



Federal Public Policy Update

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PROGRAM

- Anything Happening in Congress?
- Who are the Masters of our Fate?
- Populating the FCC
- PEG –
 - Registration
 - Closed Captioning
 - FCC
 - DOJ
- Video Franchising
- Effective Competition
- Wireless and Wireline NPRMs and BDAC – Offspring of Mobilitie Petition
- OTMR
- Net Neutrality
 - Court
 - FCC
 - Congress
- Privacy
 - FCC
 - FTC
 - Court

Hill

- Legislation repealing of FCC BB privacy rules approved
- MOBILE NOW Act (S. 19) – Passed by Senate
 - Watch out for possible ROW/wireless preemption add-ons in House
- Gigabit Opportunity Act. (S 1013/ HB 2870)
 - Sen. Capito (R-WV)/Rep. Collins (R-GA)
- Community Broadband Act (S. 742)
 - A bill to promote competition, to preserve the ability of local governments to provide broadband capability and services, and for other purposes

Hill

- Balancing the Rights of Web Surfers Equally and Responsibly (BROWSER) Act of 2017 – HR 2520
 - Rep. Blackburn (R-TN) introduces Internet privacy legislation –
- HR 2479 (Leading Infrastructure for Tomorrow’s America Act) – which includes \$40 billion for broadband deployment
 - Again, watch out for ROW/wireless, or “GO Act”-like add-ons.
- Sens. Booker (D-NJ) and Hoeven (R-ND) introduce legislation (Commercial UAS Modernization Act) dealing with interim operating guidelines for small commercial unmanned aircraft systems (UAS)

Masters of Our Destiny

House



Senate



Populating the FCC



Rosenworcel
June 2018



Clyburn
June 2017

Pai
June 2016

O'Rielly
June 2019



Brendan Carr
June 2020

PEG: CC Obligations

Obligations

- *Absent an exemption* Television channels, including PEG, must be captioned.
 - See 47 CFR 79.1(d) for a number of exemptions available to PEG stations, including 47 CFR 79.1(d)(12), which captures almost all PEG channels, because it exempts from closed captioning channels that “...produce revenue less than \$3,000,000.”

PEG: CC Registration

- Recent FCC Order establishes:
 - No change in exemption rules, **but**
 - **Creates** a Reporting system for all video **channels** and video **producers** so the Commission can:
 - Refer consumer complaints; and
 - Document exemption status of **channels** and **producers**.
- ACM asks for PEG channel to serve as single registrant.
- FCC has yet to create platform – question is will it?

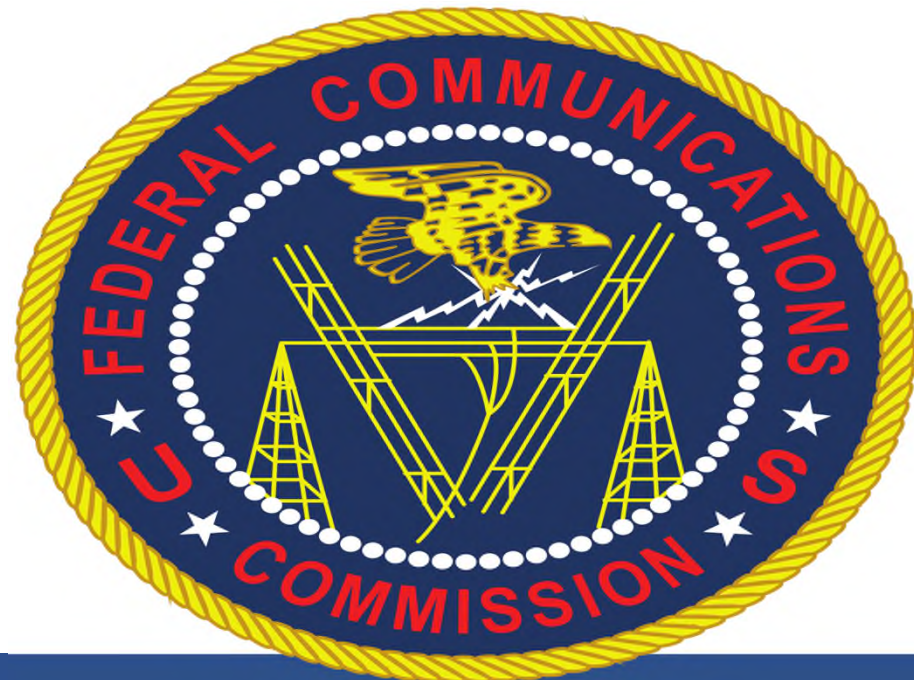
Captioning and ADA (Justice Dept.)

