Testimony of Scott S. Ward
Before the House Finance Committee

March 25, 2015

Chairman Smith and members of the House Finance Committee, thank you for allowing me to appear today to provide testimony on House Bill 64. I am Scott Ward, an attorney with the law firm Orrick, Herrington & Sutcliffe, LLP. I am here today on behalf of the satellite television industry, including the Satellite Broadcast Communications Association and both DirecTV and Dish Network and the more than one million Ohio families that currently use satellite television.

Imagine two neighbors, living right next door to each other, but one has cable and the other has satellite. In fact, for those of you who have seen any television commercials in the last few months you might want to call them satellite Rob Lowe and cable Rob Lowe. Both Robs watch the same television shows and have access to similar on-demand programming. Both Robs also pay a state and local sales tax on their set-top equipment. And I should also note that both the cable and satellite companies are equally subject to CAT taxes here in Ohio. So while the service is similar and much of the tax treatment is equal, the business models of cable and satellite and how they get their service to the two Robs is very different. A fundamental misunderstanding of those business models is why satellite Rob Lowe pays an unfair 5.75% state sales tax while his neighbor, cable Rob Lowe pays no state sales tax at all.

Tax	Rate	Cable	Satellite
State Sales Tax on the Provision of Television Services	5.75%	NO	YES
State Sales Tax on set-top boxes and other equipment	5.75%	YES	YES
County Sales Tax on set-top boxes and other equipment	Up to 3%	YES	YES
Commercial Activity Tax (CAT)	.26% on receipts > $1 million	YES	YES

Cable's chosen business model requires running cable under the public rights-of-way. Cable can do it because they have negotiated contracts with the cities, towns, or State of Ohio to pay a franchise fee which gives them the right to run their cable on public property. That rent for use of the public rights-of-way is called the Video Service Provider Fee in Ohio. Cable went to the federal government and got them to cap the most a locality can charge for rent of its public rights-of-way at 5%. Of course, use of the public's property also comes with other additional regulatory burdens. But keep in mind that every one of those regulatory burdens is a direct result of their choice of business model, using the public rights-of-way. Use of other people's property requires payment of rent. Just because that rent is paid to a municipality doesn't change the simple fact that they are cable's costs of doing business, resulting from their choice of business model.

Satellite's business model is very different. Satellite customers get their television service directly from space using dishes placed on their home. Satellite doesn't need to use the public rights-of-way or dig up streets and sidewalks so satellite doesn't pay rent in the form of franchise fees. Satellite's business model has its own costs of course. A satellite can cost up to a billion dollars to design, build, launch, and maintain. And there are the requisite payments to the government for orbital slot fees and the purchase of spectrum.

In a level playing field the consumer should get to choose a more efficient or lower cost alternative based on innovation. That's really the crux of those Rob Lowe commercials; that the consumer should choose based on better product or service. When industry builds a better mousetrap, avoiding costs and burdens associated with older technology, the consumer should realize the benefit of those lower costs. But that's not what has happened in Ohio over the last ten years. In fact, Ohio is one of only five states across the country that has an unequal tax on satellite.

This is because in 2003 the General Assembly imposed the state sales tax on satellite services and not cable services. Cable argues that the franchise fees they pay municipalities are a tax and that justifies the unequal tax on satellite. But, in court documents cable actually argues that they are nothing like taxes. And in filings with the Securities and Exchange Commission, Comcast calls franchise fees "operating costs and expenses" used to purchase "cable franchise rights" which it describes as its "largest asset." Comcast reports their franchise rights as an asset valued at over $59 billion. Time Warner Cable reports their franchise rights as an asset of over $26 billion.

When franchise fees are correctly viewed as cable's operating costs and not as a tax, it is clear why the current tax structure is unfair and anticompetitive. Cable has about three million customers in Ohio compared to about one million for satellite. The national average for satellite's market share is about 35% but in Ohio it is only 25% because of the unfair tax artificially raising satellite customer's costs. The tax is even more unfair in rural areas, where cable refuses to provide service. Rural and Appalachian Ohio is paying 5.75% more simply because of where they live.

Tax Commissioner Testa said before the House Finance Committee that this is a "matter of equity." We agree. The satellite television industry supports tax policies that treat industry competitors the same. While the policy choice is of course up to you whether to tax us both, or don't tax us both, we respectfully ask that you level the playing field by removing the unfair tax on the one million satellite families. That's because if the status quo remains the same, under HB 64 the current unequal tax will get even worse due to the increase in the sales tax to 6.25%.

In closing, we ask you not to further tilt the burden onto more than one million Ohio families because of their choice of television service provider or because of where they live. In the television commercials satellite Rob Lowe and cable Rob Lowe are very different, and the consumer is presented with a clear choice based on product and service. For the State of Ohio though, we ask that you view them the same, don't tax them the same, and let them compete in the marketplace.