The Tennessee Advisory Commission on Intergovernmental Relations

226 Anne Dallas Dudley Blvd, Suite 508
Nashville, Tennessee 37243-0760
Phone: (615) 741-3012
Fax: (615) 532-2443
www.tn.gov/tacir

MINUTES OF THE TENNESSEE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

December 12, 2018

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in House Hearing Room I of the Cordell Hull Building at 1:05 p.m., Acting Chairman Larry WATERS presiding.

Present 19	Absent 1
Mayor Rogers Anderson	Mr. Kenneth Young
Mayor Tom Bickers	
Mayor Keith D. Brooks	
Metropolitan Trustee Charles Cardwell	
Representative Mike Carter	
Deputy Commission Paula Davis	
Ms. Christi Gibbs	
Mayor Brent Greer	
County Executive Jeff Huffman	
Representative Harold Love Jr	
Mayor A. Keith McDonald	
Regional Director Iliff McMahan	
Representative Antonio Parkinson	
Vice Mayor Kay Senter	
Mayor Larry Waters	
Senator Bo Watson	
[1]Comptroller Justin Wilson	
Senator Ken Yager	
Senator Jeff Yarbro	

[1] Kristina Podesta represented Justin Wilson

1. Call to Order and Approval of the Minutes

Acting Chairman Larry WATERS called the meeting to order at 1:05 p.m., dispensed with the calling of the roll, and requested approval of the minutes of the September 2018 meeting. Regional Director Iliff MCMAHAN moved approval, and Metropolitan Trustee Charles CARDWELL seconded the motion, which passed unanimously.

2. Commission and Staff Update

Executive Director Cliff LIPPARD recognized the passing of former Commission member, Representative Charles SARGENT, asking Research Manager Mark MCADOO to read a resolution honoring Representative Sargent's service. Following the reading of the resolution, Acting Chairman WATERS brought to the attention of the members additional resolutions honoring the service of other departing members, including Senator Thelma HARPER, Brentwood City Commissioner Betsy CROSSLEY, and Representative Tim WIRGAU. He also informed the members that a resolution honoring the former chairman, Judge Mark NORRIS, was included in the tab, but that Judge NORRIS hopes to attend the next meeting to be recognized. Dr. LIPPARD concluded the commission update by welcoming new members Mayor Kevin BROOKS of Cleveland and Mayor Rogers ANDERSON of Williamson County and by congratulating County Executive Jeff HUFFMAN on his reappointment to the Commission.

Dr. LIPPARD also provided staff updates, recognizing Research Manager Mark MCADOO and Senior Research Associate Nathan SHAVER for 25 and 5 years of service and congratulating Senior Research Associate David KEISER for graduating from the state's LEAD Tennessee program.

3. House Bill 971/Senate Bill 1075 (Local Revenue and Services)—Panel

Senior Research Associate Michael MOUNT explained that at its September 2018 meeting, the full Commission agreed with a recommendation from a working group of its local members that the Commission's study of revenue and services of local governments in Tennessee should initially focus on internet and streamlined sales tax issues. He introduced a panel of speakers knowledgeable about issues related to internet sales tax, including a representative from the Department of Revenue, as requested by the Commission:

- David GERREGANO, Commissioner, Department of Revenue
- Donald BRUCE, Professor, University of Tennessee, Department of Economics and Boyd Center for Business and Economic Research

- Scott PETERSON, Director of Governmental Affairs and Vice President of Tax Policy, Avalara, and former Executive Director, Streamlined Sales Tax Governing Board

Commissioner GERREGANO summarized the *Wayfair* decision and the Department of Revenue's rule (Rule 129) that would tax sales of out-of-state sellers with more than $500,000 in sales in Tennessee per year. He said enactment of the rule is on hold by the General Assembly, but the court case that challenged the rule was dismissed. He added that about 30 other states have issued guidance to taxpayers that would file sales tax returns in their state regarding internet sales tax, with a lot of the discussion being around the threshold. Mayor Tom BICKERS said that, considering available technology, there should not be much difference in the burden between a $100,000 threshold and a $500,000 threshold. Scott PETERSON agreed and predicted that states' thresholds will decrease because sellers will be more able to comply. Mayor BICKERS asked, if there's not much difference with the burden, then why not have every seller collect sales tax? Mr. PETERSON said setting a threshold is a political decision, and whether there is a threshold is something the Supreme Court considered in its *Wayfair* decision. In response to a question from Mayor Jeff HUFFMAN, Commissioner GERREGANO said that the General Assembly has the ability to change the $500,000 threshold.

