SENATE BILL REPORT
SB 6003

As of February 26, 2007

Title: An act relating to statewide authorization for the provision of cable service or video service by competitive cable service providers and competitive video service providers in competition with incumbent cable operators.

Brief Description: Promoting competition for cable television service by providing statewide authorization for private entities to provide cable service or video service in competition with incumbent cable television operators.

Sponsors: Senators Poulsen, Rockefeller, Honeyford, Pridemore, Holmquist, Kilmer, and Morton.

Brief History:
Committee Activity: Water, Energy & Telecommunications: 2/20/07.

SENATE COMMITTEE ON WATER, ENERGY & TELECOMMUNICATIONS

Staff: William Bridges (786-7424)

Background: A franchise is a special privilege to use public rights-of-way. With few exceptions, federal law requires cable televison operators to obtain franchise agreements from local or state governments, called "franchising authorities," as a condition of doing business in a community.

Local and State Cable Franchising Authorities: Most franchising authorities in the United States are local governments, which is the case in Washington. At least 11 states have a statewide franchising authority: Alaska, California, Hawaii, Indiana, Kansas, Michigan, New Jersey, North Carolina, South Carolina, Texas, and Virginia.

Washington Utilities and Transportation Commission (WUTC) Does Not Regulate Cable Television: In 1985, the Legislature prohibited the WUTC from regulating cable televison transmission signals.

Federal Law Governing Cable Franchising Authorities: Under federal law, local franchising authorities may not grant exclusive franchises, nor may they unreasonably withhold consent for new service. However, federal law grants franchising authorities some important powers and responsibilities, for example:

- charging a franchise fee of no more than 5 percent of a cable company's annual gross revenue;

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- establishing construction schedules and construction-related performance requirements;
- ensuring access to cable service is not denied to any group of potential residential cable subscribers on the basis of income class;
- requiring public, educational, and governmental (PEG) channels and the provision of services, facilities, and equipment for the use of these channels; and
- regulating the rates for basic service if there is no effective competition (Basic service includes most local broadcast stations and PEG channels).

Federal Communications Commission's (FCC) Survey of Cable Prices in Competitive Markets: According to the FCC, consumers in about 2 percent of the communities in the United States have the opportunity to choose between two or more cable televison operators. In those markets, cable rates are about 17 percent lower than in markets without competition.

FCC Adopts New Cable Franchising Rules: In December 2006, the FCC announced but did not release an order that establishes rules to prohibit franchising authorities from unreasonably refusing to award competitive cable televison franchises.

Summary of Bill: A new chapter is created designating the WUTC as the exclusive franchising authority in the state for competitive cable service providers and competitive video service providers.

Directs the WUTC to Issue Franchises for Competitive Cable or Video Service Providers: The WUTC must issue franchises, called "authorizations," to competitive cable or video service providers within 30 days after receiving an affidavit containing, among other things, a description of the geographic area that is to be served by a provider. The authorizations are fully transferable to any successor in interest, although a notice of transfer must be filed with the WUTC within 30 days of the transfer. The authorizations may be terminated by a provider by submitting notice to the WUTC.

Limits the Franchising Authority of the WUTC and Local Governments: No governmental entity in the state may require a competitive cable or video service provider to obtain a separate franchise or pay an unauthorized fee. In addition, unauthorized franchise requirements are prohibited, such as: (1) regulating rates charged by a provider; (2) imposing build-out requirements; and (3) requiring a franchise to be approved by a public vote.

Requires PEG Channels: A competitive cable or video service provider must carry PEG programming, on a comparable number of channels as the incumbent cable operator, within 180 days of receiving a request from a local government in its authorized service area. The competitive provider must pay the same PEG fees, if any, as an incumbent cable operator. Where technically feasible, the competitive provider and an incumbent cable operator must use reasonable efforts to interconnect their systems to provide the PEG programming.

Preserves Existing Cable Franchise Agreements: Current cable franchise agreements are not affected. A cable operator with an existing franchise is not eligible to obtain a state authorization for any area covered in the franchise until the franchise expires.

