

SENATE No. 01687

The Commonwealth of Massachusetts

PRESENTED BY:

Michael J. Rodrigues

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act promoting consumer choice and competition for cable service.

PETITION OF:

NAME:

Michael J. Rodrigues

DISTRICT/ADDRESS:

First Bristol and Plymouth

SENATE No. 01687

By Mr. Rodrigues, petition (accompanied by bill, Senate, No. 1687) of Rodrigues for legislation to promote consumer choice and competition for cable service [Joint Committee on Telecommunications, Utilities and Energy].

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act promoting consumer choice and competition for cable service.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Findings.

2 Whereas Massachusetts’ consumers benefit from expanded choice and competition for
3 cable television services, and

4 Whereas, increased investment and the potential for competition in the cable service
5 market through the provisioning of new communications services and deployment of advanced
6 communications infrastructure, including fiber optic technologies, further enhances economic
7 opportunities, smart growth, the delivery of health care services, improved public safety,
8 education and human services and the overall health and well being of the residents of the
9 Commonwealth, and

10 Whereas, modifying existing cable service franchising laws through the enactment of
11 new standards and procedures that provide consumers with expedited access to a competitive
12 facilities-based cable market is warranted in this state,

13 The General Court finds that a local franchising process that speeds innovation,
14 technology deployment, and competition while sustaining local programming via public,
15 education and government channels through a predictable set of consumer-supported fees is in
16 the public interest.

17 SECTION 2. Chapter 166A is hereby amended in section 1, as appearing in the 2006
18 Official Edition, by inserting the following definitions:

19 “Annual gross revenue”, the revenue derived during a twelve-month period from the
20 operation of the CATV system to provide cable service as defined by federal law at 47 U.S.C.
21 section 542(b).

22 “Incumbent cable operator.” The cable operator serving the largest number of cable
23 subscribers in a particular municipal franchise area on the effective date of this chapter.

24 SECTION 3. Section 5 of said chapter 166A, as so appearing, is hereby amended by
25 inserting after by inserting after the words "shall agree to the following", in the first sentence,
26 the following words:- “unless otherwise authorized by an agreement with an issuing authority.”

27 SECTION 4. Said chapter 166A is hereby further amended by striking out section 6, as
28 so appearing, and inserting in place thereof the following section:-

29 Section 6. Issuance of License; Hearing; Notice.

30 (a) Within ten (10) business days of receipt of an application, the issuing authority and
31 applicant shall commence negotiations on the terms and conditions of a license.

32 (b) Within ninety (90) days of receipt of an application, the issuing authority shall hold a
33 public hearing thereon, first causing notice of the time and place of such hearing and of the
34 subject matter sufficient for identification, to be published in a newspaper of general circulation
35 in the city or town not less than fourteen days before the day of such hearing, or if there is no
36 such newspaper in such city or town then by posting such notice in a conspicuous place in the
37 city or town hall for a period of not less than fourteen days before the day of such hearing.

38 (c) The purpose of the hearing shall be to assess the applicant's financial, technical and
39 other qualifications to operate a CATV system in the municipality based upon the contents of the
40 application and the negotiated terms and conditions of the license. Within five (5) business days
41 of the public hearing held pursuant to this section, the issuing authority shall approve or deny the
42 application, provided that the issuing authority may not unreasonably refuse to approve a
43 competitive cable license application. For purposes of this section and section thirteen
44 ("Renewal of License"), it shall be deemed unreasonable for an issuing authority to require the
45 applicant to provide fees in excess of those set forth in section nine of this chapter. In the event
46 that the issuing authority approves the application, then the parties shall execute a final license
47 within five (5) business days of the public hearing, and the issuing authority shall deliver a copy
48 of the fully-executed final license to the division. In the event that the issuing authority denies
49 the application, then it shall issue a written public statement within five (5) business days of the
50 public hearing containing the reasons for its rejection, and the issuing authority shall promptly
51 deliver a copy of said public statement to the applicant and to the division.

52 SECTION 5. Chapter 166A is hereby amended by striking out section 9, as so appearing,
53 and inserting in place thereof the following section:-

54 Section 9. License Fees; PEG Support Fees.

55 No application for a license to operate a CATV system or for renewal, transfer or
56 assignment of such a license shall be considered by an issuing authority unless it is accompanied
57 by an application fee of one hundred dollars payable to the city or town. A licensee, serving
58 more than two hundred and fifty subscribers, shall on or before March fifteenth of each year, pay
59 to the commonwealth a license fee equal to eighty cents per subscriber served and to the issuing
60 authority a license fee equal to fifty cents per subscriber served. In determining a license fee, the
61 number of subscribers served shall be measured as of December thirty first of the preceding
62 calendar year.

