INFORMATION BRIEF
Minnesota House of Representatives
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November 2006

New State Cable TV Franchising Laws

Several states have enacted laws designed to increase market competition among cable television service providers, and thereby lower cable rates. These new laws also represent a major change in the way that cable television is regulated. This information brief explains various aspects of the new laws.

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Traditionally, cable companies have had to negotiate with local municipalities in order to obtain a franchise authorizing them to provide cable services in a community. Since 2005, seven states have passed laws that allow cable service providers to apply for a franchise at the state level: California, Indiana, Kansas, New Jersey, North Carolina, South Carolina, and Texas. Virginia's new statute still requires cable operators to negotiate with municipalities, but provides that a standardized "default" franchise be awarded if no agreement is reached within 45 days. These new procedures expedite the application process and virtually guarantee the cable service providers will be granted a franchise.

The first portion of this information brief discusses factors motivating the enactment of these new laws, including the state of competition for providing cable services and its effect on cable rates, and the development of innovative technology to deliver cable television.

The second portion discusses the major controversial issues that surrounded the new cable laws, including the treatment of current local franchises, franchise fees, fees to support public, educational, and governmental (PEG) access channels, geographic scope of service (build-out requirements), municipal services, and PEG channel requirements. The final portion of the information brief compares in table form how individual states addressed these issues in their laws.

Background

Cable TV Competition Has Been Minimal to Date

In 2006, seven states—California, Indiana, Kansas, New Jersey, North Carolina, South Carolina, and Virginia[1]—joined Texas, which acted in 2005, in enacting legislation designed to promote effective competition among cable service providers. The absence of competition is cited as a major contributor to continually escalating monthly cable rates,[2] estimated by the Federal Communications Commission (FCC) to have risen 7.5 percent annually between 1998 and 2004.[3]

While Congress prohibited the awarding of exclusive cable franchises in 1992, and allowed telephone companies and electric utilities to enter video markets in 1996, relatively little direct competition resulted. Although direct broadcast satellite (DBS) companies currently account for 27.2 percent of all subscribers to multichannel video programming,[4] their presence appears to have little effect on cable pricing.[5] In contrast, cable rates are approximately 15 percent lower in areas where a wire-based competitor (using either traditional copper wire or new fiber-optic lines made of glass or plastic threads) is present, but this only occurs in about 2 percent of markets.[6]

The new laws, which represent a major change in the way cable television is regulated, aim to expand the number of markets with wireline competition and thereby lower cable rates. The means to achieve this objective is to relieve cable providers of the requirement to negotiate individually with each municipality in which they seek to offer service, negotiations that providers claim are unjustifiably lengthy, amounting to a significant barrier to entry. Providers in these states will now apply at the state level to offer service in as many communities, or portions of communities, as they wish. Under the new laws, they are virtually guaranteed issuance of a franchise within as few as 15 or as many as 85 days after a completed application has been filed.

Advances in Technology Allow Telecommunications Companies to Diversify Their Services

The main advocates of these regulatory changes have been telephone companies, such as AT&T and Verizon,[7] seeking to take advantage of competitive opportunities made possible by technological advances that allow voice (including Internet-based VoIP, or Voice over Internet Protocol), video, and data (high-speed Internet service) to be carried over a single fiber-optic line, giving both cable and phone companies the ability to offer customers all three services.

To exploit these business opportunities, both telephone and cable companies have made large investments to upgrade their networks. Verizon has invested $18 billion in fiber-optic lines that extend into customers' homes, reaching more than three million households in 18 states; AT&T has spent $4.6 billion to install fiber-optic lines to carry these services to neighborhood nodes that connect to homes via existing copper cable.[8] By the end of 2004, BellSouth had laid five million miles of fiber passing by one million homes.[9] Cable companies have reportedly invested $85 billion in recent years to enable them to offer not only high-speed Internet connections and telephone service, but also high-definition TV and video-on-demand.[10]

The results of these investments are most readily seen among cable operators. By May 2006, Comcast, the nation's largest cable TV provider, also boasted nine million broadband and 1.5 million phone customers, adding 211,000 digital voice customers in the first quarter of 2006.[11] At the end of 2005, Time Warner Cable had 1.1 million phone customers, while Cablevision Systems Corp. passed the one-million mark by July 2006.[12] A 2006 survey estimated that the number of VoIP subscribers grew from 1.9 million in March 2005 to 5.5 million a year later, and is projected to reach 9.6 million by the end of 2006. Cable companies accounted for 57 percent of VoIP subscriptions in 2006, up from 47 percent a year earlier.[13]

