

The sea change in communications technology, together with substantial changes and proposed changes in federal and state communications law, is producing a host of opportunities, needs and risks for consumers and local governments. The ways that information is used, collected and transmitted are changing and will change further as digital technology, use of fiber optic lines, wireless delivery systems, and other advanced technologies continue to be more widely developed and deployed. As technology is transforming, so are the industries providing communications services and the laws affecting them. Distinctions among telephone companies, cable companies, broadcasters and other providers of wireline, wireless and satellite services will fade as technologies converge and companies merge, acquire others, or are acquired.

Since the Telecommunications Act of 1996, it has been declared federal communications policy “to provide a pro-competitive, deregulatory national policy framework designed to rapidly accelerate private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.” As it has been implemented, the Act is resulting in unprecedented concentration within, between and among communications industry participants, while reducing regulatory oversight and increasing federal preemption of state and local authority. FCC and court decisions, as well as proposed new federal and state legislation, are accelerating these trends. The need for local governments to act to protect the public interest and their own fiscal interests will increase as regulatory oversight diminishes, perhaps to the vanishing point, and the threat of federal preemption continues to grow.

For more than 20 years, Spiegel & McDiarmid has advised and represented local governments, non-profit community groups, and municipal and cooperative utilities on a variety of telecommunications, cable



television and other communications law matters. Firm attorneys have represented local governments on such matters as:

- state and federal court proceedings involving cable television and telecommunications franchising rights, rights to establish and operate municipal cable and broadband systems, rights to require public, educational and governmental (“PEG”) access, rights to regulate communications service providers’ use of local public rights of way, land use regulation of telecommunications facilities, constitutional issues relating to cable television and other mass media, and rights to impose franchise fees and taxes on communications service providers;
- FCC proceedings relating to cable television, telecommunications and other communications matters, including FCC proceedings on video franchising, franchise fees, classification of internet services, siting of wireless facilities, public safety spectrum, non-commercial radio and television broadcast stations, state and local taxes on communications service providers, and cable service rate regulation;
- advising and representing clients in drafting and enforcing rights of way and franchising ordinances designed to address industry and regulatory changes resulting from passage of the federal Telecommunications Act of 1996 and other more recent changes in the law, particularly provisions affecting public rights-of-way fees and management of public rights-of-way,

communications related taxes and fees, and cable television franchise ordinances;

- lobbying before Congress on behalf of local governments concerning the 1992 Cable Act, the Telecommunications Act of 1996, the Mobile Telecommunications Sourcing Act of 2000, and various communications bills currently pending before Congress;
- cable television franchise renewal, transfer, modification, and rate negotiations and proceedings, including negotiating of cable franchises with new competitive multichannel video entrants like Verizon;
- monitoring and participating in FCC rulemaking and other proceedings of greatest interest to local governments;
- providing legal representation involving an innovative FCC suit under the Telecommunications Act of 1996 that secured the manufacture of cell phones with usability features for the visually-impaired; and
- development by municipalities of fiber optic, wireless and broadband over power line (“BPL”) networks, whether acting separately or in public/private partnerships with companies that will construct and/or operate the network.

The Firm is also involved in important communications issues through our representation of a number of community PEG access organizations, whose mission is to enhance the diversity of programming available to the public through electronic media. We advise

our community access clients on a range of issues, including a number of significant First Amendment issues, and have represented those clients in federal court litigation involving the First Amendment, the federal Cable Act and other provisions of law.

The revolution in the telecommunications industries presents many exciting opportunities for local governments and municipal and cooperative utilities. Access to the internet will continue to be an important concern. Local governments, as well as cooperatives, can play a key role as either the providers of new telecommunications services or through the management of the use of their local rights-of-way. Municipal and cooperative utilities already possess components of the infrastructure for telecommunications systems. Use of these assets can best position a municipality or cooperative to ensure fair access to new information systems, as well as providing new sources of revenue for established activities.

Through our work in these areas, Spiegel & McDiarmid is an active participant in cutting edge issues concerning local governments, municipal utilities, and public interest sector rights in the field of cable television, telecommunications and other communications law. Because of the public sector nature of our client base, our participation in the full range of communications law and policy debate has a unique public interest flavor that few law firms can match.

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