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Guest editorial: State must even the playing field

By Joseph Widoff • April 15, 2010

Other Views

Sam and Carl are next-door neighbors. Both subscribe to pay television. They receive similar programming and watch the same shows. Yet the state of Tennessee slams Sam, a satellite subscriber, with a tax of 8.25 cents on every dollar while letting Carl, a cable customer, off without paying a penny of state tax on the first \$15 of his TV bill.

Most other states would let cable and satellite compete for customers on a level playing field, encouraging customers to choose between the two services based upon what they care about: service, programming and price. Tennessee is almost alone among the states for putting its thumb on the scale of free competition by penalizing satellite customers for their choice. The time has come for the General Assembly to close this loophole.

Ohio Court overturned discrepancy

The loophole dates back to 1999. The then-governor introduced a bill that placed an evenhanded 8.25 percent tax on everything but the first \$15 of cable and satellite bills. But cable lobbyists intervened and persuaded the General Assembly to grant them a competitive advantage in the form of a \$15 cable-only tax exemption.

The discrimination is bad for all consumers. It is obviously unfair to punish a satellite TV customer because he wants to watch a channel that is available on DirecTV or DISH but not on his local

cable monopoly in Tennessee — or because he finds DISH's or DirecTV's service better than Comcast's or Charter's. It is even more unconscionable to penalize satellite consumers who do not even have the option of getting cable, because cable companies will not spend the money to lay cable in most rural areas.

Three years ago, a trial court in Ohio ruled that this type of discrimination is unconstitutional. It ordered the state to refund the tax to satellite customers. The full refund amount is already more than \$100 million and counting. The same could easily happen in Tennessee. A trial in that case could take place as early as the fall; that is, assuming the chancellor does not rule in satellite's favor beforehand.

It is only a matter of time before this discriminatory tax blows a gaping hole in the state's already-strapped budget. The longer we wait, the bigger the hole.

There is an obvious solution: Stop the discrimination. Repeal the cable loophole. The governor's budget proposal will do just that.

But the cable lobby is fighting the budget proposal tooth and nail to cling to its unfair advantage. Specifically, cable companies point to a line item they put on their cable bills called "franchise fees." They note that satellite customers do not pay franchise fees. They insist that it's only fair, then, that satellite customers should pay a discriminatory tax to offset some portion of those fees.

But make no mistake: Satellite companies have their own unique costs of doing business. Unlike cable companies, they have to build, launch and maintain satellites. They have to pay a rent of sorts for their orbital slots. The only difference is that satellite

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companies do not go through the charade of itemizing those costs as a separate line on their bills, as cable companies do.

Despite cable's obfuscation, the bottom line is that the cable-only tax exemption is discriminatory. It punishes consumer choice. It interferes with free competition. With each passing day, it presents a growing threat to the state budget.

The solution is simple: The General Assembly must eliminate the cable tax loophole this year.

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