Dr. BRUCE emphasized the importance of getting the policy challenges right that were presented by the *Wayfair* decision. He said that, although he expects revenue gains, the focus should be on tax fairness, and similar transactions should be treated similarly for tax purposes. Mayor Keith MCDONALD said that businesses and citizens in Tennessee are concerned with having a fair tax rate, but revenue is also a concern because it's needed to pay for services. Dr. BRUCE said states without sales taxes are trying to protect their businesses from tax-collection efforts from states like Tennessee.

Dr. BRUCE said he heard that Congress is going to live with the *Wayfair* decision rather than try to reverse it. He said recent federal legislation, if enacted, would delay collections until 2020, create a national $10 million small seller exemption, and require states to join a compact like the Streamlined Sales and Use Tax Agreement in order to collect online sales taxes. He said he would encourage more state-specific policy action.

In response to a request by Acting Chairman WATERS, Commissioner GERREGANO summarized the current distribution of sales tax revenue in Tennessee. He said the formula for distributing revenue from the uniform 2.25% rate option is based on the relative in-state collections of the various jurisdictions, and 60% of out-of-state sales tax revenue is through the 2.25% uniform rate formula, although more out-of-state sellers are foregoing the uniform rate. Dr. BRUCE said it would make more sense for that revenue to go to the jurisdiction where the customer lives or through a formula based on personal income or population. Commissioner GERREGANO said the other 40% of out-of-state revenue goes to the jurisdiction of the customer, and that number is growing. Mr. PETERSON noted that the majority of states use destination sourcing.

Commissioner GERREGANO said destination sourcing for in-state sales is no longer a requirement of the Streamlined Sales and Use Tax Agreement. Mayor MCDONALD said he was heartened to hear that was taken out of the agreement, and that will better enable a compromise between municipalities and counties that sales tax revenue be distributed based on situs. Mayor HUFFMAN asked what happens after July 1, 2019, if the General Assembly does not push back the date on streamlined sales tax. Commissioner GERREGANO said there would be several changes but highlighted that the state would move from origin sourcing to destination sourcing, and the single-article cap would still apply to cars, boats, and planes but not to some other expensive items like jewelry. He said businesses buying expensive equipment would be able to apply for an annual refund—calculated as the difference between what they paid and what they would have paid had the cap been applied—but that's problematic because the Department of Revenue wouldn't know which jurisdiction received the money or what local tax to a particular jurisdiction is being refunded.

Scott PETERSON highlighted a study from the University of Tennessee showing how much sales tax was not being collected from internet sellers. He predicted that there will be more lawsuits, and that sourcing, local nexus, and audits are issues that will lead to the next US Supreme Court decision. He said that there doesn't seem to be a right answer for sales-based or transactions-based thresholds.

Mayor MCDONALD asked whether sales tax collection technology is homogenizing toward the state with the most complex sales tax collection. Mr. PETERSON said he doesn't see much homogenization, and most states are moving away from complexity. Mayor BICKERS asked whether companies assisting sellers with collecting sales tax charge by transaction. Mr. PETERSON said yes, and they charge for filing a return. Mayor BICKERS asked whether sellers might consider transaction costs and decide not to make sales of small items across the country. Mr. PETERSON said they might, but in his experience, sellers eat the cost. Mayor HUFFMAN asked whether more sellers have registered to collect sales tax because of the *Wayfair* decision. Commissioner GERREGANO said some probably have.

Mayor HUFFMAN asked how the Department of Revenue designates sales tax revenue to either a city or county within the same ZIP code. Commissioner GERREGANO said the Department of Revenue works with the Comptroller and uses a GIS database that's based on residential addresses, not ZIP codes. Mayor BICKERS asked how cities can ensure internet sales tax is going to the correct jurisdiction. Commissioner GERREGANO said internet sellers are in the same report as brick-and-mortar sellers, but there's no way for a city to know that their sales tax revenue from internet sellers is accurate. Mayor BICKERS asked whether out-of-state sellers that do not use the uniform 2.25% rate option are using the same GIS model the state uses for brick-and-mortar sellers. Commissioner GERREGANO said they may because the Department of Revenue makes the model available. Mayor BICKERS asked how accurate GIS mapping is for determining whether a sales is in a city or a county. Mr. PETERSON said with 5-digit and 9-digit ZIP codes there will be inaccuracies. He said there are companies that turn addresses into latitude and longitude, which must be used to ensure accuracy.

