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Bill Analysis
Legislative Service Commission

H.B. 582

123rd General Assembly
(As Introduced)

Reps. Terwilleger, Krebs, Taylor, Sullivan, Hartnett

BILL SUMMARY

- Requires a cable operator that is both a wireline provider of broadband internet access transport service and either an internet service provider or an affiliate of an internet service provider to allow any other internet service provider access to the cable operator's broadband internet access transport service.
- Requires that such access be unbundled from the provision of content and that it be provided at any technically feasible point selected by the requesting party, upon rates, terms, and conditions that are at least as favorable as those upon which the cable operator provides access to itself, an affiliate, or another person.

CONTENT AND OPERATION

The bill imposes an "open access" requirement with respect to the broadband internet access transport service of a cable operator that is a wireline provider of that service and also an internet service provider or affiliate provider. There currently is no Ohio law regulating cable operations. Cable franchises and contracts for cable services in Ohio are awarded by municipal corporations and townships subject to terms and conditions the local governments negotiate with cable operators. Cable operations also are subject to federal cable law, which currently does not impose such an open access requirement.

The bill

Open access requirement

The bill requires that each cable operator that is a wireline broadband internet access transport service provider and that is, or is an affiliate of, an internet service provider provide any other requesting internet service provider

access to its broadband internet access transport service. This access must be available separately (unbundled) from the provision of content, and must be provided upon rates, terms, and conditions that are at least as favorable as those upon which it provides access to itself, an affiliate, or any other person. The access must be provided at any technically feasible point selected by the requesting internet service provider. (Sec. 1349.31(B).)

Definitions

Under the bill, "broadband internet access transport service" is the broadband transmission of data between a user and the point of interconnection of the user's internet service provider with the facilities of a broadband internet access transport provider (sec. 1349.31(A)(3)). The bill defines "broadband" as possessing the capability to transmit data in excess of 200 kilobits per second (sec. 1349.31(A)(2)).

An "internet service provider" under the bill is a person that provides a service enabling users to access content, information, electronic mail, or any other service offered over the internet (sec. 1349.31(A)(6)). The "internet" is defined as the myriad collection of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected world-wide network of those networks that use the transmission control protocol or internet protocol, or any predecessor or successor protocol, to communicate information of all kinds by wire or radio (sec. 1349.31(A)(5)). "Affiliate," under the bill, means a person that directly or indirectly owns or controls any equity of other financial interest of more than 10% of another person, any management interest in that person, or the equivalent of any such financial or management interest; or that directly or indirectly is so owned or controlled by or is under such common ownership or control of another person (sec. 1349.31(A)(1)).

A "wireline broadband internet access transport service provider" is a person that provides directly or indirectly to the public for a fee broadband internet access transport service by aid of wire, cable, or other like connection over facilities it owns or controls. The term includes an internet service provider that provides such broadband internet access transport between itself and its users by aid of such connection or facilities. (Sec. 1349.31(A)(7).) "Person," in this definition and in the definition of "internet service provider," includes an individual, corporation, business trust, estate, trust, partnership, and association (sec. 1.59, not in the bill) and generally is construed as applying to private organizations and excluding governmental entities.

The bill's definition of "cable operator" is the same as that in current federal law (47 U.S.C.A. 522(5)): any person or group of persons that (1) provides cable

service over a cable system, and (2) directly or through one or more affiliates owns a significant interest in the cable system or otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system (sec. 1349.31(A)(4)). "Person" and "affiliate" in this federal definition are more broadly defined than in the bill, but without consequence for the operation of the bill. As defined in federal law, "person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity (47 U.S.C.A. 522(15)); and "affiliate" means, in relation to any person, another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person (47 U.S.C.A. 522(2)).

"Cable service," in the bill's definition of "cable operator," means the one-way transmission to subscribers of video programming or other programming service and any subscriber interaction that is required for the selection or use of that programming (47 U.S.C.A. 522(6)). "Video programming" means programming provided by, or generally considered comparable to programming provided by, a TV broadcast station (47 U.S.C.A. 522(20)). "Cable system" means a facility that consists of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community. The term excludes the following: a facility that serves only to retransmit the television signals of one or more TV broadcast stations, a facility that serves subscribers without using any public right-of-way, a facility of a common carrier under federal telecommunications law unless the facility meets specified criteria, an open video system that complies with specified federal law, and any facility of an electric utility used solely for operating its electric utility system. (47 U.S.C.A. 522(7).)

HISTORY

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