TELECOMMUNICATIONS POLICY UPDATE

DEVELOPMENTS IN 2014

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Introduction

• Regulatory Issues Affecting Wireless Facility Deployment:
  – Small Cell Order.
  – Signal Boosters.
  – Radio Frequency Exposure Standards.
  – Indoor 911 Location Accuracy Rulemaking.
  – Marriott WiFi case.

• Status of Net Neutrality Rulemaking.
• Status of Comcast/T-W merger.
• Status of AT&T/DirecTV merger.
• IP Transition Trials.
• New VZN Cable/FiOS Deployments.
• Redefinition of Multichannel Video Programming Distributor
Small Cell Order

• October 21, 2014, Order intended to ease deployment of “small cells” and distributed antenna systems (“DAS”).

• No environmental review required for following small facility installations:
  – On existing building or tower, inside buildings, or in existing utility and communications rights-of-way.
  – Collocated antennas mounted on utility poles, water tanks and other structures.

• No National Historical Preservation Act review required if:
  – On existing utility structure, within certain size limitations, and no new ground disturbance involved.
  – On a building or other non-tower structure and requirements related to proximity to existing antenna are met, new antenna complies with all zoning and historic preservation conditions of existing antennas, and no new ground disturbance.
Small Cell Order (cont.)

- Clarified restrictions on local government authority to review requests for collocation under Section 6409(a) of the Spectrum Act.
- Clarified procedural restrictions on local zoning authority imposed by earlier order under Section 332(c)(7), and found that small cell and DAS installations are subject to these rules.
Signal Boosters

• FCC made minor amendments to rules in September, largely regarding technical characteristics.
• Also asked for comment on whether “personal use” restriction for single provider boosters should be removed.
• Current rules make it difficult to deploy boosters in MDUs.
  – Must obtain provider consent, as with a DAS.
  – Can’t install consumer-grade booster without modifying equipment.
  – Allowing MDU owner to install multiple consumer grade boosters connected to a single donor antenna could be cost effective way to address coverage issues in some buildings, but this is currently not permitted.
Radio Frequency Exposure Standards

• March 2013 FCC issued Notice of Proposed Rulemaking (NPRM), and Notice of Inquiry (NOI).
• Both are still pending.
• NPRM asked for comment on:
  – Revised criteria for determining whether various transmitters should be routinely tested for compliance, or exempted.
  – Clarifying evaluation requirements for portable and medical implant devices.
  – Clarifying definition of transient exposure for workers at transmitter sites.
Radio Frequency Exposure Standards (cont.)

- NOI will determine need to reevaluate overall RF exposure limits and policies.
- FCC defers to organizations with expertise in health matters, and seeks comment from such experts on whether changes are appropriate.
  - Are current exposure limits appropriate given the differences in recommendations from various outside groups, and developments in research since adoption of existing exposure limits?
- FCC must balance need for caution against efficient and practical delivery of service.
- Feasibility of evaluating portable RF sources (e.g., cellphones) when worn on the body, to ensure compliance with FCC limits under actual usage conditions.
- Appropriate education and outreach to the public on low-level exposure to RF energy from fixed transmitters
Indoor 911 Location Accuracy Rulemaking

- Seeks comment on following, among other issues:
  - Providers would be required to provide horizontal location within 50 meters of caller for 67% of 911 calls placed from indoors within two years of new rules, and 80% of calls within five years.
  - Providers would be required to provide vertical location within 3 meters of caller for 67% of 911 calls placed from indoors within three years of new rules, and 80% of calls within five years.
- FCC recognizes this is insufficient to provide specific address in an apartment building; they anticipate that this will be addressed by “NG911.”
Marriott WiFi Case

- Staff at Marriott’s Gaylord Opryland Hotel blocked guests from using their own mobile WiFi hotspots.
- FCC fined Marriott $600,000 for violating Section 333 of the Communications Act (forbidding willful interference with licensed radio communications).
- Note that OTARD rule did not apply, because not leased property.
Status of Net Neutrality Rulemaking

• Broad consensus in favor of some form of regulatory oversight; no consensus on how much.

• Concerns include:
  – ISPs could block consumer access to certain content.
  – ISPs could degrade network performance in a way that has the same effect for disfavored users.
  – Paid prioritization would favor larger, wealthier users over smaller competitors.

• Communications Act doesn’t directly address regulation of Internet services.

• FCC trying to adopt rules that courts will accept within existing authority.
Net Neutrality (cont.)

- **Comcast case:**
  - Court held FCC did not have “ancillary jurisdiction” over Comcast’s network management practices.
  - To regulate broadband, FCC has to find authority in language of the Communications Act.

- FCC then adopted light touch regulatory scheme designed to allow entities claiming harm to bring complaints case-by-case.
  - No Discrimination.
  - No Blocking.
  - Transparency.
Net Neutrality (cont.)

