

Office of Telecommunications & Regulatory Affairs

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

July 12, 2017

Cable/Video PEG Issues:

- For a complete update of Austin Public activities, visit <https://www.austinpublicaccess.org/>.
- On May 29, 2017, Purchasing issued a Request for Proposal (RFP) for about \$200,000 in additional equipment for the City Hall GAATN room master control system that feeds the 7 PEG channels to the 4 cable/video service providers in Austin. Proposals from potential vendors were due prior to 2:00 p.m. CST on June 29, 2017. The vendor proposal will be evaluated on July 17, and then taken to Council for approval in October.

CITY REGULATIONS

Wireless Small Cell Communications Regulatory Coordination

TARA is working with Austin Energy, Transportation, Planning and Zoning, Development Services, Legal, and other City offices to coordinate procedures that are required for placement of wireless small cell equipment in the right of way in anticipation of the September 1, 2017 effective date of SB 1004 (described below).

STATE ACTIVITY

SB 1004 – Hancock

The bill sought by wireless industry vendors ("network providers") to quickly install small cellular equipment ("network nodes") and/or towers in a city's rights-of-way and in the process reduce city authority was passed by the Texas Legislature on May 18, signed by the Governor on June 9, and will take effect on September 1, 2017. The bill greatly expands industry authority to deploy cellular network nodes in the public rights-of-way thereby reducing municipal authority over those rights-of-way. Here is a link to the detailed analysis provided by the Texas Municipal League, https://www.tml.org/legis_updates/the-pucs-sustained-bombardment-of-city-authority-private-profit-from-free-use-of-city-rights-of-way.

Public Utility Commission of Texas

The PUC Administrative Law Judge recommended that the PUC rule in favor of ExteNet in its complaint against the City of Houston regarding charges for small cell deployment. The Commission has yet to rule on the complaint which has been superseded by SB 1004.

On Friday, April 7, Crown Castle filed a similar complaint against Austin with the PUC. The complaint asserts the same general issues that have been filed against Houston, Dallas, and Beaumont—namely that Texas Local Government Code Chapter 283 requires the City to allow Crown to use the rights of way without compensation or a license agreement, to install components of small cell/DAS wireless networks. On May 15, 2017, the Commission Advising and Docket Management Division issued an order referring the complaint to the State Office of Administrative Hearings (SOAH), which required Crown, the City and the PUC to file a list of issues to be considered by the SOAH.

NATIONAL ACTIVITY:

Internet privacy legislation – HR 2520

Rep. Marsha Blackburn (R-TN) introduced HR 2520, (Balancing the Rights of Web Surfers Equally and Responsibly (BROWSER) Act of 2017). The bill would give the Federal Trade Commission (FTC) sole jurisdiction over Internet privacy protection, and it would also require both broadband Internet service providers (ISPs) and online edge providers to notify customers of their privacy policies and obtain “opt-in” authorization from customers for the collection and usage of sensitive information.

Infrastructure legislation introduced – HR 2479

On 05/17/2017, Rep. Pallone, (D-NJ-6) - Introduced HR 2479 (Leading Infrastructure for Tomorrow's America Act) – to rebuild and modernize the Nation's infrastructure, to expand access to broadband internet, rehabilitate drinking water infrastructure, modernize the electric grid and energy supply infrastructure, redevelop brownfields, strengthen health care infrastructure, create jobs, and to protect public health and the environment.

Gigabit Opportunities Act, S1013

The bill introduced in May by Senator Capito (R-WVa), and House companion bill HB 2870 introduced by Rep. Collins (R-GA) give tax breaks to broadband providers that provide service to low income areas, if they have comply with the “Model Deployment Act” by the FCC.

Net Neutrality Rollback –

The Federal Communications Commission released the draft text of a notice of proposed rulemaking (NPRM) on April 27, 2017, that would launch a new FCC proceeding (WC Docket No. 17-108) to roll back the Commission's 2015 Open Internet Order and take steps to “restore Internet freedom” by deregulating broadband Internet access service (BIAS). Comments are due July 17, 2017; reply comments due August 16, 2017. In the NPRM, the Commission proposes to restore the regulatory framework in place before the 2015 Open Internet Order (which the NPRM calls the “Title II Order”), and seeks comment on how best to achieve that outcome. This is consistent with FCC Chairman Pei's statement on February 28, 2017 that under his direction, the FCC would move to reverse the heavy handed approach toward broadband regulation taken by the FCC under the previous FCC Chairman Wheeler. Pei promised to take a “light touch approach” to reverse the “utility-style regulation”, (aka net neutrality).

