

Office of Telecommunications & Regulatory Affairs

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

September 14, 2016

Cable/Video PEG Issues:

- Austin Public in coordination with Building Services, will conduct a major renovation of the facility including carpet replacement, studio floor tile installation, repainting, ceiling tile replacement, and conversion of internal/external lights to LED. The work is expected to be completed in November.
- For a complete update of Austin Public activities, visit <https://www.austinpublicaccess.org/>.

CITY REGULATIONS

The National Association of Telecommunications Officers and Advisors (NATOA) Annual Conference

We are very excited to be hosting the NATOA annual conference in Austin September 19-22nd at the Sheraton Austin Hotel on E. 11th Street. NATOA is the premier local government professional association that provides support on local, state, and federal communications laws, administrative rulings, judicial decisions, and technology issues impacting the interests of local governments. The Conference educational sessions are divided into two tracks – a Telecom Policy and Legal track covering matters of local government and consumer interests in wireline and wireless telecommunications, cable television, zoning, public rights of way, and broadband, and a Programming track about writing, production, marketing strategies, quadcopters and more. Conference highlights include a SMART Communities Pre-con Day, an All Day Storytelling workshop for video production programmers featuring Scott and Carolyn Hall Jensen, a tour of San Antonio's state of the art new Public, Education and Governmental (PEG) facility and a tour of the City of Austin Government Access TV studio. Additional conference details can be found at: <https://www.natoa.org/events/annual-conference/2016/>.

Wireless Communications Regulatory Coordination

The interdepartmental wireless study group provided its policy recommendations for wireless installations, (small cell and DAS/Wi-Fi antenna attachments in ROW and on City poles and other infrastructure) to the City Manager. City Council received an update at the August 16, work session. Affected City departments are working with an outside technical consultant to develop the industry specifications, terms, fee proposal, processes and procedures to allow wireless installations to be completed in time for South by Southwest 2017.

FEDERAL ACTIVITY:

H.R. 2666, the No Rate Regulation of Broadband Internet Access Act

On April 15, 2016, the U.S. House of Representatives voted 241 to 173 to pass H.R. 2666, the No Rate Regulation of Broadband Internet Access Act, a bill that would restrict the FCC's ability to enforce key net neutrality protections. According to the Electronic Frontier Foundation, the White House has promised to veto the bill if it passes the Senate.

Set Top Box Competition

At a July 12, House Energy and Commerce Communications and Technology Subcommittee hearing, two FCC Commissioners and FCC Chairman Wheeler indicated that concerns from the Copyright office should be considered when considering the proposed rulemaking to allow consumers to change their cable boxes and apps. 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, and the approval was endorsed by the White House. Consumer groups generally support the proposed rule, providing that the rules protecting viewer privacy rights are also applied to third party device manufacturers and suppliers. The Rule Making Notice that gave industry and consumer stakeholders a 60-day comment period expired May 16. A final vote on the FCC order is set for September 29, and if approved, the industry would then have two-years for full implementation.

HR 5893 - No Regulation Without Representation Act of 2016- No recent developments

A bill introduced by Rep. Jim Sensenbrenner, R-Wis., that would not require merchants to collect sales tax or report sales unless the person or company is "physically present in that state" during the tax period. The bill is in the Committee on Finance.

Net Neutrality – No recent developments

On June 14th, the DC Federal Court of Appeals ruled in a 2-1 decision that internet service should be treated as a telecommunications service allowing the FCC to prevent broadband providers from restricting internet access. AT&T and others have said they will continue to appeal this ruling.

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>.

S 2644 – FCC Reauthorization Act of 2016– No recent developments

(Thune – R-SD)(reauthorized FCC for FY 2017-2018; provisions include: require FCC to begin proceeding on cramming; promote broadband access for veterans; report on impact of Universal Service Fund (USF) on tribes; require report on Rural Health Care Program; require report on broadband deployment and subscription data collection services); Unanimously passed by the Senate Commerce Committee on April 27, 2016; includes S 2553 and S 2558.

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

The 6th U.S. Circuit Court of Appeals reversed the FCC preemption of state limits on municipal efforts to extend broadband systems to neighboring communities in a ruling issued today. The ruling was seen as a major setback for municipal rights to provide broadband services where and when they are not being provided by commercial broadband interests.

Background: 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 were heard on March 17, 2016. On August 2nd, the court ruled to consolidate the two appeal petitions into one case no. 15-3291.

Charter — Time Warner & Bright Newhouse Merger

On May 18, 2016, Charter Communications announced that it had completed purchase of Time Warner Cable for \$78 BB and Bright House Networks for \$10.4 BB. 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. Following the transactions, Liberty Broadband completed a purchase and stock swap of previously held Time Warner shares that resulted in Liberty Broadband controlling about 25% of New Charter's aggregate voting power.

HR 4889 — Kelsey Smith Act

(Yoder — R-KS) requires providers to provide call location information to law enforcement in emergency situations); Approved by House E&C Committee April 28, 2016 and then failed in a record vote of the full House on May 23, 2016. Critics of the bill say that it lacks adequate privacy protection of citizens.

S.698 Marketplace Fairness Act of 2015 — No recent developments

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.

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.