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Red-hot digital television issue moving into prime time

With key parties refusing to negotiate, the Senate and House Commerce chairmen have decided it's time to whip the digital TV bill into shape themselves.

But the cable TV industry and local government interests, which would like to defeat the bill, hope at least to delay it until next year. Some House leaders are thinking along the same line, wanting to hold the bill as leverage for an aggressive expansion of broadband to rural areas by AT&T and/or cable providers.

Senate Commerce Chairman Steve Southerland gave lobbyists for the various interests a homework assignment last week, planning to craft a compromise from what they turn in. He directed them to list numerically their problems with the bill and what could be done to fix them. Even AT&T, the main proponent of the legislation, was given the assignment. In fact, after hearing the points raised by opponents in last week's hearings, the company is developing some amendments itself.

Talk, please. The House Commerce chairman, Rep. Charles Curtiss (D-Sparta), who is also a sponsor of the bill, warned the parties that his committee will not "allow itself to be boycotted and filibustered," so "for God's sake put your two cents in."

But a spokesman for cities and counties, which have vigorously opposed the measure, told both Curtiss and Southerland (R-Morristown) that their principal concerns about it — loss of local franchising and the power to impose "build-out" requirements — are "non-negotiable."

Southerland is ready to take the lobbyists' homework, craft amendments, and let the bill start moving — a tactic that conceivably could bring even "boycotters" to the bargaining table. House leaders still want to mediate a discussion by the parties first, and an attempt to coerce conversation could come as early as today (April 16).

State shift. The bill would permit a video services provider to obtain a state license, rather than negotiate hundreds of local franchise agreements. The step would allow AT&T to enter the market immediately, wherever it wishes, and compete with cable TV companies through its U-verse Internet protocol network. Verizon also supports the bill, as does the Communications Workers of

America, which expects the U-verse deployment to create hundreds of jobs.

Although the bill provides for even state-licensed providers to pay the equivalent of local franchise fees directly to cities and counties, local governments have taken a hard line. They have a litany of arguments, most of which AT&T says it can address if city and county officials will work with them, but the build-out requirement is another matter. The locals contend the company would "cherry pick" affluent customers and ignore the rest. AT&T says population density, not income, is the key factor in determining which areas are served.

Why cable hates it. It's no mystery why the cable companies oppose the bill. Not only do they not want the competition, they see the competition as unfair. They had to agree to build-out requirements and other conditions to get their franchises, and now AT&T wants to use a "short-cut" to enter the market. The Tennessee Cable Telecommunications Association compares AT&T to Rosie Ruiz, who finished first among women in the Boston Marathon in 1980 — after jumping into the race from the crowd during the last mile.

Under existing law, AT&T could negotiate franchise agreements itself; they are not exclusive. However, the Federal Communications Commission determined in December that local franchising has deterred competition. It imposed new rules a few weeks ago limiting the conditions local governments can impose and requiring them to act on applications within 90 days. The U.S. League of Cities and other local government groups have gone to court to challenge the rules.

Why locals hate it. The local government opposition is more complicated. Cities and counties have raised concerns about everything from the status of public, educational, and governmental access (PEG) channels to consumer protection to the size of the switch boxes AT&T would put in public rights of way.

As with most issues of this nature, money is a central concern. The Tennessee Municipal League contends the bill's definition of items to which the gross receipts tax (franchise fee) applies isn't as broad as it is in some locales

now. AT&T says it can make changes, but there is another consideration. The gross receipts tax, which under federal law can be up to 5%, already is being collected from cable users. Especially with no build-out requirement, AT&T would not be expected to sign up many citizens who aren't already getting cable. It would mostly be taking customers away from the existing franchise holder. As things currently stand, cable rates regularly go up, which means collections from the gross receipts tax also rise. But if competition were to result in a reduction of rates by, say, 25%, then a local government would collect 25% less from the tax.

Moreover, once competition exists, the bill gives the incumbent franchise holder the option of switching to a state license. Legislators want to hear from the attorney general whether a franchisee could switch before a local agreement expired.

Locals under fire. Until last week, AT&T, the bill sponsors, and other legislators were cautious in their dealings with local governments. In the first place, both the Tennessee Municipal League and the Tennessee County Services Association wield major influence. The organizations represent mayors and other public officials in every legislator's home county and hometown, where numerous resolutions of opposition have been adopted. And, of course, AT&T has had to be diplomatic while trying to win the local officials over.

But last Monday, during a 4½-hour joint hearing by the Commerce committees in which AT&T made the last presentation, the company's principal lobbyist, Jim Spears, took off the gloves. Spears, who underwent quintuple bypass surgery in late January and made the presentation against his doctor's advice, said he was dismayed to find that opponents were "still talking about last year's bill" instead of the version filed this year. He told the lawmakers he believes "the organizations you've heard from are not telling their clients the truth." In other states, he said, the cable industry has "been at the table with us" negotiating and would be in Tennessee "if they weren't hiding behind TML and County Services."

