



ILLINOIS MUNICIPAL LEAGUE

DATE: MARCH 27, 2007

MEMO TO: REPRESENTATIVE JIM BROSNAHAN

FROM: DAVE BENNETT, METROPOLITAN MAYORS CAUCUS
TERRY MILLER, CITY OF NAPERVILLE
ROGER HUEBNER, ILLINOIS MUNICIPAL LEAGUE

RE: HB 1500 MODIFICATIONS AND ADDITIONS

This memo is intended to raise issues not addressed by HB 1500 as introduced, changes to HB 1500, and other public policy considerations for a future cable/video competitive business environment in Illinois. Clearly, Illinois must do better than to pass a one-entrant competition bill and instead open existing transmission lines for many competitors to boldly enter the field and truly bring cable/video services.

If this is indeed the goal, we believe that the following fundamental issues need to be addressed:

- First and foremost, the role of Federal, State, and local authority must be explained and detailed language be included in the bill.
- Second, what statutory framework will apply to cable service which is defined and referenced by existing federal statute and regulation, does that also apply to video service?
- Third, what statutory framework in existing Illinois law will apply to the telephone company infrastructure and what statutes will apply to the cable/video portion of the system?
- Fourth, as to existing statutory requirements, how do municipalities address legal demands to change existing franchise agreements to ensure that when considered in its entirety that it does not provide a competitive advantage?

In addition to raising these fundamental issues, enclosed are two documents that outline our more specific concerns with HB 1500. The first document provides a "dot-point" summary of policy and legal issues that we believe require further attention. The second is a mark-up of HB 1500.

Thank you for giving us the opportunity to submit our written concerns. If you or your staff have any questions, please contact one of us.

We look forward to participating in any discussions you will conduct on this legislation.

HB 1500 Policy and Factual Issues Requiring Further Attention:

1. HB 1500 seeks to regulate an industry already regulated by Illinois CATV law as codified at 65 ILCS 5/11-42-11. Prior to embarking upon a considerable rewrite of HB 1500 and the total disregard of twenty (20) years of Illinois CATV and federal law, the proponents of HB 1500 should expressly address the applicability of CATV law to their respective IPTV products. Specifically, AT&T and Verizon should publicly state their position as to:
 - i. Whether their respective products are currently subject to CATV regulation;
 - ii. Whether they deny their respective products will consist of facility which is constructed in whole or in part, on, under or over any highway or other public place;
 - iii. Whether they deny their respective products will be operated to perform for hire the service of receiving and amplifying the signals broadcast by one or more television stations and redistributing such signals by wire, cable or other means to members of the public who subscribe to such service;
 - iv. What specific provisions of CATV laws currently encumber their ability to negotiate franchise agreements;
 - v. What is their respective position on a shot clock amendment to Illinois CATV law in conformity with the March 5, 2007, FCC Rule? With such a provision completion of franchise agreements would be mandated within ninety (90) days for IPTV providers with existing authority to access the public right-of-way, and six (6) months for IPTV providers that do not have authority to access the public right-of-way; and
 - vi. To what degree does Verizon attribute its successful launch of its FiOS product to Verizon's willingness to sign franchise agreements? Verizon should expressly state how many of the 600 franchise agreements entered into were signed pursuant to statewide franchising laws, and how many were signed prior to the passage of an applicable statewide franchise law. Does AT&T claim, or has it ever claimed, local franchising authorities are the sole basis for its IPTV products ability to garner less than 10,000 customers nationwide?
2. Public Safety and Homeland Security. HB 1500 undermines local emergency planning, emergency management and fails to address legitimate public safety concerns.
 - i. Under local cable franchises, municipalities have the ability to override every channel themselves in order to send emergency messages (e.g. boil order, evacuation) to residents. HB 1500 will deprive municipalities of this important public safety tool that local emergency managers plan to use. In a time of sensitivity to homeland security; why should HB 1500 impair local emergency management and accept less protection for the public than the public has now?
 - ii. Fire, Police and Public Works need to know where public utilities are located in the public right-of-way in emergencies. HB 1500 does not require AT&T to provide as-built maps, which a cable franchisee has to provide.
 - iii. Fire, Police and Public Works need to know what is in the right-of-way in an emergency. Does it have hazardous material? Does it have high voltage? HB 1500 deprives local first responders of this information.
 - iv. In or around October 2006, near the 8200 block of Clover Gardens Drive in Houston, Texas, a 52B cabinet, used by AT&T in association with its IPTV product exploded, shaking and damaging a nearby home. An investigation of the explosion ensued; however, no results from the investigation have been released to the public. Prior to further deliberations on HB 1500, it is incumbent on Illinois' elected officials to demand the public release of the investigation.

