

Office of Telecommunications & Regulatory Affairs

Legislative and Regulatory Update – October 10, 2012

Cable/Video Issues:

- **PEG Channel Coordination**
TARA has received the additional license for ACC to provide its channel feed to TWC and Grande over the existing encoder which is pending installation and activation. The PEG managers' meeting was held September 19th.
- **ChannelAustin PEG Equipment Purchase**
The channelAustin automated playback system, studio cameras, and audio system are being installed and should be fully operational by the end of October.
- **AISD PEG Equipment Purchase**
TARA is working with AISD to assist in the purchase of a new video playback system to replace its system that is plagued by reliability and quality issues. The proposal being developed calls for AISD to provide more than half of the purchase with the City using PEG fees for the balance. Council approved developing an agreement with AISD to participate in the equipment purchase. Execution of the agreement is still pending.
- **Public Information Request on PEG Fees**
On October 10, 2012, the City Manager received a letter from the Texas Cable Association requesting 1.) a list of the 1% PEG fees collected by source as well as all PEG-specific disbursements with payee, purpose, and date for the period September 1, 2005 through August 31, 2011, and 2.) the name and account number for the account used for all PEG fee contributions; a list of all PEG fee deposits by source as well as all PEG-specific disbursements with payee, purpose, and date from the account for the period September 1, 2011 through March 31, 2012, along with the account balance on March 12, 2012.

FEDERAL ACTIVITY:

The Federal Communications Commission (FCC) on July 20th issued a Notice of Inquiry regarding the status of competition in the delivery of video programming.

TARA filed comments to the FCC September 7th on behalf of the City that focused on the carriage and funding for the seven City PEG channels.

The Federal Communications Commission (FCC) on August 3rd adopted a Notice of Proposed Rulemaking (NPRM) proposing to modernize and reform its cable television technical rules, facilitating the cable industry's widespread transition from analog to digital transmission systems.

CAP Act - HR 1746 (No recent action)

CAP Act support organizations are working to obtain a replacement for Republican co-sponsor Steven LaTourette, who recently announced he would be retiring from Congress at the end of the current session.

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 5th of 2011 by Congresswoman Tammy Baldwin (D-WI) and Congressman Steven LaTourette (R-OH).

H.R. 3523: Cyber Intelligence Sharing and Protection Act (CISPA) of 2011 (Still pending action in the Senate)

The bill, introduced by Rep. Michael Rogers, (R. MI), with 106 co-sponsors, was passed by the House on April 26th and is now pending action in the Senate. It amends the National Security Act of 1947 to add provisions concerning cyber threat intelligence and information sharing.

The bill has broad-based industry support by many of the same firms who opposed SOPA & PIPA.

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.

FCC Launches Connect America Fund (CAF) (No recent action on the Program)

On April 25th, the FCC issued an order on the CAF and High Cost Universal Service Support. The first phase of the CAF takes \$300 million in savings recovered through reforms and directing it to provide an immediate boost to connect up to 400,000 homes, businesses and anchor institutions that currently lack access to high-speed Internet. Companies that accept the money – as well as the strict accountability measures and buildout requirements attached to it – will help deliver broadband to hundreds of thousands of unserved Americas in rural communities. NATOA filed extensive comments with the FCC on how to best use the funds with anchor institutions.

The second phase of the order frees more broadband funding for over 2 million lines served by 500 rural carriers – without increasing the size of the Fund – by implementing another set of reforms. These reforms will increase fairness, fiscal responsibility and accountability in another Universal Service Fund program known as High Cost Loop Support, or HCLS. HCLS provides close to \$800 million annually to offset the typically high capital and operating costs of small, rural carriers serving sparse populations. Key elements of the order will improve efficiency and

State Sales Tax Collection on Internet Sales (No recent action on the Program)

Bipartisan legislation has been introduced in both the House (HR 3179) and Senate (S 1832) that would authorize the collection of sales taxes from remote retailers. The measures are similar in that they would not make participation in the Streamlined Sales Tax Project (SSTP) a condition for the authority to collect sales taxes from remote retailers. The House Judiciary Committee held a hearing back on the week of November 28th.

