



# Statewide Franchise Bill is Law

Texas is the first state in the nation to have a statewide franchise provision for entering the cable television business. Governor Perry signed the SB5 into law on September 7. New entrants into the cable business will now obtain a state-issued cable and video franchise from the Public Utility Commission.

The statewide franchise will not require mandatory build-outs and will keep existing cable franchise agreements in place until they expire or 2007 whichever is later.

The franchise fee payment remains at 5% for the new incumbents. PEG requirements remain under the current franchise holder. However, after the expiration of the current franchise, the holder of a PUC-issued certificate is to pay the city 1% of the provider's gross revenues, or at the city's election, the per subscriber fee that was paid to the municipality under the expired incumbent cable service provider's agreement.

The holder of a PUC-issued franchise must comply with FCC customer service requirements until there are two or more providers offering service, excluding satellite service. In other words, once there are two providers no customer standards will apply.

The big issue is the loss of local authority. When subscribers have complaints about the PUC issued franchisee, the City will only be able to offer the subscriber the phone number to the PUC. Complaints concerning the incumbent provider can still be directed to the City for handling.

There is language in SB5 that orders a study on the impact to the public rights-of-way by the new competitors. However, new entrants can be licensed and possible operational before the study will be completed.

The Texas Cable and Telecommunications Association (TCTA) has filed a lawsuit to stop the implementation of SB5. The Association is asking a fed-

eral district court to overturn the law, specifically the provision of keeping the cable companies from qualifying for a statewide franchise like the new entrants.

The Texas Coalition of Cities for Utility Issues (TCCFUI) filed a motion to intervene in the TCTA lawsuit and the State did not oppose the intervention.

The PUC has the new application form on its website at [www.puc.state.tx.us/cable/forms/index.cfm](http://www.puc.state.tx.us/cable/forms/index.cfm). The application asks for a detailed description of the requested service area footprint including any municipality and/or unincorporated area(s) including but not limited to city limits, subdivisions, streets, and blocks.

The story doesn't end here. The House Committee on Commerce and Energy released a discussion draft named the BITS bill (Broadband Internet Transmission Services) right before the NATOA Conference started in Washington D.C. In early November BITS II was released that was not as favorable. See page 3 for more information about BITS and the Texas TATOANs taking on the Hill.

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# President's Message

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This newsletter has served as an important channel of communication for TATO A over the last three years, and promises to keep on that way for some time to come. For every issue since the newsletter started, I've had the opportunity as president to share some thoughts and observations on current topics with my colleagues. It's with mixed feelings now that I do so for the last time.

I'm pleased to report that I've been elected to the Board of the national organization, NATO A, and look forward to working for the public interest in telecommunications at the national level. In many ways, it will be an extension of the work we've been able to accomplish for the cities of Texas, but with a wider opportunity for the municipal point of view to be heard.

On the other hand, I regret to say that I have stepped down as president of TATO A in order to give my new duties all the focus they deserve. The TATO A presidential baton has been passed onto Margaret Somereve, with the reassurance that it has been passed into very capable hands. I will certainly remain active in the organization, but we can look forward to TATO A's continued effectiveness under the guidance of her experience and leadership.

When I first started serving as TATO A president in 2001, new legislation had recently come into effect that changed the way telephone companies paid for their use of the public rights of way. It was another step in a series of legislative moves toward deregulation that had begun in earnest with the 1995 Public Utilities Regulation Act.

The process continues, and at each step, municipalities risk losing more of their ability to manage the public rights of way. But meeting these challenges at every step, TATO A has taken an active part, voicing the concerns of cities and collaborating with other organizations like the Texas Municipal League to give legislators a more complete and balanced picture of the public policy issues involved.

The long-term effect of this legislative trend has been to remove the telephone companies from cities' control over their use of the rights of way. Now, with the most recent legislative session, the cable companies, too, are being removed from municipal regulation. It took two special sessions, but finally Senate Bill 5 established a statewide franchise for cable operators, removing the franchise from its tra-

ditional municipal jurisdiction.