So far, the telephone companies have been slower at marketing video services. "It's been much easier and much less expensive for the cable companies to add voice to their networks than for the Bells to add TV to theirs," according to an industry analyst.[14] Verizon only began offering TV service in a few selected communities in six states in early 2006.[15]

In Minnesota, Qwest Communications has so far preferred to offer cable to its phone customers by reselling DirecTV, a satellite system, rather than building its own fiber-optic network, a costly prospect. One Wall Street analyst suggested that Qwest might be waiting to see how Bell companies that have elected to build a fiber-optic system, such as AT&T, fare before deciding to do so.[16] Qwest currently offers cable over fiber-optic lines or copper video digital subscriber lines in Omaha, Phoenix, and parts of Colorado, and is considering supporting a state franchise law in Colorado like those discussed here.[17]

Statutory Analysis

The table beginning on page 10 summarizes the major issues that engendered great controversy during the legislative process regarding the degree to which regulatory requirements under the new statewide franchises differ from those under current municipal franchises, and whether those differences might harm some subscribers or place incumbents, or current cable franchise license holders, at a competitive disadvantage. Proponents and opponents of these laws wrestled with the following questions:

- ***Treatment of current local franchises:*** Are the current cable providers, or incumbents, required to operate under their local franchise agreements until those agreements expire, or can they convert to a state-issued franchise and face the same regulatory regime as their new competitors?

- ***Franchise fees:*** Will the level of franchise fees paid to municipalities by cable providers utilizing public rights-of-way to install their equipment be reduced from current levels? These revenues—calculated as a percentage of gross revenues from cable operations[18]—are utilized to help support the public, educational, and governmental (PEG) access channels.

- ***PEG support fees:*** Will state franchises require direct operator support of PEG operations, either through grants or in-kind contributions of equipment and training, as many local franchise agreements do?

- ***Build-out requirements:*** Are operators holding state franchises required to provide service to all parts of a municipality, as under most negotiated franchises, or can they choose to operate only in certain areas whose density or income level will generate the greatest amount of revenues?

- ***Municipal services:*** Are providers holding statewide franchises required to provide cable services to schools, libraries, and other public buildings as they are under many local franchise agreements?

- ***PEG channel requirements:*** Are statewide franchisees required to provide a different number of PEG channels than incumbents?

Treatment of Current Local Franchises

Several of these statutes allow existing operators the option to terminate the local franchise and replace it with a state franchise. This was an accommodation made to defuse opposition from incumbents who claimed that the new laws gave new entrants a regulatory advantage.

Only the Texas statute prevents local franchisees from applying for a state franchise until the local franchise expires.[19] Indiana, New Jersey, and Virginia allow operators to make this choice at any time and under any conditions; other states require that wireline competition be present in order for this option to be available. In South Carolina, North Carolina, and California, an incumbent can apply for a state franchise once a competitor holding a state franchise enters the incumbent's service area. North Carolina also allows that option if a second incumbent in the service area passes by 25 percent of the households, or if a wireline competitor that does not require a franchise offers service in the area.

California's law allows an incumbent to apply for a state franchise when the local franchise expires or if the local franchising authority agrees to it, and gives a local franchiser authority to require all local franchisees to apply for a state franchise. Kansas allows an incumbent facing competition to request modification of its local franchise terms and agreements to those of a state franchise, a request that the local franchiser must grant within 180 days.[20]

Franchise Fees

Laws in seven states rescind the authority of municipalities to set the level of the franchise fee. Only Kansas fully preserves municipalities' authority to set the fee, subject to the 5 percent ceiling established by federal law. In Indiana, this authority is reserved for areas with an incumbent provider. In unserved areas, the fee is set at 5 percent of gross revenues. In the six other states, the fee is set in statute and applies to all municipalities.

In California, South Carolina, and Virginia, the fee is the lesser of the existing fee or 5 percent. Texas set its fee at 5 percent. In New Jersey, local franchisees pay municipalities 2 percent of gross revenues, but once a provider operating under a state franchise becomes capable of serving 60 percent of households in a local service area, the local franchisee pays the same fee as a state franchisee: 3.5 percent of gross revenues, plus a payment to the state equal to the gross revenues paid by seniors for basic cable service. These payments are used to reduce the price of that service for seniors.

North Carolina features a different type of fee structure, which predates the 2006 statute. The state collects revenues from a state tax on video services—currently set at 4.5 percent of gross revenues, to be reduced to 4 percent in July 2007—and then rebates 22.61 percent of the net revenue to cities and counties, proportional to their population.

