Office of Telecommunications & Regulatory Affairs

Legislative and Regulatory Update – May 9, 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 the connection to Time Warner Cable has been activated.

  We are now working to establish a connection for AISD and Travis County with Grande Communications at City Hall.

- **PEG Channel Coordination**
  Travis County is working with TARA and AT&T to provide its channel feed at City Hall. The City Purchasing Office has issued a Purchase Order for the required equipment which should be installed at City Hall in the next two weeks. TARA is coordinating with AISD and Travis County to provide their channels to Grande Communications at City Hall. ACC is working on transmitting its channel to City Hall which should be completed in the next 2-3 months. AISD provided a capital equipment list for the 2012-2013 fiscal year which TARA will review for possible purchase of at least some of the gear in the current fiscal year. The group agreed to test two remote video transmission systems for possible shared use among the PEG channel providers. Carriage of the 2013 Texas legislative session feeds was also be discussed with resolution to be worked out with the House and Senate production groups.

- **ChannelAustin PEG Equipment Purchase**
  The winning bid for the channelAustin equipment was selected last week for a new automated playback system, studio cameras, and audio system. The purchase will require Council approval since it will exceed $50,000.

- **AISD PEG Equipment Purchase**
  TARA is working with AISD to assist in the purchase of a new video playback system to replace its system that is plagued by reliability and quality issues. The proposal being developed calls for AISD to provide more than half of the purchase with the City using PEG fees for the balance. More details will be provided as the project is finalized.

FEDERAL ACTIVITY:

H.R. 3523: Cyber Intelligence Sharing and Protection Act (CISPA) of 2011

The bill, introduced by Rep. Michael Rogers, (R. MI), with 106 co-sponsors, was passed by the House on April 26th and is now pending action in the Senate. It amends the National Security Act of 1947 to add provisions concerning cyber threat intelligence and information sharing.

The bill has broad-based industry support by many of the same firms who opposed SOPA & PIPA.

Other privacy rights opponents of SOPA are concerned that CISPA goes much further, permitting ISPs to funnel private communications and related information back to the government without adequate privacy protections and controls. The bill does not specify which agencies ISPs could

disclose customer data to, but the structure and incentives in the bill raise a very real possibility that the National Security Agency or the DOD's Cybercommand would be the primary recipient.

Two new FCC Commissioners Confirmed by the Senate

On Monday, May 7th, the Senate approved President Obama's nomination of two new FCC commissioners-- Jessica Rosenworcel, a Democrat, and Ajit Pai, a Republican. This brings the FCC back to full membership after several months with only three commissioners.

FCC Launches Connect America Fund (CAF)

On April 25th, the FCC issued an order on the CAF and High Cost Universal Service Support. The first phase of the CAF takes $300 million in savings recovered through reforms and directing it to provide an immediate boost to connect up to 400,000 homes, businesses and anchor institutions that currently lack access to high-speed Internet. Companies that accept the money – as well as the strict accountability measures and buildout requirements attached to it – will help deliver broadband to hundreds of thousands of unserved Americas in rural communities. NATOA filed extensive comments with the FCC on how to best use the funds with anchor institutions.

The second phase of the order frees more broadband funding for over 2 million lines served by 500 rural carriers – without increasing the size of the Fund – by implementing another set of reforms. These reforms will increase fairness, fiscal responsibility and accountability in another Universal Service Fund program known as High Cost Loop Support, or HCLS. HCLS provides close to $800 million annually to offset the typically high capital and operating costs of small, rural carriers serving sparse populations. Key elements of the order will improve efficiency and competitiveness among the companies who receive the funding.

CAP Act - HR 1746

The United States Conference of Catholic Bishops (USCCB) have signed on to support the CAP Act. USCCB will not only have a presence and voice on the Hill on this matter but will also be doing a blast fax to every office asking their members to support this effort

Representative Michael E. Capauno, Dem.-MA, has signed on as a co-sponsor to the CAP Act.

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.

FCC Reform Act Legislation (Still pending action in the Senate)

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 the full House passed the bill on March 27th, when it was referred to the Senate Committee on Commerce, Science, and Transportation where it is still pending action. The bill 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 bill which would restructure the regulatory process at the Federal Communications Commission (FCC) is 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 bill 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 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.

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 Notice of Inquiry (NOI) on Broadband Deployment (No recent action)

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.