ACA Connects' 2020 Achievements in Washington

ACA Connects kept busy in 2020 helping our Members contend with the COVID-19 pandemic, while also continuing to advocate for laws and policies that benefit them. We were able to achieve success this year in a variety of regulatory proceedings. Below are ACA Connects' biggest wins for our Members in Washington in 2020.

Expanding Flexible Use of the 3.7-4.2 GHz Band ("C-Band")

In 2019 and early 2020, ACA Connects urged the FCC to give earth station operators the option to make C-Band transition decisions that meet their needs. That advocacy bore fruit in the FCC's March Order, which acknowledged and granted ACA Connects' request that the FCC "give incumbent earth station operators flexibility to replace earth stations with fiber in their transmission planning." In particular, the Order gave earth station operators the option of electing a lump sum payment for accommodating changes necessitated by the C-Band transition in lieu of having the satellite operators migrate their earth stations to the upper portion of the band. Earth station operators choosing the lump sum payment were permitted to allot it towards the transition solution that works best for them, whether that is switching to alternative transmission mechanisms such as fiber, or migrating their earth stations to the upper portion of the band themselves. Approximately 150 ACA Connects Members elected the lump sum option, for an aggregate sum of over $97 million. In addition, ACA Connects' advocacy resulted in the Order enshrining fundamental safeguards for MVPD earth station operators who do not elect to receive the lump sum. The Order stipulates that these earth station operators, for whom the satellite operators are responsible for their transition activities and costs, must ensure these earth stations are able to provide substantially the same service to their customers during and after the transition compared to what they were able to provide before, meaning that the video quality of the end-to-end, programmer-to-viewer chain is at least as good as it is today.

Retransmission Consent "Buying Groups" Order

Following passage on Dec. 2019 of Section 1003 of the Television Viewer Protection Act (TVPA), which provides that the good faith rules governing retransmission consent negotiations shall apply to negotiations between a "large station group" and a "qualified MVPD buying group," the FCC issued a rulemaking seeking comment on how to interpret the statute's definitions of these two terms. In comments, ACA Connects urged the Commission to adopt interpretations which are favorable to ACA Connects Members, and the FCC adopted ACA Connects' recommendations. Due in part to this Order, the NCTC has been able to reach retransmission consent agreements in 2020 with these large station groups Sinclair Broadcast Group, TEGNA, E.W. Scripps, and Gray Television.

Truth-in-Billing Implementation Deadline

New truth-in-billing requirements for MVPDs and broadband providers were enacted into law as part of the TVPA. The requirements were set to take effect June 20, 2020, with the FCC having the option to extend the deadline up to six months. Early in the year, ACA Connects held numerous discussions with Member companies and cable industry billing vendors to understand the logistical challenges and burdens our Members would incur in implementing these new requirements. In March, ACA Connects and other industry associations submitted a joint letter to the FCC seeking the full six-month extension. The filing explained that the compliance burdens of the new law would have justified the extra six months even in normal circumstances, and COVID-19 made the case even stronger—all available resources were needed to address the pandemic. The FCC agreed: In April, it granted the full six-month extension. As a result, the truth-in-billing requirements did not take effect until December 20, 2020.

STIR/SHAKEN

In December 2019, Congress passed a law—the TRACED Act—that requires voice service providers to implement the STIR/SHAKEN call authentication protocol in their Internet Protocol networks. Consistent with the TRACED Act, the FCC set an implementation deadline of June 30, 2021, but sought comment whether to extend that deadline by one year for providers with 100,000 voice lines or fewer. In comments to the FCC, ACA Connects explained that smaller providers will incur significant costs and burdens to implement STIR/SHAKEN, and that an extension would allow time for the marketplace to mature and for new vendor solutions to emerge, driving down implementation costs. ACA Connects also pushed back against a proposal that would have disqualified certain small providers from a full extension, based on criteria that might have swept in ACA Connects Members. In response to comments, including those of ACA Connects, the FCC decided in October to grant all small providers the deadline extension, but for two years instead of one. The FCC found support from ACA Connects for its decision to grant this extension for all providers below the voice line threshold; the agency agreed with us that a case-by-case approach where providers would have to demonstrate their need for an extension would be too administratively burdensome and would consume resources that are better spent working towards implementing STIR/SHAKEN.