PEG Support Fees

Laws in five of the eight states require payments to cities specifically to support PEG channel operations, even after the local franchise expires.[21] A Texas provider under a state franchise must pay the same per-subscriber fee as an existing provider ("in lieu of in-kind compensation and grants") until the local franchise expires, after which it must pay 1 percent of gross revenues, unless the city prefers to continue collecting the per subscriber fee. Indiana requires a provider holding a state franchise to make the same PEG payments as an incumbent, on a per-subscriber basis, even after the local franchise has expired.

North Carolina's statute specifies that the state rebate to cities and counties, in addition to the amount cited above, must include "supplemental PEG channel support" of $25,000 per year for each PEG channel (up to three). These funds may not exceed $2 million statewide.[22]

In California, after January 1, 2007, and until an incumbent franchise expires, a provider with a state franchise must support PEG channels at the incumbent's current per-subscriber level. After an incumbent franchise expires, a municipality may establish a PEG support fee of up to 1 percent of gross revenues. If a higher fee already exists on December 31, 2006, it may be retained, up to a maximum of 3 percent.

Virginia's law provides that a PEG capital fee (the lowest existing charge on a per-subscriber or percentage-of-gross-revenue basis) and a PEG capital grant surcharge fee (the lower of 1.5 percent of gross revenues or the lowest amount of paid or in-kind capital contribution made by a provider) be collected until the earliest existing local franchise expiration date. If, at that time, the locality and the provider cannot agree on a recurring capital cost fee, the locality may impose one by ordinance "to support the reasonable and necessary capital costs" of PEG channels, but no greater than the earlier PEG capital fee. A PEG capital grant surcharge fee cannot be charged once the original franchise expires.

No financial support for PEG channels is required by the statutes enacted in Kansas, New Jersey, or South Carolina.

Build-out Requirements

Typically, cable franchise agreements with municipalities require providers to offer service throughout an entire city, including low-income or low-density neighborhoods that might not otherwise be served because the capital investment required to extend service to those areas may not generate a sufficient return. A major objection of cities and incumbent cable operators to the laws establishing state-issued cable franchises is that they allow companies to select only more lucrative geographic areas for their operations, denying service to low-income communities and giving an unfair regulatory advantage to state franchise operators. On the other hand, it has been argued that a requirement to provide complete coverage may cause an entrant to abandon a decision to offer service at all, denying competition to the community altogether, or can result in higher prices.[23]

All eight statutes prohibit income discrimination against groups of potential residential subscribers in language virtually identical to that of federal law, which requires franchise authorities to insure that "access to cable service is not denied to any group of potential residential subscribers because of the income of the local area in which such group resides."[24] However, this prohibition refers only to residents *within* the operator's chosen service area. The statutes clearly allow operators to designate selected portions of cities and counties in which to offer service.[25] Only New Jersey's statute gives its franchise-issuing agency authority to deny a franchise based on a company's selection of a service area.[26]

California's statute addresses economic discrimination most directly in its build-out requirements. A provider with more than one million telephone customers in the state must insure that within three years, at least 25 percent of households with access to its video service have an annual household income below $35,000, a proportion that increases to 30 percent after five years.[27] Telephone companies with fewer than one million customers in the state must "offer video service to all customers within their telephone service area within a reasonable time, as determined by the commission." An exception is allowed for areas where the cost of providing service is "substantially above" the average cost of providing service in the company's telephone service area.[28]

California's Public Utilities Commission also has authority, in certain cases, to review a provider's chosen service area to insure that it was not drawn in a discriminatory manner. This may take place under any of three conditions, which otherwise provide operators with a rebuttable presumption that discrimination has not occurred:

- Service is provided outside a company's telephone service area
- A provider enters an area not served by a wireline competitor
- The company is not a telephone company

In contrast to California, five states—Indiana, Kansas, North Carolina, South Carolina, and Texas—flatly prohibit build-out requirements.

Build-out provisions in other states appear to have less potential to prevent economic discrimination than do California's. Virginia allows municipalities to require that video service be provided to up to 65 percent of the residential dwelling units in a company's telephone service area within seven years after service has begun; this can be increased up to 80 percent after ten years. The effectiveness of such thresholds depends, obviously, on the target percentage a municipality requires a provider to meet and the proportion of lower income residents in a telephone company's service area. For example, if 20 percent of the households in a telephone service area are categorized as low-income, Virginia's law would not require that service be provided to them.

