

Office of Telecommunications & Regulatory Affairs

Legislative and Regulatory Update – June 8, 2011

Cable/Video Issues:

- **SB 1087 (Carona)** was passed by the House and Senate and was sent to the Governor on May 31st. The bill amends SB5 the state cable/video franchising bill to allow all incumbents to opt out of their city franchises. The bill was amended to retain the current requirement to provide INet services and cable service at incremental costs. The bill also requires cities to maintain all of the PEG fees in a separate account to verify that they are used in compliance with federal regulations.
- **HB 259 (Eiland)** which imposes a 6 ¼% assessment on all video providers, including satellite service, and allows cable/video providers who now pay city franchise and PEG fees to deduct those fees from the assessment died in committee. This source of revenue may be reintroduced in the 2013 legislative session.

Telecom Issues:

- **SB 980 (Carona) and companion bill HB 2295(Hancock)** prohibit any rate or contract regulation of Voice Over Internet Protocol (VoIP), and reduce PUC regulatory authority over telecommunications providers. The bills also prevent the PUC from reregulating telecom markets that have been deregulated, losing consumer protection if competition is lost in a deregulated market, and they reduce PUC authority to require mandatory telephone and local toll-free calling in metropolitan areas, limiting newly annexed areas to participate in the metro service options. The bill was signed into law by the Governor on May 20th.
- **HB 2295 (Frullo), (companion to SB 712 (Hegar))** that introduces two service plans into the state Universal Service Fund regulations, (no impact on the City), was passed by the House May 5th and by the Senate May 23rd and sent to the Governor May 24th.
- **HB 1688 (Raymond)** removes the requirement for Certified Telecommunications Providers (CTPs) to pay for relocations required by road widening or straightening, increasing the City's cost to widen or straighten roads where CTP plant must be relocated. The bill died in the House State Affairs Committee.

FEDERAL ACTIVITY:

CAP Act

On May 5th, 2011, the Community Access Preservation ("CAP") Act (HR 1746) was introduced by Congresswoman Tammy Baldwin (D-WI) and Congressman Steven LaTourette (R-OH).

Here are some key points of the legislation:

1. It removes the distinction between "capital" and "operating" in PEG support fees.

PEG support fees that are collected from subscribers by the cable operators can only be used for "capital and equipment" and not for operational overhead. The CAP Act will eliminate that part of the Telecommunications Act that prevents PEG centers from using PEG support for their operating expenses. Right now, access centers are closing their doors because even though they receive money for buildings and equipment, they do not have or are losing money for operations. The CAP Act will allow centers to spend the PEG support fees as they see fit to keep the centers open and keep the channels on the air.

2. It makes sure that cable operators transmit the PEG channels without charge to the local government.

This is an important point because in several places cable operators are claiming they can charge local governments for the transmission of the channels. Cable operators are demanding several thousand dollars per year per channel for transmission. Time Warner has indicated that they will charge us when they fall under a state issued cable franchise in August.

3. It requires the FCC to undertake a study on PEG.

The FCC will be required to undertake a study within 180 days of the passage of CAP to analyze the effect of statewide/state issued franchise laws that have passed. It also requires an analysis of the impact of digital conversion on PEG. And it calls for the FCC to make recommendations for changes to the Telecommunications Act to preserve and advance PEG, broadband and localism.

We are working with state and national organizations to obtain support for the bill, the beginning of much more that needs to be done. We need every one of you to pick up the phone, call your Representatives and ask them to support H.R. 1746, the CAP Act!

City Council is posted to take action on a Resolution supporting passage of the CAP Act at its June 9th meeting, (copy of the draft resolution is included in your packet).

channelAustin has a page on their website about the CAP Act:
<http://www.channelaustin.org/capact>

with information including links to bill analysis and bill text, as well as contact information for the Austin area reps.

FCC to Issued Notice of Inquiry (NOI) April 20th with the implication of establishing that local governments are a "barrier to broadband deployment" that need to be torn down by the agency, and to make the federal government the arbiter of local rights-of-way practices and rights-of-way fees. In Austin, these fees are more than \$34 million annually, about 8 percent of total General Revenues. Several mayors, including Mayor Leffingwell, have sent letters to Vice President Biden with copies to Texas Congressional Delegation and to FCC Chairman Julius Genachowski expressing opposition to the NOI.

A major effort is underway to encourage cities to submit comments to document that city ROW management is not impairing broadband deployment. National associations, including the National Association of Telecommunications Officers and Advisors, US Conference of Mayors, National League of Cities) are filing joint comments to address big policy issues and legal issues. We don't believe the FCC has preemption jurisdiction over local rights-of-way management ordinances and local ROW charges.

The City will file comments to document that the City's management of the rights-of-way does not impede broadband deployment.

SB 911 - "Public Safety Spectrum and Wireless Innovation Act" by senators Rockefeller and Hutchinson was passed out of the Commerce Committee today and sent to the Senate floor for consideration. The bill would set aside the D-Block for public safety communications and create a funding stream to build out an interoperable public safety communications network. Unfortunately, the bill also contains a provision that would effectively strip municipal authority over any modifications to current wireless tower and equipment placements, regardless of the increase in electromagnetic radiation or the configuration of the antennae. NATOA and other municipal groups are working to have the language taken out, or to garner support for a similar bill by McCain and Lieberman that does not have the municipal restriction.

The City's D.C. office has contacted Senator Hutchinson's office to express our concerns and have been assured that they would be addressed during floor debate in the Senate.

FCC Order on Pole Attachment Rules

On April 7th, the FCC issued rulings that require utilities to charge the same rate to telecom providers that they charge cable providers and that set maximum timelines for utilities to negotiate agreements, process pole attachment applications and perform the work needed to access the poles or conduit. The rule could reduce the pole attachment fees received by Austin Energy for pole attachments since SB 5 requires municipal electric utilities to set pole attachment rates no higher than is allowed by following the Federal regulations.

Moratorium on Internet Taxes and Electronic Commerce

There has been no movement on **S.135 (John Ensign, R-Nevada)**: A bill to make the moratorium on Internet access taxes and multiple and discriminatory taxes on electronic commerce permanent. The current legislation banning Internet taxation will not expire until 2013.

Cell Tax Fairness Act

The bill sponsored by Zoe Lofgren D. Cal. prohibits any State or local jurisdiction from imposing a new discriminatory tax on or with respect to mobile services, mobile service providers, or mobile service property, during the 5-year period beginning on the date of enactment of this Act. Hearings are expected to be held March 29th in the Judiciary Committee. The bill would limit the City's authority to collect fees from the mobile service industry.

FCC Moves to Shift Phone Subsidy to Rural Broadband

The Federal Communications Commission on Tuesday moved to begin the process of overhauling the \$8 billion federal telephone subsidy to redirect funding to broadband service in rural areas. The notice of proposed rulemaking (NPRM), approved by a unanimous vote, also outlines a path for reforming the system of payments among telephone providers for exchanging local and long-distance calls, known as inter-carrier compensation.

In the long term, the FCC is looking to consolidate the USF programs into a single Connect America Fund, which would shift funding toward broadband and away from telephone service without increasing the price tag of the fund. Transitioning to the Connect America Fund was a central piece of the national broadband plan the FCC issued last March.

COURTS:

Appeal of Ruling on Texas Cable Association and TWC Suit on SB 5

The Cable Assoc. and Time Warner Cable's Initial Brief to the Fed. 5th Cir on the SB 5 Appeal was filed Monday, Jan. 31, 2011. With the passage of SB 1087, we anticipate that the litigation will be dismissed.