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LOCAL GOVERNMENT Expedited Franchising of Cable and Video Services: Amend Title 36 of the Official Code of Georgia Annotated, Relating to Local Government, so as to Provide for the Expedited Franchising of Cable and Video Services by the Secretary of State; provide for a Short Title; Provide for Definitions; Provide for Franchise Options for Cable Service Providers and Video Service Providers; Provide a Process for the Issuance of a State Franchise; Provide for Transfers, Modifications, and Terminations of a State Franchise; Provide for Franchise Fees; Require Customer Service; Provide for Public, Educational,

and Governmental Programming Under a State Franchise; Provide a Service Outlet to Municipalities and Counties and Complementary Basic Cable Service or Video Service to Public Schools and Public Libraries over Such Service Outlet; Provide Certain Limitations on Requirements that May Be Imposed upon Holders of a State Franchise; Prohibit Discrimination Towards Potential Residential Subscribers; Provide for Related Matters; Provide an Effective Date; Repeal Conflicting Laws; and for Other Purposes

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CODE SECTIONS:	O.C.G.A. §§ 36-76-1 to -11 (new)
BILL NUMBER:	HB 227
ACT NUMBER:	368
GEORGIA LAWS:	2007 Ga. Laws 719
SUMMARY:	The Act allows cable and video service providers to obtain a statewide franchise for the providing of services. The Act provides for certain franchise fees, customer service requirements, and requirements for cable providers to provide for public, educational, and governmental programming under a state franchise.
EFFECTIVE DATE:	July 1, 2007

History

The primary reason this bill was introduced was to increase competition among cable providers in Georgia.[1] In recent years, Georgia has been on a path to increase not only competition among cable providers, but also to increase the number of households who have access to broadband internet service.[2] Prior to the passage of the Act, cable companies, such as Comcast, spent years negotiating licenses in Georgia's individual municipalities in order to provide cable service.[3] Some companies, such as AT&T, sought to speed up this process by going directly to the Georgia General Assembly and Representative Jeff Lewis (R-15th), chairman of the House Committee on Energy, Utilities, and Telecommunications.[4] AT&T was the strongest supporter of the bill because it wants to provide television services and compete with cable companies via a state license.[5] AT&T purchased the former BellSouth in December of 2006 and, along with this purchase, began increasing its efforts to compete with current cable providers in Georgia.[6]

In March of 2006, Comcast alerted Representative Lewis to the existence of consumer choice legislation being passed by other state legislatures.[7] Representative Lewis and Senator David Shafer (R-48th), seeing the potential benefits for Georgia consumers of

1. Telephone Interview with Rep. Jeff Lewis (R-15th) (Apr. 18, 2007) [hereinafter Lewis Interview].

2. During the 2006 session of the Georgia General Assembly, the Governor signed into law SB 120, the Broadband Voice over Internet bill. O.C.G.A. § 46-5-220 (Supp. 2007). The bill provided that no state agency can regulate broadband, cell phone, and wireless internet communication. *Id.* Now one year after its implementation, Georgia has the most broadband per capita of any state in the nation. *See* Video Recording of House Proceedings, Mar. 20, 2007 at 1 min., 18 sec. (remarks by Rep. Jeff Lewis (R-15th)), http://www.georgia.gov/00/article/0,2086,4802_6107103_72682804,00.html [hereinafter House Video].

3. Scott Leith & Sonji Jacobs, *New Cable TV Franchise Rules May Yield Choices, Lower Costs*, ATLANTA J.-CONST., Apr. 12, 2007, at A1, *available at* 2007 WLNR 6951827.

4. Lewis Interview, *supra* note 1; Scott Leith, *The Flip Side of Network TV*, ATLANTA J.-CONST., Feb. 16, 2007, at G1, *available at* 2007 WLNR 3049258.

5. Scott Leith, *Legislature 2007: Bill Would Change How Franchises Are Granted*, ATLANTA J.-CONST., Apr. 14, 2007, at B5, *available at* 2007 WLNR 7106419.

