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AT&T's video plan gets FCC help, but legislative path not easy

A major victory for AT&T last week on the national front may have complicated its effort to pass a cable TV franchising bill in Tennessee. New rules issued by the Federal Communications Commission will make it easier and faster to obtain local franchises, and the bill's opponents argue that any need for state action has been erased.

But AT&T says dealing with more than 30,000 local franchising entities throughout the country, including 440 in Tennessee, is still too cumbersome a process for it to enter into immediate competition with cable providers.

The bill the company is pushing would allow providers of video services — including AT&T's "U-verse" Internet protocol network — to obtain a statewide license instead of multiple franchises from cities and counties.

The Competitive Cable and Video Services Act, jokingly known around the Capitol as the Lobbyist Relief Act of 2007, has yet to see even committee action, but it is already the subject of an all-out public relations war.

The cable TV industry is furiously opposed to the legislation and has been running television ads warning the public not to let "AT&T's shortcut shortchange Tennesseans." AT&T has aired commercials of its own. And TV4US, a national organization promoting video competition, also has been running commercials, as well as print ads, arguing that "real competition" could bring down cable TV prices. AT&T is a member of the organization.

More than 40 lobbyists are or will be involved in the fight to one degree or another, including 24 registered as representatives of either AT&T or BellSouth. The two companies recently merged.

Local opposition. AT&T's big problem is that the Tennessee Municipal League and four lobbying organizations for county officials are against the bill. City councils in Knoxville, Nashville, Johnson City, and Jackson have passed resolutions against it, and the mayors of Memphis, Nashville, Knoxville, and Chattanooga are opposed.

The company has tried to address concerns over control of rights of way and has language in the bill guaranteeing that the local governments would continue to receive a percentage of gross receipts under state licens-

ing. Indeed, it argues that infrastructure investment spurred by the legislation would increase city and county revenues from personal property taxes. But local interests are not convinced they'll be better off.

Legislature. The bill was introduced last year at the behest of BellSouth, but the company didn't push it, hoping to win over local governments before pressing ahead. This year's modified version — SB 1933/HB 1421 — is sponsored by Sens. Bill Ketron (R-Murfreesboro) and Doug Jackson (D-Dickson) and Reps. Steve McDaniel (R-Parkers Crossroads) and Charles Curtiss (D-Sparta).

House Speaker Jimmy Naifeh referred the bill to the Commerce Committee, which Curtiss chairs, though he told reporters Thursday that it was a close call between Commerce and the State and Local Government Committee. He said the referral was made with the understanding that the bill might also be sent to State and Local, and he noted that Curtiss and State and Local Chairman Ulysses Jones (D-Memphis) "are communicating very well."

The Commerce referral is a more favorable one for AT&T, which routinely lobbies the committee. State and Local, on the other hand, is routinely lobbied by city and county representatives. The Senate bill also went to Commerce. The prime Senate sponsor, Ketron, is chairman of Senate State and Local.

Naifeh observed that "everyone's positioning" on the AT&T bill, which he termed the Lobbyist Employment Act of 2007. He suggested that it "might have to be the Lobbyist Employment Act of 2008" — an indication the bill could be held up this year. Other House leaders mentioned the FCC ruling.

In past battles over big telecommunications issues, Naifeh more than once has had a key lieutenant bring all the parties together to meet over a period of days or weeks until a compromise was hammered out. Those disputes involved competition for telephone service.

The speaker's wife, Betty Anderson, is one of eight lobbyists registered for the Tennessee Cable Telecommunications Association, the organization of Comcast, Charter, Time Warner, and other cable TV companies.

FCC. The new FCC rules, adopted in December and posted last Monday, require local governments to act on video franchise applications within 90 days. They also prohibit extraordinary demands on applicants for deployment of hardware or requests unrelated to providing video service. The FCC's final order notes that Verizon Communications, which like AT&T uses Internet technology for video service, presented evidence that it was asked to wire churches, buy streetlights, install cell phone towers, and provide cell phone subsidies for city employees.

The commission pointed out that most communities in the United States lack cable competition, and it concluded from "the voluminous record in this proceeding" that the franchising process "unreasonably interferes with competitive entry."

The new rules were adopted on a party-line vote, with the three Republicans, including Commissioner Debi Tate of Nashville, voting yes and the two Democrats no.

Build-out. Opponents to the AT&T bill argue that the company now could apply for local franchises throughout Tennessee and have them by the end of the summer. They argue the principal advantage the company gains from the legislation is elimination of the "build-out" requirement now in place for the incumbent cable providers. Franchise holders are required to extend service throughout the franchise area. With a state license, a provider could serve the areas it wishes, and opponents say AT&T wants to "cherry pick" the affluent ones.

Civil rights organizations and other groups nationally have spoken out on this issue and called for anti-discrimination provisions in state and federal laws. The AT&T bill prohibits the denial of service to any neighborhood based on the income of the residents.

