

Office of Telecommunications & Regulatory Affairs

Legislative and Regulatory Update – December 11, 2013

Cable/Video Issues:

- **PEG Channel Coordination**

PEG channel managers met last week and agreed on the equipment configuration needed to increase signal feed reliability and allow remote signal monitoring in the City Hall GAATN room.

The Council will act December 12th on the \$2.5-million proposal to remodel City Hall to accommodate the new 10-1 Council make-up, as well as to upgrade the City channel 6 control room, studios, and equipment to HD using \$2.5-million in PEG funds. Target completion is October 2014.

- At the December 12th meeting, Council will also consider a change in the City Code to require companies with utility poles in the City ROW to allow a provider of public services (cable TV, video services or telecommunications) to have access to those poles on rates, terms and conditions that are reasonable and non-discriminatory.

CITY REGULATIONS

Wireless Regulatory Coordination

TARA is coordinating an interdepartmental evaluation of City regulations regarding private and public uses of the City ROW, infrastructure and other City assets for wireless applications such as wireless telecommunications and WiFi. The working group met on December 9th to kick off the process and will meet again in January.

Cell Tower Offset and Construction Offset from Existing Cell Towers (pending coordination with the Planning & Zoning Commission)

Following public comments from Scott Johnson last month, staff investigated whether the Code requirements for offsets for placement of new cell towers are the same offset requirements for the placement of new construction adjacent to existing cell towers. Lynda Courtney, Development Services Process Coordinator, advised that while there are offset requirements from residential structures for new cell tower placement, there are no comparable offset requirements for new residential structures being constructed adjacent to existing cell towers.

FEDERAL ACTIVITY:

CAP Act - has been reintroduced in the U.S. Senate by Senators Tammy Baldwin (WI) and Edward Markey (MA) yesterday. It is unlikely that the bill will be approved during the current session.

Work is ongoing by municipal associations and individual cities to inform elected officials and to gain support for the Community Access Preservation ("CAP") Act and to obtain a replacement sponsor for Republican co-sponsor Steven LaTourette, who retired from Congress at the end of the last session. The CAP Act removes the distinction between capital and operating uses of PEG support fees that currently prevent PEG fees from being used for operational expenses; ensures

funding for PEG channels; requires cable operators to transmit PEG channels without charge to the local government; and requires the FCC to undertake a study of PEG operations.

FCC adopted a Notice of Proposed Rulemaking (WT Docket No. 13-238) to address what the Commission believes to be a continuing problem with provider access to the public rights-of-way. (Due date delayed to January, 2014 because of government shutdown.)

The City will participate in filing Reply Comments to rebut inaccuracies anticipated in the initial Comments filed by industry in January.

The NPRM seeks comment on:

- Streamlining the environmental and historic preservation review processes for newer technologies, including small cells and distributed antenna systems;
- Removing barriers to the deployment of temporary towers, that are used in cases of emergencies or to add capacity during short term events;
- The meaning of terms included in a provision of the Middle Class Tax Relief and Job Creation Act of 2012 which states “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;” and
- Clarification of issues addressed in the Commission’s “shot clock” order which set time periods for state and local governments to complete review of wireless siting applications.

The City will submit comments individually and as a member of NATOA.

Representative Anna G. Eshoo (CA-18) has released draft discussion legislation - the Video CHOICE (Consumers Have Options in Choosing Entertainment) Act (no change)

The bill is intended to eliminate television blackouts caused by retransmission consent disputes and give consumers greater flexibility to choose the channels they receive each month from their pay-TV provider.

H.R. 2844 Federal Communications Consolidated Reporting Act of 2013 (no change)

Rep. John Scalise (R-LA), Rep. Greg Walden (R-OR), and Rep. Anna Eshoo (D-CA) introduced the bill on July 26th which amends 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. The bill was unanimously approved by the full House September 9th, and it is now pending action by the Senate.

S. 912 Television Consumer Freedom Act of 2013 (no change)

Sen. John McCain (R-AZ) and Sen. Richard Blumenthal (D-Conn.) introduced the bill that would allow multichannel video programming distributors (MVPDs) to provide subscribers with any channel of video programming on an a la carte basis.

H.R.2309 & S.1235 Tax Fairness Act of 2013 (no change)

Rep Zoe Lofgren D-CA-19 on June 11th introduced the House bill and Sen Ron Wyden D-OR on June 25th introduced a companion bill that would restrict any State or local jurisdiction from imposing a new discriminatory tax on cell phone services, providers, or property. The House bill has 149 cosponsors and is pending action by the House Committee on the Judiciary.

