

**AUSTIN TELECOMMUNICATIONS COMMISSION
REGULAR MEETING – JANUARY 12, 2005
<http://www.ci.austin.tx.us/telcommission/>**

MINUTES

1. Call to order.

Commission Chair Wendell Ramsey called the meeting to order at 7:41 p.m.
Commissioners in attendance were Wendell Ramsey, Chad Williams, Chip Rosenthal, Deborah Hill, John Green, Jim Howerton, and Stephen Martin
Staff in attendance was Rondella Hawkins, Jane Reina and Sheena Harden.

2. Adoption of agenda.

Motion to adopt the agenda was made by Commissioner Hill; seconded by Commissioner Williams. Vote 7-0.

3. Citizen communications. (3 minutes to speak)

Pam Thompson wanted to thank the Commission for their help with the Austin Community Television (ACTV) problems the year.

Stefan Wray stated that the Auditors, District Attorney and Austin Police Department are looking at the financial aspects of Austin Community Television (ACTV). He requested the Telecommunications Commission's help and assistance in requesting a management audit of ACTV.

Commissioner Hill suggested to Mr. Wray that he request help from the Alliance for Community Media.

Rondella Hawkins, Manager of the City of Austin's Office of Telecommunications & Regulatory Affairs (TARA) stated that there was a management audit conducted in 1996 and she will place it on the TARA website for review.

4. Approval of minutes of the December 8, 2004 regular meeting.

Motion to approve the minutes of the December 8, 2004 regular meeting, with an added statement by Commissioner Rosenthal requesting TARA staff for a legislative update on how state legislation may affect city plans and programs with respect to municipal wireless, was made by Commissioner Williams; seconded by Commissioner Green. Vote 7-0.

5. Speaker Series: Presentation on City of Austin Information Technology Projects and Initiatives. (Peter Collins, COA Chief Information Officer)

This item was postponed until the March regular meeting.

6. Telecommunications & Regulatory Affairs Office Report.

Rondella Hawkins, Manager of the City of Austin Office of Telecommunications & Regulatory Affairs Offices reported:

Ms. Hawkins stated that the RFP for the management of the public access channels would need to be out in early March. This would give the Commission 45 days to finalize the scope of work. She recommended that the next meeting of the commission hold a public hearing. Staff will provide a draft scope of the RFP to the Commission.

State Level:

- 1) Report from the House Committee on Regulated Industries recently released:
Chair: Representative Phil King (Weatherford)
Vice Chair: Bob Hunter (Abilene)
Todd Baxter (Austin)
Joe Crabb (Kingwood)
Ryan Guillen (South Texas)
Sylvester Turner (Houston)

The Committee, which considers much of the legislation concerning compensation and regulation of telecommunication providers in Texas, released its report to the Legislature. The report has nine (9) “charges”, which it discusses, five of which involve telecommunications matters. One specific charge, that is Charge No. 4, deals with fees and compensation for use of rights-of-way.

Charge No. 4 states, “Examine issues related to access of rights-of-way and easements to ensure state laws encourage nondiscriminatory access for all broadband service providers regardless of technology used to offer the service or the regulatory status of the provider.”

In discussing this particular issue, the Committee notes the disparity between various service providers and what they pay in compensation. It specifically notes that cable service providers pay a 5% gross receipts fee, yet certificated telecommunications providers pay access line fees, and sometimes cable providers pay both. (As we know, this is because these are “rental” payments for ROW.) But on cable modem service they do not pay specifically for that, nor do DSL providers. However, it is also noted that with regard to VoIP provisions, cable operators are currently, but may not in the future, paying access line fees, but other VoIP providers who have chosen not to be certificated do not pay an access line fee.

The Committee has made a recommendation that the “Texas law should be amended to ensure that fees, terms, conditions for access to the public rights-of-way are competitively and technologically neutral as they apply to any communications service provider.”