- Justice target, as I understand, was streaming of Council meetings that were not captioned. If you carry G channel, likely that ADA applies.
 - “Covered entities are required to provide aids and services unless doing so would result in an ‘undue burden,’ which is defined as significant difficulty or expense.”
- Obama Justice opened a docket to clarify –
 - NATOA and others filed.
 - Will Trump Justice complete or let go quiet?
- *Eddie Sierra v. School Board of Broward County*, Case No. 16-cv-63021-BLOOM/Valle, (S.D. FL 4/20/17)

Recurring Theme at the FCC: Local Government as Part of Problem, Not Solution, to Broadband Deployment

Multiple FCC items describe local government policies as “barriers to entry and investment”

- Mobile wireless siting petition
- Wireless and wireline infrastructure proceedings
- Preemption Petition Targeting San Francisco MDU Ordinance
- Multiple Tenants Environment Proceeding
- Section 706 Inquiry



Deadlines

Due Date	Proceeding and Deadline
Sept. 21	Comments on 706 (Docket No. 17-199)
Sept. 26*	FCC OPEN MEETING <ul style="list-style-type: none"> Cable Television Technical and Operational Standards Report and Order– MB Docket No. 12-217
Oct. 6	Reply Comments on 706 (Docket No. 17-199)
Oct. 24*	FCC OPEN MEETING
Nov. 9	BDAC Meeting
Nov. 6	FCC OPEN MEETING
Dec. 14	FCC OPEN MEETING

* Moved forward two days.

Section 706 Inquiry

- Annual Report on Progress of Broadband Deployment
- FCC wants to consider wireless or wireline coverage together – if either exists, community deemed served
- Wireless coverage adequate even at slower speeds
- Wireless-wireline equivalency indicates push to emphasize wireless over wireline
- Video over wireless means less wireline plant, supporting argument for abandoning franchise fees

Cable Television Technical and Operational Standards Report and Order– MB Docket No. 12-217

- Order specifies the SCTE 40 standard;
- Declines to require proof of performance testing at the Federal level.
- Streamline (read: reduce) signal quality certification and testing requirements.
- Reserves ability of franchising authority to require testing in franchise – (How many folks thought to do – and none of the state laws require.)

Video Franchising

- *Montgomery County v. FCC* (6th Circuit)
 - Appeal of FCC's *2d Video Franchising Order* and *Recon Order*.
 - Court vacates, as inadequately justified, FCC's rulings that:
 - Costs of cable-related in-kind franchise requirements are a "franchise fee."
 - LFAs cannot regulate provision of non-cable services over a cable system ("mixed use" rule).
 - Court upholds FCC's ruling on franchise MFN clauses.
 - Case is a major victory for locals; what will FCC do on remand?

Effective Competition

- *NATOA v. FCC* (DC Circuit)
 - Upholds FCC decision that flipped effective competition presumption.
 - Effective competition presumed.

Small Cell Mania at the FCC

- *Mobilitie Petition, Wireless Barriers NPRM, and Wireline Barriers NPRM*
 - What industry wants (and FCC seems sympathetic):
 - Shorter (60-day) shot clock.
 - “Deemed granted” remedy.
 - Fees limited to costs.
 - Application of §§ 253/332(c)(7) to ROW access and municipal pole access.
 - Other issues (in *Wireline NPRM*):
 - Pole attachment rule revisions (including possibly OTMR).
 - Streamlined service discontinuance and copper retirement requirements.

Small Cell Mania at the FCC

- BDAC
 - Membership heavily tilted to industry
 - 3 key working groups
 - Removing State and Local Regulatory Barriers Working Group
 - Model Code of Municipalities Working Group
 - Model Code for States Working Group
 - BDAC recommendations as early as November 9

Small Cell Mania – the States

- Many states have enacted various forms of small-cell legislation. Details vary, but legislation typically –
 - Grants ROW access.
 - Limits fees.
 - Sets shot clock-like deadlines.

One-Touch Make-Ready

- District court upholds Louisville Metro's OTMR ordinance against AT&T's challenge.
- Other pending OTMR litigation:
 - Charter challenges Louisville Metro's OTMR ordinance.
 - AT&T and Comcast are challenging Metro Nashville's OTMR ordinance.
 - Frontier is challenging West Virginia's OTMR requirement.

Net Neutrality

- In the courts –
 - DC Circuit upholds *2015 Open Internet Order* and denies rehearing.
 - Industry still deciding whether to seek cert.
- Before the FCC –
 - The Pai FCC issues an NPRM proposing to undo the *2015 Open Internet Order* and reclassify broadband as an “information service.”
 - Likely to act by year’s end.
- On the Hill –
 - Talk of “compromise” net neutrality legislation; but action seems unlikely until dust settles on appeal of anticipated Pai FCC undoing of *2015 Open Internet Order*.

Broadband Privacy --

- Congress “un-does” the Wheeler FCC’s broadband privacy rules.
- Pai FCC believes broadband privacy should be handled by the FTC, not the FCC.
- 9th Circuit is rehearing *AT&T v. FTC* on the scope of the “common carrier” exemption in the FTC Act.
 - 9th Circuit panel had ruled that exemption applies to carrier and all of its services, not just common carrier services.
 - That interpretation would deprive FTC of all jurisdiction over any entity that provides any common carrier service.

Strategies

- Show up at FCC/Congress/courts/state legislatures
- Form coalitions at state level
- Be prepared to face multiple challenges, at multiple levels
- ...Think about creating a counter narrative – and changing the legal facts on the ground



QUESTIONS AND CONTACT INFO



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