



Understanding the Impact of State Video Services Legislation

Background

During December 2007 and January 2008, affected members of the National Association of Telecommunications Officers and Advisors (NATOA) were administered a series of 54 questions about the impact of new state legislation on video services in their communities. The 14 studied states included: Arizona, California, Florida, Georgia, Indiana, Illinois, Iowa, Michigan, Missouri, North Carolina, Nevada, Ohio, Texas and Virginia.

It is important to note that each of the impacted states passed somewhat different legislation and each is in different stages of implementation regarding state legislation. For example, Texas passed its legislation in October 2005 and was the first to do so. It is the most mature of the studied pieces of legislation in practice in the United States¹. Georgia, on the other hand, passed legislation that just went into effect in January 2008. Therefore, the data presented in this study should be considered as a snapshot of the legislation, capturing a moment in time, and the basis upon which future comparisons may be made

The Survey Group

In total the survey represented respondents from 139 Local Franchise Authorities (LFAs). This represents 63% of communities with NATOA membership in areas impacted by state video services legislation. Respondents reported representing more than 10 million cable subscribers. This sample represents 15% of cable subscribers nationwide.

When considering the sample as a whole, about one third represents communities with 50,000 to 250,000 households. About one fourth of respondents were from smaller communities and 4% represented communities with more than one million households.

¹ The States of Hawaii, Massachusetts, Vermont, Connecticut and to some extent, New York, had previously adopted some form of state oversight of video franchising that has been in place for more than 10 years. These more mature states were not included in the study, as they have all addressed the role of local governments and the public interest obligation of video providers in a manner long since resolved with their individual local communities.

Following national trends, most respondents were in communities where Comcast was the incumbent cable provider (44%), followed by Time Warner Cable (36%), Charter (16%) and Cox (12%).

Competition

About 1 in 3 respondents report that the incumbent cable provider had taken advantage of the new state legislation to terminate its locally negotiated franchise for a state franchise since enacting new legislation. Charter and Bright House have been the most likely to seek a state issued franchise. The larger cable operators Comcast and Time Warner have abandoned only about 15% of their affected locally negotiated franchises for one issued by the state. By cable company, transition numbers are: Comcast (14%), Time Warner (13%), Charter (30%), Cox (18%) and Bright House (27%).

Thirty-nine percent (39%) of participants in the survey report a new entrant has requested a state franchise. In franchise areas affected by state legislation, 27% of participants report one new entrant, and 6% report more than one new entrant in operation. Given the preponderance of states that have adopted statewide legislation, the most likely new entrant in this study was AT&T, followed by Verizon.

Of those experiencing new entrant activity, 8% indicate that the provider had “built out all of the community,” 10% built part and plan on building the rest, 35% have not built any of the community yet and 48% indicated the new entrant had “built part of the community.” In other words, 1 in 5 is in a community where a new entrant has launched service and is reporting build-out as complete or in progress. Compared to all 139 survey respondents, 2% report having a new entrant that has built out the entire community and an additional 3% report that a new entrant is in the process of building out the entire community.

Sixty percent (60%) of LFAs with new entrant activity report that that communication between LFAs and the new entrant are inadequate to do their jobs. Only in states where communication is required did respondents report having sufficient information to stay informed of the new entrant’s activities. In communities without designated channels of communication such as serving notice, respondents indicated having to extrapolate activity by monitoring permit requests, reading about it in the newspaper and going to the new entrant’s website.

Services, Rates, and Funding

With respect to video service offerings, the majority of respondents report similar offerings by new entrants and incumbents. The differences reported (about 1 in 4) are in specialty tiers of foreign language programming and “analog” bundles.

There is no indication that incumbent pricing fell as a result of new entrant activity. Survey results indicate that after passage of state legislation rates charged by incumbent cable operators increased by \$1.12 on analog services and by \$1.51 on digital services. Additionally, 1 in 5 respondents served by a new entrant report that rates are higher for the new entrant’s service than the incumbent’s.

When asked about the new entrant, LFAs were uncertain about whether the new entrant even offered a basic rate. Because new entrants are not required to report this information, many LFAs had to extrapolate this information from marketing materials. This is a clear indication that this issue needs further study.

As a result of these findings, it’s not surprising that 98% of LFAs are not reporting lower rates as a result of state video legislation.

The majority of LFAs (80%) report that bundled services (voice, video and data) available from the incumbent are offered at a lower rate than the individual services. 50% described the new entrant’s bundle (voice, video and data) as a lower rate than the incumbent’s but most couldn’t pin point at what percentage the rate was lower. Of those respondents that could determine the difference, the rate was less than 1% lower on the bundled services versus the individual offerings. Of those respondents that indicated the new entrant did not offer a discount rate for its bundle of services, several also noted that the new entrant’s video services were only available as part of a bundle and not as stand alone services.

When considering revenues from franchise fees and telecommunications taxes, just 17% of LFAs with active new entrants report an increase in revenues. Fifty-five percent (55%) of LFAs report that revenues have “stayed about the same.” One in five (19%) LFAs with an active new entrant report a decrease in franchise fee and tax revenue.

As related to public, educational and governmental (PEG) access channel funding, 12% of LFAs report an increase in funding for PEG since state video legislation, 44% report funding has stayed about the same and 22% indicated PEG funding has decreased.

Consumer Complaints

Seventy-four percent (74%) of LFAs report receiving about the same number of complaints each year, an average of 171 per community, after passage of state legislation. When considering the number of complaints LFAs received before and after state video legislation, one in five (21%) report more complaints since passage of the state law. While the topics of complaints remain the same since state video legislation (customer service, rates, technical quality), there are fewer complaints about lack of competition. Most LFAs (58%) report that they are still the primary organization responsible for resolving customer complaints; however several reported problems associated with state legislation regarding customer care.

PEG

State video legislation has not impacted the number of PEG channels available. The majority indicated that the number of PEG channels had stayed the same since state video legislation passed (97%). Additionally, 89% report the quality of PEG channel delivery has stayed the same on the incumbent's system, but 1 in 3 (36%) report that PEG technical quality is worse on the new entrant's system.

One in four (25%) LFAs report that the channel position for PEG on the incumbent's system has changed. Additionally, several described planned movement of the PEG channels from the analog to the digital tier in the coming months.

Thirty-nine percent (39%) of responding LFAs reported that the new entrant's position for the PEG channels is different than the incumbent's position. In open comments, several respondents described the problems associated with using a drop-down menu for PEG programming. This is associated with the delivery of PEG in a "pull" environment, rather than being "pushed" over the basic cable service.

Administration

The introduction of state video legislation has not reduced overall workloads of responding LFAs. Forty-seven percent (47%) said it has increased their workload and 46% said the workload had remained the same. Only seven percent (7%) reported spending less time at work on cable issues.

Additional Information

Responding to a brief series of questions on the overall impact and effectiveness of state video legislation, 82% of LFAs do not believe that state video legislation is having a positive impact on their community; 90% believe that PEG programming is being treated unfairly by new entrants compared to incumbents; 97% believe that customer

service has not improved under state supervision; and 68% believe that there is no more choice of video packages now than before the introduction of the legislation.

In open comments at the end of the survey, responding LFAs offered additional thoughts that addressed the following issues:

- Consumers having inadequate complaint recourse under state legislation.
- State legislation with local management still doesn't permit sufficient control to address local needs.
- PEG is being disadvantaged in channel placement.
- State collection of franchise fees and telecom taxes is failing to keep local governments whole.
- Several respondents observed that the legislation is still in the early stages and it is too soon to know the impact.

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