The Tennessee AARP contends this protection means little, because it is limited to areas in which the video service provider has chosen to offer service. AARP believes cherry picking could still take place. It has told lawmakers that it cannot support the bill as drafted but would like to work with the sponsors and others on consumer protection amendments.

AT&T says that even low-income areas tend to utilize cable service in high numbers.

Broadband standoff. Having local government on its side gives the cable industry the upper hand at the moment. Cable rates have risen faster than most other services and goods, and consumers are eager for competition — an advantage for AT&T that cable is trying to neutralize with advertising.

Both sides have engaged Nashville public relations firms, with cable utilizing Joe Hall Strategies and AT&T advised by McNeely Pigott & Fox. And the lobbyist lists include some of the biggest names on Capitol Hill.

AT&T, through concessions and changes, needs to win over at least some of the local government forces to have a shot at pushing the bill through. If the vote were to take place now, it probably wouldn't fly.

But a lot of talking and perhaps dealing lies ahead. A great deal can change in a few weeks. Or, in a year.

Legislators balking at 40-cent tax hike

It's not as if his whole proposal is going up in a cloud of smoke, but Gov. Phil Bredesen's proposed 40-cent cigarette tax increase is encountering strong opposition.

Several Republican lawmakers have questioned the need for such an increase in good economic times. And some rural Democrats who traditionally have resisted higher levies on tobacco products also have reservations.

Last Monday, speaking to the Pachyderm Club in Chattanooga, Senate Majority Leader Mark Norris (R-Collierville) said if the legislature "voted on the budget tomorrow," it wouldn't pass.

The week before, Bredesen went out of his way to tell reporters — without being asked — that there was no truth to rumors he was already discussing a lower cigarette tax. He said he would stick with the 40-cent proposal, which would raise \$219 million, mostly for new education programs. House Minority Leader Jason Mumpower (R-Bristol) later observed that in the legislature, things considered non-negotiable in February and March often get negotiated in April or May.

Thursday, House Speaker Jimmy Naifeh (D-Covington) said there may have to be a compromise on the tax hike, perhaps making it 20 or 25 cents and finding another source of revenue to make up the difference. He said it was early and important to be "flexible and fluid." He said "we're not going to push anyone" to vote for 40 cents.

Surprise. The current cigarette tax of 20 cents a pack is among the lowest in the nation. Bredesen signaled in December that he intended to propose an increase. Most observers expected him to call for doubling it — or for an amount in that range.

But the political logic of tripling the rate, as he proposed in early February, made some sense. Even at 60 cents, the rate would be lower than in many states. And a tax increase is a tax increase. Negative consequences from proposing or voting for one wouldn't be much different at 40 cents than at 20. So why not raise more money and try to boost education?

Of course, the extra 20 cents a pack would be significant for lots of cigarette smokers. The magnitude of the proposed increase caught tobacco interests by surprise, and they have been fighting it.

Reynolds American, the parent company of R.J. Reynolds, recently retained lobbyist/consultant Steve Adams, a former state treasurer who, of course, has expertise in identifying alternative revenue sources.

Outlook. It is early, and the governor has yet to apply his full court press. But the Republican-controlled Senate makes his task harder than in the past. A popular proposal to use part of the tax hike to reduce the sales tax on food further complicates the situation.

And displeasure on some fronts with his plan for spending the proceeds doesn't help either. Last week, he announced that he intends to work in this session on making refinements to the Basic Education Program funding formula. Hamilton and Knox counties in particular have

- Gov. Phil Bredesen gave the first CoverTN insurance card Thursday to the sales manager of Pepper Patch, a gourmet food store in Franklin, ceremonially kicking off CoverTN, which officially launches April 1. Bredesen was to be in Kingsport and Memphis on Friday to promote the plan, which offers state-subsidized commercial health insurance for companies with 25 or fewer employees, at least half of whom earn less than \$41,000 per year.
- State Sen. Jerry Cooper (D-Morrison), who was seriously injured in a one-car accident Feb.

7, is back home after undergoing surgery on an arm. Cooper faces a DUI charge in connection with the accident.

- Former state revenue commissioner Loren Chumley has joined the Nashville office of KPMG, one of the largest professional services firms in the world, as a principal in state and local tax practice.
- U.S. Rep. David Davis (R-Johnson City) made a visit to the Army's Walter Reed Hospital last week to inspect conditions amid a public scandal over treatment of soldiers returning from

Iraq. Davis, who owns a health care business, concluded the main hospital's care was good but said there were problems with the operation of nearby buildings for long-term care.

