TRANSPORTATION, COMMUNICATION & PUBLIC WORKS POLICY COMMITTEE
Thursday, June 7, 2018
10:00 a.m. – 3:00 p.m.
Sacramento Convention Center, 1400 J Street, Sacramento

Individuals who wish to review the full text of bills included in this packet are encouraged to do so by visiting the League’s website at www.cacities.org and clicking on “Bill Search” found at the left column. Be sure to review the most recent version of the bill.

AGENDA

SPECIAL ORDER: State Budget and Issues Briefing for all policy committee members
10:00 – 10:45 a.m., Room 204, Sacramento Convention Center
Upon adjournment, individual policy committee meetings will begin

I. Welcome and Introductions

II. Public Comment

III. Repeal of SB 1 Impact on Funding of Public Transit (Informational)
   - Speaker: Josh Shaw, Executive Director, California Transit Association

IV. Federal Update
   1. Small Cell Wireless Preemption Efforts (Informational)
      - Speaker: Angelina Panettieri, Principal Associate for Technology and Communications, National League of Cities (invited)
   2. Autonomous Vehicle Preemption Efforts (Informational)
      - Speaker: Greg Rodriguez, Of Counsel, Best Best and Krieger (invited)
      - Speaker: Bernard Soriano, Deputy Director, California DMV (invited)
   3. Task Force Developed Drone Policy (Attachment A) (Action)
      - Speaker: Derek Dolfie, Policy Analyst, League of California Cities

V. City and County Pavement Improvement Center (Attachment B) (Action)

VI. Legislative and Campaign Update (Attachment C) (Informational)

VII. Legislative Agenda (Attachment D) (Action)
   1. SB 460 (de León) Telecommunications. Universal Service.

VIII. Adjournment

Next Meeting (tent.): Annual Conference, Long Beach, September 12
Staff will notify committee members after July 20th if the policy committee will be meeting in September.

Brown Act Reminder: The League of California Cities’ Board of Directors has a policy of complying with the spirit of open meeting laws. Generally, off-agenda items may be taken up only if:
- Two-thirds of the policy committee members find a need for immediate action exists and the need to take action came to the attention of the policy committee after the agenda was prepared (Note: Fewer than two-thirds of policy committee members are present, taking up an off-agenda item requires a unanimous vote); or
- A majority of the policy committee finds an emergency (for example: work stoppage or disaster) exists.

A majority of a city council may not, consistent with the Brown Act, discuss specific substantive issues among themselves at League meetings. Any such discussion is subject to the Brown Act and must occur in a meeting that complies with its requirements.

NOTE: Policy committee members should be aware that lunch is usually served at these meetings. The state’s Fair Political Practices Commission takes the position that the value of the lunch should be reported on city officials’ statement of economic interests form. Because of the service you provide at these meetings, the League takes the position that the value of the lunch should be reported as income (in return for your service to the committee) as opposed to a gift. Any such discussion is subject to the Fair Political Practices Act reporting requirements.

If you would prefer not to have to report the value of the lunches as income, the League will let you know about the issue so you can determine your course of action. The lunches tend to run in the $30 to $45 range. To review a copy of the FPPC’s most recent letter on this issue, please go to www.cacities.org/FPPCletter on the League’s Website.
League Drone Policy

The League believes that Unmanned Aerial Systems (UAS), or “drones,” are an important technology that can be used in a number of beneficial ways for recreational, commercial and governmental purposes. Given the proliferation of this technology, while respecting the jurisdiction of the Federal Aviation Administration (FAA), it is important for local agencies and the state to craft a regulatory framework that provides for the appropriate uses of this technology, while also addressing important public safety, nuisance and other issues that arise as drones are increasingly used for recreational, business, and governmental purposes.

This policy sets out a regulation framework for the state, cities, and counties. There are suggested minimum rules for the state to enact that would be enforceable by local agencies; and other regulations that local agencies would have discretionary authority to pursue. A statewide drone regulatory framework should not limit any power of the state or local agencies to regulate operations of drones if such the regulations do not conflict with the provisions of this framework.

I. Minimum Statewide Standards:
   A. Statewide framework should clarify that no local agency can outright ban drones.
   B. Required Registration: The state should require drone operators to register under the FAA’s registration system. The state should seek approval from the FAA to allow local agencies to enforce the FAA’s registration requirement. If the FAA eliminates drone registration at the federal level, the State should then develop a statewide drone registration system. If the state fails to develop a uniform drone registration system, then local agencies must be able to develop their own. Local agencies should have the authority to require all drone operators to show proof of federal registration to local law enforcement officials. Failure to show proof of registration should be a correctable violation for first time offenders.
   C. The state should establish a statute that grants governmental immunity for local jurisdictions that designate drone recreational areas, as long as signs are posted notifying the public that drones may be flying overhead and they are entering at their own risk.
   D. Safety: An important state goal must be the protection of citizens through the prohibition against careless and reckless operations that endanger life or property.
      i. No person may operate a drone over a human being unless that human being is:
         1. Directly participating in the operation of the drone; or
         2. Located under a covered structure or inside a stationary vehicle that can provide reasonable protection from a falling drone.
         3. Located in an area that has been designated as a drone-recreational area by a local agency
         4. Clarified exemptions for drone operators who have obtained a Part 107 certificate of waiver from the FAA
      ii. A person shall not weaponize a drone or operate a weaponized drone.
E. Prohibit the operation of a drone by a person under the influence of alcohol or drugs that impair the ability of a person to operate a drone.

F. Require, pursuant to federal law, a person to be 16 years of age or older to operate a drone independently. For those under the age of 16, require a person over the age of 21 and a registered drone operator with the FAA, to be present.

G. Require a visual line of sight by the drone operator and/or pilot to operate a drone.

H. A statewide framework should incorporate definitions for hobbyists or recreationalists, government, and commercial use of drones pursuant to federal law definitions\(^1\). A commercial definition should encompass commercial uses such as insurance companies, realtors, photographers, etc.

I. Insurance Requirements: Require the state to establish requirements for minimum insurance coverage that must be maintained by business and government drone operators.

J. Future uses: A state framework should not prevent or prohibit future drone uses. Cities want to be engaged in the policy discussion on the use of drones for commercial drone deliveries and long distance drone use.

K. Protection of Privacy: Ensure that the privacy protections in Section 1708.8 of the Civil Code apply to all drone operators.

L. State’s framework also needs to establish standards for how video, photo, and sound recordings obtained by government drones are treated under the California Public Records Act, as well as state records retention laws.

M. Clarify that any state law that allows for the use of drones does not authorize drone use in any areas that are prohibited by federal law.

II. **Enforcement:** Local agency law enforcement has the authorization to enforce state and local drone laws.

III. **Role of Local Regulation:**

   A. Time, Place, Manner Restrictions: Local agencies should retain the ability to impose reasonable time, place, and manner limitations on low-altitude, at or under 400 feet, drone operations within their jurisdictions.

   B. Outreach and Education: Local agencies shall ensure that information is readily available so that operators are aware of, and accountable to, local rules.

   C. Local agencies should have the ability to enact and enforce rules of general applicability in a manner that addresses unsafe drone operations, such as trespass, nuisance, or noise, and includes the ability to:

     i. Appropriately plan for recreational, hobbyist, and commercial drone use during parades, public holiday celebrations or other local agency wide civic events. Designate no fly zones around “critical infrastructure” (such as water treatment or electricity generating facilities) or as otherwise defined by state and federal law.

     ii. Establish clear rules for hobbyists or recreationalists through the adoption of reasonable “community based safety guidelines.” For hobbyists, a local agency could also designate their own areas in parks, open spaces or on beaches for drone operation.

     iii. Require a public or private entity to apply for an event permit to fly over specified areas with specified date, time, location, and purpose.