Representative Mike CARTER asked whether cities and states around the country could overwhelm retailers in Tennessee with audits. Commissioner GERREGANO said in theory they could, but in practice, they are limited by the number of auditors and their states' resources to conduct audits. Mr. PETERSON added that most audits are not sales tax audits but use tax audits, and with fewer businesses owing use tax—because more will be collected in the form of sales tax—he's hopeful that in five years there will be fewer audits, not more. Mayor BICKERS asked how it can be shown to an auditor that the correct tax and rate has been applied. Mr. PETERSON said states can audit Certified Service Providers (who assist sellers with collecting sales tax), and ask them to prove that they charged the right rate, or if no rate was charged, that the purchaser was truly exempt.

Mayor HUFFMAN asked how much of state sales tax revenue is distributed to cities. Commissioner GERREGANO said it's 4.6% of the revenue generated by the 5.5% sales tax rate, and that it's distributed based on cities' populations.

4. Election Study—Information Presentation

Senior Research Associate Jennifer BARRIE presented the additional information that was added to the election study update in response to questions from Commission members at the September meeting. The update responds to Senator Frank NICELEY's April 2018 letter expressing concerns about new threats to Tennessee's voting system and requesting that the Commission revisit and update its 2007 staff report *Trust but Verify: Increasing Voter Confidence in Election Results*.

Ms. BARRIE said TACIR staff continues to support the 2007 staff recommendations that addressed the use of VVPAT. Staff would also encourage county election officials not wanting to replace their current non-VVPAT machines to consider adding printers, when they are available, to those machines to make them VVPAT capable. And rather than relying on paper voter registration applications, although the cost savings are not clear, staff encourages the state to continue implementing electronic voter registration processes, making it easier to register, improving accuracy of voter rolls, and potentially saving money.

In response to Acting Chairman WATERS' questions about whether a fiscal note is included in the update and whether there are voting systems that can be purchased to integrate into current systems, Ms. BARRIE responded that the costs in each county differ depending on several variables such as the type of equipment and the amount of HAVA funds remaining. Counties currently using DRE machines can purchase printers to add to the machines when the technology is approved in Tennessee, which would probably be the most cost-effective option for those counties.

Representative Antonio PARKINSON asked whether staff could show in a table the type of equipment counties use along with the remaining Help America Vote Act (HAVA) funds. Ms. BARRIE said staff would add that to the update. [Note: The information Representative PARKINSON requested is included in the final version of the update.] In response to Representative PARKINSON's question about what action the Commission needs to take in response to the staff update, Executive Director LIPPARD said that Commission members do not need to take any further action, but the staff update will be listed as a publication on the TACIR website, and staff will report back to Senator NICELEY.

Vice Mayor Kay SENTER asked whether every county has the option of secure electronic transfer. Ms. BARRIE explained that online registration, a type of electronic registration, is available in every county. The kiosks with electronic registration are located in some driver services centers across the state, but she is not sure how many counties have kiosks. [Note: The final staff update notes that driver services kiosks with electronic voter registration are currently located in 19 counties.] Vice Mayor SENTER asked whether electronic registration would be required in each county and expressed concerned that requiring electronic registration could inhibit the use of paper applications to register voters in the field. Ms. BARRIE said that the General Assembly could decide to require it. [Note: TACIR staff encourages electronic voting registration but is not recommending that it be required.]

5. Public Chapter 179, Acts of 2017 (Boat Titling)—Update.

Senior Research Associate Nathan SHAVER provided an update on the boat titling report that the Commission previously approved in January of 2018. Mr. SHAVER reminded the members that the report included recommendations that the state establish a boat titling system and details on how a potential boat titling system could be administered. And while the stakeholders and relevant state agencies agreed that a boat titling system would be beneficial to consumers, the state agencies that potentially would be tasked with administering a titling system did not all agree about which agencies should administer a boat titling system.

