[First Reprint]

ASSEMBLY, No. 3766

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED FEBRUARY 3, 2011

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SYNOPSIS

The "Market Competition and Consumer Choice Act;" alters State regulation of competitive services provided by telecommunications and CATV companies.

CURRENT VERSION OF TEXT

As reported by the Assembly Regulatory Oversight and Gaming Committee on February 3, 2011, with amendments.

(Sponsorship Updated As Of: 2/18/2011)

AN ACT concerning the regulation of competitive services provided by telecommunications and cable television companies, designated as the "Market Competition and Consumer Choice Act," and amending R.S.48:2-13, P.L.1972, c.186 and P.L.2006, 83.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. R.S.48:2-13 is amended to read as follows:

48:2-13. a. The board shall have general supervision and regulation of and jurisdiction and control over all public utilities as defined in this section and their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of this Title.

The term "public utility" shall include every individual, copartnership, association, corporation or joint stock company, their lessees, trustees or receivers appointed by any court whatsoever, their successors, heirs or assigns, that now or hereafter may own, operate, manage or control within this State any railroad, street railway, traction railway, autobus, charter bus operation, special bus operation, canal, express, subway, pipeline, gas, electricity distribution, water, oil, sewer, solid waste collection, solid waste disposal, telephone or telegraph system, plant or equipment for public use, under privileges granted or hereafter to be granted by this State or by any political subdivision thereof.

b. Nothing contained in this Title shall extend the powers of the board to include any supervision and regulation of, or jurisdiction and control over any vehicles engaged in ridesharing arrangements with a maximum carrying capacity of not more than 15 passengers, including the driver, where the transportation of passengers is incidental to the purpose of the driver or any vehicles engaged in the transportation of passengers for hire in the manner and form commonly called taxicab service unless such service becomes or is held out to be regular service between stated termini; hotel buses used exclusively for the transportation of hotel patrons to or from local railroad or other common carrier stations, including local airports, or bus employed solely for transporting school children and teachers, to and from school, or any autobus with a carrying capacity of not more than 10 passengers now or hereafter operated under municipal consent upon a route established wholly within the limits of a single municipality or with a carrying capacity of not more than 20 passengers operated under municipal consent upon a route established wholly within the limits of not more than four contiguous municipalities within any county of the fifth or

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1]Assembly ARG committee amendments adopted February 3, 2011.

sixth class, which route in either case does not in whole or in part parallel upon the same street the line of any street railway or traction railway or any other autobus route.

c. Except as provided in section 7 of P.L.1995, c.101 (C.58:26-25), the board shall have no regulatory authority over the parties to a contract negotiated between a public entity and a private firm pursuant to P.L.1995, c.101 (C.58:26-19 et al.) in connection with the performance of their respective obligations thereunder. Nothing contained in this title shall extend the powers of the board to include any supervision and regulation of, or jurisdiction and control over, any public-private contract for the provision of water supply services established pursuant to P.L.1995, c.101 (C.58:26-19 et al.).

d. Unless otherwise specifically provided pursuant to P.L.1999, c.23 (C.48:3-49 et al.), all services necessary for the transmission and distribution of electricity and gas, including but not limited to safety, reliability, metering, meter reading and billing, shall remain the jurisdiction of the Board of Public Utilities. The board shall also maintain the necessary jurisdiction with regard to the production of electricity and gas to assure the reliability of electricity and gas supply to retail customers in the State as prescribed by the board or any other federal or multi-jurisdictional agency responsible for reliability and capacity in the State.

e. Notwithstanding the provisions of subsection a. of this section, the board shall have the authority to classify as regulated the sale of any thermal energy service by a cogenerator or district heating system, for the purpose of providing heating or cooling to a residential dwelling if, after notice and hearing, it determines that the customer does not have sufficient space on its property to install an alternative source of equivalent thermal energy, there is no contract governing the provision of thermal energy service for the relevant period of time, and that sufficient competition is no longer present, based upon consideration of such factors as: ease of market entry; presence of other competitors; and the availability of like or substitute services in the relevant geographic area. Upon such a classification, the board may determine such rates for the thermal energy service for the purpose of providing heating or cooling to a residential dwelling as it finds to be consistent with the prevailing cost of alternative sources of thermal energy in similar situations. The board, however, shall continue to monitor the thermal energy service to such residential dwellings and, whenever the board finds that the thermal energy service has again become sufficiently competitive pursuant to the criteria listed above, the board shall cease to regulate the sale or production of the service. The board shall not have the authority to regulate the sale or production of steam or any other form of thermal energy, including hot and chilled water, to non-residential customers.