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\(^1\) For hobbyists and recreationalists, see Special Rule for Model Aircraft (Public Law 112-95 Section 336). For commercial and government use, see 14 CFR (107).
iv. Local agencies should have the authority to track commercial drone users, by requesting information on drone use from businesses that are required to obtain a business license or pay a business license tax within a jurisdiction. Local agencies should retain the authority to require commercial operators to provide advance notice to the local agency before flying within the local jurisdiction for commercial use. Notice may include, but is not limited to date, time, location of the flight, and operator’s contact information.

D. Local agencies should adopt drone use guidelines in order to inform residents on local agencies’ use of drones by including, but not limited to, law enforcement, fire, emergency medical, first responders, and public works officials. These guidelines should be easily accessible to the public.

E. As technology permits, to promote transparency to the public, local agencies are encouraged to pursue the development and use of real-time drone tracking systems to ensure residents can look up the details of drones operating in a given area.
Transportation, Communications, and Public Works Policy Committee
City and County Pavement Improvement Center Proposal
Thursday, June 7, 2018

Staff: Rony Berdugo, Legislative Representative (916) 658-8283

Proposal:
Authorize the League of California Cities (League) to formally enter into a partnership with the City and County Pavement Improvement Center (CCPIC).

The City and County Pavement Improvement Center (CCPIC) is a collaboration between the California State Association of Counties (CSAC), the County Engineers Association of California (CEAC), the University of California Pavement Research Center (UCPRC), the California Pavement Preservation Center (CP2C) at CSU Chico, and the pavement programs at CSU Long Beach and Cal Poly San Luis Obispo. The CCPIC will provide the most advanced, cost-effective and sustainable pavement practices, science, tools, and resources to all 540 local government agencies, which will help local agencies maximize the value of their local streets and roads.

The League’s involvement with the CCPIC would include the following:
- Securing six (6) city public works directors or engineers to serve on the Governing Board of the CCPIC, representing Northern, Central, Southern, Coastal/Near Coast, and Inland California.
- Approximately 3-4 Governing Board meetings per year hosted by the various academic institutions (subject to change via the Governing Board’s discretion).
- Directing CCPIC research, training, education, certificate programs, and any other activities carried out by the CCPIC via Governing Board approval.
- Updating the League, this policy committee, and its other partners of ongoing CCPIC activities.
- Exploring one or more of the following options for additional, long-term funding for CCPIC activities for the next 5-7 years:
  - General Fund Appropriations,
  - CSU/UC SB 1 Funds, and/or
  - Local Planning Grant Funds.

The main activities planned for the CCPIC are:
1. Provide technology transfer through on-line and in-person training, peer-to-peer exchanges, and dissemination of research results and best practices;
2. Develop technical briefs, guidance, sample specifications, tools, and other technical resources based on the latest scientific findings and tested engineering solutions for local government pavement managers, and the consultants who support them;
3. Establish a pavement engineering and management certificate program for working professionals through the Institute of Transportation Studies at UC Berkeley (ITS-Berkeley) Technology Transfer program;
4. Serve as a resource center for up-to-date information, regional in-person training, pilot study documentation, and forensic investigations; and
5. Conduct research and development that produces technical solutions that respond to the pavement needs of both urban and rural local governments.

While the CCPIC was established with initial seed funding from ITS-Berkeley and ITS-Davis, the long-term success and expansion of CCPIC support and assistance provided to local agencies will require identifying and securing a long-term funding source. The seed funding is enough to provide two (2) classes, an FAQ resource center, and one tool (such as a Life Cycle Cost Analysis Comparison tool) per year for the next two (2) years, but would be insufficient to deliver the five (5) main activities described above. It has been conveyed to the League, that approximately $1 million phased in over the next 3-5 years is what may be required to deliver on such activities for the benefit of all 540 local agencies.

**Fiscal Note:**
Approximately $1 million phased in over the next 3-5 years secured via one of the funding sources described in the proposal (i.e. State General Fund, SB 1 CSU/UC Fund, and/or SB 1 Local Planning Grant Fund, or any other source identified by this policy committee). Consistent with the funding sources described above, League staff recommends that any funding for the CCPIC has little to no impact on funding sources already dedicated for cities.

**Background:**
In January, this policy committee made a recommendation to direct League staff to formally explore entering into a partnership with the CCPIC, which is an initiative developed by UCPRC (with branches at UC Davis and UC Berkeley) with participation from several CSU pavement programs (i.e., CSU Chico, CSU San Luis Obispo, and CSU Long Beach).

With the passage of SB 1 and the $15 billion dedicated to cities and counties to help address the billions of dollars of unmet funding needs over the next 10 years, it will be essential to demonstrate that local governments are good stewards of the new funds, that funding will be used to improve road conditions, and that funds are being put to efficient use. Local governments are responsible for over 80% of the roadway pavement lane-miles in California and carry 45% of the vehicle miles traveled. If you think about where every trip begins and every trip ends, undoubtedly it starts and ends on a local road.

The proposed governance framework for CCPIC is based on a white paper recently completed by the UCPRC for the National Center for Sustainable Transportation with funding from Caltrans titled “Local Government Pavement Research, Development, and Implementation Organization in Several States”. The white paper summarizes the successes, challenges, funding methods and levels, and organization and governance structures of five state-wide local government pavement/transportation centers and one regional center. These centers have been identified as national models. The proposed
governance and operations framework is also based on the experience of more than 20 years that the UCPRC has been operating a similar program for Caltrans, and many years of working on similar programs for the Federal Highway Administration and the Federal Aviation Administration.

Existing League Policy:
“Transportation: [Commitment to Efficiency. Priority should be given to using and improving current systems. Recipients of revenues should incorporate operational improvements and new technology in projects.] …

[Accountability. All tax dollars should be spent properly, and recipients of new revenues should be held accountable to the taxpayers, whether at the state or local level.]”

Comments:
- The City and County Pavement Improvement Center is already up and running.
- The CCPIC is requesting formal partnership with the League and CSAC to govern all of its activities.
- The goal of the CCPIC is to produce tangible research, training, and certification programs for local governments and by local governments to maximize the value of local streets and roads networks.

Staff Recommendation:
1. Approve the staff proposal.

Committee Recommendation:
From January 18, 2018 TCPW policy committee meeting:

To authorize League staff to explore formally entering into a partnership with the California State Association of Counties and the University of California in identifying, developing, prioritizing, performing, reporting and implementing the City and County Pavement Improvement Center, its governance structure and priorities, and to bring any funding decisions such as source of funding and the amount of funding back to the Committee for consideration and approval. Approved by a majority, two members abstained.

Board Action:
Approved Committee Recommendation Unanimously.
**AB 636** (Irwin D) Local streets and roads: expenditure reports.

*Status:* 5/24/2018-Re-referred to Com. on GOV. & F.

*Location:* 5/24/2018-S. GOV. & F.

*Summary:* Current law, with limited exceptions, requires each city and county to submit to the Controller a complete report of expenditures for street and road purposes by October 1 of each year relative to the preceding fiscal year ending on June 30. This bill would instead require the report to be submitted to the Controller within 7 months after the close of the fiscal year adopted by a county, city, or city and county. The bill would make other conforming changes.

**League Position:** Support

**Policy Committee (primary):** Transportation, Communications and Public Works

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**AB 1395** (Chu D) State highways: Department of Transportation: litter cleanup and abatement: report.

*Status:* 5/8/2018-In committee: Hearing postponed by committee.

*Location:* 4/19/2018-S. T. & H.

*Summary:* Would require the Department of Transportation, within its maintenance programs relating to litter cleanup and abatement, to assign the highest priority to litter deposited along state highway segments that carry the highest traffic volumes and the segments found by the department to have the highest incidences of litter and to reallocate existing litter cleanup resources as necessary in order to implement this priority. The bill would also require the department, on or before January 1, 2020, to conduct an assessment of the problem of litter on state highways and to make a specified report to the Legislature on its findings.

**League Position:** Oppose

**Policy Committee (primary):** Transportation, Communications and Public Works

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**AB 1405** (Mullin D) Advanced Digital Network Act.

*Status:* 2/26/2018-From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on T. & H.

*Location:* 2/14/2018-S. T. & H.

