NLC opposes new bill on cable TV

by Cynthia Pols

Sen. Barry Goldwater (R-Ariz.) introduced a cable bill (S.66) on Jan. 26 that would dramatically cut back state and local authority over cable and prohibit the establishment and enforcement of most regulatory requirements. The bill, which would apply retoractively to all existing franchise agreements, gives the Federal Government primary authority over cable and is similar to S.2172, last year's cable bill.

NLC immediately went on record opposing the bill.

NLC Executive Director Alan Beals said, "S.66 represents a completely unwarranted usurpation of fundamental state and local franchising powers and would abrogate freely negotiated contracts." He continued, "there is no need for this special interest legislation which would destroy the franchising powers of cities." He urged city officials to write or contact their Senators immediately and urge them to work for the defeat of S.66.

The bill, known as "the Cable Telecommunications Act of 1983," eliminates virtually all rate regulation, sharply curtails the availability of access programming, prohibits the establishment of service requirements, establishes virtually guaranteed rights of franchise renewal for all existing cable operators, restricts municipal ownership of cable systems, and limits franchise fees.

Under Section 607, states and localities have authority to regulate rates charged to subscribers for the reception of access programming, but are prohibited from regulating the rates for any other service with the exception of broadcast programming in limited circumstances. Under this narrow exception to the ban on rate regulation, subscriber rates for the reception of broadcast programming could be regulated in areas such as rural areas where service from traditional broadcast stations is regarded as inadequate.

The Federal Communications Commission (FCC) would have authority for determining whether there are enough broadcast stations in a community to justify eliminating local regulation of rates for the retransmission of broadcast programming over cable systems.

In addition to dramatically cutting back on municipal authority to regulate rates, Section 607 also prohibits the establishment and enforcement of service requirements included in franchise

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Cable TV

from p. 1

agreements such as system configuration and capacity (i.e., the construction of a cable system according to a plan and schedule or with an institutional network or a minimum number of channels) and programming requirements (i.e., the provision of specific programming services). This is a result of Section 607(c)'s prohibition of the regulation of "the provision of or nature of telecommunications facilities offered by . . . a cable system" and Section 607(b)'s prohibition of the regulation of "the provision of or nature of cable service" which effectively outlaws franchise requirements dealing with any one-way video programming other than broadcast and access programming.

Section 606 establishes maximum access requirements of 10 percent of the system's channels for public, educational, and governmental access programming on systems with 20 or more channels. Under this provision, no access requirements could be established on systems with fewer than 20 channels and the required provision of institutional networks for the exclusive use of governmental and other institutional programmers would be effectively prohibited.

In addition, the FCC is required to terminate these access requirements in any community in which there are other outlets for the distribution of programming, meaning that eventually even these access requirements are likely to be eliminated in most communities.

Under Section 608, the FCC is required to establish a nationwide ceiling on franchise fees based on the FCC's estimate of the average cost of regulating cable systems. A municipality which could establish that its regulatory costs were in excess of that percentage could petition the FCC for a waiver of that ceiling.

Under current practices, the FCC has set a ceiling of three percent, but will allow fees of up to 5 percent by waiver. This FCC rule is generally regarded as having no statutory basis and is under review in an FCC rulemaking proceeding. Section 608 mandates the establishment of a ceiling which is likely to be considerably less than the current three to five percent standard.

Section 609 requires a city to renew a franchise whenever a cable operator submits an application for renewal or extension and has satisfied a minimal test.

In particular, the applicant is required to offer services and facilities which are "reasonable" in terms of the size of the community, "the age and status of the existing cable system," the cost of construction, and the "current availability" of cable services and facilities in communities of a similar size.

These criteria result in the establishment of a test that has elements that may be in direct conflict (e.g., if the costs of construction are high, the cable operator is justified in refusing to upgrade the cable system?). Because the elements of the test established by Section 609 are vague and contradictory, a city is likely to be precluded from denying an application for renewal, giving existing cable operators virtually guaranteed renewal.

The bill has been referred to the Senate Committee on Commerce, Science, and Transportation. Hearings are expected in mid-February with full committee action expected in late March or early April and floor action by May. Members of the committee are Sens. Bob Packwood (R-Oreg.), chairman; Barry M. Goldwater (R-Ariz.); John C. Danforth (R-Mo.); Nancy Landon Kassebaum (R-Kan.); Larry Pressler (R-S.D.); Slade Gorton (R-Wash.); Ted Stevens (R-Alaska); Robert W. Kasten (R-Wisc.); Paul S. Trible (R-Va.); Ernest F. Hollings (D-S.C.); Russell B. Long (D-La.); Daniel K. Inouye (D-Hawaii); Wendell H. Ford (D-Ky.); Donald W. Riegle, Jr. (D-Mich.); J. James Exon (D-Neb.); Howell Heflin (D-Ala.), and Frank R. Lautenberg (D-N.J.). □

NATIONAL CITIES WEEKLY

JAN. 31, 1983

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • (617) 498-9017

OFFICE OF
THE CITY CLERK

February 16, 1983

Senator Paul Tsongas
Russell Street Office Bldg.
Room 342
Washington, D.C. 20510

Dear Senator Tsongas:

Pursuant to the request of the City Council, I am forwarding a copy of a resolution adopted by the Council at its meeting of February 14, 1983, endorsing the National League of Cities in its opposition to a bill known as "The Cable Telecommunications Act of 1983", as introduced by Senator Barry Goldwater.

Your kind attention in this matter will be greatly appreciated.

Very truly yours,

Paul E. Healy

Paul E. Healy, City Clerk.

PEH/mh

Enclosure: City Council Order #12 of 2/14/83

cc: Senator Edward Kennedy

City of Cambridge

12.

IN CITY COUNCIL
February 14, 1983

COUNCILLOR CLINTON

WHEREAS: On January 26, 1983, Senator Barry Goldwater introduced a Cable Bill (S.66), the latest in a succession of bills designed primarily to strip cities and states of much of their regulatory power over the cable industry. The bill, known as "The Cable Telecommunications Act of 1983", eliminates virtually all rate regulation, sharply curtails the possibility of public access programming, completely eliminating access in many instances, prohibits the establishment of service requirements, establishes virtually guaranteed rights of franchise renewal for all existing cable operators, severely restricts municipal rights, and limits franchise fees; and

WHEREAS: The National League of Cities has gone on record as strongly opposing this bill which frees the cable industry of practically all regulatory restraints set by cities and towns and cuts back on the franchise fees that these cities and towns now receive under law; therefore be it

RESOLVED: That the Cambridge City Council fully supports the National League of Cities in its opposition to S.66; and be it further

RESOLVED: That copies of this resolution be sent to Senators Kennedy and Tsongas on behalf of the Cambridge City Council.

In City Council February 14, 1983.
Adopted by the affirmative vote of 8 members.
Attest:- Paul E. Healy, City Clerk.

A true copy;

ATTEST:- Paul E. Healy

Paul E. Healy, City Clerk.

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CCM-101

City of Cambridge

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A true copy;

ATTEST:-

Paul E. Healy

Order # 12,5-69

C. Clinton order re: in support of the National League of Cities opposition to Cable Bill (S.66) introduced by Senator Barry Goldwater.

In City Council,

February 14, 1983

2/14/83

Copy of resolution sent to Senator Kennedy + Senator Tsongas 2/16/83 mh