



Staff Report

RESOLUTION OPPOSING AB 2987 -- THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006

Honorable Mayor and Council Members:

Summary

AB 2987 is legislation that would create statewide franchising of cable and video service providers. The legislation would provide for franchise fees (5% of a limited definition of gross revenues) and Public / Educational / Government (PEG) access channel funding (1% of gross revenues). However, the bill would take away local control of decisions regarding the use of City public rights-of-way (PROW), fair compensation for use of the PROW, and take away local enforcement of customer service standards, handing them to the California Department of Corporations which has little if any experience in dealing with cable / video franchising and customer service enforcement. This bill purports to accelerate local competition, but does not spell forth any requirements for new entrants to build-out entire communities. It also allows cable companies with existing cable franchises to opt out of their existing agreements, and is unclear as to whether or not existing agreements pertaining to PEG channel carriage and I-Net support must continue.

In short, this bill does more harm to local government and the citizens we serve than it does good. Staff recommends that Council join SCAN-NATOA (States of California and Nevada Chapter National Association of Telecommunications Officers and Advisors) and the San Mateo County Telecommunications Authority (SAMCAT) by going on record in opposition to this bill.

Background

State of Telecommunications Industry

The telecommunications industry is in a constant state of change. It has been a long time since any substantive legislation has been passed to deal with these changes. The Telecommunications Act of 1996 was authored and passed by Congress nearly 10 years ago. The State of California hasn't overhauled its telecommunications laws for nearly 5 decades! Local governments have been feeling the pressures of outdated law by the nature and extent of telecommunications providers that have entered the marketplace, using laws that don't quite fit in with the types of services being rolled out.

Cable TV vs. Internet TV

A prime example of new services that is currently driving the industry and recent legislation is

the deployment of a new service known as Internet Protocol TV, or “IPTV.” The telephone industry has found a way to provide television services to consumers over its existing phone lines using their high-speed internet networks. A consumer would be able to receive high quality television networks on their television, and bundle their telephone and high-speed internet services for less than \$100 per month. This offers a community an exciting alternative to typically only one land-based choice they have for advance television services ... the cable operator. Competition is typically a great thing for consumers – helping to see reduced prices, better customer services, and more advanced service offerings.

Yet the key questions that IPTV raises are: Is IPTV a “cable TV service” subject to local regulation, or an “information service” that is free from local regulation? Is there any distinction between cable TV and IPTV other than how it gets to the consumer? Should local government have the right to obtain fair and reasonable compensation for the use of its rights of way? What impact does IPTV have on the definition of existing cable services and cable providers?

The Advent of New Telecommunications Legislation

These questions have been presented to lawmakers in Washington DC, Sacramento, and several other state capitals across the country. And the questions are being raised by the industry. AT&T (formerly SBC) and Verizon, two telecommunications companies that are looking to enter the marketplace with cable-TV alternative services, have been successful at framing the issue with lawmakers. Their claim is that these services are being demanded by consumers as an alternative to cable TV, and that local regulatory authority presents a “barrier to competition.” As such, lawmakers are being pressured by industry representatives to rewrite the Telecom Act to make it easier for broadband and cable-TV alternative providers to enter the marketplace. AT&T and Verizon have successfully lobbied Congressional delegates and state legislators to author legislation that would eliminate what they feel are “barriers to entry”.

AB 2987’s Introduction to California Assembly

Several previous telecommunications bills in this current session of the Legislature (e.g., SB 909, AB 1547, AB 903, AB 1735) have been suspended pending the introduction of AB 2987. This legislation is backed by AT&T and Verizon, authored by Assembly Speaker Fabian Nunez (D – Dist 46) and Assembly Member Lloyd Levine (D – Dist 40). The bill was introduced to the Assembly on February 24, 2006, amended and referred to the Committee on Utilities and Commerce on April 6, and heard by the Committee on April 25, 2006.

Bill Status

The Committee passed the legislation unanimously (vote 10-0) and referred it to the Appropriations Committee. As of May 31, 2006, the bill passed the Assembly (vote 77-0). The bill now moves to the Senate.

