



# TATO A Update

## 8th Annual Conference A Great Success!

TATO A's 8th Annual Conference—Hot Topics in Telecommunications was a great success. To review power point presentations and other information from the conference please check out [www.tatoa.org](http://www.tatoa.org) under conference information.

A suggestion that came from the conference was a guide for understanding the alphabet soup of telecommunications. New to TATO A's website is a listing of those terms. It can be found under the references section at the bottom of the page.

The 2nd annual Programming Awards luncheon had 115 entries for the programming competition.



Burton Fitzsimmons and Rondella Hawkins

out TATO A's website.

Austin News 8's Burton Fitzsimmons was Emcee of the luncheon.

Plans are currently underway for the 2004 Conference planned for the Metroplex in August 2004. Watch for more details in upcoming newsletters.

## WE NEED YOU!

In an attempt to learn more about the TATO A membership, the board has included a survey for you to fill out or go online to complete the survey.

Please take a few minutes to fill out the survey and mail or fax it in. Not only will this allow the board an opportunity to learn more about the membership in planning upcoming conferences but it will also be a database of the member cities.

Another great resource for members is the website. Currently, the website has many franchises, li-

cense agreements, legislative information and helpful links. However, we are always looking for more content for our TATO A website ([www.tatoa.org](http://www.tatoa.org)), please feel free to forward any franchises/license agreements/government access programming policies to Terry Dyke. His e-mail is [Terry.Dyke@ci.austin.tx.us](mailto:Terry.Dyke@ci.austin.tx.us) or mailing address is TARA, City of Austin, P.O. Box 1088, Austin, TX 78767.

Only with your help can we continue to offer valuable resources to the membership.

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### Web Sites:

- TATO A [www.tatoa.org](http://www.tatoa.org)
- NATO A [www.natoa.org](http://www.natoa.org)
- PUC [www.puc.state.tx.us](http://www.puc.state.tx.us)
- FCC [www.fcc.gov](http://www.fcc.gov)
- Texas Legislature Online [www.capitol.state.tx.us](http://www.capitol.state.tx.us)

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# President's Message

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This issue of the TATO A newsletter contains a survey that will give us all some detailed insight into the state of telecommunications regulation in Texas cities. We look forward to the results with a great deal of interest.

In a way, this survey is a little bit like a census – in each case, the motivation is not just to come up with a head count, but to determine who is doing what, and generally how they are getting along. As groups grow and change, there is always the question, Who are we now? This is a thorough way of addressing the question.

We caught a few glimpses of who we are during the last TATO A conference. The sessions dealing with trends in state and federal rulings, and the response those sessions drew, reinforced the sense that the nature of our job is in major transition, that it calls for professionals who are always adapting to a changing environment and coping in spite of the uncertainties and dwindling support. Same with the sessions on dealing with smaller budgets.

At the same time, the turnout was high, the atmosphere energetic, and there was every indication that, adversity or no, this is a group with plenty of ability and inspiration. The video awards were a case in point. The competition itself was well-organized and drew an enthusiastic response from entrants and audience alike, showing that they care a great deal about using this medium for effective and innovative civic communication. Once we saw samples of the winning entries, it became very obvious that TATO A members are stretching themselves with higher quality productions, more ambitious content, and a more sophisticated use of the available technology.

But the conference, productive as it was, just gave us incidental bits and pieces of what we are and how we 're doing – “anecdotal evidence,” as the statisticians are fond of saying. This survey will get down to the nuts and bolts.

So, I'll encourage everyone to take a little time from their busy schedules to complete and return the survey. We'll publish the results on the TATO A website as well as in the next issue of the newsletter. With a good response to the survey, our big questions will have a solid answer.

As you may know, TATO A intervened as an interested party and joined the Alliance of Local Organizations Against Preemption (ALOAP) appeal to the Ninth Circuit of the FCC's decision to classify cable modem services as an "interstate information service". On October 6th, a panel of the Ninth Circuit issued a decision that cable modem services have elements of telecommunications and information services. ALOAP had urged the Court to find that cable modem service is a cable service, based on 1996 amendments to federal law which were specifically intended to make clear that information services provided to subscribers over a cable system are cable services.

A decision has not yet been made by ALOAP on whether to seek a rehearing en banc, simply appeal the existing decision to the Supreme Court, or both.

On behalf of the membership, the TATO A Board voted to contribute \$1,000 towards expenses for further court proceedings to pursue the “cable service” option rather than waiting to try our luck with the FCC after those are resolved. Given the amount of money at stake for local governments and our authority to regulate customer service over cable modem services, we don't believe we should give up now!