The next day, in the Senate Commerce Committee, Sen. Dewayne Bunch (R-Cleveland) suggested to Murfreesboro Mayor Tommy Bragg, the TML president, that local governments have "an inherent conflict" since they receive a percentage of cable revenues. Requiring a build-out to remote areas, Bunch said, will either keep competition out of the market or raise the cost, and "the higher the cost, the more money you make."

During three hearings over two days, questions were raised concerning how many cities and counties actually have consumer-protection programs and how many citizens would think to call City Hall if they had a problem with cable service, anyway. And Bunch, who has argued that TV service is not a need but a "luxury" and doesn't fit the definition of a utility, questioned whether "consumers know that they're paying a higher bill in order to have PEG channels."

TML response. After cities and counties were urged Monday afternoon by Curtiss to come to the negotiating table, Bragg appeared before the House Commerce

Committee Tuesday morning on behalf of both TML and the County Services Association and said local governments saw no reason "to negotiate something that we already own." He asked the legislators to consider how they would feel if the state granted franchises and the federal government tried to take over. Local governments, he said, "can't accept the unacceptable."

Later in the day, when Southerland began assigning all the parties the task of laying out problems and solutions, Bragg said that while TML considers non-negotiable both local franchising and the authority to require build-outs, he would ask the TML board for permission to discuss with county representatives other areas of the bill in which they might recommend improvements.

Pressed on the build-out issue, AT&T attorney Joelle Phillips said she would discuss with company executives the possibility of addressing it in some way.

Consumers. AT&T's big selling point is that consumers will benefit from the competition. But the company contends that cities and counties aren't likely to see a drop in revenue. For one thing, a heavy investment in electronic switches will be required to make AT&T's existing broadband lines compatible with U-verse. The equipment will be subject to the local personal property tax. And while TV rates should go down, many consumers would simply use the saving to buy additional service. Moreover, with competitive offerings, AT&T and the cable provider might be able to lure away some satellite users.

Rural concerns. In January, the Tennessee Broadband Task Force adopted a report that broadband service is "essential to the future of Tennessee's economy, the health of our citizens and the education of our children." The issue is especially important to lawmakers from remote areas, where lack of broadband Internet access can hinder economic development. The task force did not take a position on AT&T's bill, though it did find that competition among broadband providers tends to spur additional deployment of infrastructure. Last year, before it merged with AT&T, BellSouth argued that while it wasn't economically feasible to extend broadband to sparsely populated areas for Internet, the demand for TV services would make expansion possible, at the same time bringing Internet access.

As a condition of the FCC's approval of the merger, AT&T agreed to have broadband available to every home in the BellSouth telephone network in Tennessee by the end of this year, with at least 85% of the homes to be served by a wireline connection. The other homes, in the most remote parts of the state, will be given broadband access through a satellite technology.

Rural legislators have questions about the quality of broadband that will be available in their areas. Thursday, in the weekly House leadership press availability, House Finance Chairman Craig Fitzhugh (D-Ripley) suggested that "once this bill is passed" there will be "no leverage." If the bill is held up until next year, he said, lawmakers could see if there was an improvement in broadband access from "one or both" of the warring sides. Rep. Mark Maddox (D-Dresden), who chaired the Broadband Task

- A Coalition of Large School Systems has been created to lobby for the extra education funding Gov. Phil Bredesen has proposed as well as BEP changes. Chuck Welch has been hired as lobbyist for the group, formed by the systems in Shelby County, Memphis, Nashville, Knox County, and Hamilton County.
- U.S. District Judge Todd Campbell refused Thursday to block the process for filling a vacant Tennessee Supreme Court seat. The Judicial Selection Commission was proceeding Friday with public hearings on 16 applicants to submit

three nominees to the governor. Drew Johnson, executive director of the Tennessee Center for Policy Research, and longtime Tennessee Plan critic John Jay Hooker filed federal lawsuits challenging the constitutionality of the process.

- The Metro Nashville school board adopted a policy requiring students to wear collared shirts and khaki, navy, or black pants, skirts, shorts, or jumpers. The system has 74,000 students.
- Interim Rep. Mary Wilder (D-Memphis), 57, who took her seat last week, manages a home repair program for the Metropolitan Inter-Faith

Association. She is not seeking the seat in the district 89 special Democratic primary May 31.

- Clyde Webb, 73, a retired Athens banker who was elected to the state House in 1970 and served for 20 years, died April 5 at his home.
- The case against A C Wharton III, son of the Shelby County mayor, was sent to the Knox County grand jury Thursday after a general sessions judge found probable cause for a charge of aggravated statutory rape. Wharton, 34, is accused of having sex with a 13-year-old girl he met on the Internet.

