



ICLG

The International Comparative Legal Guide to:

Telecoms, Media and Internet Laws and Regulations 2013

6th Edition

A practical cross-border insight into telecoms, media and internet laws and regulations

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1 Overview

- 1.1 Please describe the: (a) telecoms; (b) audio-visual media distribution; and (c) internet infrastructure sectors in the USA, in particular by reference to each sector's: (i) importance (e.g. measured by annual revenue); (ii) 3-5 most important companies; (iii) whether they have been liberalised and are open to competition; and (iv) whether they are open to foreign investment.**

Telecommunications is the largest communications sector in the United States, with a total revenue in 2010 of over \$507 billion. AT&T and Verizon are the largest and most diversified telecommunications companies in the United States. Each provides to residential and business customers local, long-distance, and international voice and data services, wireless services, broadband and Internet access, and multichannel video programming. Although wireline services continue to experience contraction, the rapid growth of wireless services, and in particular wireless data services, have ensured that the aggregate telecommunications sector continues to grow. The telecommunications sector is not subject to significant regulatory barriers to entry, and is generally open to foreign investment.

With over \$107 billion in revenue in 2010, the audio-visual media distribution sector is comprised primarily of broadcast television and radio, cable television, satellite television and radio, and Internet-delivered video programming. Cable operator Comcast (22 million subscribers) is the largest provider, followed closely by satellite provider DirecTV (20 million subscribers). Notwithstanding substantial competition in the markets that comprise this sector, there are substantial regulatory barriers to new entry. New broadcast and satellite licences are seldom issued, and obtaining a franchise for cable overbuilding to compete with an incumbent cable provider is relatively uncommon. However, with some loosening of local cable franchising requirements, telecommunications carriers are offering multichannel video services that compete with cable. There are no significant barriers to foreign investment, except with respect to broadcast TV and radio companies, which cannot be more than 25% foreign-owned.

The rapidly growing Internet infrastructure sector generated over \$106 billion in revenue in 2010. It is generally dominated by cable companies' and the largest telecommunications providers' retail Internet access offerings. Comcast and AT&T, the largest Internet access providers, each have approximately 17 million retail subscribers and Time Warner serves approximately 14 million subscribers. Internet connections are growing rapidly with the number of connections over 200 kbps in at least one direction increasing in 2011 by 31% year-over-year to 206 million. In

addition, connection speeds continue to rapidly increase. The Internet sector is regulated more lightly than telecommunications or video, and it is not subject to foreign ownership limitations.

- 1.2 List the most important legislation which applies to the: (a) telecoms; (b) audio-visual media distribution; and (c) internet, sectors in the USA.**

The Communications Act of 1934, as amended (Communications Act), codified as Title 47 of the U.S. Code, is the primary statute governing regulation of the telecommunications and media industries, including governance of the Federal Communications Commission (FCC), an independent (*i.e.*, non-executive) federal agency. Most new telecommunications and media laws are adopted by Congress as amendments to the Communications Act, including the Cable Act of 1992 and the Telecommunications Act of 1996.

- 1.3 List the government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of the: (a) telecoms; (b) audio-visual media distribution; and (c) internet, sectors in the USA.**

Traditional intrastate wireline telecommunications providers primarily are regulated by the public utility commissions (PUCs) of the various states, and some PUCs also lightly regulate wireless companies and/or interconnected Voice Over Internet Protocol (VoIP) providers. Cable operators are licensed and regulated by local or state-level cable franchising authorities. Interstate telecommunications providers, wireless companies, interconnected VoIP providers, Internet service providers (ISPs), radio and TV broadcasters, cable providers, and satellite companies primarily are regulated by the FCC. The FCC is directed by five Commissioners who are appointed by the U.S. President and confirmed by the Senate. No more than three of the Commissioners can be from the same political party, and one of the Commissioners of the majority party is appointed by the President to serve as Chairman.

Federal government use of radio spectrum is supervised and coordinated by the National Telecommunications and Information Administration (NTIA), an agency within the Department of Commerce. The head of the NTIA, the NTIA Administrator, is nominated by the U.S. President and approved by the Senate.

In addition, the Federal Trade Commission (FTC), another independent agency, has jurisdiction over certain consumer protection laws that are applicable to telecommunications, media, and Internet companies. Further, in addition to FCC review, the FTC and the Department of Justice (DOJ) have authority to review proposed mergers and acquisitions of such entities under the antitrust laws.

