

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 765,
2 Page 1, Section A, Line 5, by inserting after all of said section and line the following:

3
4 "71.284. 1. For purposes of this section, the following terms mean:

5 (1) "Communication service", a service that transports information electronically including,
6 but not limited to, internet protocol enabled services;

7 (2) "Competitive service", a wholesale or retail offering of a specific communication service
8 that is provided by one or more service providers within the boundaries of the local government.

9 "Competitive service" shall not mean:

10 (a) Any service that a local government is prohibited from offering by law;

11 (b) The provision of free wireless communication services to the public;

12 (c) Any communication service that a local government uses for its own internal purposes;

13 (d) Any dark fiber that a local government may provide without including transmission of
14 information in its offering if such dark fiber is made available to all service providers under the
15 same terms and conditions;

16 (e) Any communication service to be provided by a local government if the proposed
17 communication service meets the following requirements on the date of initial offering to the
18 public:

19 a. The service is substantially similar to a service being offered by one or more service
20 providers within such local government;

21 b. The service is offered to at least fifty percent of the addresses within the boundaries of
22 such local government; and

23 c. The service is offered at speeds that are fifty percent greater than any maximum retail
24 service speeds offered by a service provider within such local government; or

25 (f) Any internet broadband service that does not meet the minimum speed of broadband as
26 defined in FCC 14-190;

27 (3) "Dark fiber", unlit fiber optic cable that does not include the electronics necessary to
28 transmit or receive information;

29 (4) "Fiscal impact", the total estimated cost of providing the proposed service, including the
30 annual operating cost, the fair market value of all resources provided by the local government,

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1 interest, the cost of physical facilities, and compensation of staff;

2 (5) "Local government", any city, town, village, or entity under the ownership or control of
3 any city, town, or village;

4 (6) "Service provider", a wireless service provider, broadband or other internet protocol
5 enabled service provider, video service provider, telecommunications company, or other
6 communications-related service provider;

7 (7) "Wireless service provider", a provider of commercial mobile service under Section
8 332(d) of the Federal Telecommunications Act of 1996 (47 U.S.C. Section 151, et seq).

9 2. On or after August 28, 2016, no local government may offer to provide a competitive
10 service unless:

11 (1) The local government offered such competitive service for purchase before August 28,
12 2016. Such local government may continue to provide such competitive service and may continue
13 to use necessary infrastructure to provide such service. It may upgrade, improve, or enhance such
14 infrastructure to continue to provide such service to its customers and prospective customers,
15 including any modification or expansion to provide additional features or quality through products
16 or technology not previously utilized;

17 (2) The competitive service is not being offered to fifty percent of the addresses by any
18 combination of service providers within the boundaries of such local government;

19 (3) The fiscal impact to the local government of providing such competitive service is less
20 than one million dollars over the initial five-year period such service will be offered, with such
21 figure adjusted annually according to the applicable consumer price index utilized by the
22 department of economic development;

23 (4) A single actual or potential business or a local government, on behalf of such business,
24 makes a request for a communication service of a specific speed in excess of one gigabit per second
25 download speed at a specific location that all service providers are unable or unwilling to provide.
26 If such is the case, such local government may offer such service to such single business at a cost
27 not below market price; or

28 (5) Such competitive service offering is approved by a majority of the voters of the local
29 government voting thereon, as provided in this section. Once a local government receives approval
30 by a majority of voters, it may upgrade, improve, or enhance such infrastructure to continue to
31 provide such service to its customers and prospective customers, including any modification or
32 expansion to provide additional features or quality through products or technology not previously
33 utilized.

34 3. To place the question of providing a competitive service on the ballot, the local
35 government shall complete a study concerning the feasibility of offering the service including, but
36 not limited to, the financial implications to the local government, including for the initial five-year
37 period such service will be offered; the access to the service being provided by private business; and
38 other relevant factors; and shall release the results of the study to the public at least ninety days
39 prior to the question being placed before the voters.

