Texas Becomes First To Permit Statewide Franchising

Texas has become the first state to permit a single statewide franchise provision for companies entering the cable television business. Under legislation signed by Gov. Rick Perry (R) on Sept. 7, new entrants into Texas' video, cable and telecommunications markets now can obtain a state-issued, statewide cable and video franchise from the Texas Public Utility Commission instead of having to obtain franchises from individual municipalities.

Proponents of the law, including SBC and Verizon, claim it will usher in new technology investments and create greater competition for video, cable and telecommunications services. Cable companies still bound to individual franchises with local municipalities opposed the law and filed suit after it was signed (see below).

The state-issued video franchise will not require mandatory buy-outs of existing municipal cable franchise agreements in place until they expire. Specifically, phone companies entering a video market where the cable industry already has a presence will be allowed to obtain statewide franchises if they adhere to the same contractual obligations as cable companies. Those cable companies, however, will not be able to secure statewide franchising until they have completed the terms of existing contracts.

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In addition to providing for a single state franchise for cable TV services, the law covers a number of other areas, including broadband over powerline services, telecom wholesale services, deregulation of some incumbent local exchange company markets, and oversight of consumer cable TV service complaints.

Cable Industry Suit

The ink from the governor's signature on the new law had barely dried by the time a lawsuit was filed to stop its implementation. The suit by the Texas Cable and Telecommunications Association (TCTA) accuses Gov. Perry and several state Public Service Commission members of approving discriminatory legislation in their zeal to further deregulate the state's telecommunications market.

The law "clearly violates not only federal law but the U.S. and Texas constitutions as well," Tom Kinney, TCTA chairman charged.

TCTA is asking a federal district court in the state to overturn the law and prevent officials from enforcing its provisions. Specifically, TCTA objects to the provision binding cable companies to the terms of existing contracts before they can qualify for statewide franchising – putting them at a competitive disadvantage vis-à-vis new entrants.

This "perpetuates obligations imposed by existing municipal franchise agreements," TCTA said in its filing.

State Sen. Troy Fraser, a Republican who sponsored the bill, said during legislative debate on the measure that the provision was included so as not to upset the status quo in cities with cable contracts.

That provision is unfair, TCTA maintained, because rivals that build cable systems in areas with providers, dubbed "overbuilders," can terminate their contracts at will under the new law.

"Competition won't flourish when businesses offering the same services are treated differently, for no reason," Kinney said. TCTA's suit acknowledges efforts to obtain equality among providers — but claims its obligations are more burdensome than those on phone companies.

Responding to the cable industry suit, one of the Bell companies — Texas-based SBC Communications — declared: "Having been unchecked in their ability to raise rates by 40 percent since 2000, cable has every incentive to try to stop the competition this law was intended to bring."

TCTA is employing "delay tactics that actually harm the public by denying consumers a choice of video providers," said Bill Kula, director of media relations for Verizon Wireless' western bureau.

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