6. Scott Leith, *AT&T-Backed Bill Passes House by a 166-2 Vote*, ATLANTA J.-CONST., Mar. 22, 2007, at B5, *available at* 2007 WLNR 5403293. AT&T was the largest donor to Gov. Perdue's inaugural campaign, contributing more than $200,000. Scott Leith, *Governor Signs Video Franchise Bill AT&T Wanted*, ATLANTA J.-CONST., May 31, 2007, at C1, *available at* 2007 WLNR 10150074.

7. Lewis Interview, *supra* note 1.

competition entering the market, were the driving forces behind the passage of the Act.[8] In the summer of 2006, Representative Lewis arranged for all interested parties, including AT&T, to meet and agree on legislation that serves the best interests of Georgia.[9] Also included in these meetings were representatives from county and city cable television providers to ensure their views were expressed and represented in the legislation.[10]

Bill Tracking

Consideration and Passage by the House

Representatives Jeff Lewis (R-15th), Charles Martin (R-47th), Ron Stephens (R-164th), Earl Ehrhart (R-36th), and Stan Watson (R-91st) sponsored HB 227. [11] On January 31, 2007, the House first read HB 227 and Speaker of the House Glenn Richardson (R-19th) assigned it to the Committee on Energy, Utilities, and Telecommunications.[12]

With minor changes, the House Committee on Energy, Utilities, and Telecommunications favorably reported the bill out of committee on February 22, 2007.[13] The minor changes included amendments passed during the House Committee Meeting on February 20 and 21.[14] The effective date for state franchising was changed from July 1, 2007 to January 1, 2008, to allow time for the Secretary of State to promulgate customer service standards.[15] After much negotiation, the committee made the franchise fee more flexible by setting a maximum rate of 5% of the franchise holder's gross revenue received from providing cable service under the license.[16] Prior to this

8. *Id.*; Scott Leith & Sonji Jacobs, *Senate OKs Measure to Increase Cable Competition*, ATLANTA J.-CONST., Apr.11, 2007.

9. *See* Lewis Interview, *supra* note 1.

10. *Id.*

11. HB 227, as introduced, 2007 Ga. Gen. Assem.

12. State of Georgia Final Composite Status Sheet, HB 227, June 5, 2007.

13. *Id.*

14. *See* Video Recording of House Committee on Regulated Industries Meeting, Feb. 21, 2007, http://www.legis.state.ga.us/legis/2007_08/house/Committees/publicUtilities/energyArchives.htm [hereinafter House Committee Meeting Video].

15. *Id.* at 31 min., 27 sec. (remarks by Rep. Lewis (R-15th)). *Compare* HB 227, as introduced, 2007 Ga. Gen. Assem. *with* HB 227 (HCS), 2007 Ga. Gen. Assem.

16. House Committee Meeting Video, *supra* note 14, at 35 min., 45 sec. (remarks by Rep. Jeff Lewis (R-15th)).

amendment, the franchise fee was set at a *required* 5% percent for the state franchising option.[17] The change provides local governments with some additional leverage and flexibility by allowing them to set a lower franchise fee and then negotiate with a cable provider for additional PEG channel access or support in return for the lower fee.[18] The committee also added language limiting the fee the Secretary of State may impose for amendments to a statewide franchise application; the fee is limited to $250.[19]

The Act was further amended in regard to the handling of customer service complaints. The original draft of the bill provided that local governments, after receiving a certain number of complaints, had the option of forwarding the complaints to the Governor's Office of Consumer Affairs.[20] After consulting with local governments, this section was amended to provide that the Secretary of State will establish the rules and standards that will determine the amount of power given to the local governments.[21] These standards will apply only until two or more competitors service up to 25% of the defined market area.[22]

Finally, technical changes were made to Code section 6-76-11 which provide for a fallback provision to the current federal code with regard to discrimination against consumers.[23]

On March 20, 2007, Representative Lewis presented the bill on the floor of the House.[24] Representative Randal Mangham (D-94th) voiced his concerns that the bill limits the number of public,

17. *Compare* HB 227, as introduced, 2007 Ga. Gen. Assem., *with* HB 227 (HCS), 2007 Ga. Gen. Assem.