Mr. SHAVER said that the Commission requested that the Tennessee Wildlife Resources Agency (TWRA), the county clerks, and the department of revenue try to come up with a consensus on who would administer a potential boat titling system and report back at the December 2018 meeting. Mr. SHAVER explained that since then, TACIR staff has continued to discuss options with the three parties regarding how a boat titling system could be administered, including several conference calls and facilitated a meeting at TWRA headquarters with all three parties. He said that at this time, however, the three parties' positions remain unchanged and there has not been a consensus reached by all on the best way to administer a potential boat titling system.

6. Public Chapter 849, Acts of 2018 (Statutes of Limitation)—Final Report For Approval

Senior Research Associate Nathan SHAVER presented the final report on statutes of limitations for the Commission's approval. He explained that the report was required by Public Chapter 849, Acts of 2018, which directed the Commission to perform a study on Tennessee's criminal statutes of limitations and specified that the study include information on the statutes of limitations for the prosecution of sexual offenses.

Mr. SHAVER summarized the report's recommendations, which were unchanged from the draft report. The report recommends that that the state may want to consider either extending or eliminating the statute of limitation for second degree murder. It also recommends that Tennessee law should be amended to clarify the drafting error found at Tennessee Code Annotated, Section 40-2-101(h)(2) and (i)(2), which has the unintentional effect of shortening the statute of limitation for rape offenses committed against minors. The final recommendation is setup as a choice between two options. The first option is that Tennessee should consider fully eliminating the statute of limitation for most felony child sex abuse crimes, as has already been done in a majority of other states. The second option is that, alternatively, Tennessee should consider eliminating the statute of limitation for felony child sexual abuse crimes in circumstances where corroborating evidence is obtained by the prosecutor, similar to Oregon and Massachusetts, which would still provide additional protection from unfair prosecutions. If corroborating evidence is not obtained, then the statute of limitations otherwise in place would apply.

Regional Director MCMAHAN asked why the felonies are not specified in the recommendation that the state should consider eliminating the statute of limitation for "most" child sexual abuse felonies. Mr. SHAVER explained that it would be up to the legislature to determine which of the child sexual abuse crimes should be included.

Senator WATSON asked whether the report discusses the effectiveness of criminal statutes of limitations on prosecution of sexual offenses as required by the legislation directing the Commission to do the study. Mr. SHAVER responded that it is difficult to determine how effective the statutes of limitations are because the state doesn't have records of alleged crimes that were not prosecuted because of expired statutes of limitations.

Mayor MCDONALD moved to change the final recommendation so that it says that the state eliminate the statute of limitation for "most" child sex abuse felonies to "all" child sex abuse felonies and to delete the second alternative option. Regional Director MCMAHAN seconded the motion. Mayor Tom BICKERS cautioned against eliminating the statutes of limitations for all felony child sex crimes. After further discussion, Mayor MCDONALD withdrew his motion to amend the report. Regional Director MCMAHAN withdrew his second on Mayor MCDONALD's original motion.

Mayor BICKERS then moved to eliminate the second option of the final recommendation and amend the language of the first option so that it reads "Tennessee should fully eliminate the statute of limitations for class A and B felony child sexual abuse crimes and consider extending or eliminating the statute of limitations for other child sexual abuse crimes." Regional Director MCMAHAN seconded the motion. The motion passed unanimously.

Mayor BROOKS asked whether the report provided a funding mechanism for the recommendations. Mr. SHAVER noted that the information included in the final report shows that for past legislation on the elimination of a criminal statute of limitation, fiscal notes on those bills determined the costs to be not significant, even though some stakeholders, such as district attorneys and public defenders, estimate an increase in future costs.

The Commission approved the amended report unanimously.

Acting Chairman WATERS adjourned the meeting at 3:27 p.m.

The Tennessee Advisory Commission on Intergovernmental Relations

226 Anne Dallas Dudley Blvd, Suite 508
Nashville, Tennessee 37243-0760
Phone: (615) 741-3012
Fax: (615) 532-2443
www.tn.gov/tacir

MINUTES OF THE TENNESSEE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

December 13, 2018

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in House Hearing Room I of the Cordell Hull Building 8:42 a.m., Acting Chairman Larry WATERS, presiding.

