

Office of Telecommunications & Regulatory Affairs

Public, Educational, and Government (PEG) Program & Legislative - Regulatory Update

March 9, 2016

Cable/Video PEG Issues:

- The electronic equipment to upgrade the master control equipment in the City Hall basement telecommunications room to provide the seven Public, Educational, and Governmental, (PEG), Access channels to Time Warner Cable, Grande Communications, AT&T, and Google Fiber is almost complete, pending transmission of the three public access channels from the access studio to City Hall expected later this month.
- The interlocal agreement between the City and the Austin Independent School District to allow AISD to receive \$350,000 of PEG capital equipment funds for the new board room and performing arts center has been executed as approved by Council in December, 2015. Payment to AISD will be made later this week.

CITY REGULATIONS

Wireless Communications Regulatory Coordination

An interdepartmental task force was recently formed to develop city-wide policy recommendations for wireless installations, (small cell and DAS/Wi-Fi antenna attachments in ROW and on City poles and other infrastructure), with a target completion date of July, 2016. The City has pending requests from multiple providers (Crown Castle, Extenet, AT&T, Mobilitie, and Verizon). Planning is underway for the first workshops and meetings to be held beginning March 21, immediately after the conclusion of SXSW.

FEDERAL ACTIVITY:

Charter – Time Warner Merger-

The FCC timeline for approving the merger is now at day 165 of the 180 day total countdown, despite growing opposition among consumer advocates and competitors like Dish Networks. The resulting company will have 17.4 million video subscribers and 20 million broadband subscribers, compared with Comcast who has 22.4 million video subscribers and 22 million broadband subscribers.

H.R. 235 & S 431 Internet Tax Freedom Act

The bills to prohibit state and local governments from levying discriminatory taxes on Internet products and services supported by Rep Bob Goodlatte (R-Va) and passed by the full House June 9th with the Senate version, S 431 by Sen. John Thune with 50 co-sponsors in the Senate Committee on Finance were incorporated into H.R.644 - Trade Facilitation and Trade Enforcement Act of 2015 which was signed into law by President Obama on February 24, 2016.

S.698 Marketplace Fairness Act of 2015

Passage of the Custom's Enforcement Act containing the Internet Tax Freedom Act provisions included a verbal non-binding agreement for the senate to consider Senator Enzi's (R-WY) bill to require remote sellers to collect and remit sales taxes for their sales transactions. The bill now has 22 co-sponsors and is in the Committee on Finance.

Set Top Box Competition

By a 3-2 vote, at its February 18 open meeting, the FCC approved issuing a Notice of Public Rule Making to let consumers change out their cable boxes for cheaper devices and apps. The Rule Making Notice will give industry and consumer stakeholders a 60-day comment period. If a permanent FCC order is issued, the industry would then have two-years for full implementation.

Wilson, NC and Chattanooga, TN Petition FCC to restore local broadband authority

The Federal Communications Commission (FCC) on Feb. 26 approved petitions filed by the Electric Power Board of Chattanooga, Tennessee, and Wilson, North Carolina, to preempt state laws which prevent expansion of their networks. The petitions that the FCC approved on a 3-2 party-line vote are being appealed by the states of Tennessee and North Carolina to the 6th U.S. Circuit Court of Appeals. Oral arguments on the appeal petitions will be heard on March 17, 2016.

Net Neutrality – No recent developments

On December 4th, the DC Federal Court of Appeals heard initial arguments between the FCC and industry groups who are opposed to allowing the FCC to prevent undue restrictions to internet access by broadband providers. The court will rule on the case later in 2016.

On February 26, 2015, the FCC ruled in favor of net neutrality by reclassifying broadband access as a telecommunications service and thus applying Title II (common carrier) of the Communications Act of 1934 to Internet service providers.

Major Provisions of Title II that will apply to broadband providers:

- The proposed Order applies "core" provisions of Title II: Sections 201 and 202 (e.g., no "unjust and unreasonable practices")
- Allows investigation of consumer complaints under section 208 and related enforcement provisions, specifically sections 206, 207, 209, 216 and 217
- Protects consumer privacy under Section 222
- Ensures fair access to poles and conduits under Section 224, which would boost the deployment of new broadband networks
- Protects people with disabilities under Sections 225 and 255
- Bolsters universal service fund support for broadband service in the future through partial application of Section 254.

Major Provisions of Title II that are Subject to Forbearance (would not apply to broadband):

- the Order makes clear that broadband providers shall not be subject to tariffs or other form of rate approval, unbundling, or other forms of utility regulation
- Universal Service Contributions: the Order DOES NOT require broadband providers to contribute to the Universal Service Fund under Section 254
- The Order will not impose, suggest or authorize any new taxes or fees – there will be no automatic Universal Service fees applied and the congressional moratorium on Internet taxation applies to broadband.

On February 26, Angele A. Gilroy with the Congressional Research Service issued an extensive report on the Net Neutrality Debate that can be found at <http://fas.org/sgp/crs/misc/R40616.pdf>.

CAP Act - S.1244 – No recent developments

The Community Access Preservation (CAP) Act was reintroduced in the U.S. Senate by Senators Tammy Baldwin (WI) and Edward Markey (MA) May 7, 2015. It is now pending action in the Senate Committee on Commerce, Science, and Transportation.

H.R. 734 & S 253: Federal Communications Commission Consolidated Reporting Act of 2015 - No recent developments

H.R. 734 by Rep. Steve Scalise passed the House unanimously on February 24 and was referred to the Senate Committee on Commerce, Science, and Transportation February 25. S.253 by Sen. Dean Heller, is the Senate companion bill that was reported out of committee and is waiting for action by the full Senate. The bills would amend the Communications Act of 1934 to require the FCC to publish on its website and submit to Congress a biennial report on the state of the communications marketplace assessing: (1) competition, including intermodal, facilities-based, and new and emergent services competition and addressing the provision of content, as well as communications using the Internet; (2) deployment of communications capabilities, including whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion; and (3) whether laws, regulations, or regulatory practices pose a barrier to competitive entry or expansion of existing providers of communications services.

H.R. 1212, - Internet Freedom Act – No recent developments

Congressman Marsha Blackburn (R-TN), supported by Senator Thom Tillis (R-NC), has reintroduced legislation-- H.R. 1212, on February 26, 2015, the Internet Freedom Act, that would block the FCC's Net Neutrality rules by stating that they shall have no force or effect and prohibits the FCC from reissuing new Net Neutrality rules.

H.R. 1106: States' Rights Municipal Broadband Act of 2015 - No recent developments

The bill, sponsored by Marsha Blackburn, (R-TN), would amend section 706 of the Telecommunications Act of 1996 to provide that such section does not authorize the Federal Communications Commission to preempt the laws of certain States relating to the regulation of municipal broadband. The bill has been referred to the House Energy and Commerce Communications and Technology.

H.R. 279, - No recent developments

On January 12, 2015, Rep. Bob Latta (R-Ohio) introduced H.R. 4752 to prevent the FCC from reclassifying broadband as, at least in part, a Title II common carrier service. The bill would define Internet access as an information service, and would not allow an information service to be classified as a common carrier. It has been referred to the House Committee on Energy and Commerce