Further, the report, in the text, discusses in some detail this particular recommendation, where it notes that cable service providers are required to pay permitting fees, whereas certificated providers that are paying access line fees do not. It suggests, although it does not expressly state, that that should change with either both of them paying permit fees or neither of them paying permit fees.

Charge #1, deals with what is termed intermodal competition in emerging technologies in the telecommunications market. Intermodal means competition between different modes of delivery such as satellite versus wire line versus wireless. The recommendation is to revise Texas law so that the laws are technologically neutral in their application and enforcement between the various modes of delivery.

Charge #2 suggests a study concerning the various types of broadband deployment.

Charge #6 is again another study concerning the broadband infrastructure platforms such as cable, satellite, and DSL and that those should be reviewed to determine what is the most appropriate way to encourage that kind of distribution.

The last issue on telecommunications, Charge #7, is to determine how broadband networks can be encouraged to be installed in the state. Significantly, in the recommendation, it suggests that tax-supported entities such as cities “should not be allowed to offer telecommunications or information services in direct competition with private industry.” If in fact this comes to pass, this would foreclose the ability of cities to provide services, which they have looked at such as WiFi to allow access to their citizens.

2) Private Utility Relocation of Facilities:

Private Utility Relocation of Facilities has become a real problem for cities across the state. When cities have to construct or make improvements to roads, streets, public ways, or any other public works project or make repairs to existing facilities, such as a water or sewage, private utility companies need to relocate their facilities. The position of telecommunications companies, SBC here in Austin for example, is that cities should pay for those relocation costs. Our position is that the private utility companies should pay for relocation costs.

This disagreement can cause major delays in projects and time is money. When cities had the ability to require franchises of telecommunications providers, we could write in provisions that relocations costs were borne by the provider. We lost the ability to require telephone franchises as a result of HB 1777 (enacted in 1999). Because all cities are experiencing problems with telecommunications providers relocating their facilities, this issue has moved to the forefront of the Texas Municipal League’s Legislative Agenda.

Federal Level:

- 1) S. 150 - Internet Tax Non Discrimination Act. The original Internet Tax Moratorium expired which was a 5-year congressional moratorium on taxes unique to the Internet, including taxes on access and bandwidth.

The original version of S. 150 would have permanently banned taxes but we ended up with a 3-year moratorium. The President signed into law.

The U.S. Senate approved amendments to Internet tax moratorium bill (S. 150). The one amendment important to Texas cities is the amendment that makes it clear that Texas Cities can continue to collect access line fees. Access line fees are a city’s sole compensation from certificated telecommunications companies (such as SBC, Verizon) for use of the public rights-of-way.

With the previous vague language, there was some question that access line fees could fall into a loophole and not be able to be collected by cities. The amendment language is: “Nothing in this Act shall prohibit Texas or a political subdivision thereof from imposing or collecting the Texas municipal access line fee pursuant to Texas Local Government Code Ann. Ch. 283 (Vernon 2005) and the definition of access line as determined by the Public Utility Commission of Texas.

Thanks to Senator Hutchison for her hard work on this amendment. It passed the House also. The President signed the bill into law. As TATOA President, I sent thank you note to the Senator.

- 2) VoIP/Vonage Petition

On November 12, 2004, the FCC released its Vonage Order declaring VoIP applications such as Vonage and those similar to Vonage (including Cable VoIP) to be interstate in jurisdiction, in part based on an inability to separate both the interstate and intrastate components of the service. This order preempts all states that would attempt to place requirements on Vonage another VoIP providers. The order does not classify VoIP as an “information service”, remaining silent on classification. The order also indicates the FCC’s intent to address “critical issues such as universal service, intercarrier compensation, section 251 rights and obligations, numbering, disability access, and consumer protection” in the IP-Enabled Services Proceeding.

3) A La Carte Study

On November 18, 2004, the FCC complied with a request of Congress by submitting a report to Congress on a la carte programming. NATOA filed comments in this proceeding that were neither for nor against a la carte, but made the case that the real issue underlying higher cable bills and lack of consumer choice is insufficient competition in the multivideo programmer’s distribution marketplace.

