Synopsis of House Committee Amendments[*]

Mary S. Connor *Legislative Service Commission*

Sub. S.B. 117

127th General Assembly
(H. Public Utilities)

Incumbent opt-in (R.C. 1332.23)

- Removed Senate authority for an incumbent company to obtain a state video service authorization (VSA) at any time after the bill's effective date (and thereby void its existing local franchise or other local authority).

- Instead, provided that an incumbent can apply for a VSA only as follows: (1) before its local authority expires or terminates in accordance with that authority, (2) after another person provides or sells video service in the incumbent's service area, (3) after the incumbent receives requisite notice that another provider intends to provide or sell service in that area, or (4) after a determination by the Federal Communications Commission that the incumbent is subject to effective competition as federally defined.

*"**Access to video service**"* (R.C. 1332.21)

- Replaced language in the Senate definition of that term that referred to the capability of a video service provider (VSP) to provide service "irrespective of whether an owner or landlord or other responsible person has granted entrance or a subscriber has ordered the service" to read "irrespective of whether a subscriber has ordered the service or whether the service is actually provided at that address."

State enforcement (R.C. 1332.24)

- Added authority for the Director of Commerce to enforce against a failure of a VSP to comply with revised customer service requirements (see "***Customer service***," below).

- Added to the Director's Senate-conferred authority to obtain an injunction, restraining order, or other appropriate relief for violation by a VSP of specified

[*] This synopsis does not address amendments that may have been adopted on the House floor.

prohibitions and requirements by also allowing Commerce to accept assurances of voluntary compliance, impose civil penalties after adjudication, and, for repeated, knowing violations, revoke a VSA.

- Credited penalty revenue to a new Video Service Enforcement Fund in the state treasury, for use by Commerce.

Application process (R.C. 1332.25)

- Increased from 10 to 30 days the amount of time Commerce has to determine a VSA application's completeness after its filing.
- Reduced from 20 to 15 days the amount of time Commerce has to issue a VSA after determining an application is complete.
- Changed from the 31st day to the 45th day after filing the day a VSA takes effect if Commerce fails to act on a completed application within that time.
- Newly provided that VSA application, trade secret information, as affirmed by Commerce, is not a public record.
- Credited application fee revenue to a new Video Service Authorization Fund in the state treasury, for use by Commerce.
- Newly prohibited a VSP from identifying or referring to an application fee on any subscriber bill or in conjunction with any fee to the subscriber.

Customer service (R.C. 1332.26)

- Removed Senate-conferred authority of a municipal corporation or township to require a VSP to conform to customer service requirements that are consistent with and not more stringent than those in specified federal law (except if two or more persons are offering service within the jurisdiction, excluding direct-to-home satellite service, or if the VSP is subject to effective competition as defined in federal law).
- Replaced that authority with requirements that a VSP assist a local government in addressing service complaints, in a manner consistent with the VSP's complaint handling process set forth in its VSA application and that VSPs adhere to seven specified customer service standards regarding service interruptions and notices concerning service offerings, disconnections, rate increases, and other matters.
- Included a new, express provision that preserves existing authority under the Consumer Sales Practices Act regarding video service.

Commencing/ending service (R.C. 1332.27)

- Changed the Senate-required VSP notice of intent to provide video service to a notice of intent to provide *or sell* video service.

- Added that a VSP send such notice to all providers of video service in the VSP's intended service area, as well as to the local governments required by the Senate to be notified.

- Changed from 30 to 90 days in advance the requirement that a VSP provide notice to Commerce and affected subscribers, municipal corporations, and townships to terminate service to its video service area.

- Newly required a person to continue providing video service it currently provides to its subscribers, at least until its franchise would have expired if not terminated under the bill's incumbent opt-in provisions.

PEG channels (R.C. 1332.30)

- Increased from two to three the number of PEG channels that must continue on the basic service tier in municipalities or townships that currently have three or more PEG channels.

- Removed Senate limitations on when a PEG channel of a municipality or township that currently has three or more channels can be reclaimed (i.e., if the channel is on a nonbasic service tier and not substantially utilized, except that one such channel must remain).

