ACA Connects' 2019 Achievements in Washington

ACA Connects was busy in 2019 advocating for laws and policies that benefit our members. We achieved success on many fronts at the FCC and on Capitol Hill, including in hotly contested and high-profile proceedings. Below are ACA Connects' biggest wins for our members in Washington in 2019.

Retransmission Consent Negotiations Through MVPD Buying Groups
As Congress considered renewing the Satellite Television Extension and Localism Act (STELAR) in 2019, ACA Connects encouraged it to include language extending the good faith rules to cover retransmission consent negotiations between large station groups and buying groups representing smaller MVPDs, such as NCTC. ACA Connects was able secure such language in the bill that passed, the Television Viewer Protection Act ("TVPA"). To achieve this outcome, ACA Connects developed the policy position, drafted legislative language, and messaging materials. ACA Connects persuaded influential lawmakers from both sides of the aisle to support the concept early and performed well in Congressional hearings due to exceptional testimony of ACA Connects' Chairman Patty Boyers. Moreover, ACA Connects was able to recruit other associations to endorse the provision too. The engagement of ACA Connects members in support of the effort was also vital to the campaign's success, as was the association's ability to leverage its longstanding relationships with key members of Congress. ACA Connects overcame determined opposition from the broadcaster lobby, which leaned hard on lawmakers not to pass any reforms, and they largely succeeded except with regard to ACA Connects' buying group provision. Though the TVPA does not solve all problems with retransmission consent, it should help level the playing field for ACA Connects members in their negotiations with large station groups and reduce disparities between what they pay and what larger operators pay for the same broadcast programming.

Expanding Flexible Use of the 3.7-4.2 GHz Band ("C-Band")
ACA Connects led opposition—at the FCC, on the Hill, and through outreach to industry stakeholders—to the satellite industry's proposal that it orchestrate a private sale of C-Band spectrum to wireless companies and oversee the repacking of incumbents with minimal FCC oversight. In particular, the satellite industry's proposal, if adopted, would have left ACA Connects members stuck with higher prices to use a less reliable C-band that is more prone to interference and is unable to meet future demand. Though many observers expected the FCC to embrace the satellite industry's plans, ACA Connects' advocacy helped elevate the concern that a private sale of a public spectrum asset would allow satellite companies to reap a windfall at taxpayer expense.

Facing growing pressure, the FCC Chairman announced in November that the FCC would use a public auction to reallocate C-Band spectrum for 5G. Though this decision alone does not guarantee a desirable outcome in the proceeding, the choice of a public auction means that the FCC is likely to play a larger role in key decisions -- including reimbursable transition expenses for MVPDs – and less likely to leave such matters to the discretion of satellite companies.

Cable Franchising Order
To build their networks and provide cable service, cable operators need to obtain a franchise from local or state franchising authorities. In issuing a franchise, the local and state authorities are subject to limitations provided for in federal law. For instance, franchise fees are limited to 5% of gross revenues from cable service. Over the past decade, the FCC has sought to interpret these statutory limitations; however, in 2018, the U.S. Court of Appeals (6th Circuit) overturned the FCC's decision to limit the ability of franchising authorities -- to require "in-kind" cable-related contributions in excess of the 5% franchise fee, and to impose fees and regulations on broadband and other non-cable services provided over cable

systems. In 2019, the FCC initiated a proceeding to again address whether these two limitations on actions by franchising authorities were consistent with the statute. ACA Connects filed comments and reply comments as well subsequent ex parte letters in support of the FCC's proposal to retain the two limitations, and in August 2019, the FCC adopted an order concluding (1) franchise fees include cable-related in-kind contributions, and (2) franchising authorities may not regulate or impose fees on non-cable services provided over a cable system. This Order will prevent franchising authorities from imposing excessive fees and regulation on cable operators.

