

## Office of Telecommunications & Regulatory Affairs

### Legislative and Regulatory Update – September 14, 2011

#### Cable/Video Issues:

- **Time Warner Cable Franchise with the City Expired on August 11.**

TWC converted to a State Issued Certificate of Franchise Authority (SICFA) regulated by the PUCT on August 12 to continue providing cable TV service in Austin. Under the SICFA, TWC will begin contributing 1 percent of its gross revenues to the City to be used for capital expenses related to the Public, Educational, and Governmental Access channels.

Work is underway to decommission the TWC-provided INet and to eliminate the annual maintenance fees associated with INet operations, currently about \$240,000 annually. To accomplish this, AISD and Travis County are working to transmit their PEG channel feeds over GAATN fiber to City Hall where TWC will pick them up.

The City will use PEG capital funds to help acquire the equipment needed for this transition.

Time Warner will continue to provide complimentary cable service to the City facilities receiving service when the SICFA goes into effect at no charge to the City. The SICFA regulations allows cable providers to charge for the complimentary service at their incremental costs, but TWC advises that it will give the City notice and work within budgetary process timelines if it ever changes its current policy to begin charging for the service.

The regulations define "Actual incremental cost" as only current out-of-pocket expenses for labor, equipment repair, equipment replacement, and tax expenses directly associated with the labor or the equipment of a service provider that is necessarily and directly used to provide what were, under a superseded franchise, in-kind services, exclusive of any profit or overhead such as depreciation, amortization, or administrative expense.

#### **FEDERAL ACTIVITY:**

##### **CAP Act**

Work is ongoing by municipal associations and individual cities to obtain additional Republican sponsors and support for the Community Access Preservation ("CAP") Act, (HR 1746), which was introduced back on May 5<sup>th</sup> of 2011 by Congresswoman Tammy Baldwin (D-WI) and Congressman Steven LaTourette (R-OH).

Progress was suspended during the extended debate on extending the Federal debt ceiling.

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!

At the June 9<sup>th</sup> Council meeting, Resolution No. 20110609-042 expressing the City's support of the CAP Act was approved on consent on Mayor Pro Tern Martinez' motion, Council Member Morrison's second on a 7-0 vote (copy of the 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)** Comments were filed on the NOI July 18<sup>th</sup>, with the primary industry filings coming from the wireless industry calling for less local control over ROW access regulations and fees. Municipalities individually and as member groups filed comments documenting how local ROW management has not hindered broadband deployment.

Work is now underway preparing Reply Comments to further rebut the industry allegations against municipalities. The deadline for filing Reply Comments was extended to October 31<sup>st</sup>.

As background, the NOI has the potential 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.

**FCC Order on Pole Attachment Rules**

The April 7<sup>th</sup>, FCC Order went into effect in July. The Order requires utilities to charge the same rate to telecom providers that they charge cable providers, and it sets 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.

**The following bills and issues are still pending action in Washington:**

**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.

### **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 were held March 29th in the Judiciary Committee. The bill would limit the City's authority to collect fees from the mobile service industry.