

Office of Telecommunications & Regulatory Affairs

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

May, 2019

Cable/Video PEG Issues:

- For a complete update of Austin Public activities, visit: <https://www.austinfilm.org/austin-public/about-austin-public/>.

CITY REGULATIONS

Wireless Small Cell Communications –

TARA coordinates the small cell deployment in the City rights of way across City departments and with the wireless carriers.

In late February TARA hired John Guinan, the new Small Cell Project Manager to manage the interdepartmental the small cell application process working with the wireless industry. The following summarizes the wireless permit process as of April 17, 2019:

98	Approved Permits
197	Total Applications Received

STATE ACTIVITY

SB 1004

The City of McAllen and a coalition of more than 30 other cities filed suit in Travis County District Court to have the bill overturned as being an unconstitutional taking of municipal property. Trial for the McAllen suit on SB 1004 has been set to begin the week of May 13, 2019. The Federal Communication Commission, (FCC), Declaratory Ruling and Third Report and Order on small cell deployment may affect or may cause additional motions to be filed in the McAllen suit. The FCC Order can be found at: <https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf>

The City filed a similar suit in Federal District Court in Austin stating that the Texas law (SB 1004) frustrates the City's ability to manage public rights-of-way and to require fair and reasonable compensation from companies that use public property to provide private mobile telephone services. On March 25, 2019, U.S. District Judge Robert Pitman dismissed the case, ordering the case to be closed with each party being responsible for its own costs.

Here is a link to the detailed analysis of the SB 1004 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.

86th Legislative Regular Session

SB 1152 by Hancock & HB 3535 by Phelan

These identical bills would allow companies who provide both cable television and wireline telecom services to stop paying cities the smaller of either the cable franchise fee or the telecom access line fee for their use of city ROW. If passed, the bill could cost the City about \$5.6-million annually in general fund revenues. SB 1152 was passed by the Senate April 4, 2019, on a 26 to 5 vote. On April 10, 2019, the House State Affairs committee held a public hearing on HB 3535

and voted favorably on the substituted bill by a 9 to 2 vote. The bill is now pending action by the full House. SB 1152 can be found at:

<https://capitol.texas.gov/tlodocs/86R/billtext/pdf/SB01152E.pdf#navpanes=0>

HB 3899 by Springer

This bill would function as a super preemption bill that prohibits municipalities from adopting or enforcing any ordinance, rule, or regulation that regulates or affects commercial activity. Commercial activity is a term that is very broadly defined in the statute. Although the bill provides for four limited exceptions to the broad prohibition, but those exceptions do not provide significant relief from the prohibitions. The House State Affairs committee held a public hearing on the bill April 1, 2019, and reported the bill as substituted to the full House by a 7 to 2 vote on April 10th. The committee report was distributed and sent to Calendars on April 24th and is waiting action by the full House.

According to the Texas Municipal League, the bill would wipe out the following:

1. Payday lender regulations that prohibit predatory lending practices.
2. Sexually oriented business regulations, such as "no touch" ordinances.
3. Burglar alarm registration ordinances designed to properly allocate law enforcement resources.
4. Pawnshop regulations designed to stop stolen property transactions.
5. Eight liner and similar game room regulations designed to protect patrons of those establishments and properly allocate law enforcement resources.
6. Short-term rental regulations designed to protect both patrons and neighbors.
7. Noise ordinances designed to protect quality of life.
8. Billboard and on premise sign regulations designed to protect against visual blight.
9. Peddler and door-to-door solicitor regulations designed to protect residents from unscrupulous salespersons.
10. Oil and gas well drilling ordinances designed to protect residents from the deleterious effects of urban drilling.
11. Ordinances regulating alcohol sales near churches and schools designed to protect youth.
12. Health codes designed to protect restaurant patrons.
13. Transportation network company rules at city airports designed to facilitate traveler access to those services.

SB 1103 by Perry

This bill creates a broadband office within the Public Utility Commission of Texas and establishes a broadband investment program to encourage broadband deployment. Since it is still pending action by the Senate Business and Commerce Committee, it is unlikely to be approved in this session.

SB 14 by Nichols

The bill empowers Texas electric cooperatives to deploy broadband to the members they serve by allowing them to utilize their existing electricity easements. The bill was voted out of the Senate Business & Commerce Committee on April 4, 2019, by a 7 to 1 vote, and then approved by the full Senate on April 8th. On April 25th, the House State Affairs Committee held a formal hearing on the bill and reported it favorably as substituted.

