



TILLMAN L. LAY
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EDUCATION: **University of Michigan Law School**, JD, *magna cum laude*, 1980
Ann Arbor, MI
Order of the Coif
Articles and Executive Editor, *Michigan Law Review*, 1979-80
Associate Editor, *Michigan Law Review*, 1978-79
University of Tennessee, BS, with highest honors, 1977
Knoxville, TN

BAR ADMISSIONS: District of Columbia
United States Supreme Court
US Court of Appeals for the DC, Fourth, Fifth, Sixth, Ninth, and Eleventh
Circuits

LEGAL EXPERIENCE: Mr. Lay has substantial experience in litigation and counseling on cable television, telecommunications, antitrust, and constitutional law matters before administrative agencies, federal courts, and international tribunals. For the past 20 years, his practice has been devoted primarily to telecommunications and cable television matters, representing clients on municipal cable regulation, telecommunications, and broadcasting matters before Congress, the FCC, the US Department of Justice, and federal courts. He has published articles on the Telecommunications Act of 1996, on the effect of telecommunications convergence on federalism, on the role of local governments in telecommunications policy and investment, and on antitrust and regulatory issues relating to telecommunications common carriers and information service providers.

On behalf of the National League of Cities, Mr. Lay was a major participant in lobbying efforts for several municipal clients during the 1992 Cable Act and the Telecommunications Act of 1996. As a result of that effort, he has unique insight into interpreting those Acts. Mr. Lay has represented a number of local government clients on cable television and telecommunications matters.

Mr. Lay co-authored the National League of Cities' handbook *The Telecommunications Act of 1996: What It Means to Local Governments*, as well as a similar handbook for the American Planning Association, the National Association of Counties, and the American Public Works

Association, entitled *Implementing the New Telecommunications Law – A County and Local Officials Guide to the Telecommunications Act of 1996*. He has been a faculty member at the Practising Law Institute’s annual seminars on cable television.

Mr. Lay has also been directly involved in major federal court litigation and FCC proceedings concerning cable television and telecommunications issues. He played a major role in representing the City of Los Angeles in *Preferred Communications, Inc. v. City of Los Angeles*, a landmark case concerning the First Amendment rights of cable operators and their effect on local municipal franchising. He also successfully represented a coalition of local governments in *City of Dallas v. FCC*, in which the US Court of Appeals for the Fifth Circuit overturned an FCC decision concerning the proper calculation of franchise fees under the Cable Act. He has represented municipalities whose telecommunications franchise requirements have been challenged in court by industry members, and municipalities whose local zoning decisions have been challenged in court by wireless providers. He also has represented municipal interests in FCC and court proceedings concerning the regulatory classification of cable modem service and local right-of-way requirements and telecommunications taxes. He represented a coalition of local government interests in *Brand X Internet Services v. FCC*, a court appeal of an FCC decision classifying cable modem service. He also represented the NLC in lobbying that culminated in the Mobile Telecommunications Sourcing Act of 2000, and he has represented local government interests in lobbying Congress in connection with legislation relating to the Internet tax moratorium. More recently, Mr. Lay represents the National Association of Telecommunications Officers and Advisors (NATOA) and other local government and PEG access organizations in the FCC’s *Video Franchising* rulemaking.

In August 2006, Mr. Lay was selected as NATOA’s “2006 Member of the Year,” an honor given to those who set “such an example as to warrant not only [NATOA's] private accolades, but also [NATOA's] public gratitude and appreciation.” Mr. Lay was celebrated for several contributions, including representing NATOA before Congress and the FCC on many occasions – including during revisions to the Telecommunications Act – and speaking at numerous NATOA events and those of other local government organizations.

