

Texas Video Franchise Law Accelerated FTTH Deployment

Texas streamlined video franchising in September 2005. Over the next year, fiber-to-the-home video service expanded six times as fast there as in the rest of the country. A new study from RVA Render & Associates gives details.

A BBP Staff Report

In September 2005, Texas became the first state to streamline its video franchising process. The Texas State-Issued Video Franchise Law, also known as SB5 – a law that was enacted with the support of the telecommunications industry and over the objections of the cable industry – transferred video franchising powers from local authorities to the state utilities commission, reduced processing time to 17 days following the filing of an affidavit and imposed a standard 5 percent municipal franchise fee.

While the Texas law doesn't provide a statewide franchise (the franchise is limited to the specific area where the provider intends to offer services), it radically reduces the time and effort required to obtain local franchises.

Recently, the Fiber-to-the-Home Council commissioned market research firm RVA Render & Associates (www.rvallc.com) to study the impact of the new law on video services provided via fiber to the home (FTTH). As shown in Figure 1, RVA found that video-enabled FTTH has grown six times faster in Texas than in the rest of the country since the new law was passed.

Of course, a simple comparison of growth rates doesn't tell the whole story, because it isn't clear how much, if any, of the faster growth was caused by the change in the law. In a series of telephone interviews with all 16 FTTH providers in Texas, RVA tried to establish the actual effect of the law.

A few of the FTTH providers were serving such small and scattered populations (averaging 124 subscribers) that video service was not economically feasible. Another company was still considering how to provide video service. The remaining 11 providers all offered video, and their responses are shown in Figure 2. All of the larger providers and most of the smaller ones agreed that the new law had significantly accelerated their deployment of FTTH video services.

The nine providers who believed the new law was accelerating their deployment gave the following reasons:

- The reduction of the time for franchising from an average of 18 months to less than one month meant that they could expand service more quickly to additional cities – or, in the case of smaller providers, to areas surrounding

their original service area.

- The cost of obtaining franchises had dropped dramatically because it was no longer necessary to prepare extensive documentation or to send legal counsel and top executives to multiple meetings in each municipality. Municipalities are also now prohibited from making onerous requests, which in the past have included such items as town Christmas decorations and sports parks.

- The cost of maintaining franchises also dropped once fees and procedures became standardized.

- Municipalities could no longer impose uneconomical build-out requirements and timetables.

While there is no way to determine the precise effect of the law, RVA's interview with Verizon (which accounts for nearly 90 percent of FTTH coverage in Texas) shows the magnitude of the effect. Verizon stated that before the law was passed, it had negotiated four video franchises covering about 60,000 potential households. Without the new law, it expected to be able to provide video services to those 60,000 households and perhaps a few more by December 2006. In fact, by December it was offering FTTH video services to 325,000 Texas households.

As providers noted in the interviews, the benefits of the law also include new investment in local economies and increased competition leading to better prices, better product and better customer service. And, since other telcos and cable operators have applied for state-issued franchises to provide video

Households Offered Video Over FTTH			
	Texas	Other States	Total US
1-Sep-05	18,070	326,164	344,234
1-Dec-06	364,050	1,436,162	1,800,212
15-Month Growth Rate	1915%	340%	423%

Figure 1. Texas added FTTH homes at six times the rate of other states in the past 15 months. Its FTTH growth rate was already faster than the rest of the country, but the gap widened even more after statewide franchising kicked in there.

over DSL and hybrid fiber/coax, it appears that the law is also encouraging expansion of video services via modalities other than FTTH.

