



Benefits from Statewide Cable and Video Franchise Reform Remain Uncertain

at a glance

The 2007 Consumer Choice Act provided for a statewide franchise for cable and video service providers and ended local government authority to negotiate franchise agreements. Several departments—State, Agriculture and Consumer Services, and Legal Affairs—have responsibilities related to the new law but none has regulatory authority. As many as 20 states also passed statewide franchise laws in recent years. However, little systematic information exists to demonstrate the effect of these laws.

Since 2007, the Department of State has issued 26 state franchise certificates; most certificates were issued to existing cable or video service providers. However, two barriers prevent a comprehensive assessment of the affect of these franchises on competition for cable and video services: provider reluctance to share data and insufficient information provided in statewide franchise documents. In light of these difficulties, the Legislature may wish to consider amending s. 610.119(1), *Florida Statutes*, to modify study requirements or make changes that might lessen the industry concerns regarding a required December 2014 follow-up study on cable and video services competition.

Scope

As directed by the Legislature, OPPAGA reviewed the current regulatory structure for cable and video services provided by traditional cable and telecommunications companies.¹ The report addresses three questions.

1. What is the current structure of cable and video services regulation in Florida?
2. What has been the experience of other states that have adopted statewide franchise legislation?
3. What has been the outcome of Florida's statewide franchise law to date?

Background

Cable television systems in the United States were developed in the 1940s to serve communities unable to receive over-the-air television broadcasts because of terrain or distance from TV stations. Cable systems have expanded greatly over time to serve urban settings and offer a wide variety of programs that are often not available from broadcast networks. The most recent information reported by the Federal Communications Commission indicates that nationwide, 58% of households

¹ Chapter 610, *F.S.*, The Consumer Choice Act of 2007.

have cable television service.² In addition to traditional cable providers, other types of companies now offer video services to consumers, including direct broadcast satellite companies and telecommunication companies that provide cable and video services via telephone lines or through underground fiber optic cables.

For many years, the cable industry was regulated as a natural monopoly comparable to electrical utility and telephone companies.³ To deliver their services, cable providers typically installed a network of copper coaxial lines either underground or strung with telephone lines on electric power poles. Due to these capital costs, once a company made this investment in a community, other providers were unlikely to duplicate the infrastructure investment and offer competing services.

Local franchise agreements typically governed local cable operations. Cable companies generally were regulated by local governments that established franchise agreements with providers in order to manage right-of-way issues. To gain the access to public rights-of-way needed to install cables underground or on power poles, cable companies entered into franchise agreements with local governments to use the land in exchange for adhering to specified conditions. These agreements provided companies a franchise to offer cable services in exchange for payments of franchise fees (sometimes millions of dollars), meeting specified customer service standards,

systematically extending coverage to previously underserved areas, and regulation of their service charges by the local governments.^{4,5} Franchise requirements often varied from one jurisdiction to the next. As a result, companies were required to engage in extensive and complex negotiations with large numbers of local governments. For example, one industry representative indicated that a single Florida county had as many as 26 different local franchising entities.

Statewide franchise laws have replaced local franchise agreements in some states. In recent years, there has been an effort in many states to replace local regulation of cable operations with statewide regulation. Proponents of these initiatives have held that the local franchise process is burdensome, costly, and an unnecessary barrier to competition. The proponents have asserted that establishing statewide regulation would eliminate the need for companies to engage in costly negotiations with multiple entities, provide statewide levels of service, and increase competition by eliminating local monopolies and allowing other entities to offer television services through telephone lines.

The National Conference of State Legislatures reports that 27 states have considered and 20 have passed video franchise reform legislation since 2005. In 2007, the Florida Legislature approved the Consumer Choice Act, which established a statewide franchise process in Florida.

² *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Federal Communications Commission, January 2009. The data in the report is from 2006.

³ Cable operators are also subject to federal regulations. These include the Cable Communications Policy Act of 1984, which established guidelines for ownership, channel usage, franchise provisions and renewals, subscriber rates and privacy, obscenity, unauthorized reception of services, and boundaries for federal, state, and local regulations. The 1992 Cable Television Consumer Protection and Competition Act and the 1996 Telecommunications Act established additional requirements intended to protect consumers and provide a competitive, de-regulated national policy framework for cable and video services. There has been some question of whether telecommunications companies that offer video services fall under the Federal Communication Commission's cable regulations.

⁴ Local franchise authorities could regulate rates for basic cable unless the companies could meet certain federal standards for competition.

⁵ Federal law provides that local franchise agreements cannot be exclusive. However, once a cable company made the investment to develop cable services in a community, other cable providers were less likely to invest the resources in order to compete.

Questions and Answers —

What is the current structure of cable and video services regulation in Florida?