*Rondella Hawkins  
City of Austin*

# 2003 TATO A SURVEY

The purpose of this survey is to derive baseline information about our membership, determine critical issues, and identify available resources within the membership which potentially could be shared with other members for their edification. Moreover, we wish to improve the capability for "networking" within TATO A by making it easier for members to identify and locate other members with common interests, concerns or experience.

1. Your name
  - a. First \_\_\_\_\_
  - b. Last \_\_\_\_\_
2. Title \_\_\_\_\_
3. Municipality \_\_\_\_\_
4. Years in present position \_\_\_\_\_
5. Mailing address:
  - a. Street \_\_\_\_\_
  - b. City \_\_\_\_\_
  - c. State \_\_\_\_\_ d. Zip \_\_\_\_\_
6. Phone \_\_\_\_\_
7. FAX \_\_\_\_\_
8. E-Mail \_\_\_\_\_
9. Name of your dept/division \_\_\_\_\_
10. Title of person you report to: \_\_\_\_\_
11. Form of Government:
  - a. City Council/Manager \_\_\_\_\_
  - b. City Council/Strong Mayor \_\_\_\_\_
  - c. Village Board/Mayor \_\_\_\_\_
  - d. Other \_\_\_\_\_ e. If Other, please identify: \_\_\_\_\_
12. Population: \_\_\_\_\_

**Please indicate the company(s) providing the following services to your jurisdiction:**

**Cable TV:**

13. Company \_\_\_\_\_
14. How Many Overbuilders? \_\_\_\_\_
15. Status of Overbuilders' Network?
  - a. Overbuilder #1 \_\_\_\_\_
  - b. Overbuilder #2 \_\_\_\_\_
16. For both Incumbents and Overbuilders please give address:
  - a. Incumbent: \_\_\_\_\_
  - b. Overbuilder #1 \_\_\_\_\_
  - c. Overbuilder #2 \_\_\_\_\_
17. Cable homes passed? \_\_\_\_\_
18. No. of Subscribers? \_\_\_\_\_
19. Basic Penetration? \_\_\_\_\_%
20. What is the duration, in years, of current Cable TV Franchise(s)?
  - a. Incumbent \_\_\_\_\_
  - b. Overbuilder #1 \_\_\_\_\_
  - c. Overbuilder #2 \_\_\_\_\_
21. When do they expire?
  - a. Incumbent \_\_\_\_\_
  - b. Overbuilder #1 \_\_\_\_\_
  - c. Overbuilder #2 \_\_\_\_\_
22. Have you renewed a cable franchise in the last three years? \_\_\_\_\_
23. Are you in the process now? \_\_\_\_\_
24. Have any cable TV franchises transferred in the past three years? \_\_\_\_\_
  - a. When? \_\_\_\_\_
  - b. From? \_\_\_\_\_
  - c. To? \_\_\_\_\_
25. How many channels are offered over your cable system (s)?
  - a. Total \_\_\_\_\_
  - b. Basic Tier \_\_\_\_\_
  - c. Cable Tier \_\_\_\_\_
  - d. How many PPV? \_\_\_\_\_
  - e. How many Premium? \_\_\_\_\_
  - f. How many Home Shopping? \_\_\_\_\_
  - g. Is Video on Demand offered? (Y/N) \_\_\_\_\_
  - h. Cable Modem Services? (Y/N) \_\_\_\_\_
26. How many channels are reserved for PEG Access?
  - a. Total \_\_\_\_\_
  - b. Public Access Channels? \_\_\_\_\_
  - c. Educ. Access? \_\_\_\_\_
  - d. Gov. Access Channels? \_\_\_\_\_

**TATOA Telecommunications Committee Survey (continued)**

27. Is your Public Access provider \_\_\_\_\_
- a. A separate entity \_\_\_\_\_
  - b. Local government \_\_\_\_\_
  - c. The cable company \_\_\_\_\_
  - d. Other \_\_\_\_\_
  - e. If other, then what?: \_\_\_\_\_
28. PEG access fee (operations) amount \$ \_\_\_\_\_
29. PEG capital funding by operator, average per year: \$ \_\_\_\_\_
30. PEG operating or other non-capital funding by operator, avg. per year: \$ \_\_\_\_\_
31. Portion of cable franchise fee revenue put toward PEG access Operations/Equipment
- a. Portion in percent: \_\_\_\_\_% b. Amount in dollars: \$ \_\_\_\_\_
32. Does your cable TV operator offer or intend to offer
- a. Telephone service? (Y/N) \_\_\_\_\_
  - b. Voice Over Internet Protocol (VoIP)? (Y/N) \_\_\_\_\_
33. Does your cable TV franchise document include provision for an INET (Institutional Network)? (Y/N) \_\_\_\_\_
- a. If yes, is the INET in place? (Y/N) \_\_\_\_\_
34. INET applications/uses: \_\_\_\_\_
35. Who owns the INET? \_\_\_\_\_ 36. INET Capacity/bandwidth: \_\_\_\_\_
37. Who is responsible for maintaining the INET? \_\_\_\_\_
38. Does your jurisdiction pay any fees associated with ops/maint of the INET? (Y/N) \_\_\_\_\_
- a. Explain \_\_\_\_\_
39. Do you receive any INET support dollars from the cable operator? \_\_\_\_\_
- a. Explain \_\_\_\_\_