New Jersey's build-out requirements are also somewhat circumscribed in their ability to prohibit economic discrimination. Within six years of beginning to offer service, a telephone company providing local exchange service to more than 40 percent of the state's telephone customers must make video service available "throughout the residential areas" of each municipality within its service area with a population density greater than 7,111 persons per square mile,[29] which includes about 10 percent of the state's municipalities, according to a staff member of New Jersey's Office of Legislative Services. While this provides some protection to customers, it does not address those living in less dense areas, nor customers of telephone companies with a smaller market share.

Municipal Services

Many municipally negotiated franchises require the provision of cable services and institutional network capacity[30] to public buildings, including schools, at no charge. Of the new laws, only those in three states—New Jersey, North Carolina, and Virginia—require holders of a state franchise to provide these services free of charge in perpetuity as a condition of receiving a franchise. North Carolina's statute stipulates that basic cable service must be provided to all public buildings located within 125 feet of the system. New Jersey's and Virginia's requirement is broader, applying to all government buildings without reference to proximity to equipment, although Virginia's requirement to provide institutional network capacity ends when the earliest local franchise expires. New Jersey includes Internet service as well.

Three states place time limits on the continued provision of these services. In Texas, Indiana, and California, provision of municipal services required under a local franchise must continue, even if the local franchise converts to a state franchise, until the later of the local franchise expiration date or until January 1, 2008 (Texas), or January 1, 2009 (Indiana and California). Once that date has passed, a converted franchise in Texas and California must continue to provide these services only if paid by the municipality. Indiana's law is silent regarding whether a local franchise that has been converted to a state franchise must continue to provide these services free of charge.

New, as opposed to converted, state franchises are not required to provide municipal services in Texas, California, and in previously unserved areas in Indiana. Neither state franchise type is required to do so in Kansas and South Carolina.

PEG Channel Requirements

Laws in four states insure that subscribers suffer no loss of PEG channels under a state-issued franchise:

- South Carolina requires operators to provide the same number of channels activated by the incumbent. If no incumbent provides service, a municipality may request, and the operator must provide, up to three channels.

- California specifies that a city must receive the largest number of channels activated by any incumbent, with the same alternative as South Carolina if no incumbent exists on January 1, 2007.

- The Texas statute requires no fewer channels than were activated by an incumbent. Cities without an incumbent operator must be provided with three channels if the population exceeds 50,000, or two channels if it is below that level.

- North Carolina provides that a municipality be provided with the same number of channels activated by an incumbent as of July 1, 2006, and has identical provisions to the Texas law if no incumbent was present on January 1, 2005. The statute also allows for areas with fewer than seven PEG channels to gain one additional channel if all existing channels are utilized at least eight hours daily.

Virginia requires a franchise to provide the lowest number of PEG channels presently offered under a local franchise. If this is less than three, a city may require up to three. If existing PEG channels are utilized more than 12 hours daily, a city may require provision of up to three additional channels, so long as that requirement applies to all providers in the city, and a total of seven channels is not exceeded.

Two states specify the number of PEG channels to be provided without reference to those of an incumbent: New Jersey provides for two (if a city desires additional channels, it must demonstrate need), while Kansas prescribes no more than two.[31] In Indiana, the Utilities Regulatory Commission sets the number of PEG channels.

Statutes Providing for State-Issued Franchises for Cable Video Service

The table beginning on pages 10 and 11 describes aspects of the states' laws for state-issued cable franchises. It includes the following information:

- The effective date of the statute
- Who grants the franchise
- The deadline for issuing the franchise
- How current local franchises are treated
- The amount of franchise fees
- The amount of PEG support fees
- What build-out requirements are specified
- What municipal services are required
- The customer service standards
- The number of PEG channels required

Statutes Providing for State-Issued Franchises for Cable Video Service
(Texas, Kansas, Indiana, Virginia, South Carolina, North Carolina, New Jersey, and California)

	TEXAS	KANSAS	INDIANA	VIRGINIA
Effective Date	September 1, 2005	July 1, 2006	July 1, 2006	July 1, 2006
Franchise Grantor	Public Utilities Commission	Corporation Commission	Utilities Regulatory Commission	Municipalities
Franchise Issuance Deadline	16 days after application is complete	30 days after application is complete	15 days after application is complete	If franchise agreement not negotiated within 45 days after application received, applicant may begin service 30 days later, and municipality must award retroactive default or "ordinance" franchise 90 days after service begins
Treatment of Current Local Franchises	Incumbent may not apply for state franchise until local franchise expires Nonincumbent serving less than 40% of market may choose to terminate local franchise and apply for state franchise before 1/1/06	Incumbent may continue local franchise until expiration, or, if multiple providers exist, may request modification of local franchise terms and conditions identical to those of state franchise, which request municipality must grant within 180 days	Incumbent may continue local franchise until expiration or apply for state franchise before 11/1/06	Incumbent may continue local franchise or apply for ordinance franchise