Present 15	**Absent 5**
Mayor Tom Bickers	Mayor Rogers Anderson
Mayor Keith D. Brooks	Ms. Christi Gibbs
Metropolitan Trustee Charles Cardwell	Senator Bo Watson
Representative Mike Carter	Senator Jeff Yarbro
Deputy Commissioner Paula Davis	Mr. Kenneth Young
Mayor Brent Greer	
County Executive Jeff Huffman	
Representative Harold Love	
Mayor A. Keith McDonald	
Regional Director Iliff McMahon	
Representative Antonio Parkinson	
Vice Mayor Kay Senter	
Mayor Larry Waters	
Comptroller Justin Wilson[1]	
Senator Ken Yager	

[1] Kristina Podesta represented Justin Wilson

7. **Public Chapter 693, Acts of 2018 (Excess Property)—Draft Report For Review And Comment**

Senior Research Associate Bob MOREO presented a draft of the report requested by the General Assembly through Public Chapter 693, Acts of 2018, which directs the commission to study and determine the amounts of non-tax-producing property held by the state and local governments and to make recommendations regarding ways to put surplus properties to productive use. Mr. MOREO explained how a retail development in East Ridge, Tennessee, built on surplus land owned by the Tennessee Department of Transportation (TDOT), generated interest in finding out whether there were other opportunities across the state to identify unused publicly held land that is not being held onto for a future purpose.

Mr. MOREO showed that the state, local governments, and the federal government collectively own more than 10% of Tennessee's 26.4 million acres of land area, but noted that the information gathered for the report is not complete and detailed enough to fully analyze how efficiently the state is using its real estate assets or to be able to state with any certainty how much "potential surplus" property could be put to better use. The report explains that the State of Tennessee Real Estate Management Division (STREAM) within the Department of General Services is responsible for managing an inventory of the state's real estate assets and disposing of unneeded surplus, but that STREAM needs additional information from other state agencies on their future real estate needs, and current property uses in order to be more effective. So, Mr. MOREO said that the report recommends Tennessee follow the model set by the federal government, and examples from several states, and require all state agencies to submit annual real property plans and property utilization information to STREAM. To make this requirement effective, and avoid problems noted by a few states where failure to comply with the requirements had no consequence, the report suggests that Tennessee could require agencies to submit their real property reports as part of their budget approval process.

Mr. MOREO said that excess transportation right of way—like that which was developed in East Ridge—is not included in STREAM's inventory and has not historically been quantified or actively managed by TDOT. TDOT estimates that it owns approximately 217,962 acres of right-of-way land, valued at approximately $1.8 billion, but there is not yet an inventory of "excess" right-of-way available that would yield an amount of potential surplus property for development. Mr. MOREO said that, in addition to the recommendation that all agencies submit annual real property plans and property use information to STREAM, the report recommends that TDOT first complete an inventory of all its ROW property and determine which properties are needed and which are excess, and in the future for the department to include ROW property in its annual reports to STREAM. Mr. MOREO said that TDOT should more actively market its surplus property for sale—as is done in several other states—and that STREAM and TDOT should work together to integrate surplus TDOT properties within the overall surplus property strategy for the state.

Mr. MOREO also spoke about the benefits to state government of expanding the use of Geographic Information Systems (GIS) for property management, noting some other states where GIS has been valuable, and saying that Tennessee should integrate GIS tools with the STREAM inventory of state-owned property to allow for more robust analysis and help promote the highest and best use of the state's real estate assets.

Mr. MOREO explained how staff partnered with Tennessee's County Technical Assistance Service (CTAS) and the Tennessee Municipal League to survey all counties and cities in Tennessee, asking which types and how much property local governments own and how they approach disposal of surplus. This survey revealed no widespread need among local governments to address surplus property issues but did find that most of what they consider surplus property was acquired as tax-delinquent property. Mr. MOREO said that land banks—a special type of quasi-governmental entity created to help communities cope with vacant, abandoned and tax-delinquent properties—can make the process of selling this unwanted property easier for local governments. In 2012, Tennessee established a pilot land bank program for the city of Oak Ridge and since has allowed some other cities and counties to create land banks. Mr. MOREO, citing a 2012 Commission report, said that the state could assist local governments with the management of real property by granting legal authority for any city or county to establish a land bank.

