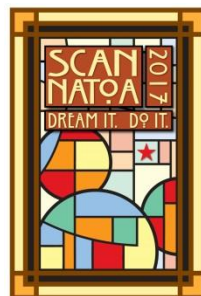




PLENARY SESSION

The State of Communications Law in California and the Nation



PRESENTERS



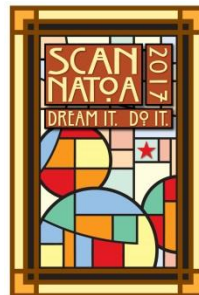
Gerry Lederer
Best Best & Krieger



Christy Marie Lopez
SCAN
Immediate Past President
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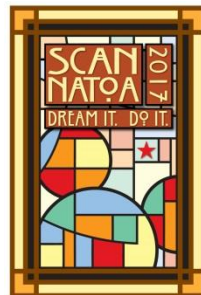


Tripp May
Telecom Law Firm



PROGRAM

- Buzzwords – What’s that to SCAN NATOA
- What’s In and What’s Out
- Applications
 - PEG – registration/DOJ
 - Wireline – Because taking authority away from localities for cable franchising has been such a good idea
 - Wireless NPRM – Son of Mobilitie
 - Cal. Wireless
- Strategies
- Questions

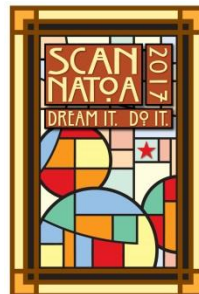


Buzzwords

- “Internet of Things”
- “Big Data”
- “5G”
- “Smart City”
- “Abundant
Broadband/Wireless
Broadband”
- “Cord Cutting Continues”

Meaning for SCAN NATOA

- These buzzwords translate to:
 - Dealing with small cell deployment
 - Ensuring your community has adequate connectivity
 - Protecting consumer/advancing community interests
 - Protecting local revenue streams



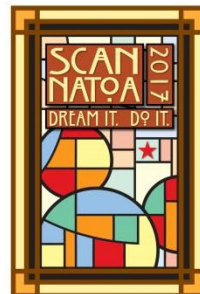
POLICY: What's In – What's Out

IN

- Broadband deployment
- Significant new threats to local authority to control right of way *and* proprietary property
- New barriers to municipal deployment
- “Universal service” subsidies for broadband – likely to be modified

OUT

- Consumer privacy protections
- Net neutrality – significantly threatened.
- Wire to wire competition-- copper wire – protections are out



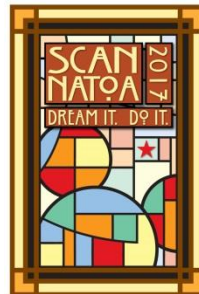
Operations: What's In – What's Out

IN

- Interstate Information Service
- Preemption
- Mergers
 - Post quiet period
- FirstNet – AT&T awarded contract - moving forward (180 days to state plans/90 days for states to opt out) – 5 states opted/ready to opt out

OUT

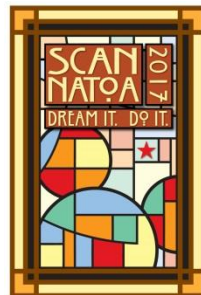
- Title II Broadband Services
- Consumer Protections in Mergers
- Infrastructure Funding
 - Unless we're talking about state and local funding
- Local government input at FCC
 - IAC vs. BDAC



PEG: CC Obligations

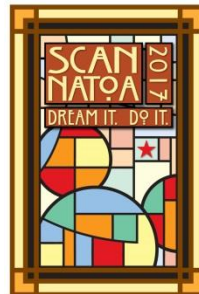
Obligations

- *Absent an exemption* Television channels, including PEG must be captioned.
 - See 47 C.F.R. 79.1. d for a number of exemptions available to PEG stations including 47 CFR 79.1.d. (12) which captures almost all PEG channels, as it exempt from closed captioning channels that “...produce revenue less than \$3,000,000.”



