NC League of Municipalities: Southern Cities Article

North Carolina cities and towns will soon be out of the video franchising business with passage of legislation by the General Assembly that makes the state responsible for granting these franchises. Legislators passed HB 2047 – Video Franchising at the behest of telephone companies, who want to enter the video franchising market, but do not want to obtain local franchises.

The legislation, effective Jan. 1,2007, places franchising authority with the N.C. Secretary of State's Office. Companies can file to receive a state franchise, and granting of the franchise is automatic if minimal conditions are met.

"Municipal officials support competition, but we remain unconvinced that this legislation will promote true competition," said NCLM Executive Director S. Ellis Hankins. "This bill will allow phone companies to offer video/phone/Internet package services to selected customers, and current cable operators to abandon any neighborhood or area that operator feels is not making enough of a profit."

"We were able, however, to protect local control over rights-of-way and secure alternate revenues that likely will bring in more revenues to local governments, on a statewide basis, than the previous franchise fees did," said Hankins.

There are no build-out requirements for state franchise holders, meaning that a company can delineate the area it wants to serve when it applies for a franchise and there are no requirements to serve all areas of a community that mean a density standard. Current local franchise holders can opt out of their agreements as soon as a state franchise holder offers service to just one customer in that local area. Also, a current local franchise holder can apply for a state franchise when the existing agreement expires.

The legislation provides alternate revenue sources to replace the franchise fees paid to cities and towns. Municipalities will receive percentages of the state telecommunications sales tax, the cable sales tax and the satellite sales tax. These will provide an estimated $65.3 million statewide, an amount that should equal what local governments have received from franchise fees.

Municipalities retain the right to control public rights-of-way. The N.C. Attorney General's office will handle customer service complaints.

There are requirements for public, educational and governmental (PEG) channels. Cities with at least 50,000 residents will have a minimum of three initial PEG channels, and those with less than 50,000, a minimum of two, plus channels in excess of those minimums that are activated under the terms of an existing franchise agreement as of July 1, 2006. Those municipalities without seven PEG channels are eligible for an additional channel if they meet certain requirements.

Some money is set aside for operation of PEG channels and associated capital costs. Each PEG channel is eligible to receive $25,000 annually for support (up to three per local government), and a PEG grant fund will be established with grants up to $25,000 available.

If a local government charged a subscriber fee for PEG channels, it is required to continue to spend that amount of money on PEG channels. Also, if a local government used any of its franchise fee revenues on PEG channels, it must continue to spend at least the same amount of money on PEG channels in perpetuity.

"Although it is certain that local governments will no longer be franchising video services, it is not clear to use, what level of government will be taking on this responsibility," said Hankins. "The U.S. House has passed a bill that effectively nationalizes video franchising authority, and the Senate is considering its own version. So we may soon see national video franchises and consumers having to call the Federal Communications Commission when their local company is performing as promised."