

**Testimony of Jonathon McGee
Executive Director
Ohio Cable Telecommunications Association**

**Before the
House Finance Committee**

**In Opposition to the New Sales Tax on
Cable Television Service (HB 64)**

March 26, 2015

Introduction

Chairman Smith and members of the Committee, thank you for the opportunity to provide testimony regarding the new sales tax on cable television service proposed in HB 64. My name is Jonathon McGee. I am the Executive Director of the Ohio Cable Telecommunications Association, a trade association representing cable television operators, programmers, and suppliers. Our member companies serve the majority of approximately four million cable television households in the state. On behalf of our customers and more than 8,000 full-time cable employees in Ohio, I am here in opposition to the proposal to impose a sales tax on cable television service, installation, maintenance and repair.

Before I explain why we oppose this new sales tax, let me also note that we are concerned about the 23% increase in the Commercial Activities Tax (CAT), the partial elimination of the vendor discount, and the new sales tax on items such as advertising, intangibles, intercompany sales (including R&D, financial planning and budgeting, accounting, IT, legal, marketing, and new product development), professional services and other services that would drive up the cost of doing business in Ohio. I will not separately address these items, leaving that for opponents better versed in the particulars of those additional taxes. We are also

concerned with the proposed 14 percent increase in the Video Service Provider (VSP) assessment which wireline video providers remit to the Department of Commerce annually. This is another cost to the consumers of our product imposed by the state which is being increased in HB 64.

Overview of the Cable Industry

Many of you are familiar with the unique manner in which the cable television industry is regulated and taxed. Allow me to highlight some key features that make it unique.

Cable's video product in Ohio is primarily taxed at the local level but certain parts of the service are also taxed at the state level. It is also regulated by the Ohio Department of Commerce. In 2007, with the passage of SB 117, the state moved from local franchising to state-issued franchises. Prior to SB 117, a wireline video provider had to obtain a franchise from the city, village or township it was seeking to serve.

With passage of SB 117, wireline video service providers now must obtain a state-issued franchise (known as a video service authorization (VSA)) issued by the Ohio Department of Commerce. In addition, Commerce now has authority over video service providers, and video service providers must comply with many statutory consumer protection provisions. 1332.26(D)

(Exhibit 1)

However, the rate of the video service provider (VSP) fee continues to be set by, and remitted to, the local government. Local governmental authorities in Ohio may continue to set the VSP fee at a rate up to five percent of revenue derived from the provision of video service. Additionally, they may elect to include in the calculation revenue from advertising sales, which can drive the effective rate above 5%. In the sample bill attached, the effective rate is 5.26%.

(Exhibit 2) This fee is unique to the cable industry.

Cable's primary competitor, the Direct Broadcast Satellite (DBS) industry, is not subject to the locally imposed fees, regulation by the Department of Commerce (including the payment of the VSP assessment), or any of the statutory consumer protection provisions of SB 117.

Cable's Current Tax Burden

In addition to our VSP fee obligations, the cable industry is responsible for many of the same taxes imposed on general businesses. Some of the additional taxes the industry pays include, but are not limited to:

- Municipal Income Tax
- CAT
- Real Property Tax
- Sales Tax

The total state and local tax burden of OCTA member companies and their customers is well over \$250 million annually, including \$78 million paid annually in the local VSP fee.

State Sales Tax on Cable

The cable television industry and its customers oppose this new tax on cable television service for multiple reasons.

The Proposed Sales Tax is Double Taxation on the Cable Customer

The cable television industry and its customers already pay a local tax on service – the video service provider (VSP) fee – that is unique to the cable industry and its wireline competitors.

As explained above, OCTA member companies collect and remit directly to municipalities and townships the VSP fee which amounts to \$78 million annually. Additionally, customers already pay a state sales tax and the local “piggyback” tax on cable equipment rentals,

such as set-top boxes, modems and remotes. Our customers also pay a regulatory fee that is remitted to the Federal Communications Commission. **(See also, Exhibit 2)** To impose a new sales tax on service would in effect more than double the cable customer's tax burden.

Under Ohio law, the VSP fee is levied on the amount of the customer's charges from:

- (a) Recurring monthly video service charges;
- (b) Event-based charges (*e.g.*, pay-per-view and Video-on-Demand);
- (c) Set-top box rentals and other video service equipment fees;
- (d) Service charges relating to video service (*e.g.*, activation, installation and repair);
- (e) Administrative charges relating to video service (*e.g.*, service order and service termination charges).
- (f) Advertising revenues, if a municipality or a township elects to include them.

