

Agenda Report

TO: CITY COUNCIL **DATE:** OCTOBER 3, 2005

THROUGH: LEGISLATIVE POLICY COMMITTEE

FROM: CITY MANAGER

SUBJECT: OPPOSITION TO S. 1504 – BROADBAND INVESTMENT AND CONSUMER CHOICE ACT, S. 1349 – VIDEO CHOICE ACT, AND HR. 3146 – VIDEO CHOICE ACT

RECOMMENDATION:

It is recommended that the City Council:

- (1) Oppose the following three federal bills: S. 1504 (Ensign/McCain) – Broadband Investment and Consumer Choice Act of 2005; S. 1349 (Smith/Rockefeller) – Video Choice Act of 2005; and HR. 3146 (Blackburn/Wynn) – Video Choice Act of 2005 and any other legislation that would negatively impact local governments.
- (2) Authorize the Mayor to send correspondence to the appropriate authorities advocating Pasadena's position.

BACKGROUND:

There appears to be a growing consensus in the US Congress that telecommunications technology and the telecom industry have changed significantly since passage of the Telecommunications Act of 1996. The nation's phone companies are poised to begin offering video services, while cable companies are launching local phone service in some areas. Historically, telephone and cable companies have been regulated under very different frameworks. As these service providers cross into each others' service areas, questions are raised with more frequency about the need to restructure telecommunications regulation. The telephone companies are making the biggest push for restructuring, lobbying at the federal and state levels for state or nationwide video franchises that would eliminate the need to negotiate with individual local franchising authorities. The telecommunications industry has also advocated for limits on the rights of municipalities and their utilities to provide communications services to the public.

Three bills were introduced earlier this year to address these industry concerns. The first is the Broadband Investment and Consumer Choice Act bill, S. 1504, introduced by Senators Ensign and McCain on July 27, 2005. The bill is a rewrite of the 1996

Telecommunications Act, and proposes to limit telecommunications regulation significantly, and to shift franchising to the national level. With the bill, Senators Ensign and McCain aim to encourage widespread investment, innovation and competition in the telecommunications arena. Their goal is to speed deployment of advanced communications services to businesses and consumers, reestablishing the nation as the global telecommunications leader.

However, the legislation would implement a wide variety of changes to the detriment of local governments. The bill would:

- Eliminate local franchising and authority over provision of cable TV and video services within communities
- Abrogate previously negotiated video franchise agreements
- Eliminate the 5 percent cable franchise fee and replace it with a new federally-determined compensation methodology based on local governments' costs of managing the public rights-of-way
- Reduce the amount of capacity which may be required by local governments to meet local public, educational and governmental (PEG) access needs
- At the same time, strip local government of the ability to secure PEG access grants
- Shift response to customer service issues to the state level, reducing responsive to customer complaints
- Eliminate build-out requirements for any video service provider, allowing providers to discriminate in favor of certain customers in making their services available
- Preempt the applicability of any state or local law to the communications industry that is not generally applicable to all businesses, thereby potentially preempting state or local law applicable to utilities or rights-of-way users (such as requiring utilities to underground their facilities or meet electrical codes)
- Prohibit imposition of any fee for rights-of-way construction permits issued to video service providers
- Prohibit municipalities and municipal utilities from providing communications services without giving a right of first refusal to private industry
- Eliminate current federal law protections against preemption of local zoning decisions relating to placement of cellular towers

S. 1504 has been referred to the Senate Committee on Commerce, Science and Transportation.

The other two bills, S. 1349 (Smith/Rockefeller) and HR. 3146 (Blackburn/Wynn) are both titled the Video Choice Act of 2005, despite some differences between the bills' language. They were introduced on June 30, 2005. They are designed to encourage deployment of competitive video services, eliminate redundant and unnecessary regulation, and foster development of next generation broadband networks. The primary

change proposed in the legislation is award of national video franchises to phone companies.

Like S. 1504, these bills pose significant issues for local governments. These include:

- Elimination of many of the important mechanisms that local government uses to manage the rights-of-way and collect franchise fees.
- Leaving open the possibility for cable companies to abandon their current cable franchises once they start providing phone service.
- Failure to require phone companies to provide video service throughout a municipality. Redlining would be prohibited, but there are no enforcement mechanisms.
- Failure to prohibit all forms of discrimination against video service customers
- Blockage of local governments' ability to obtain support funding for public educational and governmental (PEG) channels or to obtain Institutional Networks.
- Failure to provide audit mechanisms to ensure that the appropriate franchise fees are paid to local governments.

The Senate version of the Video Choice Act has been referred to the Committee on Commerce, Science and Transportation. The House version of the bill is under review by the House Committee on Energy and Commerce Subcommittee on Telecommunications and the Internet. Thirty-three additional Representatives have signed on to the House bill as co-sponsors, indicating broad acceptance of the concept of national franchising for telephone providers.

All three bills are opposed by the National League of Cities (NLC), the US Conference of Mayors, and the National Association of Telecommunications Officers and Advisors (NATOA).

FISCAL IMPACT:

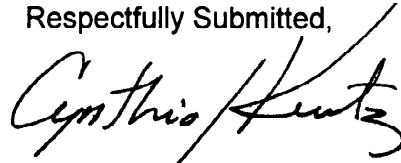
If these bills become law, it is likely that franchise fee payments, right-of-way construction permit fees, and PEG access support to the City would decline significantly.

Local government consultants estimate that S. 1504 alone would result in losses to municipalities nationwide of roughly \$3 billion per year. Staff estimates that Pasadena could experience losses in franchise fee revenue of at least \$210,000 annually. Permit fee losses are estimated at \$225,000. In addition, the support for PEG access provided through our local franchise agreements – including upfront capital grants for PEG equipment, free cable drops to public buildings, drops at facilities for live broadcasts, ad spots, and our Institutional Network – would be eliminated. This support is valued at over \$800,000 annually.

The Video Choice Act bills would have a less immediate, but still significant fiscal impact. The City would continue to collect franchise fees and receive PEG access support under

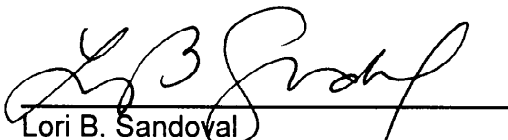
its current franchise agreements. However, if customers shift to video services provided by local phone companies, the City's franchise fee revenues would decline. In addition, PEG support requirements in current franchise agreements would be in place only through the current term of those agreements or until local providers offer telephone service and seek exemption from franchise requirements.

Respectfully Submitted,



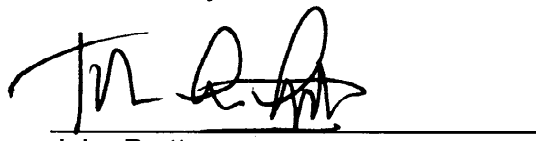
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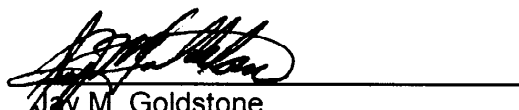
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