Local governments and several state agencies provide limited oversight of cable and video services in Florida. Under local franchise agreements that existed in Florida prior to 2007, local governments established various requirements for cable providers. The Consumer Choice Act provides that these local franchises are terminated upon the issuance of a state certificate.⁶ Several state agencies now share responsibilities related to cable and video services—the Department of State, Department of Agriculture and Consumer Services, Department of Legal Affairs, and Public Service Commission. However, none of these agencies has regulatory authority over cable and video services providers.

- **Department of State.** The department accepts applications for state franchises and issues certificates, posts franchise forms and other information on its website.
- **Department of Agriculture and Consumer Services.** Beginning July 1, 2009, the department is responsible for receiving and investigating quality complaints concerning cable or video services statewide.⁷
- **Department of Legal Affairs.** Depending on the circumstances, the department is responsible for investigating complaints of discrimination based on race or income that pertain to the statewide franchise holders under the state's unfair and deceptive trade practices law.⁸

⁶ OPPAGA survey results indicate that local franchise agreements continue in some areas even though existing cable companies may have received a state franchise certificate.

⁷ The Department of Agriculture and Consumer Services has already been handling cable complaints for some local governments. In Fiscal Year 2008-09, the department received 612 complaints, many of which concerned poor service quality.

⁸ The local state's attorney would handle cases not under the jurisdiction of the Department of Legal Affairs.

- **Public Service Commission.** This body oversees telecommunications companies but does not have authority over the video services that they provide. The commission also reports annually on competition for telecommunications services.

Cable and video service providers pay fewer franchising fees than they did under local franchise agreements. The fees associated with state franchise certificates are a one-time \$10,000 application fee, a \$1,000 fee paid every five years to process application updates, and a \$35 fee for information updates; these fees are submitted to the Department of State, which deposits them into the Operating Trust Fund. Local governments no longer receive revenue under locally negotiated franchise agreements.

What has been the experience of other states that have adopted statewide franchise legislation?

States' experiences vary due to substantive differences in their franchise laws, and very little objective information is available to compare state experiences. No comprehensive nationwide studies have been conducted that assess the impact of statewide cable and video franchises.

States have enacted franchise laws that provide differing roles for state and local governments. While at least 20 states have enacted statewide cable and video franchise laws, there is little uniformity in the regulatory structures they have created. Some states, including Florida and Texas, have replaced local franchises with a centralized process that gives certificate holders authority to provide services, although the two states differ in how this transition is to occur. In Florida, state law provides that local franchise agreements are to automatically terminate when the company is issued a statewide certificate. In contrast, Texas prohibits companies from obtaining a state franchise until their local franchise agreements expire. In both states, local governments

continue their role as it relates to right-of-way responsibilities but no longer have authority to negotiate local franchise agreements.⁹

Other states have retained substantive roles for local governments. For example, in Michigan local governments continue to establish franchise agreements but must use a uniform agreement promulgated by the state's Public Utilities Commission. Local governments must approve the agreement within 30 days of submission by a company. In addition, local governments in Michigan continue to receive franchise fees, but the amount of these annual fees is not to exceed 5% of gross revenues.

Little comprehensive information exists to assess state franchise reforms. Due in part to the differences in state franchise law, there is little public data available on the outcomes of state reform efforts. Most available information on the advantages or disadvantages of state cable franchise reform is anecdotal and derived from media sources or from reform advocates and opponents. For example, in 2007 an advocacy group reported that rates for cable services had declined as new providers entered Texas and Indiana. However, reports from other sources have contradicted these findings, stating that rate reductions were misrepresented. Media stories in North Carolina, Georgia, Maryland, and Michigan have reported that cable rates have not declined and customer service problems, especially those concerning timely resolution of consumer complaints, have increased since statewide franchises were implemented. Some reports about the outcomes associated with new franchise laws may be influenced by the amount of revenue that local governments have lost because of the new laws.¹⁰

One of the few studies by an independent entity on the effects of the reform in one state was issued in January 2009 by the Public Utility Commission of Texas. This study concluded that the state franchise law had eased barriers to cable service providers entering the market and encouraged investment in the video and cable market. In the absence of available data to measure competition or rate changes, the commission based its conclusions on the number of companies applying for and receiving statewide franchises and the areas of the state that reported having access to more than one video service provider. In the spring of 2009, the Texas Legislature directed the commission to conduct another study to determine the extent to which cable or video service providers currently offering cable or video services in the state had engaged in discriminatory practices such as redlining, in which providers avoid areas with high concentrations of poor and minority households. This study is due by December 31, 2009.