*Summary:* Would enact the Advanced Digital Network Act. The bill would authorize the Department of Transportation, subject to federal approval, to enter into a specified comprehensive development lease agreement pursuant to a best value competitive procurement process for a project with a public or private entity, or a consortia thereof, to install and operate a network of new digital signs within the rights-of-way of the state highway system that would display commercial advertising and public service messages.

**League Position:** Oppose

**Policy Committee (primary):** Transportation, Communications and Public Works

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**AB 1959** (Wood D) Telecommunications: universal service programs.

*Status:* 5/30/2018-In Senate. Read first time. To Com. on RLS. for assignment.

*Location:* 5/30/2018-S. RLS.

*Summary:* Current law, until January 1, 2019, requires the Public Utilities Commission to develop, implement, and maintain a suitable program to establish a fair and equitable local rate structure aided by universal service rate support to small independent telephone corporations that serve rural areas and are subject to rate-of-return regulation by the commission (the CHCF-A program). Current law, until January 1, 2019, requires the commission to develop, implement, and maintain a suitable, competitively neutral, and broad-based program to establish a fair and equitable local rate support structure aided by universal service rate support to telephone corporations serving areas where the cost of providing services exceeds rates charged by providers, as determined by the commission (the CHCF-B program). This bill would extend the CHCF-A program and CHCF-B program requirements to January 1, 2023.

**League Position:** Support

**Policy Committee (primary):** Transportation, Communications and Public Works
AB 2249  (Cooley D)  Public contracts: local agencies: alternative procedure.
Status: 5/3/2018-Referred to Com. on GOV. & F.
Location: 5/3/2018-S. GOV. & F.
Summary:
Would authorize public projects of $60,000 or less to be performed by the employees of a public agency, authorize public projects of $200,000 or less to be let to contract by informal procedures, and require public projects of more than $200,000 to be let to contract by formal bidding procedures.

League Position:  Support
Policy Committee (primary):  Governance, Transparency, and Labor Relations, Transportation, Communications and Public Works

AB 2544  (Lackey R)  Parking penalties.
Status: 5/31/2018-From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on T. & H.
Location: 5/3/2018-S. T. & H.
Summary:
Current law authorizes an agency that processes unpaid parking penalties to proceed under 3 specified options to collect those penalties. Under one option, a processing agency is authorized to file an itemization of unpaid penalties with the Department of Motor Vehicles for the department to collect the penalties along with the registration of the vehicle. Existing law requires this option, starting on July 1, 2018, to include a process to provide a payment plan for indigent persons. This bill would specify that this option is applicable to all unpaid parking penalties, regardless of the date on which the ticket was issued.

League Position:  Oppose
Policy Committee (primary):  Transportation, Communications and Public Works

AB 2806  (Obernolte R)  Vehicles: disabled parking.
Status: 4/19/2018-Referred to Com. on T. & H.
Location: 4/19/2018-S. T. & H.
Summary:
Current law makes it an offense for a person to park or leave standing a vehicle in a stall or space designated for electric vehicle charging unless the vehicle is connected for electric charging purposes. This bill would make an exception to that prohibition by authorizing a vehicle identified with a specified disability license plate or distinguishing placard and equipped with a lift, ramp, or other assistive device used for loading or unloading a person with a disability to park in a stall or space designated for electric vehicle charging without being connected for electric charging purposes if the equipment has been or will be used for loading or unloading a person with a disability from the parked vehicle.

League Position:  Oppose
Policy Committee (primary):  Transportation, Communications and Public Works

Location: 5/31/2018-A. DESK
Summary:
Would provide for a red alert system designed to issue and coordinate alerts following an evacuation order, as specified. The bill would require the red alert system to incorporate a variety of notification resources and developing technologies that may be tailored to the circumstances and geography of the underlying evacuation, as appropriate. The bill would require a local government agency or state agency that uses the federal Wireless Emergency Alert (WEA) system to alert a specified area of an evacuation order to use the term "red alert" in the alert and notify OES of the alert.

League Position:  Support
Policy Committee (primary):  Transportation, Communications and Public Works

Total Measures: 8
Total Tracking Forms: 8
Transportation, Communications, and Public Works Policy Committee
Legislative Agenda – Action Items
Thursday, June 7, 2018

Staff: Rony Berdugo, Legislative Representative (916) 658-8283

1. **SB 460 (de León) Telecommunications. Universal Service.**

Bill Summary:
SB 460 (de León) would impose net neutrality rules on broadband internet service providers in California and prohibit state agencies from entering into service contracts with any provider that does not adhere to net neutrality rules.

Bill Description:
Existing Law:
1. Defines “information service,” “telecommunications,” and “telecommunications carrier.” (47 United States Code §153)
2. Authorizes the FCC, with some exceptions, to forbear from applying any regulation to a telecommunications carrier if the FCC makes specified determinations. States that a state commission may not continue to apply or enforce any provision that the FCC has determined to forbear. (47 United States Code §160)
3. Requires that all charges, practices, classifications, and regulations for and in connection with common carrier interstate communication service by wire or radio be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful. (47 United States Code §§201 and 202)
4. Establishes duties on telecommunications carriers regarding interconnection to other telecommunications carriers, among other duties and responsibilities. (47 United States Code §251)
5. Establishes procedures for negotiation, arbitration, and approval of interconnection agreements among telecommunications carriers. (47 United States Code §252)
6. Requires the FCC and each state commission with regulatory jurisdiction over telecommunications services to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment. (47 United States Code §§706 and 1302)
7. Empowers the Federal Trade Commission (FTC) to prevent persons, partnerships or corporations, except common carriers, and specified others, from using unfair methods of competition in or affecting commerce and unfair or deceptive acts of practices in or affecting commerce which give rise to a claim. (15 United States Code §45 (a)(1))

8. Finds and declares the policies for telecommunications in California include, among others, universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians. (California Public Utilities Code §709)

9. Prohibits the California Public Utilities Commission (CPUC) from exercising regulatory jurisdiction or control over Voice over Internet Protocol and Internet Protocol-enabled services, except as required or expressly delegated by federal law or expressly directed to do so by statute or as set forth in statute. (Public Utilities Code §710)

10. Establishes the Consumers Legal Remedies Act (CLRA), protects consumers against unfair and deceptive business practices and provides procedures to secure such protection. (Civil Code §1750 et seq.)

11. Prohibits certain unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction that are intended to result or that result in the sale or lease of goods or services to any consumer, including misrepresentations of the person’s products or those of competitors and false or misleading advertising. (Civil Code §1770)

12. Provides that any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 of the Civil Code may bring an action against that person to recover or obtain any of the following: actual damages, but in no case shall the total award of damages in a class action be less than one thousand dollars ($1,000); an order enjoining the methods, acts, or practices; restitution of property; punitive damages; and any other relief that the court deems proper. (Civil Code §1780(a))

13. Authorizes the State Attorney General to prosecute for unfair business competition, false advertising, or fraudulent business practices any business that violates any of California’s false advertising laws. (Business & Professions Code §§17200 and 17204)

14. Establishes laws prohibiting the use of untrue or misleading in advertisements by any person, firm, corporation or association selling a product or service. (Business & Professions Code §17500 et seq.)
This bill:

1. Establishes the California Internet Consumer Protection and Net Neutrality Act of 2018 and state its intent is to ensure that corporations do not impede competition or engage in deceptive consumer practices, and that they offer service to residential broadband Internet customers on a nondiscriminatory basis.

2. Prohibits Internet service providers from:
   - Blocking lawful content, applications, services, or nonharmful devices,
   - Impairing or degrading lawful internet traffic based on Internet content, application, service, or use of a nonharmful device.
   - Engaging in paid prioritization or providing preferential treatment to any Internet customer.
   - Interfering with a customer's ability to select, access, and use broadband Internet access or lawful content, apps, services or devices of the customer's choice, and
   - Engaging in deceptive or misleading marketing practices that misrepresent the treatment of Internet traffic or content to its customers.