f. Nothing contained in this Title shall extend the powers of the board to include supervision and regulation of, or jurisdiction and control over, an entity engaged in the provision or use of sewage effluent for the purpose of providing a cooling medium to an end user or end users on a single site, which provision results in the conservation of potable water which would otherwise have been used for such purposes.

g. Except as provided herein, the board shall have no regulatory authority over the parties to a contract entered into between the governing body of a city of the first class and a duly incorporated nonprofit association in connection with the performance of their respective obligations thereunder when the governing body of a city of the first class shall determine by ordinance that it is in the public interest to contract with that duly incorporated nonprofit association for the provision of water supply services as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), or for the provision of wastewater treatment services as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15) or a wastewater treatment system as defined in subsection (19) of section 15 of P.L.1971, c.198 (C.40A:11-15), or any component part or parts thereof, including a water filtration system as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), upon approval of the contract pursuant to the provisions of section 6 of P.L.2002, c.47 (C.58:28-7).

Notwithstanding any other provision of P.L.2002, c.47 whenever the governing body of a city of the first class enters into a contract with a duly incorporated nonprofit association for the provision of water supply services as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility as defined in subsection (16) of section 15 of P.L.1971, c.198 (C.40A:11-15), and that governing body operates water supply facilities as authorized pursuant to the provisions of N.J.S.40A:31-4, which supply water to customers within another local unit, the nonprofit association or governing body shall be subject to the jurisdiction, rate regulation and control of the Board of Public Utilities as provided in N.J.S.40A:31-23, to the extent the nonprofit association or governing body supplies water to customers within that other local unit.

h. Notwithstanding any other provision of law, this chapter or chapters 3 and 17 of this Title, and any regulation, order, or settlement, or portion thereof, adopted pursuant to such chapters, shall not apply to any public utility, as defined pursuant to subsection a. of this section, that offers telephone service in any and

all exchanges where the public utility certifies to the office of the Secretary of State that there are at least two providers offering voice services to retail residential customers in that exchange or those exchanges, including any entity providing voice telephone service using any technology, including, but not limited to, a provider of "commercial mobile service" as defined in subsection (d) of section 332 of the Communications Act of 1934 (47 U.S.C. s.332(d)), a provider of Voice over Internet protocol service, as defined in section 3 of P.L.2007, c.195 (C.48:17-34) or, for an interexchange telecommunications carrier, as defined in section 2 of P.L.1991, c.428 (C.48:2-21.17), two such providers operating in its service territory. However, nothing in this subsection affects:

(1) the applicability of, including the utility's rights and obligations under any authority of the board to implement and enforce, articles 3, 3A, 3B, 3C and 4 of chapter 3 of Title 48 of the Revised Statutes, and R.S.48:2-37, R.S.48:17-8, section 58 of P.L.1962, c.198 (C.48:17-9.1), R.S.48:17-19, and R.S.48:17-20;

(2) the applicability or enforcement of consumer protection and unfair or deceptive trade practices laws that apply generally to the conduct of business in the State;

(3) the applicability of, including any authority of the board to implement and enforce, the provisions of the "Underground Facility Protection Act," P.L.1994, c.118 (C.48:2-73 et seq.);

(4) ¹[the board's] board¹ authority to implement and enforce any telephone relay service or enhanced 9-1-1 funding or operational requirements;

