

8/25/05

51-R-05

**A RESOLUTION**

**A Resolution of the City Council of the City of Evanston Expressing Opposition to Senate Bill 1504 Known as the "Broadband Investment and Consumer Choice Act" (S. 1504), Urging Congressional Representatives to Refrain from any Form Of Support or Co-Sponsorship of S. 1504 and to Vote in Opposition to S. 1504, and Directing that this Resolution be Forwarded to the Illinois Congressional Delegation, Other Members of Congress as Deemed Appropriate, and the President Of the United States; and Providing an Effective Date.**

**WHEREAS**, on August 2, 2005, Senators John Ensign and John McCain introduced the Broadband Investment and Consumer Choice Act of 2005 (S.1504); and

**WHEREAS**, the City Council of the City of Evanston, Illinois opposes the passage of S.1504 because:

- a) The bill would preempt all local authority over the provision of cable and video services within the community, including the ability of the local government to provide appropriate oversight to entities conducting business within their jurisdiction and in the local public rights-of-way;
- b) The City's negotiated contract with its cable operator would be abrogated under the terms of the bill;
- c) The bill would substitute a new compensation methodology on the parties to the City's existing franchise contract, depriving the City of the agreed-upon bargain by lowering the existing franchise fee and replacing it with a fee which must be justified as being "reasonable" in the eyes of the user, limited to management costs (which denies the rights of the property owner to obtain fair and reasonable compensation for the use of public property for private gain), and not in excess of 5%;
- d) These requirements and restrictions would result in the creation of a subsidy to the cable and telecommunications industries; at the expense of the City's taxpayers;

- e) The bill would further substantially reduce the revenues that are now includable in the definition of "Gross Revenues" so that even if the franchise fee did in fact remain at 5%, the City's revenues from the fee would be significantly less due to the smaller revenue base;
- f) The bill would substantially reduce the amount of capacity which may be required by local governments to meet their public, educational and government ("PEG") access needs, while stripping the City of the ability to obtain capital support for the use of PEG capacity – part of the bargain contained within the City's negotiated franchise agreement - with the result that the community's cable-related needs and interests would not be met;
- g) The bill would deprive local citizens of the ability to address local issues locally, by removing to the state all customer service issues, and further by denying consumers any form of recourse for any actions of a communications provider;
- h) The bill would eliminate any build-out requirements for any video service provider, thereby allowing providers to discriminate based on the wealth of the local neighborhoods they choose to serve;
- i) The bill would preempt any state or local law that is not generally applicable to all businesses, thereby potentially preempting any law applicable to only certain classes of business, such as utilities and rights-of-way users (such as requiring undergrounding of facilities and ensuring electric code compliance);
- j) The bill would prohibit the City from imposing any fee for issuance of rights-of-way construction permits yet would require the City to act on requests for permits in a timely manner as determined by the FCC, thereby insinuating inappropriate federal government involvement in the basic day-to-day management of local rights-of-way;
- k) The bill would prohibit municipalities and their utilities from providing communications services without giving a right of first refusal to private industry, and would then grant industry unfettered access to all municipal facilities and financing in the event private industry chooses to provide services;
- l) The bill would deprive the City of the authority to establish and maintain government owned and operated networks, known as institutional networks, that may be utilized by first responders and other government officials in the day-to-day management of the City's business;
- m) The bill would permit broadened preemption of local zoning decisions relating to the placement of cell towers, depriving the City of the authority to ensure that

such towers are safely and appropriately located in areas to provide the greatest degree of services without unnecessarily posing a hazard to the public health, safety and welfare; and

n) The bill would eliminate the protection the City currently has against liability for damages and attorneys fees in lawsuits brought by communication service providers against local governments, a type of litigation that the bill would seem to invite service providers to bring.

**WHEREAS**, for these reasons, the City Council finds that it should oppose S.1504 and urges the Illinois Congressional Delegation and other members of Congressional Delegation and other members of Congress to oppose S. 1504; and

**WHEREAS**, the City Council finds that this Resolution should be forwarded to the Illinois Congressional Delegation, other members of Congress as deemed appropriate, and to the President of the United States.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:**

**SECTION 1:** That the reasons stated above, the City Council of the City of Evanston, Illinois, declares its opposition to S. 1504 and urges the Illinois Congressional Delegation and all other members of Congress to oppose S. 1504.

**SECTION 2:** That the City Council hereby directs that this Resolution be forwarded immediately to the Illinois Congressional Delegation, other members of Congress as deemed appropriate, and to the President of the United States.

**SECTION 3:** That this Resolution shall be in full force and effect from and after the date of its passage and approval in the manner required by law.

Lorraine H. Morton  
Lorraine H. Morton, Mayor

ATTEST:

Mary D. Morris  
City Clerk

Adopted: September 12, 2005