3. Makes the remedies and procedures of the Consumer Legal Remedies Act available for violations of its provisions. This bill would also make clear that it does not preclude enforcement of the rights granted therein pursuant to the Unfair Competition Law (Business & Professions Code §17200 et seq.) and the False Advertising Law (Business & Professions Code §17500 et seq.).

4. Prohibits state agencies from contracting with an ISP unless that ISP certifies, under penalty of perjury, that it will not engage in the activities made unlawful by this bill.

5. Defines the following terms:
   - "Broadband Internet access service:" is a mass-market retail service by wire or radio in California that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service.
   - "Edge provider:" is any individual or entity in California that provides any content, application, or service over the Internet, and any individual or entity in California that provides a device used for accessing any content, application, or service over the Internet.
   - "Internet service provider:" is a business that provides broadband Internet access service to an individual, corporation, government, or other customer in California.
   - "Paid prioritization:" is the management of a broadband provider’s network to directly or indirectly favor some traffic over other traffic, including through the use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management,
Background:
Net neutrality has been a major focus for cities at the national level. The National League of Cities and the U.S. Conference of Mayors have aggressively opposed the repeal of net neutrality rules.

Following the FCC vote to overturn net neutrality, the National League of Cities (NLC) President Mark Stodola, Mayor of Little Rock, Arkansas, released the following statement:

- “Today, the FCC took action to dismantle net neutrality and broadly preempt state and local authority to regulate broadband. Not only will today’s order harm local broadband choice and preempt local consumer protection authority, it permits internet service providers to engage in anticompetitive behaviors like blocking, throttling and paid prioritization. The FCC has created an environment that will discourage, rather than spur, competition and good citizenship by internet service providers in local markets. We hope that future action on net neutrality will restore and enshrine the ability of cities to protect their residents and promote robust broadband competition in their communities while expanding broadband access in underserved communities.”

In their letter (NLC) responding to the FCC action, they write:

- “We are also concerned that this proposal sets in motion broad unnecessary preemption of local authority over broadband services. State and local governments have traditionally regulated the infrastructure built in their jurisdictions, and provided protections to their residents who purchase broadband services. The order’s broad language intending “to preempt any state or local requirements that are inconsistent with the federal deregulatory approach” is a sweeping overreach that seems to intend to weaken or eliminate any local authority over broadband services at all […]”

NLC contends that cities should be concerned about the repeal of net neutrality rules for three key reasons, including:

- It directly preempts local authority by applying the rollback of these principles not only to federal regulation, but also any state and local regulation of broadband.
- It hurts local broadband choice by returning broadband from a Title II service to a Title service, which means it will be regulated as an information service instead of a telecommunications service which are subject to more stringent common carrier requirements. The removal of the more stringent requirements on private carriers will create more competitive disadvantages for municipal broadband against private broadband.
- It hurts consumers by enabling practices such as blocking, throttling, and paid prioritization when few broadband options exist for consumers and eliminates the
ability for state and local government to respond to complaints against such practices.¹

**Fiscal Impact:**
The fiscal impact to cities is unknown, but it is possible that cities would see cost savings and/or maintain a certain level of broadband performance as a customer if net neutrality principles are preserved. Without such protections, it is unknown which customers, including municipalities, would be charged more for privileged access, speed, or reliability.

**Existing League Policy:**
From Transportation, Communications, and Public Works:

[…] Traditional franchising at the local level has served the valuable purpose of tailoring service to unique local conditions and needs and assuring responsiveness of providers to consumers. The continued involvement of local government in any new state or federal regulatory scheme by way of locally negotiated agreements is an essential component of telecommunications regulations; best serves the needs of consumers, and is consistent with the goal of providing consumers greater choice in telecommunications options.

Any new state or federal standards must conform to the following principles:

**Revenue Protection**
- Protect the authority of local governments to collect revenues from telecommunications providers and ensure that any future changes are revenue neutral for local governments.
- Regulatory fees and/or taxes should apply equitably to all telecommunications service providers.
- A guarantee that all existing and any new fees/taxes remain with local governments to support local public services and mitigate impacts on local rights-of-way.
- Oppose any state or federal legislation that would pre-empt or threaten local taxation authority

**Rights-of-Way**
- To protect the public’s investment, the control of public rights-of-way must remain local.
- Local government must retain full control over the time, place and manner for the use of the public right-of-way in providing telecommunications services, including the appearance and aesthetics of equipment placed within it.

**Access**
- All local community residents should be provided access to all available telecommunications services.

• Telecommunications providers should be required to specify a reasonable timeframe for deployment of telecommunications services that includes a clear plan for the sequencing of the build-out of these facilities within the entire franchise area.

[...]

Customer Service Protection

• State consumer protection laws should continue to apply as a minimum standard and should be enforced at the local level. Local governments should retain the authority to assess penalties to improve customer service.

Comments:

• There are rumors that the telecommunications industry may be successful in amending SB 460 to address most of their concerns.
• This bill has not moved since January, but it is already in the Assembly and can be set for a hearing at any moment.
• Many states are pursuing their own legislation to impose net neutrality principles on private broadband providers in response to the FCC action.
• Furthermore, the public overwhelmingly supports net neutrality principles.
• The League may want to take a position supportive of net neutrality principles consistent with the National League of Cities and the U.S. Conference of Mayors.

Support-Opposition:

Support (as of 5.31.18):
ADT Security Services
Center for Accessible Technology
City of Santa Monica
The Greenlining Institute
The Utility Reform Network

Opposition (as of 5.31.18):
Asian Pacific Islander American Public Affairs Association
Asian Pacific Islander American Public Affairs Association Bay Area Region
AT&T
Black Business Association
Black Chamber of Orange County
California Cable & Telecommunications Association
California Chamber of Commerce
California Manufacturers & Technology Association
Carmel Valley Chamber of Commerce
Central City Association of Los Angeles
Chambers of Commerce Alliance of Ventura and Santa Barbara Counties
Coalition for Responsible Community Development
Community Youth Center of San Francisco
Congregations Organized for Prophetic Engagement
CONNECT
Consolidated Communications
CTIA
Escondido Chamber of Commerce
Exceptional Parents Unlimited
Fresno Chamber of Commerce
Frontier Communications
Greater Coachella Valley Chamber of Commerce
Greater Los Angeles African American Chamber of Commerce
Hacker Lab
Imperial Valley LGBT Resource Center
Inland Empire Economic Partnership
Innovation Tri-Valley Leadership Group
International Leadership Foundation
International Leadership Foundation Orange County Chapter
Janet Goeske Foundation
Jobs and Housing Coalition
KoBE Government Contracting Alliance
LEAD Projects/NetRoots
Lighthouse Counseling and Family Resource Center
Monterey County Business Council
Monterey Hospitality Benefits Group
Music Changing Lives
OCA Silicon Valley
Oceanside Chamber of Commerce
Organization of Chinese Americans Sacramento Chapter
Orange County Business Council
Orange County Hispanic Chamber of Commerce
Pacific Grove Chamber of Commerce
San Diego North Economic Development Council
San Diego Regional Chamber
San Gabriel Valley Economic Partnership
San Marcos Chamber of Commerce
Santa Ana Chamber of Commerce
Sprint
T Mobile
TechNet
The Fresno Center
The RightWay Foundation
Tracfone
UFCW Local 648
Valley Industry & Commerce Association
Verizon
Young Visionaries Youth Leadership Academy

Staff Recommendation:
1. Watch this bill for pending amendments sought out by the telecommunications industry and instead develop policy guidance.

2. The League should support net neutrality and oppose any efforts that might:
   a. Preempt local governments from having the ability to protect their residents as consumers from anti-consumer behavior, such as:
      i. Throttling (the practice of intentionally slowing or speeding internet service by an internet service provider for either the end user or the lawful content they attempt to access).
      ii. Paid prioritization (the practice of giving certain “edge providers” priority to network bandwidth in exchange for payment, which could have a fiscal impact on local governments that are increasingly delivering services and content via the internet).
   b. Hurt local broadband choice with efforts attempting to:
      i. Return broadband from a “Title II” service to a less stringent “Title I” service, which would put city owned networks at a competitive disadvantage against larger telecommunications companies. Often, city owned networks have to connect to the existing carrier in the area for the backhaul network, and without net neutrality, these types of network would be incredibly difficult to pursue.
   c. Hurt consumers:
      i. Practices like blocking, throttling, and paid prioritization can limit consumer choice because it can allow ISP like Comcast or Verizon to prioritize delivery of their own products and services that pay to play, putting small businesses and startups at a competitive disadvantage (i.e. local bakery that also retails online).