(5) ¹[the board's] board¹ authority, including that which existed prior to the enactment of section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) to implement or enforce or to resolve disputes regarding any law, rule, regulation, order, or board-approved settlement governing the interconnection, wholesale services, or other intercarrier rights, duties, or obligations of any party, and such party's successors and assigns, including any authority of the board to enforce any rights, duties, or obligations under 47 U.S.C. s.251 or 47 U.S.C. s.252;

(6) the applicability of article 5, chapter 17 of Title 48 of the Revised Statutes;

(7) ¹[the board's] board¹ jurisdiction over intrastate switched access rates, and the terms and conditions of service, including requirements for the filing of switched access tariffs, subject to oversight and enforcement by the board;

(8) the ability of a public utility, in its discretion, to otherwise file tariffs with the board;

(9) the discounts available under the federal Lifeline and Link-Up programs, and any technology may be used to satisfy Lifeline obligations without otherwise subjecting Lifeline services to any greater regulation than non-Lifeline services provided using that technology; or

(10) the definition of an "incumbent local exchange carrier" under 47 U.S.C. s.251(h).

i. A public utility, as defined in subsection a. of this section, may offer telephone exchange service by filing a registration statement with the board which is limited to providing the name, address, and telephone number of the company's primary business office in this State.

(cf: P.L.2002, c.47, s.10)

2. Section 9 of P.L.1972, c.186 (C.48:5A-9) is amended to read as follows:

9. The board, which is empowered pursuant to P.L.1972, c.186 (C.48:5A-1 et seq.) to be the local franchising authority in this State, and the director under the supervision of the board, shall have full right, power, authority and jurisdiction to:

a. Receive or initiate complaints of the alleged violation of any of the provisions of P.L.1972, c.186 (C.48:5A-1 et seq.) or of any of the rules and regulations made pursuant to P.L.1972, c.186 (C.48:5A-1 et seq.) or of the terms and conditions of any municipal consent or franchise granted pursuant to P.L.1972, c.186 (C.48:5A-1 et seq.); and for this purpose and all other purposes necessary to enable the director to administer the duties of the office as prescribed by law may hold hearings and shall have power to subpoena witnesses and compel their attendance, administer oaths and require the production for examination of any books or papers relating to any matter under investigation at any such hearing;

b. Supervise and regulate every CATV company operating within this State and its property, property rights, equipment, facilities, contracts, certificates and franchises so far as may be necessary to carry out the purposes of P.L.1972, c.186 (C.48:5A-1 et seq.), and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction;

c. Institute all proceedings and investigations, hear all complaints, issue all process and orders, and render all decisions necessary to enforce the provisions of P.L.1972, c.186 (C.48:5A-1 et seq.), of the rules and regulations adopted thereunder, or of any municipal consents issued pursuant to P.L.1972, c.186 (C.48:5A-1 et seq.);

d. Institute, or intervene as a party in, any action in any court of competent jurisdiction seeking mandamus, injunctive or other relief to compel compliance with any provision of P.L.1972, c.186 (C.48:5A-1 et seq.), of any rule, regulation or order adopted thereunder or of any municipal consent or franchise issued thereunder, or to restrain or otherwise prevent or prohibit any illegal or unauthorized conduct in connection therewith.

e. Notwithstanding any other provision of law, the requirements of this chapter, and any regulation, order, or

settlement adopted pursuant thereto, shall not apply to a cable television company in any competitive franchise area and the rates, service, property, and operations of such cable television company shall not be subject to board regulation, except that nothing in this subsection affects:

(1) the board's authority to issue or renew individual certificates of authority or system-wide franchises pursuant to sections 15 through 19 of P.L.1972, c.186 (C.48:5A-15 through C.48:5A-19); provided, however, that the board's authority governing the renewal of a system-wide franchise in any and all competitive franchise areas shall be limited by this subsection and not expanded;

(2) the rights of a cable television company or telecommunications provider to occupy public rights of way as those rights existed as of the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), including, but not limited to, the rights reflected in sections 15 and 20 of P.L.1972, c.186 (C.48:5A-15 and C.48:5A-20);

(3) the obligation to obtain municipal consents, as pursuant to section 22 of P.L.1972, c.186 (C.48:5A-22);

