



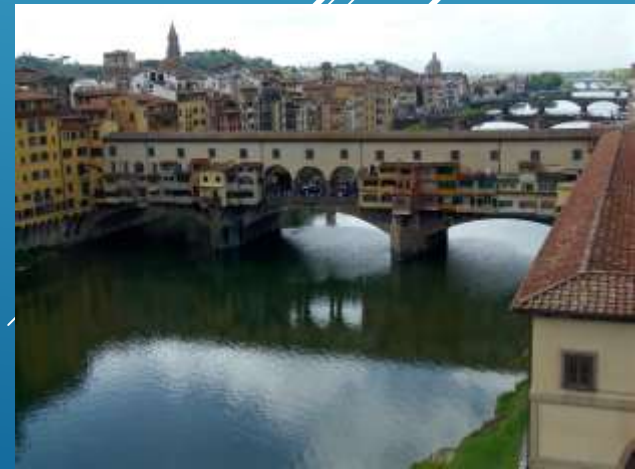
**FEDERAL AND FCC
UPDATE
WATO Annual Conference**

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Yes, I had a great vacation...thanks for asking!





FCC PROCEEDINGS

- *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services, MB Docket No. 14-261*
- *Notice of Inquiry, Promoting the Availability of Diverse and Independent Sources of Video Programming, MB Docket No. 16-41*
- *Notice of Proposed Rulemaking, Expanding Consumers' Video Navigation Choices/Commercial Availability of Navigation Devices, MB Docket No. 16-42, CS Docket No. 97-80*
- *Accessibility / ADA Requirements for PEG Programming*



FCC PROCEEDINGS

- *Lifeline*
- *FirstNet*
- *NPRM implementing the privacy requirements of Section 222 of the Communications Act for broadband ISPs, WC Docket 11-42; WC Docket No. 09-197; WC Docket No. 10-90*
- *In the Matter of Implementation of Section 224 of the Act, A National Broadband Plan for Our Future, Docket No. 07-245 (Pole Attachments)*
- *Application of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to the Transfer of Control of Licenses and Authorizations, MB Docket No. 15-149*
- *IAC wireless facilities siting report*

PROMOTING INNOVATION AND COMPETITION IN THE PROVISION OF MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTION SERVICES

- Known as the “OTT Proceeding” – discussion of whether ...
 - Linear IP video service falls within the Cable Act’s definition of “cable service,” 47 U.S.C. § 522(6), and
 - Therefore is any entity that provides such services over landline, ROW-crossing facilities that it owns or in which it or its affiliates have a significant interest a “cable operator,” 47 U.S.C. § 522(5), providing such a “cable service” over a “cable system,” 47 U.S.C. § 522(7)?



FCC'S TENTATIVE CONCLUSIONS AND HOW THIS IMPACTS CABLE FRANCHISING

- If the provider offers managed linear video services over IP, on a network it owns or controls, is it a cable operator? (tentative answer: YES)
- If the provider offers video services over IP but does not own or control the network, is it a cable operator? (tentative answer: NO)
- Are these OTT video programming services “cable services” for purposes of the Cable Act? (tentative answer: it depends upon whether the services are delivered over a “cable system” as that term is defined in the Cable Act)
- Does it matter that the managed video service is provided over an IP platform (like CenturyLink’s Prism, AT&T’s U-Verse, etc.)? (tentative answer: NO)

AND THIS IS IMPORTANT TO US BECAUSE ...?

