



# The Florida Senate

*Interim Project Report 2001-019*

*October 2000*

Committee on Fiscal Resource

Senator Jim Horne, Chairman

## EVALUATION OF IN-KIND COMMUNICATIONS SERVICES PROVIDED TO LOCAL GOVERNMENTS

### SUMMARY

Federal law provides that a cable operator may be required under the terms of any franchise to pay a franchise fee, and limits the fee to five percent of gross revenues. This limitation does not apply to capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities. Known as "in-kind services," these are not subject to the limitations imposed by Florida's Communications Services Tax Simplification Law. The law provides that local governments may request and negotiate for in-kind requirements, institutional networks, and contributions for, or in support of, the use or construction of public, educational, or governmental access facilities as allowed under federal law. The law also directs the Legislature to review this provision during the 2001 session, and requires the appropriate legislative committees to study and evaluate an appropriate state policy regarding these issues.

Data gathered by the Department of Revenue indicates that 85 local governments in Florida report receiving in-kind services from cable companies, 231 report that they receive no in-kind services, 48 did not answer the question, and 111 have not sent any communications tax receipts information to the department.

In July, 2000, the Board of Directors of the Florida Cable Telecommunications Association voted to instruct its staff and lobbying team no longer to pursue state legislation as it relates to in-kind requirements imposed on cable television operators by local governments during the 2001 Legislative session. Reasons given for this decision are that legislation concerning these requirements would jeopardize Florida's efforts to improve the efficiency and fairness of its communications services tax and fee structures,

and that several areas of the Communications Services Tax Simplification Law still require the collective efforts of industry and local government representatives during the 2001 legislative session.

### BACKGROUND

Chapter 2000-260, Laws of Florida, creates the Communications Services Tax Simplification Law. This law replaces numerous state and local taxes and fees imposed on communications services with a uniform statewide tax and local taxes to be administered and collected by the Florida Department of Revenue. The law makes specific provisions for replacing most currently-authorized taxes and fees on communications services, but it does not prescribe a method for dealing with certain requirements on cable operators for in-kind services authorized under federal law.

Section 52 of the Communications Services Tax Simplification Law declares that it may be necessary to adopt a state policy regarding in-kind requirements, institutional networks, and contributions for, or in support of, the use or construction of public, educational, or governmental access facilities allowed under federal law for providers of cable services. The law directs the appropriate legislative committees to study and evaluate an appropriate state policy regarding these issues, including the option of calculating the present and future value of such requirements, networks, and contributions in excess of allowable franchise fees. This value could be used in the computation of replacement revenues in setting the local communications services tax rate.

### **Federal Regulation of Cable Franchise Agreements**

Under Section 622 of the Communications Act, federal law provides that a cable operator may be required under the terms of any franchise to pay a franchise fee. (47 U.S.C. s. 542) The term “franchise fee” includes any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of its status as such. It does not include any tax, fee, or assessment of general applicability or requirements or charges incidental to the awarding or enforcing of the franchise. For any twelve month period the franchise fees shall not exceed five percent of a cable operator’s gross revenues derived in such period from the operation of the cable system to provide cable services.

For franchises in effect on October 30, 1984, payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in support of, public, educational, or governmental access facilities are not considered franchise fees. For franchises granted after October 30, 1984, a distinction is made between expenses and cash support associated with public, educational, and governmental access facilities and the capital costs of these facilities.

All payments which a franchise requires a cable operator to pay to franchising authorities for, or in support of the use of public, educational, or governmental facilities, such as studios, cameras, and other equipment, are specifically included in the definition of franchise fee and are covered by the five percent cap. A franchise fee does *not* include “capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities.” These capital costs requirements may be established by the franchising authority under Section 611(b) or Section 624(b)(1). In addition, any payment which a cable operator makes voluntarily relating to support of public, educational, or governmental access and which is not required by the franchisee is not subject to the five percent franchise fee cap.

### **Florida’s Communications Services Tax Simplification Law**

Enacted in 2000, this law preempts the authority of a

public body to require taxes, fees, charges, or other impositions from dealers of communications services for occupying its roads and rights-of-way. The law specifically prohibits requiring any dealer of communications services to enter into or extend the term of a franchise or other agreement that requires the payment of a tax, charge, fee, or other imposition. (Sec. 16, Ch. 2000-260, Laws of Florida)

The Communications Services Tax Simplification Law provides for the imposition of local communications services taxes by municipalities and counties at rates which generate the same amount of revenue as all “replaced revenue sources” including franchise fees on cable services as authorized by 47 U.S.C. s. 542. (Sec. 12, Ch. 2000-260, Laws of Florida) The law provides that local governments may request and negotiate for in-kind requirements, institutional networks, and contributions for, or in support of, the use or construction of public, educational, or governmental access facilities as allowed under federal law. The Legislature is directed to review this provision during the 2001 session and the appropriate legislative committees are directed to study and evaluate an appropriate state policy regarding these issues, including the option of calculating the present and future value of such requirements, networks, and contributions in excess of allowable franchise fees. This value could be used in the computation of replacement revenues in setting the local communications services tax rate.

## **METHODOLOGY**

This study is based upon review of the relevant federal regulations, data gathered by the Florida Department of Revenue, and the recommendations of the Florida Cable Telecommunications Association.

## **FINDINGS**

According to data supplied by local governments to the Florida Department of Revenue, 85 local governments in Florida report receiving in-kind services from cable companies and 231 report that they receive no in-kind services. Forty-eight did not answer the question, and 111 local governments have not sent any communications tax receipts information to the department, as of October 23, 2000.

In July, 2000, the Board of Directors of the Florida Cable Telecommunications Association voted to instruct its staff and lobbying team no longer to pursue

state legislation as it relates to in-kind requirements imposed on cable television operators by local governments during the 2001 Legislative session. The following reasons were given for this decision:

There is concern that the study of in-kind requirements, with the possibility of legislation concerning these requirements would jeopardize Florida’s efforts to improve the efficiency and fairness of its communications services tax and fee structures. The association preferred to continue a dialogue with the League of Cities and Association of Counties on this issue in an effort to mitigate disputes among their members and avoid the need to seek further legislative action.

The association recognized that several areas of the Communications Services Tax Simplification Law still require the collective efforts of industry and local government representatives during the 2001 legislative session. The tax rates must be determined, the application of these taxes to Internet access services continues to be debated, and questions remain about how regulations will apply to local governments which decide to provide communications services in competition with private sector providers.

**RECOMMENDATIONS**

Reform of Florida’s communications taxes was undertaken in an effort to improve equity and efficiency in the taxation of this growing and evolving industry, and in reponse to concerns raised by the industries involved. The question of how in-kind services should be treated in the new tax system was not addressed in the legislation passed in 2000, but a provision was added to the bill to require that the issue be studied in before the next legislative session.

Florida’s cable industry, represented by the Florida Cable Telecommunications Association, determined that it is not in its interest to pursue legislation on this issue since such an effort could damage their relationship with local governments and impede the ongoing effort to improve the communications tax simplification process. Therefore, staff recommends that legislation on this topic not be proposed for the 2001 legislative session.

**COMMITTEE(S) INVOLVED IN REPORT** *(Contact first committee for more information.)*  
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 Committee on Regulated Industries  
 Committee on Comprehensive Planning, Local and Military Affairs

**MEMBER OVERSIGHT**  
 Senator Horne