Discussion

Key Provisions of the Bill

Key points of the bill are summarized below:

- Creates a statewide franchise for video and cable service providers.
- Provides for the California Department of Corporations to be the franchising authority of all cable / video franchising provided under the legislation.

- Provides franchise fees paid to the local entity in the amount of 5% of gross revenues (on a cash basis, not accrual basis) where an incumbent cable operator exists.
- Requires PEG channels to be carried, the total number of channels not less than those activated by the incumbent cable operator; however, *each channel must carry PEG programming for at least 8 hours per day.*
- Provides PEG capital funding equal to 1% of gross revenues on a go-forward basis. However, existing PEG capital funding requirements provided by the existing cable operator are to be shared amongst competing providers on a per-subscriber basis that is adjudicated by the local entity.
- Provides for incumbent cable operators to honor their commitments relative to PEG, I-Net, and “free cable service” to public facilities and schools.
- Allows local entities to enforce PROW provisions relative to time, place and manner, but in accordance with rules established to telephone corporations under Section 234 of the Public Utilities Code.
- Includes anti-discrimination provisions for access based upon income of residents in a local area.
- Provides for build-out requirements in a “reasonable period of time” to all households within a local entity’s borders; however, build-out can be achieved by providing satellite service or other alternative technology that provides comparable content, service and functionality. Build-out is enforced at the local level, as are all costs for enforcement.
- Customer service standards are based upon California standards set forth in the California Government Code.

Impacts on Existing Services

- Encouraging Competition – It should be noted that the City of Belmont is interested in competition. Staff has been discussing a potential video services agreement with AT&T for the past few months. Nevertheless, competition should be offered on a level playing field with other service providers. This bill would allow new entrants to circumvent existing requirements placed on cable providers. Upon expiration of the existing cable franchise, one could argue that a level playing field would be created. But until then, new entrants like AT&T would have an unfair competitive advantage over the existing cable provider.
- Preempts Local Franchising – This bill places franchising into the hands of the State of California, which may not understand unique local issues that need to be addressed in a cable / video franchise agreement, such as build-out requirements, construction standards, PEG channel viewership, and other local dynamics. In particular, the State Department of Corporations has no previous experience in dealing with cable franchises, enforcing customer service issues, adjudicating PROW management issues, etc. Local government already has that as a core competency.
- Build-out Requirements – The legislation allows providers to meet build-out obligations by providing similar services through satellite dish. However, those services would not be subject to local franchise fees, as satellite services are precluded from franchise fees

by federal law, thereby reducing the City's revenues if cable subscribers moved to the dish alternative.

- Franchise Fee Payments – Franchise fee payments would be required quarterly (same as the incumbent cable operator), however there are no enforcement provisions in the form a late fees, etc., if the operator does not provide timely payment.
- Composition of Franchise Fees – Franchise fees are limited to a definition of gross revenues that places payment on a cash-basis of accounting, rather than an accrual-basis of accounting, and excludes late fees collected on past-due bills. This would reduce the City of Belmont's franchise fee revenues by only about 2% of total franchise fees, but it is a reduction nevertheless.
- Local Fees – The legislation places in jeopardy the collection of business license and encroachment permit fees.
- PEG Channel Carriage – It places the burden on the local entity to certify a programming schedule of at least 8 hours of daily programming before a channel can be turned on. Furthermore, the legislation is unclear from a technical perspective as to whose technical and financial responsibility it is to provide the PEG channel's signal to the franchisee.
- PEG Funding – AB 2987 would allow another provider to come in and not have to provide any additional funding to the City -- they would merely be required to reimburse Comcast for any of its continued obligations. On a go-forward basis, funding would be limited to 1% of gross revenues, irrespective of a local community's articulated needs in an otherwise negotiated franchise.
- INet Continuation – The City of Belmont has negotiated an INet with Comcast. Under AB 2987, it is unclear whether or not those obligations would continue. The City could stand to lose its negotiated investment in a fiber network that would connect the nine identified City facilities along with 8 other cities and their connected facilities in San Mateo County.
- Emergency Event Override – The current franchise agreement allows the City to override the cable system for notifications during emergency events. This legislation does not provide for emergency notification systems.
- Customer Service Standards – The bill stipulates the state customer service standards, not the federal standards that are currently in effect for cable companies. The state standards are more vague and liberal than the federal standards. As such, customers are not as well protected as with the federal standards. Furthermore, there is no provision for local customer service issues to be addressed (e.g., requiring a local payment or service location like the Comcast service center provided for in the Franchise Agreement).

