

March 20, 2007

Dear Chairman Brosnahan & Members of the Telecommunications Committee:

My name is Peter Collins and I am the President of the [Illinois Municipal Broadband Communications Association](#), as well as the Information Technologies Manager for the City of Geneva and a citizen of Batavia, Illinois.

I write today to discuss the wide reaching problems of Illinois HB 1500 from all of those points of view and, more importantly, to ask that this bill never leave committee.

From a municipal outlook, I will concede that the City of Geneva is probably not one of AT&T's most favorite places to do business. In fact, just to level the playing field, I am sure we have been received as a thorn in the side of their friends from "across the aisle" – Comcast – at several times in the past as well. Our local referendum attempts to serve our citizenry directly by creating municipal fiber optic broadband utilities in Geneva, St. Charles & Batavia (collectively the TriCities) met their demise under the marketing might of both companies. The municipal utilities proposed to be created by the 2003 & 2004 votes would have offered many of the same highly touted services that AT&T is just getting to today. Information concerning that process is thoroughly documented at <http://www.geneva.il.us/bb/faq.htm> and at the website of the citizen's group supporting the ballot initiative – <http://www.fiberforourfuture.com>.

As an additional point of reference, our business plans for the operations of these municipal utilities included the path of applying for and existing under the rules of a local cable franchises because, among other things, it was the law as stated under the Illinois Level Playing Field Statue of the Illinois Municipal Code. From [65 ILCS 5/11-42-11](#)

no such additional cable television franchise shall be granted under terms or conditions more favorable or less burdensome to the applicant than those required under the existing cable television franchise, including but not limited to terms and conditions pertaining to the territorial extent of the franchise, system design, technical performance standards, construction schedules, performance bonds, standards for construction and installation of cable television facilities, service to subscribers, public educational and governmental access channels and programming, production assistance, liability and indemnification, and franchise fees.

Or, short form, we cannot legally give AT&T terms different from those under which Comcast, in Geneva's case, exists.

This brings us directly to the point Geneva and six other communities in Illinois are at – under the weight of a [frivolous federal lawsuit](#) – due to requiring AT&T to have a franchise to offer video services before they could start upgrades to allow for video services.

As Mr. Lenihan sat before this committee two weeks ago, he referred to Project Lightspeed as a “different” service that does not require local franchising because of its delivery method and that Lightspeed was just an upgrade to their “telecommunications” infrastructure.

A number of interesting questions can be posed from looking deeper into this statement.

1. If AT&T is just upgrading its “telecommunications” infrastructure, would the 52B utility boxes used – affectionately termed “B-52s” by many communities – even be required if video was not a part of their planned offering? If they were just going to offer phone and internet and video were not part of their business equation at all? The answer is no.
2. If Project Lightspeed is truly a “telecommunications” upgrade, aren’t all the services provided subject to federal, state, and local “telecommunications” taxes? If so, then AT&T would not be subject to franchise fees anyway.
3. If AT&T truly believes that the services it will offer are “telecommunications” services, or even advanced data services – subject to an entirely different set of regulations – and completely unlike traditional cable, why then are they pushing for statewide video franchising requirements? After all, as Mr. Lenihan said here on March 8th

“We go to a city and say, “We are not a cable operator, we are telephone company. We are not providing cable service, we are upgrading our telecommunications network.”

Shouldn’t AT&T be focusing then on telecommunications law, rather than video franchising?

It seems that perhaps even AT&T does not believe what it’s trying to sell to you.

AT&T wants to bring Project Lightspeed to our area but does not want to exist under the same local and state regulatory framework that other terrestrial video providers must abide. They do not want to sign anything termed a “franchise agreement.” If memory serves correctly, one of the AT&T Representatives sat here on the 8th and said something to the effect of, “No one has even offered us a franchise-like agreement that would cover what we are.” Geneva has. We call it the ["City of Geneva Cable and Multichannel Video Communications Ordinance"](#) and it treats services like those offered by AT&T on the exact same footing as those offered by traditional cable providers, including PEG requirements. AT&T has not expressed an interest.

To say it is too hard to get local agreements in place is a little ridiculous. For example, Verizon – who also sat here on March 8th – has signed hundreds of local franchise agreements around the country. In September 2006, Verizon went as far as publicly acknowledging to its shareholders that franchising was not an issue for the company and that [the process was not holding back the company](#) in the deployment of video services.

But stepping away from the classification of what AT&T's services really "are," a more basic problem with their overall philosophy is present.

AT&T has attempted to paint municipal problems with this bill as tied to franchise fees, or the loss thereof. This is absolutely not the issue as far as most cities are concerned. The field is rather static, and what one provider loses another gains. The outcome for the cities is relatively the same. We agree that whatever the level that traditional cable companies provide, so should be the same for any new video entrants. End of story. The fair and level playing field is what our state law mandates for land based video providers.