Requires Competitive Providers to Pay Fees: Competitive cable or video service providers must pay a fee to local governments in the areas where they operate, upon request. The fee is 5 percent of gross revenues or the percentage currently paid by the incumbent cable operator, whichever is less. No other fees or methods of calculating are allowed. A local government may request that the WUTC hire an independent auditor to verify the accuracy of the fee calculations, with the competitive provider bearing its own costs and the local government bearing its own costs as well as the WUTC's.

Requires Access to Public Rights-of-Way: Local governments must provide competitive cable or video service providers open, comparable, nondiscriminatory, and competitively neutral access to the public rights-of-way. In addition, local governments may not discriminate against competitive cable or video service providers concerning pole attachment terms or access to buildings. The laws governing the use of municipal rights-of-way by telecommunications and cable televison companies also apply to competitive cable or video service providers.

Local governments may impose a permit fee for using the rights-of-way to the extent it imposes a fee on incumbent cable operators, and any fee may not exceed the actual, direct costs incurred by the governments for issuing the permit. Fees are not allowed if: (1) the competitive provider already paid a permit fee of any kind in connection with the same activity; or (2) the competitive provider is authorized by law or contract to place its facilities in the public rights-of-way. Local governments may not charge a competitive cable or video provider a fee for general revenue purposes.

Prohibits Discrimination: A competitive cable or video provider may not deny access to service to any group of potential residential subscribers because of the income, race, or national origin of the residents in the authorized area.

Definitions: Various terms are defined. The definition of "gross revenue" contains numerous exclusions. For example, revenue received from telecommunications services, information services, advertising, and home shopping services, and among other things, may not be included as "gross revenue."

Enforcement: The WUTC is solely responsible for enforcing the provisions of the new chapter by filing a complaint in court. Courts have exclusive jurisdiction to enforce the requirements concerning the issuance and conditions of authorizations (section 3 of the act).

Appropriation: None.

Fiscal Note: Requested on February 13, 2007.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Consumers benefit from competition. Federal government reports and examples from other cities show that cable to cable competition improves services and decreases prices. Competition is working in the telecom market and it will work in the cable TV market. Build-out requirements are an artifact from the days of monopolistic regulation and they hinder the entry of new competitors. There is no build-out requirement for cable TV companies entering the telecom market. Redlining does not make economic sense for cable TV services because minority and low-income consumers are some of the biggest markets for these services. Large cable companies like Comcast purchased franchises from competitors rather than negotiate the agreements themselves. The WUTC is a logical entity to issue franchises because consumers are familiar with the commission and they will know where to go to get info and file complaints.

CON: Cable is not a legal monopoly. Comcast and Charter Communications have invested heavily in Washington and they employ many Washingtonians. Nothing in current law prevents Qwest to invest in Washington. Other telecom companies, like Verizon, have entered into video franchises. Click! Network in Tacoma has entered into franchises with surrounding cities. The bill would prevent cities from getting adequate compensation for the use of public rights-of-way. The lack of buildout requirements would mean low-income and rural areas would not get services. Cable prices have gone up because services have increased. Consumer protection standards are weak. The bill will reduce the gross revenue base for cities and undermine their financial stability. No other industry has asked that franchise rules to be changed for their benefit. Statewide franchising has not lowered rates or improved service in Texas, which was one of the first states to adopt this model. WUTC is too far away for most consumers. There is no funding for WUTC to process franchises. This bill is a duplicate franchise process layered on top of the existing franchise process. The bill will allow phone companies to leverage rights-of-way regulations to their advantage.

OTHER: Telecom franchises should be included in the bill. There are no consumer protection provisions for low-income neighborhoods.

Persons Testifying: PRO: Jim Campbell, Kirk Nelson, Tom Walker, Qwest.

CON: Bill Baarsma, Mayor of Tacoma; Judy Devall, Cities of Toppenish, Wapato, Granger; David Kerr, City of Bellevue; Ron Main, Broadband Communications Association; Jill Novik, Washington Association of Telecommunications Officers and Advisors, City of Seattle; Lewis Rudd, Tabor 100, Ezell's Famous Chicken; Karen Toering, Michael Weisman, Reclaim the Media.

OTHER: James Kelly, Urban League; Greg Kopta, XO Communications, Time Warner Telecom, Integra Telecom; Len Rozek, Comcast; Petra Redchuck, Charter Communications.