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New Federal Telecom Bills Could Tune Out Millions of Dollars for the City

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LAST DECEMBER, THE NEW YORK CITY COUNCIL passed a law creating an advisory committee to recommend ways of using municipal resources to increase the availability of broadband Internet access for all New Yorkers. But the efforts at City Hall may be trumped in Washington, where a number of bills have been introduced that could change national policies on broadband access, as well as cable television and phone service.

These far-reaching Congressional bills, which would overhaul the federal Telecommunications Act of 1996, may even have consequences for the city budget. Under one of the proposals, the city's cable franchise agreements would be voided, along with more than $75 million in annual revenue. The city could also lose funding for its public access television production networks as well as five of the nine channels it has for government and educational broadcasting.

Advancing Technology, Converging Markets. Sparking the proposed overhaul are recent technological advancements, such as the rapidly developing Internet Protocol technologies that allow telephone calls to be placed over the Internet, that are blurring the distinctions among telephone companies, cable television services, and broadband Internet providers. Such technological changes were barely envisioned just a decade ago when the 1996 law was enacted. Indeed, the more than 100-page bill made few references to the Internet.

Due to these technological advances, cable, broadband, and telephone are no longer distinct communications markets, and the service providers are now vying for each others' turf. The phone companies are seeking access to the television transmission business that has been the domain of the cable companies which, in turn, are trying to capture more phone companies' business by packaging Internet-based telephone along with broadband and cable services. Standard & Poor's recently downgraded its rating of Verizon Communications Inc. because of the competition from cable companies.

Phone companies like Verizon are responding by investing in new fiber optic lines as part of their effort to gain access to the cable tv market. But the phone companies want access without the franchise agreements required of the cable companies. The phone companies argue that these franchise agreements, which have provided localities like New York City with the leverage to negotiate payments for the use of public streets to lay cable, funding for public access stations like Manhattan Neighborhood Network and Brooklyn Community Access Television, and the availability of channels for government and educational broadcasting, are too burdensome. These franchise agreements also enable localities to press cable companies to provide service in low-income communities and to monitor the quality of service.

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On a separate but related track, the Federal Communications Commission, the national regulator for radio, tv, wire, cable, and satellite communications, is also examining the role of local franchises. Last November the commission issued a "Notice of Proposed Rulemaking" that could weaken, if not eliminate, the franchising powers of New York and other localities. The communications commission is now receiving comments on its proposals.

Congressional Legislation. There are currently four bills introduced in Congress that would effectively rewrite the 1996 telecommunications act, as well as a draft of a bill by the Commerce Committee of the House of Representatives. The bill getting the most public attention so far, the Broadband Investment and Consumer Choice Act (S.1504), was introduced last July by Sen. John Ensign of Nevada and is cosponsored by Sen. John McCain of Arizona.

The primary goal of the Ensign bill is to open the telecommunications marketplace to increased competition, in part by eliminating barriers to entry such as the local franchise requirements for cable services. This would, according to proponents, foster more choices and better prices for consumers among competing video, telephone, and broadband service providers. To accomplish this, the bill would void current cable franchise agreements in order to remove barriers to entering the market and limit localities to being reimbursed for the cost of managing the public "rights of way" used by the telecommunications companies for laying cables and other equipment. This "video service fee" to recover the management cost is significantly different—and likely to be considerably lower—than the franchise fees that now let localities charge for the value of using public streets and facilities. Additionally, video service providers would be able to seek reductions in these fees from the Federal Communications Commission.

Under the Ensign bill, New York and other localities would also lose other forms of local control. Localities would be barred from charging video providers fees for construction permits to dig in public streets or roadways. Nor could cities require that providers offer their telecommunications services in low-income communities or set other consumer protections. The bill would also create barriers to localities forming their own municipal wireless networks and limit the number of public, education, and government channels cable providers would have to make available to localities to four.

Two other bills that have been introduced in Congress are similar legislation called the Video Choice Act of 2005. The House bill (H.R. 3146) is sponsored by Rep. Marsha Blackburn of Tennessee and Rep. Albert Russell Wynn of Maryland. In the Senate (S. 1349) the bill is sponsored by Sen. Gordon H. Smith of Oregon and Sen. John D. Rockefeller, IV of West Virginia.