HR 3179 went to the House Committee on the Judiciary and then to the Subcommittee on Courts, Commercial and Administrative Law.

The Senate Committee on Finance held hearings August 7th on S 1832.

FCC Reform Act Legislation (Still pending action in the Senate)

The House Committee on Energy and Commerce on March 7th, completed markup of H.R.3309, the "Federal Communications Commission Process Reform Act of 2011" and the full House passed the bill on March 27th, when it was referred to the Senate Committee on Commerce, Science, and Transportation where it is still pending action. The bill would prevent the FCC from setting limits on a merging company's behavior that aren't related to the transaction. It also would require the FCC to identify a harm to be remedied before adopting rules, and to publish regulations before it votes upon them.

The bill was sponsored by Representative Greg Walden, an Oregon Republican, who said "we need to lock in reform." Democrats criticized the bill, with Representative Henry Waxman of California saying it would "disable the FCC, not reform it."

The bill which would restructure the regulatory process at the Federal Communications Commission (FCC) is opposed by Consumers Union who fears that the changes would make it harder for the FCC to protect consumers and promote the public interest and ultimately would do more harm than good.

Republican supporters say the bill will improve the FCC by "increasing transparency, predictability, and consistency as part of Republicans' ongoing effort to ensure the commission's work encourages job creation, investment, and innovation."

The bill is also supported by the National Cable & Telecommunications Association and the National Association of Broadcasters

FCC Basic Tier Encryption NPRM (No recent action)

The FCC is considering letting cable TV operators with all-digital system to encrypt their basic service tier. This would require customers with analog TVs to obtain digital set top boxes to continue receiving the basic tier channels.

The agency adopted a Notice of Proposed Rulemaking Oct. 13 seeking comment on removing an existing prohibition on such encryption and has tentatively concluded that lifting the ban would not "substantially affect" compatibility between consumer electronics and the cable systems.

In the NPRM, the commission acknowledged that certain viewers feel the impact of the change, but that the number would be relatively small. The notice identifies viewers who subscribe to basic cable and have no digital set top box (STB) and those who have a STB on a primary TV and have basic service on a second or third household TV as those who could be affected.

To remedy these potential problems, the commission has tentatively concluded that all-digital cable system operators choosing to encrypt their basic service tier will be subject to steps that protect such consumers for a limited time.

Supporters of the basic tier encryption proposal include the American Cable Association, the National Cable & Telecommunications Association, the Minority Media and Telecommunications Council, and other industry groups. Consumer advocates like the Alliance for Community Media emphasized the need for more protection of the subscribers and public entities that will be affected by the change.

H.R.1002 -- Wireless Tax Fairness Act of 2011 (Still pending action in the Senate)

The bill is still pending action by the Senate Committee on Finance after being passed by the House in November.

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. The bill was passed overwhelmingly in the House last week and referred to the Senate. The bill would limit the City's authority to collect fees from the mobile service industry.

An identical Senate companion bill was introduced by Senators Ron Wyden (D-Ore.) and Olympia Snowe (R-Maine), where it also seems to be getting bipartisan support.

Texas state and local taxes on wireless service is 12.43%, the tenth highest rate in the country.

FCC Notice of Inquiry (NOI) on Broadband Deployment (No recent action)

We are waiting for possible FCC action based on the comments and reply comments that have been filed.

Comments were filed on the NOI July 18th, 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. Clarence West filed reply comments on September 30th on behalf of Coalition of Texas Cities (TML, TCCFUI, and TATO) which rebutted undocumented industry claims that city regulations and fees limited broadband deployment. The comments also call on the FCC to follow the National Broadband Plan recommendation to appoint a local government task force (IAC) and to recommend to Congress that it preempt state laws that restrict municipal broadband. The FCC announced the Intergovernmental Advisory Committee (IAC) committee members on November 4th, naming Ken Fellman, immediate NATOA past president as City Attorney representative.