As taken from the Report’s summary, the Report finds “that many of the harms suggested by opponents of a la carte or themed-tier services have merit... that a la carte regulation will likely increase operational expenses for MVPDs...” and that there is “legitimacy to programmers’ concerns about an a la carte regime. As to the effect of a la carte on prices the report states “it is unclear than an a la carte regime would produce the desired result of lower MVPD prices for many pay-television households. The Report’s economic analysis estimates that the impact on retail rate of pure or mandatory a la carte sales indicates that only those consumers who would purchase fewer than 9 program networks may see a reduction in their monthly cable bill.”

The report also makes suggestions to Congress indicating that Congress should “provide incentives for more MVPD competition in the marketplace”, “provide incentives for operators to offer more control over programming choices to the public” and “pursue aggressive policies to provide incentives for broadband deployment.”

4) The U.S. Supreme Court will review the 9th Circuit’s decision that held that cable modem service is not a “cable service” but contains separate “telecommunications service” and “information service elements.” This decision overturned the FCC’s Declaratory Ruling that cable modem service is a single, unified “information service” with no separate “telecommunications service” element, but upheld that part of the FCC’s Declaratory Ruling that concluded that cable modem service is not a “cable service.” Note: The City of Austin is losing approximately \$2.4 million annually as a result of cable companies no longer paying franchise fees on cable modem revenues.

5) Congress has indicated the rewrite of the 1996 Telecommunications Act.

With the convergence of voice, data and video over the same infrastructure and the move to an IP-based (Internet Protocol) world, the convergence raises some tricky questions about the current regulatory paradigm. Among some of the primary issues are:

- *maintaining local authority over the public rights-of-ways;
- *compensation for private use of those rights-of-way;
- *universal service, broadly defined as a basic level of voice, video, and data applications at reasonable prices; and
- *access to the means to create content for media applications and the ability to transmit that content to a local audience (aka Public, Education and Government Access)

NATOA filed comments in response to the Federal Communications Commission Notice of Proposed Rulemaking (NPRM) proceeding on IP enabled services. The FCC is expected to issue order on IP-enabled services in spring of 2005 that will establish a structure for regulating IP-enabled services.

7. Discussion and possible action of the following:

a. GTOPs 2005 Review Committee selection.

The Commission accepted Gary Cowser, Carlena Harris, Varshna Narumanchi-Jackson, Jon Lebkowsky and Owosimiwaiye Shonowo as the GTOPs 2005 Review Committee.

b. City of Austin Grant for Technology Opportunities (GTOPs) update. (Sheena Harden)

Sheena Harden, Program Coordinator for the City of Austin's Office of Telecommunications & Regulatory Affairs reported that American Youthworks are finalizing their GTOPs 2003. Girlstart is closed for 2004 everybody else is on track except for Cine Las Americas, whose Executive Director has been doing research in South America.

c. Policy recommendations on ways the City of Austin can support the development of the wireless industry.

Motion to approve the wireless resolution as follows:

WHEREAS, The City of Austin strives to be a leading community in the use and development of emerging and converging technologies; and

WHEREAS city and local leaders continue to ensure that public access to wireless sites continues to expand; and

WHEREAS small and medium size businesses that offer a range of wireless services and products continue to grow in Austin, Texas; and

WHEREAS, wireless communication technologies, such as Wi-Fi, Wi-Max, and other wireless metropolitan area network technologies, offer significant economic and social benefits to our community; and

WHEREAS, national surveys consistently identify the Austin metropolitan area as one of the leading *unwired* communities in the nation; and

WHEREAS, the City of Austin has processes for entities to acquire permits for infrastructure such as roof top access and mounting equipment to provide wireless access, and the City possesses property that may be useful for hosting such wireless infrastructure; and