(4) the rights of municipalities to manage their rights of way in a non-discriminatory and competitively neutral manner, consistent with federal law;

(5) a CATV company's payment obligations to municipalities pursuant to section 30 of P.L.1972, c.186 (C.48:5A-30) and subject to the provisions of subsection a. of section 69 of P.L.1997, c.162 (C.54:30A-124);

(6) the applicability of the "Underground Facility Protection Act," P.L.1994, c.118 (C.48:2-73 et seq.);

(7) the right of a cable television company to convert to a system-wide franchise pursuant to section 19 of P.L.2006, c.83 (C.48:5A-25.1);

(8) the rights of a cable television company to lease, rent, or otherwise have made available facilities or rights-of-way, including pole space pursuant to sections 20 and 21 of P.L.1972, c.186 (C.48:5A-20 and C.48:5A-21) and any board regulation, order, and decision with respect thereto;

(9) the rights of a cable television company with regard to liability for use of its facilities as established in section 50 of P.L.1972, c.186 (C.48:5A-50); '[or]'

(10) the access rights of a cable television company pursuant to section 49 of P.L.1972, c.186 (C.48:5A-49) and any board regulation, order, and decision with respect thereto ';

(11) the obligations of a cable television company pursuant to paragraphs (1) and (2) of subsection a. of section 20 of P.L.2006, c.83 (C.48:5A-25.2);

(12) with regard only to applications for a system-wide franchise, a commitment to provide, without charge, a standard installation within 150 feet of the cable television company's active

plant, one service outlet activated for basic service to all public schools, all municipal public libraries, and the municipal fire headquarters, the municipal police headquarters, and one municipal building designated by the municipality; or

(13) with regard only to applications for a system-wide franchise, a commitment by a cable television company to provide, without charge, free Internet service, through one service outlet activated for basic service to all public schools, all municipal public libraries, and the municipal fire headquarters, the municipal police headquarters, and one municipal building designated by the municipality[1] .

For the purposes of this subsection, a "competitive franchise area" means a franchise area where a cable television company certifies to the office of the Secretary of State that there are at least two "multichannel video programming distributors," as defined in subsection (d) of 47 C.F.R. s.76.905, offering video programming in that franchise area, or portions thereof.

(cf: P.L.2006, c.83, s.6)

3. Section 16 of P.L.1972, c.186 (C.48:5A-16) is amended to read as follows:

16. a. Any entity that seeks to provide cable service in this State after the effective date of **[**P.L.2006, c.83 (C.48:5A-25.1 et al.)**]** P.L. , c. (C.) (pending before the Legislature as this bill) may apply for either individual certificates of approval or a system-wide franchise. The application for a certificate of approval or a system-wide franchise from the board shall be in writing.

b. (1) If the application is for an individual certificate of approval, it shall have attached thereto the municipal consents required under section 22 of P.L.1972, c.186 (C.48:5A-22), except that a CATV company which is authorized under section 25 of P.L.1972, c.186 (C.48:5A-25) to continue operations after the expiration of a municipal consent and pending municipal action upon application made for renewal or reissuance of such consent may in lieu of such municipal consent attach to its application a statement regarding its authorization to continue operations under the provisions of section 25 of P.L.1972, c.186 (C.48:5A-25); and shall contain such other information as the director may from time to time prescribe by duly promulgated rule, regulation or order. Each such application shall be accompanied by a filing fee of $200.

(2) Upon receipt of an application for a certificate of approval, the board shall review the application and shall, within 30 days of the receipt thereof, either issue the certificate of approval applied for or order the director to schedule a hearing upon the application. No application shall be denied without a hearing thereon. In determining whether a certificate of approval should be issued, the board shall consider only the requirements of **[**sections**]** section 17

and subsections a. through f. ', i., and l.' of section 28 of P.L.1972, c.186 (C.48:5A-17 and C.48:5A-28).

c. (Deleted by amendment, P.L.2006, c.83).

d. If the application is for a system-wide franchise, it shall be accompanied by a filing fee of $1,000, and shall specify the information required in subsections a. through f. ', i., and l.' of section 28 of P.L.1972, c.186 (C.48:5A-28).