Thanks in great part to the efforts of TATO A and its allies, several earlier versions of the bill were defeated, despite powerful support for them by the industry. Even though commercial interests prevailed in the end, the final version was in many ways more favorable to cities than earlier ones.

This same legislative trend is now being carried into the national arena, where Senate Bill S.1504 proposes, among other things, to do away with cable franchising. This may well end local control over public rights of way, and cost municipalities an estimated \$3 billion a year in lost revenue. Nationwide, some cities are now facing the same struggles protecting their rights of way that Texas cities have been facing these past ten years.

As a long-time officer of TATO A, I'm grateful for the experience and the opportunity to serve the municipalities of Texas, in the company of so many fine professional colleagues. I'll continue to do so as a member. In my capacity as part of the NATO A leadership, I look forward to helping shape the dialog and working for legislative outcomes that help cities across the country remain strong in their roles as stewards of the public rights of way.

*Rondella Hawkins  
City of Austin*

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## NEW TATO A BOARD

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With the resignation of Rondella Hawkins as President, the TATO A board was faced with filling the position as per the bylaws. By unanimous vote, the board selected Vice President Margaret Somereve to be President. To fill the position of Vice President, the board selected Secretary Janet Devault (formerly Mastronardi). The position of Secretary will be discussed at the next board meeting.

Margaret has been on the TATO A board since 2001 while Janet has been on the board since 2003. If you are interested on serving on a committee, please contact Margaret at [margaret.somereve@farmersbranch.info](mailto:margaret.somereve@farmersbranch.info)

For a complete list of officers during the 10 years of TATO A please go to [www.tatoa.org](http://www.tatoa.org).

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# Federal Prospective on Telecom

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## TEXAS ON THE HILL

Representatives from the Cities of Denton, Austin, Laredo, Farmers Branch and Fort Worth took the opportunity to go to Capitol Hill during the 25<sup>th</sup> annual NATOA Conference held in Washington, D. C. September 21-25. NATOA president Coralie Wilson also joined the Texas representatives as they met with the staffs of Congressman Joe Barton, Congressman Michael Burgess and Senator Kay Bailey Hutchison.

Congressional staffers were told that although the recently passed Texas SB 5 had some good points to it, it shouldn't be used as the model for a national franchise. The Cities explained the importance of public, educational and government access channels, service that is available to all the residents of the city, customer service standards and accountability and a city's ability to manage its public rights of way.

The House Energy and Commerce Committee staff had just released its Broadband Internet Transmission Services (BITS) draft for comment prior to the conference. This draft is a very good start and the City representatives that were on the hill were appreciative that the Committee is open to comments.

The overwhelming perception in Washington D.C was that the Texas Law was supported by Texas Cities and if Texas supports it then it will work everywhere. During the congressional meetings and NATOA conference the Texas perspective was heard.

It will be important for your Representatives to stay informed on what this or any other possible national franchising legislation will mean to your city.

### City Changes Name to DISH

Ever heard of Clark, Texas in Denton County? Don't worry if you haven't, the town is now officially DISH, Texas. No gimmick. The town legally changed its name in return for every resident (125 population) or 55 households getting free DISH service for 10 years—a \$4,000 value per household. Cable TV was not offered in this city. The only option that residents had prior to this was over the air reception or satellite services.

After the 10-year deal the town could change its name again.

## BITS 2: Sequels are Never Good!

The Broadband Internet Transmission Services (BITS) released by the House Energy and Commerce Committee staff in September as a discussion draft was promising that Congress was willing to listen to the concerns of Cities.