Form 477 and the new Digital Opportunity (Broadband Deployment) Data Collection
In 2013, the FCC enhanced its Form 477 broadband data collection to require providers to submit deployment information by census block. However, since then, it has become clear that this information is neither sufficiently granular nor accurate. For instance, under the 2013 collection regime, a census block is declared "served" even if service is available to only one location in that area. As a result, in 2017, the FCC initiated a proceeding to address these shortcomings, and it considered a wide range of new methodologies, including collecting data by street segments, shapefiles (polygons), or geocoded locations. While ACA Connects in its many filings generally supported the collection of better data, it raised concerns that smaller providers, most of whom voluntarily collect and report data, should not be overly burdened, especially by having to "walk their plant" to geocode every location. In August 2019, the FCC adopted an order requiring that providers submit broadband deployment data by polygons (the Digital Opportunity Data Collection), which ACA Connects members should be able to derive relatively easily from their existing data. The FCC is now conducting a follow-on proceeding to determine the details for the collection.

Media Modernization Initiative
In 2019, ACA Connects continued its advocacy at the FCC to streamline and remove outdated cable regulations. Our efforts—which included numerous filings and meetings with FCC staff—contributed to successful outcomes in a number of specific proceedings, including the following:

- *Children's Television Programming*. Cable operators are required four times a year to collect "KidVid" certifications from every programmer they carry and to post these documents, which can number over 100 in total, to their public file. When the FCC initiated a proceeding to modernize the children's television rules, it included a question – at ACA Connects' recommendation – on whether to move cable operators' certifications from a quarterly to an annual process. Having taken this procedural step, the FCC was able, in September, to adopt the proposal. ACA Connects' intervention early in the proceeding thus contributed directly to an outcome that will substantially reduce compliance burdens for members.
- *Channel Lineup*. In April, the FCC eliminated outdated rules that require cable operators to maintain copies of their channel lineups in their local offices and to post them in their online public inspection files. In doing so the FCC cited evidence from ACA Connects that smaller operators' channel lineups are widely available on company websites and by other means, and that operators have strong market incentives to publicize their channel lineups.
- *Leased Access*. ACA Connects advocated in support of the FCC's adoption of an order, in June, that substantially reduces leased access burdens for cable operators. In particular, the FCC eliminated part-time leased access; extended timeframes to respond to requests; and removed obligations to respond to requests that are not bona fide.

“Opt-Out” Robocall Blocking

An ACA Connects proposal led to an FCC declaratory ruling in June that affirmed voice service providers’ ability to offer popular robocall blocking tools to customers on an opt-out basis. The FCC had previously ruled that providers can block robocalls when customers affirmatively sign up, but that process can be cumbersome—and at the end of the day, few customers may take the initiative to “opt in.” ACA Connects raised this concern in a series of filings and asked the FCC to affirm that providers may offer call blocking on an informed opt-out basis. By issuing a ruling that granted ACA Connects’ request, the FCC has given smaller providers more flexibility in employing tools to combat illegal and unwanted robocalls that frustrate customers and degrade the value of their voice service. The FCC’s “opt-out” ruling was later codified in robocalls legislation Congress adopted at the end of the year, further solidifying ACA Connects’ regulatory achievement.

News-Press Transaction

News-Press already owns low-power stations that transmit NBC, CBS, and FOX in St. Joseph (MO), along with the local newspaper. It sought to purchase the full-power ABC station, which would have given it control over all four networks. This would have enabled it to charge much higher retransmission consent fees. ACA Connects and others objected to the creation of this quadropoly on these grounds. In light of these and other objections, News-Press withdrew its application. Preventing this combination will save ACA Connects members significant amounts in license fees. More importantly, our advocacy may discourage other broadcasters from engaging in similar local consolidation.

Regulatory Fees

Cable and DBS providers both pay a regulatory fee to support the work of the FCC’s Media Bureau, but DBS providers pay a lower amount. In response to ACA Connects’ continuing advocacy, the FCC has steadily increased the DBS fee each year while also shrinking the gap between the two fees. The FCC brought the fees closer to parity in 2019, increasing the DBS fee by 12 cents per subscriber and reducing the gap between the two fees by an additional 3 cents per subscriber. Though the progress this year was modest, the FCC reiterated its support for regulatory parity as an end goal, and ACA Connects will continue to drive for that outcome in 2020.

Incentive Auction Reimbursement Funds

The FCC agreed with ACA Connects’ suggestion that it give MVPDs and certain other entities priority access to the $400 million appropriated to the TV Broadcast Relocation Fund for 2019 to support the broadcast incentive auction post-auction transition.