**Please indicate the company(s) providing the following services to your jurisdiction:**

**Certificated Telecommunication Providers:**

40. How many certified telecommunications providers (CTPs) are serving in your community? \_\_\_\_\_
41. What are your access line fees?
- a. Category 1 \_\_\_\_\_
  - b. Category 2 \_\_\_\_\_
  - c. Category 3 \_\_\_\_\_

**Long Distance Carriers:**

42. How many long distance carriers are serving in your community? \_\_\_\_\_
43. Does your community have right-of-way agreements with these providers? \_\_\_\_\_
44. Please list by company name, description of compensation arrangements (flat fee/percent of gross revenue/per linear foot fee/ other). \_\_\_\_\_
45. Please state the percentage of your community's general fund budget funded from this type of franchise fee. \_\_\_\_\_
46. Does your community receive any type of in-kind compensation from the providers? (Y/N) \_\_\_\_\_
- a. If so, please describe \_\_\_\_\_

**Wireless:**

47. How many providers are serving in your community? \_\_\_\_\_
48. Does your community have agreements with these providers?(Y/N) \_\_\_\_\_
49. Please list by company name, description of compensation arrangements (flat fee/percent of gross revenue/other). \_\_\_\_\_

50. Does your community receive any type of in-kind compensation from the providers? (Y/N) \_\_\_\_\_
- a. If so, please describe: \_\_\_\_\_

51. Does your community have a wireless communications plan? (Y/N) \_\_\_\_\_
- If yes, please mail to address below or email to Terry.Dyke@ci.austin.tx.us

52. Does your community have a WI-FI initiative? (Y/N) \_\_\_\_\_
- a. If yes, please describe/or mail: \_\_\_\_\_

**Internet Use:**

53. Does your municipality currently have a WWW page? (Y/N) \_\_\_\_\_
- a. If yes, what types of governmental services is your municipality offering via the Internet? \_\_\_\_\_

**Boards/Commissions and Council Committees:**

54. Do you have a Council appointed citizen advisory board/commission? (Y/N) \_\_\_\_\_

**FAX: Terry Dyke at 512-974-2416      MAIL: TARA, City of Austin, P.O Box 1088, Austin, TX 78767**  
**OR GO ONLINE TO COMPLETE at www.tatoa.org**

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# Time Warner VoIP and Cities-What does it mean?

By Clarence West

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The characterization of Voice over the Internet (“VoIP”) service is of immense fiscal and regulatory importance to Texas municipalities, including those members of TATO. The issue of the proper legal characterization of the service will ultimately determine if 911 requirements are to be complied with; if a separate franchise is needed and how Time Warner will compensate cities for the use of the rights-of-way.

This past spring the Public Utility Commission (“PUC”) discussed how the provisioning of local exchange service via VoIP could constitute an “access line” for purposes of rights-of-way compensation to cities (Docket No. 26412). The PUC based its determination of what constitutes an “access line” on whether or not a service meets the eight requirements of basic local telecommunication service (“BLTS”), as defined under Texas law. VoIP as Plain Old Telephone Service (“POTS”) must meet the BLTS criteria in Texas to be certified by the PUC to provide local exchange services. The PUC stated: “...the commission [PUC] finds that **POTS lines are access lines, because [PUC] regulation ensures that POTS meets the eight requirements of BLTS....**”

On August 7, 2003, Time Warner Cable Information Services (Texas), LP, d/b/a Time Warner Cable (“Time Warner”) filed an application with the PUC for approval to provide facilities-based “**local exchange service**” within the entire State of Texas in the name of Time Warner Cable using VoIP (PUCT, Docket No. 28303). While the issues as to the applicability of state regulations has not been directly challenged by Time Warner in its application, inconsistencies and reservations in Time Warner’s Application may indicate such a challenge is all but imminent.

Most of Time Warner’s answers to the Application Questions regarding the type of services proposed by Time Warner make it clear that “local exchange service” is to be provided. In the answer on PUC Service Quality standards Time Warner confirms it will provide and meet the standards as required of any other Certified Telecommunication Providers (“CTP”). Those standards include, among other requirements, E 911 connections and universal service contributions.

