

Office of Telecommunications & Regulatory Affairs

Legislative and Regulatory Update – December 14, 2011

Cable/Video Issues:

- **INet Deactivation**

Work is underway to decommission the TWC-provided INet and to eliminate the annual maintenance fees as provided in the expired municipal franchise associated with INet operations, currently about \$240,000 annually. To accomplish this, AISD and Travis County are routing their PEG channel feeds over GAATN fiber to City Hall where TWC will pick them up.

Purchasing has received an acceptable bid, and the order for the required encoder equipment has been placed.

Time Warner has recalculated its current INet operational costs reflecting the reduced usage by the City, channelAustin, AISD, and Travis County. Until AISD and Travis County PEG channel feeds are transferred to City Hall, the monthly INet maintenance and operational charges will be \$2,842.58.

- **AT&T U-Verse Carriage of PEG Channels** The encoder equipment has been installed to allow AT&T U-verse to add the three channelAustin public access channels and the AISD educational channel. The channels are now available in the Austin metro area on Channel 99. Adding the Travis County and ACC channels to U-Verse should also be completed in the next 3-6 months. State cable franchise regs require PEG operators to provide the equipment that will hand off their channel signals to the cable operators in the format they require.

FEDERAL ACTIVITY:

FCC Reform Act Legislation H.R.3309, the "Federal Communications Commission Process Reform Act of 2011" and H.R.3310, the "Federal Communications Commission Consolidated Reporting Act of 2011" have been referred to the House Committee on Energy and Commerce for mark up. The two bills which would restructure the regulatory process at the Federal Communications Commission (FCC) are opposed by Consumers Union who fears that the changes would make it harder for the FCC to protect consumers and promote the public interest and ultimately would do more harm than good.

Republican supporters say the bills will improve the FCC by "increasing transparency, predictability, and consistency as part of Republicans' ongoing effort to ensure the commission's work encourages job creation, investment, and innovation."

FCC Basic Tier Encryption NPRM The FCC is considering letting cable TV operators with all-digital system to encrypt their basic service tier.

The agency adopted a Notice of Proposed Rulemaking Oct. 13 seeking comment on removing an existing prohibition on such encryption and has tentatively concluded that lifting the ban would not "substantially affect" compatibility between consumer electronics and the cable systems.

In the NPRM, the commission acknowledged that certain viewers feel the impact of the change, but that the number would be relatively small. The notice identifies viewers who subscribe to basic cable and have no STB and those who have a STB on a primary TV and have basic service on a second or third household TV as those who could be affected.

To remedy these potential problems, the commission has tentatively concluded that all-digital cable system operators choosing to encrypt their basic service tier will be subject to steps that protect such consumers for a limited time.

FCC Releases Universal Service Fund Reform Order On November 18th, the Federal Communications Commission released its much anticipated Order reforming the Universal Fund and Intercarrier Compensation system. Taken together, the two complex systems of charges and funding support the operations of the vast majority of rural telecom carriers in the nation. The Order launches the new Connect America Fund (CAF), first announced in the Commission's National Broadband Plan of last year. CAF is intended by the Commission to fund the build-out of extended broadband networks to rural areas, with a special emphasis on mobile broadband deployed by carriers eligible for funding.

"Public Safety Spectrum and Wireless Innovation Act"

HR 2482 the House Energy and Commerce Committee approved spectrum management and public safety communications legislation which was then overwhelmingly passed by the House in late September. The bill includes language that would preempt local government zoning authority regarding modifications or additions to existing telecommunications towers. Known as the JOBS Act, the bill has been referred to the Senate for consideration.

SB 911 the Senate counterpart by senators Rockefeller and Hutchinson is still pending consideration by the full Senate. The bill would set aside the D-Block for public safety communications and create a funding stream to build out an interoperable public safety communications network. Unfortunately, the bill also contains a provision that would effectively strip municipal authority over any modifications to current wireless tower and equipment placements, regardless of the increase in electromagnetic radiation or the configuration of the antennae.

Senator Reid has said that the bill will not be taken up this session, but it is possible that it could be attached to a bill that extends the current withholding tax cut reductions.

H.R.1002 -- Wireless Tax Fairness Act of 2011

The bill is still pending action by the Senate.

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. The bill was passed overwhelmingly in the House last week and referred to the Senate. The bill would limit the City's authority to collect fees from the mobile service industry.

An identical Senate companion bill was introduced by Senators Ron Wyden (D-Ore.) and Olympia Snowe (R-Maine), where it also seems to be getting bipartisan support.

Texas state and local taxes on wireless service is 12.43%, the tenth highest rate in the country.

State Sales Tax Collection on Internet Sales Bipartisan legislation has been introduced in both the House (HR 3179) and Senate (S 1832) that would authorize the collection of sales taxes from remote retailers. The measures are similar in that they would not make participation in the Streamlined Sales Tax Project (SSTP) a condition for the authority to collect sales taxes from remote retailers. The House Judiciary Committee held a hearing back on the week of November 28th.