The first staff draft ("BITS I"), while not perfect, was a good starting point. It was a reflection of what can be achieved by bi-partisan dialogue between all the impacted parties (federal, state, and local governments, industry and consumer groups) with the mutually shared goal of creating fair competition to benefit consumers. The goals of the process and dialogue were simple. Telcos would receive a fast track franchise process, but not be granted franchises on preferable terms or conditions than their cable competitors. Consumers would receive a choice of broadband providers with a guarantee of net neutrality. State and local governments would maintain rights-of-way management control and be kept whole in terms of social obligations and fees.

BITS II does not treat all parties fairly. While the Telcos get their fast track franchising process, everyone else loses. Consumers are no longer guaranteed choice of broadband providers (competitors can now buyout their competition). There is no more net neutrality. Cable is asked to support social obligations such as PEG and I-Nets, while telcos are not. Finally, local government is not kept whole. BITS II limits rights-of-ways fees to the recovery of management costs, while franchise fees are limited to 5% of subscriber revenue, not the 5% of gross revenues which is standard today and which was in the first BITS draft.

The first hearing of BITS was held on November 9th which was standing room only. Rep. Mike Doyle from Pennsylvania came out against the franchise fee limits which would put his cities in dire straits as they try to continue balancing their already tight budgets. He also pointed out that the federal government is not going to respond to a cable complaints in an effective manner. Rep Bart Stupak from Michigan acknowledged that the new law needs to be a balance between the needs of the telecom industry and the cities but the most important need was the rural communities being connected.

Mr. James Ellis, Senior Vice President of SBC was in favor of the BITS bill and pointed to the fact that there has been no competition in video providers and the rates have just been going up over the years. Wireline should be treated like the wireless companies who have flourished without regulatory oversight.

For a list of members of the Committee which you can contact to let your City's viewpoint be heard go to [energycommerce.house.gov](http://energycommerce.house.gov).

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# FCC Notice on Jurisdiction and Franchising Authority

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The Federal Communications Commission (FCC) adopted a *Notice of Proposed Rulemaking* that seeks comment on issues relating to what can be done to ensure that local franchising authorities (LFAs) do not unreasonably refuse to award cable franchises to competitive entrants.

This *Notice* initiates a proceeding to further the interrelated goals of enhanced cable competition and accelerated broadband deployment. The FCC tentatively concludes that the mandate of Section 621(a)(1) should be interpreted to prohibit not just the ultimate refusal to award a franchise, but also a broader range of behaviors, and the *Notice* seeks comment on that conclusion.

Specifically, the *Notice* addresses a broad range of questions, including:

If local franchising authorities are unreasonably refusing to grant competitive franchises, what problems cable incumbents have encountered with LFAs, including how best the Commission can ensure that the local franchising process is not inhibiting the ability of incumbent cable operators to invest in broadband services.

Whether the Commission has authority to implement the pro-competitive mandate of Section 621(a)(1). The *Notice* tentatively concludes that the Commission is empowered by provisions of both Title I and Title VI of the Communications Act to take steps appropriate to ensure that the local franchising process does not serve as an unreasonable barrier to entry for competitive cable operators. The *Notice* also tentatively concludes that the Commission may deem to be preempted and superseded any law or regulation of a State or LFA that causes an unreasonable refusal to award a competitive franchise in contravention of Section 621(a).

The *Notice* tentatively concludes that it is not unreasonable for an LFA, in awarding a franchise, to "assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income"; "allow [a] cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area"; and "require adequate assurance that the cable operator will provide adequate public, educational and governmental access channel capacity, facilities, or financial support."

The *Notice* seeks comment on whether the Commission has authority to establish a minimum amount of time for potential competitors with existing facilities to build out their networks beyond their current service territories.

A copy of the NPRM can be found at [www.fcc.gov](http://www.fcc.gov).

## NATOA RESPONDS

The National Association of Telecommunications Officers and Advisors (NATOA) welcomes the fact based inquiry initiated by the Federal Communications Commission (Commission), on the status of local franchising in today's marketplace. NATOA supports the questions outlined by the Chairman and Commissioners in their description of the item, a Notice of Proposed Rulemaking (NPRM). NATOA is encouraged by the statements of the Commissioners and Staff at the meeting.