Mr. MOREO said that the report also recommends that the state help local governments reach a wider audience of potential buyers by allowing local governments to post links to their surplus properties—including hard-to-sell tax-delinquent properties—on the state's website where the state advertises its surplus property. It also suggests that the state, through CTAS and MTAS, could develop training on best practices for real property management for county and city officials to promote the highest and best use of local-government-owned surplus property. Mr. MOREO also said that the state should take a more cooperative approach to property management by always notifying local government officials of state-owned surplus property available in their jurisdiction before offering the property to the public for sale

8. **Public Chapter 795, Acts of 2018 (Food Deserts)—Draft Report For Review And Comment**

Senior Research Associate Tyler CARPENTER presented the draft report on food deserts for review and comment. Public Chapter 795, Acts of 2018 required staff to evaluate the prospect of the Tennessee Department of Economic and Community

Development (ECD) administering a grant and loan program for retailers in food deserts. The final report will be presented at the January meeting.

Mr. CARPENTER summarized information about states that have passed legislation creating healthy food financing programs, those that have funded these programs, and those that have not created a state program but have provided funding for the development of healthy food retail projects. He said that the draft report recommends that given the costs of opening and renovating grocery stores and other similar food retailers and the complex relationship between improved access to healthy food sources and measurable improvements in diet and health, state efforts should focus on leveraging the variety of public and private resources that are already available to assist communities in crafting solutions tailored to local needs. A state program for encouraging the development of grocery stores and other food retailers in food deserts may not be necessary, but if Tennessee were to adopt such a program, the state should

- structure the program as a public-private partnership with one or more CDFIs, or similar entities, to take advantage of existing federal programs and to maximize private investment and

- incorporate consumer education and outreach into the program.

Mayor MCDONALD asked staff to find additional data supporting the costs cited in the draft report for opening a new grocery store. Mr. CARPENTER said that the cost data in the report came from an interview with the president of the Tennessee Grocers and Convenience Stores Association, Save-a-lot stores, and from a person in Memphis who is trying to open a small grocery in a food desert, and said he would research whether additional cost data is available. Mayor MCDONALD suggested that a state program would be better administered by the Tennessee Department of Agriculture rather than ECD, or jointly administered by the two.

Vice Mayor Kay SENTER said staff should look into programs like the SNAP programs Morristown has implemented at its farmer's market, which includes nutrition education for individuals visiting the market. Representative Love asked staff to research the prospect of the two land grant universities—Tennessee State University and the University of Tennessee, Knoxville–as resources to educate the population of the benefits of eating healthy and budgeting their money.

9. Cord Cutting and Local Government Revenue—Update and Guest Speaker

Policy Coordinator Matt OWEN introduced a panel of speakers who provided information on the taxation of cable and satellite television and their internet-based alternatives and the laws governing cable television franchises in Tennessee. This panel included

- Sherry Hathaway, Director, Tax Policy and Development Office, Tennessee Department of Revenue;

- Jerry Kettles, Director of Economic Analysis, Tennessee Public Utility Commission; and

- John Hutton, Telecom/Utilities Consultant, Tennessee Public Utility Commission.

Ms. Sherry HATHAWAY said that currently cable television service is subject to state and local sales tax. The first $15 of the bill is exempt from state sales tax, while the first $27.50 of the bill is exempt from local sales tax. The amount of the bill between $15 to $27.50 is subject to an 8.25% state sales tax, and the amount of the bill above $27.50 is subject to a 7% sales tax and any applicable local sales tax. Satellite television is subject to an 8.25% state sales tax, but the federal Telecommunications Act of 1996 prohibits local taxation of satellite television. Over the top (OTT) services are subject to a 7% state sales tax and a 2.5% standard local tax rate. The local sales tax portion of the revenue is distributed to local governments based on a formula.

In response to Mayor GREER's question about what formula is used to distribute the revenue from the uniform local sales tax rate on OTT services to local governments, Ms. HATHAWAY said that 50% is based on population and 50% is based on collections. Mayor GREER asked that the formula and how it works be made a part of the report.

