

Cable clash

Gloves are off as AT&T's bid to enter market nears showdown

By Richard Locker

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NASHVILLE -- You've seen the TV ads in the big fight in the Tennessee legislature among the cable industry, the telephone giant that wants into the cable business, and local governments wanting to retain their authority to award cable franchises.

You wonder:

The cable company's been raising rates for years, won't sell me only the channels I want -- and doesn't even talk to me about its customer service. Yeah, I want more choices now!

But what's AT&T's angle?

Why are its executives fighting so hard for a bill, which they wrote, to shortcut their entry into the cable market? Why do their TV ads proclaim lower prices and other consumer benefits when they've said they won't wage a price war? Why does the bill ban state and local governments from enforcing consumer complaints and from requiring them to serve any specific area? And what about this provision that grants authority to a provider "to construct, maintain and operate facilities through, along, upon, over and under the lands of any person . . . any public lands, rights of way or waters of this state"?

Why are city and county mayors opposing AT&T when everyone wants more cable competition, regardless of whether the state or cities or counties issue the business license? Don't they just want to keep that 5 percent I pay on my cable bill flowing to municipal coffers?

Those questions constitute the basic issues lawmakers must resolve in the next few weeks over the proposed "Competitive Cable and Video Services Act" drafted by AT&T. If they're not resolved before the legislature adjourns next month, there'll be no action before 2008.

All sides agree that the outcome will set telecommunications policy in Tennessee for a decade -- with impacts far beyond who delivers the History Channel into your home. The debate also will determine whether rural areas, small towns and other underserved areas get competition and the quality broadband Internet service they need for economic growth and education, whether school-based cable channels like Germantown High's award-winning program continue -- and how much we pay for it all.

The basics

AT&T, which acquired BellSouth last year, wants to start selling cable TV, or what it calls video services, in Tennessee by investing nearly \$250 million in new technology to deliver digital Internet-protocol TV (IPTV) over its telephone lines. The technology also promises to improve its Internet services and make them available on your TV, as cable already does.

Tennessee -- like most states -- currently requires would-be providers like AT&T to negotiate separate cable franchise agreements with each city and county where they want to provide service, as Comcast, Charter and Time Warner have done for decades.

These agreements generally include "build-out" requirements (the areas where the network must be built to provide service to customers, usually covering the entire town or city or densely populated suburb); "franchise fees" paid to local government (based on the company's gross revenue within the franchise area and passed on to customers); how customer complaints are handled; whether free or discounted service is provided to schools, libraries and public buildings; the number of public, educational and government access (PEG) channels available locally, and requirements on the use and repair of public rights-of-way.

Some cities are better at negotiating favorable terms for their citizens than others. From a consumer standpoint, Germantown's cable franchise agreement is considered a model, outlining specific quality of service provisions and allowing fines against the cable company if they're not met.

But testimony in legislative hearings indicated that many towns do very little other than collect franchise fees.

AT&T argues that the current process, requiring negotiations and agreements with up to 347 municipal and 95 Tennessee county governments, is so cumbersome that it's an economic barrier for new entrants in the market -- that investors won't finance the expansion unless they're reasonably assured of an adequate return.

So AT&T drafted a bill that, if passed, sets up a new framework for entering the video service business -- by applying to the Tennessee secretary of state for a certificate allowing them to provide service anywhere in the state an applicant chooses.

Under AT&T's bill, a certificate must be issued within 10 days of application, with few requirements on the operation. It explicitly bans any state and local government from imposing any service requirements beyond the minimum required by the Federal Communications Commission.

It requires local governments to receive customer complaints and seek a "voluntary resolution" -- but it bans them from taking any enforcement action to resolve them. It creates no mechanism for the state to enforce complaints.

It specifies that no state or local government can impose any "build-out" requirements on a state certificate-holder, which would require network construction or service availability in any specific area. Opponents say that leaves AT&T free to "cherry pick" its customers, making services available in some neighborhoods but not others.

The bill does prohibit denying access to services "to any group of potential residential subscribers" based on their income. But it requires "cost, density, distance and technological or commercial limitations" to be taken into account in determining if such discrimination exists. And the bill prohibits existing cable operators from using the state permit process until their local franchise agreements expire -- or until a new competitor starts providing service in a specific locality.

Memphis lawyer John Farris, lobbying for the Tennessee Cable Telecommunications Association, argued in a legislative hearing that effectively gives AT&T control over when Comcast and other competitors would become eligible for the reduced restrictions under the new regulatory scheme. "We want a level playing field," he said.

Rep. Charles Curtiss, D-Sparta, a sponsor of the bill, acknowledged there "will be winners and losers" under the bill. And no one expects the new services to be available to every nook and cranny of the state.

The status

After weeks of discussions, a bipartisan group of senators and representatives filed the AT&T bill Feb. 14. AT&T lawyer Joelle Phillips told a joint hearing by the House and Senate Commerce Committees last Monday that consumers will be "better off on price, choice and quality of service" if the bill passes.

The association of cable operators; the Tennessee Municipal League, representing city governments, and the Tennessee County Services Association, for county governments, announced their opposition.

AT&T sought to address concerns of local governments over franchise fees by requiring new video service providers to match the franchise fees paid by existing cable companies to each city and county where the new provider will operate. But city and county lobbyists said during the hearing Monday they still believe the bill erodes consumer protection, removes local government control over public rights-of-way, puts the PEG channels at risk, eliminates build-out requirements and cuts franchise-fee revenue because its definition of gross revenue covers less than existing law.

Both sides have hired phalanxes of lobbyists to work on the bill -- "I hired a football team," AT&T chief lobbyist Jim Spears told the committees -- as well as public relations firms to sway public and media opinion, and are running the ubiquitous ads.

Legislative leaders last week ordered all sides to negotiate a compromise. Lawmakers said it was clear the bill is only a starting point for negotiations and that few would vote for it the way it's now written. AT&T's Phillips and the company's Tennessee president, Marty Dickens, said they want to negotiate but warned that the investment will go to other states if a bill allowing the single statewide entry isn't passed this year. AT&T has won similar bills in 12 states and is lobbying in more.

Last week, AARP entered the fray in an attempt to represent consumers in the debate -- and legislators appeared to be listening. AARP suggested the bill be rewritten to:

Prevent "redlining" out low-income neighborhoods and ensure the law requires all providers make their services available in all neighborhoods.

Establish consumer service standards. AARP Tennessee legislative director Brian McGuire told the hearing Monday that the bill's provisions are "a giant step backward for consumers" and that the FCC requirements should be the floor for protections and more should be added.

Establish effective enforcement mechanisms, including authority to fine providers that don't meet standards.

Ensure access to a minimum number of local channels for public access, governmental and educational programming.

And the legislature should consider placing oversight of the new law at the Tennessee Regulatory Authority, which regulates privately owned utilities, instead of the secretary of state's office.

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