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SENATE BILL 522

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Gerald P. Ortiz y Pino

AN ACT

RELATING TO TELECOMMUNICATIONS; ENACTING THE COMMUNITY ACCESS TO MEDIA AND INFORMATION ACT; PROVIDING FOR COMMUNITIES TO ENSURE PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS TO CABLE TELEVISION FRANCHISE AGREEMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Community Access to Media and Information Act".

Section 2. DEFINITIONS.--As used in the Community Access to Media and Information Act:

A. "access management organization" means an entity contracted to provide the services of public, educational and governmental access;

B. "annual gross revenues of the local service provider" means any and all revenues receivable annually by the

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1 service provider subject to federal regulations and laws;

2 C. "local franchise authority" means the unit of  
3 the political subdivision charged with oversight and regulation  
4 of the franchise agreements;

5 D. "political subdivision" means a unit of state  
6 government;

7 E. "public, educational and governmental access"  
8 means either combined or separate noncommercial channels that  
9 are given to communities in exchange for the use of public  
10 rights of way and that provide the general public with access  
11 to media programming, training and equipment to facilitate the  
12 use of bandwidth and spectrum; and

13 F. "service provider" means a corporation that  
14 offers communications, information and digital services to a  
15 consumer for remuneration.

16 Section 3. COMMUNICATIONS AND INFORMATION SERVICES--  
17 FRANCHISE AGREEMENT--TEN PERCENT FOR PUBLIC USE.--

18 A. A political subdivision that enters into a  
19 franchise agreement with a service provider shall require as a  
20 term under the franchise agreement that no less than ten  
21 percent of the bandwidth and spectrum or channels, whichever  
22 may be greater, be made available for public use. The  
23 franchise agreement shall include methods for the use of the  
24 bandwidth or spectrum by noncommercial agencies, organizations  
25 and institutions to provide communications and information

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1 services in the public interest.

2 B. A telecommunications franchise agreement  
3 pursuant to this section shall provide compensation of no less  
4 than five percent of the gross revenues of the service provider  
5 as determined by a transparent audit mechanism.

6 Section 4. NEEDS ASSESSMENT PRIOR TO FRANCHISE  
7 AGREEMENT.--

8 A. Prior to the execution of a franchise agreement,  
9 the service provider shall, at its expense, conduct an  
10 assessment of the communications and information needs of the  
11 community. The methodology for the needs assessment shall  
12 conform to generally accepted standards. The results shall be  
13 published as a matter of public record, and a public hearing  
14 shall be conducted by the political subdivision within ninety  
15 days of completion of the needs assessment.

16 B. No assignment of a franchise shall be valid  
17 unless:

18 (1) the assignee assumes all of the  
19 obligations of the assignor; and

20 (2) the political subdivision has approved the  
21 assignment.

22 C. Minimum requirements of franchise agreements  
23 executed pursuant to this section for public, educational and  
24 governmental access shall include that:

25 (1) no less than two and one-half percent of

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1 the annual gross revenues of the local service provider shall  
2 be passed through to the access management organization for  
3 general operations;

4 (2) no less than an additional one percent of  
5 gross revenues above franchise fees of the service provider  
6 shall be set aside for the provision of facilities and  
7 equipment, to be collected by the political subdivision and  
8 passed through to the public, educational and governmental  
9 access operation; and

10 (3) the funds payable to the political  
11 subdivision in accordance with Paragraphs (1) and (2) of this  
12 subsection shall be distributed by the political subdivision  
13 among the access providers equitably in accordance with the  
14 demands upon their respective resources.

15 D. If the service service provider also operates as  
16 the access management organization, the service provider shall  
17 establish clear administrative procedures to make equipment and  
18 channel time available to the community and shall state, on  
19 screen, that the public is watching an access channel. These  
20 requirements shall be specifically described in the franchise  
21 agreement and subject to regulation and approval by the local  
22 franchise authority.

23 E. If a nonprofit organization operates as the  
24 access management organization, the obligations in this section  
25 shall be included in the contractual agreement between the

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1 political subdivision and the nonprofit organization and  
2 subject to regulation and approval by the local franchise  
3 authority.

4 F. Nothing in this section prohibits political  
5 subdivisions from obtaining additional funding, bandwidth and  
6 spectrum or services from service providers within the  
7 limitations imposed by federal law.

8 Section 5. CABLE AND SATELLITE SERVICE.--Cable and  
9 satellite service providers shall carry public, educational and  
10 governmental access channels and services in those designated  
11 market areas where they currently carry local commercial  
12 channels on their systems.

13 Section 6. EMERGENCY ALERT CAPACITY.--A communications  
14 and information service provider shall have the capacity for  
15 transmitting emergency alerts via its system.

16 Section 7. ABANDONED FRANCHISE.--A cable system shall be  
17 deemed abandoned if a renewed franchise agreement has not been  
18 completed by the termination date of the existing franchise  
19 agreement unless a mutually agreed upon extension between the  
20 political subdivision and the service provider for continuation  
21 of negotiations has been reached.

22 Section 8. DIVERSITY IN PROGRAMMING--DISCRIMINATION  
23 PROHIBITED.--

24 A. Service providers, political subdivisions and  
25 access management organizations shall act to provide the

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1 greatest possible range of diversity in programming and  
2 delivery of services to the public.

3 B. No service provider, political subdivision or  
4 access management organization covered under this section may  
5 discriminate against an individual, organization or corporate  
6 entity in regard to service or the granting of contracts and  
7 franchises for reasons of race, religion, ethnicity, gender,  
8 age or sexual orientation.

9 Section 9. PUBLIC REGULATION COMMISSION--COMPLIANCE.--The  
10 political subdivision and the service provider shall file a  
11 report each year with the public regulation commission  
12 certifying compliance with the provisions of the Community  
13 Access to Media and Information Act.

14 Section 10. SUBSCRIBER--ACTION FOR COMPLIANCE.--A  
15 subscriber to the services included in this section may bring  
16 action to enforce compliance with the Community Access to Media  
17 and Information Act.

18 Section 11. SEVERABILITY.--If any part or application of  
19 the Community Access to Media and Information Act is held  
20 invalid, the remainder or its application to other situations  
21 or persons shall not be affected.