

COUNCIL AGENDA: 12-08-09
ITEM: 2.11

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Lee Price, MMC
City Clerk 

SUBJECT: SEE BELOW

DATE: 12-03-09

SUBJECT: HOUSE RESOLUTION NO. 3745 (BALDWIN) COMMUNITY ACCESS PRESERVATION ACT 2009.

RECOMMENDATION

As recommended by the Rules and Open Government Committee on December 2, 2009 and outlined in the attached memo previously submitted to the Rules and Open Government Committee, adopt a support position for HR 3745 (Baldwin) Community Access Preservation Act 2009, which would have several positive effects for the City and the community.



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: Tom Manheim

SUBJECT: SEE BELOW

DATE: November 16, 2009

Approved

Date

11/16/09

**SUBJECT: HOUSE RESOLUTION 3745 (BALDWIN) COMMUNITY ACCESS
PRESERVATION ACT 2009**

RECOMMENDATION

It is recommended that:

1. The City Council support House Resolution 3745 (Baldwin), which would have several positive effects for the City and the community, as detailed in this document.
2. The Committee provide a one-week turnaround for Mayor and City Council to review and take a position.

OUTCOME

If the Rules and Open Government Committee and the City Council accept staff's recommendation, the City's representative in Washington DC could begin seeking support for House Resolution 3745.

BACKGROUND

On October 7, 2009, Representative Tammy Baldwin (D-WI1), introduced the Community Access Preservation (CAP) Act of 2009 (H.R. 3745). The bill is co-sponsored by Michael Thompson (D-CA1), and has been referred to the Committee on Energy and Commerce.

According to Congresswoman Baldwin, CAP was introduced in order to address the challenges faced by Public, Education, and Government (PEG), TV channels and Community Access television organizations. In San José, the City operates the City's Government Access channel, CivicCenter Television (cable channel 26). Public and Education channels are managed on

behalf of the City by CreaTV San José, a local nonprofit organization representing K-12 educational institutions, higher education, nonprofit groups and the general public. Historically, the funding for and broadcast of PEG channels have been negotiated as part of local franchise agreements between cable companies and local franchise authorities. However, twenty-three states, including California, have enacted new telecommunications laws that establish state-level franchise authorities (the state-level franchise in California is known as the "Digital Infrastructure and Video Competition Act" or "DIVCA"). As a result of these recent statewide agreements and a lack of federal protection, some PEG channels now face significant broadcast and funding obstacles.

The National Association of Telecommunications Officers and Advisors (NATOA), is urging local governments to support the legislation by, among other things, adopting a resolution indicating support for the proposed legislation.

ANALYSIS

CAP would amend the Communications Act of 1934 (47 U.S.C. §151 et seq.), to address immediate issues affecting PEG channels. The key components of the proposed legislation follow.

- Allow PEG fees to be used for any PEG-related purpose. The Communications Act (as interpreted by the court in Alliance for Community Media v. FCC 529 F. 3d 763 (2008)), currently limits the expenditures of PEG fees to capital costs i.e., facilities and equipment, only. Eliminating this restriction would give the City, as well as CreaTV San José, the flexibility to use the PEG fees it receives towards other PEG-related purposes such as programming, production, overhead, and personnel.
- Require PEG channels to be carried in the same manner as broadcast channels. Unlike DIVCA which only requires that PEG capacity be of "similar quality and functionality to that of commercial channels", CAP would require that PEG channel capacity be "at least equivalent in quality, accessibility, functionality, and placement" to that of commercial channels. This would address the current situation in which AT&T would provide inferior treatment of the City's PEG channels when compared to all of its commercial channels.
- FCC review. Require the FCC to study the effect state video franchise laws have had on PEG channels and make recommendations for changes to the Communications Act to preserve and advance localism and public, education, and government use of cable systems.
- Operator support. Require operators to provide the greater of the support required under state laws, or the support historically provided for PEG. This requirement would ensure that each cable operator is providing the channels and facilities it had been historically providing. It would also require operators to make PEG support payments equal to the greater of the cash payment required under state law, or the value of PEG support historically provided.

These provisions are intended to assist those jurisdictions, which had greater PEG support prior to the imposition of state-level franchises and would likely have little, if any, effect on how PEG is supported in San Jose. The City is receiving the same number of channels and financial support it received prior to the enactment of DIVCA. Currently, Comcast and AT&T each pay the City 1% of their respective gross revenues for PEG support based on information the City has been able to obtain from Comcast and AT&T.

- Make cable television-related laws and regulations applicable to all landline video providers. Entities that provide video services via wired facilities (i.e., AT&T), in the rights-of-way are supposed to be subject to the Communications Act regardless of the transmission protocol used to deliver service. However, some providers claim the law is unclear creating doubt as to whether the Communications Act applies to those providers. CAP would ensure that providers using wired facilities in the rights-of-way are treated similarly and are subject to the same regulations. This would assist the City with the regulation of its rights-of-way by making it clear that all operators are subject to the requirements of the Communications Act including the PEG requirements.

PEG channels are a vital resource for the City and the community as a whole. CAP would level the playing field among landline video service providers, provide equal treatment of PEG channels and remove restrictions on the use of PEG fees; allowing funds to be used for any PEG-related purpose. For these reasons, staff recommends that the City Council support HR 3745.

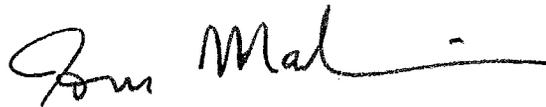
POLICY ALIGNMENT

The staff analysis and recommendation aligns with two sections of the 2009 Adopted Council Legislative Guiding Principles. These both fall under "Principle A, Protect Local Control." The Principle is intended to ensure that the City retains control over issues of significance to residents. The priorities are:

- Promote legislation and policies that increase local control of utility infrastructure; and
- Promote the ability of cities, in the area of telecommunications, to have control over the collection of fees and raising of revenues through franchise agreements.

COORDINATION

This memorandum was coordinated with Intergovernmental Relations, the City Attorney, the City's lobbyist firm of Patton Boggs in Washington DC and CreaTV San José.

A handwritten signature in black ink, appearing to read "Tom Manheim", with a long horizontal flourish extending to the right.

Tom Manheim
Communications Director

For questions please contact Tom Manheim, Communications Director, at (408) 535-8170.