18. House Committee Meeting Video, *supra* note 14, at 35 min., 45 sec. (remarks by Rep. Jeff Lewis (R-15th)).

19. *Id.* Prior to this amendment the section did not contain any restrictions on the amount the Secretary of State could charge for amendments to franchising applications. *Compare* HB 227, as introduced, 2007 Ga. Gen. Assem., *with* HB 227 (HCS), 2007 Ga. Gen. Assem.

20. House Committee Meeting Video, *supra* note 14, at 37 min., 37 sec. (remarks by Rep. Jeff Lewis (R-15th)).

21. *Compare* HB 227, as introduced, 2007 Ga. Gen. Assem., *with* HB 227 (HCS), 2007 Ga. Gen. Assem.

22. House Committee Meeting Video, *supra* note 14, at 38 min., 37 sec. (remarks by Rep. Jeff Lewis (R-15th)). *Compare* HB 227, as introduced, 2007 Ga. Gen. Assem., *with* HB 227 (HCS), 2007 Ga. Gen. Assem.

23. House Committee Meeting Video, *supra* note 14, at 41 min., 30 sec. (remarks by Rep. Jeff Lewis (R-15th)). *Compare* HB 227, as introduced, 2007 Ga. Gen. Assem., *with* HB 227 (HCS), 2007 Ga. Gen. Assem.

24. State of Georgia Final Composite Status Sheet, HB 227, June 5, 2007.

educational, or governmental (PEG) channels to three, even though DeKalb County and Atlanta currently exceed this amount.[25] Representative Mangham also suggested that for fairness reasons, existing PEG stations in DeKalb County, such as Clark Atlanta University and People TV, should be grandfathered in to the current bill so as to not jeopardize their future.[26] He also expressed concern that PEG stations at Clark Atlanta University and People TV feel that they will have no bargaining power under the regulation.[27] Representative Lewis responded that each individual PEG channel provider would have negotiating rights in the city where they are located.[28] With a vote of 166 to 2, the House passed HB 227 on March 20, 2007.[29]

Consideration and Passage by the Senate

The Senate read the bill for the first time on March 27, 2007, and Senate President Pro Tempore Eric Johnson (R-1st) assigned it to the Senate Committee on Regulated Industries and Utilities.[30] Representative Lewis (R-15th) introduced HB 227 to the Senate Committee on Regulated Industries and Utilities.[31] Without making any substantive changes, the committee passed a substitute version of the bill.[32]

On April 11, 2007, Senator David Shafer (R-48th) presented the Senate committee substitute on the floor of the Senate.[33] In his presentation, Senator Shafer explained the background of a pending floor amendment. He stated that while the committee substitute makes reference to the number of PEG channels that a county would be entitled to have based on its population, the substitute failed to

25. House Video, *supra* note 2, at 1 hr., 24 min. (remarks by Rep. Randal Mangham (D-94th)).

26. *Id.* at 52 min., 3 sec. (remarks by Rep. Randal Mangham (D-94th)).

27. *Id.*

28. *Id.* at 55 min., 50 sec. (remarks by Rep. Jeff Lewis (R-15th)).

29. Georgia House of Representatives Voting Record, HB 227 (Mar. 20, 2007).

30. State of Georgia Final Composite Status Sheet, HB 227, June 5, 2007.

31. Student Observation of the Senate Regulated Industries and Utilities Committee (Mar. 29, 2007) (on file with the Georgia State University Law Review) [hereinafter Senate Committee Meeting].

32. *Compare* HB 227 (HCS), 2007 Ga. Gen. Assem., *with* HB 227 (SCS), 2007 Ga. Gen. Assem.