PREVIOUS EMPLOYMENT:

Miller, Canfield, Paddock and Stone, PLC
Leader, Telecommunications Group
Senior Counsel, 2000-05
Of Counsel, 1994-99

Miller & Holbrooke, Washington, DC
Partner, 1988-94

Wilmer, Cutler & Pickering, Washington, DC
Attorney, 1981-88

U.S. Court of Appeals, Fifth Circuit

Law Clerk to The Honorable John C. Godbold, Chief Judge, 1980-81

MEMBERSHIPS: American Bar Association

Federal Communications Bar Association

District of Columbia Bar Association

National Association of Telecommunications Officers and Advisors (NATOA)

REPRESENTATIVE CASES: Major participant in lobbying efforts for several municipal clients during debates on Capitol Hill that culminated in the Federal Telecommunications Act of 1996 and the Federal Cable Act of 1992.

Successfully represented clients in appeals overturning FCC decisions adverse to clients' interests.

Played major role in First Amendment litigation concerning cable television franchising and regulation.

Representation of clients on telecommunications, cable television and broadcasting matters before Congress, the FCC, Department of Justice, and federal and state courts.

SELECTED SPEECHES: **U.S. Conference of Mayors' 77th Annual Meeting**, Providence, RI, June 13, 2009, "Streamlined Sales Tax Proposal and Communications Taxes: Impact on Local Governments"

2009 National Association of Telecommunications Officers and Advisors (NATOA) Spring Conference, Washington, D.C., May 18, 2009, "Congressional, Regulatory and Legal Update"

National League of Cities (NLC) Annual Congressional Cities Conference, Washington, D.C., March 18, 2009, "Access for America: The Future of Broadband"

2008 Oregon Connections Telecommunications Conference, Newport, OR, October 17, 2008: "State and Federal Regulation: Universal Service Fund and Inter-Carrier Compensation Reform"

2008 NATOA Annual Local Government Conference, Atlanta, GA, September 20, 2008: "Congress, The Courts and The FCC: Focus on Recent Court Developments"

American Public Power Association Economic Development & Broadband Conference, Nashville, TN, July 22, 2008: "Connect America"

2008 Alliance for Community Media (ACM) Annual Conference, Washington, DC, July 10, 2008: "Federal Policy Update"

Florida Association of Telecommunications Officers & Advisors Annual Conference, West Palm Beach, FL, June 27, 2008: "Comcast/Michigan and AT&T PEG Channel Mischief Update"

NATOA Policy & Legal Seminar, Alexandria, VA, April 3, 2008: "Congressional, Regulatory and Legal Update: Recent Court Developments"

NATOA 27th Annual Conference, Portland, OR, October 3, 2007: "Federal Update"

2007 ACM Conference, Minneapolis, MN, July 28, 2007: "FCC Franchising Rulemaking"

2007 Washington Association of Telecommunications Officers and Advisors Workshop, Tacoma, WA, June 12, 2007: "Analysis of FCC's Video Franchising Order"

2007 ACM Mid-Atlantic Region Conference, Edison, NJ, June 9, 2007: "Ask the Lawyers"

NATOA, eNATO Seminar, April 2, 2007: "Customer Service in the New Environment"

NATOA Policy & Legal Seminar, Alexandria, VA, March 9, 2007: "2007: The Year Of The Pig – It Clearly Seems To Be For Industry, But Will There Be Any Scraps Left For Local Governments?"

NATOA 26th Annual Local Government Telecommunications Conference, Lake Buena Vista, FL, August 23, 2006: "Down the Rabbit Hole: A 'Triple Play' Attack on Local Cable Franchising"

National Conference of State Legislatures (NCSL) Annual Meeting, Nashville, TN, August 15, 2006: "Telecommunications Tax Reform: Will It Impact State and Local Revenue?"

