

## ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda—underwritten by global corporations—includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

## ALEC's Corporate Board

### —in recent past or present

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- American Bail Coalition
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For more on these corporations, search at [www.SourceWatch.org](http://www.SourceWatch.org).

**DID YOU KNOW?** Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

[Home](#) → [Model Legislation](#) → Telecommunications and Information Technology

### Cable and Video Competition Act

#### (Certainty in Regulatory Treatment of Competitive Cable Service Providers and Video Service Providers)

Did you know that global telecommunications company AT&T was the corporate co-chair in 2011?

### Summary

This Act provides for regulatory certainty at the state level in the critical areas of cable and video services with respect to the authority of Competitive Cable Service Providers and Video Service Providers to use the public rights of way to provide Cable Service or Video Service and to promote competitive entry by all Competitive Cable Service Providers and Video Service Providers. The Act provides the State the authority to provide a state-issued authorization for Competitive Cable Service Providers and Video Service Providers to deploy their systems and provide Cable Service and Video Service to residents of the State. The Act further provides, however, that Competitive Cable Service Providers and Video Service Providers must reimburse municipalities for use of the public rights of way, provide sufficient capacity for public, educational and government noncommercial programming and continue comply with the public rights of way management requirements.

### Model Legislation

An act to add Sections \_\_\_\_\_ to the [STATE] \_\_\_\_\_ Code,

THE PEOPLE OF THE STATE OF [STATE] DO ENACT AS FOLLOWS:

**Section 1. {Legislative Findings}** A new Section \_\_\_\_\_ is added to the \_\_\_\_\_ Code to read as follows:

"This act shall be known and may be cited as the Cable and Video Competition Act ('Act').

The Legislature finds and declares all of the following:

(a) [STATE]'s economy would be enhanced by investment in new communications and video programming infrastructure, including fiber optic and Internet protocol ('IP') technologies.

(b) Cable Services and Video Services bring important daily benefits to [STATE] by providing news, education and entertainment.

(c) Competitive Cable Service Providers and Video Service Providers are capable of providing new video programming services and competition to consumers in [STATE] - and have stated their desire to do so.

(d) There has been only minimal competitive entry into the facilities-based video programming market since [STATE] current franchising requirements were enacted.

(e) The cable franchise requirements and associated build-out requirements have acted as a barrier to entry to many new facilities-based entrants, because time-to-market and reasonable cost of entry are critical for new entrants seeking to compete with the cable incumbents.

(f) Under both federal and State law, there is considerable uncertainty concerning whether and to what degree the cable franchise requirements apply to various Competitive Cable Service Providers and Competitive Video Service Providers, especially to the extent those new entrants are already subject to public right-of-way management under other State regulatory schemes.

(g) To remove legal uncertainty under State law with respect to the authority of Competitive Cable Service Providers and Video Service Providers to use the public rights of way to the extent the cable franchise requirements do not apply, and to promote competitive entry by all Competitive Cable Service Providers and Video Service Providers, the State of [STATE] can and should provide a state-issued authorization for Competitive Cable Service Providers and Video Service Providers to deploy their systems and provide Cable Service and Video Service to residents of the State. This state-issued grant will allow all Competitive Cable Service Providers and Video Service Providers to move forward in making the significant investments required to provide new services and competition for video programming.”

**Section 2. {Definitions}** A new Section \_\_\_\_\_ is added to the \_\_\_\_\_ Code to read as follows:

“For purposes of this Act:

(a) ‘Cable Service’ is defined as set forth in 47 U.S.C. Section 522(6).

(b) ‘Cable Operator’ is defined as set forth in 47 U.S.C. Section 522(5).

(c) ‘Cable System’ is defined as set forth in 47 U.S.C. Section 522(7).

(d) ‘Competitive Cable Service Provider’ means a person authorized by this Act to provide Cable Service over a Cable System other than the incumbent Cable Operator providing service in the area to be served by the Competitive Cable Service Provider; or (ii) a Cable Operator authorized by this Act to provide Cable Services over a Cable System in areas where it currently does not have an existing franchise agreement as of the effective date of this Act.

