

CROSSED WIRES

Oakland among several cities taking legal action against AT&T over its services

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There is plenty of static between local cities and cable service provider AT&T Broadband these days, and city attorneys across the Bay Area are looking to the legal system for answers.

Oakland, for example, wants AT&T to pay more than \$10 million in damages for violating a 3-year-old settlement agreement that, among other things, was supposed to wire Oakland residents who don't have access to cable service. Last week, Sonoma County, the city of Santa Rosa and other North Bay cities sued AT&T, and exasperated San Jose city officials will decide this month whether to take another step that could lead to litigation.

Calls to AT&T in-house counsel Michael Hurst were referred to AT&T's San Ramon-based national spokesman, Andrew Johnson, who said city lawsuits and the threatened litigation are nothing new in the cable world.

"It's a well-worn tactic," said Johnson, adding that the company is involved in ongoing talks about customer service issues and alleged violations of franchise agreements.

Also complicating matters is AT&T Broadband's proposed merger with Comcast Corp. Though the merger isn't final, AT&T is eager to transfer its local franchises to Comcast, and that may give local governments the leverage they need to resolve some of their gripes with their cable service.

City franchise agreements typically give cable companies rights that allow them to provide cable service. In exchange, cities usually ask for customer service guarantees or perks such as government channels.

"This is a part of the process. It's standard in the industry," Johnson said.

But Oakland City Attorney John Russo says AT&T "has raised their rates higher than the rate of inflation." Yet, he said, the cable company — which heavily advertises its broadband services — hasn't completed its upgrade of the city's cable system. Nor has it wired scattered pockets in East Oakland that have been without cable access for years, Russo said.

AT&T won't release figures on how many residents don't have cable service, because the company claims that the information is proprietary, said City Clerk Ceda Floyd, who coordinates the cable franchise talks.

"We don't know if it's 50 or 5,000," she said.

Floyd said the company reported that lack of service will be resolved when AT&T upgrades the network in those areas, but that may take at least another year or two for work to commence in that part of the city.

Those problems were supposed to be resolved by a February 1999 settlement agreement. At the time, cable provider TCI needed Oakland's permission to give its merger partner AT&T control of its city franchise agreement.

The City Council was poised to reject TCI's request because TCI had failed to meet several terms of its franchise agreement, said Deputy City Attorney J. Patrick Tang. Eventually the parties signed a pact in which AT&T pledged to lay wiring in Oakland neighborhoods with no cable service, rebuild the cities' aging cable infrastructure with a digital network by March 2001, and give discounts to low-income residents and supplemental security income recipients.

The agreement also says that AT&T must pay damages if it fails to come through on the settlement promises. Some violations, for example, will cost the cable company \$500 a day, according to the agreement.

But today, those East Oakland neighborhoods still don't have service. The March 2001 "rebuild" deadline has come and gone, but only a few neighborhoods have been upgraded to digital service.

"You would have to ask AT&T why they have continually failed to complete the build-out," Russo said.

Oakland and AT&T will meet with a hearing officer, retired Alameda County Judge Richard Hodge, to determine if AT&T broke the pact.

Russo said he hopes the move will prod the telecommunications company to make good on its past promises.

"Things are moving forward," he said.

NORTH BAY LEGAL TACTICS

In Santa Rosa, Assistant City Attorney Caroline Fowler, who worked on the North Bay lawsuit, said she thinks the "climate has changed" since AT&T bought up other companies.

Fowler said North Bay city leaders had more clout with smaller cable companies when problems came up.

"It's a bigger company that everyone is dealing with," she said. These days, "we have had difficulty getting someone on the phone."

Santa Rosa, Rohnert Park, Calistoga and Sonoma County leaders seek an injunction to block AT&T from engaging in alleged unfair business practices.

According to a suit filed March 25 in Sonoma County Superior Court, the cable operator "continues to receive excess profits belonging to cable subscribers" because of "fraudulent business practices."

The suits alleges that AT&T has kept residents waiting up to an hour when they call for customer service — instead of 30 seconds to three minutes, which is mandated in franchise agreements; has billed customers for services they didn't get; has failed to upgrade the existing cable infrastructure; and has failed to maintain a local office.