No comprehensive studies have been published analyzing the impacts of statewide franchise reforms on competition. Fully assessing the impact of statewide cable franchises requires a systematic analysis of the number of providers offering services in each market, the market share of each provider, and the rates charged for services over time. It is important to analyze each of these factors, as changes in a single factor may not produce material benefits for consumers. For example, increasing the number of providers in a market area may have little impact for consumers if all providers charge comparable rates for similar service packages.

No published studies have been conducted that analyze changes in the number of providers offering services, market share, and rates charged in the states that have implemented statewide franchising. This is likely due to at least three factors. First, statewide franchise systems are relatively new in most states. Second, cable and telecommunications subscriber data, which is needed to analyze market share, is considered by companies to be

⁹ In Texas, if local franchise agreements allow for renewal, then local governments may renew them. Once the local agreement expires, the provider must seek a state-issued certificate.

¹⁰ Florida's Consumer Choice Act amends Ch. 202, *F.S.*, and broadens the state's communications services tax to include video services.

proprietary information.¹¹ Finally, analyzing changes in rates is complicated because providers often market bundled packages that can include voice, data, and video services, making it more difficult to identify costs for individual services and compare rates over time and across companies.

What has been the outcome of Florida's statewide franchise law to date?

Limited information exists for drawing conclusions about Florida's statewide franchise law. Department of State data indicates that 26 companies have applied for and received state franchise certificates, and it appears that these companies gradually are offering services to more Florida consumers. However, no reliable information exists in the public arena that would allow a comprehensive analysis of changes in competition and rates for services. Cable and telecommunications companies report that they will be unwilling to provide such data unless the Legislature enacts new public records exemptions to protect the confidentiality of this information.

New companies gradually are offering services to more Florida consumers. In response to the Consumer Choice Act of 2007, the Department of State has established a process to accept franchise applications and award statewide certificates. Between July 2007 and July 2009, the department issued 26 certificates for statewide video franchises, 14 of which were issued to existing cable and video service providers and 12 were issued to new providers.

In addition, two large, national telecommunications providers have begun to offer video services to Florida consumers. In the summer of 2009, Verizon offered cable services to consumers in Pasco, Pinellas, Hillsborough, Polk, Manatee, and Sarasota counties. During the same period,

AT&T offered its services to consumers in Duval, Clay, St. Johns, Volusia, Seminole, Orange, Osceola, Brevard, St. Lucie, Martin, Palm Beach, Broward, and Miami-Dade. It is important to note that not all consumers in these counties may have access to services. In some instances, only certain communities or areas within each county have access, depending on the business plan of the individual company.¹²

Lack of reliable information prevents an accurate assessment of competition for cable and video services. Two barriers currently preclude an analysis of the impact of Florida's statewide franchise initiative—provider reluctance to share data and insufficient information provided by statewide franchise documents.

Cable and video companies declined to provide OPPAGA the information needed to assess changes in industry competition across the state. Specifically, due to their concerns about the security of proprietary business information, the companies declined to provide the subscriber information necessary to determine market share. In addition, the companies declined to provide the specific service area descriptions and rate information needed to assess service patterns as they affect demographic and income groups.

Our ability to assess changes in competition is also limited because the franchise applications required by state law do not require companies to clearly indicate whether all consumers in a company's service area will be able to access services. Some franchise application documents may describe a "service area" as all or part of a city, county, or a wire center if the provider is a telecommunications provider.¹³ However,

¹¹ According to the Federal Communications Commission, cable providers are precluded from releasing individual subscriber information. Companies also declined to provide aggregate information on subscribers due to proprietary concerns.

¹² The description of the Verizon and AT&T service areas is based on publicly available documents. In the absence of information from the companies, we relied on franchise documents provided to the Department of State. However, these documents do not contain sufficient information to precisely determine coverage areas within counties.

¹³ A wire center is a central location or point of convergence where physical telephone circuits are interconnected; typically housed in a central office owned by an incumbent local exchange carrier.

depending on the technology, only some people in an area may have access to services.

Available data indicates that the number of cable subscribers has increased slightly under statewide franchising. In the absence of market share and rate information for all statewide franchisees, OPPAGA examined statewide changes in basic cable subscribers for the state's traditional cable companies to determine if there have been significant market changes. Entry into the market by new providers including traditional telecommunications companies could result in declines in the number of basic cable subscribers served by traditional cable companies as people switch their service to a new provider.

At the state level, information from traditional cable companies shows a small net increase in basic cable subscribers. Industry information shows that the number of basic cable subscribers increased in Florida by approximately 2% from 2007 to 2009 (from 4,960,629 to 5,046,547, or nearly 86,000 additional basic subscribers).¹⁴ However, nationwide, figures reported by the National Cable and Telecommunications Association for 2007 and 2008 show a decline in basic video customers from 64.9 million to 63.7 million.¹⁵

Local governments report limited changes but challenges in addressing consumer complaints and concerns with government access channels. We surveyed local governments to gain their perspectives on the effects of the change from local to statewide franchises. County and municipal governments that responded to our survey generally reported that they have seen little change in services, access,

or rates under the new law.¹⁶ Of the 29 counties responding to the survey, over half (15) reported no identifiable changes, as did 34 of the 57 cities that responded to the survey question.¹⁷ A few local governments reported benefits including fewer consumer complaints and lower rates.