e. A hearing held pursuant to subsection b. of this section shall be held not later than the sixtieth day following the date of receipt of the application; it may be adjourned from time to time, but not to a date later than the sixtieth day following the date on which it commenced, except with the consent of the applicant. If such hearing is held, the director shall within 60 days after the conclusion thereof, transmit his findings of fact and recommendations to the board, which shall either issue or deny the certificate for which application was made, or may issue a certificate with such limitations and conditions as the public interest may require. The board shall transmit notice of its decision to the applicant.

f. Upon receipt of an application for a system-wide franchise submitted pursuant to subsection a. of this section, the board shall review the application and shall, within 45 days of the receipt thereof, schedule two public hearings to be held in different geographical areas of the State during the 45-day review period to consider the application. In determining whether a system-wide franchise should be issued, the board shall consider only the requirements of [sections] section 17 and subsections a. through f. ', i., and l.' of section 28 of P.L.1972, c.186 (C.48:5A-17 and C.48:5A-28). On or before the expiration of the 45-day period, the board shall issue an order in writing approving the application if the applicant has complied with the requirements for a system-wide franchise, or the board shall disapprove the application in writing citing the reasons for disapproval if the board determines that the application for a system-wide franchise does not comply with the requirements for a system-wide franchise. If, during the 45-day review period, the board determines to disapprove the application, the board shall schedule a meeting with the applicant to explain to the applicant the reasons for the board's disapproval and to allow the applicant to question the board concerning the reasons for the board's disapproval. Such meeting shall be scheduled no later than two weeks following the expiration of the 45-day review period required by this subsection. The applicant shall have 30 days following the date of the meeting with the board required by this subsection to file an appeal of the board's decision. The board shall thereafter schedule an administrative hearing not later than the thirtieth day following the date of the filing of the applicant's appeal in order to consider the applicant's appeal. The board shall issue a final decision in written form on the applicant's appeal not later than

the sixtieth day following the administrative hearing, required by this subsection, on the applicant's appeal.
(cf: P.L.2006, c.83, s.12)

4. Section 19 of P.L.1972, c.186 (C.48:5A-19) is amended to read as follows:

19. a. A certificate of approval issued by the board shall be nontransferable, except by consent of the board and shall specify the area to which it applies and the municipal consents upon which it is based. A certificate of approval issued by the board shall be valid for 15 years from the date of issuance or 20 years from the date of issuance if the board certifies that a CATV company has implemented an open video system in accordance with 47 U.S.C. s.573 within one year after receiving a municipal consent, or until the expiration, revocation, termination or renegotiation of any municipal consent upon which it is based, whichever is sooner. But amendment of the terms of a municipal consent by mutual consent and in conformity with the procedures specified in P.L.1972, c.186 (C.48:5A-1 et seq.) during the term for which it was issued shall not require the issuance of a new certificate of approval. A CATV company holding a certificate based upon a municipal consent with a provision for automatic renewal for a term not exceeding 10 years beyond its expiration date or 15 years beyond its expiration date if the board certifies that the CATV company has implemented an open video system in accordance with 47 U.S.C. s.573, shall be entitled to automatic reissuance of a certificate for such term, unless it shall forfeit such entitlement by violation of any terms of P.L.1972, c.186 (C.48:5A-1 et seq.), regulations issued pursuant thereto, or by the terms of the municipal consent.

b. A system-wide franchise issued by the board shall be nontransferable, except by consent of the board, and shall specify the area to which it applies. A system-wide franchise issued by the board shall be valid for seven years from the date of issuance. A system-wide franchise issued pursuant to P.L.1972, c.186 (C.48:5A-1 et seq.) shall not require: (1) a CATV company to operate outside of the areas in which the CATV company either has plant or equipment in use for the provision of any consumer video, cable or telecommunications service, or has proposed to place into use such plant or equipment for the provision of such services; or (2) a CATV company with municipal consents issued prior to the effective date of P.L.2006, c.83 (C.48:5A-25.1 et al.) to operate outside of the areas covered by such consents. **[**Renewal of a system-wide franchise shall be valid for a period of seven years from the date of the renewal issuance, and the board shall establish rules governing the renewal of a system-wide franchise.**]**