Force, said it likely will meet in the next week or two to hear from both AT&T and cable companies.

Outlook. Both sides are waging political-style TV ad campaigns, but the issue is in the hands of the legislature. The bill is scheduled to be heard Tuesday by the House Utilities, Banking, and Small Business Subcommittee, which will meet in the full Commerce Committee's morning time slot, as well as at its regular afternoon time. If the bill starts moving, chances will increase that the different parties will start talking to each other in good faith. At this point, though, the bill's fate is far from certain.

In wacky House Agriculture meeting, cigarette tax hike is whacked in half

It was enough to make one long for the old days of meetings in smoke-filled rooms. For 2½ hours Tuesday, in a room far too small to accommodate the crowd, the House Agriculture Committee debated Gov. Phil Bredesen's 40-cent cigarette tax increase, ultimately reducing it to 20 cents and diverting all the money from education. There was nothing close to agreement on what the amended legislation actually did at the time members voted — nor for hours after the meeting ended.

The key point, though, was that the bill made it out of the Republican-majority committee in any form. Tuesday, it will be before the Budget Subcommittee, which likely will put it closer to the original language. The present tax is 20 cents a pack. Bredesen wants to raise it to 60 cents.

New member. Until Tuesday, the committee had nine Republicans and seven Democrats. Monday, the Shelby County Commission appointed Democrat Mary Wilder, a former teacher, as the interim representative from district 89 to replace Beverly Marrero (D-Memphis), who is now a senator. After being sworn in early Tuesday by Justice Connie Clark, Wilder was appointed by Speaker Jimmy Naifeh as a 17th member of the panel — in time for its 9 a.m. consideration of the tax bill. And Naifeh (D-Covington), who as speaker is entitled to vote in any committee, participated in the meeting himself.

As proposed by Bredesen and sponsored by House Majority Leader Gary Odom (D-Nashville), the bill would raise \$219 million for the general fund. In the separate appropriations bill, which was not before the committee, Bredesen proposes to spend nearly all the money on education. He does allocate \$15 million for anti-smoking programs and \$6 million for agricultural program grants.

The committee adopted three amendments. The first, offered by Chairman Stratton Bone (D-Lebanon), had the effect of requiring that \$21 million go for the grants, in essence removing the anti-smoking program. After relinquishing the gavel to Vice Chairman Butch Borchert (D-Camden) to present his amendment, Bone never took it back. The next amendment cut the increase from 40 cents to 20 cents. The final change, proposed by Rep. John Mark Windle (D-Livingston), was termed an attempt to make the tax hike revenue neutral by simultaneously removing the sales tax from food items approved by the federal Women, Infants, and Children (WIC) program. Although the committee's attorney noted that the amendment was outside the caption, or subject, of the bill — which does not address the code section containing the sales tax — it nonetheless was adopted.

There then was general confusion and disagreement about whether the amendment also restored the tax hike to 40 cents, since as written it referred to a 60-cent tax. Windle insisted he had proposed an "oral" amendment and had referred to the draft only to read the list of approved WIC items. At one point, House Clerk Burney Durham, noting that Windle was reading from the written amendment when explaining his change to the panel, said he couldn't "have it both ways." Windle snapped that "if you get a vote on this committee, you can make a comment like that." When the panel voted to cut off debate, a confused discussion continued. Naifeh twice reminded Borchert of the parliamentary situation.

The bill was approved 11-7, with both Naifeh and Rep. Wilder voting yes along with six other Democrats and three Republicans — Reps. Chris Crider of Milan, Dale Ford of Jonesborough, and Steve McDaniel of Parkers Crossroads. Only one Democrat, Rep. John Litz of Morristown, voted against the bill.

After the meeting, legislative attorneys listened to a tape and concluded Windle had indeed offered an oral amendment and that the tax hike was kept at 20 cents.

Next step. With the WIC amendment outside the caption of the bill, the measure will be reworked in Budget Subcommittee. But Senate Republican leaders don't want to act on the bill until revenue projections are revised next month. They are cool to the idea of a 40-cent tax hike and have been discussing some ideas, including a December with no tax on food, that could make the governor's troubles in House Agriculture seem petty.

Tennessee Notes & Quotes

■ Former senator **Fred Thompson** disclosed in an interview on the Fox News channel that he was diagnosed with non-Hodgkin's lymphoma in 2004. He said he has never been sick from it and that doctors have told him this slow-progressing type of cancer probably won't affect his life span. The disclosure was widely seen as an indication he is giving serious consideration to a presidential bid.