NATOA President Lori Panzino-Tillery, of San Bernardino County, CA, stated, "The Cable



Act clearly defines the jurisdiction of local franchising authorities and the Commission. I trust a factual inquiry will

confirm to the Commission that local government's role is essential to deploying competitive telecommunication services on a proactive basis. The Act establishes judicial relief and oversight for any franchise denial. Contrary to recent media accounts, local governments support competition and choice for our citizens."

The Commissioners indicated that they have not concluded that action is necessary or appropriate at this time, or that Congress intended the Commission to have any role in this regard. "The NPRM comes as the result of large telephone and other telecommunications companies' efforts to largely avoid the established local franchising process, but more specifically to avoid having to individually negotiate the statutorily protected areas of build-out requirements, public, educational and governmental capacity and capital support and the important public safety benefits in the provision of institutional networks," states Libby Beaty, NATOA's Executive Director.

The Commission is seeking "hard record evidence" regarding the franchise process and whether that process has in fact impeded the deployment of video services in violation of the statute. NATOA looks forward to the opportunity to review the Notice and participate fully in this proceeding.

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# 10th Annual Conference a Success!

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TATOA Celebrated its first decade of service to the Texas at its annual conference on August 4 and 5, 2005. The conference was again held at the Wyndham Dallas North in Farmers Branch.

New this year was an expanded Programmer's Track, a keynote lunch on Friday and exhibitors.

The conference kicked off with the Mayor of Farmers Branch presenting a proclamation congratulating TATOA on 10 years of service to Texas.



With so many issues at both the state and federal level the Legislative and Regulatory Update was expanded over two sessions. Snapper Carr from TML, and Attorneys Clarence West and Dorothy Palumbo gave an update on the 79th Legislature. NATOA president Coralie Wilson and Attorney John Pestle from Michigan rounded out the expanded session with a federal perspective.

New this year was the Cable operator's roundtable meeting which gave the cities and their respective operators a chance to discuss issues in an informal setting. Representatives from Cox Communications, Grande Communications and Charter Communications were on hand for this session.

On the programming side, innovative programming and production basics workshop opened the conference on Thursday. Joe Van Eaton from Miller and Van Eaton gave a presentation on Legal Issues for PEG.

With Granicus and Digital Display Group as exhibitors attendees could see what it means

to web stream.

The Programming Awards lunch on Thursday showcased the top three winners in twenty categories. There were 134 entries representing 13 cities. Award winning videos were shown in a roundtable so that ideas could be gained and taken back with attendees.

The Texas heat did not deter the conference as attendees made their way to the Dr Pepper StarCenter for the Thursday reception. The StarCenter has two regulation NFL ice hockey rinks used for hockey and figure skating. Door prizes, food and fun were on the agenda.

The new keynote luncheon on Friday closed a very successful conference. Representative Burt Solomons gave an update of the legislative session and how the statewide cable franchise debate was going at the time (SB 5 had not yet passed during the conference). Also speaking at the luncheon was Gene Crick, Federal Communications Commission's Consumer Advisory Committee member. Mr. Crick is the Executive Director of the national TeleCommunity Resource Center in Austin. Mr. Crick gave an insider's view of the FCC and what it means for the Cities to be heard at the FCC and his role on the Consumer Advisory Committee.

Attendees went back to their Cities and organizations armed with new information, tips, and more know-how on the ever changing world of telecommunications.

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## The Votes are In for 2006



Next year's annual conference will be held in San Antonio in September. The move to September is to accommodate NATOA's conference being held in Orlando, Aug. 22-26, 2006. If you would like to serve on the planning committee or have suggestions for topics, speakers or locations please contact Margaret Somereve at 972-919-2596

# Scenes from NATOA's Annual Conference

## TATOA President Honored



Rondella Hawkins was presented a plaque at the NATOA Conference for her Outstanding Service, Dedication, and Distinguished Leadership for ten years of Service to TATOA and the last four years as President.