3. In terms of discerning the full impact each product will have on competition, each IPTV provider should disclose in which specific municipalities they intend to compete against cable, and which municipalities they anticipate competing against each other. Each IPTV provider should disclose a table of their rates in all the municipalities they currently have franchise agreements. Finally, each provider should disclose the current maximum speed, capacity and range of available services for their respective IPTV systems.
 4. HB 1500 fails to adequately protect consumer privacy. Prior to proceeding with HB 1500, each IPTV provider should disclose their corporate privacy policy and disclose whether the IPTV provider is asserting, or has ever asserted, a claim that ownership to “customer calling and internet records are corporate property.” In addition, IPTV providers should demonstrate provisions in their privacy policy that prohibits data mining, and bars the reporting of viewer habits. HB 1500 must be edited to reflect the existence of enforcement of penalties for invasion of privacy.
 5. HB 1500 lacks any protections for net neutrality. The concept of net neutrality recognizes that higher education in partnership with government and industry designed and built the internet over 30 years ago to operate over an open platform accessible by every American. HB 1500, however, seeks to privatize, balkanize and monopolize this venture. Interestingly, HB 1500 presumes that the very same internet that was fostered and designed without massive lobbying efforts and corporate subsidies cannot and will not grow until and unless large phone companies are granted near limitless access to public right of ways, and granted the right to charge businesses, individuals and the universities for quicker internet delivery of preferred Web sites. This notion is completely contrary to the founding nature of the internet. Finally, this notion ignores the fact that telecommunications reform concerns more than the future of American phone companies. Telecommunications reform risks the future of American innovation and competitiveness.
- HB 1500 is devoid of any language that provides for standards and procedures to prevent unreasonable charges. *See, 47 USC § 543.*
 - HB 1500 shall be enforced only by a court of competent jurisdiction. This may be a timely and costly process, and a municipality is generally the ideal forum for local right-of-way enforcement.
 - HB 1500 is deficient of any language that provides for the expeditious resolution of disputes between service providers and municipalities.
 - HB 1500 is devoid of any language that provides for enforcement of protections against discrimination; customer service standards, and services for the hearing impaired. *See, 47 USC § 543.*
 - HB 1500 is devoid of any language that provides for protections against sham transfers of ownership. Further it does not limit the renewal of franchise agreements for vendors with a history of material breaches. *See, 47 CFR 76.502 and 47 USC § 546.*
 - HB 1500 must provide a means for public notice and hearings regarding the territorial extent of the franchise, system design, technical performance standards, construction schedules, performance bonds, standards for construction and installation of IPTV television systems. *See, 65 ILCS 5/11-42-11 and 47 USC § 545.*
 - HB 1500 improperly vests private corporations with the power to take municipal and private property.
 - HB 1500 fails to provide a requirement that IPTV providers tender to municipalities an as-built map as part of the franchise deliberative process.
 - HB 1500 fails to provide a mechanism by which a municipality could deny an IPTV provider access to an over burdened municipal right-of-way or pole attachment with limited or no extra capacity.
 - Under HB 1500, municipalities must cede their ability to determine whether it is in the best interest of the municipality to grant such additional IPTV franchise.
 - HB 1500 does not compel IPTV providers to make their IPTV product available to local schools.
 - HB 1500 has no provision to assure that owners of property be justly compensated by the IPTV operator for any damages caused by the installation, construction, operation or removal of such systems by the IPTV operator.
 - HB 1500 places a financial hardship on PEG providers, and diminishes the quality and accessibility of PEG programs.
 - HB 1500 contains inferior regulatory protections relative to statewide franchising laws in other states.
 - HB 1500 lacks guidelines for the application process and requirements for any documents or applications to be submitted.
 - HB 1500 should be more explicit regarding the grants of authority awarded to an authorized video provider.
 - HB 1500 lacks compliance requirements regarding its redlining/universal service provisions.
 - Under HB 1500, the definition of gross revenues does not keep local governments financially whole.

HB 1500 Legal Issues Requiring Further Attention:

- HB 1500 does nothing to conserve the finite resources of the public right-of-way.
- HB 1500 is devoid of any language that provides that the installation or construction of facilities in the right of way cannot affect the safety, functioning, and appearance of the property and the convenience and safety of other persons. *See, 47 USC § 541.*
- HB 1500 lacks a requirement that the cost of installation, construction and the removal of equipment in the right-of-way must be borne by the provider. *See, 47 USC § 541.*
- Under HB 1500, once an IPTV provider submits and application for a statewide franchise, there is no provision for rejection of an application.