SOUTH CAROLINA	NORTH CAROLINA	NEW JERSEY	CALIFORNIA
May 23, 2006	January 1, 2007	November 2, 2006	January 1, 2007
Secretary of State	Secretary of State (but see cell below)	Board of Public Utilities (BPU)	Public Utilities Commission
85 days after application is received[32]	Applicant can offer service immediately after filing notice of franchise	45 days after application is received	43 days after application is complete
Incumbent may terminate its franchise and apply for state franchise when a competitor holding a state franchise gives notice that it will enter the same service area	Incumbent with local franchise on 1/1/07 may terminate it if: • any household is also passed by holder of a state franchise; • at least 25% of households are passed by another provider with a local franchise; or • wireline competition is present	Incumbent may continue local franchise or automatically convert to state franchise Local franchises (through BPU) continue to be available	Local franchise authority may extend expiring franchise to 1/2/08, date state franchise is operational Incumbent may apply for state franchise when local franchise expires, when local authority agrees to termination, or when provider with state franchise gives notice that it will enter same service area Local authority may require all incumbents to apply for state franchise

	TEXAS	KANSAS	INDIANA	VIRGINIA
Franchise Fees [33]	5% of gross revenues	5% of gross revenues	Areas previously unserved: 5% of gross revenues Municipality sets fee in other areas, not to exceed 5% of gross revenues	Lowest fee paid by existing local franchise, not to exceed 5% of gross revenues
PEG Support Fees	Same per-subscriber fee as incumbent until expiration of incumbent franchise. After expiration, state franchisee may, at city's discretion, continue per-subscriber fee or pay 1% of gross revenues	None	Same per-subscriber fee as incumbent If no incumbent, and commission requires provision of PEG channels, it may also set level of PEG support	PEG capital fee: lowest existing per-subscriber fee or gross revenues percentage fee to support PEG capital costs[34] PEG capital grant surcharge fee, if existing local franchise paid lump-sum capital grant or provided equipment: lower of latter or 1.5% of gross revenues PEG fees collected until earliest existing local franchise expiration date, after which new fee may be negotiated or set by ordinance

SOUTH CAROLINA	NORTH CAROLINA	NEW JERSEY	CALIFORNIA
Lesser of fee paid by existing local franchise or 5% of gross revenues	State rebates to cities and counties 22.61% of net proceeds of state tax on cable video services (set at 4.5% prior to 7/1/07 and 4% thereafter) proportional to population[35]	Local franchise: 2% of gross revenues; city may petition BPU for higher rate. Once state franchise is capable of serving 60% of households, rate is same as state franchise State franchise: 1) 3.5% of gross revenues; and 2) amount of gross revenues paid by seniors for basic cable[36]	Lesser of fee paid by existing local franchise or 5% of gross revenues If provider leases access to network owned by local franchise authority, latter may establish a different fee
None	State rebates $25,000 annually for each PEG channel (up to 3), not to exceed $2 million statewide[37]	None	Between 1/1/07 and later of 1/1/09 or expiration, level of PEG support must be maintained through identical per subscriber fee on all providers. After expiration, city may set fee up to 1% of gross revenues. If higher fee existed on 12/31/06, city may retain it, up to 3%

	TEXAS	KANSAS	INDIANA	VIRGINIA
Build-out Requirements	Prohibited	Prohibited Applicant must be capable of providing service to entire service area within 5 years	Prohibited	Municipalities set requirements: up to 100% of initial service area in 3 years; up to 65% of area where telephone service is provided in 7 years, which may be increased to 80% after 10 years. Service not required outside of a telco's service area, or where density is less than 30 units/mile
Municipal Services Required	Until later of 1/1/08 or existing franchise expiration date, a local franchisee that converts to a state franchise must maintain institutional network capacity and cable service to public buildings and schools as required under local franchise Afterward, a state franchisee must continue service only if compensated by city. A new state franchisee is not required to provide municipal services.	Incumbent franchise unaffected. A converted or new state franchisee is not required to provide municipal services.	Until later of 1/1/09 or existing franchise expiration date, a local franchisee or one that converted to a state franchisee must provide institutional network capacity and cable service to public buildings and schools. Afterward, service must continue if requested by city State franchisee in previously unserved area is not required to provide municipal services	All operators must provide basic cable service to fire and police stations, public schools and libraries, and other local government buildings, at no charge Institutional network service must be provided until earliest local franchise expiration date