Committee Recommendation:
From April 2018 TCPW Meeting:

Motion to watch both bills and study this issue and NLC’s position and come back to the committee in June with more information was made and seconded. The motion passes with majority support.

Board Action:


Bill Summary:
SB 822 (Wiener) would establish net neutrality requirements by prohibiting internet service providers (ISPs) from taking certain actions that interfere with consumers’ ability to lawfully access internet content, including intentionally blocking content, speeding up or slowing down traffic, engaging in paid-prioritization, requiring consideration from edge providers for access to an ISP’s end users, and selectively zero-rating certain content.

Bill Description:
Existing Law:
1. Defines “information service,” “telecommunications,” and “telecommunications carrier.” (47 United States Code §153)

2. Authorizes the FCC, with some exceptions, to forbear from applying any regulation to a telecommunications carrier if the FCC makes specified determinations. States that a state commission may not continue to apply or enforce any provision that the FCC has determined to forbear. (47 United States Code §160)

3. Requires that all charges, practices, classifications, and regulations for and in connection with common carrier interstate communication service by wire or radio be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful. (47 United States Code §§201 and 202)

4. Establishes duties on telecommunications carriers regarding interconnection to other telecommunications carriers, among other duties and responsibilities. (47 United States Code §251)

5. Establishes procedures for negotiation, arbitration, and approval of interconnection agreements among telecommunications carriers. (47 United States Code §252)

6. Requires the FCC and each state commission with regulatory jurisdiction over telecommunications services to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment. (47 United States Code §§706 and 1302)

7. Empowers the Federal Trade Commission (FTC) to prevent persons, partnerships or corporations, except common carriers, and specified others, from using unfair methods of competition in or affecting commerce and unfair or deceptive acts of practices in or affecting commerce which give rise to a claim. (15 United States Code §45 (a)(1))

8. Finds and declares the policies for telecommunications in California include, among others, universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians. (California Public Utilities Code §709)

9. Prohibits the California Public Utilities Commission (CPUC) from exercising regulatory jurisdiction or control over Voice over Internet Protocol and Internet
Protocol-enabled services, except as required or expressly delegated by federal law or expressly directed to do so by statute or as set forth in statute. (Public Utilities Code §710)

10. Establishes the Consumers Legal Remedies Act (CLRA), protects consumers against unfair and deceptive business practices and provides procedures to secure such protection. (Civil Code §1750 et seq.)

11. Prohibits certain unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction that are intended to result or that result in the sale or lease of goods or services to any consumer, including misrepresentations of the person’s products or those of competitors and false or misleading advertising. (Civil Code §1770)

12. Provides that any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 of the Civil Code may bring an action against that person to recover or obtain any of the following: actual damages, but in no case shall the total award of damages in a class action be less than one thousand dollars ($1,000); an order enjoining the methods, acts, or practices; restitution of property; punitive damages; and any other relief that the court deems proper. (Civil Code §1780(a))

13. Authorizes the State Attorney General to prosecute for unfair business competition, false advertising, or fraudulent business practices any business that violates any of California’s false advertising laws. (Business & Professions Code §§17200 and 17204)

14. Establishes laws prohibiting the use of untrue or misleading in advertisements by any person, firm, corporation or association selling a product or service. (Business & Professions Code §17500 et seq.)

This bill:
1. Prohibits ISPs from engaging in certain activities that impact a consumer’s ability to lawfully access content on the internet, including, but not limited to the following:
   a. Intentionally blocking lawful content, slowing or speeding traffic, or otherwise interfering with access to lawful content on the basis of source, destination, internet content, application, or service, or use of a non-harmful device.
   b. Engaging in third-party paid prioritization.
   c. Selectively zero-rating some internet content, applications, services, or devices or zero-rating in exchange for consideration or payment.
   d. Engaging in deceptive or misleading marketing practices that misrepresent the treatment of internet traffic, content, applications, services, or devices.
e. Failing to publicly disclose accurate information about the network management practices, performance, and commercial terms of its broadband internet access services to enable consumers to make informed choices about those services.

f. Providing services other than broadband internet access service delivered over the same last-mile connection as the broadband internet access service if those other services can be used as an equivalent of broadband internet, circumvent or undermine the other prohibitions for ISPs, or negatively affect the performance of broadband internet services.

g. Requiring consideration from edge providers, monetary or otherwise, for access to an ISP’s end users.

2. Authorizes an ISP to offer different levels of service without violating this bill’s net neutrality prohibitions if the provision of those different service levels meets certain criteria and does not degrade the quality of the basic internet service offered by the ISP.

3. Prohibits public entities from purchasing services from ISPs that engage in prohibited activities. This bill authorizes a public entity that enters into a contract with an ISP later found to be in violation of this bill’s requirements to declare the contract void.

4. Specifies that nothing in this bill limits ISPs from meeting the needs of emergency communications, law enforcement, public safety, or national security authorities.

5. Allows consumers to use the CLRA to bring a legal action against an ISP that engages in the actions prohibited by this bill.

6. Defines the following terms:
   a. “Public entity” means the state, county, city, city and county, district, public authority, public agency, municipal corporation, or any other political subdivision or public corporation in the state.
   b. “Application-agnostic” means not differentiating on the basis of source, destination, Internet content, application, service, or device, or class of Internet content, application, service, or device.
   c. “Application-specific differential pricing” means charging different prices for Internet traffic to customers on the basis of Internet content, application, service, or device, or class of Internet content, application, service, or device, but does not include zero-rating.
   d. “Broadband Internet access service” means a mass-market retail service by wire or radio provided to customers in California that provides the capability to transmit data to, and receive data from, all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. “Broadband Internet access service” also
encompasses any service provided to customers in California that provides a functional equivalent of that service or that is used to evade the protections set forth in this chapter.

e. “Class of Internet content, application, service, or device” means Internet content, or a group of Internet applications, services, or devices, sharing a common characteristic, including, but not limited to, sharing the same source or destination, belonging to the same type of content, application, service, or device, using the same application- or transport-layer protocol, or having similar technical characteristics, including, but not limited to, the size, sequencing, or timing of packets, or sensitivity to delay.

f. “Content, applications, or services” means all Internet traffic transmitted to or from end users of a broadband Internet access service, including traffic that may not fit clearly into any of these categories.

g. “Edge provider” means any individual or entity that provides any content, application, or service over the Internet, and any individual or entity that provides a device used for accessing any content, application, or service over the Internet.

h. “End user” means any individual or entity that uses a broadband Internet access service.

i. “Internet service provider” means a business that provides broadband Internet access service to an individual, corporation, government, or other customer in California.

j. “ISP traffic exchange” means the exchange of Internet traffic destined for, or originating from, an Internet service provider’s end users between the Internet service provider’s network and another individual or entity, including, but not limited to, an edge provider, content delivery network, or other network operator.

k. “Mass market” means a service marketed and sold on a standardized basis to residential customers, small businesses, and other end-use customers, including, but not limited to, schools, institutions of higher learning, and libraries. The term also includes broadband Internet access services purchased with support of the E-rate and Rural Health program and similar programs at the federal and state level, regardless of whether they are customized or individually negotiated, as well as any broadband Internet access service offered using networks supported by the Connect America Fund or similar programs at the federal and state level.

l. “Network management practice” means a practice that has a primarily technical network management justification, but does not include other business practices.

m. “Reasonable network management practice” means a network management practice that is primarily used for, and tailored to, achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service, and that is as application-agnostic as possible.

n. “Third-party paid prioritization” means the management of an Internet service provider’s network to directly or indirectly favor some traffic over...
other traffic, including through the use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either (1) in exchange for consideration, monetary or otherwise, from a third party, or (2) to benefit an affiliated entity.

o. “Zero-rating” means exempting some Internet traffic from a customer’s data limitation.