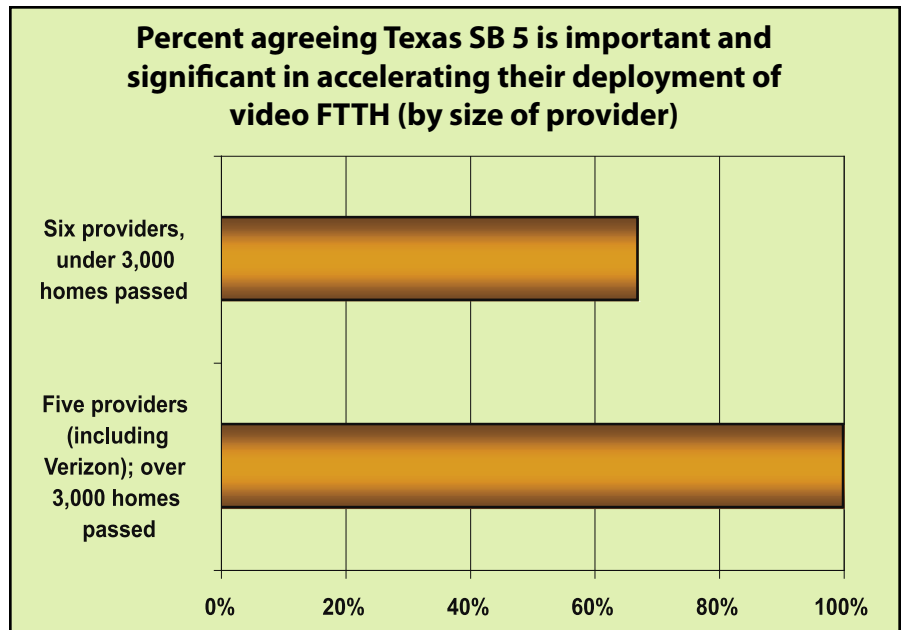


Figure 2: Providers agree that the Texas franchise rules helped them to offer FTTH to more households.

Texas Rules Nationwide?

As we went to press, the FCC voted 3-2 to reduce the power of local franchising authorities to block or delay video franchising by telcos. The FCC said the current franchising process constitutes an “unreasonable barrier to entry that impedes the achievement of the interrelated federal goals of enhanced cable competition and accelerated broadband deployment.”

The two Democratic appointees to the commission voted against changing the franchise system, leading to speculation that the FCC ruling could be overturned legislatively in the new Congress, or in court.

The FCC decried local negotiations with no time limits; unreasonable build-out requirements; unreasonable requests for “in-kind” payments that attempt to subvert the five percent cap on franchise fees; and unreasonable demands with respect to public, educational and government access. It preempted local laws, regulations, and requirements, including local level-playing-field provisions, to the extent they impose greater restrictions on market entry than the new FCC rules.

The FCC in particular cited fast-rising cable rates for consumers – a 93 percent increase in the past decade – and noted that where cable companies faced competition, rates were on average 17 percent lower.

The changes had been sought by the FTTH Council, telcos and vendors of network gear. They were opposed by cable operators. The American Cable Association lambasted the move, saying rates have risen because the cost of programming has risen. Matthew M. Polka, president and CEO of the ACA, noted that competition from satellite vendors had

not affected pricing, and said his organization “once again encourages the Commission to examine wholesale programming practices in detail. If it does so, the Commission will find that powerful programmers routinely use retransmission consent, onerous distribution obligations, price increases, and tying and bundling practices to reduce choice and raise costs. These issues are truly at the heart of the matter.”

State-level franchising laws remain in place. The FCC concluded that although the record allows it to determine generally what constitutes an “unreasonable refusal to award an additional competitive franchise” at the local level, it did not have sufficient information to make such determinations with respect to franchising decisions made at the state level or in compliance with state statutory directives, such as statewide franchising decisions.

The FCC annual report on cable industry prices was released with the franchising decision. The report shows that average monthly rates for cable service – including basic and expanded basic cable programming services – increased by 5.2 percent over the 12-month period ending January 1, 2005, from \$40.91 to \$43.04, and by 93 percent since the period immediately prior to Congress’s enactment of the Telecommunications Act of 1996.

The average monthly charge for basic service increased by 3.3 percent, rising from \$13.84 on January 1, 2004 to \$14.30 on January 1, 2005. Over the same period, the average charge for expanded basic service rose from \$27.07 to \$28.74, an increase of 6.2 percent – more than 84 percent of cable consumers subscribe to the expanded basic service.