

Alliance for Community Media, Conference July 26, 2007
The Illinois **CABLE AND VIDEO COMPETITION LAW OF 2007** and
The Illinois **CABLE AND VIDEO CUSTOMER PROTECTION LAW**
SB 678 House Amendment 4

INTRODUCTION

My name is Susan L. Satter, and I am a Senior Assistant Attorney General in the Public Utilities Bureau of the Illinois Attorney General's Office.

I come from a utilities background - telephone, electricity, natural gas and water --- but not cable, because unlike other utilities, cable has been subject to LOCAL and federal rules, but not direct state regulation.

In fact, I've never even been a cable TV or cable modem subscriber. But in the last year I learned a lot about cable and about the amazing public benefit called PEG or public access.

Cable – Telephone convergence

In the telephone regulatory world, we have been hearing about how telephone service over cable was going to be this great competitor for more than 10 years, but never saw any real inroads until VoIP became commercially viable.

Like telephone, cable also started as a monopoly and is the only competitor that owns its own residential network.

Finally, in the last year or two, cable companies offering high speed Internet connections began offering telephone service to the public in earnest, marketing the "triple play." Consumers are being encouraged to turn to one provider for television, Internet and telephone, often with steep short term discounts.

With cable and telephone both offering high speed internet, and cable entering the telephone turf, it was just a matter of time,

technology and investment before telcos entered the pay TV business.

Telcos have been arguing that cable's entry into telephone justified lifting regulation and consumer protections, and we fully expected that telcos entry into pay TV would carry the same tune: Now there will be competition, and regulation and consumer protections are not necessary.

But, just as we didn't believe that cable's entry into local telephone service justified doing away with all telephone regulation, we were not convinced that Telcos' entry into cable's territory meant we should scrap the regulation and public benefits applicable to cable.

TELCOs TO CHANGE THE RULES

Telcos first tried to change the rules governing the pay TV business on the national level. They failed.

By the end of 2006, they succeeded in passing bills in Texas, California, New Jersey, Michigan, Indiana.

We knew IL would not be far behind. Going into the beginning of session:

- Cable and telco contributions to state officials were reported to be \$2.5 million over the last 2 years (\$1.387m telco, \$1.150m cable, major contributors: ATT - \$741,000 and Comcast - \$545,000);
- We heard rumors of ATT hiring more lobbyists than there were legislators. One of the more level-headed legislators reminded her colleagues: there is no crisis here, it is just that one company has hired a lot of lobbyists;

- No one could escape television and print ads lambasting cable and urging consumers to call their legislators to demand “competition” for cable service. Direct mail pieces went out to consumers, complete with legislators names and telephone numbers so consumers could urge them to allow cable competition;
- We heard that ATT was floating a bill and getting various groups to sign off. The local consumer protection groups were not opposed, citing cable’s dismal customer service record. The unions were on board, the state Chamber Commerce supported the bill, and the chairmen of the Senate and the House Telecom Committees were the bill’s sponsors.
- Editorials began to appear in local papers arguing for the need to change the law so that telephone companies could compete with cable without burdensome local franchising requirements, and the sponsors ran an opinion piece touting the benefits of their bill.
- We kept hearing over and over, they have the votes, this is a steamroller, it’s a “slam-dunk”, who can oppose competition?
- Finally, the bill was filed and we reviewed it.

We were not surprised.

ATT ORIGINAL PROPOSAL

The bill, HB 1500, moved cable or video franchising to the state level.

1. No negotiation. Unlike local franchising, in this new system, there was to be no negotiation over the terms of the franchise. The terms were set in the statute, and the franchise was to be granted within 30 days.

2. Build-out provisions were somewhat less advantageous than in other states, and were a long way from universal build out.

3. Anti-redlining. The anti-redlining provision did not kick in for 3 years, and could be satisfied if at least 25% of households with access were low-income.

4. Consumer protection and privacy. From a consumer and privacy point of view, the standards in the bill were the minimum protections required by federal law.

5. Public, Education, and Government Access. Of special interest to this group, the Bill also limited carriers' obligation to carry PEG channels.

- The Bill essentially froze the number of PEG channels to those that are in actual use on the incumbent cable company's system.
- It defined in use to be at least 8 hours/day of non-repeat programming for 3 consecutive months, so channels could be lost. It also allowed a lost channel to be regained if there was sufficient programming to meet this standard.
- The bill addressed PEG fees and franchise fees, but the devil was in the details, of course.
- A 1% of gross revenues fee was payable to local governments for PEG programming – but the carrier's costs could be an offset against this amount. Sec. 21-801.

The Attorney General recognized this as an unacceptable proposal. We value consumer protections and recognize the value of public benefits like PEG. We did not want to lose them on the promise of "competition" particularly when the promise was limited to less than 20% of the state.

We were also aware that cable and satellite complaints are second only to Long Distance among our network - related complaints (2006, 394 LD, 376 Cable/Satellite, 372 Do Not Call, etc.). There was room for improvement, and we saw this as a potential opportunity.

OPPOSITION DEVELOPS

Notwithstanding the aura of inevitability that the proponents attempted to create, there were groups and organizations that were ready to react to the bill.

PEG: “Keep Us Connected” Coalition, led by the persistent and ever-present Barbara Popovic, made one of the first presentations to the House Telecom Committee. Hers was the first panel criticizing the bill.