(e) ‘Competitive Video Service Provider’ means a person authorized by this Act to provide Video Service. This term does not include a Cable Operator, and a Competitive Video Service Provider shall not be considered a Cable Operator and the facilities of a Competitive Video Service Provider shall not be considered a Cable System.

(f) ‘Competitive Cable Service Provider Fee’ means the amount paid by a Competitive Cable Service Provider pursuant to section 4 of this Act.

(g) ‘Competitive Video Service Provider Fee’ means the amount paid by a Competitive Video Service Provider pursuant to section 4 of this Act.

(h) ‘Franchise’ means an initial authorization, or renewal of an authorization, issued by a Franchising Entity, regardless of whether the authorization is designed as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction and operation of a Cable System or Video Service Provider’s network in the public rights-of-way.

(i) ‘Franchising Entity’ means the city or county or city and county entitled to require franchises and impose fees under [STATE] \_\_\_\_ Code § \_\_\_\_ for Cable Systems.

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(j) "Public Rights-of-Way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easements dedicated for compatible uses.

(k) "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in 47 U.S.C. Section 522(20).

(l) "Video Service" means Video Programming services provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any Video Programming provided by a commercial mobile service provider defined in 47 U.S.C. Section 332(d) or cable service provided by a Competitive Cable Service Provider."

**Section 3. {Main Provisions}** A new section \_\_\_\_\_ is added to the \_\_\_\_\_ Code to read as follows:

"(a) State Authorization to Provide Cable Service or Video Service.

(1) The following entities shall possess a Cable Service or Video Service Authorization:

(i) any entity certificated to provide local exchange service in the State of [STATE] that seeks to operate or operates as a Competitive Cable Service Provider or Competitive Video Service Provider in its local exchange service area and (ii) any other Competitive Cable Service Provider or Competitive Video Service Provider that secures permission from the Secretary of State. The entities that are certificated under part (i) shall automatically possess such authorization upon the effective date of this Act. The Secretary of State shall promulgate regulations to govern the Cable Service or Video Service Authorization application process for Competitive Cable Service Providers and Video Service Providers included in part (ii) of this subparagraph. To the extent required by applicable law, any Cable or Video Service Authorization granted by this Act or the Secretary of State shall constitute a 'franchise' for purposes of 47 U.S.C. § 541(b)(1). To the extent required for purposes of 47 U.S.C. §§ 521-561, only the State of [STATE] shall constitute the exclusive 'franchising authority' for Competitive Cable Service Providers and Competitive Video Service Providers in the State of [STATE].

(2) (i) No Franchising Entity or other political entity of the State of [STATE] may (1) require a Competitive Cable Service Provider or Competitive Video Service Provider to obtain a separate Franchise or (2) otherwise impose any fee or Franchise requirement on any Competitive Cable Service Provider or Competitive Video Service Provider except as provided in this Act. For purposes of this subsection, a Franchise requirement includes, without limitation, any provision regulating rates charged by Competitive Cable Service Providers or Competitive Video Service Providers or requiring Competitive Cable Service Providers or Competitive Video Service Providers to satisfy any build-out requirements or deploy any facilities or equipment. [STATE] \_\_\_\_\_ Code §§ \_\_\_\_\_ shall not apply to Competitive Cable Service Providers or Competitive Video Service Providers.

(3) A Cable Operator with an existing franchise to provide Cable Service in any municipality in the state as of the effective date of this Act is not eligible to seek a State Authorization to Provide Cable Service or Video Service under this Act as to such municipality until the expiration date of the existing franchise agreement.

(b) Customer access to community programming.

(1) Not later than 180 days after a request by a municipality or county in which the Competitive Cable Service Provider or the Competitive Video Service Provider is providing Cable Service or Video Service, the holder of a State Authorization to Provide Cable Service or Video Service shall designate a sufficient amount of capacity on its communications network to allow the provision of a comparable number of channels or capacity of public, educational, and governmental (PEG) noncommercial programming provided by the incumbent cable operator.

(2) The content to be provided over this PEG access pursuant to this section shall be the responsibility of the municipality or county receiving the benefit of such capacity and the holder of a State Authorization to Provide Cable Service or Video Service bears only the responsibility for the transmission of such content, subject to technological restraints.

