

Federal Legislative Update The Yellow Brick Road...Not

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Where we Are Today

- Title II Telecommunications – 100 years
 - Public Interest (Universal Service/Common Carrier)
- Title VI Cable – 22 years
 - Public Interest (PEG, INET)
- Convergence
- Services classified as Info Service – NO Public Interest Obligations (Universal Service, Fees, PEG/INET/ Buildout)

What is Franchising?

- Private companies using Public property pay a fair price for that use.
- Franchising has always been about meeting local needs. The needs of Newport, Coos Bay and Florence are different than the needs of Pendleton, Portland and Burns

Why do we care?

- Locals Support Competition! Bring It On!
- Protect the Public Interest
- Broadband for Everybody...Not just a few
- Level Playing Field
- Franchising reflects local needs:
Compensation, Right of Way Management, Consumer Protection/Customer Service, Everybody is served, Public, Education and Government Access, Institutional Networks (I Net's), Enforcement, Emergency Alert

Changes Are Necessary

- Regulatory Framework lags behind Technology Changes – convergence, digital, VOIP
- Public interest obligations are tied to current regulatory categories: 9-1-1 obligations, Universal service fund obligations, Cable franchise obligations
- Telco/Cable – Regulatory Silos are Different

Telco's Strategy

Congress, FCC, States and Courts

- Support the One with the Best Solution
 - By definition that is the Congress – one fell swoop
 - By practice, that may be the States or FCC
- Expect the FCC to play a Trump Card:
 - If Congress does not act: FCC defines IPTV as “non-cable service.”
 - If Congress does not act – look to state action
 - If State action is pro-local government – look to FCC to preempt

Federal Legislation

- House passed “COPE” bill (H.R. 5252)
June 8, 2006, by 321-101 vote
- Sen. Stevens (R-Alaska) “ATOR” bill
(labeled as substitute for H.R. 5252)
adopted by Commerce Committee 15-7 vote
June 28, 2006

Concerns

- Wreak havoc with local regulatory scheme
- Eliminate local franchising and reduce or eliminate public interest benefits
- Tax attack (wireless, internet)
- Pre-empt state regulation of wireless services

Major Provisions (House Bill)

- Establishes national franchise scheme
- Franchise *shall* be effective within 30 days of filing certification
- 10 year term with automatic 10 year renewal
- Early “opt out” for incumbent provider
- Franchise fee: Up to 5% of gross revenue (includes advertising and home shopping)

Major Provisions (House Bill)

- PEG/I-Net financial support: 1% of gross revenue
- PEG channel capacity – same as incumbent provider; if no incumbent, capacity to be determined by FCC
- PEG adjustment – every 10 years; 1 or 10%

Major Concerns (House Bill)

- Takes away local authority
- Lacks a build-out requirement
- Redlining – no teeth; no local enforcement authority; merely ensures access within “reasonable time”
- ROW management – no enforcement authority
- Customer Service/Consumer Protection – federal standards established by FCC; no local enforcement authority

Major Provisions (Senate Bill)

- 90 day approval period – deemed approved on 91st day
- Early “opt out” for incumbent provider
- Franchise fee: Up to 5% of gross revenue (includes advertising and home shopping)
- ROW disputes in court of competent jurisdiction

Major Provisions - Senate Bill

- PEG/I-Net financial support: No more than 1% of gross revenues or per subscriber basis (includes one-time and lump sum payments)
- PEG adjustment – every 15 years; 1 or 10%
- LFA may not require construction of new I-Net
- FCC-promulgated customer service/ consumer protection “one size fits all” regulations with local enforcement authority

Major Concerns (Senate Bill)

- No build-out requirement
- Redlining – no teeth; may only “ensure” compliance or impose fines as remedy
- Tax Attack
 - moratorium on new, “discriminatory” cell phone taxes
 - Makes permanent the Internet tax moratorium

What's Next?

- Hold placed on bill – Net Neutrality (Senator Wyden)
- Full Floor Vote – needs 60 votes to overcome point of order against unfunded mandate – November?
- Add the bill to another piece of legislation
- Take up in January 2007
- If passed, House/Senate conference
- If Congress doesn't act, look to FCC

FCC Video Franchising

- FCC Notice of Proposed Rulemaking on the Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984
- FCC presumes local franchise process is a barrier to competition and questions its authority to remove such barriers, and to provide rules to further implement the Act.

FCC Video Franchising

- Telco's are asking FCC to
 - Eliminate Build Out requirements;
 - Require a “shot-clock” for grant
 - Weak consumer protection regulations
- Local governments
 - Want Competition
 - Protect the public interest
 - Best position to ensure fair and reasonable competitive entry

Oregon Cities FCC Filings

Initial Comment Round (February 14th)

63 comments filed (total), broken out as follows:

4 Oregon LFA Comments were filed in the initial round: MACC (represents 14 LFAs), MHCRC (represents 6 LFAs), City of Salem, and the City of Medford.

