

SENATE COMMITTEE ON BUSINESS AND COMMERCE  
TESTIMONY OF RON McMILLAN  
REGIONAL VICE PRESIDENT, TIME WARNER CABLE - TEXAS  
ON BEHALF OF TIME WARNER CABLE AND THE TEXAS CABLE ASSOCIATION  
IN FAVOR OF S.B. 1087  
MARCH 29, 2011

Mr. Chairman, Members of the Committee, I am Ron McMillan, Regional Vice President of Time Warner Cable Texas, which serves 2 million customers in 365 Texas communities stretching from El Paso to Beaumont and from Wichita Falls to the Rio Grande Valley. I also serve on the Board of the Texas Cable Association, for whom I am testifying today.

The cable industry employs more than 112,400 Texans directly and indirectly and has a \$15.9 Billion economic impact per year. TCA member companies serve 4.2 million customers in more than 1,000 Texas communities and have paid more than \$1.5 Billion in franchise fees to local governments over the past 10 years.

Time Warner Cable and the Texas Cable Association support this bill because it equalizes the treatment of terrestrial video providers in Texas and gives the Legislature a chance to improve upon its 2005 effort to streamline regulation in the competitive multichannel video marketplace in four key ways:

1. Letting cable operators opt in to the state-issued franchise regime
2. Relieving cable operators of the obligation to maintain expensive Institutional Networks
3. Clarifying the period in which franchise fee payments can be audited
4. Providing for accountability to taxpayers that PEG fees are spent for their intended purpose

By way of background: In 2005, the Texas Legislature passed Senate Bill 5, establishing a new state-run regulatory framework for providers of video services. Before that, all video service providers had to negotiate franchises city by city. But S.B. 5 provided two sets of rules for competitors – rules that created more favorable terms and conditions for telephone companies offering video services and non-incumbent cable operators, such as Grande Communications, than for most cable companies operating prior to its passage.

Texas was the first state in the nation to adopt a state-issued franchising regime. Since that time, 19 states have followed Texas in adopting similar legislation – but with a big difference: In every other state, legislation passed with the support of cities and telcos allowing incumbent cable operators some type of “opt-in” to the state regime. The bill before you eliminates many of the inequities that result from cable companies being subject to a different set of rules.

TWC alone still is bound by 105 municipal franchises with varying expiration dates. TCA member companies have roughly 250 municipal franchises still in place – some extending into 2030. More than half extend beyond 2016. These franchises impose burdens not imposed on competitors and not appropriate in a robust competitive marketplace.

## **Leveling the playing field of regulatory obligations by letting cable operators opt in to the state-issued franchise regime**

Some provisions of existing franchises create higher costs of doing business for cable operators than competitors. I will cite Time Warner Cable examples, but these provisions apply to other operators as well. For example:

- Nearly all franchises require build-out of the system to the entire city, not select neighborhoods. Such provisions affect capital deployment decisions and raise overall capital expenses. Competitors, under a state-issued franchise, are able to pick and choose where they build. An important note: Unlike phone networks, the cable infrastructure was built with private-sector capital, without government subsidies or guaranteed rates of return. Texas cable operators have invested more than \$10 Billion in capital improvements in the past 10 years.
- There are some other costly requirements, such as cities requiring:
  - the production and cablecasting of free advertising on cable networks to promote city causes and events
  - Reimbursement of branding costs if we move a PEG channel
  - Reimbursing the City if it chooses to conduct technical reviews of our system
- Because of franchise requirements, Time Warner Cable provides more than 5,000 courtesy accounts to government and school buildings. That is, conservatively, a \$1 million mandated donation per year in services to governments and schools in our service area. By the way, those requirements continue after a city transitions to a state-issued franchise. Although the law allows operators to charge the “actual incremental cost” as defined in statute, the definition is so narrow that administrative costs of collecting from the cities and schools would outweigh the amount collected. So in practice, those mandated donations continue. Let me be clear that we are not proposing to change this provision, we just point it out as another inequity.

Further, some provisions inappropriately interfere with business decisions in such a highly competitive environment. For example:

- Requirements that we maintain a retail office in their city, even if there is a convenient center in a nearby community.
- Micromanagement of operations by prescribing:
  - how many days we have to wait after a payment is due before we can disconnect the non-paying customer
  - the kind of identification technicians must carry
  - the size of logos on our vehicles and our contractors’ vehicles
  - how we must calculate credits for outages, and when we can apply a fee for late payments

Further still, some provisions impose burdensome regulatory requirements that raise compliance costs that ultimately are passed on to customers. Some examples:

- Financial penalties for non-compliance with customer service standards written in 1993 for simple analog video systems, not robust and competitive video, voice and data offerings. These liquidated damages range from \$50 to \$1,000 per day and for Time Warner Cable alone, payments can bring thousands of dollars in extra annual revenue to cities – money that goes straight into the general fund.
- Insurance requirements, letters of credit, surety bonds and legal indemnification of the municipality.

- Requirements that the city consent for sale of the business, triggering an expensive and lengthy legal review process.
- Requirements of written monthly, quarterly or annual reports regarding finances, customer service and operations. Also, some cities require periodic presentations to City Council about a variety of topics and have citizen oversight commissions whose monthly meetings a cable representative must attend.
- Requirements that we provide detailed system maps in an electronic format acceptable to the City, even if that requires additional capital or operating expenses.

All these are requirements of cable operators under some existing municipal franchises, but not our competitors. So, the opt-in provision of this bill addresses those inequities.

### **Relieving cable operators of the obligation to maintain Institutional Networks**

The second way this legislation improves upon the 2005 bill is that it addresses the expensive and unequal burden that cable operators maintain Institutional Networks (called I-Nets) even after the community transitions to a state-issued franchise. These private data lines were built mostly with technology that is now antiquated, and maintaining them is time-consuming and expensive – if we can even obtain the equipment needed to repair or maintain them. The provision in state law that cities pay Actual Incremental Costs does not sufficiently reimburse companies for the costs of maintaining them. Time Warner Cable is currently maintaining 15 I-NETs for cities covered by municipal or state-issued franchises. This is another obligation for incumbent cable operators but not their competitors.

### **Clarifying the period in which franchise fee payments can be audited**

The third way this legislation improves upon the 2005 legislation is that it ensures that audits on franchise fees are conducted in a reasonable amount of time. Because there are no stated restrictions currently, some cities argue they can go back decades to review franchise fee payments. One city recently went back 11 years. The audit provision in this bill provides financial and regulatory certainty while still giving cities ample time to review payments.

### **Providing for accountability that PEG fees collected from taxpayers are spent for their intended purpose**

Finally, the bill before you addresses the collection and use of the so-called “PEG fee.” SB 5 created a new 1% fee to help cities fund Public, Education and Government (PEG) channels. Although there are clear federal statutory limitations as to what the 1% PEG fee can be spent on, there is not a system in place to ensure that those PEG funds are being spent only for their intended purpose. Of Time Warner Cable’s 139 cities under state-issued franchises, 87 cities receiving the 1% fee have no PEG channels. This provision merely creates a system of accountability to the customers who pay those fees.

Thank you. I’m happy to answer any questions you have.