

Florida PIRG



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The Honorable Charlie Crist
State of Florida
PL-O5 The Capitol
Tallahassee, FL 32399-0001

Re: House Bill 529, Cable Franchising Legislation

Dear Governor Crist:

We are writing today as the largest consumer and public interest organizations working on communications policy in the country. We represent tens of thousands of consumers in Florida who have a strong interest in HB 529, which currently awaits your consideration. This bill purports to benefit consumers with new competition. However, if enacted in its current form this legislation would do more harm than good.

We strongly urge you to take a stand for consumers by supporting an open Internet, sustaining public access television, and most importantly, bringing truly competitive broadband and cable TV service to all Florida markets. We urge you to veto HB 529.

The purpose of the bill is laudable—to bring competition to the cable television and broadband Internet marketplace. Yet as currently drafted, HB 529 falls far short of what is required to promote meaningful competition that will deliver lower prices, more competition, and higher quality of service to all consumers.

We have long sought new video competition, and it is with regret that we must oppose the pending measure. However, several critical pieces are missing from this bill.

A new video franchising framework must include stronger build-out requirements and consumer protections: Without build-out requirements, this bill cements the digital divide by statute. Because the legislation does not require new cable providers operating under a statewide franchise to serve all consumers within a franchise area, new entrants will be free to offer service to only wealthy neighborhoods, leaving behind middle and low-income consumers who most need cable rate relief. It also eliminates the existing authority of communities to require that cable providers serve all residents — something virtually every current franchising authority has done. To ensure that the benefits of competition come to those who need it most, the legislation should require telephone companies entering the video market to build out their services to all consumers within a franchise area over a reasonable period of time, with appropriate accommodations for very low-density areas. Particularly in areas where telephone companies already have facilities, build-out should be timely and mandatory.

This is not only critical to ensure video competition will discipline cable rates, it is also central to reversing the alarming trends in the broadband market. Next generation cable services bring broadband as well. Absent a build-out requirement, underserved areas will be permanently stranded on the wrong side of the digital divide. On the one hand, it allows telephone companies to cherry-pick the most profitable franchise areas in the state without requiring those companies to serve all consumers. On the other, it gives the incumbent cable operators an incentive to lower prices in competitive areas and raise them in non-competitive ones (or simply withdraw service) where consumers have no alternatives and remain at the mercy of their monopoly cable provider.

As the *Washington Post* recently reported, this kind of limited competition has NOT resulted in price competition.¹ On the contrary, prices have increased across the board despite the appearance of telephone companies offering cable TV. Moreover, under federal law, once a telecommunications company offers service in a community, regardless of how many or how few consumers have access to the service, local authorities lose their ability to restrain onerous price increases for basic cable service, leaving consumers without competition even more vulnerable to rake hikes from the dominant incumbent cable company.

Anti-redlining provisions are insufficient to ensure low and middle income consumers are not left behind. We acknowledge and applaud your efforts to work with legislators to insert an anti-discrimination provision. However this provision alone will not guarantee that new communications technologies will be offered throughout the state to traditionally under-served communities.

The legislation appropriately prohibits redlining based on race and income. Unfortunately, in the absence of build out requirements this anti-redlining provision, on its own, will be not be sufficient to ensure low-income areas will be served by new video providers. Existing anti-

¹ Ann Marimow, “Cable War Fails to Offer Rate Relief in Montgomery,” *Washington Post*, February, 18, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/17/AR2007021701334.html>

redlining provisions have only been effective because they exist *in tandem* with the ability of local franchise authorities to require service throughout the franchise area over time. Without requirements for build-out, anti-redlining provisions are toothless.

Moreover, redlining, particularly as defined in this bill, will be difficult to prove and violations will be difficult to enforce. So long as the burden lies with authorities to prove that race and income are the sole reasons that a cable company has denied service or upgrades, the anti-redlining provision will be largely symbolic. Providers may justify failure to provide service to particular neighborhoods based on insufficient demand or economic infeasibility. Therefore, any anti-redlining prohibition should place the burden of proof on cable providers, not local, state or federal authorities. That is, the providers should be required to prove that service denial is justified for reasons other than race and income.

The current language also allows a cable provider to easily satisfy the nondiscrimination requirements with "alternative technology that is demonstrably similar to that provided through the providers system and it may include technology that does not require the use of the public-right-of-way." In other words a cable company will be able to satisfy the nondiscrimination clause by establishing a partnership with a Satellite TV company. This is already offered in most areas and will not add competition to the market. **More importantly, Satellite TV does not help in providing traditionally underserved areas with affordable access to broadband internet service.** This provision was removed from an earlier version of this bill and strangely placed back in the final committee substitute.