63 The issuing authority may require each CATV operator issued a license to provide
64 funding to support the ongoing operations of public, educational and governmental (“PEG”)
65 access programming at the same percentage assessed upon all other CATV operators serving the
66 municipality. Such PEG support fee, together with the license fees set forth in subsection (a)
67 shall not exceed five percent (5%) of the CATV operator’s annual gross revenue. Each annual
68 fee payment set forth in subsections (b), (c) and (d) of this section shall be due and payable on or
69 before March fifteenth of each year for CATV operations undertaken during the preceding
70 calendar year.

71 After the effective date of this chapter and until the expiration of the incumbent CATV
72 operator's existing license, if the incumbent CATV operator’s license has obligations to remit to
73 the issuing authority any cash payments for the capital costs of public, educational, and

74 government access channel facilities or institutional networks in the municipality, each CATV
75 operator issued a license by the issuing authority may be required to provide payments to the
76 issuing authority on a pro rata share per annum basis to support the capital costs of public,
77 educational, and government access channel facilities or institutional networks in an amount up
78 to one percent (1%) of each operator's annual gross revenue, provided that in no event shall the
79 total of such payments exceed the capital support funding required to be provided in cash by the
80 incumbent CATV operator's license, pro rated on a monthly per subscriber basis calculated based
81 on the incumbent CATV operator's cash capital support obligation and on the number of
82 subscribers to the incumbent CATV operator's cable service in the municipality at the time the
83 CATV provider's license application is filed with the issuing authority.

84 After expiration of the incumbent CATV operator's license in effect as of the effective
85 date of this chapter, all CATV operators in a municipality, including an incumbent CATV
86 operator who renews its license pursuant to section thirteen of this chapter, shall provide annual
87 cash payments to the issuing authority to support the capital costs of public, educational, and
88 government access channel facilities or institutional networks in an amount up to one percent
89 (1%) of each operator's annual gross revenue, so long as the percentage assessed against the
90 annual gross revenue is the same for all CATV operators serving the municipality.

91 The CATV operator's obligation to transmit public, educational and governmental access
92 channel signals shall be subject to the provision by the issuing authority, without charge to the
93 CATV operator of: (1) access to the content origination facility; (2) access to any required
94 equipment within the content origination facility and suitable required space, environmental
95 conditions, electrical power supply, access, and pathways within the content origination facility;
96 (3) video and audio signal feeds in an analog baseband format (NTSC) or other format that is

97 acceptable to the license holder; and (4) any third-party consent that may be necessary to
98 transmit such access channel signals (including, without limitation, any consent that may be
99 required with respect to third-party facilities, including the facilities of other CATV operators in
100 the municipality, used to originate at or transmit PEG access channel content to the content
101 origination facility) .

102 SECTION 6. Said chapter 166A, as so appearing, is hereby further amended by striking
103 out the first paragraph of Section 14, and replacing it with the following new paragraph:

104 Any applicant for a license or renewal of a license who is aggrieved by a denial of its
105 application by the issuing authority or by its failure to act within the period of sixty days or
106 otherwise act with the time periods set forth in Section 6 of this chapter or any licensee who is
107 aggrieved by the action of an issuing authority in modifying, suspending, cancelling, revoking,
108 declaring a license forfeited, denying consent to the transfer or assignment of a license or control
109 thereof, or by the issuing authority's failure to act within the period of sixty days may appeal
110 therefrom to the division within thirty days following notice of such action or within thirty days
111 following the expiration of such sixty day period of inaction or such time period set forth in
112 Section 6 of this chapter, by a petition in writing, setting forth all material facts in the case.

113 SECTION 7. Said chapter 166A is hereby further amended by striking out the first line
114 of Section 16, as so appearing, and inserting in its place the following sentence: The division
115 shall after hearing issue or amend such standards and regulations as are necessary and
116 appropriate to carry out the purpose of this chapter for which purpose it may employ such expert
117 assistants as it deems necessary.

118 SECTION 8. This act shall take effect immediately upon passage.