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CITY COUNCIL MEETING

MAY 18, 1983

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City Clerk Reimche presented a letter from Charles Royer, President of the National League of Cities re compromise agreement between NIC and the National Cable Television Association on cable legislation.



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Mayor Seattle Washington
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Executive Director
Alan Beals

May 6, 1983

John

The Honorable Fred M. Reid
Mayor of Lodi
P.O. Box 320
Lodi, California 95241

Dear Mayor Reid:

During the past few weeks, many cities have raised serious questions about and objections to the compromise agreement between NLC and the National Cable Television Association on cable legislation. As a result, as the bill moves through the legislative process, NLC will make every effort to ensure that the legislation preserves essential elements of local authority. In fact, the agreement was revised in several areas prior to the April 21 approval of a new S.66 by the Senate Commerce Committee.

I expect that further adjustments and revisions will be made as the full Senate takes up S.66 and the House Subcommittee on Telecommunications begins its hearings on May 18. I can assure you that NLC will make every effort to urge the House Subcommittee to hold full hearings on the bill. In addition, several cities have been concerned that the NLC Board of Directors have further discussions on cable matters. This will be an agenda item at our next Board meeting on July 15-16 in Seattle, Washington.

In this letter, I want to address directly some of the major objections made to the compromise agreement, particularly those from a major city set forth in a letter received by all NLC members. It was stated that: "Basically this legislation would strip localities of rights they currently have to regulate cable television; it would favor the cable television industry and it is not the basis for a sound national public telecommunications policy."

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I take strong exception to this statement. In fact, the authority of cities to regulate cable systems is under constant attack both in the courts and before state public utility commissions. Under the compromise, the authority of cities over cable systems in their communities is affirmed and codified. In the absence of federal law in this area, the courts may very well eliminate city authority and/or allow state public utility commissions to assert jurisdiction over major aspects of cable regulation.

I do not believe that "sound national public telecommunications policy" is likely to result from a series of court actions initiated by the cable and telephone industries. From the cities' point of view, our interests are much more likely to be protected by NLC's active involvement in the legislative process as equal partners with the cable industry. The fact that we have made this compromise has ensured just such a role for us, unlike in years past when we played a largely negative outsider's role. As House action on cable legislation appears likely this year, we must continue to play a constructive role in order to ensure that essential local regulatory powers are preserved.

I would like to discuss in detail some of the city objections we have heard to the compromise. In some cases, these objections were based on a misunderstanding of the political realities underlying the compromise; in other cases, additional revisions and adjustments to the compromise were successfully made to accommodate city concerns.

Invalidation of existing franchise agreements. Many have argued that the compromise will invalidate existing franchise agreements. In fact, the bill has a minimal impact on existing franchise agreements. S.66 grandfathered all service, access, and facility requirements and payments to support access in existing franchises. These grandfathered provisions, which determine the type of system and services to be provided, represent, in most communities, the most important area of local control.

Failure to develop minimum federal standards and guidelines. Certain cities have criticized the compromise for failing to establish minimum federal standards for local regulation of cable systems. In my view, it is inconsistent with our philosophy of local control to call for minimum federal standards. If an area of cable

regulation is truly of local concern and local governments are capable of exercising responsibility in that area, federal minimum standards are simply inappropriate. If minimum federal standards are necessary in areas of local control, it suggests that localities have failed to meet their responsibilities in these areas. S.66 does, in fact, develop guidelines for the exercise of local authority in a number of areas. The purpose of these guidelines, however, is to clarify state and local authority and, in certain cases, to limit the scope of regulation. Guidelines are established for the exercise of local authority over access, services, and facilities; restrictions are imposed in the areas of rate regulation and franchise fees. Only in the area of privacy is state and local authority completely preempted. The proposed federal standards on privacy are, however, in excess of virtually all existing state and local requirements in this area.

Creation of franchise renewal expectation. It has been argued that S.66 establishes a renewal expectancy. S.66 does not create a presumption of renewal or an explicit expectancy of renewal. Rather, it establishes procedures and standards for consideration of renewal applications which are implemented by the franchising authority. The standards for consideration of a renewal application are broad, permitting the denial of a renewal application for failure to comply with the franchise agreement or for refusal to upgrade the system to meet the community's needs for communications services in the future.