1.4 Are there any restrictions on foreign ownership or investment in the: (a) telecoms; (b) audio-visual media distribution; and (c) internet, sectors in the USA?

Wireline providers, generally, are not subject to foreign ownership restrictions. Common carrier wireless licensees may have no more than 25% foreign ownership without prior FCC approval, which generally is freely granted, provided that the foreign ownership is by citizens of, or companies organised under the laws of, World Trade Organization (WTO) member countries. Non-common carrier wireless licensees, including most satellite licensees, are not subject to foreign ownership restrictions. Radio and TV broadcast licensees also are subject to a 25% foreign ownership cap, and, unlike with respect to common carrier wireless licensees, the FCC does not waive this requirement. The Internet sector is not subject to any foreign ownership restrictions.

2 Telecoms

General

2.1 Is the USA a member of the World Trade Organisation? Has the USA made commitments under the GATS/GATT regarding telecommunications and has the USA adopted and implemented the telecoms reference paper?

The United States has been a WTO member since the WTO's inception. The United States has undertaken specific commitments under the GATS to provide market access and national treatment for a broad range of telecommunications services, with certain limited exceptions, as well as additional commitments to the procompetitive regulatory principles set forth in the "Reference Paper". The United States implemented these commitments through two companion orders issued by the FCC in November 1997. These orders collectively established a framework for facilitating entry into the U.S. market by foreign (or foreign-licensed) entities for the provision of telecommunications services.

2.2 How is the provision of telecoms (or electronic communications) networks or services regulated?

The regulatory framework applicable to communications networks and services varies greatly depending on the technology utilised by the service provider, the type of service, and the regulatory classification of the provider. Historically, wireline common carriers have been subject to the highest level of regulation, although the trend primarily is deregulatory. Nevertheless, incumbent local exchange carriers (ILECs), which enjoyed local monopoly status prior to the deregulation of local markets, remain highly regulated at the federal and state level. Competitive carriers are subject to lighter regulatory requirements at the federal level and varying degrees of regulation by the individual states. Non-voice broadband providers, including data transport providers and ISPs, are much more lightly regulated at the federal and state levels, although the FCC recently imposed certain network neutrality requirements on ISPs. (See question 6.4 below.)

Wireless carriers are primarily regulated by the FCC. The states are precluded from regulating the entry of, or rates charged by, wireless carriers, although they frequently impose consumer protection requirements on wireless carriers.

VoIP providers are subject to substantially less regulation than traditional wireline carriers. However, federal regulation of VoIP providers has increased as they have gained market share. In addition, although state regulation of VoIP providers initially was largely preempted by the FCC, the FCC recently has been permitting increased state regulation.

2.3 Who are the regulatory and competition law authorities in the USA? How are their roles differentiated? Are they independent from the government?

The FCC has broad "public interest" authority to regulate the telecommunications marketplaces. The DOJ and the FTC hold more limited jurisdiction over antitrust, competition, and consumer protection issues, and, in addition to the FCC, one of these entities typically reviews larger mergers and acquisitions of telecommunications carriers to determine whether the effect of a proposed transaction would substantially lessen competition. State PUCs also play a significant role in regulating intrastate telecommunications, including the review of mergers of intrastate providers.

2.4 Are decisions of the national regulatory authority able to be appealed? If so, to which court or body, and on what basis?

FCC staff-level decisions may be appealed to the FCC Commissioners, and decisions of the FCC Commissioners may be appealed to the federal courts. The U.S. Court of Appeals has exclusive jurisdiction to enjoin, set aside, suspend, or determine the validity of final orders and decisions of the FCC. Generally, judicial appeals of FCC decisions assert that the decisions are inconsistent with underlying federal statutes or are arbitrary and capricious.

Licences and Authorisations

2.5 What types of general and individual authorisations are used in the USA?

U.S. telecommunications service providers may be required to obtain regulatory authorisations depending on the nature of the services that they provide. Carriers providing only domestic interstate services generally need not seek an individualised authorisation. To provide international common carrier services, U.S. carriers must apply for and receive individualised authorisations under Section 214 of the Communications Act. The authorisations required to provide local exchange and intrastate long-distance services are established by state PUCs and vary by state.