33. Video Recording of Senate Proceedings, Apr. 11, 2007 at 2 hr., 26 min., 31 sec. (remarks by Sen. David Shafer (R-48th)), http://www.georgia.gov/00/article/0,2086,4802_6107103_72682316,00.html.

indicate how the population would be tabulated.[34] Therefore the amendment adds that the population will be determined as of the last census.[35] After minimal discussion, the Senate unanimously adopted the floor amendment to the committee substitute.[36] By a vote of 52 to 2, the Senate passed HB 227, as amended, on April 11, 2007.[37] By a vote of 146 to 0, the House agreed to the Senate substitute on April 13, 2007.[38] Governor Perdue signed the bill into law on May 30, 2007.[39]

The Act

The Act adds Chapter 76, Expedited Franchising of Cable and Video Services, to Title 36 of the Official Code of Georgia Annotated.[40] Section 36-76-1 provides that the Act shall be known as the "Consumer Choice for Television Act."[41] Further, the Act provides definitions in Code section 36-76-2, relating to the various provisions of the Act.[42]

In Code section 36-76-3, the Act provides a new way to enter the cable television market.[43] Prior to the enactment of this Act, there were only two ways a cable provider could enter the market: (1) go to the local government and negotiate directly to obtain what is known as a local franchise,[44]or (2) adopt the same terms as an incumbent provider.[45] The Act adds a third option, the state franchise.[46] After January 1, 2008, a "cable service or video service provider" may "file an application for a state franchise in one or more specified service

34. *Id.*
35. *Id.*; HB 227 (SFA), 2007 Ga. Gen. Assem.
36. State of Georgia Final Composite Status Sheet, HB 227, June 5, 2007.
37. Georgia Senate Voting Record, HB 227, (Apr. 11, 2007); State of Georgia Final Composite Status Sheet, HB 227, June 5, 2007.
38. Georgia House of Representatives Voting Record, HB 227 (Apr. 13, 2007); State of Georgia Final Composite Status Sheet, HB 227, June 5, 2007.
39. State of Georgia Final Composite Status Sheet, HB 227, June 5, 2007.
40. HB 227, as passed, 2007 Ga. Gen. Assem.
41. O.C.G.A. § 36-76-1 (Supp. 2007).
42. O.C.G.A. § 36-76-2 (Supp. 2007).
43. O.C.G.A. § 36-76-3 (Supp. 2007).
44. O.C.G.A. § 36-76-3(a)(2) (Supp. 2007).
45. O.C.G.A. § 36-76-3(a)(3) (Supp. 2007).
46. O.C.G.A. § 36-76-3(a)(4) (Supp. 2007).

areas with the Secretary of State . . . ."[47] The franchise options are not mutually exclusive; a cable provider may choose a different option for each service area.[48] However, each provider can only have one franchise agreement for each service area.[49]

Code section 36-76-4 details the application process with regard to the state franchise.[50] The process begins with an application to the Secretary of State, for which the provider is required to supply copies of the application to each affected municipal or county governing authority at least forty-five days before offering cable or video services.[51] State franchise application fees shall not exceed $500 and fees for amendments to applications shall not exceed $250.[52] The application must contain "an affidavit signed by an officer or general partner of the applicant," containing: (1) an affirmative declaration that the applicant will comply with laws "regarding the placement and maintenance of facilities in the public right of way," specifically including facilities that fall under the "Georgia Utility Facility Protection Act;" (2) a description of the service area or a map depicting the service area; (3) the applicant's principal place of business and the names of its officers, and information about payment locations and equipment returns; (4) certification that the applicant is authorized to conduct business in Georgia and has the financial and technical capability to provide such service;[53] and (5) notice to the affected local governing authority of its right to designate a franchise fee pursuant to Code section 36-76-6.[54]

Code section 36-76-4(d) requires the Secretary of State to notify applicants within ten days if an application is incomplete, or the application will be deemed complete.[55] Within forty-five days of receiving a completed application, the Secretary of State shall issue a state franchise that contains a nonexclusive grant of authority to

47. *Id.*
48. O.C.G.A. § 36-76-3(b) (Supp. 2007).
49. *Id.*
50. O.C.G.A. § 36-76-4 (Supp. 2007).
51. O.C.G.A. § 36-76-4(a) (Supp. 2007).
52. O.C.G.A. § 36-76-4(b) (Supp. 2007).
53. These certification requirements will not apply to incumbent providers or to any provider that has wireline facilities located in the public right of way as of January 1, 2008. O.C.G.A. § 36-76-4(c)(4) (Supp. 2007).
54. O.C.G.A. § 36-76-4(c) (Supp. 2007).
55. O.C.G.A. § 36-76-4(d) (Supp. 2007).