Acquisition of a cable system upon default at fair market value. Critics of the compromise have argued that it requires a city to pay fair market value when a system is acquired after a franchise is terminated for cause or is abandoned. S.66 does not establish a minimum price to be paid by a franchising authority in those situations. The franchising authority is required simply to comply with standard due process safeguards, such as notice of intent to terminate. The purchase price in these situations may be determined by the franchise agreement or in a condemnation or similar proceeding. The city is required to pay fair market value for a cable system only when it purchases a cable system on expiration of the franchise under a buy-out clause.

Lack of local authority to regulate alternative technologies. It has been argued that federal legislation should authorize localities to regulate alternative technologies such as satellite, microwave, and direct broadcast satellite systems. As you know, the basis for local regulation of cable systems is that cable system facilities are installed on public property--the public rights-of-way--which is under local control. It is illogical to argue that this unique relationship with cable systems justifies the extension of local authority to regulate technologies which use the airwaves, which have historically been subject to federal control.

There are serious dangers in arguing for consistent regulation of these technologies. In fact, a logical response to this argument is federal regulation of cable systems, as well as alternative technologies, in order to ensure consistency and parity of regulation. It is not feasible to subject technologies that provide communications services directly to consumers by transmission through the airwaves to local regulation. It would be feasible, although impractical, to shift regulation of cable systems to the federal level, as occurred during the early 1970's. Thus, I cannot see that it is in the interest of cities to seek consistent regulation of the various communications technologies.

Elimination of authority to negotiate for the set aside of channel capacity for third party leased access. It has been argued that, under the compromise, localities would be prohibited from negotiating franchise provisions which require the cable operator to provide channel capacity on an open and nondiscriminatory basis to third parties. This is completely erroneous. Under S.66, the authority of municipalities to negotiate for access set asides and to establish rules and procedures for the use of access channels in the franchise agreement is unlimited and all access requirements, including leased access requirements, in existing franchises are grandfathered.

Elimination of authority to regulate rates. It has been claimed that, under the compromise, cities would have no power to protect subscribers from unreasonable and unjustified increases in basic service rates. In fact, if the signals from at least four television stations cannot be received over the air, then a city may regulate the rates for basic service. In those communities in which the signals from four or more television stations can be received over the air, a city may regulate basic service rates under existing franchises for the longer of five years or one-half the remaining life of the franchise.

We believe that, when rate regulation is eventually terminated in major television markets, marketplace forces will suffice to protect subscribers from unreasonable and unjustified increases in basic service rates. Under the compromise, basic service, as defined by the franchise agreement, must be sold as a single package of services throughout the life of the franchise. As the entry tier to the system, basic service is marketed by cable operators so as to obtain the largest number of subscribers possible. Once these subscribers are hooked up to the system, the cable operator has greatly increased opportunities to market money-making services such as pay services to those subscribers. In other words, basic service serves as a loss leader in any system with a high channel capacity and must be priced accordingly by the cable operator in order to sell additional services. As a result, marketplace forces should ensure, in major television markets where penetration rates are, at this time, relatively low, that rates for basic service are kept at a low level.

I understand that this argument is of little comfort to cities with low capacity systems and minimal enforcement requirements. I believe, however, that many of your concerns should be alleviated by the grandfathering provisions and by the continuation of authority to regulate rates in communities which are not well served by conventional broadcasting.

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I believe that the compromise represents a fair and balanced approach to cable regulation. A more detailed description of the provisions of S.66 is included in an April 27 memorandum from NLC Executive Director Alan Beals to all member cities.

The leadership of NLC realizes we do not have unanimity among our member cities on this issue. As described above, it is a complex issue. More importantly, we were losing the battle nationally and stood to lose most of our basic powers in this area. Our friends and advocates in the Senate and House, last year, urged us to make one last effort to make an accommodation. As is true in any negotiation, neither party gets every thing it wants. We think we got a good deal for cities. Clearly, the new S.66 is a far better bill than if we continued a "man the bunker" mentality.

It can be improved on the Senate floor and in the House. It is a far better beginning point in the legislative give and take. The cities' interests will be further enhanced as a result of this effort.

If you cannot accept the revised compromise, NLC will respect your right to seek additional improvements. We hope you will respect our judgement on the political forces that motivated our negotiations. Obviously, we have to honor our agreement, made in good faith, in the months ahead. We stand ready to work with you on this difficult issue during the balance of the legislative process.

Sincerely,



Charles Royer, President
Mayor of Seattle