

# OPINION

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## Rules cripple cable competition

■ **Thomas M. Koutsky**

If you want to open up a small coffee shop or tiny bookstore in Florida, all it takes is the gumption to take a risk. The law does not tell you that to start selling coffee or books, you have to open up as many stores as Starbucks or be as large as Barnes & Noble. But, in Florida, if you want to compete with the local cable company to offer new choices in television, that is pretty much what you have to do — and Florida's "level playing field" law and the litigiousness of cable companies are to blame.

Florida's Legislature is considering a measure to reform the local franchise system and welcome competition. But incumbent cable companies are trying to fend off this reform and the competition it could bring. Floridians are paying for this obstructionism: Delaying possible competition to cable for just one year could cost consumers in Florida more than \$600-million. Florida's existing "level playing field" law gives incumbent cable operators the ability to sue any local government that welcomes a new competitor on terms that are different from their deal with the cable monopoly.

Many city councils in Florida want to promote cable competition, but have been frustrated by state law. An attorney for several Florida cities, Matthew L. Leibowitz, told the FCC earlier this year that "the threat of being sued" under the state law is "[o]ne of the major impediments to the grant of competitive franchises" in Florida. And these level-playing-field rules apply to every potential competitor, large or small. Because these laws require a new competitor to operate on the same scale and manner as the dominant incumbent network, it is effectively illegal for a firm to put together a niche system that caters to a specific set of customers. For example, a company cannot operate a cable system directed only at Florida's retirement communities.

Defenders of the status quo argue against this niche entry by stating that new entrants should be forced to "build out" their service to every place the

incumbent cable company now serves on a fixed timetable. The cable companies say such requirements would make sure that everybody gets service, but experience proves just the opposite. Constructing a fiber optic network takes a lot of money, and Florida's experience shows that requiring firms to commit to building everywhere before they have even a single customer just about guarantees they won't offer service at all.

That's the real reason cable likes build-out rules — they are a prescription for continued cable monopoly. Moreover, while a build-out rule is ostensibly aimed at protecting low-income and minority communities, research by the Phoenix Center shows that this requirement hurts those communities. Competitors will go where the customers are and, it turns out, low-income households are attractive customers that subscribe to TV service at roughly the same rate as higher-income households. Moreover, the ability to offer video service substantially improves the business case for new network investment in low-income neighborhoods.

Using publicly available data from the U.S. Census Bureau, the Phoenix Center found that a new competitor's ability to offer video can speed the delivery of advanced networks to less affluent neighborhoods substantially. Right now, Florida law stands in the way of video choice for consumers across the economic spectrum.

Other states have already reformed their local franchise rules. Where communities or states have embraced change, prices are coming down, choices are going up, and consumers are getting access to a host of new services. For Floridians to enjoy these same benefits, the Legislature needs to address the artificial requirements and barriers that hamper video and broadband competition in the state.

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