

**Office of Telecommunications & Regulatory Affairs
Austin Community Technology and Telecommunications Commission
Legislative and Regulatory Update
March 9, 2011**

Texas Cable Association's legislative proposals:

- **HB 256 (Hildebran) & SB 1987 (Carona)** amend SB5 the state cable/video franchising bill to allow all incumbents to opt out of their city franchises. The bill also eliminates the current requirement to provide INet services at incremental costs and requires cities to report how they use the 1% PEG fee.
- **HB 259 (Eiland)** imposes a 6 ¼% assessment on all video providers, including satellite service, and allows cable/video providers who now pay city franchise and PEG fees to deduct those fees from the assessment. The state would keep 75% of the assessment and 25% would be distributed to the cities on a prorated per subscriber basis.

We are tracking other bills that:

- prevent the PUC from reregulating telecom markets that have been deregulated,
- reduce PUC authority to require mandatory telephone and local toll-free calling in metropolitan areas,
- prohibit any rate or contract regulation of Voice Over Internet Protocol (VoIP),
- introduce two service plans into the state Universal Service Fund regulations,
- remove the requirement for Certified Telecommunications Providers (CTPs) to pay for relocations required by road widening or straightening,

FEDERAL ACTIVITY:

CAP Act

We are still waiting for the Community Access Preservation Act bill to be introduced in the House of Representatives. Extensive ground work is ongoing among individuals and groups who support PEG programming to gain cosponsors for the bill on both sides of the aisle. We are working with state and national organizations to obtain support for the bill.

FCC to Issue Notice of Inquiry (NOI) in April with the strong likelihood of establishing that local governments are a “barrier to broadband deployment” that need to be torn down by the agency, and to make the federal government the arbiter of local rights-of-way

practices and rights-of-way fees. In Austin, these fees are more than \$16million annually, about 4percent of total General Revenues. Several mayors, including Mayor Leffingwell, are preparing letters to Vice President Biden with copies to Texas Congressional Delegation and to FCC Chairman Julius Genachowski expressing opposition to the NOI.

Moratorium on Internet Taxes and Electronic Commerce

There has been no movement on **S.135 (John Ensign, R-Nevada)**: A bill to make the moratorium on Internet access taxes and multiple and discriminatory taxes on electronic commerce permanent.

Cell Tax Fairness Act

The bill sponsored by Zoe Lofgren D. Cal. prohibits any State or local jurisdiction from imposing a new discriminatory tax on or with respect to mobile services, mobile service providers, or mobile service property, during the 5-year period beginning on the date of enactment of this Act. Hearings are expected to be held March 29th in the Judiciary Committee.

FCC Moves to Shift Phone Subsidy to Rural Broadband

The Federal Communications Commission on Tuesday moved to begin the process of overhauling the \$8 billion federal telephone subsidy to redirect funding to broadband service in rural areas. The notice of proposed rulemaking (NPRM), approved by a unanimous vote, also outlines a path for reforming the system of payments among telephone providers for exchanging local and long-distance calls, known as intercarrier compensation.

In the long term, the FCC is looking to consolidate the USF programs into a single Connect America Fund, which would shift funding toward broadband and away from telephone service without increasing the price tag of the fund. Transitioning to the Connect America Fund was a central piece of the national broadband plan the FCC issued last March.

COURTS:

Appeal of Ruling on Texas Cable Association and TWC Suit on SB 5

The Cable Assoc. and Time Warner Cable's Initial Brief to the Fed. 5th Cir on the SB 5 Appeal was filed Monday, Jan. 31, 2011.

The brief has two points of error, with multiple subparts. In point of error I, subpart C., on the Municipal Reliance interest in the unexpired local franchises that were grandfathered by SB 5 was challenged as being unlawful. Clarence West will be filing a Reply Brief on behalf of TCCFUI on the proper lawful use of the grandfathering in SB 5 to protect that Municipal Reliance/Grandfathering issue in SB 5 and in the lawful use of grandfathering in any future legislation involving municipal negotiated contracts.