Background:
Net neutrality has been a major focus for cities at the national level. The National League of Cities and the U.S. Conference of Mayors have aggressively opposed the repeal of net neutrality rules.

Following the FCC vote to overturn net neutrality, the National League of Cities (NLC) President Mark Stodola, Mayor of Little Rock, Arkansas, released the following statement:

• “Today, the FCC took action to dismantle net neutrality and broadly preempt state and local authority to regulate broadband. Not only will today’s order harm local broadband choice and preempt local consumer protection authority, it permits internet service providers to engage in anticompetitive behaviors like blocking, throttling and paid prioritization. The FCC has created an environment that will discourage, rather than spur, competition and good citizenship by internet service providers in local markets. We hope that future action on net neutrality will restore and enshrine the ability of cities to protect their residents and promote robust broadband competition in their communities while expanding broadband access in underserved communities.”

In their letter (NLC) responding to the FCC action, they write:

• “We are also concerned that this proposal sets in motion broad unnecessary preemption of local authority over broadband services. State and local governments have traditionally regulated the infrastructure built in their jurisdictions, and provided protections to their residents who purchase broadband services. The order’s broad language intending “to preempt any state or local requirements that are inconsistent with the federal deregulatory approach” is a sweeping overreach that seems to intend to weaken or eliminate any local authority over broadband services at all […]”

NLC contends that cities should be concerned about the repeal of net neutrality rules for three key reasons, including:

• It directly preempts local authority by applying the rollback of these principles not only to federal regulation, but also any state and local regulation of broadband.
• It hurts local broadband choice by returning broadband from a Title II service to a Title service, which means it will be regulated as an information service instead of a telecommunications service which are subject to more stringent common carrier requirements. The removal of the more stringent requirements on private carriers will create more competitive disadvantages for municipal broadband against private broadband.
• It hurts consumers by enabling practices such as blocking, throttling, and paid prioritization when few broadband options exist for consumers and eliminates the ability for state and local government to respond to complaints against such practices.²

**Fiscal Impact:**
The fiscal impact to cities is unknown, but it is possible that cities would see cost savings and/or maintain a certain level of broadband performance as a customer if net neutrality principles are preserved. Without such protections, it is unknown which customers, including municipalities, would be charged more for privileged access, speed, or reliability.

**Existing League Policy:**
From Transportation, Communications, and Public Works:

[...]

Traditional franchising at the local level has served the valuable purpose of tailoring service to unique local conditions and needs and assuring responsiveness of providers to consumers. The continued involvement of local government in any new state or federal regulatory scheme by way of locally negotiated agreements is an essential component of telecommunications regulations; best serves the needs of consumers, and is consistent with the goal of providing consumers greater choice in telecommunications options.

Any new state or federal standards must conform to the following principles:

**Revenue Protection**

• Protect the authority of local governments to collect revenues from telecommunications providers and ensure that any future changes are revenue neutral for local governments.
• Regulatory fees and/or taxes should apply equitably to all telecommunications service providers.
• A guarantee that all existing and any new fees/taxes remain with local governments to support local public services and mitigate impacts on local rights-of-way.
• Oppose any state or federal legislation that would pre-empt or threaten local taxation authority

**Rights-of-Way**

• To protect the public’s investment, the control of public rights-of-way must remain local.

• Local government must retain full control over the time, place and manner for the use of the public right-of-way in providing telecommunications services, including the appearance and aesthetics of equipment placed within it.

Access

- All local community residents should be provided access to all available telecommunications services.
- Telecommunications providers should be required to specify a reasonable timeframe for deployment of telecommunications services that includes a clear plan for the sequencing of the build-out of these facilities within the entire franchise area.

[...]

Customer Service Protection

- State consumer protection laws should continue to apply as a minimum standard and should be enforced at the local level. Local governments should retain the authority to assess penalties to improve customer service.

Comments:

Support-Opposition:
Support (as of 5.26.18):
18MillionRising.org
Access Humboldt
ADT Security Services
Agribody Technologies, Inc
Aixa Fielder, Inc
Alameda Motor
American Civil Liberties Union of California
American Sustainable Business
Analysis of Motion
Barnes Insurance
BentonWebs
Bioeconomy Partners
Brian Boortz Public Relations
Brightline Defense Project
C, Wolfe Software Engineering
Califa
California Alarm Association
California Association of Competitive Telecommunications Companies
California Association of Nonprofits
California Association of Realtors
California Attorney General, Xavier Becerra
California Common Cause
California Conference Board of the Amalgamated Transit Union
California Faculty Association
California Freedom Coalition
California Insurance Commissioner, Dave Jones
California Labor Federation
California Public Interest Research Group
California Teamsters Public Affairs Council
Cartoonland
CCTV Center for Media & Democracy
Center for Democracy & Technology
Center for Media Justice
Center for Rural Strategies
Change Begins With ME
Cheryl Elkins Jewelry
Chris Garcia Studio
City and County of San Francisco
City of El Cerrito Mayor, Gabriel Quinto
Cities of Emeryville, Los Angeles, Oakland, Sacramento, and San Jose
Coalition for Humane Immigrant Rights
Cogent Communications
Color Of Change
Common Cause
Computer-Using Educators
Corporate Host Services
Constituent Records
Consumer Action
Consumer Attorneys of California
Consumers Union
County of Santa Clara
Courage Campaign
CREDO Action
CreaTV San Jose
Daily Kos
David’s Amusement Company
Demand Progress Action
Democracy for America
Digital Deployment
Disability Rights Education & Defense Fund
Dragon’s Treasure
dsherman design
Electronic Frontier Foundation
Engine
Engineers & Scientists of California, Local 20
Equal Rights Advocates
EveryLibrary
Faithful Internet
Federal Communications Commission Commissioners & Chairs (Former): Michael Copps, Gloria Tristani, Tom Wheeler
Fight for the Future
FREE GEEK
Free Press
Friends of the Millbrae Public Library
Gold Business & IP Law
Goodlight Natural Candles
Grass Fed Bakery
Greenpeace USA
Grocery Outlet of Lompoc
Horticultrist
Iam Bloom
iHomefinder, Inc
Indivisible CA: StateStrong
Indivisible Sacramento
Indivisible SF
Indivisible Sonoma County
inNative
Intex Solutions, Inc
IR Meyers Photography Jockeys’ Guild
Johnson Properties
Judith Glickman Zevin, Psy.D.
Kahl Consultants
Langlers WebWorks
Lat13
Latino Coalition for a Healthy California
Leatherback Canvas
Leet Sauce Studios, LLC
Leverata, Inc
Lisa LaPlaca Interior Design
Logical Computer Solutions
Los Angeles County Democratic Party
Magical Moments Event Planning & Coordinating
May First/People Link
Mechanics’ Institute Library
Media Alliance
Media Mobilizing Project
Melbees
Merriman Properties LLC
MGCC
Milked Media
Mixt Media Art
MM Photo
Mobile Citizen
Mogin Associates
NARAL Pro-Choice California
Narrow Bridge Candles
National Consumer Law Center
National Digital Inclusion Alliance
National Hispanic Media Coalition
New American’s Open Technology Institute
New Media Rights
NextGen California
Nobody Cares Media
Nonprofit Technology Network
Oakland Privacy
Obscure Engineering
Office of Ratepayer Advocates
OpenMedia
Oregon Citizens’ Utility Board
Orthogonal, LLC
Pacific Community Solutions, Inc
Paper Pastiche
Patty's Cakes and Desserts
PEN America
People Demanding Action
Personhood Press
PolicyLink
Pony Named Bill Tack
Pretty Me Store
Professional & Technical Engineers, Local 21
Progressive Technology Project
Prosenergy
Public Knowledge
Reid Case Management
RI Lopez Interpreter Services
RootsAction.org
San Mateo County
Service Employees International Union California
Silicon Harlem
Silver Lining Unlimited
Small Business Majority
SNAP Cats
Sonic.net, LLC
spamedfit.com
Stauter Flight Instruction
Sternidae Industries
SumOfUs
Suzi Squishies
Tarragon Consulting Corporation
Tech Goes Home
The Greenlining Institute
The Radio Doctor
The Utility Reform Network
Thinkshift Communications
Trader Ann's Attic
Tribd Publishing Co.
TWB & Associates
Twilio
UHF
Unite Here International Union
United Auto Workers, Local 5810
United Food & Commercial Workers Western States Council
Utility Workers Union of America, Local 132
UX Consulting
Vic DeAngelo IT Consulting
Voices for Progress
Wallin Mental Medical
Western Center on Law and Poverty
Wonderlandstudios
Words 2 Wow Life Science Marketing
World Wide Web Foundation
Writers Guild of America West
XPromos Marketing Mastery, LLC
A petition with several individuals