Other Pending Legislation

- COPE - Communications, Promotion and Enhancement Act of 2006
The Bill strips local governments of their authority to franchise the use of their rights-of-

way for video/cable services and gives that authority to the Federal Communications Commission (FCC) in Washington, D.C. The Bill gives the FCC the authority to oversee and second-guess all local rights-of-way management practices and all customer service issues.

- CHOICE (McCain) – Reduce Franchise Fee to 3.7%

League of California Cities and Others' Opposition

The San Mateo County Telecommunications Authority (SAMCAT) has gone on record as being opposed to AB 2987 for the reasons mentioned above. States of California and Nevada Chapter National Association of Telecommunications Officers and Advisors (SCAN-NATOA) as well as the League of California Cities has also voiced its opposition to this bill.

General Plan/Vision Statement

No Impact.

Fiscal Impact

No Fiscal Impact.

Public Contact

Posting of City Council agenda.

Recommendation

Staff believes that the current Cable TV and Video franchising system works. We also believe that the “model franchise” concept discussed by the League of California Cities is also a productive model to look at if the current system is to be changed.

Staff recommends that the City Council go on record to oppose AB 2987 for the reasons mentioned herein and in the attached resolution. With Council approval, the Mayor will send a cover letter and a copy of the adopted resolution to the bill authors (Nunez and Levine) and Belmont’s elected representatives (Assembly Member Gene Mullin and State Senator Jackie Speier), and also directs staff to send future letters supporting the League of California’s position on this topic.

Alternatives

1. Take no action
2. Refer back to staff for further information

Attachments

A. Resolution

B. Exhibit A - Belmont Letter of Opposition (5/31/2006) – “Cable and Video Service, AB 2987 (Nunez/Levine), as amended 5/25/06 – Notice of Opposition”

Respectfully submitted,

Valerie Harnish
Information Services Manager

Maureen Cassingham
Interim City Manager

Staff Contact:

Valerie Harnish, Information Services Manager
(650) 637-2970
Valerie@belmont.gov

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT
OPPOSING AB 2987 -- THE DIGITAL INFRASTRUCTURE AND VIDEO
COMPETITION ACT OF 2006 (NUNEZ/LEVINE)**

WHEREAS, the City of Belmont encourages rapid deployment of advanced telecommunications services for our residents and business community; and,

WHEREAS, the City supports healthy competition among telecommunications providers in our community; and,

WHEREAS, the City is concerned with the conditions under which telecommunications services will be deployed under the proposed legislation in AB 2987; and,

WHEREAS, AB 2987 preempts local franchising authority by establishing a new state bureaucracy within the California Department of Corporations with the power to oversee franchising in California, an issue with which it has no previous practical experience, and,

WHEREAS, the bill does not provide flexibility for local problem solving that is much more creative and adaptable to local communities than a state administered, top-down approach; and,

WHEREAS, AB 2987 should be amended to ensure that new entrants are subject to a build out standard that sets a reasonable time frame for the deployment of its telecommunications infrastructure in local communities, ensuring access to these services by all areas of a community, not just the most economically attractive areas of a community; and,

WHEREAS, the bill should be amended to make it clear that local government franchise fee revenue needs to be maintained at least at its current level to keep local government whole financially; and,

WHEREAS, the bill does not include provisions to deal with problems of late payments by a provider, including interest and late payment charges; and,

WHEREAS, AB 2987 preempts local tax and fee authority and places in jeopardy collection of business license fees and encroachment permit fees; and,