- **Verizon Case:** Court struck down most of FCC’s rules because they amounted to common carrier regulation, but FCC had previously ruled that broadband providers were not common carriers.
  - FCC did not have authority to adopt anti-discrimination and anti-blocking rule, but transparency rule was upheld.
  - Court laid out roadmap for adopting rules under Section 706 of 1996 Telecom Act, which gives FCC authority to encourage broadband deployment and promote competition.
Net Neutrality (cont.)

• Current debate: Should the FCC re-characterize broadband service as a telecommunications service, or follow Verizon court’s lead and rely on more limited authority under Section 706?
• Advocates of robust regulation urge re-characterization; this would could allow broad, utility-style common carrier regulation.
• Others argue for more limited approach, saying:
  – Current approach is working well;
  – Verizon court already laid out roadmap – recharacterization might not work.
• FCC’s proposed order would rely on Section 706 and allow providers to charge more for faster speeds, but also keep Title II authority on the table.
• Original goal was to act this year – that seems unlikely.
• No matter what FCC does, issue is not going away.
Status of Comcast/T-W Merger

• Formal comment period closed in October.
• FCC still reviewing record and gathering information.
• FCC decision likely second quarter 2015.
• Direct effect on apartment industry would be minimal: existing franchise agreements and building access agreements would be transferred and enforceable against new operator.
• FCC will likely approve subject to conditions related to program access and net neutrality.
Status of AT&T/DirecTV Merger

• Formal comment period closed in early November.
• FCC still reviewing record and gathering information.
• FCC decision likely second quarter 2015.
• Direct effect on apartment industry could be significant: unclear what will happen in buildings served by both AT&T U-Verse and DirecTV or a DirecTV reseller.
IP Transition Trials

- FCC’s Technological Advisory Council working on issues that need to be addressed as POTS network is converted to Internet Protocol.
- AT&T conducting IP transition testing in Carbon Hill, AL and West Delray Beach, FL.
- This is long-term issue – but it is coming.
New VZN Cable/FiOS Deployments

- Verizon may be ready to begin applying for new franchises and deploying cable service in additional communities.
Redefinition of Multichannel Video Programming Distributor

- FCC is circulating proposal to treat “Over-the-Top” services as MVPDs.
- Change would make it easier for online video distributors to obtain access to programming owned by cable operators and broadcasters.
- Change would not address copyright issues.
- Proposal heightens need for owners to have solid agreements governing terms of broadband access.
Conclusion

- Questions?
Out

Coca-Cola

VGR100

OpTech

2014 NHC Conf. & Exp.
Music
“Congress shall have the power....To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

U.S. Const., Art. I, § 8, cl. 8
Brief Anatomy of Musical Rights

- Artist Writes Song
- Song Gets Recorded
  - Music (and lyrics)
  - Recording
The Exclusive Rights

- Reproduction
- Public Display
- Distribution
- Derivative Works
- Digital Performance Rights in Sound Recordings
- Public Performance
The Public Performance Right

• To perform or display a work “publicly” means—
  – (1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or
  – (2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.
Performing Rights Organizations

BMI

ASCAP

SESAC
Revenues of the PROS

- ASCAP - $944 Million (2013)
- BMI- $ 977 Million (2013)
- SESAC- $ 167 Million (2013)
“At a place open to the public”

I DON'T ALWAYS SING IN THE SHOWER

BUT WHEN I DO, ALL FOUR COACHES ON THE VOICE TURN THEIR CHAIRS AROUND
“a place where a substantial number of persons outside of a family and its close acquaintances are gathered”
“whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times”
“to transmit ... to a place specified by clause (1) or to the public, ... whether the members of the public capable of receiving the performance ... receive it in the same place or in separate places and at the same time or at different times”
“to transmit ... to a place specified by clause (1) or to the public, ... whether the members of the public capable of receiving the performance ... receive it in the same place or in separate places and at the same time or at different times”
“Capable of Receiving the Performance”
“Capable of Receiving the Performance”
“at the same time or different times”
The Fairness in Music Licensing Act In [Close to] Plain English, Part I

• “communication by an establishment of [AM/FM radio or TV broadcast]”
  – “establishment in which the communication occurs has 2,000 or more gross square feet of space (excluding space used for customer parking and for no other purpose)”
The Fairness in Music Licensing Act In [Close to] Plain English, Part II

• Audio:
  – “not more than 6 [total] loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space.”

• TV: “not more than 4 audiovisual devices [e.g., TVs]”
  – “not more than 1 [TV] is located in any 1 room,”
  – “and no [TV] has a diagonal screen size greater than 55 inches,” and “audio ... is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space;”
Activity that Does Not Qualify for the Exemption

- Pandora radio
- DJ’d Dance Parties
- Spotify streamed to speakers
- “Family DVD Night” in the Common Room
Congressional Review
Areas Covered

- Statutory damage liability
- Music licensing
Questions

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