c. Renewal of a system-wide franchise shall be valid for a period of seven years from the date of the renewal issuance. Notwithstanding anything to the contrary herein, to the extent that

the system-wide franchisee is operating in a competitive franchise area, as defined in subsection e. of section 6 of P.L.2006, c.83 (C.48:5A-9), regardless of whether such system-wide franchise was obtained pursuant to section 16 of P.L.1972, c.186 (C.48:5A-16) or section 19 of P.L.2006, c.83 (C.48:5A-25.1), the franchise shall be renewed automatically for an additional seven years upon the submission of written notice to the board by the franchisee. Such notice shall identify the franchise area that is subject to the renewal, attach a copy of the expired or expiring franchise to be renewed, and certify that the subject area is a competitive franchise area. The renewal shall be effective upon the submission of the notice to the board. The board shall have no authority to establish rules governing this renewal provision as it relates to competitive franchise areas.

(cf: P.L.2006, c.83, s.15)

5. Section 19 of P.L.2006, c.83 (C.48:5A-25.1) is amended to read as follows:

19. a. Municipal consents and certificates of approval for applications to provide cable television services in a municipality issued prior to the effective date of P.L.2006, c.83 (C.48:5A-25.1 et al.) shall remain in effect until such time as they may expire or until such time as the cable television company is granted a renewal of the franchise as a municipal franchise or converts the franchise to a system-wide franchise. Except as may otherwise be provided by subsection b. of this section and section 30 of P.L.1972, c.186 (C.48:5A-30), both the municipality and the cable television company shall be bound by the terms of the municipal consents and certificates of approval until such time as the municipal consents and certificates of approval have been converted into a system-wide franchise. A cable television company with a municipal franchise or franchises issued prior to the effective date of P.L.2006, c.83 (C.48:5A-25.1 et al.) may, if it wishes, automatically convert any or all such franchise or franchises into a system-wide franchise upon notice to the board and the affected municipality, but without the need for the consent of either the board or the affected municipality and without regard to the requirements of P.L.2006, c.83 (C.48:5A-25.1 et al.) applicable to applications for such a franchise **[**, except that the commitments required pursuant to subsections h. through n. of section 28 of P.L.1972, c.186 (C.48:5A-28) shall be applicable to any or all such system-wide franchises and any failure of a CATV company to abide by or conform its practices to such commitments shall be considered a violation of the system-wide franchise and the board may enforce these provisions through the imposition of monetary penalties under section 51 of P.L.1972, c.186 (C.48:5A-51), or the suspension or revocation of the system-wide franchise, or it may seek to renew such franchise or franchises as a municipal franchise or franchises pursuant to the provisions of P.L.1972,

c.186 (C.48:5A-1 et seq.)**]** **'**, except that the commitments required pursuant to subsections i. and l. of section 28 of P.L.1972, c.186 (C.48:5A-28) shall be applicable to any or all such system-wide franchises and any failure of a CATV company to abide by or conform its practices to such commitments in subsections i. and l. of section 28 of P.L.1972, c.186 shall be considered a violation of the system-wide franchise and the board may enforce these provisions through the imposition of monetary penalties under section 51 of P.L.1972, c.186 (C.48:5A-51), or the suspension or revocation of the system-wide franchise, or it may seek to renew such franchise or franchises as a municipal franchise or franchises pursuant to the provisions of P.L.1972, c.186 (C.48:5A-1 et seq.)**'** . Such conversion need not take place with respect to all municipalities at the same time, but rather the cable television company may convert additional municipal franchises and add affected municipalities to the service area covered by such system-wide franchise at any time during the term of the system-wide franchise.