WHEREAS, the bill fails to clearly spell out the authority of local government to manage its public rights-of-way, failing to ensure that local authority is maintained to address the inevitable problems when deploying new telecommunications infrastructure, including control over aesthetic issues when it comes to the deployment of telecommunications infrastructure; and,

WHEREAS, current Public / Educational / Government (PEG) channels must be maintained and an opportunity created in the legislation for communities to establish and increase the number of PEG channels to serve the community; and,

WHEREAS, the City's Institutional Network (I-Net) established under its current franchise agreement with Comcast is placed in jeopardy to expire at a future date under AB 2987 without changes to the bill that would require the maintenance of the current INET services and permit local communities in the future to adopt INETs; and,

WHEREAS, AB 2987 does not maintain emergency notification systems that are already in place with existing cable franchise agreements and should be required of new entrants for the safety and welfare of the citizens we serve; and,

WHEREAS, the bill specifies customer service standards at State standards which are more vague and less stringent than Federal customer service standards.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Belmont OPPOSES AB 2987 – The Digital Infrastructure and Video Competition Act of 2006 (Nunez / Levine) as it is currently written, and encourages the bill authors and the State Legislature to work closely with the City and other local government leaders in addressing our concerns regarding this legislation.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting thereof held on June 13, 2006 by the following vote:

AYES, COUNCILMEMBERS: _____

NOES, COUNCILMEMBERS: _____

ABSTAIN, COUNCILMEMBERS: _____

ABSENT, COUNCILMEMBERS: _____

CLERK of the City of Belmont

APPROVED:

MAYOR of the City of Belmont

EXHIBIT A

May 31, 2006

The Honorable Gene Mullin
Assembly Member
State Capitol, Room 3173
Sacramento, CA 95814

RE: **Cable and Video Service. AB 2987 (Nunez/Levine), as amended 5/25/06**
NOTICE OF OPPOSITION

Dear Assembly Member Mullin:

On behalf of the City of Belmont, I am writing to inform you of the city's strong opposition to AB 2987, as amended 5/25/06, for the following reasons:

AB 2987 is unfair. Cities support competition in telecommunications services, but competition has to be FAIR TO ALL CALIFORNIANS! AB 2987 is unfair and unbalanced because it permits new entrants providing video services to circumvent requirements that apply to existing video providers. It is not fair to the taxpayers because it does adequately protect the taxpayers' investment in its public right-of-way.

AB 2987 is discriminatory. The measure permits new entrants in the video service industry to pick and choose the neighborhoods it will serve in a community, while ignoring other neighborhoods in the same community. The addition of intent language does not constitute protection against discrimination. Who is protecting the underserved? The Department of Consumer Affairs is only empowered to process applications, not evaluate their merit.

AB 2987 does not PEG channels. Public access to broadcasting is not protected. The bill fails to adequately protect the community's public, education and governmental (PEG) channels. These are important assets in a community that permit the televising of community events, governmental deliberations and educational opportunities. The current language seriously narrows the PEG options now open to a community.

AB 2987 threatens local revenues. The local government revenues from franchise fees are in jeopardy in the current language in the bill. Serious legal flaws remain. The bill in its current form is a tax under the constitution of the state. The language needs to be amended to ensure that the traditional local franchise fees for local government are maintained and not taken over and preempted by the state tax currently in the bill. Also, the bill narrows the definition of "gross revenues" that constitute the basis for calculating local government revenues. For some cities this may result in a revenue loss.

AB 2987 creates a new state bureaucracy. The bill establishes a new state bureaucracy that will grow to regulate what is essentially a local franchise process. The new state bureaucracy will be put in charge of determining issues relating to local streets. In short, the state is taking over local streets when it comes to industries providing video services. Have a problem on a local street? Go to Sacramento and ask the state to correct it!

For these reasons, the City of Belmont is opposed to AB 2987 and asks for your **NO** vote on the bill when it is heard on the Assembly Floor.

Thank you for your attention to this important matter.

Sincerely,

Phillip E. Mathewson
Mayor

Cc: Belmont City Council
Senator Speier
League of California Cities
Belmont Information Services Manager