O.R.C. Sec. 1332.32(B). **(Exhibit 3)**

Under HB 64, these services will **also** be subject to the state and local sales tax. Taxing the same service twice is not good policy.

The Proposed Sales Tax Puts Cable at a Competitive Disadvantage

Currently, there are over 1.2 million Direct Broadcast Satellite (DBS) customers in Ohio, making the DBS industry the second largest provider of multi-channel video programming services in the state. Nationally, DBS is larger than every cable operator except for one. The competition between the cable television industry and DBS in Ohio is fierce.

DBS provides a substantially identical service to cable and other wireline video products, and our state tax burdens are comparable under Ohio’s current tax structure.¹ Under HB 64, our tax burdens would cease to be comparable and an advantage would be given to our largest competitor, as federal law preempts local authorities from levying any tax or fee upon DBS.² This means that DBS does not pay the franchise fee or local piggyback sales taxes.

Additionally, more consumers are now obtaining video programming through Internet based providers such as Hulu, Netflix, Amazon, iTunes and other streaming video services (referred to as “over-the-top” or “OTT” video providers). These services are not currently subject to any federal taxes or fees; however, the state now subjects “digital goods” to the sales/use tax. While the imposition of this tax to digital goods amounts to a somewhat comparable tax³ when compared to what cable customers already bear in the form of the VSP fee, HB 64’s proposal will reverse whatever parity was achieved with the taxation of digital goods, thereby keeping cable at a competitive disadvantage against these competitors.

Below is an illustration of the tax disparity the proposed sales tax will create between cable and DBS.

	Cable Television Services	OTT ³	DBS Services
Sales Tax	6.25%	6.25%	6.25%
Piggyback Sales Tax	Up to 3%	Up to 3%	N/A – federal law
Local VSP Fee	Up to 5+%	N/A	N/A – federal law

¹ The current sales tax was imposed on DBS in 2003. At that time, the General Assembly decided not to tax the cable product, recognizing that doing so would amount to double taxation of cable. The DBS industry challenged this tax structure in court, with the Ohio Supreme Court upholding the law as being constitutional. The United States Supreme Court refused to hear the DBS industry appeal. *DIRECTV v. Levin*, 128 Ohio St. 68, 941 N.E.2d 1187 (2010), *cert. denied*, 133 S. Ct. 51, 183 L. Ed. 2d 675, 80 U.S.L.W. 3707 (2012).

² Section 602 of the Telecommunications Act of 1996, Pub. L. No. 104-104, § 602, 110 Stat. 144 (47 U.S.C. § 152 note).

³ A comparable tax, if it is indeed even collected. Before a vendor must collect the sales tax, nexus to Ohio must exist. Attached is an invoice from one of these vendors for a movie rental on which no state tax is collected, (Exhibit 5) which allows this vendor to maintain a price advantage over Ohio VSPs.

The point here is that the majority of cable customers already pay a 5% fee on their cable bill. Imposing another 6.25% state tax, plus the piggyback tax, increases most cable customers' total tax to somewhere between 11 and 14 plus percent. This is just too much.

Municipalities Will Lose Franchise Fee Revenue

Cities, townships and villages stand to lose revenue if a state sales tax is imposed on cable television service. As prices increase, customers will seek their video from other sources, such as DBS and OTT video, which are not subject to the VSP fee.

The Proposed Tax Will Hurt Cable's Ability to Provide Broadband Services

Federal, state and local policymakers have all recognized the importance of broadband technology to our economy. They also know how critical it is to the rural Ohio economy that these areas stay on the cutting edge of information technology.

Cable operators have invested over \$1.2 billion in private capital in just the past three years to upgrade infrastructure, providing residential and business customers with advanced services. Many companies have also expanded their competitive offerings to include business and residential telephone services, providing meaningful competition to the local telephone company.

Any tax policy that stifles the cable industry's ability to create and offer new and improved digital services to business and residential consumers is contrary to Ohio's stated policy goal of expanding broadband access. O.R.C. 1332.22.

Imposing a sales tax on cable could force customers to downgrade or drop cable service altogether, which will result in declining revenues, ultimately drying up investment dollars necessary to continue our aggressive deployment of advanced services, and it would kill jobs in

the cable industry. This will have an even more dramatic impact on small, independent cable operators serving our more rural communities.

