

Telecom Laws Overhaul Threatens Public-Access TV, Services

by Tara Tidwell Cullen

Lawmakers looking to encourage competition in television provider markets are insisting on bills that would undermine local governments' ability to force cable companies to pay for essential public services.

Dec. 29, 2005 – When Ralph Montefusco left IBM in Burlington, Vermont to become a full-time union organizer, he struggled to communicate with other workers. Mainstream television reporters reduced his ideas to sound bytes, and he never had control over his message.

Then Montefusco was invited to appear as a guest on a labor-themed public-access television show, and he discovered community TV. He now produces a monthly show about his union's activities and helps other Burlington-area community organizers create their own public-access shows.

"It's a way for us to get our story out without it being filtered and chopped up by the mainstream media," he said.

Now, with a wash of telecommunications legislation wending its way through Congress, public-access television users like Montefusco may have to fight for its survival in 2006.

Throughout the United States, people working for social change use public-access television to bypass corporate media and reach broad local viewerships. Constituents use public-access TV to discuss what they expect from politicians. Immigrants use it to share news from home. Small cities shadowed by big cities use it to report stories that never make it into the major-market newscasts. People from every background use public-access channels as training ground for media production skills.

The funding for public-access stations usually comes through "franchise agreements" between local governments and cable companies. Through these contracts, cable companies pay fees for laying their wires under sidewalks and streets, or "public rights of way."

In Vermont, these negotiations bring in about \$4 million per year for public services and community television networks like the one Montefusco and his colleagues use for community and union organizing.

As technology evolves, companies like Verizon and AT&T – which already use public rights of way to provide telephone and Internet services – want to offer TV and video services over their telephone wires. These companies are not currently regulated by local franchise agreements.

In order to address this issue, lawmakers have introduced four bills in recent months that could dramatically alter, or even eliminate, the funding sources for local public-access channels.

"Seventy years of regulation is really in question," said Lauren-Glenn Davitian, executive director of the Center for Media and Democracy in Burlington. "For 70 years [the cable and telecommunications] industries were regulated as if they were different industries – which they were – but they can no longer be considered entirely separate because they are all engaged in the same broadband business."

The Video Choice Act, introduced in the US House of Representatives last summer by Marsha Blackburn (R–Tennessee) and in the Senate by Gordon Smith (R–Oregon), would require cable companies to continue paying franchise fees. But phone and Internet companies already using public rights of way for non-video services could begin providing video services without entering into the same kind of contracts, leaving local governments little room to charge fees and negotiate for compensation.

Public-access supporters say that both cable and phone companies should be required to compensate municipalities for public rights of way, and local governments should be able to negotiate those payments. They worry that by exempting phone and Internet companies from the fees, "level playing field" clauses common in current franchise agreements could put municipalities in breach of existing contracts with cable providers. These

clauses state that if a competitor is not required to meet the same obligations as the cable franchisee, the cable company does not have to meet its obligations either.

Two other Senate bills call to eliminate franchise fees entirely. John Ensign (R–Nevada) introduced the Broadband Consumer Choice Act in July, and Jim DeMint (R–South Carolina) introduced the Digital Age Communications Act on December 15. Presumably, legislative analysts say, control over public rights of way would shift to the Federal Communications Commission.

Susan Fleischmann, executive director of Cambridge Community Television (CCTV) in Massachusetts, says local governments' ability under current laws to negotiate franchises is crucial to maintaining valuable public services. CCTV operates three public-access channels, 70 percent of the funding for which comes from franchise fees that are put at risk by the current versions of the House and Senate bills.

"Cable-related needs and interests differ among cities," Fleischmann said. "There are franchise fees and additional capital requirements that we negotiate for, but there are also other, more nuanced needs."

For instance, in Monroe County, Indiana, local cable-franchise negotiations also fund the tornado warning system and an I-Net, or institutional network, used by public-access channels for live election-night and public meeting coverage.

Michael White, who directs Community Access Television Services in Indiana, said that residents in the town of Ellettsville have been known to rush to televised public meetings in their pajamas after seeing important topics arise on the public-access channel. Monroe County and the City of Bloomington could lose about \$1 million per year in cable franchise money that maintains the tornado warning system and I-Net system.

These specialized obligations are what cable and video service providers hope new legislation would help them avoid.

In a statement on his website, Sen. Ensign said his bill intends to make the United States a world leader in telecommunications by changing what he calls "burdensome and outdated government regulations," which he accuses of slowing innovation.

Senator John McCain (R-Arizona), who is co-sponsoring the Ensign bill, says that deregulation is needed to "encourage the rapid deployment of new technologies." The Telecommunications Industry Association, USTelecom, Alcatel North America, National Cable & Telecommunications Association, US Internet Industry Association, and Verizon have all endorsed the bill.

Local government representatives say they welcome increased video competition, but do not want it at the expense of public services.

In testimony before Congress, Montgomery County, Maryland council member Marilyn Praisner said that for three decades local governments have used cable franchising authority to make sure that cable reaches nearly every household in their communities. In her November testimony before the House Subcommittee on Telecommunications and the Internet of the Committee on Energy and Commerce, Praisner represented a coalition of local government entities, including the National League of Cities, the US Conference of Mayors and the National Association of Counties.

"We also know that only wire-line competition reduces cable rates and enhances service," Praisner said. "Therefore, let there be no mistake, local governments want competition, as fast and as much as the market and some state laws will sustain."

But critics of the proposed legislation express skepticism that eliminating local control over franchises would necessarily lower rates or offer more choices for all consumers. They say that eliminating local regulation could allow companies to pass over communities they deem unprofitable.

"Local government strongly endorses promoting competition for all consumers," says an action alert released by the National League of Cities. "But these bills would mean that fewer citizens will receive the benefit of video competition. The bills eviscerate local government's authority to ensure head-to-head competition for all citizens, leaving video providers free to cherry pick the most lucrative communities."

The Broadband Consumer Choice Act and Video Choice Act received enough opposition from both industry and local-government advocates that they never made it to a vote in either the House or the Senate this fall. With DeMint's bill added to the mix, the final structure of the telecom legislation overhaul is far from clear.

"The burden is on the access channels and their partners to educate everyone so that at the key time in 2006, Congress hears from the people," Davitian said. "The only solution to the power of industry on Congress is people power, and the thing the public-access channels have is people power. You've got a built-in constituency."

Cambridge resident Jacques Fleury has already used his weekly show on Cambridge Community Television's Channel 9 to tell his Haitian immigrant community about the threats the bills pose.

"Public-access to the Haitian community is everything," he said. "When I came here all my mother watched was [public-access] television, to find out what's going on in the Haitian community."

Fleury said his live show, "Dreamweavers w/ Jacques," allows him to introduce Haitian community leaders to the rest of Cambridge, where Haitians are one of the smaller populations. Most public-access stations offer religious and foreign-language programming for immigrant communities.

"It's a way for us to keep together and make sure we're not silenced," Fleury said.

Fleury, whose mother still lives with fears ingrained from living most of her life under an oppressive Haitian dictatorship, said her concern for his safety when he makes political statements reminds him of public-access TV's value in a free society.

The Senate bills have been assigned to the Senate Commerce, Science, and Transportation Committee, which has scheduled a full committee hearing on video franchising for January 24. Blackburn's bill is in the House Energy and Commerce Committee, which has not yet released a schedule of 2006 hearings.

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