b. If a cable television company is granted a system-wide franchise by the board pursuant to the provisions of P.L.2006, c.83 (C.48:5A-25.1 et al.), the company shall be able thereafter to be issued a municipal franchise or franchises and the renewal of a municipal franchise or franchises which had been issued prior to the effective date of P.L.2006, c.83 (C.48:5A-25.1 et al.). Nothing herein shall preclude a municipality from enforcing its right-of-way management powers on a reasonable and non-discriminatory basis, except that such powers shall not include the authority to impose any fees, taxes, assessments or charges of any nature for the use of public rights-of-way by a CATV company except as expressly provided by P.L.2006, c.83 (C.48:5A-25.1 et al.). The provisions of this subsection shall not be construed to relieve any cable television company issued a system-wide franchise of its obligations to meet the requirements of section 20 of P.L.2006, c.83 (C.48:5A-25.2).
(cf: P.L.2006, c.83, s.19)

6. Section 30 of P.L.1972, c.186 (C.48:5A-30) is amended to read as follows:

30. a. Except as provided in subsection d. of this section, **[**in consideration of a municipal consent issued under P.L.1972, c.186 (C.48:5A-1 et seq.), the**]** a CATV company to which **[**the**]** a municipal consent is issued or a CATV company that operates under a system wide franchise pursuant to section 19 of P.L.2006, c.83 (C.48:5A-25.1), shall annually pay to each municipality served by the CATV company, in lieu of all other franchise taxes and municipal license fees, a sum equal to two percent of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers to its cable television reception service in such municipality. Each CATV company shall, on or before the

twenty-fifth day of January each year, file with the chief fiscal officer of each municipality in the territory in which it is certificated to operate a statement, verified by oath, showing the gross receipts from such charges, and shall at the same time pay thereon to the chief fiscal officer of the municipality the two percent charge hereby imposed on those receipts as a yearly franchise revenue for the use of the streets.

b. Any CATV company which, pursuant to any agreement in effect prior to December 15, 1972, paid or had agreed to pay to any municipality in fees or other charges in consideration of the consent of such municipality to the use of streets, alleys and public places thereof for the installation and operation of a CATV system, or similar consideration, a sum or rate exceeding that which it would pay pursuant to this section shall, in applying for a certificate of approval show to the satisfaction of the board that the reduction in such payments effectuated by the application of this section shall be reflected in (1) commensurate reduction of rates to subscribers to cable television reception service or (2) commensurate improvements in such service made available to such subscribers. If the board is not so satisfied it shall amend, as excessive, the rate schedule contained in the application so that such rates shall be reduced to a degree commensurate with the reduction in payments by the CATV company to the municipality.

c. **[**In consideration of a municipal consent issued to a CATV company pursuant to P.L.1972, c.186 (C.48:5A-1 et seq.), a municipality may petition the board for permission to charge a yearly franchise fee exceeding that prescribed in subsection a. of this section. A municipal consent setting such a fee in excess of the amount prescribed in subsection a. of this section shall be deemed to constitute such a petition when filed with the board pursuant to section 16 of P.L.1972, c.186 (C.48:5A-16) as part of an application for a certificate of approval. A hearing pursuant to the provisions of section 16 of P.L.1972, c.186 (C.48:5A-16) shall be held upon any application containing such petition, or upon any such petition separately filed, and at such hearing full notice and opportunity to be heard upon the matter shall be accorded to both the municipality and any CATV company affected thereby. The board after such hearing and upon recommendation of the director may grant such petition and allow the imposition of a franchise revenue exceeding that prescribed in subsection a. of this section, and at a rate to be prescribed by the board, when the board is satisfied that the same is warranted by the expenses to the municipality with respect to the regulation or supervision within its territory of cable television, or any other expenses caused by the existence and operation within its territory of cable television service.**]** (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)

d. In consideration of a system-wide franchise issued under P.L.1972, c.186 (C.48:5A-1 et seq.) , but not in the case of a CATV

company operating under a system-wide franchise pursuant to section 19 of P.L.2006, c.83 (C.48:5A-25.1), once the CATV company receiving such system-wide franchise serves one or more residents within a municipality, then such CATV company shall pay the fees as provided in paragraphs (1) and (2) of this subsection, and once such CATV company files a certification with the board certifying that the company is capable of serving 60 percent or more of the households within such municipality that are served by a CATV company that has received a municipal consent issued under P.L.1972, c.186 (C.48:5A-1 et seq.) and the board approves such certification, **[**both**]** the CATV company receiving such system-wide franchise and a CATV company in such municipality that has received a municipal consent issued under P.L.1972, c.186 (C.48:5A-1 et seq.) or is operating under a system-wide franchise pursuant to section 19 of P.L.2006, c.83 (C.48:5A-25.1), shall annually pay:

