

PUBLIC POLICY UPDATE – January 28, 2019

For Information Only – MHCRC 1/29/19 meeting

Cable

- **FCC 621 Notice of Proposed Rulemaking – “Off-set” MB Docket No. 05-311**
 - MHCRC joined local government coalition and filed comments November 14, 2018 and reply comments December 14, 2018.
 - FCC has not indicated if or when an order is expected.
- **Supreme Court - MCAC v Halleck**
 - The Supreme Court case of Manhattan Cable Access Corporation vs Halleck revolves around the question of whether a private operator of a public access channel should be considered a state actor for the purpose of running a public forum for free speech. The cable lobbying group NCTA had attempted in an earlier amicus brief to claim that ALL access channels authorized in the 1984 Cable Act were unconstitutional. The Alliance for Community Media and other parties refuted the NCTA's claims as wrong on both the facts and legal precedent.
 - The Supreme Court will hear oral arguments in the case on February 25, 2019.
- **FCC Communications Marketplace Report Finds High Cable Prices, Uncompetitive Broadband Markets**
Source: Phillip Berenbroick, Senior Policy Counsel at Public Knowledge
 - “This Report shows what most Americans already know: cable prices are too high and rising far faster than the rate of inflation and wages; broadband is not being deployed to communities on the wrong side of the digital divide; and consumers continue to have little, if any choice of broadband provider. It's simply a blatant admission that the Commission has not only failed to make progress on closing the digital divide, but is also eager to double down on policies that exacerbate trends that harm consumers, erode competition, and disregard the public interest. The American public and its newly elected Congress must demand action to curb these trends before it's too late.”
https://www.publicknowledge.org/press-release/fcc-communications-marketplace-report-finds-high-cable-prices-uncompetitive-broadband-markets?utm_campaign=Newsletters&utm_source=sendgrid&utm_medium=email#When:17:02:00Z

Broadband

- **NCTA press release: “Introducing 10G: The Next Great Leap for Broadband”**
 - <https://www.ncta.com/media/media-room/introducing-10g>
 - ars Technica: “Envious of 5G hype, cable cos. unveil potentially confusing “10G” trademark. But we’re still waiting for 1Gbps upload speeds.”
<https://arstechnica.com/information-technology/2019/01/envious-of-5g-hype-cable-cos-unveil-potentially-confusing-10g-trademark/>
- **Oregon House Bill 2173 – Related to broadband**
 - Creates Oregon Broadband Office within Oregon Business Development Department.
 - Repeals sunset on Oregon Broadband Advisory Council. Adds member to council.
 - Broadens duties of Council to include recommending public policy and solutions to address state’s broadband needs and goals.
 - Directs Council to champion statewide access to broadband services.

Telecommunications

- **FCC Accelerating Broadband Deployment by Removing Barriers to Infrastructure Investments – Wireless Docket No. 17-79 & Wireline Docket No. 17-84**
 - The 10th Circuit granted local government requests to transfer the small cell order appeal to the Ninth Circuit. That means both the small cell order and the FCC's earlier moratoria order will be heard together in the Ninth Circuit.
 - Stay of Order denied and major portions of FCC Small Cell Order go into effect as of January 14, 2019.
 - Applications for “small wireless facilities” must be processed in accordance with the new shorter 60-day and 90-day shot clocks.
 - Initial incompleteness determinations for applications must be sent out within 10 days.
 - For all FCC shot clocks, all permits and authorizations for wireless facilities must be approved or denied within the applicable shot clock period unless the applicant agrees to a different time frame. This would include all types of permits, and if applicable, a franchise and a license agreement to use city infrastructure, such as street lights.
 - Permit fees must be reasonable and cost-based. The fees established by the FCC (\$500 for up to five small wireless facilities in the same application and \$100 per additional facility, or \$1,000 for each application involving a new pole) are “safe harbor” amounts in the absence of a cost justification for the fee.
 - Portland is conducting a major and thorough cost study of their ROW permit fees.
- **HR 530 “Accelerating Broadband Development by Empowering Local Communities Act of 2019” Introduced by Congresswoman Eshoo – California US House District 18**
 - **PRESERVATION OF RIGHTS OF STATE AND LOCAL GOVERNMENTS**