- Instead, allowed a VSP to reclaim any channel over and above the three required by the House on the basic tier, if the channel is not substantially utilized under the unchanged definition of that term.

- Added to the Senate authority, that VSPs and municipalities and townships with current PEG channels can agree to other arrangements for the channels, a provision specifying that those arrangements can include ones authorizing a different number of channels than the bill requires.

- Removed the Senate requirement that PEG channel content and programming be compatible with the technology or protocol the VSP uses to deliver video service and the prohibition that the local authority cannot require or necessitate further alteration or change in content or transmission signal.

- Instead, required that a VSP accept PEG channel content and programming that, at least, meets the (currently analog) transmission standards of the National Television Standards Committee in effect on the bill's effective date.

- Regarding PEG channel support, replaced a Senate reference to the "unsatisfied obligation" of an incumbent company with a reference to the incumbent's "obligation."

- Broadened what is included as PEG support, so that it includes not just monetary but in-kind support.

- Newly specified that the PEG support obligation of the incumbent and other VSPs runs until the obligation's expiration under the bill's incumbent opt-in provisions or, if earlier and as applicable, until January 1, 2012, or such date as may be specified in an ordinance or resolution in effect on the bill's effective date.

- Removed the Senate requirement that a local authority charge all VSPs in the municipal corporation or township a pro rata subscriber share of the total payment and subject all VSPs and the incumbent to any recurring payment requirements, whether expressed as a percentage of gross revenue or as an amount per subscriber, per month, or otherwise.

- Instead, required that other persons providing service in the locality provide the same support as the incumbent and detailed the bases for determining that pro rata support if the incumbent support is in the form of a percentage of gross revenues or a per subscriber fee, a lump sum payment without an offset to its VSP fee, or in-kind support (requiring a fair market valuation of in-kind support).

- Changed the PEG support requirement that payment of the pro rata per subscriber share be made within 45 days after the end of the preceding calendar quarter, so that payment must be made not sooner than 45 nor later than 60 days after.

- Added a provision that a person need not pay its pro rata share of PEG support unless the municipal corporation or township provided notice of the amount due.

- To the Senate authority for a VSP to charge its subscribers a fee to recover PEG support costs, added authority for the VSP to identify and collect as a separate line item on subscriber bills the amount of any PEG support and, if applicable, the cost of any PEG channel content conversion.

- Newly authorized a VSP to charge for transmission capacity for PEG channels, but required capacity for an existing PEG channel to be provided free until the earlier of the date the obligation would have expired under the bill's incumbent opt-in provisions or January 1, 2012, or, if applicable, an earlier date specified in an ordinance or resolution in effect on the bill's effective date.

- During that period, allows a VSP to charge a municipal corporation or township for certain construction costs associated with relocated or additional PEG channel origination points.

- Newly allowed a separate line item on a subscriber bill to collect for transmission capacity revenue forgone (as described above).

- Newly required 120 days' notice to a municipality or township that a VSP's I-net obligation will be terminating under the bill's incumbent opt-in provisions.

VSP fee (R.C. 1332.32)

- Newly allowed that a VSP need not pay a video service provider fee if the local authority, within 10 days after it receives requisite notice of the VSP's intent to commence providing or selling service, has not provided the VSP written notice of the appropriate percentage of gross revenue to be applied.

- Changed the requirement that VSP fee payment be made not sooner than 45 days after the end of the preceding calendar quarter, so that payment must be made not sooner than 45 nor later than 60 days after.

Audits (R.C. 1332.33)

- Newly set a 30-day deadline for a VSP to pay, with interest (in accordance with the Ohio Uniform Commercial Code), any amount found to have been underpaid in a local audit of its VSP fee liability.

- Rather than the Senate prohibition against auditor compensation that is dependent in any manner upon the outcome of an audit, prohibits compensation that is dependent on the dollar amount of the audit findings.

- Specified that the bill does not prohibit or limit contingency compensation for legal counsel enforcing the audit findings.

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