provide cable service, a nonexclusive grant of authority to construct and maintain facilities on the public right of way, and the expiration date of the state franchise.[56]

As of January 1, 2008, failure by the Secretary of State to issue a state franchise within forty-five days of receiving "a completed application from an incumbent service provider . . . that has wireline facilities located in any public right of way" will "constitute issuance of the requested state franchise . . . ."[57] If the provider does not have an existing franchise or does not have wireline facilities in any public right of way, as of January 1, 2008, such failure will "constitute temporary issuance of the requested state franchise . . . ."[58]

A local governing authority must object to the issuance of a state franchise before it is issued by the Secretary of State, when the authority reasonably believes that an applicant has not yet accessed the public right of way and does not have the financial and technical capability to provide services, or is not authorized to conduct business in Georgia.[59] The Secretary of State will then consider the objection and determine whether to issue the franchise.[60] If the Secretary of State does not respond to the objection, then the temporary issuance of the state franchise will be granted subject to the Secretary of State's determination.[61]

If an incumbent service provider applies for a state franchise, any existing franchise for that service area will be terminated, "subject to the continuation of PEG support obligations" contained in Code section 36-76-4(g)(4).[62] If an incumbent provider elects to terminate an existing franchise for the service area covered by their state franchise, it will remain subject to all "contractual rights, duties, and obligations incurred" under the terms of the terminated local franchise that are owed to private persons, including subscribers.[63]

If an incumbent provider terminates their franchise under this subsection, they must provide the PEG channels that existed on

56. O.C.G.A. § 36-76-4(d)(2) (Supp. 2007).
57. O.C.G.A.§ 36-76-4(e) (Supp. 2007).
58. *Id.*
59. O.C.G.A. § 36-76-4(f) (Supp. 2007).
60. *Id.*
61. *Id.*
62. O.C.G.A. § 36-76-4(g)(1) (Supp. 2007).
63. O.C.G.A. § 36-76-4(g)(2) (Supp. 2007).

January 1, 2007, contractual duties "under the same terms as the terminated local franchise" until the local franchise would have expired on its own.[64] A municipality or county is entitled to operate its existing PEG channels as they existed on January 1, 2007 until July 1, 2012.[65] An incumbent provider that terminates its franchise must continue to provide cable access "to any municipality or county that has an activated public safety training channel as of January 1, 2007" until July 1, 2012.[66]

The Act, in Code section 36-76-5(g)(8), also requires state franchise holders to provide the same number of PEG channels and PEG cash support.[67] If a local franchise would have expired before July of 2012, they still must provide the existing PEG channels until that date.[68]

Code section 36-76-5 discusses the transferability of state franchises to any successor in interest.[69] Section (a) addresses the requirements that must be met in order to transfer a state franchise to any successor in interest.[70] The state franchise is fully transferable, provided that all requirements of a transfer are met.[71] In a transfer to a successor in interest, outstanding liabilities are still owed to the governing authority.[72] If the Secretary of State fails to issue an amended franchise within forty-five days of receipt of the transfer notice, it will be considered an issuance without further action required.[73] This Code section also outlines the procedures for modification of the provider's service area and for termination of agreements.[74]

Code section 36-76-6 discusses the franchise fee that providers are required to pay to the local governing authority, which shall not

64. O.C.G.A. § 36-76-4(g)(4) (Supp. 2007).
65. O.C.G.A. § 36-76-4(g)(5) (Supp. 2007).
66. O.C.G.A. § 36-76-4(g)(7) (Supp. 2007).
67. O.C.G.A. § 36-76-5(g)(8) (Supp. 2007).
68. *Id.*
69. O.C.G.A. § 36-76-5 (Supp. 2007).
70. O.C.G.A. § 36-76-5(a) (Supp. 2007).
71. *Id.*
72. O.C.G.A. § 36-76-5(b) (Supp. 2007).
73. O.C.G.A. § 36-76-5(c) (Supp. 2007).
74. O.C.G.A. §§ 36-76-5(d)-(e) (Supp. 2007).

