

Agenda Report

TO: CITY COUNCIL

DATE: MAY 8, 2006

FROM: CITY MANAGER

SUBJECT: ADOPT A RESOLUTION RECOMMENDING AMENDMENTS TO HR 5252, THE COMMUNICATIONS, OPPORTUNITY, PROMOTION, AND ENHANCEMENT ACT OF 2006

RECOMMENDATION

It is recommended that the City Council:

1. Adopt a resolution recommending amendments be made to Federal Legislative Bill HR 5252 on telecommunication and;
2. Authorize the Mayor to send correspondence to the appropriate authorities stating Pasadena's position.

BACKGROUND:

On April 26, 2006, the Energy and Commerce Committee of the U.S. House of Representatives approved HR 5252, the "Communications Opportunity, Promotion, and Enhancement (COPE) Act of 2006. The legislation is designed to ease the ability of telephone companies to offer video services by eliminating the need for them to negotiate local franchise agreements.

The City of Pasadena has been actively working with national local government organizations for several months on telecommunications reform. While HR 5252 addresses some concerns that local governments have had with previous drafts of the legislation, the measure in its current form does not meet the needs of Pasadena consumers in the following ways:

- **Local Authority over Rights-of-Way:** The legislation would make the Federal Communications Commission the arbiter of disagreements over use and maintenance of public rights-of-way. The City has been charged with the duty to protect taxpayer investment in the community's infrastructure, and believes that the FCC has neither the resources nor the expertise to handle this responsibility from Washington, DC.
- **Consumer Protections:** The legislation does not provide adequate recourse for consumer complaints and provides only the FCC, not local governments, with authority to address those concerns. In the case that the FCC fines a provider, the proceeds would be directed toward the federal treasury rather than rebates to customers.
- **Universal Service:** The legislation contains no requirement that telecommunications companies wishing to do business in Pasadena serve any particular areas in the community, jeopardizing the goal of providing choice and true competition to all Pasadena citizens. Such "build-out" requirements have traditionally been part of local franchise agreements the City has with current providers.
- **Discrimination:** The legislation contains very weak "anti-redlining" provisions that would allow telecommunications companies to bypass low-income neighborhoods entirely, as long as they do not discriminate against low-income residents within the neighborhoods they choose to serve. Such language would severely hamper efforts to close the "digital divide" that exists throughout the country.

The legislation is expected to come up for a vote on the floor of the House of Representatives as early as the week of May 8 and House Members supportive of the local position are hoping to offer amendments to the bill that would remedy some of the concerns. Given this expedited schedule in the House, it is necessary to bypass the Council's Legislative Policy Committee and take the attached resolution directly to the City Council so that the City's congressional delegation may be contacted to support amendments to the bill. At the last meeting of the Legislative Policy Committee staff presented a report on the status of Federal and State telecommunication legislation.

Activity in the Senate on telecommunications reform has also increased in the last week, where draft legislation was unveiled this week by the Chairman of the Commerce Committee. However, no formal consideration of the draft has been scheduled to date.

FISCAL IMPACT:

If HR 5252 is approved in its current form, it could impact the City's franchise fee revenue. The bill's definition of gross revenues upon which franchise fees are paid is narrower than that of our current franchise agreements, excluding revenues from Video-on-Demand services. While this revenue stream is modest at present, it is likely to grow significantly over time as technology increasingly allows viewers to shift from scheduled programming to video on demand.

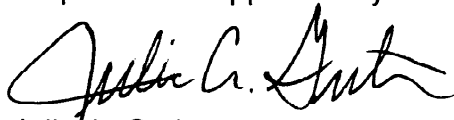
The bill also shifts the funding mechanism for Public, Educational and Governmental (PEG) access and in-kind services provided under current franchise agreements. At present, Pasadena receives through its franchise agreements up-front PEG grants, ongoing PEG contributions, and services such as use of the Charter access studio, video service to public buildings, live origination drops, and an Institutional Network. Under HR 5252, these grants and in-kind services would be replaced by PEG funding of one percent of the video provider's gross revenues. It is not clear at this time if the proposed PEG funding in the bill would cover the costs of replacing funding and services under current franchise agreements.

Respectfully submitted,



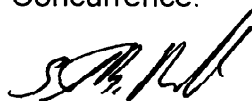
CYNTHIA J. KURTZ
City Manager

Prepared and approved by:



Julie A. Gutierrez
Assistant City Manager

Concurrence:



Steve Mermell
Acting Director of Finance

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASADENA
RECOMMENDING AMENDMENTS TO HR 5252, THE COMMUNICATIONS,
OPPORTUNITY, PROMOTION, AND ENHANCEMENT ACT OF 2006

WHEREAS, since the passage of the 1996 federal Telecommunications Act, there have been significant changes and advances in communications technology and the marketplace;

WHEREAS, the United States Congress has begun the process of considering changes to the Telecommunications Act of 1996;

WHEREAS, reform to federal telecommunications law is likely to have a profound impact on the manner in which local governments regulate the industry in their communities;

WHEREAS, the City of Pasadena is committed to promoting a competitive and technologically advanced telecommunications environment for its residents, businesses, and visitors;

WHEREAS, it is the goal of the City of Pasadena to encourage telecommunications providers to offer universal service so that all its residents can benefit from available technology;

WHEREAS, on April 26, 2006, the Energy and Commerce Committee of the U.S. House of Representatives approved HR 5252, the "Communications Opportunity, Promotion, and Enhancement (COPE) Act of 2006;

WHEREAS, in its current form, the COPE Act does not adequately address the concerns of the City of Pasadena in the following areas:

- ***Local Authority over Rights-of-Way:*** The legislation would make the Federal Communications Commission the arbiter of disagreements over use and maintenance of public rights-of-way. The City Council has been charged with the duty to protect taxpayer investment in the community's infrastructure, and believes that the FCC has neither the resources nor the expertise to handle this responsibility from Washington, DC.
- ***Consumer Protections:*** The legislation does not provide adequate recourse for consumer complaints and provides only the FCC, not local governments, with authority to address those concerns. In the case that the FCC fines a provider, the proceeds would be directed toward the federal treasury rather than rebates to customers.

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- **Discrimination:** The legislation contains very weak “anti-redlining” provisions that would allow telecommunications companies to bypass low-income neighborhoods entirely, as long as they do not discriminate against low-income residents within the neighborhoods they choose to serve. Such language would severely hamper efforts to close the “digital divide” that exists throughout the country.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Pasadena does hereby urge the United States House of Representatives to adopt amendments to HR 5252 during floor consideration that would remedy the concerns of the City of Pasadena and communities across California and the nation.

Adopted by the _____ meeting of the City Council on the _____ day of _____, 2006 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

 JANE L. RODRIGUEZ, CMC
 City Clerk

Approved as to form:

 5/4/06

 NICHOLAS G. RODRIGUEZ
 Assistant City Attorney