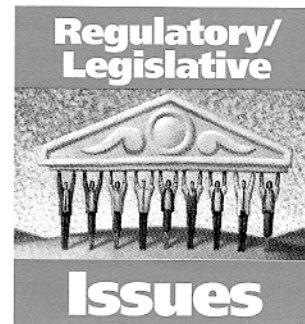


# local government involvement at the FCC:

## What Does the Future Hold?

**T**he Federal Communications Commission's (FCC's) Local and State Government Advisory Committee (LSGAC) was created<sup>1</sup> in February 1997, one year after the enactment of the Telecommunications Act, and it ended by order of the Commission released August 11, 2003. In 1997, then Chairman Reed Hundt charged the LSGAC to:

- Facilitate intergovernmental communication between local, state and tribal governments and the Commission;
- Provide advice and information to the Commission on key issues that concern local, state and tribal governments;
- Communicate local, state and tribal government policy concerns regarding proposed Commission actions.



The LSGAC responded to each of these responsibilities. Working during its six meetings each year and often outside the regular meetings, the committee was involved in a variety of issues and activities. With the adoption of an Order creating a new Intergovernmental Advisory Committee (IAC)<sup>2</sup>, the existence, but not the mission of LSGAC has ended. I have been privileged to represent local government interests as chairman of LSGAC from its first meeting in 1997 to its last meeting on July 25, 2003, and will share my

**BY KENNETH S. FELLMAN**

# Local Government **Involvement**

thoughts on LSGAC accomplishments, what the Commission is doing, and what it may mean. Since 1997, the LSGAC:

- Adopted 31 advisory opinions regarding issues before the FCC of importance to local, state and tribal governments.<sup>1</sup>
- Negotiated an agreement signed by the LSGAC, CTIA and PCIA regarding the then controversial issue of tower and antenna siting moratoria and principles to follow when enacting moratoria.
- Enabled a publication, "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance," developed by staff for LSGAC governments and FCC staff. It has been widely distributed by LSGAC members throughout the broader local government community.
- Participated in the FCC's 2002 rights-of-way forum and provided informal presentations for FCC staff on rights-of-way management issues.
- At the request of then Chairman Kennard, participated in discussions and negotiations with representatives of AT&T, Earthlink, @Home (prior to its bankruptcy) and the Media Access Group in an attempt to find common ground on the open access issue.
- At the request of FCC staff concerning its lack of success in completing the audit of the construction and operational status of private land mobile radio stations, the LSGAC initiated a comprehensive outreach operation to notify local government licensees of their audit requirements.
- Served on the National Coordinating Committee to address issues of public safety spectrum.
- Met with representatives of the National Association of Broadcasters regarding its petition for preemption of local zoning authority and the need for digital television deployment. As a result the commission implemented a "strike force" under the leadership of then Commissioner Ness. A member of the LSGAC served on the strike force.
- Provided feedback for FCC staff regarding tracking of consumer complaints.
- Met with E-rate program administrators to provide feedback solicited from local governments regarding implementation issues.
- Addressed more than 3000 local government elected officials and staff, providing information about federal telecom policy and related materials out from Washington to our communities.
- Successfully argued for a new rule requiring individual governmental entities to be notified when identified in pleadings seeking preemption of local authority.
- Worked with the Industry Rights-of-Way Working

Group in an attempt to identify areas of agreement on the scope of legitimate rights-of-way management practices, and narrow those areas of disagreement.

- Provided advice and recommendations to local officials on RF emissions and siting of telecommunications facilities. Articles have been published, and presentations have been made at conferences of NATOA, NACo, NLC, NCSI, IMLA and the U.S. Conference of Mayors.
- Provided outreach information to communities regarding the FCC's previous initiative on low power radio.
- Provided suggestions to FCC staff regarding helpful information to include on the FCC Web site for state and local governments.
- Assisted the national local government organizations in the development of materials for the recently published manual on management of Public Rights-of-Way and assisted in publication of other educational materials for these organizations regarding telecommunications matters.
- Members of the LSGAC have served on other committees, such as the National Task Force on Interoperability, the Public Safety Wireless Network, and the Homeland Security advisory committee, where their knowledge and experience in dealing with issues involving the FCC has been very useful to other participants.

These are sizable accomplishments. Through these interactions, the LSGAC has assisted the FCC in promoting the goal of rapid deployment of technology while avoiding legal confrontations with state and local governments that would otherwise be contested in administrative or court proceedings. Furthermore, all LSGAC staff support was provided voluntarily by the individual members or the national organizations.

In October 2002, in response to a request from LSGAC officers for more direction and feedback from Chairman Powell, LSGAC was told that the chairman would be reviewing all FCC advisory committees, and with specific respect to LSGAC, he felt some changes might be needed. In March 2003, LSGAC was informed that the chairman decided the committee would continue, but the specifics of what that meant had not yet been determined.

Days before LSGAC's July 25 meeting, I was informed that not only had the chairman decided what he wanted to do with the LSGAC, but that in fact, an Order had been circulated among the commissioners, all five had approved it, and that the Order would be issued shortly.