Parties seeking to use radio spectrum to provide service are generally required to obtain a radio spectrum licence from the FCC, and most such licences are awarded by auction. However, no licence is required for the use of certain "unlicensed" spectrum bands.

VoIP providers are not required to seek either state or federal authorisation to provide service. However, FCC regulation of interconnected VoIP services recently has increased, and some states require VoIP providers to register as local exchange carriers (LECs) in order to offer interconnected VoIP services to the public.

With the exception of federal network neutrality rules, ISPs are not subject to significant regulation by the FCC or by state PUCs.

2.6 Please summarise the main requirements of the USA's general authorisation.

The United States does not issue a general telecommunications authorisation. Instead, specific state and federal authorisations are required to be obtained to provide certain types of telecommunications. (See questions 2.5 and 2.7.)

2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded.

Intrastate wireline services generally are licensed by individual state PUCs, and the rules for obtaining such licences, as well as the rules to which the licensees are subject, vary widely among the states. Interstate services generally fall under a blanket licence issued by the FCC that does not expire. Individual Section 214 licences are issued by the FCC to providers of international services and also do not expire.

Radio spectrum licences are issued by the FCC to cover particular radio spectrum frequencies and geographic areas. Although their term varies depending on the type of licence, many last for ten years and are subject to a renewal expectancy. Satellite authorisations (covering spectrum access and launch and operation of satellites) are granted by the FCC for a period of fifteen years and also, generally, are subject to a renewal expectancy.

The transfer of the foregoing authorisations generally is permitted upon the prior approval of the FCC and/or the relevant state PUC, and the process for securing these approvals varies significantly depending on the type of licence and the type of transfer. Certain transfers of simple wireless licences are subject to immediate approval, while approval of large wireless transactions can take six months or considerably longer if opposed.

Public and Private Works

2.8 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

The ability to site telecommunications facilities historically has been governed primarily by state and local land use law. Zoning regulations often limited the areas in which towers could be constructed and the terms on which collocations could occur. In 2009, the FCC created a "Shot Clock" to expedite tower site application processing. The Shot Clock established concrete deadlines by which municipalities must act on zoning requests for telecommunications facilities or be subject to judicial action. In 2012, Congress created a nationwide collocation-by-right, which, for the first time, requires local jurisdictions to approve certain wireless antenna collocations. It is anticipated that this law will provide carriers and tower owners with additional leverage in the local zoning process. Tower siting on federal lands is more challenging due to the lack of a uniform process for securing access. The government has begun to focus recently on reforming the disparate federal siting processes to facilitate and accelerate broadband infrastructure deployments.

Access and Interconnection

2.9 How is network-to-network interconnection and access mandated?

All telecommunications carriers are required to interconnect with each other, either directly or through other carriers' facilities. Interconnection agreements may be regulated at the state and federal levels. The Communications Act places more stringent requirements on ILECs, which must provide interconnection to other carriers at any technically feasible point on their network and at regulated rates. The FCC is now considering whether to mandate interconnection between Internet Protocol networks.

2.10 How are interconnection or access disputes resolved?

Generally, state PUCs are charged with resolving disputes over interconnection and collocation. The decisions of state PUCs are reviewable by the federal courts. Where a state PUC declines to resolve an intercarrier connection dispute, the FCC may adjudicate.

2.11 Which operators are required to publish their standard interconnection contracts and/or prices?

State PUCs must approve interconnection agreements entered into by ILECs and certain other carriers. These agreements must be made publicly available, and other similarly-situated carriers have the right to "opt-in" to any current interconnection agreement.

2.12 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?

ILECs are permitted to charge certain carriers regulated rates for traffic originated and terminated on local exchange networks. State PUCs establish the rates associated with the origination and termination of local and intrastate traffic, and the FCC establishes the rates associated with interstate traffic. Wireless carriers lack the ability to require long-distance carriers to pay them for the origination and termination of traffic on their networks, and thus most such traffic is settled pursuant to privately negotiated agreements. The FCC is transitioning, on a phased-in basis ending in 2020, to a "bill and keep" market structure pursuant to which all carriers recover their costs directly from their customers, rather than from other carriers.