Mr. Jerry KETTLES said that historically the oversight of cable television has been at the local level using franchise agreements. These agreements establish franchise fees, access to rights of ways, and the provision of educational and governmental programming. In 2008, the Competitive Cable and Video Services Act was passed by the state legislature providing an alternative to the local franchising process by allowing the Tennessee Public Utility Commission (TPUC) to grant franchises anywhere in the state. Providers can now choose to negotiate a local franchise agreement, or they can apply for a state franchise. Mr. KETTLES said that the TPUC has the authority to review, grant, and monitor the state certificates of franchise authority and serve as a forum to resolve disputes that may arise between parties operating under the Competitive Cable Act.

Mr. KETTLES also said that he was asked by Commission staff to discuss the distinction between franchise fees and right of way fees. He said that by statute, franchise fees are based on the provider's gross revenues. He went on to say that right of way fees are distinct from franchise fees. This can be seen in TCA 7-59-306 that makes the distinction clear by indicating local governments cannot levy additional fees other than one that is intended to provide compensation for the use of public right of ways within its authority.

In response to Mayor MCDONALD's question about how local governments get franchise fee revenue from state-issued franchises, Mr. John HUTTON responded that the law doesn't prescribe a method, but in most cases, the provider contacts a local government and works out a payment schedule with them. Mayor MCDONALD requested that commission staff obtain a list of the state-issued franchises to help make affected local governments aware about the franchises and how to get their share of franchise fee revenues. Executive Director Cliff LIPPARD said that staff could work that into the project, and if they couldn't, they would let the Commission know.

In response to Mayor MCDONALD's question about whether auditors review the franchise fees from state-issued franchises, Ms. HATHAWAY said that the Department of Revenue does not audit state franchise fees, but they do audit sales taxes. Mr. KETTLES explained that there is a process for audit review of franchise fees that involves a bilateral attempt between the provider and the municipality to resolve the fee dispute, the option to involve the state Comptroller, and finally a case before a court or the TPUC.

Mayor BICKERS said that because providers have the option of obtaining a state-issued franchise, local governments lack leverage to insist that providers offer service to everyone so they don't have disparate access among residents. In response to Mayor BICKERS' question about how to increase access, Ms. HATHAWAY said that with the rise of digital products competition will ensure that if you can't get access to content one way you can get it another, but Mayor BICKERS noted that access to internet service needed to access streaming services was sparse outside cable television franchise areas because providers of cable television are often a community's only providers of internet service. Mayor BICKERS next asked what would prevent the state from requiring a provider with a state issued franchise to provide service to all residents in a municipality. Mr. KETTLES said that current law requires only that provides buildout to a set percentage of the locations in their service areas within a specified period of time. Mr. HUTTON further noted it would require a change in law to require providers with state-issued franchises to provide service to all residents in a municipality. Mayor BROOKS said that the state could try to pass such a law but added that providers would likely oppose it. Ms. HATHAWAY also responded that one way to counter cherry picking is to use utilities such as telephone and electric co-ops to provide cable and broadband internet service.

In response to Mayor MCDONALD's question about whether there is any way to audit the availability of services, Mr. KETTLES said that state law does not require universal availability; it only requires the build out to certain areas in a certain area of time.

In response to Representative LOVE's question about whether the state tracks who is providing OTT services in Tennessee, Mr. KETTLES said that none of these companies have sought a state-issued franchise, and the law does not require them to obtain one.

Representative LOVE asked whether the state has a way of knowing who is providing OTT service and who is being denied service. Mr. KETTLES responded that he could not provide him with a complete list of OTT service providers operating in the state or where they provide service. Ms. HATHAWAY added that someone selling audio visual products online is required to register and collect sales tax if they have nexus. She said there may be some that are not collecting sales tax because they don't have nexus; they don't have infrastructure, equipment, or offices in the state. OTT service providers are not required to pay a franchise fee because they are not required to obtain a franchise to provide service.

Dr. LIPPARD said that staff is working on three related studies: cord cutting, the effects of the small cell law that passed last year (Public Chapter 819, Acts of 2018), and an update on broadband access and adoption. He recommended working issues raised by Mayor Bickers' questions into the broadband update. It is not due till 2021, but staff could provide interim updates. Mayor BICKERS stated that he views cord cutting and access as very related. Dr. LIPPARD said the staff will review the broadband access and adoption research plan to see what portions need to be included in the 2019 cord cutting study.

Other Business

Mayor WATERS adjourned the meeting at 10:13 a.m. The next meeting is scheduled for January 31-February 1, 2019.