2006 ACM Conference, Boston, MA, July 7, 2006: "Negotiating a Competitive Franchise"

Tennessee Municipal League (TML) Conference, Nashville, TN, June 26, 2006; Workshop presenter on the proposed national franchising legislation and its effect on local governments

States of California and Nevada Chapter of the National Association of Telecommunications Officers and Advisors (SCAN NATOA), Santa Monica, CA, May 11, 2006; Speaker on national, state and local franchising regulations

Texas Coalition of Cities for Utility Issues (TCCFUI), Corpus Christie, TX, April 7, 2006: "The FCC's Cable Franchising NPRM: A Legitimate Inquiry or Federal Grandstanding at Localities' Expense"

NATOA Litigation and Regulation Seminar, Washington, DC, March 23, 2006: "FCC Update: The FCC's Franchising NPRM"

U.S. Conference of Mayors Winter Meeting, Washington, DC, January 26, 2006: "Federal Preemption: The FCC's Cable Franchising NPRM"

ACM West Regional Conference, LaVerne, CA, October 14, 2005; Participant on Public Policy Panel

International Municipal Lawyers' Association's (IMLA) Annual Conference, Savannah, GA, September 27, 2005: "Local Franchising, Taxes, Rights-of-Way Fees, Attorneys Fees, and Damages: Whether the Changing Telecommunications Landscape Will Leave Local Governments Out in the Cold"

NATOA's 25th Annual Conference, Washington, D.C., September 24, 2005: "The Communications Act Rewrite Debate – Ripples Across a Darkly Reflecting Pool"

2005 ACM Conference, Monterey, CA, July 7, 2005: "Analysis and Comparison of House and Senate Video Franchising Preemption Bills"

Telecommunications Law Committee, Association of the Bar of the City of New York, May 23, 2005: "IPTV and Entertainment Over Broadband"

Law Seminars International's 10th Annual Telecommunications Law Conference, Seattle, WA, May 20, 2005: "The FCC's Campaign to Federalize, and Preemptively Deregulate, the Telecom Sector"

NATOA's Annual Conference, San Francisco, CA, September 16, 2004: "Legislative and Regulatory Update"

IMLA's Mid-year Seminar, Washington, D.C., April 26, 2004: "Telecommunications Convergence and What It Means for Local Taxation, Right-of-Way and Other Municipal Authority"

NATOA's Annual Litigation and Regulation Seminar, Washington, D.C., April 22, 2004: "The Big Picture: The Coming IP Convergence and What it Means for Local Taxation, Right-of-Way, Franchising, and Other Municipal Authority"

National League of Cities' Annual Congressional City Conference, Washington, D.C., March 6, 2004: "VOIP, Cable Modem, Broadband...What Does it All Mean for Cities? A Looming Threat to Local Taxation, Right-of-Way and Other Municipal Authorities"

NATOA's Annual Conference and the National League of Cities' Information Technology and Communications Steering Committee Meeting, Denver, CO, September 12, 2003: "Franchise Fees and Other Endangered Species: Myths, Disputes and Legal Issues"

Michigan Association of Municipal Attorneys' Summer Conference, Mackinac Island, MI, June 27, 2003: "The METRO Act's Federal Overlay"

Inaugural Conference of the Virginia Association of Telecommunications Officers and Advisors, Williamsburg, VA, April 7-8, 2003: "Telecommunications Issues of Interest to Local Governments" (panel participation) and "Cable TV Franchise Renewals and Transfers"

National League of Cities' Annual Congressional City Conference, Washington, DC, March 9, 2003: "Telecommunications Issues of Interest to Cities"

NATOA Workshop, Nashville, TN, March 7, 2003: "Legal and Legislative Update"

IMLA Annual Conference, Denver, CO, October 21, 2002: "Recent Telecommunications Law Developments of Interest to Local Governments"

NATOA's Annual Conference, Chicago, IL, September 18, 2002: "Recent FCC and Court Decisions of Note to Local Franchising Authorities"

NATOA Regional Workshop, Portland, OR, June 13, 2002: "Right-of-Way Litigation under the 1996 Telecommunications Act"

Annual Litigation and Regulation Seminar, NATOA, Washington, D.C., April 18, 2002: "The FCC Gives the Cable Industry a Billion-Dollar Free Ride on Local Streets for Cable Modem Service"

NATOA Regional Workshop, Seattle, WA, April 6, 2001, and San Antonio, TX, May 11, 2001: "One K Streeter's Views on Recent Developments in Washington, DC"