Rondella resigned from TATOA to focus her attention on new elected position on the NATOA board of directors.



A view of the Washington Monument from the World War II Monument.

The Conference was held at the Hyatt on the Hill only a short walk from the Capitol and the National Mall.



TATOA Members

President Rondella Hawkins from the City of Austin and Vice President Margaret Somereve from the City of Farmers Branch at the Annual Programming Awards.



## Award Winners

Mark Kaufmann shows off a 1st place for the City of Allen while Daniel Piatt is thrilled about his 3rd place for the City of Denton.

For a complete list of all of the Texas Winners at NATOA check out page 8.



# TATOA Programming Award Winners

The 4th annual TATOA Programming Awards Lunch was a huge success held August 4, 2005. With a 134 entries representing 13 Cities, it was the largest group yet.

## Operating Budget < \$250,000

### *Community Event Coverage 7 Entries*

- 1st : DTV Sports Football—City of Denton
- 2nd: South Texas Ag Roundup—Edinburg Cable Network
- 3rd: Mark Zapata Funeral— Edinburg Cable Network

### *Documentary – Social Issues/Profiles 6 entries*

- 1st: The Tales of Allen: Allen Telephone company—City of Allen
- 2nd: The Tales of Allen: Interurban Railway—City of Allen
- 3rd: Now You're Cookin' with GAS! - City of Denton

### *Education/Instruction/Training 4 entries*

- 1st: Single Stream Recycling: The Blind Date—City of Allen
- 2nd: Tomorrow, Today—City of Denton
- 3rd: Water we Gonna do Now? - City of Denton

### *Profile of City/County or City/County Department 6 entries*

- 1st: Single Stream Recycling: The Blind Date—City of Allen
- 2nd: 2003-04 The Year in Review—City of Allen
- 3rd: Code Enforcement—City of Denton

### *Public Health/Public Safety 6 entries*

- 1st: Water Quality Report—City of Denton
- 2nd: Edinburg Police Ride Along—Edinburg Cable Network
- 3rd: FYI: Organ Donation Awareness—Edinburg Cable Network

### *Special Audience 8 entries*

- 1st: It starts with the Cart—City of Denton
- 2nd: Composting—City of Denton
- 3rd: UTPA Cuadro Flamenco—Edinburg Cable Network

### *Magazine Format 4 entries*

- 1st: Access Allen— City of Allen
- 2nd: DTV Newsbreak—City of Denton
- 3rd: ECN 12 News—Edinburg Cable Network

### *Promotion/Public Service Announcement 8 entries*

- 1st: Keep Shopping Edinburg—Edinburg Cable Network
- 2nd: DTV Football Promo—City of Denton
- 3rd: The Ref—City of Denton

### *Overall Excellence in Government Programming 3 entries*

- 1st: City of Allen
- 2nd: City of Denton
- 3rd: Edinburg Cable Network

## Operating Budget >\$250,000

### *Community Event Coverage 11 Entries*

- 1st: Big River —City of Houston
- 2nd: Irving: Game of the Week—City of Irving
- 3rd: Duck Creek Habitat—City of Richardson

### *Documentary – Social Issues/Profiles 7 entries*

- 1st: Mustangs of Las Colinas—City of Irving
- 2nd: Through a Cat's Eyes—City of Fort Worth
- 3rd: Former President George Bush @UTPA—Edinburg Cable Network

### *Education/Instruction/Training 10 entries*

- 1st : Corporate Challenge Games—City of Richardson
- 2nd: Dog Park Bark—City of Plano
- 3rd: Recycle More, Trash Less—City of Fort Worth