In addition, to improve the effectiveness of anti-redlining enforcement, the legislation should require the PSC to collect data that will allow enforcement authorities to identify redlining violations. Currently, the PSC lacks data that would help identify patterns of service and potential redlining in broadband — the technology over which telephone companies will deliver video services. Additional reporting requirements and analysis should be part of the systematic process of oversight. Cable service providers should be required to submit regular reports about the location, density, and level of service offered in each franchise area. Finally, the bill should provide for cross-tabulation of census data with the cable service provider reports.

A new franchising process must sustain and support the continued viability of valuable local public services such as public access television, institutional networks, and consumer protection: We must not shortchange local communities with a state franchising process that undercuts the services that local governments have long secured for their citizens. In particular, public access to cable channels has long provided a voice for citizens, local cultural fare, and coverage of local government activities. These services should be supported, not curtailed.

This bill currently singles out public access channels by requiring a subscriber poll that channels must face to exist in a community and by requiring a notice of unfiltered content. Neither of these requirements apply to educational or government channels. However, this bill will also adversely affect the educational channels. HB 529 gives the cable provider the ability to move education channels from the widest available tier to the "lowest cost digital tier. This will effectively shrink their audience and makes it more costly to operate. In a global world, where

educational skills are paramount, this bill would reverse Florida's advances in distance learning, effectively reducing students' access to educational technology and widening the digital divide.

Needs Based Assessments: It is important that cable providers face a needs based assessment when seeking a franchise agreement. This bill requires no such assessment. The cable franchising process established in the 1996 federal Cable Act indicates operators may be asked to meet local needs as assessed by the community government. Typically those needs assessments include surveys of local residents and focus groups of stake-holders (government, nonprofit group, business, educational, and other leaders). The local government may then consider the petitioner's demonstrated capacity to meet those needs as part of the decision about whether to award a franchise.

Customer service standards should not be limited to Federal standards: Few industries generate a higher frequency of customer service complaints than telephone companies. Their use of confusing contracts, harsh early-termination fees and dropped coverage is well known. Therefore, a bill which aims to help phone companies enter the cable market must have strong customer service language. The bill in its current form merely requires cable providers to comply with federal customer service guidelines. While the FCC's customer service guidelines are a good start they are by necessity minimal. Furthermore, they expressly give local and state governments power to enact more stringent customer service requirements. A pro-consumer state franchise bill should contain stronger customer service requirements and should in no way limit the ability of local governments to enact stronger requirements for their communities.

Network neutrality should be a central component of any pro-competitive broadband policy in the state: The federal government has debated this critical policy and failed to come to a resolution. It is now left to the states to protect consumers and innovation. At its base, the issue of network neutrality is about who will control the Internet — consumers and producers in a competitive marketplace, or network owners in a non-competitive marketplace. The Internet has become a positive economic and social force *because* of the principles of nondiscrimination that have protected the free market and which were the rules of the road until 2005. To restructure communications law without supporting fundamental protections of network neutrality would be to undermine the primary reason for the Internet's success. Network neutrality is what keeps the market power of the few from distorting the free market for the many.

Every community—rich or poor, rural or urban—deserves the benefits of new technology and competition. Good public policy guides the market to maximize competitive deployment across the board in video and broadband. It also protects an open, thriving and nondiscriminatory marketplace for Internet content and applications. There is currently nothing in HB 529 that gives cable or telephone companies incentives to abide by net neutrality protections.

Lifeline: It is our position that the lifeline language, while important, should stand on its own. Moreover, the PSC has already issued a rule requiring auto-enrollment for lifeline. Any additional benefit that will be gained by placing this language into statute should not serve as a justification for the passage of HB 529.

Switched access service rates: Some argue that consumers will enjoy a \$150 million dollar savings as a result of a provision within HB 529 which will cap switched access service rates that are currently scheduled to rise. However, they fail to acknowledge that this bill will also stop an equally significant reduction in long-distance rates which is scheduled to take place this November. So, while HB 529 will cap local rate increases it will also cancel the long-distance rate reductions that were promised to consumers four years ago.

Approximately 85% of Floridians have a long-distance service and almost every business in the state has long-distance service. Allowing the final long-distance rate reduction to take place will save consumers roughly \$150 million dollars. The passage of this bill will cancel that savings. So, in effect these two caps are likely to cancel each other out and this provision will neither benefit nor harm consumers.

In conclusion, we all want to see greater deployment and competition in voice, video and data services, but we cannot shortchange consumers in the process. It is worth taking the time to do it right. We have a unique opportunity to tailor new telecom policy to create a more innovative and technologically updated Florida.

We hope that you will veto this one-sided, industry driven bill and allow us the opportunity to come back during the 2008 legislative session with a pro-competitive, pro-consumer, cable-choice bill that is truly in the public interest.

Sincerely,

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