S. 31 & H.R. 434: Permanent Internet Tax Freedom Act of 2013 (no change)

Sen. Kelly Ayotte [R-NH] introduced the Senate bill, and Rep. Steve Chabot [R-OH1] introduced the bill in the House. The bills would make the moratorium on Internet access taxes and multiple and discriminatory taxes on electronic commerce permanent.

S. 1431: Internet Tax Freedom Forever Act (no change)

Sen. Ron Wyden (OR) introduced the bill August 1, 2013, to permanently extend the ban on state and local taxation on Internet access service.

The Broadband Adoption Act of 2013 (H.R.1685) (no change)

On April 23rd, Congresswoman Doris Matsui (D-CA-06), Member of the Energy and Commerce Subcommittee on Communications and Technology, along with Energy and Commerce Committee Ranking Member, Henry Waxman (D-CA-33) and the Ranking Member of the Communications and Technology Subcommittee, Anna Eshoo (CA-18), introduced legislation to reform and modernize the Universal Service Fund (USF) Lifeline Assistance Program. The Broadband Adoption Act of 2013 would help bridge the digital divide by making in-home broadband services more affordable across the country. The bill allows eligible Americans in rural and urban communities to use Lifeline program for broadband Internet services, and not just voice services. The bill also requires the FCC to implement a national eligibility data base to ensure only one Lifeline per eligible household, to avoid waste, fraud and abuse of the program. The bill is co-sponsored by Reps. Diana DeGette (CO-01), Zoe Lofgren (CA-19), Jan Schakowsky (IL-09), G.K. Butterfield (NC-01), and Ben Ray Lujan (NM-03).

The Marketplace Fairness Act (S.743 / H.R.684) (no change)

S. 743 passed the Senate May 6th and was referred to the House Judiciary Committee. House approval is far from certain.

Sen. Michael Enzi, R-WY, introduced S. 336 and S. 743 on April 16th that requires collection of sales taxes on all sales and remission of the tax to the state where the purchasers reside. It now has 29 cosponsors (22D, 6R, 1I) and is set to go before the full Senate on April 24th. HR 684 is the House version being carried by Rep. Steve Womack (R-AR). S. 743 provides an exception for small online businesses and requires States to make available, at no cost to retailers, software that helps calculate the State sales tax on remote transactions, as well as administrative services. The bill is supported by the administration as well as most brick and mortar retailers and opposed by cyber-retailers and fiscal conservatives.

S. 607 & H.R. 1847 - Electronic Communications Privacy Act Amendments Act of 2013 (no change)

The bill was reported out of the Senate Committee on April 25th. Introduced March 19th by Sen. Patrick Leahy, (D-VT) and referred to the Judiciary Committee, the bill increases protections regarding disclosure by a provider of electronic communication service or remote computing service of the contents of a wire or electronic communication that is in electronic storage.

H.R. 624 - Cyber Intelligence Sharing and Protection Act - (no change)

The bill was passed by the House on April 18th by more than a 2 to 1 majority with bi-partisan support. It has been referred to the Senate where it is unlikely to be taken up in its current

form. Rep. Mike J. Rogers introduced the bill February 13, when it was referred to the House Committee on Intelligence. It amends the National Security Act of 1947 to add provisions concerning cyber threat intelligence and information sharing. The bill is now in the Senate Select Committee on Intelligence.

The bill has broad-based industry support by many of the same firms who opposed the Stop Online Piracy Act & the Protect Intellectual Property Act.

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.

S. 517 & H.R. 1123 - Unlocking Consumer Choice and Wireless Competition Act, (no change)

The legislation would undo a Library of Congress ruling from last year which stripped unlocking protections from the Digital Millennium Copyright Act. Beyond Sen. Al Franken, other politicians behind the bill include Judiciary Committee Chairman Sen. Patrick Leahy (D-Vt.), Committee Ranking Member Sen. Chuck Grassley (R-Iowa), Sen. Orrin Hatch (R-Utah), and Sen. Mike Lee (R-Utah).

House Judiciary Committee Chairman Bob Goodlatte (R-Va.) and Ranking Member John Conyers (D-Mich.) introduced similar, bipartisan legislation March 13th.