Two new FCC Commissioners Nominated

A Senate panel approved President Obama's nomination of two new FCC commissioners. The Commerce Committee voice vote December 8th moves the nominations of Jessica Rosenworcel, a Democrat, and Ajit Pai, a Republican, to the full Senate for consideration.

Senator Charles Grassley, who is not a committee member, said he would prevent a vote on the nominees because the agency hasn't answered questions about whether it gave favorable treatment to LightSquared. The Reston, Virginia-based company needs FCC approval for its planned nationwide wireless network that critics say may interfere with global-positioning system devices.

FCC Notice of Inquiry (NOI) on Broadband Deployment

We are waiting for possible FCC action based on the comments and reply comments that have been filed.

Comments were filed on the NOI July 18th, with the primary industry filings coming from the wireless industry calling for less local control over ROW access regulations and fees. Municipalities individually and as member groups filed comments documenting how local ROW management has not hindered broadband deployment. Clarence West filed reply comments on September 30th on behalf of Coalition of Texas Cities (TML, TCCFUI, and TATO) which rebutted undocumented industry claims that city regulations and fees limited broadband deployment. The comments also call on the FCC to follow the National Broadband Plan recommendation to appoint a local government task force (IAC) and to recommend to Congress that it preempt state laws that restrict municipal broadband. The FCC announced the Intergovernmental Advisory Committee (IAC) committee members on November 4th, naming Ken Fellman, immediate NATOA past president as City Attorney representative.

IAC MISSION

A principal focus of the IAC during its upcoming two-year term will be the implementation of expanded broadband adoption and deployment, pursuant to the FCC's National Broadband Plan released in March 2010, particularly in unserved and underserved rural areas and Tribal lands. The IAC may also focus on such issues as improved public safety communications, facilities siting, universal service reform, and public rights-of-way. Chairman Genachowski has said, "[w]e look forward to the valuable insights and recommendations the IAC will provide the FCC on the many important telecommunications issues of mutual concern to federal, state, local and Tribal governments."

As background, the NOI has the potential 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 \$34 million annually, about 8 percent of total General Revenues. Several mayors, including Mayor Leffingwell, have sent letters to Vice President Biden with copies to Texas Congressional Delegation and to FCC Chairman Julius Genachowski expressing opposition to the NOI.

CAP Act - HR 1746

There has been no progress on the CAP Act since our last report.

Work is ongoing by municipal associations and individual cities to obtain additional Republican sponsors and support for the Community Access Preservation ("CAP") Act, (HR 1746), which was introduced back on May 5th of 2011 by Congresswoman Tammy Baldwin (D-WI) and Congressman Steven LaTourette (R-OH). At last count, there were 19 co-sponsors of the bill. Unfortunately, only one of whom is a Republican.

Here are some key points of the legislation:

1. It removes the distinction between "capital" and "operating" in PEG support fees. PEG support fees that are collected from subscribers by the cable operators can only be used for "capital and equipment" and not for operational overhead. The CAP Act will eliminate that part of the Telecommunications Act that prevents PEG centers from using PEG support for their operating expenses. Right now, access centers are closing their doors because even though they receive money for buildings and equipment, they do not have or are losing money for operations. The CAP Act will allow centers to spend the PEG support fees as they see fit to keep the centers open and keep the channels on the air.

2. It makes sure that cable operators transmit the PEG channels without charge to the local government.

This is an important point because in several places cable operators are claiming they can charge local governments for the transmission of the channels. Cable operators are demanding several thousand dollars per year per channel for transmission. Time Warner has indicated that they will charge us when they fall under a state issued cable franchise in August.

3. It requires the FCC to undertake a study on PEG.

The FCC will be required to undertake a study within 180 days of the passage of CAP to analyze the effect of statewide/state issued franchise laws that have passed. It also requires an analysis of the impact of digital conversion on PEG. And it calls for the FCC to make recommendations for changes to the Telecommunications Act to preserve and advance PEG, broadband and localism.

We are working with state and national organizations to obtain support for the bill, the beginning of much more that needs to be done. We need every one of you to pick up the phone, call your Representatives and ask them to support H.R. 1746, the CAP Act!

At the June 9th Council meeting, Resolution No. 20110609-042 expressing the City's support of the CAP Act was approved on consent on Mayor Pro Tern Martinez' motion, Council Member Morrison's second on a 7-0 vote (copy of the resolution is included in your packet).

channelAustin has a page on their website about the CAP Act:
<http://www.channelaustin.org/capact>

with information including links to bill analysis and bill text, as well as contact information for the Austin area reps.

Moratorium on Internet Taxes and Electronic Commerce

There has been no movement on **S.135 (John Ensign, R-Nevada)** which is pending in the Senate Finance Committee: the bill would make the moratorium on Internet access taxes and multiple and discriminatory taxes on electronic commerce permanent. The current legislation banning Internet taxation will not expire until 2013.