- Former Senate Majority Leader Howard Baker (R-Tenn.) is forming a new policy organization with three other former majority leaders. The Bipartisan Policy Center will seek to propose nonpartisan solutions to some of the nation's politically charged problems. Involved are George Mitchell (D-Maine), Bob Dole (R-Kan.), and Tom Daschle (D-S.D.).

been dissatisfied with their treatment under the BEP. Those systems don't like the way Bredesen plans to distribute \$147 million in new money for schools.

A governor can move votes in a hurry when he has to, and Bredesen's tax proposal shouldn't be counted out. But just in case, he might want to have a plan B.

Bredesen vows, again, to tackle BEP

The Basic Education Program funding equalization formula, established in 1992 in anticipation of a state Supreme Court ruling, has been a pain in the neck for Gov. Phil Bredesen from the time he took office.

In 2003, addressing a court decision on equalization of teacher salaries, Bredesen budgeted \$27 million to bump up pay for teachers in 75 school systems with average teacher pay of less than \$37,000. And he appointed a task force to study the problem. The following year, he won approval of a plan adding \$35 million, on top of the ongoing \$27 million, to satisfy the equalization order, holding down the state's potential cost by lowering from 75% to 65% the portion of teacher salaries paid by the state.

Since then, he twice has expressed interest in overhauling the BEP only to reject recommendations for doing so from the BEP Review Committee because of the cost and instead target new funds to address particular concerns. The loudest complainers about the current formula, Knox and Hamilton counties, would have been the biggest beneficiaries of the last two proposed reforms. And they have been critical of Bredesen's 2007 alternative solution, to be funded from a cigarette tax hike: infusion of \$120 million into the BEP to be distributed on the basis of at-risk students, and another \$27 million allocated on the basis of enrollment growth.

In a speech to leadership groups from Knoxville and Chattanooga, Bredesen promised to work on improving the BEP formula before the new money goes in. He later told reporters that addressing Hamilton County's concerns would be easier, since its formula allocation suffers from a possibly unfair effect of a cost differential factor. He said it was harder to identify what Knox doesn't like, other than it's not getting as much money as it wants.

There are political as well as policy reasons for Bredesen to try further to address the concerns. Senate Education Chairman Jamie Woodson (R-Knoxville), with whom he has been discussing the issue, is in favor of restoring the state share of teacher salaries to 75%. Senate Finance

Chairman Randy McNally (R-Oak Ridge), who represents a portion of Knox County, also has suggested this as a possibility. It would cost an estimated \$240 million, but the \$120 million now designated for at-risk distribution could get the level to 70%. McNally also has expressed interest in the state's funding a certain percentage of positions outside the BEP formula. Virtually all school systems have more positions than the BEP justifies and funds.

The governor has reason to be wary of formula changes. The state's share of BEP funding — 75% for identified classroom costs, 50% for non-classroom costs — is an aggregate portion. Each county's share of the state money, and the resulting portion it bears itself, depends on how it stands relative to other counties in a fiscal capacity index. So, any tinkering with the formula to benefit one county means that another will lose money.

Panel gridlocks on women's pay bill

A bill by Rep. Mike Turner (D-Nashville) to strengthen the equal pay law enacted in 2004 was the subject of a parliamentary standoff Wednesday in the House Government Operations Committee, which wound up adjourning an hour early without voting on it or on a controversial Turner bill creating a state minimum wage.

Business interests didn't like the 2004 measure because it demands not just equal pay for equal work — which almost no one opposes — but equal pay for "comparable" work. The existing law applies to jobs within the same establishment, but the bill — which also created a furor last year — removes that language. Republicans interpret it to invite comparisons between jobs across regions, if not across company lines.

Democrats outnumber Republicans on the committee, but at times Wednesday Republicans had more members present and tried to send the bill out with a negative recommendation. Ultimately, neither side was able to do anything, because neither had the two-thirds majority necessary to cut off debate. Twice, when Republicans questioned Chairman Mike Kernell's (D-Memphis) interpretation of rules or procedure, he declared that the issue wasn't whether a motion was in order but whether he had recognized the member to make the motion. The bill is back on the agenda this week.

Government Operations cannot kill it. As was the case last year, the measure is a political hot potato. Its fate in the House is uncertain. It likely will be killed in the Senate.

Tennessee Notes & Quotes

■ Sen. **John Wilder** (D-Somerville) fell at home Thursday evening going out his back door and sustained a five-inch gash to the head. He was taken to the Regional Medical Center at Memphis, where he initially was placed in critical care. By Friday morning, his condition was being upgraded, and he was described by a family member as sprightly and doing well. Wilder, 85, served as Senate speaker for 36 years before losing the position in January to Lt. Gov. **Ron Ramsey** (R-Blountville).