(1) to such municipality served by the CATV company, in lieu of all other franchise taxes and municipal license fees, and for the purpose of providing local property tax relief, a sum equal to three and one half percent of the gross revenues, as this term is defined in section 3 of P.L.1972, c.186 (C.48:5A-3), that the company derives during the calendar year from cable television service charges or fees paid by subscribers in the municipality to the company; and

(2) to the State Treasurer, on behalf of persons residing in the municipality who are eligible for the "Pharmaceutical Assistance to the Aged and Disabled" program established pursuant to P.L.1975, c.194 (C.30:4D-20 et seq.), a sum equal to the amount that such eligible persons pay as charges or fees to the company for providing basic cable service to such persons, provided that the yearly total of such payments from the company shall not exceed one half of one percent of the gross revenues, as this term is defined in section 3 of P.L.1972, c.186 (C.48:5A-3), that the company derives during the calendar year from cable television service charges or fees paid by subscribers in the municipality to the company. The State Treasurer shall establish a "CATV Universal Access Fund," for the purposes described in this paragraph.

e. Each CATV company shall, on or before the twenty-fifth day of January each year, file with the chief fiscal officer of each municipality in the territory in which it is certificated to operate a statement, verified by oath, showing the gross receipts from the charges described in subsection d. of this section, and shall at the same time pay thereon: (1) to the chief fiscal officer of the municipality the three and one-half percent charge hereby imposed on those receipts as a yearly franchise revenue for the purpose of providing local property tax relief; and (2) to the State Treasurer, for deposit into the "CATV Universal Access Fund," for the purpose of providing payment to eligible subscribers residing in the municipality an amount equal to the charges or fees paid by such

subscribers during the preceding calendar year to the company for providing basic cable service to such subscribers, provided that the yearly total of such payments by the company to such subscribers does not exceed the one half of one percent charge hereby imposed.

f. For the purposes of this section, in the case of a cable service that may be bundled or integrated functionally with other services, capabilities or applications, the fee required by this section shall be applied only to the gross revenue from charges or fees derived from revenues attributable to the provision of cable service, as reflected on the books and records of the holder in accordance with Federal Communications Commission rules, regulations, standards or orders.

g. For the purposes of this section, within 45 days of the date of receipt of the certification filed pursuant to subsection d. of this section, the board shall issue an order in writing approving the certification, or the board shall disapprove the certification in writing citing the reasons for disapproval. If the board fails to either approve or disapprove the certification within the 45-day period, the certification shall be deemed to be approved. If, during the 45-day period, the board determines to disapprove the certification, the board shall schedule a meeting with the CATV company to explain to the CATV company the reasons for the board's disapproval and to allow the CATV company to question the board concerning the reasons for the board's disapproval. Such meeting shall be scheduled no later than two weeks following the expiration of the 45-day period required by this subsection. The CATV company shall have 30 days following the date of the meeting with the board required by this subsection to file an appeal of the board's decision. The board shall thereafter schedule an administrative hearing not later than the thirtieth day following the date of the filing of the CATV company's appeal in order to consider the CATV company's appeal. The board shall issue a final decision in written form on the CATV company's appeal not later than the sixtieth day following the administrative hearing, required by this subsection, on the CATV company's appeal.

(cf: P.L.2006, c.83, s.27)

[1]7. (New section) Within two years after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the Board of Public Utilities shall undertake a review and study to determine whether an adequate level of competition and consumer choice exists in the telecommunications and cable television marketplace. The board shall provide a copy of its review and study to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, within two years after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill).[1]

1 ⁱ[7.] 8.ⁱ This act shall take effect immediately.