Although these bills would not end current cable franchise agreements, they would reduce the barriers to entering the market for video-related services, so long as the provider, such as a telephone company, had access to public streets and facilities. Over time, however, as the current franchise agreements expired, New York or other localities would have little ability to forge new agreements as the cable providers would likely be able to redefine themselves under the bill more broadly as video service providers.

Much like the Ensign bill, the Video Choice Act would significantly lower the fees cities or towns could collect for allowing private companies to use public streets and weaken local ability to leverage funding for public education and government channels. Although both the Senate and House versions of the Video Choice Act would prohibit video providers from redlining low-income neighborhoods, the provisions would be enforced at the federal rather than local level, which would likely make it more difficult for communities to enter complaints.

The fourth and most recent bill is the Digital Age Communications Act (S. 2113) introduced last December by Sen. Jim DeMint of South Carolina. Modeled after a similarly named proposal by the Washington-based Progress and Freedom Foundation, DeMint's bill emphasizes deregulation and market competition. It would phase out cable franchises over four years, although states would maintain some role overseeing the use of public rights of way and consumer protections. But the bill's deregulatory thrust goes further in some respects than the other telecommunications legislation. The Federal Communications Commission would lose much of its regulatory role and be focused mostly on ensuring that the cable, telephone, and broadband companies do not engage in anticompetitive or unfair business practices. It would also reduce and cap the Universal Service Fund, which helps subsidize the cost of phone service for low-income households and in rural areas, as well as for schools and libraries.

Franchise Fees. Current federal law allows the city to negotiate franchise agreements with fees of up to 5 percent of cable providers' gross revenues. In fiscal year 2001, the fees from the 10 different video-related franchises in the city totaled

City's Cable Franchise Revenue Grows

Dollars in millions

2001 Actual	2002 Actual	2003 Actual	2004 Actual	2005 Actual	2006 Projected
$56.7	$64.4	$68.2	$73.8	$81.2	$77.5

SOURCES: IBO; Department of Information Technology and Telecommunications

$56.7 million. Last fiscal year, revenue from franchise fees totaled $81.2 million. The Bloomberg Administration projects that revenue from the cable franchises will be $77.5 million in the current fiscal year.

Of the 10 franchises, there are nine separate cable franchises covering different portions of the city, two each in Brooklyn and Manhattan, three in Queens, and one each in the Bronx and Staten Island. All of these franchise agreements expire in 2008. The city also has one "open video system" agreement covering all five boroughs. This franchise agreement, in effect until 2012, gives the operator the right to provide voice, video, data, and image services.

In addition to the fees, the franchise agreements also enable the city to negotiate payments to support its government, education, and community access channels. The city currently has nine of these channels providing broadcast services ranging from coverage of City Council hearings to horse racing for the Off-Track Betting Corporation. These separately negotiated payments also support the community access channels and give local residents and civic organizations the means to produce programs for the stations.

Besides the funding garnered through the franchises, these agreements also give the city a variety of rights and protections. The City Council legislation authorizing the franchise contracts requires that there be provisions ensuring any construction work done by the cable companies in city streets and roads minimize disruptions and that city property is protected. There are also requirements to ensure that when the cable companies rip up public streets to lay their lines or install other equipment, they follow good construction practices and adhere to local building and electrical codes. Other provisions make sure there are adequate consumer protections and that the cable service providers follow local labor and purchasing rules. Many of these local requirements—and the control that goes with them—would be federalized under the Congressional bills.

Capital Action. The momentum in Washington to rewrite the telecommunications act slowed last fall in the wake of Hurricane Katrina and other events. But momentum appears to be mounting again. Sen. Ted Stevens of Alaska, chairman of the Senate Committee on Commerce, Science, and Transportation, has scheduled more than a dozen hearings on the topic, including a hearing on state and local issues slated for February 14.

The final shape of any new telecommunications law will be influenced by many other issues, such as media ownership and control of content, that go well beyond the concerns of local franchises. But with technological advances having made portions of the 1996 telecommunications act obsolete, it is clear that change is coming. And this change may have budgetary and other consequences for the city.

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