

Office of Telecommunications & Regulatory Affairs

Legislative and Regulatory Update – November 12, 2014

Cable/Video Issues:

- The 2014-15 channelAustin equipment purchase contracts for Council approval are being prepared. Key elements will be a new studio lighting system and a complete network systems evaluation.
- The RFP for the equipment needed to upgrade for the GAATN room to include transport of the three channelAustin channels to City Hall and the hand-off of all seven PEG channels to Google Fiber will be issued soon.
- The Community Needs Assessment for public access TV is about to launch a web-based survey of the general public, non-profits, and small businesses with a City press release and 30 second PSA to run on all PEG channels.

CITY REGULATIONS

Wireless Regulatory Coordination

TARA continues its coordination activities with affected departments to develop consistent policies on commercial wireless services including the fees associated with the various applications. Wireless cellular and Wi-Fi proposals are pending from Extenet, Crown Castle, AT&T, Verizon, and Google Fiber.

FEDERAL ACTIVITY:

The Federal Communications Commission adopted a Report and Order (FCC 14-153)

"The Order takes critical steps to promote deployment of the wireless infrastructure necessary to provide the public with ubiquitous, advanced wireless broadband services. The Report and Order updates and tailors the manner in which the FCC evaluates the impact of proposed deployments on the environment and historic properties. It also adopts rules to clarify and implement statutory limitations on State and local government authority to review infrastructure siting applications—including a "deemed granted" remedy if a State or local government fails to act on an eligible facilities modification request under Section 6409(a) of the Spectrum Act. Finally, it adopts an exemption from the environmental public notification process for "temporary towers" that are in place only for short periods of time," (quoted from the FCC press release).

Net Neutrality

Debate is heating up following President Obama's call on Monday for the FCC to reclassify broadband as a telecom service under Title II of the Telecommunications Act. FCC chairman Wheeler is said to be exploring all options to address the President's call while also considering the large ISPs' concerns. Large companies like Google, NetFlix, FaceBook, and Amazon are keeping a relatively low profile with smaller service providers being the most vocal in support of the Presidents recommendations.

H.R. 4752 – Broadband Reclass Prevention Act - No Recent Change

On May 28, 2014, Rep. Bob Latta (R-Ohio) introduced H.R. 4752 to prevent the FCC from reclassifying broadband as, at least in part, a Title II common carrier service. The bill would

define Internet access as an information service, and would not allow an information service to be classified as a common carrier. It has been referred to the House Committee on Energy and Commerce. The bill has been endorsed by the Independent Telephone and Telecommunications Alliance, the National Cable & Telecommunications Association, the U.S. Telecom Association, and the Telecommunications Industry Association and is opposed by the U.S. Conference of Mayors and other consumer advocacy groups.

AT&T – Direct TV Merger- No Recent Change

In August the Department of Justice approved the proposed \$48 billion merger between AT&T and Direct TV, and Direct TV shareholders overwhelmingly approved the deal in September. Comments on the proposed merger were due to the FCC on Sept. 16, with replies to those comments due on Oct. 16 and final responses due Nov. 5.

Comcast – Time Warner Cable Merger – No Recent Change

On October 3rd, the FCC extended the due date for comments from October 8th to October 29th. The FCC now expects its review of the proposed \$45 billion merger between the two largest U.S. cable providers to be completed sometime near the end of January 2015. Hearings have been held in both the Senate and House with action pending in the FCC and FTC. The merger is opposed by more than 50 consumer advocacy groups including Consumers Union, Daily Kos and MoveOn.org, who point out that a bigger Comcast would have enormous power to raise broadband rates for a significant portion of the country and restrict network access to content providers. The proposed merger would impact about 70 million subscribers, approximately 30 percent of the cable viewers in the U.S. and more importantly, it would affect about 40 percent of all U.S. high-speed broadband Internet subscribers.

FCC requested comment on petitions from Wilson, NC and Chattanooga, TN to restore local broadband authority now prohibited by state law - Pending FCC Action related to filed comments

FCC Chairman Wheeler in his October 1, speech to the NATOA conference said that they will decide on the petition based on the record and on the merits, and he declined to make any further comments.

The Marketplace and Internet Tax Fairness Act (MITFA) S.2609 - No Recent Change

The bill, introduced July 15th, merges the objectives of the Marketplace Fairness Act (S.743 / H.R.684) and Permanent Internet Tax Freedom Act (S.31 & H.R.434) into one bill, S.2609. It was read twice and reported to the full Senate on July 16th. The bill would extend the Internet Tax Freedom Act until November 1, 2024: ban on state and local taxation of Internet access and on multiple or discriminatory taxes on electronic commerce.

CAP Act - S.1789 – No Recent Change

The Community Access Preservation (CAP) Act was reintroduced in the U.S. Senate by Senators Tammy Baldwin (WI) and Edward Markey (MA) in December. It is now pending action in the Senate Committee on Commerce, Science, and Transportation.

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.

Satellite Television Extension and Localism Act (STELA) of 2010 - No Recent Change

House Communications and Technology Subcommittee Chairman Greg Walden (R-OR) released the first discussion draft of legislation to reauthorize the Satellite Television Extension and Localism Act (STELA), which contains provisions that will expire on December 31, 2014. The key element of the Act allows satellite TV providers to have access to local broadcast station content. On March 26th, Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.) chaired a hearing on extension of the Act.

FCC 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. – Pending FCC Action related to filed comments

Initial comments to the NPRM were filed with the FCC February 5, with reply comments filed by coalitions of cities March 5th to rebut inaccuracies in the initial Comments.

Municipal groups will meet with their industry counterparts over the next two months to attempt to develop a "best practices" policy regarding wireless providers access to public ROWs.

The NPRM received comments 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.

H.R. 3719 Video CHOICE (Consumers Have Options in Choosing Entertainment) Act (no change)

Rep. Anna G. Eshoo (CA-18), Ranking Member of the Communications and Technology Subcommittee and Rep. Zoe Lofgren (CA-19), senior Member of the Judiciary Committee, on December 12, 2013, introduced the Video CHOICE (Consumers Have Options in Choosing Entertainment) Act to eliminate broadcast television blackouts and give consumers greater flexibility to choose the channels they receive each month from their cable, satellite or other pay-TV provider. The bill is pending in the House Energy and Commerce Committee.

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 that 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.

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).

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.

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 26, 2013, 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.