■ A *Los Angeles Times/Bloomberg* poll found **Thompson** the second choice of Republican voters, behind only **Rudy Giuliani**, who came in at 29%. Thompson had 15%, with his friend Arizona Sen. **John McCain** at 12%. The margin of error was five percentage points. The questioning was done April 5-9. Thompson's cancer disclosure was made April 10. While the survey is encouraging for the actor/politician, whose numbers have been rising since his acknowledgment of interest March 11, it would be a mistake to read too much into it. When voters were asked which Republican would be strongest in the general election, Thompson came in fourth at 7%. On the question of who is best qualified, he finished fifth at 8%, behind Giuliani, McCain, former House speaker **Newt Gingrich**, and former Massachusetts governor **Mitt Romney**.

■ The **John Ford** bribery trial got under way in Memphis and will continue this week. Jurors were shown videotapes of the former state senator receiving cash payments from undercover operatives. Retired FBI agent **Joe Carroll**, who posed as E-Cycle president **Joe Carson** in the FBI sting, testified that the phony company also "gave bribes" to Sen. **Ward Crutchfield** (D-Chattanooga) and then-Sen. **Jeff Miller** (R-Cleveland) to sponsor legislation with Ford. Crutchfield, one of five current or former legislators charged in the sting, is to be tried July 16. Miller, who reported as a campaign contribution the \$1,000 in cash he was given, is not charged. Carroll was asked if E-Cycle made a payment to then-Rep. **Tré Hargett** (R-Bartlett), who is not charged. "We tried to," he said.

■ Farmers Insurance won approval from the Department of Commerce and Insurance last week to provide a 10% discount on automobile insurance to members of the Tennessee Education Association. That may sound like a routine matter, but it wasn't. Under current law, discounts are permitted for professional associations with more than 5,000 members that are in at least 80 counties. The only association benefiting was the Tennessee Bar Association, which gets a discount from Geico.

■ There was disagreement about whether teachers are professionals — they don't pay the professional privilege tax as do doctors, lawyers, engineers, architects, and others, including lobbyists. At the behest of Farmers Insurance, Rep. **John DeBerry** (D-Memphis) and Sen. **Bill Ketrone** (R-Murfreesboro), along with six other legislators, filed a bill to make eligible any association or "occupational classification" with over 1,000 members anywhere in the state. The effort was supported by the TEA. The measure, opposed by other auto insurance carriers, had been deferred three times in the Senate Commerce Com-

mittee. It would have been before the House Industrial Impact Subcommittee last week, but after the department's action, which applies only to teachers who are members of TEA and their families, the bill was dropped.

■ The Davidson County Election Commission got itself in a royal mess when it set the date for this year's Metro runoff election as Sept. 13. That's the second Thursday in the month, when the Metro Charter says it's supposed to take place. But this year it also happens to be Rosh Hashana. The public outcry almost certainly will force the commission to reconsider when it meets today (April 16).

■ An Ethridge & Associates poll commissioned by *The Commercial Appeal* found City Council member **Carol Chumney** leading the field of announced Memphis mayoral candidates at 32%, with incumbent **Willie Herenton**, who is seeking a fifth four-year term, at 20%. **Herman Morris**, former head of Memphis Light Gas & Water, had 16% and former Shelby County commissioner **John Willingham** 3%. Chumney, a former state legislator, has been a harsh critic of Herenton. The poll also asked voters whom they would choose if county Mayor **A C Wharton** were to enter the race. Wharton, who has said he will not oppose Herenton, came in first at 31%, with Chumney at 20% and Herenton 12%.

■ "I think it was very obvious that the member running the meeting didn't know what was going on, let alone any member of the committee, so I think anybody who voted for this can't really know what they voted for, because I don't think anybody in the room knew. I think if anything what this was, was a hodgepodge, hackneyed attempt by the Bredesen administration just to get this bill out of this committee. I think the shenanigans were orchestrated and that it's a sad way to do business." — *House Minority Leader Jason Mumpower* (R-Bristol), after the Agriculture Committee's vote on the cigarette tax increase.

■ State revenues in March came in \$69.2 million above estimates, pushing the total overage for the first eight months of the fiscal year to \$185 million. Sales tax receipts were \$6.2 million above projections but still lag \$48.6 million behind for the year. The "over-collection" to date is due chiefly to the franchise and excise taxes, which were \$44.2 million higher than projected for March and are running \$161 million ahead. April is a crucial month for the business taxes, so state officials are cautious. But a legislative fight is looming over the unbudgeted growth. Wednesday, the House Democratic Caucus staked out its position, voting to use \$95 million to convert the governor's proposed 2% bonus for state employees, teachers, and higher education workers to a permanent raise.

■ Rep. **Brian Kelsey** (R-Memphis), who recently called attention to smoking by colleagues in smoke-free state facilities, clearly is a bipartisan watchdog. In the House GOP conference room, a bulletin board is plastered with members' campaign bumper stickers. Also tacked up is a memo from Kelsey, citing several Tennessee Code sections that prohibit the stickers on state property.