However, the local governments also reported several challenges under the new law, including concerns about consumer complaints, local government access channels, and unrealized rate reductions.¹⁸ Local governments reported that they continue to receive consumer complaints. In addition, several reported that companies were less likely to respond to consumer or local government attempts to resolve complaints since the new law went into effect. Officials also expressed the opinion that the statewide complaint process will be more burdensome for residents and decrease the likelihood of complaint resolution.

Local governments also reported reduced consumer access to government access channels that provide information to residents. Some companies have moved these channels on the dial, making it more difficult for residents to find them; some governments reported that their channels had been moved and are no longer accessible without paying for a cable box. In addition, several local governments expressed concern about new programming requirements for the access channels, loss of franchise fee

¹⁴ These data on basic cable subscribers for Florida are based on survey data collected nationally by industry experts. The figures may not include small cable providers in Florida that did not respond to the survey.

¹⁵ The association reports that nationwide for the three years ending in March 2009, Verizon had added 2.2 million video customers to its fiber optic networks. In addition, the association also reports that as of December 2008, AT&T had added more than a million new video service customers and that the nation's two largest satellite broadcast companies currently serve more than 30 million customers.

¹⁶ The state's 67 counties and 411 municipal governments were provided the opportunity to respond to an online survey or to submit the survey via e-mail or fax. Twenty-nine county governments (43%) responded to the survey, representing 4.8 million residents in unincorporated areas of the state. Seventy-four municipal governments (18%) responded to the survey, representing 3.1 million residents in incorporated areas of the state.

¹⁷ In terms of positive change, the survey asked local governments whether they had seen consumer access to additional services, improved quality of service (fewer complaints), lower rates, or other positive changes. In terms of problems resulting from the new law, the survey asked about various consumer and local government concerns.

¹⁸ As used herein, local access channels refer to public, educational, and government access channels. Public access channels are available for use by the public. They usually are administered either by the cable operator or by a third party designated by the franchising authority.

revenues to support these channels, and the potential for the loss of these channels. Finally, several local governments reported that rates for cable and video services had not decreased as was expected under the new franchise process.

The Legislature may wish to provide public records protection for subscriber data to facilitate analysis of the effects of cable reform. The Consumer Choice Act directs OPPAGA to analyze cable industry competition and report to the President of Senate and the Speaker of House of Representatives by December 1, 2014. Cable and telecommunications companies report that they are unwilling to provide proprietary subscriber data needed to assess competition within the industry and services to consumers unless this information will be exempt from public disclosure. If the Legislature wishes OPPAGA's

2014 study to assess these factors, it may wish to consider amending s. 610.119(1), *Florida Statutes*, to require providers to submit information on aggregate numbers of subscribers by census block level and to provide that these data are not subject to public records disclosure. Alternately, the Legislature could modify the study requirements to no longer direct OPPAGA to analyze the effect of statewide franchising on availability of video services to subscribers throughout the state and the level of competition within the industry.

Agency Response ---

A draft of our report was submitted to the Secretary of State for review and response; a formal response was not required, although the department provided comments informally.

The Florida Legislature
Office of Program Policy Analysis
and Government Accountability



OPPAGA provides performance and accountability information about Florida government in several ways.

- Reports deliver program evaluation, policy analysis, and Sunset reviews of state programs to assist the Legislature in overseeing government operations, developing policy choices, and making Florida government better, faster, and cheaper.
- PolicyCasts, short narrated slide presentations, provide bottom-line briefings of findings and recommendations for select reports.
- The online internet encyclopedia, www.oppaga.state.fl.us/government, provides descriptive, evaluative, and performance information on more than 200 Florida state government programs.
- The [Florida Monitor Weekly](#), an electronic newsletter, delivers brief announcements of research reports, conferences, and other resources of interest for Florida's policy research and program evaluation community.
- Visit OPPAGA's website at www.oppaga.state.fl.us

OPPAGA supports the Florida Legislature by providing evaluative research and objective analyses to promote government accountability and the efficient and effective use of public resources. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475). Cover photo by Mark Foley.

Project supervised by Kara Collins-Gomez (850/487-4257)

Project conducted by Mary Alice Nye (850/487-9253) and Emily Leventhal (850/487-9239)

Gary R. VanLandingham, OPPAGA Director