SOUTH CAROLINA	NORTH CAROLINA	NEW JERSEY	CALIFORNIA
Prohibited Deployment in each city and unincorporated areas of counties in service area must begin within one year of receiving franchise	Prohibited Deployment must begin within 120 days of filing	For cable providers providing > 40% of local exchange telephone service in state: Within 3 years, must begin servicing each county seat and each city with population density > 7,111 per sq/mi. Within 6 years, must serve all residential areas in such cities that have a central office[38] Must match incumbent's extension policy and serve all customers within 100 feet of existing plant. Service not required where density is less than 35 units/mile	Telco with > 1 million telco customers: If using fiber-optic cable, must provide access to at least 25% of homes in telco service area within 2 years, 40% within 5 years; nonfiber: 35% in 3 years, 50% in 5 years[39] Also, within 3 years, at least 25% of homes with access must have incomes below $35,000; 30% after 5 years Smaller telcos must offer video to all telco customers within "a reasonable time," except service not required in areas where cost "substantially" exceeds average
Incumbent franchise unaffected. A converted or new state franchisee is not required to provide municipal services.	All operators must provide basic cable service to public buildings located within 125 feet of cable system, if requested, at no charge	State franchisee must provide basic cable and Internet service to police and fire stations, public schools and libraries, and other local government buildings at no charge, and must contract with city to provide free training and equipment to PEG access users	Until later of 1/1/09 or expiration, local franchisee must maintain obligation to provide institutional networks and cable service to public buildings, which state franchisee must match. Afterward, customers must pay for service

	TEXAS	KANSAS	INDIANA	VIRGINIA
Customer Service Standards [40]	Must comply with standards consistent with federal standards until another service provider (excluding satellite) enters market	Municipality may require franchisee, on 90 days notice, to comply with standards consistent with federal standards	Must comply with federal standards	Must comply with federal standards. If municipality prescribes more stringent standards, they must be applied to all franchisees
Number of PEG Channels Required	No fewer than activated under local franchise on 1/1/05. If none, up to 3 channels if population exceeds 50,000; otherwise, up to 2. To activate additional channel, existing channels must be utilized 12 hrs/day with less than 40% repeat programming Access to PEG channels used less than 8 hrs/day may be denied to city and programmed by provider	No more than 2	At least number of channels activated by incumbent. If no incumbent, commission can require provision of PEG channels. Commission may require provision of additional channels	Lowest number required of any other franchisee; if less than 3, city may require up to 3 If existing PEG channels are used 12 hrs/day, with at least 33% nonrepeat programming, city may require up to 3 additional channels in basic service tier, with a total cap of 7. Additional channels may be agreed to by operator and city, but if used less than 8 hrs/day, shall be denied to city and may be programmed by provider

For more information about cable television regulation, visit the utility regulation area of our web site, www.house.mn/hrd/issinfo/pubutil.htm.

SOUTH CAROLINA	NORTH CAROLINA	NEW JERSEY	CALIFORNIA
Must comply with federal standards	Must comply with federal standards and FCC emergency alert requirements	Must meet any consumer protection provisions required of local franchisees	Must comply with federal and state standards and FCC emergency alert requirements
Same number activated by incumbent. If no incumbent, municipality may request, and operator must provide, up to 3 channels, one of which may be used by municipality without repeat program restrictions. In both cases, one additional channel must be provided for transmissions of Educational Television Commission Access to PEG channels used less than 8 hrs/day may be denied to city and programmed by provider	City larger than 50,000: greater of 3 or number of channels activated as of 7/1/06 City under 50,000 or county: greater of 2 or number of channels activated as of 7/1/06 Areas with fewer than 7 channels may obtain one additional channel if all existing channels used at least 8 hrs/day and no more than 15% of content is repeat or character-generated programming	Two If municipality desires more, it must demonstrate its cable needs require more channels	Largest number activated (used 8 hrs/day) by incumbent on 1/1/07. If less than 3, local government may request up to 3. One additional channel shall be provided to carry state public affairs programming. If nonduplicated local programming exceeds 56 hrs/wk, 1 additional channel shall be provided Access to PEG channels used < 8 hrs/day may be denied to city and programmed by provider

ENDNOTES

[1] A similar bill passed by both houses of the Louisiana Legislature in 2006 (House Bill 699) was vetoed by the governor.