(3) The municipality or county must ensure that all transmissions, content, or programming to be transmitted by a holder of a State Authorization to Provide Cable

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Service or Video Service are provided or submitted to the Competitive Cable Service Provider or Competitive Video Service Provider in a manner or form that is capable of being accepted and transmitted by a provider, without requirement for additional alteration or change in the content by the provider, over the particular network of the Competitive Cable Service Provider or Competitive Video Service Provider, which is compatible with the technology or protocol utilized by the Competitive Cable Service Provider or Competitive Video Service Provider to deliver services.

(4) Where technically feasible, the holder of a State Authorization to Provide Cable Service or Video Service and an incumbent cable service provider shall use reasonable efforts to interconnect their cable or video systems for the purpose of providing PEG programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. Holders of a State Authorization to Provide Cable Service or Video Service and incumbent cable service providers shall negotiate in good faith and incumbent cable service providers may not withhold interconnection of PEG channels.

(5) A court of competent jurisdiction shall have exclusive jurisdiction to enforce any requirement under this section.

(c) Except as provided in section 3 (a) and (b) of this Act, Competitive Cable Service Providers and Competitive Video Service Providers shall enjoy the same rights under the law of the State of [STATE] as incumbent Cable Operators and other providers of Video Programming.

(d) The Secretary of State shall be solely responsible for enforcing the provisions of this Act and may do so by filing a complaint in a court of competent jurisdiction.”

**Section 4.** A new section \_\_\_\_\_ is added to the \_\_\_\_\_ Code to read as follows:

Competitive Cable Service Provider and Competitive Video Service Provider Fee.

“(a) A Competitive Cable Service Provider or Competitive Video Service Provider will provide notice to each Franchising Entity with jurisdiction in any locality in which a Competitive Cable Service Provider or Competitive Video Service Provider begins to offer Cable Service or Video Service.

(b) In any locality in which a Competitive Cable Service Provider offers Cable Service or a Competitive Video Service Provider offers Video Service, the Competitive Cable Service Provider or Competitive Video Service Provider shall calculate and pay the Competitive Cable Service Provider or Competitive Video Service Provider Fee to the Franchising Entity with jurisdiction in that locality upon the Franchising Entity’s written request. If the Franchising Entity makes such a request, the Competitive Cable Service Provider or Competitive Video Service Provider Fee shall be due on a quarterly basis, 45 days after the close of the quarter, and shall be calculated as a percentage of gross revenues, as defined herein. The Franchising Entity may not demand any additional fees or charges from the Competitive Cable Service Provider or Competitive Video Service Provider, and may not demand the use of any other calculation method.

(c) The percentage to be applied against gross revenues pursuant to section 4(a) shall be set by the Franchising Entity and identified in its written request equal to the percentage paid by the incumbent cable operator or 5%, whichever is less.

(1) For purposes of this subsection, “gross revenues” means all consideration of any kind or nature, including, without limitation, cash, credits, property and in-kind contributions (services or goods) received by the provider from subscribers for the provision of Cable Service over a Cable System by a Competitive Cable Provider or Video Service by a Competitive Video Service Provider within the Franchising Entity’s jurisdiction.

Competitive Cable Service Providers and Competitive Video Service Providers shall be subject to and only be required to pay either the Competitive Cable Service Provider Fee or the Competitive Video Service Provider Fee but no event will a provider be subject to both the Competitive Cable Service and Competitive Video Service Provider Fees.

(2) For purposes of this subsection, “gross revenues” does not include:

(A) Revenues not actually received, even if billed, such as bad debt.

(B) Revenues received by any affiliate or any other person in exchange for supplying

goods or services used by the provider to provide Cable Service or Video Service.

(C) Refunds, rebates or discounts made to subscribers, leased access providers, advertisers, or any municipality or other unit of local government.

(D) Any revenues from services not classified as Cable Service or Video Service, including, without limitation, revenue received from telecommunications services, revenue received from information services, revenue received in connection with advertising, revenue received in connection with home shopping services, or any other revenues attributed by the Competitive Cable Service Provider or Competitive Video Service Provider to non-cable service or non-video service in accordance with any applicable laws, rules, regulations, standards or orders.

(E) Any revenue paid by subscribers to home shopping programmers directly from the sale of merchandise through any home shopping channel offered as part of the Cable Services or Video Services.