Opposition (as of 5.26.18):
100 Black Men of Long Beach, Inc.
2-1-1 Humboldt Information and Resource Center
African American Male Education Network and Development
African American Unity Center
Alhambra Police Foundation
Asian Pacific Islander American Public Affairs Association of: Bay Area Region, Central Valley Region, Community Education Foundation, Los Angeles Chapter, Orange County Chapter, San Diego Chapter, San Francisco Chapter, San Gabriel Chapter, Silicon Valley Chapter, Solano County Chapter, Southern California Region, and Tri Valley Chapter
Asian Resources Inc.
AT&T
Athletes and Entertainers For Change
Be MACnificent Academy, Inc.
Benefit Tomorrow Foundation
Black Business Association
Black Chamber of Orange County
Black Women Organized for Political Action
Boys and Girls Club of El Dorado County
Boys and Girls Club of the North Valley
Brotherhood Crusade
California Cable & Telecommunications Association
California Chamber of Commerce
California Communications Association
California Manufacturers & Technology Association
Camp Fire Inland Southern California
CenturyLink
Chamber of Commerce: Alhambra, Antelope Valley African American, Arcadia, Burbank, California Asian Pacific, California Black, California Hispanic, Carlsbad, Carmel Valley, El Dorado County, Escondido, Fresno, Fresno Metro Black, Glendale, Greater Coachella Valley, Greater Los Angeles African American, Greater Riverside, InBiz Latino/North County Hispanic, Korean American Central, La Cañada Flintridge, Long Beach Area, Los Angeles Area, Mariposa County, North Orange County, Oceanside, Orange County Hispanic, Pacific Grove, Pasadena, Redding, Sacramento Asian Pacific Islander, Sacramento Black, Sacramento Hispanic, Sacramento Metropolitan, San Diego County Hispanic, San Diego Regional, San Ysidro, Slavic-American
Claypool Consulting
Coalition for Responsible Community Development
Community Women Vital Voices
Computing Technology Industry Association
Concerned Black Men of Los Angeles
Concerned Citizens Community Involvement
Congress of California Seniors
CONNECT
Consolidated Board of Realtists
Consolidated Communications
CrossingsTV
CTIA
DeBar Consulting
East Bay Leadership Council
Entrepreneurs of Tomorrow Foundation
Eskaton
Fresno Area Hispanic Foundation
Fresno County Economic Development Corporation
Frontier Communications
Frontier Senior Center
Gamma Zeta Boulé Foundation
Guardians of Love
Guide Right Achievement Development Foundation
Hacker Lab
Hispanic 100
Imperial Valley LGBT Resource Center
Inland Empire Economic Partnership
International Leadership Foundation
International Leadership Foundation Orange County Chapter
Kheir Center
KoBE Government Contracting Alliance
Krimson and Kreme
Latin Business Association
Latino Council
Latino Service Providers
Staff Recommendation: The committee may wish to consider the following question:

1. Support on the premise that this bill is consistent with the net neutrality principles supported by the National League of Cities.
2. Continue to watch and adopt broader policy guidance instead of taking a position on this bill.

3. Oppose or Support if Amended to:
   a. Request amendments that would allow for local governments to reject bids from internet service providers that do not adhere to the net neutrality principles in the bill instead of the current language that prohibits agencies from entering into such contracts.

Committee Recommendation:

Board Action:

3. **AB 1999 (Chau) Local Government. Public Broadband Services.**

Bill Summary:
AB 1999 (Chau) would impose net neutrality rules on government owned networks (GON’s), owned or operated by a city, community services district, public utility district, or a municipal utility district. Additionally, the bill would delete the requirement that a community services district must locate a private person willing and able to provide broadband services before providing such services on their own and expand the types of agencies that may provide broadband infrastructure.

Bill Description:
Existing law:
1. Allows any municipal corporation to acquire, construct, own, operate, or lease any public utility that provide certain services, including a means of communication.

2. Authorizes a community services district, county services areas, or infrastructure financing district to construct, own, improve, maintain, and operate broadband facilities and provide broadband services if a district is unable to locate a private person willing or able to provide such services.

This bill:
1. Declares the intent of the legislature to protect and promote the Internet as an open platform enabling customer choice, freedom of expression, end-user control, competition, and the freedom to innovate without permission.

2. Prohibits local agencies that operate and provide broadband services from:
   o Blocking lawful content, applications, services, or nonharmful devices,
   o Impairing or degrading lawful Internet traffic on the basis of Internet content, application, or service, or use of a nonharmful device,
   o Engaging in paid prioritization.
   o Unreasonably interfering with or unreasonably disadvantaging:
- An end-user’s ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of the end-user’s choice, and
- An edge provider’s ability to make lawful content, applications, services, or devices available to an end-user.

3. Deletes the requirement that a community services district must locate a private person willing and able to provide broadband services before providing such services on their own.

4. Defines the following terms:
   - “Broadband Internet access service:” is a mass-market retail service by wire or radio in California that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service.
   - “Edge provider:” is any individual or entity in California that provides any content, application, or service over the Internet, and any individual or entity in California that provides a device used for accessing any content, application, or service over the Internet.
   - “End user:” is any individual or entity in California that uses a broadband Internet access service.
   - “Fixed broadband Internet access service:” is any broadband Internet access service that serves end users primarily at fixed endpoints using stationary equipment in California, including fixed wireless services, including fixed unlicensed wireless services, and fixed satellite services.
   - “Local agency:” is agency of local government authorized by any other law to provide broadband internet access service, including a city, public capital facilities or projects financed by an infrastructure finance district, a community services district, a public utility district, and a municipal utility district.
   - “Mobile broadband Internet access service:” is any broadband Internet access service that serves end users primarily using mobile stations in California.
   - “Paid prioritization:” is the management of a broadband provider’s network to directly or indirectly favor some traffic over other traffic, including through the use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either (1) in exchange for consideration, monetary or otherwise, from a third party, or (2) to benefit an affiliated entity.
   - “Reasonable network management:” is a network management practice that has a primarily technical network management justification, but does not include other business practices. A network management practice is reasonable if it is primarily used for, and tailored to, achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service.
Background:
In response to the FCC’s recent decision to overturn net neutrality rules, some municipality and state government representatives have indicated that municipally owned networks, known as GON’s, can help save net neutrality by providing equal & open internet that is fast, affordable, and reliable.

Organizations, like the Business Roundtable, however, reject the notion that municipal broadband is better and more affordable than internet service provided by the private sector, especially where internet service already exists.

As it applies to net neutrality, proponents for GON’s argue that internet service owned and operated by the state, local government, small business, and non-profits are the best way to preserve a free and open internet. This year, there are several bills to impose net neutrality rules on private broadband providers and this bill, which would apply those same principles to GON’s. GON proponents argue that municipal governments are accountable to the public, not profits and can implement net neutrality rules and privacy protections that are no longer required of private sector providers. They also argue the GON’s can insert a level of competition in communities where only one or two private providers currently dominate individual markets, which can lower prices and improve performance in speed and reliability even for consumers that choose to stay with their private provider.