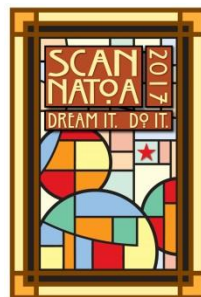
PEG: CC Registration

- Recent FCC Order establishes:
 - No change in exemption rules, **but**
 - **Creates** a Reporting system for all video **channels** and video **producers** so the Commission can:
 - Refer consumer complaints; and
 - Document exemption status of **channels** and **producers**.
- ACM asks for PEG channel to serve as single registrant.
- FCC has yet to create platform – question is will it?



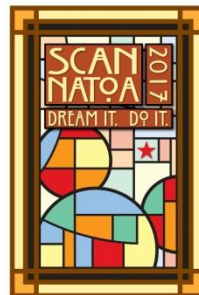
Captioning and ADA (Justice Dept.)

- Justice target, as I understand, was streaming of Council meetings that were not captioned. If you carry G channel, likely that ADA applies.
 - “Covered entities are required to provide aids and services unless doing so would result in an ‘undue burden,’ which is defined as significant difficulty or expense.”
- Obama Justice opened a docket to clarify –
 - NATOA and others filed.
 - Will Trump Justice complete or let go quiet?
- Eddie Sierra v. School Board of Broward County, Case No. 16-cv-63021-BLOOM/Valle, (S.D. FL 4/20/17)



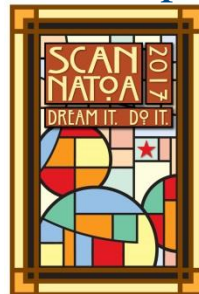
Wireline NPRM

- *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Notice Of Proposed Rulemaking, Notice Of Inquiry, And Request For Comment, WC Docket No. 17-84 (released April 21, 2017)*
- Initial comments due: 30 days after publication in Fed Reg; replies due 60 days after publication
- Main issues NPRM
 - New pole attachment rules (“one touch”/faster timelines)
 - Speeding retirement of copper lines (NOI asks whether to preempt state laws on copper retirement)
- Available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-37A1.docx



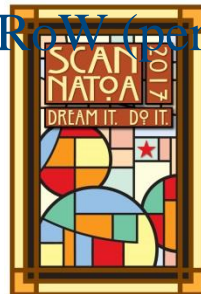
Wireline Deployment – cont'd

- *NOI to consider Section 253 preemption of practices that might prohibit or effectively prohibit provision of telecom services, including:*
 - *Moratoria; Delays in RoW Negotiation and Approval Processes.*
 - *Excessive Fees and Other Excessive Costs.* Seeks comments as to how to control excessive fees that “cut off” competition; asks whether fees paid by cable operators should be capped; or whether additional fees can be charged when additional services are provided; asks whether gross revenues based fees are reasonable.
 - *Unreasonable Conditions.* Seeks comments on “unreasonable” RoW access conditions. Gives examples of in-kind service or product requirements such as services provided free or at a discount, or requiring build out.
 - *Bad Faith Negotiations.* Asks what is bad faith conduct and whether a streamlined process for addressing bad faith would address it.
 - *Other Prohibitive State or Local Conduct.* Anything else industry needs preempted?
- *NOI re authority to act and Section 253 Interpretation.* Asks for comment on its authority to adopt general rules under Sec. 253 and Sec. 201(b) – and how this is impacted by Sec. 253(d). Also does Sec. 622 limit authority to adopt Sec. 253 rules that might apply to cable operators in their capacities as telecom providers?



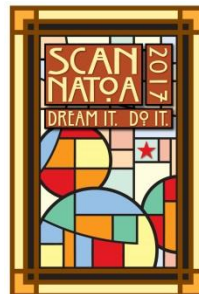
MOBILITIE

- *In re: Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie LLC Petition for a Declaratory Ruling, DA-16-1427, WT Docket No. 16- 421*
- Comments filed (but ex partes possible)
- Issues include:
 - Shortening shot clock for “small cells”
 - Adopting a “deemed granted” remedy
 - Limiting costs that can be charged for
 - Use of public property (RoW, street lights, etc.)
 - Reviewing an application
 - Ongoing management of RoW (permitting, inspection, etc.)



