

Office of Telecommunications & Regulatory Affairs

Legislative and Regulatory Update – March 14, 2012

Cable/Video Issues:

- **INet Deactivation**

The required encoder for the AISD and Travis county feeds to TWC has been received and installed at City Hall, and we are waiting for Time Warner Cable to schedule the connection to the encoder there.

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**

The next meeting with all PEG channel managers is scheduled for March 21st in City Hall. The participants will provide updates on the status of TWC, Grande, and AT&T picking up the PEG channels at City Hall. They will also provide a capital equipment list for the 2012-2013 fiscal year, indicating items that are budgeted and unbudgeted as well as identifying equipment that can be shared among the PEG providers for TARA to consider for capital purchase in the coming fiscal year. Carriage of the 2013 Texas legislative session feeds from the House and Senate will also be discussed.

- **ChannelAustin PEG Equipment Purchase**

The Purchasing Office issued the Request for Proposal to potential vendors for the equipment required to upgrade channelAustin's playback, automation, studio cameras, and studio audio system. Responses to the RFP are due on March 29th. The purchase will require Council approval since it will exceed \$50,000.

FEDERAL ACTIVITY:

The Stop Online Piracy Act (SOPA).

No Congressional action has been taken to reconsider or amend the SOPA legislation since it was pulled after the global internet protests January 18-19.

FCC Reform Act Legislation

The House Committee on Energy and Commerce on March 7th, completed markup of 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". The bills would prevent the FCC from setting limits on a merging company's behavior that aren't related to the transaction. It also would require the FCC to identify a harm to be remedied before adopting rules, and to publish regulations before it votes upon them.

The bill was sponsored by Representative Greg Walden, an Oregon Republican, who said "we need to lock in reform." Democrats criticized the bill, with Representative Henry Waxman of California saying it would "disable the FCC, not reform it."

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 bills are also supported by the National Cable & Telecommunications Association and the National Association of Broadcasters

FCC Basic Tier Encryption NPRM (No recent action) 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"

On Friday Feb. 17, 2012, Congress passed and on February 22nd President Obama signed into law the "Middle Class Tax Relief and Job Creation Act of 2012", concerning the Pay Roll Tax issues.

An important part of the Act concerns cities in several areas, particularly Title VI-Public Safety Communications and Electromagnetic Spectrum Auctions. Title VI preempts of local zoning authority in the area of collocation of new and replacement equipment on existing wireless cell towers; it allocates radio spectrum to a national public safety band; and has certain technical updates concerning E 9-1-1, with some certain possible funding grants for cities in the transitions/migration from the old to the new public safety spectrum and e 9-1-1 for 9-1-1-entities.

The Act specifies that a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. It defines the term "eligible facilities request" as any request for modification of an existing wireless tower or base station that involves—

- (A) collocation of new transmission equipment;
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment.

H.R.1002 -- Wireless Tax Fairness Act of 2011 (No recent action)

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 (No recent action)

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.

FCC Tower Siting Order Upheld by 5th Circuit Court of Appeals

The Court upheld the FCC time frames under which cities must complete wireless zoning applications. A key element of the Court's order is:

In short, we believe the cities' challenges to the reasonableness of the 90- and 150-day time frames stem from a misunderstanding of the time frames' effect on the wireless zoning application process. We do not read the Declaratory Ruling as creating a scheme in which a state or local government's failure meet the FCC's time frames constitutes a per se violation of § 332(c)(7)(B)(ii). The time frames are not hard and fast rules but instead exist to guide courts their consideration of cases challenging state or local government inaction. It is true that courts considering such cases will owe deference to the FCC's determination that a state or local government's failure to comply with the time frames constitutes unreasonable delay.

In the rare case in which a state or local government fails to submit any evidence demonstrating the reasonableness of its inaction, the government's failure to comply with the FCC's time frames will likely be dispositive of the question of the government's compliance with § 332(c)(7)(B)(ii). The more likely scenario, however, is that a state or local government that has failed to act within the time frames will attempt to rebut the presumption of unreasonableness by pointing to reasons why the delay was reasonable. It might do so by pointing to extenuating circumstances, or to the applicant's own failure to submit requested information. Or it might note that it was acting diligently in its consideration of an application, that the necessity of complying with applicable state or local environmental regulations occasioned the delay, or that the application was particularly complex in its nature or scope. All of these factors might justify the conclusion that a state or local government has acted reasonably notwithstanding its failure to comply with the FCC's time frames.

Low Power FM Broadcast Radio Stations

The FCC has taken no further action following its July 12, 2011 Further Notice of Proposed Rulemaking regarding low power FM broadcast stations and FM translators to assess the impact of the enactment of the Local Community Radio Act of 2010 ("LCRA,") on the procedures previously adopted to process the approximately 6,500 applications which remain pending from the 2003 FM translator window. The goals of this proceeding are to develop FM translator application processing policies that faithfully implement LCRA directives, to resume promptly the licensing of the remaining translator applications consistent with those directives, and to chart a path forward to the licensing of new LPFM stations in accordance with the framework established by the LCRA.

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.