- If the service is not “cable service”
 - there is no requirement for franchise fees or PEG support under Cable Act
 - cable operators may transition most video to OTT, which has the potential to significantly reduce the number of subscribers to traditional cable service
 - raises a question of whether PEG fees can be used to support OTT provision of access programming (and does it make a difference if the PEG fees are used for capital expenditures for products used to support both PEG delivered over traditional cable access channels as well as OTT?)
 - the service is not subject to cable service consumer protections (note: this could change if the FCC’s competitive cable franchise order - the Section 621 Order - is overturned on reconsideration)
 - consumer protection and customer service enforcement issues will be complicated when complaints arise implicating both traditional cable and OTT service

NOTICE OF INQUIRY, PROMOTING THE AVAILABILITY OF DIVERSE AND INDEPENDENT SOURCES OF VIDEO PROGRAMMING

- FCC seeks to “begin a conversation on the state of independent and diverse programming, and to assess how the Commission or others could foster greater consumer choice and enhance diversity in the evolving video marketplace by eliminating or reducing any barriers faced by independent programmers in reaching viewers
- FCC states it is “interested in addressing challenges faced by a specific type of independent programmer – namely, public, educational, and governmental (PEG) channels – with respect to MVPD carriage.”
- Comment deadline was 4/14. ACM and ACD filed:
<http://www.allcommunitymedia.org/wp-content/uploads/ACM-ACD-Comments-in-DN-16-41.pdf>

NPRM, EXPANDING CONSUMERS' VIDEO NAVIGATION CHOICES / COMMERCIAL AVAILABILITY OF NAVIGATION DEVICES



- Released February 18, 2016
- Some (including the FCC) describe this as a proceeding that will provide consumer benefits and lower prices
 - Query: has any FCC pro-consumer decision in cable ever led to lower prices?
- This may end up like the MVPD/OTT proceeding – the FCC is getting blowback from the Hill
- Competition will impact PEG, so we need to advocate that any decision treat PEG the same as other video programming channels

ACCESSIBILITY / ADA REQUIREMENTS FOR PEG PROGRAMMING



- Three potential avenues by which local government programming could become subject to closed captioning requirements:
 - FCC's 1998 regulations for closed captioning of video programming on television
 - FCC's 2010 regulations for closed captioning of video programming on the internet
 - U.S. Department of Justice's ("DOJ") implementation of the American's with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act of 1973

ACCESSIBILITY / ADA REQUIREMENTS FOR PEG PROGRAMMING

- PEG programming on television is exempt from the FCC closed captioning rules
- Full length PEG programming and some video clips that are made available over the Internet must be closed captioned if they are closed captioned when shown on television
- If a requirement for closed captioning would be economically burdensome to the local government there is a process available to seek a waiver from the FCC

ACCESSIBILITY / ADA REQUIREMENTS FOR PEG PROGRAMMING

- While there is no final rule on accessibility of web programming, DOJ has been aggressive in asserting that it can require Title II and Title III entities to implement web accessibility measures without a rulemaking
- DOJ has been active in enforcing captioning requirements on web-based programming through its Project Civic Access initiative

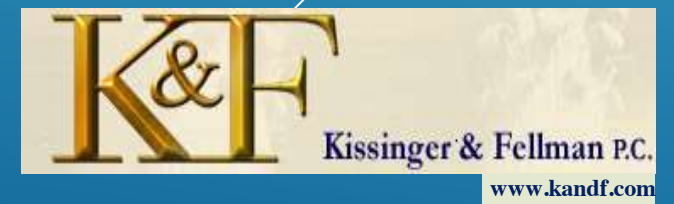
ACCESSIBILITY / ADA REQUIREMENTS FOR PEG PROGRAMMING

- 3/31/16: FCC issues NPRM addressing increasing the amount of required closed captioning on television
- Appears not to directly impact PEG stations ...
- But comments ought to be followed and the proceeding monitored

FCC REPORT AND ORDER MODERNIZING LIFELINE FOR A DIGITAL ERA



- Adopted March 31; Released April 27
- Allows Lifeline support for stand alone mobile or fixed broadband Internet access service, as well as bundles including fixed or mobile voice and broadband
- Phases in mobile broadband requirement over five years
- Helps close the homework gap by promoting the offering of mobile devices with Wi-Fi and hotspot functionality



FIRSTNET



- FirstNet (the nationwide, interoperable public safety communications network) mostly governed through NTIA – FCC has very limited role
- States may “opt out” of FirstNet, subject to certain conditions
- FCC is charged with developing the process for considering and acting upon opt out requests
- Process has not yet been announced – FCC has promised to provide a public draft and seek public input