The name of the committee is being changed to the Intergovernmental Advisory Committee. In and of

<sup>1</sup> The LSGAC was established pursuant to Section 204(b) of the Unfunded Mandates Reform Act of 1995. As such it is not subject to, and will not follow, the procedures set forth in the Federal Advisory Committee Act, 5 U.S.C. App2 (1988). From March 1997 until December 2000 the LSGAC functioned by order of the Chairman. In December 2000 the full Commission formally adopted a rule establishing the LSGAC and providing for its membership.

<sup>2</sup> Modification of Subpart G, Section 0.701 of the Commission's Rules, FCC 03-180.

<sup>3</sup> See, [www.fcc.gov/statelocal/LSGAC-archive.html](http://www.fcc.gov/statelocal/LSGAC-archive.html).

# Local Government **Involvement**

itself, this is not a substantive change. The LSGAC was comprised of ten local government representatives (six municipal elected officials, three county elected officials and one elected or appointed local government attorney), four state officials (two elected legislators, one elected Governor or Lt. Governor, and one elected or appointed public utilities commissioner), and one Native American tribal representative. The new IAC will have three tribal representatives. The number of state officials is increased from four to five, and the number of local officials is *decreased* from ten to seven. Meetings will be held four times a year. The Order does not limit the scope of the IAC's work. At the same time, there is language in the Order indicating intent to emphasize homeland security issues and ensure that rural interests are represented.<sup>4</sup>

Initially, LSGAC was told that there was no requirement that IAC members be elected officials. That would have caused a major problem and jeopardized compliance with requirements imposed upon the agency by the Unfunded Mandates Act. Fortunately, the published Order creating the IAC *does* have a requirement, consistent with the Unfunded Mandates Act, that the appointees be elected (or in some limited categories, appointed) officials.

The IAC will sunset in two years. The FCC's stated intent is to continue it, but regularly reevaluate its mission and effectiveness. Current LSGAC members were told they could apply for the new committee, although none were given an indication that they would or would not be appointed. The period for nominations closed September 29, 2003, and at the time this article was submitted, the appointees are not known. However, the specific language of the Order and Public Notice, which indicates more focus on rural representation and geographic diversity, suggests that if all current members apply, not all will be appointed. Certainly only seven local representatives will be appointed, as opposed to the prior ten.

There is at least one major substantive problem and one major process problem with the Order. From a process standpoint, it was disappointing that LSGAC was not given the opportunity to provide feedback and discuss the substance of the chairman's proposal, prior to the adoption of the Order. The LSGAC believed there would be an opportunity for feedback and dialog on the direction the FCC sought for the committee, as opposed to simply submitting written documents about the LSGAC's work and procedures, and then waiting for an Order to be issued.

Substantively, it is problematic that local governments will no longer have a majority on the committee.

That is not to say that input on state and tribal issues are not important. Certainly they are. At the same time, the Commission has other joint boards and advisory committees with missions that address state and tribal issues, and committee rosters that include their representatives. The LSGAC was the only FCC advisory committee that had local government issues as a main focus, and I would argue that at least 51% of the new committee's membership ought to be local government representatives. In the Order, the Commission expresses its appreciation of the LSGAC and commits to continue working together on issues of mutual concern. After adoption of the Order, three individual commissioners have expressed this commitment to me as well. I know that the local government community will do its part to try and make the IAC successful.

Hopefully, the FCC will act quickly to make IAC appointments and let the new committee get started. There are a number of issues pending that deserve immediate attention.<sup>5</sup> We trust that the IAC appointments will include former LSGAC members. The new Committee will be more productive if some of its members come to the table with the historical knowledge of the LSGAC's work.

Chairman Powell, the commissioners and their staffs have expressed their intent to insure the IAC is an effective vehicle for communications between the FCC and local, state and tribal governments. Time will tell. It is incumbent upon the local government community to enter into this new relationship in the same way we began with the LSGAC — with some skepticism, but overall with a positive attitude and a dedication to the idea that local government concerns must be responsibly presented to, and reasonably considered by, our counterparts at the Commission.

The LSGAC could not have been as successful as it was without the continuous assistance of NATOA. Libby Beaty, and each of her predecessors dating back to March 1997, with the backing of NATOA's Board of Directors, provided a tremendous amount of support. The organizations supporting LSGAC did so as volunteers, and while help came from many directions, it was never stronger than the support received from NATOA. We should all be proud of, and grateful for, this organization. I know I am. ■

*The author would like to thank Montgomery County Council member and LSGAC Vice-Chair Marilyn Praisner, who compiled the information describing the LSGAC's accomplishments.*

<sup>4</sup> Interestingly, the Order and subsequent Public Notice seeking applications indicated that in the past, rural interests had not been adequately represented. This appears to overlook the LSGAC work on rural issues like E-Rate, merger impacts, low power radio and television and universal service, as well as the strong representation from prior members from Alaska, Nebraska, New Mexico and rural Pennsylvania.

<sup>5</sup> Including a proceeding announced September 10, 2003 to amend spectrum rules to promote wireless services in rural America, WT Docket No. 03-202; the appeal to the full Commission of the Anne Arundel County decision regarding interference with public safety communications, WT Docket No. 02-100; Notice of Proposed Rulemaking to consider a nationwide programmatic agreement regarding the Section 106 National Historic Preservation Act review process, WT Docket No. 03-128.