On June 14th, 2016, 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. Here is a link to the ruling:

[https://www.cadc.uscourts.gov/internet/opinions.nsf/3F95E49183E6F8AF85257FD200505A3A/\\$file/15-1063-1619173.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/3F95E49183E6F8AF85257FD200505A3A/$file/15-1063-1619173.pdf).

FCC Wireless Infrastructure Notice of Proposed Rule Making (NPRM) -

On March 30, 2017, the FCC issued a NPRM WC Docket No. 17-84 seeking comments on the regulatory impediments to wireless network infrastructure investment and deployment, and how we may remove or reduce such impediments. The notice has the potential to establish new FCC rules that would reduce municipal authority over placement of wireless infrastructure in its public ROW and roll back the protections provided by the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA), as they relate to wireless infrastructure deployment. Comments are due 30 days after publication of the NPRM in the Federal Register, and reply comments are due thirty days after the initial comment due date. The City will file comments in support of municipal rights to manage its public ROW. The FCC Fact Sheet on this NPRM can be found at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0330/DOC-344160A1.pdf.

FCC Received Comments on Small Cell Deployment -

The final FCC Order is now pending. On December 22, 2016, the FCC issued a Public Notice (WT Docket No. 16-421), inviting public input on potential Commission actions to expedite wireless

infrastructure deployment, including, but not limited to issuing a declaratory ruling similar to the new rules suggested in the Mobilitie, LLC petition to the FCC dated November 15, 2016. Such a ruling could severely limit municipal authority over public rights of way in several areas including sharply reducing the fees that wireless providers are charged for ROW access, limiting the time required for cities to process applications for ROW access; dictating the criteria used to approve or deny ROW access, and other rights that have been traditionally within the exclusive jurisdiction of cities. This type of ruling could also reduce franchise and license fees currently paid by other service providers like telecom and cable TV who have facilities in the city ROW. This is a significant proceeding. The City of Austin filed comments along with NATOA and other national associations defending municipal rights and disagreeing with Mobilitie's contention that cities restrict wireless infrastructure deployment.

The full 15-page Public Notice can be found at:

http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db1222/DA-16-1427A1.pdf.

FCC Wireline Competition Bureau adopts NPRM on GN Docket No. 17-142

Captioned "Improving Competitive Broadband Access to Multiple Tenant Environments," the notice seeks input on ways to improve broadband access in apartments and other multiple family residences. Comments are due July 24, 2017 with reply comments due August 22, 2017.

Sprint in talks with Comcast and Charter for wireless cellphone service in on Sprint's network.

On June 27, 2017, CNBC reported that Sprint was in exclusive talks with Charter and Comcast on a wireless cellular services deal. In a May 8, Comcast press release, Comcast announced an agreement with Charter to explore potential opportunities for operational cooperation in their respective wireless businesses to accelerate and enhance each company's ability to participate in the national wireless marketplace. The companies, which have each separately activated a mobile virtual network operator ("MVNO") reseller agreement with Verizon Wireless will utilize their individual Wi-Fi networks where available to provide the cellular service. Comcast is expected to roll out its wireless product in the next month and Charter should have its wireless cellphone product ready next year.

AT&T and Time Warner have agreed to an \$85 billion purchase deal - No recent developments

While the purchase is still pending AT&T is working to acquire additional wireless spectrum that will support its launch of 5G in the coming years. The most recent acquisition target is Straight Path Communications. AT&T announced on April 10, 2017 that it was buying the wireless holding company Straight Path Communications for \$1.6 billion as part of the company's efforts to continue building out its 5G spectrum holdings. According to the New York Times, AT&T's proposed \$85 billion merger with Time Warner is being reviewed by antitrust officials at the Justice Department. Republicans are expected to be generally more permissive of mergers, but the outcome is uncertain. New FCC chairman Pei has not commented on the impact of the sale on whether FCC review would be forthcoming. According to Brian Stelter in CNN Money, the purchase will help AT&T expand beyond wireless and Internet service into programming. Time Warner (TWX) is the parent of CNN, TNT, HBO, the Warner Bros. studio, and other channels and websites. AT&T (T, Tech30), which dates back to the invention of the telephone in 1876, is one of the country's largest providers of wireless phone and Internet service that also recently acquired the DirecTV satellite TV business. The deal will be subject to a review by government regulators but approval in 2017 is likely despite objections that have been expressed by President Trump during the campaign.