exceed the federal maximum of 5%.[75] The 5% maximum is the total for the direct fee and other costs that come about as a result of negotiation, such as additional PEG channels.[76] This Code section provides flexibility to the local governments to set their own franchise rates according to these guidelines.[77] Every two years, local governments can adjust the franchise fee.[78] The Code section then sets forth guidelines for paying the franchise fee to the local governing authority,[79] and provides the procedure the municipality or county is to follow if nonpayment occurs.[80]

Code section 36-76-6(c) allows the governing authority to audit the provider no more than once annually "to the extent necessary to ensure payment in accordance with this Code section."[81] Code section 36-76-6(d) names certain records that are exempt "from public inspection under Code Section 50-18-70."[82]

Code section 36-76-6 also sets forth the manner in which the provider may transfer the cost of the franchise fee to the customer.[83] A state franchise holder can include the franchise fee as a separate item on a subscriber's bill.[84] The governing authority cannot asses any additional tax or fee for the use of any public right of way authorized by this Code section.[85]

Code section 36-76-7 sets forth the customer service requirements and states that a cable provider must comply with federal customer service standards.[86] Aside from the federal standards, the provider may only be subject to those standards set forth in this Code section.[87] The local government will handle any complaints from subscribers of the holder of a state franchise that reside in that

75. O.C.G.A. § 36-76-6(a) (Supp. 2007); House Video, *supra* note 2, at 1 hr., 59 min., 30 sec. (remarks by Rep. Charles Martin (R-47th)).
76. House Video, *supra* note 2, at 1 hr., 59 min., 30 sec. (remarks by Rep. Charles Martin (R-47th)).
77. *Id.* at 55 min., 50 sec. (remarks by Rep. Jeff Lewis (R-15th)).
78. O.C.G.A. § 36-76-6(a)(2) (Supp. 2007).
79. O.C.G.A. § 36-76-6(b) (Supp. 2007).
80. *Id.*
81. O.C.G.A. § 36-76-6(c) (Supp. 2007).
82. O.C.G.A. § 36-76-6(d) (Supp. 2007).
83. O.C.G.A. § 36-76-6(g) (Supp. 2007).
84. *Id.*
85. O.C.G.A. § 36-76-6(h) (Supp. 2007).
86. O.C.G.A. § 36-76-7 (Supp. 2007).
87. O.C.G.A. § 36-76-7(a) (Supp. 2007).

jurisdiction.[88] The Governor's Office of Consumer Affairs is to begin rulemaking by December 31, 2007, to establish rules for handling customer complaints.[89] These rules will "apply only until fifty percent of the potential subscribers within an affected local governing authority are offered service by two or more [providers] holding a state franchise or local franchise."[90] Once 50% of potential subscribers are being offered service by two or more providers, the affected local governing authority may adopt a resolution or ordinance to discontinue the handling of complaints, inquiries, billing issues, etc.[91] Once this occurs, the subscribers' bills cannot contain the local governing authority's contact information.[92]

Code section 36-76-8 discusses criteria regarding PEG channels and requires that providers work with local government agents in order to negotiate the existence of PEG channels.[93] The Code section states that no more than three channels are required to be provided by the cable provider.[94] There must be fifteen hours of nonduplicative original programming for production in the first month of operation and each month following.[95] This can be achieved by combining programming with another municipality or county.[96] There are different qualifications for each subsequent PEG channel, in terms of nonduplicative programming.[97] This Code section also discusses the operation and content of PEG channels.[98]

Code section 36-76-9 sets forth the free service outlets and basic cable service that providers must furnish, at no charge to local government facilities, public schools, and libraries.[99] Code section 36-76-10 discusses the prohibition against build-out requirements, which states that the governing authority or political subdivision

88. O.C.G.A. § 36-76-7(b) (Supp. 2007).
89. O.C.G.A. § 36-76-7(c)(1) (Supp. 2007).
90. *Id.*
91. O.C.G.A. § 36-76-7(c)(2) (Supp. 2007).
92. *Id.*
93. O.C.G.A. § 36-76-8 (Supp. 2007).
94. O.C.G.A. § 36-76-8(b)(1) (Supp. 2007). The current channels in existence are protected until July 1, 2012. O.C.G.A. § 36-76-4(g)(5) (Supp. 2007).
95. O.C.G.A. § 36-76-8(b)(2) (Supp. 2007).
96. O.C.G.A. § 36-76-8(b)(3) (Supp. 2007).
97. O.C.G.A. §§ 36-76-8(b)(4)-(6) (Supp. 2007).
98. O.C.G.A. §§ 36-76-8(c)-(j) (Supp. 2007).
99. O.C.G.A. § 36-76-9 (Supp. 2007).