We're not really concerned about losses to satellite providers either, as we do not see it being a viable market share loss due to its technological limitations, and apparently, AT&T doesn't really see satellite as a viable solution either. If they did, they would expand their agreement with Echostar and stop wasting money on Lightspeed upgrades and video franchise legislation.

No, among the real problems most cities have is the lack of full build out provisions. AT&T claims they cannot do this on a statewide basis. I'd tend to agree when trying to address the issue on a statewide level. Neither can Comcast, Verizon, or any other provider. But all certainly can in the world of local franchise areas by following the existing state and local regulations.

If for instance, AT&T were to offer service in Geneva, the local franchise area they would have to serve would be our city limits. When they achieved their market share in our market (and generated revenue), they could explore other cities (or franchise areas) to serve in their entirety. If it turned out to be unprofitable for them to do so, there is no requirement for them to bring their video services to that area. This is much the same reason Comcast does not serve Wayne, Illinois. They found it unprofitable to serve that franchise area, and thus, are not there. That lack of serving Wayne has coincidentally allowed Wayne to legally sign an agreement with AT&T, as there is no "level playing field" to violate. Not surprisingly, that agreement has no full build out requirement.

AT&T recently has taken to confusing the full build out provision discussions as well by promoting the idea that municipalities were requiring actual full build out before any services could be offered to a franchise area. The cities wanted a full build out over a specific timeframe – in most cases from 3 to 5 years and thus inline with what cable companies received when they entered the markets years ago – but the discussions never even got that far. AT&T has been adamant about no build out requirements. Period.

What I have found most humorous during the proceeding hearings has been AT&T's painting of themselves as new entrants to the market with no established customer base.

Mr. Lenihan went on record with the following quote:

Imposing a 100% build out requirement on a new entrant who has zero market share and is competing with an incumbent who essentially has 100% of the wired market is irrational and unreasonable.

AT&T has no "market share?" In the areas that AT&T serves via their existing "telecommunications" plant, are we expected to believe that they do not hold the majority of the existing landline telephone business? Are they not a wireline provider with a direct connection into most homes in their service areas as well? Do they not have the same trucks and same highly trained staff as the traditional cable market? It appears more that AT&T is attempting to solve its market share issues with new legislation rather than competing in the existing market.

At one point during the March 8 hearing, Representative Ramey asked Mr. LaSchiazza how many wire line video companies are in Illinois. The answer was about "8". I would imagine that the number of actual wireline phone competitors that you'd find in Illinois – not CLECs who resell service over incumbent owned lines but actual wireline competitors – is pretty low as well.

Of course, also highly problematic for the cities is the loss of local control of their rights of way. This bill allows a state agency, the ICC, with no direct knowledge of city's specific requirements, to grant authority to a private corporation to exist in property owned by the local taxpayers of a municipality, and in its current horrendous form even grants what amounts to eminent domain powers to that same private corporation. Granted, this seems to be a throwaway provision that even AT&T knows is awful, but even to have the audacity to propose such a clause is quite telling.

Even stranger is that the ICC, which would have the authority to issue such franchises, is then stripped of any power to enforce the provisions it has approved. It is allowed zero policing authority and instead relies on, as AT&T calls it, "self enforcement."

Do we understand what implications that creates?

Currently, if one of the citizens of Geneva calls me to help resolve an issue, I have the ability to scream and moan to the video provider because Geneva holds that franchise directly. If this bill goes through, I will lose that ability as the city would not be the franchise holder, and thus holds no leverage. Will I then have the power to send customer service complaints directly to my State Representatives, Mr. Schmitz & Mr. Ramey, for them to resolve?

As president of the Illinois Municipal Broadband Communications Association, we try to encourage communities to step up and take control of their broadband futures by investing in themselves and the well-being of their citizens. Where a community has the will, they can build first class infrastructure that will technologically bury the current offerings of the large incumbents, from both the cable and telephone sides of the fence. These cities succeed by keeping their focus local and paying attention to what they know best – their citizens and their own back yard.

Local franchising succeeds for the very same reason. It's locally focused and not concerned with serving a large territory partially, but rather a small footprint well. While many of the situations are similar from place to place, the specifics are unique to each area. It is not a one size fits all equation, nor is it the state's best interest to attempt to treat its municipalities as such.

It's important to keep repeating the word we've heard so many times during these hearings – Competition. Cities welcome video competition. Our citizens want it. Moreover, in Geneva's case, we even tried to bring it ourselves. But not at the expense of giving up local control. If we are truly to believe that technology will flourish under this bill, then we can also expect to have multiple providers attempting to construct these utilities in our rights of way. In responding to Representative Ramey's question concerning whether other providers would be able to "piggyback" on new builds, Mr. LaSchiazza's response was, "No." To cities, that means that any other provider that wanted to follow AT&T's deployment model would have to roll out its own boxes, etc. or in essence, doubling the impact on local rights of way and private property. It does not make sense to try and manage this on a statewide basis. Local control is a must.

I urge you to oppose Illinois House Bill 1500.

Regards,



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