Fiscal Impact:
The fiscal impact to cities depends on a variety factors, including:

- The decision to deploy or not deploy a GON
- The business model for a GON, such as:
  - A public-private partnership where the municipality owns the fiber in the way it owns a utility and leases out that fiber to private providers that can then sell service to community residents.
    - Under this model, the municipality would generate revenues from the market rates lease it imposes.
  - Locally owned and operated network where the municipality owns the network and operates the service by charging businesses and residents directly for internet access.
- Any additional public benefits the GON may provide, such as free and open Wi-Fi in public spaces.
- Any fees, taxes, or service/utility charges a municipality imposes to maintain and operate the network.

It is unknown if the imposition of net neutrality principles would have any fiscal impact for cities that deploy a GON.

Existing League Policy:
From Transportation, Communications, and Public Works:
Traditional franchising at the local level has served the valuable purpose of tailoring service to unique local conditions and needs and assuring responsiveness of providers to consumers. The continued involvement of local government in any new state or federal regulatory scheme by way of locally negotiated agreements is an essential component of telecommunications regulations; best serves the needs of consumers, and is consistent with the goal of providing consumers greater choice in telecommunications options.

Any new state or federal standards must conform to the following principles:

Revenue Protection
- Protect the authority of local governments to collect revenues from telecommunications providers and ensure that any future changes are revenue neutral for local governments.
- Regulatory fees and/or taxes should apply equitably to all telecommunications service providers.
- A guarantee that all existing and any new fees/taxes remain with local governments to support local public services and mitigate impacts on local rights-of-way.
- Oppose any state or federal legislation that would pre-empt or threaten local taxation authority

Rights-of-Way
- To protect the public’s investment, the control of public rights-of-way must remain local.
- Local government must retain full control over the time, place and manner for the use of the public right-of-way in providing telecommunications services, including the appearance and aesthetics of equipment placed within it.

Access
- All local community residents should be provided access to all available telecommunications services.
- Telecommunications providers should be required to specify a reasonable timeframe for deployment of telecommunications services that includes a clear plan for the sequencing of the build-out of these facilities within the entire franchise area.

Customer Service Protection
1. State consumer protection laws should continue to apply as a minimum standard and should be enforced at the local level. Local governments should retain the authority to assess penalties to improve customer service.

Comments:
- Likely to be set for Wednesday, April 25, 2018 in Assembly Local Government.
• The bill has been double-referred and will also be heard in Assembly Communications and Conveyance.
• The author’s office is willing to work with the League and local government stakeholders to address technical and substantive issues, but they do believe net neutrality rules should apply to both private and public providers.

Legal Comments:
• The bill expands public entities’ ability to provide broadband services, which is favorable in helping local governments close digital divides, delivering services to their residents.
• Regarding net neutrality, there may be some ambiguity in the trigger for these requirements (i.e., how substantial the local agency’s involvement in providing broadband service must be in order for net neutrality requirements to kick in);
• Only a small number of local governments would be impacted in present day, but that number could increase if more cities/counties/districts opt to build their own networks.
• It is very unlikely a public broadband provider would engage in any of the specific actions this bill would prohibit.

Support-Opposition:
Support (as of 5.31.18):
Electronic Frontier Foundation

Opposition (as of 5.31.18):
None on file.

Staff Recommendation:

1. Watch/No Position.

2. Support on the premise that this expansion will help more than hurt the ability for local governments to deliver broadband services to communities that do not have access or to provide lower cost services for their residents that may not be able to afford broadband from the traditional carriers.

3. Oppose unless amended to ensure fairness between public and private broadband providers and that the same set of net neutrality principles are applied to both private and public broadband providers.

Committee Recommendation:
From April 2018 TCPW Meeting:

Motion to watch both bills and study this issue and NLC’s position and come back to the committee in June with more information was made and seconded. The motion passes with majority support.
Board Action:

Wildfire and Utilities: Liability Standards Policy Proposal
June 7, 2018

The wildfires in Northern and Southern California in October and December were the most costly and destructive in California history. Cities were also affected in an unprecedented way, as a fast moving wildfire entered urban neighborhoods in Santa Rosa. While the League has existing policy that addresses fire services, emergency services and emergency preparedness, the League’s Policy Committees and Board are working to fill in gaps that have been identified in certain areas.

In April, Policy Committees recommended and the Board approved policy related to better natural disaster preparation and residential property insurance. This committee discussed liability standards for utilities and directed staff to draft policy for consideration in June.

Background:
Existing Liability Standard. Current law provides that utilities found to be even partially at fault for a wildfire are effectively strictly liable for damages caused by that wildfire. Utilities and government entities may be held liable for damages caused by wildfire under a rule called “inverse condemnation.” This rule has its roots in the takings clauses of the U.S. Constitution and the California Constitution, which provide that private property may not be “taken” or “taken or damaged” without just compensation. This is commonly thought of as amounting to “strict liability”. This standard applies to both investor-owned (IOUs) and publicly-owned utilities (POUs).

Push to Change Liability Standard. The immense costs of the most recent wildfires have resulted in discussions at the state level of the fairness and sustainability of the inverse condemnation standard, whether an investor-owned utility can withstand such costs, and whether potential changes to liability should be retroactive or prospective. CalFIRE has not yet assigned a cause for many of the fires, with the exception of three in rural Butte and Nevada Counties, which CalFIRE says were caused by PG&E’s failure maintain adequate vegetation clearance near power lines.

Discussions are underway among lawmakers and stakeholders about the current standard of liability and potential changes to it. While no proposals have been announced, stakeholders anticipate that legislative proposals may still be introduced this session. Among other things, these changes could include pursuing a reasonableness standard and allowing apportionment of damages to multiple responsible parties. Additional issues for consideration include forest management practices, further authority for a utility to clear-cut vegetation around infrastructure, the availability of insurance and emergency response and communication.
**Effect on Cities.** A change in liability rules could affect a city that has a claim for damages or result in more potential lawsuits against cities. First, property owners, including cities, may have claims for damages from wildfires. A change in liability for IOUs could affect a city’s ability to recover or affect their insurance premiums. Second, under a different standard of liability (i.e. negligence) property owners who may not be certain that a utility will cover damages from a wildfire may file suit against cities or other entities for damages, in which case the city may become partially or fully responsible for the property owners’ damages.

**Effect on Publicly-Owned Utilities.** In California, there are a total of 61 POUs and six IOUs. Of the POUs, 31 are city departments. A key distinction between IOUs and POUs are the territory. POUs, particularly those confined to city limits, are generally located in more urban terrain, thus reducing the risk of wildfire that may start forested areas.

A legislative change to the liability standard for utilities has the potential to affect either IOUs or POUs, or both. Questions remain as to (1) whether an anticipated legislative change would affect POUs and (2) whether a statutory change could absolve a utility of liability rooted in judicial interpretations of the U.S. and California Constitutions.

**April Policy Committee Discussion.** The committee discussed the strict liability standard for utilities at length. Committee members indicated support for the existing liability rules governing utilities, including POUs, as well as the need for punishment for wrongdoing. Committee members also discussed the existing rules for clear cutting vegetation around utility poles, as well as the potential to underground new utility lines in areas where there are high winds, but not in areas threatened by earthquakes. The committee did not take action on this item, but instead directed staff to consider the discussion and propose policy direction in June.

**Policy for Consideration:**
In the case of wildfire, the League supports maintaining the standard of inverse condemnation for investor-owned utilities that requires utilities to pay damages. The League opposes reducing the inverse condemnation standard for fires caused by a utility, whether retroactive or otherwise, and supports ensuring local governments can recover applicable damages.

**Staff Recommendation:**
League staff recommend the committee support the draft policy for the following reasons (1) it ensures cities can continue to recover damages from fires caused by utilities, (2) it protects cities from potential lawsuits for negligence if the standard for utilities were reduced, and (3) it is consistent with direction the committee provided at the April meeting.

**Committee Action:**

**Board Action:**