cannot "impose any build-out requirements on system construction or service deployment on a holder of a state franchise."[100] This section also outlines the limited power of the governing authority to regulate the holder of a state franchise.[101]

Code section 36-76-11 discusses discrimination against potential subscribers.[102] Code section 36-76-11(a) prohibits providers from denying "access to service to any group of potential residential subscribers because of the income of the residents in the local area in which such group resides."[103] This Code section describes how to determine whether a provider is violating subsection (a), and allows potential residential subscribers to file a complaint with the local governing authority if they believe they are being denied access to services.[104]

Analysis

The Act was "the subject of intense lobbying" and discussion in both television and radio ads during the 2007 session of the Georgia General Assembly.[105] Proponents view the Act as having four main principles: (1) the Act will facilitate competition; (2) the Act will level the playing field among cable providers; (3) the Act will protect sources of revenue for counties; and (4) the Act will protect the public right of way.[106] Proponents also foresee faster market entry for large providers of cable television, less cost in administering franchises, increased consumer choice, and increased investment in Georgia.[107]

The major benefit of the Act is to facilitate competition among cable providers in Georgia.[108] The Act works to increase cable television competition by shifting franchise regulation from

100. O.C.G.A. § 36-76-10 (Supp. 2007).
101. O.C.G.A. § 36-76-10(1) (Supp. 2007).
102. O.C.G.A. § 36-76-11 (Supp. 2007).
103. O.C.G.A. § 36-76-11(a) (Supp. 2007).
104. O.C.G.A. §§ 36-76-11(b)-(c) (Supp. 2007).
105. *See* Leith, *supra* note 6.
106. Senate Committee Meeting, *supra* note 31 (remarks by Rep. Jeff Lewis (R-15th)); *see* Leith & Jacobs, *supra* note 3.
107. Interview with Brian Johnson, Deputy Director of the Senate Research Office (Apr. 18, 2007) [hereinafter Johnson Interview]; Senate Committee Meeting, *supra* note 31.
108. Lewis Interview, *supra* note 1.

individual local authorities to the state level.[109] Under the statewide franchising arrangement, new entrants into the cable and video market in Georgia will no longer need to negotiate franchise agreements with individual cities and municipal authorities.[110] Rather, a statewide license grants them access to serve any part of the state.[111] Prior to the passage of the Act, cable television providers and local governments negotiated franchise agreements that gave individual cable providers the exclusive right to serve an individual community.[112] Problems under the old regime included the "bureaucratic nightmare" for cable providers of going to every local government and to set up a franchise agreement.[113] There are 159 counties and around 650 cities in the State of Georgia, making statewide access very cumbersome under the old regime.[114] Further, the old regime was time consuming and placed additional administrative burdens on providers to meet the various requirements of individual local governments.[115]

Under the Act, cable companies can compete for the same customers and give options to consumers, allowing them to find the cable company that best fits their needs.[116] Cable providers are also able to avoid the administrative burdens of negotiating with individual local governments by filing for a statewide franchise, allowing a provider to enter into every cable market in Georgia.[117]

As of December 2006, eleven other states have introduced similar consumer choice for television legislation.[118] Texas was the first state to initiate statewide franchising legislation.[119] The legislation in Texas saw great success in the state. Increased cable competition spurred about one billion dollars in new investment, created 12,000 to