NATIONAL ACTIVITY:

Congress

Digital Equity Act of 2019 by Sen. Murray

The bill introduced on April 11, 2019, helps close the digital divide impacting communities across the nation by establishing two new \$125-million grant programs to promote #DigitalEquityNow

and to support other digital inclusion programs for students, families, and workers. The full text of the bill can be found at:

<https://www.hirono.senate.gov/imo/media/doc/Digital%20Equity%20Act%20Bill%20Text.pdf>

HR 530 by Rep. Eschoo - Accelerating Broadband Development by Empowering Local Communities Act of 2019

Bill states that the FCC's August moratorium order and September small cell wireless order would have no force or effect. Introduced by Rep. Eschoo; 30 co-sponsors to date. Sen. Feinstein will be introducing a Senate companion bill in early April. The full text of the bill can be found at:

<https://eshoo.house.gov/wp-content/uploads/2019/03/H.R.530-PDF.pdf>

HR 1644 by Rep. Doyle & SR 682 by Sen. Markey - Save the Internet Act of 2019

The bills would restore FCC's 2015 net neutrality rules and bar the FCC from repealing the rules again unless specifically authorized by law to do so. H.R. 1644 was passed by the full House on April 10, 2019. Passage by the Senate is uncertain.

The bill targets the June 11, 2018, FCC Declaratory Ruling, Report and Order, and Order - WC Docket No. 17-108 that effectively cancelled existing net neutrality provisions that had been enacted by former FCC chairman Wheeler. The full text of the report can be found at

https://apps.fcc.gov/edocs_public/attachmatch/DOC-347927A1.pdf.

FCC

Wireless Infrastructure Order

At its September 26, 2018 meeting, the FCC approved a Declaratory Ruling and Report and Order that clarified the scope and meaning of Sections 253 and 332(c)(7) of the Communications Act, established shot clocks for state and local approvals for the deployment of small wireless facilities, and provided guidance on streamlining state and local requirements on wireless infrastructure deployment. (The full ruling and report can be found at:

<https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf> .)

Clarifying Local Franchising Authorities Regulation of Cable Operators

At the same September meeting, the Commission considered a Second Further Notice of Proposed Rulemaking addressing two issues raised by a remand from the U.S. Court of Appeals for the Sixth Circuit concerning how local franchising authorities may regulate incumbent cable operators and cable television services, (MB Docket No. 05-311). In *Montgomery County, Md. et al. v. FCC*, the court vacated and remanded the Commission's decision to treat cable-related, in-kind contributions to a local franchise authority (LFA) as franchise fees subject to the statutory five percent franchise fee cap, finding that the Commission had failed to explain the extent to which such treatment was allowed under Section 622. The court also vacated and remanded the Commission's ruling that an LFA may not use its cable franchising authority to regulate the mixed-use network (i.e., facilities used to provide both cable services and non-cable services) of an incumbent cable operator that is not a common carrier. The court found that the Commission had failed to offer a valid statutory basis for this ruling.

The proposed rulemaking would:

- Tentatively conclude that cable-related, in-kind contributions required by LFAs from cable operators (both new entrants and incumbents) as a condition or requirement of a franchise agreement should be treated as "franchise fees" subject to the statutory five percent franchise fee cap set forth in Section 622 of the Act, with one limited exception.
- Tentatively conclude that capital costs for public, educational, and government channels required by the franchise are the only cable-related, in-kind contribution excluded from the statutory five percent franchise fee cap.
- Tentatively conclude that the mixed-use network ruling should be applied to prohibit LFAs from using their video franchising authority to regulate non-cable services offered over cable

systems by incumbent cable operators, with the exception that LFAs are not precluded from regulating I-Nets.

The complete notice can be found at:

<https://docs.fcc.gov/public/attachments/DOC-353963A1.pdf>

An informative Utube video on the impact on PEG channel funding can be found at:

<https://youtu.be/yDif0cOab-Y>.

Courts – Judicial Challenges

Appeals by cities and consumer protection groups are pending in 9th Circuit challenging the FCC's September [Declaratory Ruling and Third Report and Order](#) and the August [Moratorium Declaratory Ruling](#). Austin joined the appeal.

Sprint and T-Mobile Merger -

On April 29, 2018, Sprint and T-Mobile announced that they have agreed to an all-stock merger transaction worth about \$145 billion for the combined company. According to T-Mobile, the new company will be perfectly positioned to quickly create a broad and deep 5G nationwide network in the critical first years of the 5G innovation cycle. According to recent reports from the Wall Street Journal and Reuters, the Department of Justice, (DOJ), advised the companies that approval of the merger is unlikely since it would harm competition among wireless providers. In February, a group of eight Democratic senators, led by Senator Blumenthal wrote the FCC and the antitrust division of DOJ to urge the merger be prevented.

According to Reuters, T-Mobile US Inc and Sprint Corp on Monday, April 29th, extended the deadline for completing their proposed \$26 billion deal to July 29 as the U.S. Justice Department's Antitrust Division chief said he had not decided whether to approve the transaction.