With a panel of 4-5 PEG municipal representatives, the “Keep Us Connected Coalition” brought home to legislators what was at stake. Legislators were reminded of their use of PEG programming and warned that the bill would stifle further PEG growth, threaten PEG quality, and diminish existing funding and programming.

The PEG representatives were peppered with questions, and the panel ended up monopolizing the Committee’s attention for most of the first day of testimony.

Municipalities: Several mayors and city attorneys appeared before the state Telecom Committee. Many had experience with ATT’s video franchising efforts and they were aggressive in their opposition.

They emphasized the need for local control so that 6’ utility boxes did not spring up without some local accountability. The Cities of Naperville and Itasca put up mock utility boxes throughout their communities informing consumers that the proliferation of these boxes could be expected if the bill passed as written.

Cable: As their \$1 million in donations attest, cable interests are no strangers to state politics. Their head lobbyist was a very articulate and effective lawyer, and their team was well informed.

Public Input: There was also an interesting effect from the ATT's direct mail campaign. At the Telecom Comm hearing, legislators talked about the phone calls their offices were receiving. They questioned whether their constituents would have "cable choice", but often did not get the answers they expected, as only ATT was willing to commit to building a video network, and that would only reach 20% of their customers.

Yet, legislators in rural areas served by other telephone Co.s were receiving calls. As one Representative said:

We are being accused of blocking competition, so if this bill passes, my constituents will be *expecting* service, *NOW*.

As it became clear that competition would be relatively limited, legislators became more skeptical.

AG: The OAG testified in opposition to the bill. We identified numerous problems with the bill, but expressed a willingness to work with the sponsor to remedy them. We also reached out to Barbara and her Keep Us Connected Coalition, to Cities, to the Consumers Union, PIRGs, and to the cable industry to learn more.

Ultimately, our conclusions were:

1. Although the bill was based on a competitive model, there was no guarantee that there would be competition in any but a small portion of the ATT service area.
2. We didn't want the minimum standards in the bill to spark a "race to the bottom" on customer service and other public benefits.
3. We adopted the principle of "do no harm."

Ultimately, the legislators on the Telecom Committee starting saying things like:

- “I am amazed at what I am hearing.
- The ATT bill is too one-sided, and we should not work off their draft. ”
- “We need to have consumer rights in the bill.”
- This is a State Law, not an ATT law. We need to protect the public interest in this bill.

By the end of the Telecom Committee hearings, it was apparent that the bill was going to substantially amended.

House Democratic leadership and the bill’s sponsor, supported and participated in roll-up-your-sleeves negotiations.

My office prepared a mark-up of the original bill which embodied our “do no harm” principle. Then ATT and the other interested parties worked together to reach a workable compromise consistent with that principle.

Although ATT had drafted the original bill, once Committee hearings ended, ATT realized that it had a lot of work to do. There would be no steam-roller.

PEG Post script

A few words about PEG and public access.

Federal cable law provides that the Franchising Authority MAY require PEG channels, facilities, or financial support. 47 USC 541(a)(4)(B).

PEG is not mandatory, and ATT clearly wanted to limit its PEG obligations. We saw PEG, however, as a public benefit, and limiting or eliminating it was losing a something that would be hard to recover.

If the state was going to set the terms of cable and/or video service, we knew that PEG access would have to be explicitly protected. And although the cost to ATT was minimal, it was one of the more

intensely negotiated issues, with changes being requested by ATT up to the night before the compromise bill was finalized.

Although we did not know the details of PEG access when this started, we were able to rely on the CAN-TV Keep Us Connected coalition to identify issues, review drafts, and provide necessary language and expertise. Based on our principle of “do no harm,” we would not accept any language that diminished the PEG public benefit of non-commercial, community television access.

Final product

I have prepared a 2 page summary of the key provisions of the final bill, and it is available on the Alliance for Community Media’s website (alliancecm.org). It highlights the build-out requirements, the anti-redlining provisions, the PEG obligation and itemizes some of the many consumer protections contained in the bill.

When the bill was voted, Chicago’s two daily papers both lauded its provisions. The Chicago Tribune, in an editorial entitled, The Illinois model, stated:

“When AT&T and Comcast went to war in Illinois over cable TV competition, who could have imagined that the winner would be their customers? That’s not how these big lobbying battles usually play out in Springfield, but glory be, the bill that sailed through the Illinois House 113-0 Friday is that rare legislative accomplishment: It ushers in competition, protects consumers and is fair to both phone and cable companies.”

Chicago Tribune, June 5, 2007.

Is the bill perfect? Of course not.
But it is better than it started out, with millions of dollars in lobbying behind it, and predictions of a slam-dunk.

Lesson Learned

We were able to develop a solid coalition of groups that put the public interest first. By the time hearings were over, our state legislators understood what was really being offered, and what was at risk of being lost.

We have to give a lot of credit to the Democratic leadership in the House and the bill's House sponsor, Representative James Brosnahan, who wanted a bill that "would be the best in the nation."

I think we met that goal in IL. Cable or video competition that does develop will continue to:

- offer public benefits like PEG,
- continue to be subject to local control over rights-of-way and construction, and
- will conform to a high level of consumer protection.

That's a pretty good outcome.