109. *Id.*
110. Johnson Interview, *supra* note 107.
111. *Id.*
112. O.C.G.A. § 36-18-1 to -2 (2006).
113. *See* Johnson Interview, *supra* note 107.
114. *Id.*
115. Lewis Interview, *supra* note 1.
116. Dave Williams, *Panel OKs Cable Competition*, GWINNETT DAILY POST, Mar. 30, 2007.
117. *Id.*
118. STEVEN TITCH, REASON FOUND., BETTER PRICES AND BETTER SERVICES FOR MORE PEOPLE: ASSESSING THE OUTCOMES OF VIDEO FRANCHISE REFORM (2007), *available at* www.reason.org/ps355.pdf. Those states include: Texas, Indiana, North Carolina, South Carolina, New Jersey, California, Michigan, Virginia, and Arizona. *Id.*
119. *Id.*

15,000 new jobs, and lowered average cable bills for consumers by an average of 20%.[120] In Texas, rural cable consumers had access to broadband cable at a faster rate than urban areas, contrary to the concerns of critics of cable providers "cherry picking" their services over rural areas.[121]

One of the strongest opponents to the Act was People TV of Atlanta.[122] Under the cable franchising arrangement, prior to the Act's passage, People TV expected to receive around $632,000 worth of revenue from Comcast.[123] Now that the Act has passed, People TV expects that in 2010, when the current franchising agreement between the City of Atlanta and Comcast expires, it will see a significant reduction in revenue.[124] Further, in 2012, the City of Atlanta would see its PEG channel access drop from five channels to three, the limit under the Act.[125] Another vocal opponent of the bill was the Southern Media Justice Coalition, which "complained that statewide cable franchises would mean fewer choices for some communities, particularly in rural areas, not just of TV programming but of internet access."[126] Proponents respond to this concern by explaining that additional PEG channels are available through negotiation with service providers, with the idea being that local governments will charge providers a smaller franchise fee in return for additional PEG channel access.[127] The fundamental principle of this argument is that if the consumers desire additional PEG channels in their community, they will lobby their local government to provide them with these channels.[128]

Additional critics of cable television franchise reform in Georgia predict that the statewide reforms will not adequately protect rural,

120. Williams, *supra* note 116.

121. Senate Committee Meeting, *supra* note 31 (remarks by Tom Giovanetti, President, Institute for Policy Innovation).

122. People TV of Atlanta, http://www.peopletv.org (last visited Apr. 17, 2007). People TV of Atlanta is a public access television station that provides individuals and non-profit organizations with the facilities and equipment to create their own shows for cable television. *Id.*

123. Free Press, HB 227 Update, http://freepress.net/defendlocalaccess/=GA (last visited Apr. 17, 2007).

124. *Id.*

125. *Id.*

126. Williams, *supra* note 116.

127. House Video, *supra* note 2, at 55 min., 50 sec. (remarks by Rep. Jeff Lewis (R-15th)).

128. House Committee Meeting Video, *supra* note 14, at 1 hr., 49 min. 44 sec. (remarks by Rep. Jeff Lewis (R-15th)).

low-income communities from being "cherry-picked" over by cable providers.[129] These critics assert that the Act allows cable companies to "choke the economic development of poor and rural areas by not providing those areas with cable and high speed internet which are both crucial in attracting new businesses and desperately needed jobs."[130] Critics expect providers to "cherry pick" over rural areas and predict that the job growth seen in some areas will not be seen in areas with a much smaller population.[131]

In response to these criticisms regarding "cherry picking," proponents suggest that statewide franchising will actually promote rural access by eliminating the burdens of individual local negotiation of cable franchise agreements.[132] Further, the proponents argue that the potential elimination of PEG channels will merely require existing PEG channels to operate more efficiently and continue to provide the same programming that is currently available.[133] Judging from the overwhelming number of votes and media coverage in support of this legislation, it appears that the legislators and the local media agree that the Consumer Choice for Television Act is good for the industry and good for the citizens of Georgia.

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129. Senate Committee Meeting, *supra* note 31 (remarks by Bruce Nixon, Southern Media Justice Coalition).

130. Georgia for Democracy, Legislature Watch 2007, Action Alert: Contact Your State Senator – Vote NO on HB 227, http://www.georigafordemocracy.org (last visited Apr. 17, 2007).

131. Senate Committee Meeting, *supra* note 31 (remarks by Bruce Nixon, Southern Media Justice Coalition).

132. *See* Johnson Interview, *supra* note 107.

133. *Id.*