

Local Governments Ask to Stay FCC Ruling on Video Franchising

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Local government organizations representing municipal and county officials across America recently asked a federal court to block implementation of the recent franchising order adopted by the Federal Communications Commission (FCC) pending a resolution of the local government organizations' court challenges of the order.

Without the court's block, the new order may otherwise go fully into effect in the next several weeks.

The organizations assert in the Motion for Stay filed in the Sixth Circuit Court of Appeals that the FCC order will severely restrict the ability of local governments to protect their citizens, rights-of-way, community channels and public safety networks.

The organizations argue that the request for stay is in the public interest since, among other things, under the FCC order, local franchising authorities will be forced to ensure the interests of the public, including safety concerns, are met.

According to the motion, "The Alice in Wonderland"-like quality of the order, where up is down and down is up, is readily apparent.

For example, in the order of the FCC created an arbitrary 90-day shot-clock for local governments to negotiate, review, obtain public comment and enact new franchise agreements even through Congress, under the Communications Act, gives local governments longer periods to complete more straightforward tasks, such as approving transfers or modification requests.

Besides NLC, organizations participating in the Joint Motion for Stay include the Alliance for Communications Democracy, Alliance for Community Media, National Association of Counties, National Association of Telecommunications Officers and Advisors and the US Conference of Mayors (USCM).

Additionally, the organizations contend that if implemented without a court's review, the FCC order will cause irreparable harm to local communities and the citizens they serve, because among other things, the order preempts important local laws and agreements, and undermines the ability of the local governments to protect their citizens. Congress has long established that local franchise authorities have the right to negotiate franchise agreements that meet the communities' needs and interests.

The organizations filed Petitions for Review of the FCC Order in April 2007, stating that the order "exceeds the FCC's statutory authority, is arbitrary and capricious, and an abuse of discretion, unsupported by substantial evidence, and in violation of the United State Constitution. The order also violates both the Communications Act and Administrative Procedure Act's public notice requirements, according to petitioners. The petitions are now pending action in the United States Court of Appeals for the Sixth Circuit.

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