Conclusion

The cable television industry has been contributing to Ohio's economy for some 50 years. We provide employment opportunities for Ohioans and pay state and local taxes. We help fund important civic and community projects. Our employees live, work and contribute to the economies of their Ohio communities. Ohio's cable industry has invested deeply in embedded infrastructure to provide video services to our customers – who already pay their fair share in state and local taxes.

Imposing a state sales tax on cable TV would penalize our industry and double the tax burden on our customers, while benefiting our primary competitors. I respectfully urge you to join the cable television industry in opposing a sales tax on cable service.

Thank you again for the opportunity to testify before you today. I'd be happy to answer any questions you may have.

1332.26 Political subdivision authority - complaints - standards.

(A) No political subdivision shall require a video service provider to obtain from it any authority to provide video service within its boundaries.

(B) Except as authorized under division (C) of this section and under sections 1332.30 and 1332.32 of the Revised Code, no political subdivision shall request anything of value from a video service provider for providing video service; impose any fee, license, or gross receipt tax on the provision of video service by such a provider; or impose any franchise or other requirement on the provision of video service by a video service provider, including, but not limited to, any provision regulating rates charged by a video service provider or establishing any build-out requirement or requirement to deploy any facility or equipment.

(C) When requested to do so, a video service provider shall assist a municipal corporation or township in addressing video service subscriber complaints, in a manner consistent with the provider's complaint handling process set forth in its application pursuant to division (A)(7) of section 1332.24 of the Revised Code. Nothing in sections 1332.21 to 1332.34 of the Revised Code affects any authority granted under sections 1345.01 to 1345.13 of the Revised Code.

(D) A video service provider shall meet all of the following customer service standards:

(1) The provider shall restore video service within seventy-two hours after a subscriber reports a service interruption or other problem if the cause was not a natural disaster.

(2) Upon a report by a subscriber of a service interruption and if the interruption is caused by the video service provider and lasts for more than four hours in a given day, the provider shall give the subscriber a credit in the amount of the cost of each such day's video service as would be billed to the subscriber.

(3) Upon a report by a subscriber of a service interruption and if the interruption is not caused by the video service provider and lasts for more than twenty-four consecutive hours, the provider shall give the subscriber, for each hour of service interruption, a credit in the amount of the cost of per hour video service as would be billed to the subscriber.

(4) The provider shall give a subscriber at least thirty days' advance, written notice before removing a channel from the provider's video service, but no such notice is required if the provider must remove the channel because of circumstances beyond its control.

(5) The provider shall give a subscriber at least ten days' advance, written notice of a disconnection of all or part of the subscriber's video service, except if the disconnection has been requested by the subscriber, is necessary to prevent theft of video service, or is necessary to reduce or prevent signal leakage as described in 47 C.F.R. 76.611.

(6) The provider shall not disconnect all or part of a subscriber's video service for failure of the subscriber to pay its video service bill, until the bill is at least forty-five days past due.

(7) The provider shall give a subscriber at least thirty days' advance, written notice before instituting an increase in video service rates.

Effective Date: 2007 SB117 09-24-2007

Total due on Feb 28, 2015: \$137.44
Account number [REDACTED]
Customer code [REDACTED]
Statement date Feb 04, 2015



Previous Balance	
Balance last statement	134.02
Total previous balance	
134.02	
Payments	
01/08 Payment received	-134.02
Total payments	
-134.02	
Monthly services	
02/03-03/02 Starter TV	22.99
Standard TV	55.00
Starz	12.99
Variety Pass	9.05
HD-DVR Set-Top Box	11.25
DVR Service	12.99
Total monthly services	
124.27	
<i>Basic tier (Starter TV) may be purchased by itself for \$22.99 per month</i>	
Taxes, fees & surcharges	
Broadcast TV and Sports Programming	5.50
Surcharges	
Franchise Fees	6.83
State Sales Tax	0.76
FCC Regulatory Fee	0.08
Total taxes, fees & surcharges	
13.17	
Total due on Feb 28, 2015	
137.44	

Reach us at your convenience

In person

1135 S. Main St. Suite 210, Bowling Green, OH 43402
 Monday-Friday 8:30am-5:30pm
 Closed Saturday

On twc.com

Visit twc.com/account to pay your bill online, view FAQs/self-help options and chat with live agent. Just have your customer code above on hand.

Through your mobile device

With our free My TWC[®] app.

Over the phone

Call us anytime at 1-800-TWCABLE to speak to someone live with any questions about your bill.