However, Time Warner concluded by an answer that under-cut what it may be providing-and even compliance with state law. Time Warner stated that **prior answers in the Application should not be “construed as a concession or agreement by [them] that the services at issue in this Application constitute telecommunication services, local exchange services, common carrier offerings, or services that are otherwise subject**

to federal or state regulation, nor that the entity or entities providing them constitute telecommunications carriers, telecommunications providers, local exchange carriers, common carriers, or other regulated entities.” (Emphasis added.) On October 17, 2003 the PUC requested that Time Warner explain the apparent inconsistencies or amend its Application accordingly.

As to any necessary municipal consent, franchise, or permit required for the types of services and facilities for which Time Warner may provide, Time Warner answered that its affiliates have municipal franchises for cable services, not that they have a franchise or will apply for any necessary municipal permits, franchises or consents.

If the services to be provided by Time Warner are “cable services”, then no further franchise may be needed. If the service constitutes “telecommunication services”, which may be “access lines” and they comply with Chapter 283 (HB 1777), they are not subject to municipal franchise requirements, per Loc. Gov. Code, Sec. 283.052. But in the event these services are not “cable services” or there is non-compliance with Chapter 283, there may well be additional necessary permits, franchises, or consent required from a municipality under state law and City Charters. For example, Tex. Civ. Statutes, Art. 1175, requires consent of a municipality to use the rights-of-way. That is why it is critical to answer this question-What are these services?

Any potential for discriminatory regulatory treatment between providers of local exchange services as to payment of “access line fees” must be eliminated; otherwise VoIP providers will have a competitive regulatory advantage over other providers of local exchange services simply due to the technology used to deploy the service.

This issue is not unique to Texas-it is nation wide. When the Minnesota Public Utility Commission decided that a VoIP provider in that state had to do the same as a traditional telephone company, i.e. E-911, compensation, etc., the company, Vonage went to the FCC and requested that the FCC preempt all state law in this area. That matter is now pending receipt of Comments. As more and more “telecommunication services” migrate to the being provided via the Internet, this will be a larger and larger regulatory-and financial issue for cities and states to deal with. (As you may know there is also a bill pending in Congress on Internet “taxes” that may affect this issue-S. 150, but that is for another article.)

Stay tuned, this is just the beginning.

Clarence is an Austin based attorney who has focused on telecommunication matters as they intersect public rights-of-way issues for over fifteen years on behalf of Texas municipalities. He represents several cities that have intervened in the Time Warner VoIP Application. cawest@cawestlaw.com.

Have a Safe and Happy Holiday Season!

Coming Next Issue  
President's Message  
Spotlight on the City of Irving  
Cable Call Centers

We're on the Web!  
[www.tatola.org](http://www.tatola.org)

*Texas Association of Telecommunication  
Officers and Advisors*

**TATOA**

c/o City of Austin  
P.O. Box 1088  
Austin, TX 78767

## Internet Taxation

At the writing of this, there was still not agreement between sponsors of legislation to enact a permanent extension of the moratorium on taxation of Internet access fees that was first created in the 1998 Internet Tax Freedom Act. S150 and HR49 were introduced and intended to extend the moratorium on state and local taxation of Internet access fees permanently. HR 49 was passed by the House. S150 was amended in committee to ensure that broadband Internet access would be included in the moratorium. However, the changes included vague language that would exempt telephone and cable television from paying franchise fees and access line charges.

Senators Lamar Alexander and Tom Carper have sponsored an amendment to S150 that would generally protect state and local government revenues.

In a letter from Senator Hutchison, she writes, "I supported the original passage and extension of the Internet Tax Freedom Act ..... I believe the more pressing issue at this time is whether sales tax should be imposed on Internet transactions.....I am also concerned about the billions of dollars states lose when sales tax is not collected for online purchases." Senator Coryn's staff has indicated that he is sympathetic to the potential loss of local revenue, but that he was a proponent of lower taxes and a tax free internet.

## Number Portability

Wireless subscribers can now change service providers while retaining the same phone number. The FCC rules require wireless carriers to make wireless local number portability available in the top 100 metropolitan statistical areas (MSA) on November 24, 2003. Dallas—Fort Worth, Austin-San Marcos, El Paso, San Antonio and McAllen-Edinburg-Mission are the MSA's in Texas. Wireless carriers outside these areas in Texas that receive a request to port a telephone number must be capable of doing so within six months after receiving such a request, or by May 24, 2004, whichever is later.

Wireline carriers are already required to provide number portability to their customers. Now consumers will be able to switch from wireline to wireless while retaining the same number.

A customer should contact their provider to port their number. A carrier may not refuse a request but customers are still bound by existing service agreements.

For more information on number portability go to [www.fcc.gov](http://www.fcc.gov) or to see if you are able to port your number go to [www.numberportability.com](http://www.numberportability.com)