WHEREAS, new wireless technologies offer new opportunities to bridge the digital divide with high-speed broadband connections, which may be provided with overhead and costs much less than existing, conventional technologies; and

WHEREAS, a skilled workforce is necessary to develop a robust wireless communications product and services; and

WHEREAS, the incubator model has been demonstrated as a successful way to encourage the commercial development of new emerging and converging technologies, and the City has had previous success in facilitating these endeavors,

NOW THEREFORE, BE IT RESOLVED BY THE AUSTIN TELECOMMUNICATIONS COMMISSION:

To recommend that the Austin City Council initiate a review of the City permit processes and properties and identify ways in which the City can facilitate the development of a robust wireless infrastructure; and be it further

RESOLVED, to recommend that the Austin City Council should initiate a survey to determine how our community uses existing technologies such as conventional, wired broadband Internet access, to map the current utilization of these technologies, to quantify the impact of the *digital divide* on our community, and to identify opportunities that may be served by new wireless technologies; and be it further

RESOLVED, that the Telecommunication Infrastructure Committee should promote/support the training of wireless installation, troubleshooting, and technical support skills through the CTTC sites.

RESOLVED, to recommend that the Austin City Council should direct the City to join with other organizations in our community, and offer support and resources toward the enhancement of wireless technology incubator opportunities.

**was made by Commissioner Hill; seconded by Commissioner Williams. Vote 6-1-0.
(Commissioner Martin abstained)**

d. Austin Telecommunications Commission name change.

**Motion to not change the name of the Austin Telecommunications Commission at this time
was made by Commissioner Williams; seconded by Commissioner Howerton. Vote 7-0.**

8. Update reports on networking relationships with other boards/commissions and groups, citywide and ATC information items.

Commissioner Ramsey announced that he has coordinated a tour of IBM's Pervasive Advance Technology Lab scheduled for January 19th.

The Commission discussed a need to revisit having liaison from the Austin Telecommunications Commission, to attend Music Commission and the Downtown Commission meetings.

Black Family Technology Awareness Week is February 13-19, 2005. There will be area classes hosted by IBM. February 13, 2005 Huston-Tillotson College will have Technology Day.

Be on the look out for Austin Free-Net's 10-year anniversary.

Commissioner Rosenthal gave a refresher on the Community Technology Initiative (CTIAustin.org). He stated the main focus of the site is the Rivercity Tech News e-newsletter. It is home of the GTOPs information and a weblog. The Commission has access to the weblog to post information. It might be a good thing to write an article on the wireless resolution and post it.

Commissioner Hill reported the Austin Film Society would have their Texas Hall of Fames Gala March 11, 2005 at the old airport.

Update on the ACTV ad hoc committee's recommendations.

**Amy Wong Mok, Chair of the ACTV ad hoc committee (December 2004 – January 2005)
reported:**

The following findings are based on our discussion of the ACTV Bylaws, the ACTV Personnel Policy, copies of email, minutes of several Board meetings, videotapes and conversations with staff, producers and Board members.

Item 2: "To agree to address, be accountable for, and rescind past Board actions that violate the Articles of Incorporation, Bylaws and Rules"

We believe there is some confusion regarding the role of the Board vis-a-vis the executive director, especially in personnel matters. The Board may have taken on responsibilities that should have been reserved for the executive director. Some Board members may not be familiar with [Robert's Rules of Order](#) in conducting Board meetings and their stewardship to the organization.

Recommendation: Training should be provided for present and future ACTV Board members regarding their duties and responsibilities. The training will help empower the members of the Board to be policy makers and stewards of the organization, and clarify their expectation of the executive director. Both [United Way](#) and [Greenlights](#) could provide Board training. The ACTV Board also should perform an independent review of ACTV Bylaws and Rules to determine NPO efficacy and stability.

Item 7: “To respond to the Producers Advisory Committee’s request to resolve the perceived conflict of interest by the fact that a Board Director’s relative is the Fiscal Officer.”