[2] Senate Committee on Commerce, Science, and Transportation, *Statement of Edward E. Whitacre, Jr., Chairman and Chief Executive Officer of AT&T, Inc.*, February 15, 2006. http://commerce.senate.gov/pdf/whitacre-021506.pdf.

[3] Federal Communications Commission, *Report on Cable Industry Prices*, MM Docket No. 92-266, released February 4, 2005, Attachment 4. The commission's authority to regulate cable service tier prices, which began in 1992, ended on March 31, 1999, as provided in the Telecommunications Act of 1996. Local franchising authorities (e.g., municipalities) regulate the price of the basic tier of cable service, which includes only broadcast stations and public, educational, and government access channels. Federal Communications Commission, *Fact sheet – Cable television*, June 2000, 3, 5. http://www.fcc.gov/mb/facts/csgen.html.

[4] Federal Communications Commission, *Annual assessment of the status of competition in the market for the delivery of video programming, 12th annual report*, MB Docket No. 05-255, March 3, 2006, Appendix B, Table B-1.

[5] A study issued by the Government Accountability Office (GAO) in 2002 found no significant rate difference for cable service in areas with satellite competition. (U.S. General Accounting Office, *Issues in providing cable and satellite television service*, GAO-03-130, October 2002, Appendix III.) A second GAO study conducted a year later found that a 10 percent higher penetration rate by DBS providers was associated with a rate reduction for cable subscribers of only 15 cents. (U.S. General Accounting Office, *Issues related to competition and subscriber rates in the cable television industry*, GAO-04-8, October 2003), 11. An FCC study issued in February 2005 found that cable rates were about 3.5 percent less in areas with satellite competition. (*Report on Cable Industry Prices*, Attachment 7)

[6] GAO, *Issues related to competition*, 9, 11; FCC, *Report on Cable Industry Prices*, Attachments 1 and 7.

[7] Telephone companies are pursuing these regulatory changes in two other public policy arenas: the Federal Communications Commission (FCC), which in November 2005 initiated a proposed rulemaking seeking comment on whether local franchising procedures are unreasonable and stifle competition, and the U.S. Congress, where the House of Representatives passed a bill in June 2006 that would award cable franchises at the national level. See, respectively, Federal Communications Commission, *Notice of Proposed Rulemaking, In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Docket No. MB05-311, adopted November 3, 2005; and Arshad Mohammed, "House votes to ease cable TV licensing for phone companies," *Washington Post*, June 9, 2006.

[8] Ken Belson, "AT&T is calling to ask about TV service. Will anyone answer?" *New York Times*, July 3, 2006; Marguerite Reardon, "Telecoms, cable firms take franchise fight to D.C.," *c/net news.com*, February 15, 2006.

[9] Leslie Brooks Suzukamo, "Telecom turf war," *St. Paul Pioneer Press*, December 29, 2004.

[10] Ken Belson and Geraldine Fabrikant, "Those Bell mergers are giving cable companies even more to worry about," *New York Times*, March 13, 2006.

[11] Comcast fact sheet, http://www.corporate-ir.net/media_files/irol/14/147565/Corporate_Factsheet_Q106.pdf; Barbara Clements, "Comcast needs new faces," *The News Tribune* (Tacoma, WA), July 12, 2006.

[12] Mike Farrell, "Telephony hangs up Comcast," *Multichannel Newswire*, February 2, 2006; Marguerite Reardon, "Cablevision signs up 1 millionth phone subscriber," *c/net news.com*, July 18, 2006.

[13] Jeff Baumgartner, "Study: VoIP revenues eclipse $1 B," *CED Magazine*, May 22, 2006.

[14] Jim Hu, "Verizon's salvo on cable TV," *c/net news.com*, April 20, 2005, quoting James Penhune, of Strategy Analytics. One source suggests that telephone companies may have lagged in deploying fiber-optic lines because they profited from the growth of dial-up Internet services, which require an expensive second phone line if the primary voice line is to remain open. Only when cable companies began successfully offering cable modem service as an alternative to dial-up were phone companies compelled to offer high-speed Internet services, which make

lucrative second lines unnecessary. Jonathan E. Nuechterlein and Philip J. Weiser, *Digital crossroads: American telecommunications policy in the Internet age* (Cambridge: MIT Press), 2005: 143.

[15] Reardon, "Telecoms, cable firms take franchise fight to D.C."

[16] Ken Belson, "Qwest beats the odds, so far," *New York Times*, September 27, 2006.