Rural Digital Opportunity Fund Phase I

The Rural Digital Opportunity Fund (RDOF) Phase I program is the FCC's most recent, and potentially most far reaching, effort to subsidize the deployment broadband services to unserved areas. Based on ACA Connects' experience with the Connect America Fund Phase II auction, we knew that the RDOF program presented challenges for our Members to ensure they were not overbuilt and opportunities for Members to participate in the program. ACA Connects thus supported the FCC's proposed "challenge process" so that no funds would be expended in areas where our Members provide service. Further, we recommended the FCC maximize participation in the auction by weighting bids to favor of the provision of higher performance services (*e.g.*, DOCSIS and Fiber based services), further favoring bids for higher performance services by instituting the "budget clearing round" rule, and using relatively small areas (census block groups) as the geographic unit for bidding. The FCC's January, 2020 order adopted rules consistent with our proposals. As a result, this past spring, numerous Members participated in the FCC's "challenge process," providing information that they in fact serve areas that were on the preliminary list of areas to be auctioned. In addition, approximately 115 ACA Connects Members participated in the auction – about 30% of the total participants. Sixty-one ACA Connects Members won support, totaling more than $1.3 Billion. Of that amount, about $497 million went to 57 Members that were not the incumbent price-cap carrier.

Digital Opportunity Data Collection & Broadband DATA Act

The FCC and Congress have made it a priority to improve the accuracy of the nation's broadband map. In 2019, the FCC adopted the Digital Opportunity Data Collection (DODC), which, among other things, will require broadband providers to submit polygons/shapefiles of coverage areas. In March 2020, Congress enacted the Broadband DATA Act, which builds upon the DODC. While ACA Connects generally supported the FCC's proposed actions to implement the new law, we expressed concerns that any new requirements not unduly burden our Members. In particular, we advocated that the FCC enable providers with DOCSIS/fiber networks to draw their coverage polygons with a buffer area that reflects the significant capabilities of these networks and that the agency verify the accuracy of crowdsourced data and limit requirements on broadband providers to respond to these submissions. The FCC adopted both of the ACA Connects' proposals.

CTIA Pole Attachment Petition
In September 2019, CTIA filed a Petition for Declaratory Ruling asking the FCC to issue rulings that would improve wireless carriers' access to investor-owned utility poles. Based on discussions with our Members about pole attachment concerns, in 2020, ACA Connects weighed in with comments supporting CTIA's request – but noting importantly that any ruling should apply to wireline providers as well. In July, the FCC ruled in our favor. The FCC found, in particular, that for both wireless and wireline providers the imposition of a "blanket ban" by a utility on attachments to any portion of a utility pole is inconsistent with the statute; and while utilities and attachers have the flexibility to negotiate terms in their pole attachment agreements that differ from the Commission's rules, a utility cannot require an attacher to give up rights to which the attacher is entitled under the rules without the attacher obtaining a corresponding benefit.

Media Modernization Initiative
In 2020, ACA Connects continued its advocacy at the FCC to streamline and remove outdated cable regulations. Our efforts contributed to successful outcomes in a number of specific proceedings, including the following:

- *Electronic Delivery of MVPD Notices to Broadcasters*. In 2018, ACA Connects proposed that the FCC conduct a proceeding to transition from certified mail to email delivery for a variety of notices that cable operators must send broadcasters in different circumstances. The FCC opened such a proceeding in 2019, which culminated in January 2020 with an Order largely adopting ACA Connects' proposal.
- *Cable Service Change Notifications*. Under longstanding FCC rules, cable operators were arguably required to notify subscribers 30 days in advance of any lapse in programming caused by failure of carriage negotiations. In late 2019, the FCC sought comment whether to clarify that such notice must only be provided "as soon as possible," in cases where negotiations actually break down. ACA Connects filed in support of the proposal, explaining that 30 days' advance notice is inconsistent with the reality that carriage agreements are almost always reached in the final days (or hours) or an existing agreement and that blackouts therefore cannot be predicted 30 days (or any set amount of time) in advance. In an October Order, the FCC adopted its proposal, citing approvingly ACA Connects' comments in support. The Order also eliminated an FCC requirement to notify local franchising authorities of rate or service changes, based in part on ACA Connects' arguments that the rule no longer served its intended purpose.
- *Modification to Leased Access Regime*. The FCC's "leased access" rules permit programmers to lease capacity on cable systems at rates determined by a highly complicated formula—one that often requires many hours to calculate. The FCC adopted an order modifying this formula by permitting cable operators to calculate the "average implicit fee" for leased access based on the tier on which the leased access programming actually will be carried, rather than across all tiers. At ACA Connects' suggestion, the Commission also clarified that cable operators may calculate fees "annually based on contracts in effect in the previous calendar year"—and then only upon request. This should substantially reduce the burden of complying with the leased access regime.

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 2020, increasing the DBS fee by 12 cents per subscriber and reducing the gap between the two fees by an additional 9 cents per subscriber. Although the FCC did not finish the job this year of bringing the DBS regulatory fee to parity with the cable fee, the FCC again reiterated its support for regulatory parity as an end goal, and ACA Connects will continue to drive for that outcome in 2021.