2 PEG providers filed comments: Portland Community Media (PCM, Portland); and Capital Community Television (CCTV, Salem).

57 Individuals filed brief comments. One aspect worthy of note about the individual comments is that they really were from "all over" Oregon, including individual comments filed from places such as Mulino, Sisters, Hebo, Port Orford, The Dalles, Ashland, McMinnville, Parkdale, Roseburg, Corvallis, Aurora, Bandon, and Columbia City.

Reply Comment Round (March 28th)

56 Reply Comments filed broken out as follows:

3 Oregon LFAs filed Reply comments: Clackamas County, Lane County, and Mt. Hood Cable Regulatory Commission (MHCRC).

50+ Individual comments (number not exact due to duplicate filings). Again, the geographic breadth is impressive, including individual comments from additional communities including Aurora, Durham, St Helens, Talent, Springfield, Woodburn, Pendleton, Florence, Corbett and Tygh Valley

Washington Cities FCC Filings

Initial Comment Round (February 14th)

132 comments filed (total), broken out as follows:

- 4 Washington LFAs filed Comments in the initial round: King County, Seattle, Enumclaw, and Toppenish (filed jointly on behalf of Toppenish, Granger, Wapato, and Zillah).
- 3 PEG providers filed (very brief comments): SCAN Community Media (Seattle), San Juan Public Access Television (SJPAT, Friday Harbor), and Vancouver ETC (Educational Television Consortium) which filed a letter addressed to Congressman Brian Baird concerning federal legislation.
- 1 statewide rural advocacy organization filed comments (Washington State Grange), complaining that local franchising regulations seem "designed to discourage competitors" and advocating that the FCC act to standardize franchise rules;
- 120+ Individuals filed brief comments (number not exact due to duplicate filings). Individual comments were filed from places such as La Center, Bremerton, Kirkland, Olympia, Spokane, Bellevue, Bainbridge Island, White Salmon, Port Townsend, Sequim, Vancouver, Tumwater, Omak, North Bend, Redmond, Bellingham, Everett, Ellensburg, Vancouver, Port Ludlow, Lummi Island, Renton, Tacoma, Port Townsend, Yakima, Pacific, Lacey, Silverdale, Shelton, Lopez Island, Federal Way, Colville, Clinton, Bonney Lake, Heisson, Lynnwood, Gig Harbor, Ridgefield, Walla Walla, Kent, Forks, Orting, Steilacoom, Bainbridge Island, Sammamish, Mercer Island, Shoreline, Langlely, Toppenish, and Friday Harbor.

Reply Comment Round (March 28th)

67 Reply Comments were filed from Washington broken out as follows:

- 60+ Individual reply comments were filed (number not exact due to duplicate filings), which in most cases repeat the Free Press-recommended comments (attached) Again, more geographic breadth is evident, with individual comments added from Maple Valley, Burien, Anacortes (my home town---2 filings---very gratifying), Camas, Eastsound (Orcas Island), Kingston, Stanwood, Vashon, St. John, Snohomish, Woodinville, and others.

What's Happening in the States?

- Just over one-half of the states have some level of state video franchising.
- California the most recent with Minnesota, Michigan, New Jersey, New York, Connecticut, Florida, Iowa, Louisiana, Maine, Massachusetts, Missouri, New York, Pennsylvania, Tennessee, Wisconsin in play
- Telecom's spent \$40 million on lobbying in California
- Will Oregon be next?

Issues

- Definitions/Scope
 - Cable Service, Gross Revenues,
 - Audits and Enforcement
 - Taxes
 - Will state legislation take away your funds?

- Consumer Protection
 - Does the FCC or PUC have the staff to address consumer complaints?

- Oversight of Rights-of-Way
 - Who decides your street issues – Your Public Works Department or State PUC?

- Buildout/Universal Service – Service for Everyone or a Few

- Public, Education and Government Access (PEG), I NET's

So what?

- Telco's are coming to video this time
 - Driven by shrinking core business (landline copper) and they want part of the \$100 billion per year video market
 - Story to Congress doesn't match Story to Wall Street
- What's at Stake for Oregon?
 - Dollars for Vital Local Public Services e.g. Police, Fire
 - Right of Way Management
 - Local Customer Service
 - Local Voices on Community Access Television
 - Broadband for all Oregonians, Not just the Wealthy
 - True Competition

Thank You

Presentation available at www.mhcrc.org or
www.cable.portland.or.us

Public Service Announcements available at
www.pcmtv.org

NATOA video available at www.natoa.org