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Bill would aid telecom, media deals
by Ron Orol in Washington

Senate Commerce Committee Chairman Ted Stevens proposes legislation that would make it easier for telecom and media mergers.

Telecom and media mergers would have an easier time winning government approval under legislation unveiled Monday, June 19, by staffers for Senate Commerce Committee Chairman Ted Stevens.

The proposed changes would be included in a broader communications bill his committee is expected to approve Thursday.

One of his merger-related provisions is sure to raise opposition from city and state governments. If enacted, the measure would eliminate a long-time staple of communications law requiring local approval whenever ownership of a hometown subscription TV franchise changes hands.

The measure is sure to be controversial, particularly now, because regional Bell telephone monopolies are rapidly consolidating to gain the scale needed to compete with established cable companies in their rollout of pay-TV service. "I'm not sure why 10,000 cities need to approve a telephone company merger," said a Stevens' staffer.

If the bill passes with the measure intact, it would be a major victory for Bells and other incumbent telephone companies and a setback for cities. Even though cities rarely can block deals, many have succeeded at slowing down transaction approval and drawn concessions during the review process, said Andrew Schwartzman, president of Media Access Project, a Washington-based public interest law firm.

Schwartzman said eliminating this local leverage will raise the ire of city officials and consumer advocates. He pointed out that cities and consumer groups would no longer have the ability to petition merging TV providers to retain or add local public access channels and other provisions desired by cities and consumer groups.

"Cities will go nuts over this," Schwartzman said.

The provision could make it easier for AT&T Inc. and BellSouth Corp. to complete their proposed \$67 billion merger.

Schwartzman pointed out that both Comcast Corp. and Time Warner Inc. have had to get scores of cities to approve their \$17.6 billion carve-up of Adelphia Communications Corp.

Stevens' bill includes another provision aimed at helping dealmakers. Under his plan, any legal challenges to the legislation or revisions of media ownership restrictions by the Federal Communications Commission would be heard by U.S. Court of Appeals for the District of Columbia.

This dictate worries public advocates because the D.C. Circuit has been more inclined to deregulate media ownership than some other courts. Most recently, the Philadelphia-based U.S. Court of Appeals for the Third Circuit rejected the agency's 2003 attempt to loosen limits on media mergers and ordered the commission to reconsider its decision. The court also claimed jurisdiction for any legal challenges arising from the agency's rewrite. In 2001, by contrast, the D.C. Circuit tossed an earlier FCC vote to retain most of ownership limits.

Schwartzman said reserving media ownership limits for the D.C. Circuit would raise serious concern about separation of powers. Schwartzman successfully challenged the FCC's looser limits on media mergers in 2004 and was able to capitalize on federal rules allowing some court venues to be chosen by lottery. Media observers said the move was critical to Schwartzman's subsequent victory because the judges sitting on the 3rd Circuit have repeatedly expressed skepticism of deregulation.

Preventing plaintiffs from seeking a change in legal forum "changes 70 years of doing things a certain way," Schwartzman complained.

But a Stevens aide defended the move as a way to provide clarity over media ownership.

"The 1996 Telecommunications Act took 10 years to get all the appeals from various circuits and district courts up to the Supreme Court," she said. "We're trying to streamline and provide some certainty so that companies could invest and not have to worry about, 'Well, gee, the 9th Circuit did this and the 5th Circuit did that,' all the while waiting to see what the Supreme Court finally says."

She added that the D.C. Circuit has good expertise in the communications sector so Stevens believes it is the proper forum.

There is some talk that the provision will be "clarified" in order to affect only lawsuits brought against Stevens' bill. Even still, the measure could end up affecting the debate over FCC media ownership rules.

That's because Sens. Byron Dorgan, D-N.D., and Trent Lott, R-Miss., are trying to win support for their amendment to make media consolidation more difficult. Challenges to their measure would end up at the deregulatory D.C. Circuit.

The new draft bill also includes watered-down net neutrality provisions similar to those in the House legislation, but it does not include what Internet advocates really want: a prohibition on phone and cable companies charging additional fees to Internet content and service companies seeking improved broadband connections.