NPRM IMPLEMENTING THE PRIVACY REQUIREMENTS OF SECTION 222 OF THE COMMUNICATIONS ACT FOR BROADBAND ISPS

- Being voted on today – Chairman states proposed rules are to ensure consumers have the tools they need to make informed choices about how and whether their data is used and shared by their broadband providers
- Will likely only apply to ISPs and no edge providers – a fight is brewing there
- Potentially another cable industry vs. the Googles of the world
- How does this relate and interact with what the FTC does?



NPRM IMPLEMENTING THE PRIVACY REQUIREMENTS OF SECTION 222 OF THE COMMUNICATIONS ACT FOR BROADBAND ISPS

- How does this relate and interact with what the FTC does?
- A major issue – notification opt in or opt out?

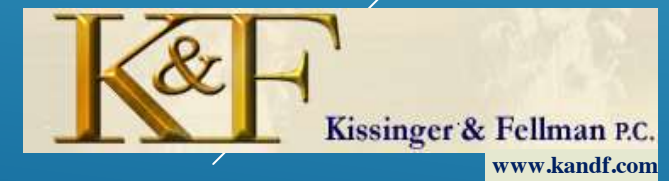


POLE ATTACHMENTS

- Report and Order, released November 24th, is attempt to harmonize pole attachment rates that cable and telecom service providers pay utility pole owners
- Cable attachment rates adopted in 1978, and rates for telecom carriers adopted in 1996 – telecom rates have generally been higher
- New rules make rates more comparable
- FCC pole attachment rates do not apply to municipal utilities, but ...
- Some state laws limit pole attachment charges by municipal utilities to the federal rates

CHARTER COMMUNICATIONS, INC., TIME WARNER CABLE INC., AND ADVANCE/NEWHOUSE PARTNERSHIP

- Charter, TWC, and Advance/Newhouse Partnership (parent of Bright House Networks), filed applications seeking FCC approval to transfer control of licenses and authorizations in connection with their merger
- Per the FCC, the proposed transaction will merge the 4th (TWC), 7th (Charter), and 10th (Bright House) largest MVPDs in the country, creating the 3rd largest provider, serving roughly 17.3 million customers
- New company would have 19.4 million broadband subscribers, creating the 2nd largest broadband internet provider in the country, providing services across portions of nearly 40 states
- FCC has just announced that it will approve with conditions





FCC'S INTERGOVERNMENTAL ADVISORY COMMITTEE WIRELESS FACILITIES SITING REPORT

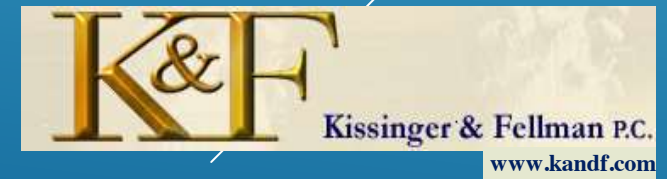
- Committee is comprised of local and appointed officials from local, state and tribal governments
- Generally, IAC has made recommendations to the FCC on a variety of proceedings, advocating for local control and flexibility in regulations and broadband deployment and worked with FCC on educational programs
- <https://www.fcc.gov/about-fcc/advisory-committees/general/intergovernmental-advisory-committee>





FCC'S INTERGOVERNMENTAL ADVISORY COMMITTEE WIRELESS FACILITIES SITING REPORT

- Chairman Wheeler asked the IAC to develop “best practices” for siting wireless facilities
- IAC wants to work with the Chairman, but was opposed to “best practices” – every community is different and one size does *not* fit all
- IAC is working on a report addressing “Effective Methods” of wireless siting
- We need your feedback in the next couple of weeks -- examples of “lessons learned” – that is, what has worked, and what has not
- Send to FCC-IAC@fcc.gov
- ... or to me kfellman@kandf.com



THANKS!

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