In addition, ILECs are required to provide interconnection and network access to other carriers at rates, terms, and conditions that are just, reasonable, and non-discriminatory. ILECs are also required to offer other carriers access to network elements on an unbundled basis at cost-based rates, although the FCC may not apply this requirement in markets deemed to be competitive.

2.13 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

The Bell Operating Companies (BOCs) are required to maintain separate entities for the provision of local, intrastate, and interstate long distance services through structural, transactional, and accounting separations. (Seven BOCs were created by the judicial breakup of AT&T in 1984, but they have since merged into the three remaining BOCs: AT&T; Verizon; and CenturyLink.) In addition,

other ILECs subject to rate regulation are also subject to accounting rules to allocate costs between local, intrastate, and interstate services and thereby enable relevant regulatory authorities to establish just, reasonable, and non-discriminatory rates.

2.14 Are owners of existing copper local loop access infrastructure required to unbundle their facilities and if so, on what terms and subject to what regulatory controls? Are cable TV operators also so required?

ILECs are required to provide competitors with access to copper loops for the provision of voice services where copper loops are available. If an ILEC retires its copper loop facilities and replaces them with fibre, it must provide non-discriminatory unbundled access to the fibre for competitors to use to provide voice services. Incumbents building out fibre in previously unserved areas are not required to provide access to such networks on an unbundled basis. Cable TV operators generally are not subject to facilities unbundling requirements.

2.15 How are existing interconnection and access regulatory conditions to be applied to next generation (IP-based) networks? Are there any regulations or proposals for regulations relating to next-generation access (fibre to the home, or fibre to the cabinet)? Are any 'regulatory holidays' or other incentives to build fibre access networks proposed? Are there any requirements to share passive infrastructure such as ducts or poles?

Broadband facilities generally are not required to be unbundled. ILECs generally are not required to provide competitors with access to fibre, except when access to copper loop is no longer available, and then only for voice service and only in areas that were not previously unserved. Other carriers generally are not subject to unbundling requirements. A primary objective of the FCC and the Executive Branch has been to spur the deployment of additional broadband facilities through regulatory streamlining and the provision of grants and financing, including the awarding of over \$7 billion in broadband stimulus funds in 2009-10.

The Communications Act requires the FCC to ensure that the rates, terms and conditions applicable to pole attachments used for any purpose are just and reasonable. The rules governing pole attachments can vary based on state and the type of service provider (e.g., telephone versus cable TV). In addition, carriers are provided with guaranteed access to some types of rights of ways.

Price and Consumer Regulation

2.16 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

Wireline ILECs generally are subject to retail rate regulation. Rates charged by competitive wireline and wireless carriers are not regulated, but are subject to requirements that they be just, reasonable, and non-discriminatory. ISPs' rates are not rate regulated.

2.17 Is the provision of electronic communications services to consumers subject to any special rules and if so, in what principal respects?

In addition to widely applicable federal and state consumer protection laws, communications services are subject to substantial state and

federal regulation. As an initial matter, common carriers must provide telecommunications services on a non-discriminatory basis at just and reasonable rates and terms. In addition, wireline and wireless common carriers are subject to the FCC's truth-in-billing requirements that loosely govern the presentation and the level of disclosure required in invoices. Further, wireline, wireless, and VoIP providers are required to establish sophisticated protections of customer information known as customer proprietary network information (CPNI). They are restricted with respect to the purposes for which they can use such information without customer consent. The FCC and FTC also administer a variety of marketing regulations, such as the Do Not Call list, which limit the use of certain telecommunications for solicitations without prior consumer consent. Moreover, the FCC recently reached a voluntary accord with wireless providers pursuant to which they agreed to provide certain billing and usage alerts aimed at avoiding "bill shock". Many state PUCs also apply similar state consumer telecommunications protections to intrastate telecommunications providers.

Numbering

2.18 How are telephone numbers and network identifying codes allocated and by whom?

The FCC has plenary jurisdiction over U.S. telephone numbers in Country Code 1 and has delegated day-to-day administrative duties to a private company, NeuStar, Inc., subject to the FCC's extensive numbering rules and oversight.

2.19 Are there any special rules which govern the use of telephone numbers?

Only regulated telecommunications carriers are allowed to obtain telephone numbers from the numbering administrator, and only based on needs showings. Carriers holding numbers must report semi-annually on their use. Unused numbers in carrier inventories are subject to reclamation. The FCC is currently considering whether to permit direct access to telephone numbers by VoIP providers, which currently purchase access to numbering resources from regulated carriers.

