



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Betsy Shotwell
Ed Shikada

SUBJECT: SEE BELOW

DATE: May 5, 2006

Approved

Date 5/05/06

**SUBJECT: THE FEDERAL COMMUNICATIONS PROMOTION AND
ENHANCEMENT ACT OF 2006 ("COPE")**

RECOMMENDATION:

Adoption of a resolution to oppose the proposed Federal Communications Promotion and Enhancement Act of 2006 ("COPE").

OUTCOME:

By taking a position to oppose the proposed COPE legislation, the City will help assist our advocacy efforts in Washington, D.C. in concert with the activities of the National League of Cities, the California League of Cities and the City's federal lobbyists in communicating our legislative priorities on this important issue.

BACKGROUND:

In Washington D.C. on April 27, the House Energy and Commerce Committee conducted a mark up of the Communications Promotion and Enhancement Act of 2006 ("COPE") and the bill is scheduled to be heard next on the House floor or possibly first by the House judiciary committee and then addressed by the House at large. Authored by Committee Chairman Joe Barton, R-Texas, and Bobby Rush, D-Ill, the measure would establish a national franchise for new telecommunications video providers, regulated by the Federal Communications Commission (FCC). The Senate companion bill was released this week and is still under review.

ANALYSIS:

This year the House began deliberating on the possibility of the creation of a national franchise for video service by telecommunications companies. Throughout the mark-up process Congresswoman Eshoo (D-CA) pushed to modify the definition of video service providers under the bill. Thanks to her efforts, the current version of the bill allows local governments to collect franchise fees from video-service providers that utilize any of a variety of means to provide the video service.

The City would seek amendments to the bill in order to protect local governments and their residents. From the League of California Cities report on the measure, the Congressional committee panel:

“rejected amendments that would have added language aimed at including build out requirements for telecom providers...A League-supported compromise amendment by Congresswomen Hilda Solis (D-CA), to include build-out provisions, failed on a vote of 33-23. The compromise amendment would have phased build out after five years in a franchise area if a company’s service area has been subscribed to by 15 percent of the households it reaches.”

The City would support additional amendments to ensure build-out requirements and prevent discriminatory service offerings.

The Committee also “rejected amendments that would have retained local governments’ control and oversight over their local streets and sidewalks – their public rights of way. Instead the bill gives the Federal Communications Commission (FCC) control and oversight.” Amendments allowing local governments to have rights-of-way enforcement were rejected at the subcommittee and full committee mark-ups, but the issue will likely be raised again in either the Judiciary Committee or on the House floor. Amendments allowing for local enforcement of rights-of-way would be supported by the City.

In addition, the legislation proposes a level of support for Public Education and Government (PEG) programming or Institutional Network (INET) services that is far below the level of support necessary to meet the identified needs and interests of the San Jose community.

Absent provisions to protect local enforcement of rights-of-way and ensuring build-out requirements, the City of San José would not support proposed federal legislation which would allow for:

- Subsidizing communications companies’ use of local streets and rights of way at the expense of local government budgets;
- Giving the Federal Communications Commission (FCC) enforcement control and oversight over how localities manage their local streets and rights of way;
- Allowing providers to define their franchise areas and avoid current requirements for service availability to all citizens within a reasonable period of time
- Taking away local authority to handle their residents’ cable customer service complaints;
- Limiting financial support for local community programming and emergency communications.

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ALTERNATIVES

The City Council may choose to not take a position on this measure or support it. However, it is in the best interests of the City to take a position as previously noted above in order to inform our Congressional delegation of our legislative priorities related to telecommunications.

PUBLIC OUTREACH

Not applicable.

COORDINATION

This memorandum was coordinated with the City Attorney's Office and our federal lobbyist in Washington D.C.

COST IMPLICATIONS

Budgetary implications are unclear. The proposed legislation appears to preserve franchise fee revenue. Funding support for PEG and INET would be specified by law, rather than negotiated at the local level.

BUDGET REFERENCE

Not applicable.

CEQA

Not applicable.



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