

(R-82-1769)

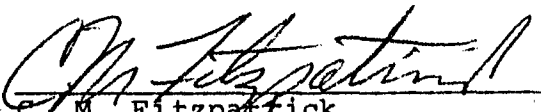
RESOLUTION NUMBER R- 256289

Adopted on APR 26 1982

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

That this City Council hereby adopts the recommendations of the Director of Governmental Relations as stated in his memorandum regarding pending cable television legislation dated March 30, 1982, a copy of which is attached hereto.

APPROVED: John W. Witt, City Attorney

By   
C. M. Fitzpatrick  
Senior Chief Deputy City Attorney

CMF:vl:490  
04/15/82  
Or.Dept:Mayor  
Form=r.none

## MEMORANDUM

Phone: 236-6276

E NO.:

DATE : March 30, 1982

TO : Committee on Rules, Legislation and Intergovernmental Relations

FROM : Director, Intergovernmental Relations Department

SUBJECT: Overview of Pending Cable Television Legislation

The current state and federal legislative session may turn out to be an important one for cable television legislation. Close to twenty bills have so far been introduced and more are expected. The purpose of this report is to assist in formulating a City position on pending cable television legislation by providing an overview of the conceptual issues that could directly impact cities.

Background:

In 1963 the City entered into its first franchise agreement with a cable television (CATV) operator. Over the years, the City has had franchise agreements with as many as eight CATV operators at one time. Presently, there are two major operators providing CATV to approximately 80% of the serviceable areas of the City.

During the past five years CATV franchise fees have become a major City revenue source growing at an average rate of over 50% a year. The Property Department estimates Fiscal 1982 revenue at \$875,000 growing to a projected \$950,000 in Fiscal 1983. This revenue results from long-term franchise agreements based on the City receiving 3% of the gross CATV operator's revenue.

Under existing law (Government Code Section 53066.1, hereafter "AB 699") a CATV franchise which meets certain specified conditions may elect to be exempt from regulation by a local franchisor with respect to cable subscriber rates, charges and rate structure. However, there is some question as to whether AB 699 applies to charter cities. In recent correspondence to the Mayor, City funds (\$1,000) were solicited to support the cities of Pittsburgh (Ca.) and Antioch in a lawsuit in Contra Costa Superior Court challenging the validity of AB 699. To date in San Diego, AB 699 has not proven to be a barrier and the City has taken an active role in rate regulation based on negotiated provisions within the franchise agreements. Although the future is uncertain due to pending legislation, current City agreements allow CATV operators to adjust their rates a maximum of 10% annually based on 6/10 of the Consumer Price Index without a public hearing.

A recent important development in the CATV arena was the U.S. Supreme Court ruling in the Community Communications Inc. v. City of Boulder case. Briefly, the Supreme Court found that local governments do not possess the anti-trust protection accorded to states when they attempt to regulate cable television

R-256289

00055

or other business activities within their community, unless they are discharging a responsibility specifically assigned to them by state law.

Discussion:

With the CATV industry in California growing rapidly and the future holding great promise for continued expansion, CATV is the subject of a very large number of legislative proposals covering a variety of areas. Rather than attempting to describe each specific measure, the following information is provided to clarify the major legislative concepts bearing the most significant potential impact on the City. The purpose of this approach is to generate a general set of policy guidelines to be used in formulating a City position on specific bills.

- Proposed Modifications to AB 699 - Primarily a regulation vs. deregulation issue, there have been a variety of bills introduced that would modify, expand or reduce the legal authority for local governments to oversee CATV rates and service. While many of the bills merely attempt to clarify technical provisions in AB 699, others are designed to strip the authority of cities and counties to regulate CATV. We believe that it is important for the City to maintain its regulatory role with the CATV industry. To this end, the City Attorney is working closely with the League of California Cities and industry representatives to attempt to reach an agreement on the reforms needed in AB 699. In addition, the City may want to consider supporting the cities of Pittsburgh and Antioch in their lawsuit testing the validity of AB 699.
- Responses to the Boulder Decision - There are at least two state bills and one federal bill attempting to address the U.S. Supreme Court's Boulder decision and grant anti-trust immunity to local jurisdictions for their CATV regulation efforts. The major question here is whether to approach the problem legislatively from a state or national level. Again, the City Attorney is very involved in this issue and is providing input from a City perspective to both the National and California Leagues of Cities.
- Local Control - One bill in particular proposes to regulate CATV on a statewide basis. Referred to as the Cable Communications Act of 1982, AB 2742 (Robinson) is lengthy and comprehensive. Its primary feature is removal of CATV companies from local control when existing franchise agreements end and placing them under a new Public Utilities Commission (PUC) division created to regulate CATV. Cities and counties would not be allowed to charge any franchise fees for use of public rights-of-way, but cable operators would have to pay to the PUC 10% of gross operating revenues.

This proposal would take away the right of local government to receive reasonable compensation for the use of rights-of-way. It would also make it difficult if not impossible to tailor a cable system to the needs of a local community. Further, cable systems are local in nature, unlike other "public utilities," and a legitimate need for statewide regulation

R-256289

00066

has not been demonstrated. Finally, AB 2742 would remove from the City a legitimate, fast growing revenue source.

Recommendations:

- 1) Proposed Modifications to AB 699 - It is recommended that the City oppose any legislation that would reduce or eliminate the City's legal authority to regulate cable television rates and services. It is also suggested that the City consider supporting the cities of Pittsburgh and Antioch in their lawsuit testing the validity of AB 699.
- 2) Responses to the Boulder Decision - It is recommended that the City support legislation that would grant anti-trust immunity to local jurisdictions for their cable television regulation efforts. In addition, it is requested that the City Attorney keep the committee apprised of his efforts through a League of California Cities Ad Hoc Committee to extend this anti-trust immunity to other discretionary areas.
- 3) Local Control - It is recommended that legislation be opposed which would remove cable television companies from local control and would deny cities from charging franchise fees for use of public rights-of-way.



Scott Harvey

BAH:mpa

cc: John Witzel  
Bill Harrington  
Marty Breslauer

R- 256289

00067

APR 26 1982

Passed and adopted by the Council of The City of San Diego on \_\_\_\_\_, by the following vote:

Councilmen	Yeas	Nays	Not Present	Ineligible
Bill Mitchell	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bill Cleator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Susan Golding	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Struiksma	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mike Gotch	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dick Murphy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lucy Killea	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON

Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

(Seal)

By Marjorie G. Pontecorvo, Deputy.

Office of the City Clerk, San Diego, California

Resolution Number R-256289 Adopted APR 26 1982