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WHAT'S NEXT FOR CITIES?

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What's Next for Cities?

- ❖ Companies like ExteNet and Crown Castle
 - Contesting city license requirements at the PUC;
 - Signing license agreements and agreeing to pay cities across Texas a fee/node and also a gross receipts fee.
- ❖ Confident of their chances at the PUC?
 - Will this invalidate license agreements?
 - How about existing agreements to pay fees?

What's Next for Cities?

- ❖ Mobilitie a/k/a Interstate Transport and Broadband a/k/a Texas Relay Transmission Service: Who are these guys?
 - Are they “utilities”? No.
 - Are they “regulated by the PUC”? No.
 - Are they “entitled” to put towers in PROW? No.
 - Must they get a permit before installing anything in PROW? YES.

Mobilitie/Sprint

- ❖ Sprint – bought Clearwire spectrum –intends to save **\$1 billion** by getting off third party towers and using PROW because it is “cheaper.”
 - Also will reduce its dependency on AT&T and Verizon’s high-speed, fiber optic cables that provide links to the cellular towers and mobile switches.
- ❖ Plans to use microwave technology using 120’ tall antennas installed by Mobilitie – want to put in PROW, claim the right to do so because of SPCOA obtained from PUC.

What's Next for Cities?

- ❖ Mobilite - SPCOA granted by PUC Docket No. 45806, on May 19, 2016. To do what?
 - Claims to provide facilities-based and resold competitive local exchange service, access, and nondominant interexchange services.
 - One service will be DAS.
 - Also, Radio Frequency or optical transport and backhaul for voice and data service providers.
 - Will be “linked by fiber optic cables or wireless RF systems with conversion equipment attached to poles and other structures.”

Mobilitie/Sprint

- ❖ “Hybrid” services – radio in and radio out.
- ❖ Will ***not*** be providing POTS, optical services, T1 private lines, long distance, or wireless – according to its application.
- ❖ Will only be providing “RF Transport Services for Business Subscribers.”

Mobilitie/Sprint

- ❖ Self-described as a carrier's carrier – not offering business or residential local exchange service nor will it interconnect to the public switched network. Will not provide switched access local service.
- ❖ Generally has 4 customers in each state in which it operates. Makes its services available to major wireless carriers, not the ultimate end-users of the service.

Mobilitie/Sprint



Mobilitie/Sprint



Mobilitie/Sprint



Mobilitie/Sprint



Mobilitie/Sprint



What's Next for Cities?

- ❖ All over the map in terms of what types of services it's going to provide.
- ❖ Also has been unclear of what types of facilities – RF, microwave, fiber?
- ❖ How are these possibly classified as “access lines”?
- ❖ Need for some clarification by the PUC – need for a rulemaking to address “access lines” and how these new technologies fit in.
- ❖ Can we wait for the two pending cases to be resolved?
Can cities wait?

Legislature

- ❖ Anything on the Legislature's radar?
 - Nothing on interim committee charges.

- ❖ TML Legislative Policy Committee on Utilities and Transportation:
 - Addresses ExteNet and Crown Castle complaints:
 - “The CTP designation was meant to authorize land line providers to use a city’s rights-of-way, subject to any management ordinance the city has in place, and to require the CTP to pay only an access line fee for rental. A DAS is not a land-line technology. It is akin to a cellular tower. Essentially, ExteNet is seeking to utilize a statute that does not apply to its activities and equipment as a way to preempt municipal authority over it.”

Public Utility Commission

- ❖ Anything on the PUC's radar?
- ❖ PUC asked for briefing in the ExteNet/Houston docket, then sent it on to SOAH regardless.
- ❖ Discussion at PUC included:
 - ❖ Chapter 283 is “separate” from PURA (could be a problem);
 - ❖ Will be a “policy call” to make, not a legal call (could be a problem);
 - ❖ Technology has changed; will potentially want to do a rulemaking and make a recommendation to the legislature (better than *ad hoc*);
 - ❖ This is “confusing” (ugh);
 - ❖ Statute is ambiguous (not really).

Cities and the PUC

- ❖ Position of cities at PUC – TCCFUI and TML brief – ***and of PUC Staff:***
 - “The benefits and obligations afforded to CTPs under Chapter 283 are specific to certain types of telecommunications services, and thus Chapter 283 only applies to the technology enabling those services.”
 - Must read Chapter 283 with PURA – otherwise generic definitions muddy the bright line in Chapter 283 between “wired” and “wireless.”

Rulemaking?

- ❖ Should ***not*** be an *ad hoc* rulemaking, as suggested by industry – wants to engraft onto the Chapter 283 regulatory structure entirely new meanings to existing defined terms:
 - Otherwise – new technology will be stymied by the evil of regulatory burdens.
 - Commission should adopt *new* definitions for “access line” and “transmission path” to allow free and unfettered use of the PROW.

Not So Fast!

- ❖ Legislature directed PUC to regularly consider whether changes in technology, facilities, or competitive or market conditions justify a modification to categories or even the definition of access lines – every 3 years (now been 6).
- ❖ This would have to be by a rulemaking.
- ❖ Long-standing delineation between wired and wireless services and devices.
- ❖ Supreme Court: don't amend agency rules in a contested proceeding – undercuts the APA; private opinion only.

PUC?

- ❖ PUC's Scope of Competition Report for 2017 session won't be available until fall.
- ❖ Perhaps an indication there of the Commission's intentions/request for legislative guidance.

Evolving Technology

- ❖ How to deal with rapidly changing technology?
- ❖ What's important – maintaining public health, safety, and welfare? Aesthetics? Revenue stream?
 - ❖ Police powers are alive and well – see 283.056(c).
 - ❖ Permit requirements are still valid – see 283.056(b).
 - ❖ Companies admit - installations are on-going across the state.
 - ❖ 100 nodes in operation or under construction – businesses are thriving.
 - ❖ Cities and citizens are eager for high quality communications services.
 - ❖ But compensation must be provided – DAS providers will never pay an access line fee.
- ❖ The system isn't broken – does not need *ad hoc* revisions.

What's next? Stayed tuned.

Thank you!