National League of Cities Congressional Conference, Washington, DC, March 12, 2001: "Recent Developments Concerning Public Right-of-Way Management and Compensation"

NATOA Annual Conference, Los Angeles, CA, September 14, 2000: "Must-Carry/Retransmission Consent: Cable and Broadcast Titans Fight in Your Backyard"

Inaugural Telecommunications Law and Policy Symposium, Washington, DC, April 18, 2000: "Federalism and Communications Law Policy"

National League of Cities' Annual Congressional City Conference, Washington, D.C., March 12, 2000: "Revisiting the Telecommunications Act of 1996"

NATOA Annual Convention, Atlanta, GA, September 17, 1999: "Prime Real Estate: Managing the Public Right-of-Way"

Panel participation, **NCSL**, Indianapolis, IN, July 27, 1999: "Public Rights-of-Way: Should States Preempt Local Government Authority?"

National League of Cities' Annual Congressional City Conference, Washington, D.C., March 8, 1999: "Taxing Mobile Phone Calls: The Budgetary Impacts for Your City"

Spring Conference of the Association for Local Telecommunications Services, Hilton Head, SC, May 6, 1998: "Telecommunications Right-of-Way Compensation Issues under the 1996 Act"

12th Annual Institute of the Michigan Association of Municipal Attorneys, Lansing, MI, March 24, 1998: "Deregulation Update: What Municipalities Should be Doing Regarding Telephone and Cable"

44th Annual Institute for City and County Attorneys, Athens, GA, September 19, 1997: "Franchising and Antenna Zoning Issues under the Telecommunications Act of 1996"

International City Managers' Association Annual Convention, Vancouver, British Columbia, September 16, 1997: "Update on US Telecommunications Law"

NATOA Annual Convention, Tucson, AZ, September 7, 1997: “Recent Developments under the Telecommunications Act of 1996 of Interest to Local Governments”

Keynote speaker, **NATOA Illinois Chapter’s Annual Conference**, Schaumburg, IL, June 6, 1995: “Legislative Labyrinth: Making Sense of Regulatory Directions in Congress, the FCC, and the Courts”

Frequent speaker at seminars and conventions on cable television and other telecommunications law issues

ARTICLES: “*Twombly’s* New ‘Plausibility’ Standard for Complaints,” *Municipal Lawyer*, November/December 2007

“Will New Federal and State Video Franchising Laws Sideline Local Governments?” 14 *Journal of Municipal Telecommunications Policy* 8 (Issue 4, Winter 2006)

“*Brand X* and the New Agency Kings,” *Municipal Lawyer*, November/December 2005 (Coauthor)

“Who’s Afraid of Competition? The Latest Assaults on Municipal Provision of Broadband Services and the Competitive Ideals of the Communications Act,” 13 *Journal of Municipal Telecommunications Policy* 6 (Issue 4, Winter 2005) (Coauthor)

“Update on Section 253 ‘Barrier to Entry’ Litigation: The Supreme Court Speaks, and The Courts of Appeals Lean Against Limiting Right-of-Way Compensation to Costs,” 12 *Journal of Municipal Telecommunications Policy* 33 (Issue 4, Winter 2004)

“Federal Internet Tax Legislation Threatens to Reduce Local Governments to Horse-and-Buggy Taxes,” 11 *Journal of Municipal Telecommunications Policy* 15 (Issue 4, Winter 2003)

“Internet Tax Bills Would Deprive Cities of Telephone and Utility Tax Revenues,” *Nation’s Cities Weekly*, August 18, 2003

“Some Thoughts on Our System of Federalism in a World of Convergence,” published by the *Law Review of Michigan State University--Detroit College of Law*, Summer 2000

“Local Government and Industry: An Uneasy Balance,” *Telecommunications Reports International Journal* (Winter 1998)

“The Telecommunications Act of 1996: What it Means to Local Governments,” *National League of Cities*, 1996 (Coauthor)

Authored several other published articles on antitrust and regulatory issues relating to communications common carriers and information service providers