

Office of Telecommunications & Regulatory Affairs

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

November 9, 2016

Cable/Video PEG Issues:

- Austin Public in coordination with Building Services, is conducting a major renovation of the facility including carpet replacement, studio floor tile installation, repainting, ceiling tile replacement, and conversion of internal/external lights to LED. The work should be completed in November.
- For a complete update of Austin Public activities, visit <https://www.austinpublicaccess.org/>.

CITY REGULATIONS

Wireless Communications Regulatory Coordination

The interdepartmental wireless study group and outside consultant updated City management on 10/12 and City Council on 10/18 on policy recommendations for wireless small installations in the downtown ROW and on City poles and other infrastructure and Small Cell Fee Ordinance scheduled for approval by Council on 11/10. The revised Administrative Rules covering the new wireless regulations were put out for the 30-day public comment period that began 11/07. The goal is still to accept permit applications for wireless installations in early December.

STATE ACTIVITY

TARA staff is working with Government Relations to prepare for the 2017 Texas Legislative Session.

NATIONAL ACTIVITY:

AT&T and Time Warner have agreed to an \$85 billion purchase deal

According to Brian Stelter in CNN Money, the purchase, announced Saturday evening, will help AT&T expand beyond wireless and Internet service into programming. Time Warner (TWX) is the parent of CNN, TNT, HBO, the Warner Bros. studio, and other channels and websites. AT&T (T, Tech30), which dates back to the invention of the telephone in 1876, is one of the country's largest providers of wireless phone and Internet service that also recently acquired the DirecTV satellite TV business. The deal will be subject to a review by government regulators that could take more than a year to complete.

FCC Adopts Broadband Consumer Privacy Rules

The new rules empower consumers to decide how their data are used and shared by broadband providers. Here is the link to the full rules and order released October 27, 2016 <https://www.fcc.gov/document/fcc-releases-rules-protect-broadband-consumer-privacy>.

FTC Seeks Rehearing En Banc of Dismissal of AT&T "Throttling" Case

As reported in Kelley Drye's CommLaw Monitor, On October 13, 2016, the Federal Trade Commission (FTC) filed a petition in the U.S. Court of Appeals for the Ninth Circuit requesting a rehearing en banc of the court's decision in the FTC's case against AT&T alleging that the company dramatically reduced – or "throttled" – data speeds for certain customers on unlimited data plans once those customers had used a certain level of data. The request, if granted by the court, would result in the full contingent of judges hearing the case, likely early next year which could reset the jurisdictional boundaries between the FTC and the Federal Communications Commission (FCC) with respect to phone companies, broadband providers and other common carriers.

Comcast & AT&T Sue Nashville

Comcast joined the AT&T suit against Nashville's "one touch" make ready ordinance designed to speed aerial construction by new competitors like Google Fiber. According to Jon Brodtkin in the October 26, 2016 issue of Ars Technica, Comcast's complaint in US District Court in Nashville is similar to one already filed by AT&T last month. Both ISPs are trying to invalidate a One Touch Make Ready ordinance that lets new ISPs make all of the necessary wire adjustments on utility poles themselves instead of having to wait for incumbent providers like AT&T and Comcast to send work crews to move their own wires. The ordinance was passed largely to benefit Google Fiber, which is offering service in Nashville but says that it hasn't been able to deploy faster because it is waiting to get access to thousands of poles.

H.R. 2666, the No Rate Regulation of Broadband Internet Access Act

On April 15, 2016, the U.S. House of Representatives voted 241 to 173 to pass H.R. 2666, the No Rate Regulation of Broadband Internet Access Act, a bill that would restrict the FCC's ability to enforce key net neutrality protections. The bill was placed on Senate Legislative Calendar under General Orders Calendar No. 431. According to the Electronic Frontier Foundation, the White House has promised to veto the bill if it passes the Senate.

Set Top Box Competition

FCC Chairman Wheeler hopes to schedule a vote on a rule to require cable providers to allow subscribers to change their source of cable boxes and related apps by year's end. A final vote on the FCC order originally set for September 29, was cancelled. If the order is approved, the industry would then have two-years for full implementation. By a 3-2 vote, at its February 18 open meeting, the FCC approved issuing a Notice of Public Rule Making to let consumers change out their cable boxes for cheaper devices and apps, and the approval was endorsed by the White House. Consumer groups generally support the proposed rule, providing that the rules protecting viewer privacy rights are also applied to third party device manufacturers and suppliers.

S 2644 – FCC Reauthorization Act of 2016 –No recent developments

(Thune – R-SD)(reauthorized FCC for FY 2017-2018; provisions include: require FCC to begin proceeding on cramming; promote broadband access for veterans; report on impact of Universal Service Fund (USF) on tribes; require report on Rural Health Care Program; require report on broadband deployment and subscription data collection services); Unanimously passed by the Senate Commerce Committee on April 27, 2016; includes S 2553 and S 2558. Placed on Senate Legislative Calendar under General Orders Calendar No. 637 on September 20, 2016.

HR 5893 - No Regulation Without Representation Act of 2016- No recent developments

A bill introduced by Rep. Jim Sensenbrenner, R-Wis., that would not require merchants to collect sales tax or report sales unless the person or company is "physically present in that state" during the tax period. The bill is in the Committee on Finance.

Net Neutrality – No recent developments

On June 14th, the DC Federal Court of Appeals ruled in a 2-1 decision that internet service should be treated as a telecommunications service allowing the FCC to prevent broadband providers from restricting internet access. AT&T and others have said they will continue to appeal this ruling.

On December 4th, the DC Federal Court of Appeals heard initial arguments between the FCC and industry groups who are opposed to allowing the FCC to prevent undue restrictions to internet access by broadband providers. The court will rule on the case later in 2016.

On February 26, 2015, the FCC ruled in favor of net neutrality by reclassifying broadband access as a telecommunications service and thus applying Title II (common carrier) of the Communications Act of 1934 to Internet service providers.

Major Provisions of Title II that will apply to broadband providers:

- The proposed Order applies "core" provisions of Title II: Sections 201 and 202 (e.g., no "unjust and unreasonable practices"
- Allows investigation of consumer complaints under section 208 and related enforcement provisions, specifically sections 206, 207, 209, 216 and 217
- Protects consumer privacy under Section 222
- Ensures fair access to poles and conduits under Section 224, which would boost the deployment of new broadband networks
- Protects people with disabilities under Sections 225 and 255

- Bolsters universal service fund support for broadband service in the future through partial application of Section 254.

Major Provisions of Title II that are Subject to Forbearance (would not apply to broadband):

- the Order makes clear that broadband providers shall not be subject to tariffs or other form of rate approval, unbundling, or other forms of utility regulation
- Universal Service Contributions: the Order DOES NOT require broadband providers to contribute to the Universal Service Fund under Section 254
- The Order will not impose, suggest or authorize any new taxes or fees – there will be no automatic Universal Service fees applied and the congressional moratorium on Internet taxation applies to broadband.

On February 26, Angele A. Gilroy with the Congressional Research Service issued an extensive report on the Net Neutrality Debate that can be found at <http://fas.org/sgp/crs/misc/R40616.pdf>.