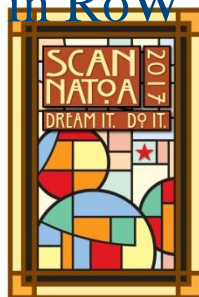
Wireless NPRM

- *Removing Barriers to Investment Needed for America's 5G Future*, Notice of Proposed Rulemaking and Notice of Inquiry WT Docket Nos. 17-79 (adopted but not yet issued)
 - *NPRM*
 - Specifically invites participants in Mobility docket to submit information here
 - Seeks comment on “deemed granted” remedy for missing shot clocks other than Sec. 6409 . In draft proposed deemed granted in one or more of the following forms:
 - Irrebuttable presumption rather than rebuttable presumption)
 - Lapse of state or local authority
 - Preemption rule – failure to act in reasonable time is violation of Sec. 332(c)(7) which creates need for FCC action
 - Seeks comment on “reasonable period to act” – and whether there should be more and different shot clocks under 332.
 - Moratoria – are any localities still imposing them? What can FCC do to stop them?



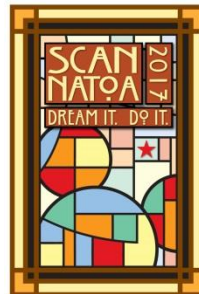
Wireless NPRM

- *Notice of Inquiry* asks how Sec. 253 and 332(c)(7) apply to wireless facilities
 - Discusses different tests in different circuits for what is “effective prohibition” and asks if FCC should make clear that some statutory interpretations are correct and others are not.
 - Seeks comment on proper role of aesthetic considerations and whether FCC should issue guidance on what are ok specific aesthetic impacts and what are not ok – generalized concerns.
 - Seeks comments on whether 253/332 apply to localities acting in a proprietary capacity
 - Unreasonable discrimination concerns related to more burdensome reviews for telecom than other developments, and whether undergrounding could be an effective prohibition to wireless, and whether there has been discrimination in treatment of functionally equivalent services
- Other issues: NHPA and NEPA processes – attacks tribal fees and costs of NEPA reviews; asks whether to have new categorical exclusions for small cells and DAS, pole replacements, and whether to expand exemption for wireless facilities in RoW



Wireless Issues California

- SB 649 (Hueso)
 - precludes discretion over “small cells” on new poles, existing poles and other structures within the public rights-of-way and on private property
 - requires approval pursuant to a single administrative permit
 - circumvents any and all environmental review
 - requires cities to lease space on poles or similar facilities and private property
 - deceptively large definition for a “small cell”
- CPUC Rulemaking 17-03-009
 - pole attachment rates for CMRS facilities
 - potential revisions to GO 95
- No Nevada Updates



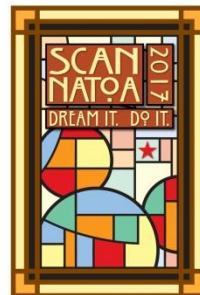
Deadlines

Due Date	Proceeding and Deadline
June 9	Comments in Wireless Infrastructure NPRM
June 12	Comments in Wireline Infrastructure NPRM
July 10	Reply Comments in Wireless Infrastructure NPRM
July 10	Reply Comments in Wireline Infrastructure NPRM
July 17	Net Neutrality Comments Due [WC Docket No. 17-108]
Aug. 16	Net Neutrality Reply Comments Due [WC Docket No. 17-108]



Strategies

- Show up at FCC/ Congress/ state legislatures
- Form coalitions at state level
- Be prepared to face multiple challenges, at multiple levels
- ...Think about creating a counter narrative – and changing the legal facts on the ground



QUESTIONS AND CONTACT INFO



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