Actions by the Federal Communications Commission in “Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment” (83 Fed. Reg. 51867) and the Federal Communications Commission’s Declaratory Ruling in “Third Report and Order and Declaratory Ruling” (FCC 18–111) shall have no force or effect.
 - Portland submits letter of support:

H.R. 530 would return local governments’ ability to balance competing interests for the use of the public rights-of-way by overturning actions of the Federal Communications Commission in August and September of 2017. While we support the Commission’s goal of ensuring affordable broadband access for every American, the Commission’s actions do nothing to achieve that goal and deny local governments the ability to manage the public rights-of-way effectively and equitably, by taking into account considerations for public safety, public utility services such as water, sewer, and electricity, the travelling public, environmental concerns, economic development, and maintenance costs.

Net Neutrality

- **Rep. Mike Doyle (D-PA) will lead the Communications Subcommittee of the House Commerce Committee chaired by Frank Pallone, Jr. (D-NJ)**

Source: Benton Weekly Digest – Friday, January 18, 2019

 - “After eight years serving in the minority, I’m excited for the opportunity to set the Committee’s agenda on these issues – rather than just playing defense,” Chairman Doyle said this week. “I’m looking forward to working with my colleagues to promote policies that benefit consumers, small businesses, and innovators, as well as to conduct effective oversight of the Trump Administration...One of the things our committee can do and one of the things we’re going to be taking a look [at] is introducing a net neutrality bill in the House of Representatives and try to do it in such a way that it sort of concurs with what the [52] senators voted for so that we have a chance to get this through in the Senate.”

- Rep. Doyle has been a frequent advocate for expanding broadband into rural areas. But he has sparred with the GOP over how to pay for it. In January 2018, when President Donald Trump was making statements aimed at expanding broadband access, then House Communications Subcommittee Chairman Marsha Blackburn (R-TN) said she expected to introduce several pieces of legislation aimed at removing barriers to broadband expansion into rural areas. But Rep. Doyle was critical of the GOP's efforts, claiming that they did not do enough to bring in new funding, and claiming the efforts failed to address the main obstacle to rural broadband expansion: cost. "It would require tens of billions of dollars to bring broadband to unserved and underserved parts of the country," he said. "The private sector hasn't done it because they know they wouldn't make a profit on it." Any rural broadband initiative without substantial new funding "would be nothing more than window dressing."

Federal Government Shutdown

Government shutdown halts the Trump FCC's deregulation agenda

Tom Wheeler | Analysis | [Brookings Institution](#)  | January 23, 2019

The companies that have been the beneficiaries of the Trump Federal Communications Commission's deregulation are now discovering that a government that does nothing cannot serve their interests. Amazing as it may seem to those who have built their careers by proclaiming "government overreach," closing the doors of the FCC hurts their businesses. For instance, consider the following examples of how the FCC shutdown is hurting telecommunications companies: The proposed merger of T-Mobile and Sprint has stopped dead in its tracks, the proposed merger of broadcast giants Nexstar and Tribune is also on ice, and the push for 5G wireless that the Trump FCC calls a national security-tinged "race" with China is slowed if the Commission cannot approve new 5G-capable phones and infrastructure. It is important to recognize that this is not a situation where employees walk back in and pick up where they left off a few days before. Over the course of a month (or more) so much new has piled up on the Commission's plate that the first thing to do upon returning is to assess the new pile, the second step is to catch up on other developments in the intervening period, then the third step is to reprioritize. Only after that step-by-step process can the Commission get back to full productivity. Even if the Trump shutdown ends tomorrow, its effects at the Trump FCC will be felt for a long time to come.

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