■ Republican presidential candidate **Mitt Romney**, the former governor of Massachusetts, was in the state Tuesday, raising money in Blount County and Nashville. He has the backing of U.S. Reps. **Jimmy Duncan** (R-Knoxville) and **Marsha Blackburn** (R-Brentwood). Veteran Nashville fund-raiser **Ted Welch** is on his finance team. Meanwhile, Arizona Sen. **John McCain**, a rival GOP contender, was to be in Nashville Saturday (March 10).

■ In the blogosphere, there has been considerable buzz about the possibility that former senator **Fred Thompson** will enter the presidential race. News stories have popped up here and there, and there is even a web site devoted to the cause: draffredthompson.com. More seriously, an influential group of state Republicans has been encouraging Thompson, now part of the cast for NBC's *Law & Order*, to consider the idea. Our guess is he won't run, but who knows? The last Tennessean to run for president wound up getting in the TV business and making a movie. Maybe Thompson will do the reverse.

■ We had expected that in the Senate, where Majority Leader **Mark Norris** is the sponsor, a medical malpractice reform bill would pass to impose a cap on non-economic damages. We also expected the bill to die in the House, where Judiciary Committee Chairman **Rob Briley** opposes it. But something odd is going on. Norris (R-Collierville) and Rep. **Doug Overbey** (R-Maryville) have been meeting with Briley (D-Nashville) to see what they might agree on to cut down on frivolous lawsuits and hold down insurance costs. The lawmakers are trying to put together a compromise that would require lawyers, subject to penalty, to vet their malpractice cases with experts before filing. The potential deal would eliminate an existing requirement that health care providers, when seeking insurance or medical credentials, list lawsuits in which they have been named even if the claims were quickly dismissed as invalid. The legislators also want to permit easier access to medical records needed to evaluate claims and to make it easier for both sides in a malpractice dispute to interview other doctors and personnel who were involved in the patient's care. The talks have not involved the Tennessee Medical Association or the Tennessee Trial Lawyers Association, and TMA, which considers caps essential to any reform, isn't happy about it.

■ "Don't make me your punk." — *Memphis Councilman* **Edmund Ford**, to fellow council member **Carol Chumney**, during a 15-minute diatribe Tuesday. Ford complained about how he's been treated during a federal

grand jury investigation into why Memphis Light, Gas & Water protected his business and residence from disconnection of services despite unpaid bills totaling \$16,000.

■ The state Senate voted 22-6 last Monday to require that driver's license tests be given in English only. An exception: Foreigners who document that they're here legally could take the test in Japanese, Korean, or Spanish, the three languages besides English in which it is currently offered. All 17 Republicans and five Democrats voted for the measure. In the House, the bill is in the Transportation Committee, and should it pass, Gov. **Phil Bredesen** will consider a veto.

■ "I just think we made the state a little chillier and a little less friendly place yesterday and set a bad tone." — *Gov. Phil Bredesen, the day after the Senate vote.*

■ One of the most vocal opponents to the bill during the floor debate was Sen. **Doug Jackson** (D-Dickson), who, oddly enough, said he nevertheless was going to vote for it. And he did. But then, after the vote was announced, he changed his yes vote to no. Sen. **John Wilder** (D-Somerville), who initially didn't vote, later asked to be recorded as voting yes. The six no votes were by Sens. **Charlotte Burks** (D-Monterey), **Douglas Henry** (D-Nashville), **Tommy Kilby** (D-Wartburg), **Jim Kyle** (D-Memphis), **Reginald Tate** (D-Memphis), and **Jackson**.

■ "El proyecto de ley del senador Ketron es innecesaria para varias razones, lo menos de que es que Tennessee tiene una ley que establece ingles como nuestro idioma oficial de estado." — *Minority Leader Jim Kyle, in a statement following passage of the bill that referred to sponsor Sen. Bill Ketron (R-Murfreesboro).*

■ **Kyle's** statement was issued on Senate Democratic Caucus letterhead. The caucus chairman, Sen. **Joe Haynes** (D-Nashville), voted for the bill. Of course, unless Haynes speaks Spanish or saw the "English only" version of the statement, Kyle may be in the clear.

■ The secretary-treasurer of the caucus also voted for the bill, though we hesitate to mention it. That position is held by Sen. **Lowe Finney** (D-Jackson), whose actions we somehow managed to misreport in each of our last two editions — once because a sponsor's signature was misread in the clerk's office as his and once because we misread our own scribbling and confused "Finney" with "Flinn." For the record, an attorney general's opinion on a Senate resolution concerning creationism was requested by Sen. **Shea Flinn** (D-Memphis), not Finney.

■ "I have a mother and daughter, and I think anybody who has a mother and daughter will be for this bill." — *Rep. Mike Turner (D-Nashville), on his bill to prohibit employers from paying members of the opposite sex different wages for "comparable" jobs.*

■ If someone doesn't have a mother or a daughter, he might still be for it if he has a comparable relative. Would a wife count? A sister? Daughter-in-law? Let's hope House Government Operations doesn't debate the question.