

Understanding the Impact of the American Broadband Deployment Act

by Dave Garb, Legislative Committee Chair

As we have talked about in the last few newsletters, the American Broadband Deployment Act of 2023 (HR 3557), is still in play in Congress. If enacted, it would impose new restrictions on local authorities regarding their ability to regulate a variety of state and local land use and zoning issues that pertain to the deployment of the telecommunications infrastructure. This would include wireless and wireline deployment, and new limits on the requirements and renewals of cable franchise agreements.

The Congressional Budget Office

In order to fully understand the ramifications if it were to pass, the Congressional Budget Office (CBO), Public and Private Mandates Unit asked for an Inquiry about it. Last month, the [National League of Cities](#) the [United States Conference of Mayors](#) the [National Association of Counties](#) and the [National Association of Telecommunications Officers and Advisors](#), met with the CBO about the American Broadband Deployment Act of 2023. They were able to relate the concerns of local government regarding the cost impact and loss of revenue to local and state governments that would be caused by this bill.

From NATOA:

The CBO asked about the impact on cable franchise fees. Gerry Lederer, a partner at Best, Best & Krieger, LLP, was able to point them to the cable industry's FCC filing back in 2018 that operators pay ~\$3.4 billion, annually, in franchise fees. Also discussed was the loss of wireless siting revenue and the burdens & expenses of increased permitting costs, inspections and requirements.

It remains to be seen how much CBO will rely on our 'loss of (street rent) revenue,' so we're now pivoting to a focus on examples of increases costs/expense/burdens such as:

- Costs of a study to amend ordinances, code, permitting processes and/or fees.
- In discussions, we mentioned a conservative estimate of \$18-20K per unit of government. The # of local government units - counties, municipalities (cities and town), and special districts run from 28,000 – 32,000. (Last year, Treasury's SLFRF funding reported 2,966 counties, 1,088 metropolitan cities (>50,000 pop.) and 22,356 non-entitlement units (<50,000 pop).
- Back of the envelope, that's an unfunded mandate of \$504M - \$640M.
- As Nancy Werner, partner at Bradley Werner, LLC, suggested, think in terms of Small Cell rules – studies, staff, consultants, staffing costs for wireless permitting reviews, inspections, etc., as well as any in-kind contributions that would be threatened.

For more information on this harmful bill, please watch JAG's very informative video about HR3557 and hear what might happen if it is passed at: https://www.youtube.com/watch?v=fzP_t_SPzGk . Please share this link with all those who have the influence and power to stop it.

The Protecting Community Television Act

While HR3557 is floating around Congress, we must not forget that the Protecting Community Television Act ([HR 907/S 340](#)) is also still very much alive and is circulating the halls as well.

From the ACM ([Alliance for Community Media](#)):

The FCC's 2019 Franchise Fee Order redefined the federal Cable Act's 5% franchise fee cap to include the value of most non-monetary franchise obligations as franchise fees. This change allows cable companies to reduce what they pay for the use of public property and rights-of-way. The Protecting Community Television Act ([HR 907/S 340](#)) would correct this error by simply clarifying that franchise fees are only monetary.

The Cable Act of 1984, protects the rights of a local community to charge cable companies a five (5%) percent franchise fee and to meet community needs and interests, such as providing public, educational and governmental channel capacity.

Contrary to industry practices that date to the 1980s, the FCC's actions could result in reducing cable operators' monetary compensation to towns and municipalities that wish to communicate with residents through community television. The FCC Order could force communities to choose between franchise fees or communicating with residents through community media that provide Americans with local civic, public safety and public health content.

The Protecting Community Television Act ([HR 907/S 340](#)) clarifies that only monetary payments, not non-monetary franchise obligations, qualify as Cable Act franchise fees and are subject to a fee cap. Without it, a cable operator could create fees to drain away municipal revenues and pressure municipalities to give up or de-staff channels.

For further information on these bills, please contact David Garb, Chair. of JAG's Legislative Committee at davegarb@paps.net.

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