

Office of Telecommunications & Regulatory Affairs

Legislative and Regulatory Update – January 11, 2012

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.

- **PEG Channel Coordination**

TARA will lead meetings with all PEG channel managers to identify ways to best allocate PEG resources and coordinate activities among the channels. The first meeting is set for January 24.

FEDERAL ACTIVITY:

The Stop Online Piracy Act (SOPA), also known as H.R. 3261, is a bill that was introduced in the United States House of Representatives on October 26, 2011, by Representative Lamar Smith (R-TX) and now is supported by a bipartisan group of 31 co-sponsors. The bill expands the ability of U.S. law enforcement and copyright holders to fight online trafficking in copyrighted intellectual property and counterfeit goods. Now before the House Judiciary Committee, it builds on the similar PRO-IP Act of 2008 and the corresponding Senate bill, the PROTECT IP Act.

The originally proposed bill would allow the U.S. Department of Justice, as well as copyright holders, to seek court orders against websites accused of enabling or facilitating copyright infringement. Depending on who requests the court orders, the actions could include barring online advertising networks and payment facilitators such as PayPal from doing business with the allegedly infringing website, barring search engines from linking to such sites, and requiring Internet service providers to block access to such sites. The bill would make unauthorized streaming of copyrighted content a crime, with a maximum penalty of five years in prison for 10 pieces of music or movies within six months. The bill also gives immunity to Internet services that voluntarily take action against websites dedicated to infringement, while making liable for damages any copyright holder who knowingly misrepresents that a website is dedicated to infringement.

Proponents of the bill say it protects the intellectual property market and corresponding industry, jobs and revenue, and is necessary to bolster enforcement of copyright laws especially against foreign websites. They cite examples such as Google's \$500 million settlement with the Department of Justice for its role in a scheme to target U.S. consumers with ads to buy illegal prescription drugs from Canadian pharmacies. Opponents say that it violates the First Amendment, is Internet censorship, will cripple the Internet, and will threaten whistle-blowing and other free speech.

The House Judiciary Committee held hearings on SOPA on November 16 and December 15, 2011. The Committee is scheduled to continue debate when Congress returns from its winter recess.

The Senate version of the bill (S. 938 by Senator Patrick Leahy (D-Vermont) was reported out of the Judiciary Committee, but stalled in the full Senate on a cloture motion December 17, 2011.

FCC DAS Forum Announced

The FCC Wireless Telecommunications Bureau, in cooperation with the National Association of Telecommunications Officers and Advisors (NATOA), will present an informational forum on distributed antenna systems (DAS) and small cell solutions on Wednesday, February 1, 2012, at 9:30 AM, in the Commission Meeting Room at FCC Headquarters in Washington, DC.

The forum will provide an overview of DAS and small cell technologies that augment mobile broadband and wireless services. The forum will discuss uses of these technologies in both outdoor and indoor public spaces, including hospitals, business and historical districts, campuses, and transit systems. Panelists will explore DAS and small cell equipment needs and business models, how these solutions benefit communities by expanding mobile broadband and wireless data coverage, and case studies in successful deployment.

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."

The bill is still pending action by the House Subcommittee on Communications and Technology of the Energy and Commerce Committee.

FCC Basic Tier Encryption NPRM The FCC is considering letting cable TV operators with all-digital system to encrypt their basic service tier. This would require customers with analog TVs to obtain digital set top boxes to continue receiving the basic tier channels.

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 digital set top box (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.

Supporters of the basic tier encryption proposal include the American Cable Association, the National Cable & Telecommunications Association, the Minority Media and Telecommunications Council, and other industry groups. Consumer advocates like the Alliance for Community Media emphasized the need for more protection of the subscribers and public entities that will be affected by the change.

"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.

Groups in support of the legislation include the Public Safety Alliance, the National Governors Association, the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, the International City/County Management Association, Consumer Federation of America, Consumer's Union, Public Knowledge, the New America Foundation, Free Press, and Media Access Project.

The original cosponsors of the "Wireless Innovation and Public Safety Act of 2011" are Rep. Henry A. Waxman, Rep. Anna G. Eshoo, Rep. Edward J. Markey, Rep. Mike Doyle, Rep. Doris Matsui, Rep. Donna M. Christensen, Rep. Frank Pallone, Jr., Rep. Diana DeGette, Rep. Eliot Engel, and Rep. Jan Schakowsky.

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

The bill is still pending action by the Senate Committee on Finance after being passed by the House in November.

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.

HR 3179 went to the House Committee on the Judiciary and then to the Subcommittee on Courts, Commercial and Administrative Law.

S 1832 is pending action by the Committee on Finance.

Two new FCC Commissioners Nominated Senate Confirmation still pending

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 TATOA) 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.