There is a violation of the ACTV Personnel Policy in regard to nepotism. The executive director has admitted to his oversight in this regard.

Recommendation: Action should be taken immediately in order to be in compliance with the Personnel Policy. Decisions and outcome should be reported to all producers and staff members.

Item 10: “To negotiate into the City Contract a clause that permits Producers to serve on the Board of Directors, and establishes ACAC performance measures regarding Producers.”

Before July 2004, the producers were not formally organized to exercise their privilege as stated in the ACTV Bylaws for Producers Advisory Forum (PAF). There were no established procedures or forum for producers to discuss their collective concerns or interests. Consequently, there was no communication with the Board and there was a lack of trust between producers and Board members. And because the producers weren’t organized at that time, the opinions that had been brought forward to the staff, ACTV Board or the Telecommunications Commission were opinions of individual producers only. This has started to change with the first election of the Producers Advisory Committee (August 2004).

Recommendation: (1.) The Bylaws should be updated to acknowledge the PAC’s existence, mission, etc. (2.) The ACTV Bylaws should be made available to every producer and posted on ACTV’s Web site. (3.) Even though a Producers Advisory Committee (PAC) was established in August 2004, ACTV producers should continue to formalize and create rules/documentation for the PAC, and establish procedures to allow better and more frequent communication among producers. (4.) The PAC should set up regular meetings with the Board to share their interests and concerns. These regular meetings could also help establish better communication between Board members and the producers so that both sides can process and discuss different issues for the betterment of ACTV. (5.) If more communication is needed, or if there are still sound arguments for producers to be on the ACTV Board, the producers / Board should approach the Telecom Commission during the next round of ACTV contract negotiation, to request that the contract clause preventing producers from serving on the Board be amended.

Commission Hill stated the reason the City contracted the management of the public access channels out was to keep it separate from the City regarding legal matters. She feels if the Commission gets involved that they would be dictating the operations of a non-profit group.

Ms. Mok stated that it is up to the ACTV Board to amend their bylaws not the Commission.

Ms. Hawkins recommended that the Commission keep a hands off approach to the process and let the ACTV Board take care of things. We do not want to get involved in the day-to-day management of ACTV. The Commission can monitor the situation.

Pam Thompson stated the Producers Advisory Committee (PAC) have written their mission statement. The PAC elections will be held January 20th. The Board passed a resolution that the public access channels would remain free speech channels and non-commercial.

Stefan Wray stated he did not understand why the Commission could not help them with the problems with the ACTV Board. He stated due to the producers being citizens of Austin using a City of Austin facility he did not understand why the Commission cannot help them as citizens.

Commissioner Hill stated that neither the Commission nor the City Council can tell a non-profit what they should or shouldn't do in the organizing and running of their non-profit. It is staff's position to monitor the contract only.

Commissioner Green asked if there had every been a report given to the Commission on the access channels finances.

Ms. Hawkins stated the reports given in the past to the Commission only contained the activities and programming, never finances.

Mr. Lee Hill, ACTV Board Treasure stated that they would be working closer with PAC regarding ACTV's budget. City funding will be monthly instead of quarterly. ACTV has a \$50,000 gap in their budget at this time. They will be working closely with the City regarding their contract status. At this time Ms. Pat O'Neal will be acting executive director. With the RFP coming up there are no plans to look for an executive director at this time.

9. Council Committee for Telecommunications Infrastructure report. (Ramsey)

Commissioner Ramsey stated the Commission's 2004-05 Workplan, name change results; GTOPs reviewers and Wireless resolution will be brought before this Committee at their next meeting.

10. Future agenda items for the Austin Telecommunications Commission regular meeting scheduled for February 9, 2005.

- Public hearing for the Request for Proposal for the management of Austin's public access channels.
- Speaker Series: Presentation on City of Austin Information Technology Projects and Initiatives. (Peter Collins, COA Chief Information Officer) **March regular meeting.**

11. Adjournment

The meeting adjourned at 10:10 p.m.