Pay online

Go green with online bill payment. Sign up at twc.com/account. Have your account number and customer code ready, found on the top of this page.

Pay by phone

Call us anytime at **1-800-TWCABLE**; simply say "pay my bill" to pay your bill for free. Or you can speak to someone live with any questions about your bill.

Customer information

Experiencing technical issues with closed captioning? Call 1-866-892-4249, email closedcaption@twcable.com, or fax 1-877-430-1386. Address written complaints to A. Long, Legal, 13820 Sunrise Valley Dr., Herndon, VA 20171, email twc.closedcaptioningissues@twcable.com, or fax 1-704-697-4935. To follow up on a written submission, call 1-877-276-7432.

If your check is returned, you expressly authorize your bank account to be electronically debited for the amount of the check plus any applicable fees. The use of a check for payment is your acknowledgement and acceptance of this policy and its terms and conditions.

To view the call detail for your Home Phone calls, go to twc.com/account

For Information on any upcoming programming changes, please consult the Legal Notices published in the Toledo Blade on the 1st and 3rd Wednesday of each month or on twc.com

Visit twc.com/careers for career opportunities at Time Warner Cable.

TWC imposes surcharges to recover costs of complying with its governmental obligations.

Franchising Authority: FCC ID#OH0139
 Bowling Green City, 304 N Church St Bowling Green, OH 43402

Exhibit 3

1332.32 Payment of video service provider fees.

(A) Not sooner than forty-five nor later than sixty days after the end of each calendar quarter, a video service provider shall pay a video service provider fee to each municipal corporation and each township in which it offers video service. The fee shall be calculated quarterly by determining the provider's gross revenue for the preceding calendar quarter as described in division (B) of this section and multiplying the result by the percentage specified in division (C)(1)(a) or (b) of this section.

(B) Gross revenue shall be computed in accordance with generally accepted accounting principles.

(1) Gross revenue shall consist of all of the following revenue for the calendar quarter that is collected by the provider for video service from all its subscribers having service addresses within the municipal corporation or, respectively, the unincorporated area of the township:

(a) Recurring monthly charges for video service;

(b) Event-based charges for video service, including, but not limited to, pay-per-view and video-on-demand charges;

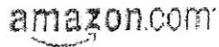
(c) Charges for rental of set top boxes and other video service equipment;

(d) Service charges related to the provision of video service, including, but not limited to, activation, installation, and repair;

(e) Administrative charges related to the provision of video service, including, but not limited to, service order and service termination charges.

(2) Gross revenue shall not include any of the following:

(g) Advertising revenue, unless a municipal corporation enacts an ordinance or a board of township trustees adopts a resolution that uniformly applies to all video service providers. For those purposes, "advertising revenue" means the net revenue received by the video service provider for advertising on its subscription-based video service within a municipal corporation or the unincorporated area of a township. If such revenue is derived under a regional or national compensation contract or arrangement between the video service provider and one or more advertisers or advertising representatives, the amount of revenue derived for a municipal corporation or for the unincorporated area of a township shall be determined by multiplying the total net revenue received by the video service provider under the contract or arrangement by the percentage resulting from dividing the number of subscribers in the municipal corporation or unincorporated area of a township by the total number of regional or national subscribers that potentially receive the advertising under the contract or arrangement. The municipal corporation or township shall promptly notify affected video service providers of the ordinance or resolution, which shall not take effect until the first day of the first calendar quarter that begins more than thirty days after the notice.



Details for Order # [REDACTED]

Print this page for your records.

Amazon.com order number: [REDACTED]

Order Total: \$14.99

Digital Order: December 31, 2014	
Items Ordered	Price
Gone Girl [HD] [Amazon Instant Video]	\$14.99
By: David Fincher, Ben Affleck, Rosamund Pike ...	
Sold By: Amazon Digital Services, Inc.	
	Item(s) Subtotal: \$14.99

	Total Before Tax: \$14.99
	Tax Collected: \$0.00

	Total for this Order: \$14.99

Payment Information	
Payment Method	Item(s) Subtotal: \$14.99
VISA Last 4 digits: [REDACTED]	-----
Billing Address	Total Before Tax: \$14.99
[REDACTED]	Tax Collected: \$0.00
[REDACTED]	-----
WORTHINGTON, OHIO [REDACTED]	Grand Total: \$14.99
[REDACTED]	

[Return to the Order Summary.](#)

Please note: This is not a VAT invoice.