(F) The sale of Cable Services or Video Services for resale in which the purchaser is required to collect the 5% fee from the purchaser's customer.

(G) Any tax of general applicability imposed upon the Competitive Cable Service Provider or Competitive Video Service Provider or upon subscribers by a city, state, federal or any other governmental entity and required to be collected by the Competitive Cable Service Provider or Competitive Video Service Provider and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, and communication taxes), and including the 5% fee specified in this subsection.

(H) The provision of Cable Services or Video Services to public institutions, public schools or governmental entities at no charge.

(I) Any foregone revenue from the Competitive Cable Service Provider's or Competitive Video Service Provider's provision of free or reduced-cost video service to any person, including, without limitation, any municipality and other public institutions or other institutions.

(J) Sales of capital assets or sales of surplus equipment.

(K) Reimbursement by programmers of marketing costs incurred by the Competitive Cable Service Provider or Competitive Video Service Provider for the introduction or promotion of new programming.

(L) Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing.

(M) Copyright fees paid to the United States Copyright Office.

(d) At the request of a Franchising Entity, no more than once per year, the Secretary of State may perform reasonable audits of the Competitive Cable Service Provider's or Competitive Video Service Provider's calculation of the Competitive Cable Service Provider or Competitive Video Service Provider Fee.

(e) Any Competitive Cable Service Provider or Competitive Video Service Provider may identify and collect the amount of the Competitive Cable Service Provider or Competitive Video Service Provider Fee as a separate line item on the regular bill of each subscriber."

**Section 5.** A new section \_\_\_\_\_ is added to the \_\_\_\_\_ Code to read as follows:

Nondiscrimination By Franchising Entity.

(a) A Franchising Entity shall allow the holder of a State Authorization to Provide Cable Service or Video Service to install, construct, and maintain a communications network

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within a public right-of-way and shall provide the holder of a State Authorization to Provide Cable Service or Video Service with open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way.

(b) A Franchising Entity may not discriminate against the holder of a State Authorization to Provide Cable Service or Video Service:

(1) the authorization or placement of a communications network in public rights-of-way;

(2) access to a building; or

(3) a municipal utility pole attachment term.

(c) A Franchising Entity may impose on a Competitive Cable Service Provider or Competitive Video Service Provider a permit fee under [STATE] \_\_\_ Code § \_\_\_\_\_ only to the extent it imposes such a fee on incumbent Cable Operators, and any fee may not exceed the actual, direct costs incurred by the Franchising Entity for issuing the relevant permit. In no event may a fee under this subsection be levied (i) if the Competitive Cable Service Provider or Competitive Video Service Provider already has paid a permit fee of any kind in connection with the same activity that would otherwise be covered by the permit fee under this subsection or is otherwise authorized by law or contract to place the facilities used by the Competitive Cable Service Provider or Competitive Video Service Provider in the public rights of way, or (ii) for general revenue purposes.”

**Section 6.** A new section \_\_\_\_\_ is added to the \_\_\_\_\_ Code to read as follows:

(a) The purpose of this section is to prevent discrimination among potential residential subscribers.

(b) A Competitive Cable Service Provider or Competitive Video Service Provider that has been granted a State Authorization to Provide Cable Service or Video Service may not deny 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.

(c) The holder of a State Authorization to Provide Cable Service or Video Service may use direct-to-home satellite service or another alternative technology that provides comparable content, service, and functionality to satisfy the requirements of this section.”

**Section 7.** A new section [\_\_\_\_\_] is added to the \_\_\_\_\_ Code to read as follows:

Applicability of Other Law.

(a) The provisions of this Chapter are intended to be consistent with the Federal Cable Act, 47 U.S.C. Section 521 *et. seq.*

(b) Except as otherwise stated herein, nothing in this Chapter shall be interpreted to prevent a Competitive Cable Service Provider, Competitive Video Service Provider, a Cable Operator or a Franchising Entity from seeking clarification of its rights and obligations under federal law or to exercise any right or authority under federal or state law.

(c) If any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.”

Adopted by the Telecommunications & Information Technology Task Force at the States and Nation Policy Summit, December 2005. Approved by the ALEC Board of Directors, April 20, 2006.

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