40 4. Nothing in this section shall be construed to require multiple votes to obtain authorization
41 to provide a competitive service and authorization regarding fiscal issues. A local government may

1 name the individual service providers necessary to meet the definition of a competitive service
2 under this section. Depending on the question to be asked, the question shall be submitted in
3 substantially one of the following forms:

4 (1) "Shall (name of local government) offer (name and description of
5 competitive service) in competition with current private business at an estimated cost of
6 (estimated cost of the project determined under subsection 3 of this section) over the initial five-year
7 period of operation?";

8 (2) "Shall (name of local government) offer (name and description of
9 competitive service) in competition with current private business at an estimated cost of
10 (estimated cost of the project determined under subsection 3 of this section) over the initial five-year
11 period of operation, and shall such competitive service be financed from (description of
12 where and by what means revenue shall be obtained)?"; or

13 (3) "After previously approving the question of whether (name of local
14 government) offer (name and description of competitive service) in competition with
15 current private business, shall such competitive service be financed from (description of
16 where and by what means revenue shall be obtained)?".

17 5. If a local government offers a communications service where a private business also
18 offers such service:

19 (1) No financial subsidization to support the service shall be allowed from revenue collected
20 from other services offered by the local government, unless such usage of funds for the competitive
21 service is specifically approved by voters. The provisions of this subdivision shall become void if
22 such practice is determined by a court of competent jurisdiction to be unlawful. The use of assets
23 owned by the local government, which are provided under an agreement requiring the payment of
24 fair market value for use of such assets, shall not be considered financial subsidization under this
25 subdivision. The issuance of a loan by the local government, which is provided under an agreement
26 requiring the payment of principal and interest, shall not be considered financial subsidization under
27 this subdivision;

28 (2) Except as provided under subdivisions (3) and (6) of this subsection, no assets or funds
29 of the local government shall support such service, unless the voters of the local government
30 approve a specific usage or revenue stream for the service;

31 (3) The local government may provide infrastructure owned by the local government, or
32 any subdivision thereof, for the purpose of providing a competitive service under this section, if the
33 subdivision of the local government offering such competitive service enters into an agreement to
34 pay the local government, or subdivision thereof, the fair market value of such infrastructure or
35 portion thereof used in the competitive service, unless the voters of the local government approve
36 the use of such infrastructure without such payment. Further, notwithstanding subsection 2 of this
37 section to the contrary, if the local government provides wholesale communication services to other
38 political subdivisions for retail offerings or other communication service providers, it shall offer
39 those wholesale communication services to any service provider under the same terms and
40 conditions;

41 (4) The competitive service offered by a local government shall not receive any preferential

1 access to public right-of-way and shall be subject to the same zoning and land use requirements as
2 competitive services offered by other service providers;

3 (5) The competitive service offered by a local government shall not be provided under
4 exclusive service arrangements that prohibit other service providers from offering competitive
5 services; and

6 (6) A local government may issue a loan to the subdivision of the local government wishing
7 to provide competitive service; provided that:

8 (a) Such loan is of a duration of no more than five years;

9 (b) The total of all loans issued to such subdivision by the local government does not exceed
10 one million dollars; and

11 (c) The interest rate on such loan shall be no more than one percent above the prime interest
12 rate as determined by the federal reserve system on the date the loan is approved, and the payback
13 on such loan shall include evenly divided principal payments over the term of the payback period.

14
15 This subsection shall not apply to any local government that provides competitive service under
16 subdivision (1) of subsection 2 of this section.

17 6. If any resident or representative of a private business providing a competitive service,
18 within the boundaries of such local government, has belief or knowledge that such local government
19 has violated this section, he or she may file suit in a court of competent jurisdiction against the local
20 government, or any such person may file an affidavit with the attorney general stating such belief or
21 knowledge. Upon receiving such affidavit or on his or her own motion, the attorney general shall
22 investigate the subdivision of the local government offering or seeking to offer the competitive
23 service and, if the attorney general believes that the local government has violated this section, shall
24 file suit against the local government on behalf of the state.

25 7. If the court finds that the local government has violated subsection 2 of this section, the
26 court shall order the local government to cease providing the competitive service until such time
27 that the local government obtains voter approval under subsections 3 and 4 of this section. If the
28 court finds that the local government has violated subsection 5 of this section, the court shall order
29 the local government to:

30 (1) Cease any action resulting in a violation of this section; and

31 (2) Refund the account or accounts, which originally had the funds that were improperly
32 used under this section from revenues of the municipal service in question, in an amount equal to
33 the amount that was improperly used under this section.

34 8. If the court finds that the local government has violated this section multiple times, the
35 court may order:

36 (1) An audit performed by a third party of the municipal service in question. The court may
37 order the local government to refund and remedy any audit findings; and

38 (2) Any other remedy the court deems appropriate."; and

39 Further amend said bill by amending the title, enacting clause, and intersectional references
40 accordingly.