Fowler says that AT&T also has sent notices in local cable bills that virtually force consumers to give up their rights to pursue grievances in court.

In January, U.S. Magistrate Judge Bernard Zimmerman rapped AT&T for similar conduct in *Ting v. AT&T*, C01-02969.

In that suit, a Berkeley resident and other long distance customers sued after AT&T sent them notices that said if they made one long distance call or paid a bill, they would be agreeing to a pact that shielded AT&T from legal liability. AT&T has appealed the case to the Ninth Circuit U.S. Court of Appeals.

Trial Lawyers for Public Justice, which was on the plaintiffs' legal team in *Ting*, is considering whether to initiate a legal challenge on behalf of AT&T's cable customers, said Trial Lawyers attorney F. Paul Bland Jr.

The San Jose City Council will decide this month whether to ask AT&T to formally submit a proposal to renew its cable franchise, which expired in December 2000. Often renewals are negotiated informally, which gives cities and cable companies more flexibility.

"AT&T's service down here is a joke," said San Jose City Attorney J. Richard Doyle. Like other Bay Area cities, the South Bay is still waiting for its promised cable system upgrade.

"San Jose is the high-tech center of the world. We have the old A-B switches. That's 1990s technology," Doyle said.

He declined to elaborate about specific negotiation issues but acknowledged that the City Council's decision has brought the city a step closer to litigation with the telecommunications company.

"That is the practical result," said Doyle. "I don't want to say that litigation is never going to happen."

AT&T has worked hard to comply with the terms of its local franchise agreements, said Johnson, the utility's spokesman, adding that the company provides cable service to about 2 million Bay Area consumers.

About half of AT&T's 128 California agreements require that the local leaders sign off on a "consent to a change in control" — which would essentially transfer the cable franchise to AT&T's successor, Comcast, Johnson said.

He declined to discuss details of the talks in San Jose and Oakland. He also refused to address specific allegations in the North Bay lawsuit. However, Johnson defended the communications company's efforts to upgrade aging cable systems in the Bay Area.

In Oakland alone, the company anticipates investing "tens of millions" in upgrading Oakland's aging cable network, he said, and about 10 neighborhoods have been upgraded so far. He said the company is not merely giving digital cable access but is installing an entirely new fiber-optic network to deliver an array of communications services.

"We are on track with the deadlines of the agreement," Johnson said, noting that obtaining city permits and other bureaucratic processes have caused delays. And, he added, the city is aware that such factors have slowed the project.

Johnson said the city has not taken any action to collect cash penalties listed in the settlement agreement.

Johnson, who worked for AT&T's predecessor, TCI, stressed that cable franchise agreements typically are renewed every 15 to 20 years, and negotiations can be acrimonious and take up to three years.

HIGH PRICE OF NEGOTIATIONS

Plus, he noted, both San Jose and Oakland have hired a pricey Washington, D.C., lawyer, Joseph Van Eaton, as consultant for the cable talks.

San Jose has paid Van Eaton, who is a name partner with Miller & Van Eaton, \$750,000 so far, the AT&T spokesman said. Van Eaton's firm specializes in municipal telecommunications issues.

Calls to Miller & Van Eaton's San Francisco and D.C. offices were not returned.

Both Oakland and San Jose officials confirmed that the firm's attorneys have been retained by the cities.

San Jose's Tom Manheim, a city public outreach manager who is part of the negotiations, said the figure represents how much the city has set aside if it goes through with the protracted formal franchise renewal process.

To date Van Eaton's firm has been paid "far less than that," but Manheim did not know the exact figure.

Floyd, the Oakland city clerk, said the city's contract with Van Eaton — who has been on the case since Oakland's cable franchise expired — is specified "not to exceed \$90,000."

Oakland's Russo said that while it's easy to vilify AT&T, the reasons behind the troubled relationship between cities and cable providers are more complex.

Federal telecommunications rules prevent local governments from imposing certain restrictions on cable rates — and those restrictions can be used as an incentive to get cable companies to adhere to franchise rules, he said.

The recent convergence of cable issues and the multimillion dollar damage claims give Oakland a golden opportunity, Russo said.

"The city is in a position to get a more compliant partner," he said, noting that AT&T is eager to get City Council approval of the transfer to Comcast.

"Now we have something that they want."

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