### *Profile of City/County or City/County Department 4 entries*

- 1st: Cottonwood Arts Festival—City of Richardson
- 2nd: Most Livable City—City of Fort worth
- 3rd: Taking it to the Streets—City of Houston

### *Public Health/Public Safety 5 entries*

- 1st: Irving Review—City of Irving
- 2nd: Scooter Safety—City of Richardson
- 3rd: It Takes a Village—City of Plano

### *Special Audience 7 entries*

- 1st: Every 15 Minutes—City of Plano
- 2nd: Focus on Abilities—City of Houston
- 3rd: Emergency Vehicles—City of McAllen

### *Magazine Format Series 7 entries*

- 1st: Above the Fold —City of Richardson
- 2nd: Irving Review—City of Irving
- 3rd: City News Update—City of Houston

### *Promotion/Public Service Announcement 10 entries*

- 1st: Stop Trashing Houston—City of Houston
- 2nd: Go Wild Read—City of Irving
- 3rd: Time Change—City of McAllen

### *Overall Excellence in Government Programming 5 entries*

- 1st: City of Plano
- 2nd: City of Irving
- 3rd: City of Richardson

## Open Categories (no budget limitations):

### *Public Affairs 4 Entries*

- 1st: City Council Tonight/Council Recap—City of Farmers Branch
- 2nd: City Council Meeting— City of Fort Worth
- 3rd: Former President George Bush @UTPA—Edinburg Cable Network

### *Interview/Talk Show 9 entries*

- 1st: Profiles with George Primo—City of Irving
- 2nd: Cityscape Corpus Christi—City of Corpus Christi
- 3rd: McFun 2005—City of McAllen

### *Video Text Bulletin Board 3 entries*

- 1st: City of Denton
- 2nd: City of Farmers Branch
- 3rd: City of Allen

See page 8 for Texas NATOA award winners.

# Happy Holidays!!!

**TATOA**  
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## NATOA PROGRAMMING AWARDS

September 24, 2005

Six Texas Cities came home winners from the 25th Annual NATOA Conference in Washington, D.C.

### City of Allen

- **Public Education: (Operating Budget \$100 –250K) (19)**  
1st Place "Single Stream Recycling: The Blind Date"
- **Magazine Format: (Operating Budget < \$200,000) (23)**  
1st Place "Access Allen"
- **Use of Humor (23)**  
2nd Place "Single Stream Recycling: The Blind Date"
- **Excellence in Government Programming: (Operating Budget \$100,000 - \$250,000) (12)**  
HM "Allen City Television - ACTV-15"

### City of Denton

- **Children/Young Adults: (Budget <300,000) (27)**  
3rd Place "It Starts with the Cart"
- **Visual Arts: (Operating Budget <\$300,000) (8)**  
3rd Place "Denton Magazine Graphics Package"
- **News Series: (Operating Budget < \$300,000) (9)**  
2nd Place "DTV Newsbreak"
- **Promotional Video Campaign (15)**  
2nd Place "DTV Football Promos"
- **Event/Program Promotion: ( Budget < \$300,000) (17)**  
1st Place "Dog Days of Summer Promo"

### City of Houston Municipal Channel

- **Sports Category (15)**  
1st Place "Houston All Star Game Impact"

### City of Richardson

- **Library (17)**  
HM "Above The Fold: Richardson Reads One Book"
- **Community Awareness: (Budget 250 - 500K) (29)**  
1st Place "2004 Wildflower Promo"
- **Public Safety: (Operating Budget \$200-400K) (16)**  
HM "Scooter Safety Video"

**Excellence in Government Programming:  
(Operating Budget > \$500,000) (13)**

### City of Plano

3rd Place "Excellence in Govt. Programming"

### City of Irving

HM "ICTN Demo Tape"

*Number of entries in Categories are in parenthesis.*

*HM is for Honorable Mention.*

*For a complete list of all categories and winners go to [www.tatoa.org](http://www.tatoa.org)*