[17] Beth Potter, "Qwest to expand TV service," *Denver Post*, July 5, 2006, http://www.denverpost.com/business/ci_ 4011840; Joyzelle Davis and Jeff Smith, "Qwest eyes state pay-TV law," *Rocky Mountain News*, October 3, 2006, http://www.rockymountainnews.com/drmn/tech/article/0,2777,DRMN_23910_5038185,00.html.

[18] Municipalities opposing these bills asserted that the definition of gross revenues in some bills is narrower than that contained in current local franchise agreements, which could reduce the revenues municipalities receive from cable providers operating under state franchises. This publication makes no attempt to analyze those claims.

[19] That is one reason the law has been challenged by the Texas Cable and Telecommunications Association in both state and federal court. TCTA press release, "TCTA files second telecom lawsuit against State of Texas," January 27, 2006.

[20] If the parties have not reached an agreement after 60 days, the incumbent may again request such a modification where there are material differences between a local and state franchise, and the municipality is required to grant the request within 120 days.

[21] Kansas allows providers to recover from subscribers "costs in providing capacity for retransmitting community programming," but requires no payments to municipalities. Substitute for Senate Bill No. 449, section 4, subsection (g).

[22] State grants of up to $25,000 annually are also available to cities and counties. The grants must be used for PEG capital expenditures and must be matched dollar-for-dollar by the applicant.

[23] U.S. Department of Justice, *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Federal Communications Commission Docket No. MB05-311, *Ex Parte Submission*, May 10, 2006, 5.

[24] U.S. Code §541(a)(3). North Carolina's statute also prohibits discrimination on the basis of race.

[25] This option is not prohibited in any state and is made explicit in laws in three states. South Carolina requires applicants to supply "a written description of the municipalities and . . .counties to be served, *in whole or in part*. . ." [Emphasis added] (House Bill 4428, section 58-12-310(B)(2)). Kansas requires a "description of the service area footprint to be served . . . , including any municipalities *or parts thereof* . . . " [Emphasis added] (Substitute for Senate Bill, No. 449, section 3(a)(5)). Texas requires an affidavit affirming "description of the service area footprint to be served *within the municipality*, . . . " [Emphasis added] (Texas Utilities Code, Section 66.003(b)(4)).

[26] "All of the elements required to be included in the franchise application . . . shall form, in part, the foundation for the board's decision as to the . . . system-wide franchise." Assembly Committee Substitute for Assembly No. 804, section 25, paragraph (a).

[27] The cable operator must also provide service to community centers in "underserved" areas, as determined by the operator, at a ratio of one center for every 10,000 video customers. A "community center" is a 501(c)(3) or 501(d) nonprofit organization offering health care, job training or placement, or education to community residents.

[28] Assembly Bill 2987, section 5890, paragraphs (a) through (c).

[29] Assembly Committee Substitute for Assembly, No. 804, section 20, paragraph a. New Jersey's law also establishes that service is not required to be provided where density is less than 35 units per mile.

[30] "Institutional network capacity" provides for one- and two-way communications services on the cable network among institutional subscribers.

[31] According to Kansas Legislative Services Department staff, very few municipalities currently have as many as two PEG channels.

[32] A state franchise is denied if a municipality or county in which the service is to be provided does not consent. The reason is that article 8, section 15 of the South Carolina Constitution prohibits the passage of any law granting

the right to build infrastructure in a public right-of-way without consent of the local governing body. The statute provides that an applicant may seek relief from such a denial of consent in state or federal court.

[33] Federal law caps cable service franchise fees at 5 percent of gross revenues.

[34] The PEG capital fee is also applied to the cost of institutional networks.

[35] Cities and counties that imposed subscriber fees during the first half of fiscal year 2006-07 must allocate, from the amount rebated, twice the amount of subscriber-fee revenue received during that period to operate and support PEG channels. A city or county that used part of its franchise tax in fiscal year 2005-06 to support and operate PEG channels must allocate that same level of support from the rebated amount for those purposes.

[36] This amount is paid to the state, which uses it to discount the costs of these services to seniors.

[37] Cities and counties may apply to a PEG Channel Fund created in the same statute for 50 percent matching grants of up to $25,000 annually to be used for capital expenditures necessary to provide PEG channel programming.

[38] A building that houses switching and related equipment.

[39] The five-year requirements may be delayed if fewer than 30 percent of households subscribe for six consecutive months.

[40] Existing federal cable TV service standards (47 CFR § 76.309) may be enforced at franchise authority’s discretion.