2.20 What are the basic rules applicable to the 'porting' (i.e. transfer) of telephone numbers (fixed and mobile)?

All wireline carriers that hold telephone numbers are required to allow customers to port their numbers to another carrier, provided that the customers remain in the same geographic region. Porting between wireless and wireline carriers is also required at the customer's election. In addition, VoIP providers are subject to porting requirements but are not bound by geographic restrictions. The FCC has developed specific processes and timelines for various types of intramodal and intermodal porting.

3 Radio Spectrum

3.1 Is the use of radio spectrum specifically regulated and if so, by which authority?

Radio spectrum licensed to private entities and to state and local governments is regulated by the FCC, and the use of radio spectrum by the federal government, including all federal agencies, is coordinated by NTIA.

3.2 How is the use of radio spectrum authorised in the USA? What procedures are used to allocated spectrum between candidates - i.e. spectrum auctions, comparative 'beauty parades', etc.?

Congress first authorised the award of commercial spectrum licences through a competitive bidding (*i.e.*, auction) process in 1993, based on the concept that awarding licences to the bidders who value them most highly will result in spectrum being put to its most efficient use in the marketplace. Since that time, the FCC has used auctions to assign most such licences. In a typical case, once a particular frequency band is allocated for a commercial wireless use, the FCC adopts technical and service rules to govern the use of that band, including a "band plan" that sets forth the bandwidth of each licence and the geographic area it will cover, which in turn, determines how many licences will be awarded. The FCC then schedules an auction and settles on the auction procedures to be employed, which can vary between auctions.

FCC spectrum auctions usually involve multiple rounds of bidding and can take weeks (and sometimes months) to complete. In order to encourage entry by smaller businesses, the FCC typically enables bidders below a certain size to take advantage of bidding credits, making it easier for them to outbid larger entities.

3.3 Are distinctions made between mobile, fixed and satellite usage in the grant of spectrum rights?

The FCC typically allocates spectrum for particular types of uses, such as for mobile, fixed, and satellite services. There is, however, a growing trend toward allowing more flexibility in spectrum usage rights, and technological developments may enable different uses to co-exist more easily on particular frequency bands in the future.

3.4 How is the installation of satellite earth stations and their use for up-linking and down-linking regulated?

The operation of satellite earth stations for uplink transmissions or downlink reception generally requires an FCC licence, although certain receive-only earth stations do not require an FCC licence. Satellite earth stations may also be subject to FCC equipment authorisation requirements and other rules governing their construction and operation. Additionally, where not preempted by the FCC, the installation and maintenance of satellite earth stations may be subject to state and local regulations, including zoning, land-use, and building regulations.

3.5 Can the use of spectrum be made licence-exempt? If so, under what conditions?

The FCC reserves certain spectrum bands for unlicensed uses, such as WiFi. Any entity may utilise unlicensed spectrum, provided that the user's equipment is certified by the FCC and operated in conformity with the FCC's rules. Users of unlicensed spectrum are not afforded the types of interference protections available to holders of licensed spectrum, although the FCC's rules are designed to minimise the potential for interference.

3.6 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

As the FCC awards most spectrum licences through competitive bidding and participation in spectrum auctions requires a payment

before the licence is awarded, there is currently no requirement that licensees pay ongoing fees to the U.S. government. In recent years, federal legislation has been introduced that would impose spectrum user fees.

3.7 Are spectrum licences able to be traded or sub-licensed and if so on what conditions?

In general, the FCC has encouraged the development of a robust secondary market for spectrum leasing, including for "partitioned" and "disaggregated" portions of spectrum licences. In addition, spectrum licence transfers are permitted with prior FCC approval. The FCC has established procedures that provide for immediate processing of most non-controversial spectrum leasing and transfer transactions – those that involve insignificant foreign ownership, require no rule waivers, and raise no competitive or other public policy concerns. Conversely, applications that do not meet these streamlining criteria are subject to the FCC's general approval procedures, which include a public comment period and greater scrutiny by the FCC.

Having eliminated spectrum aggregation limits in 2003, the FCC now uses a "spectrum screen", or aggregate per-market threshold, to determine the potential competitive impact – and therefore the amount of scrutiny required – of a proposed spectrum transaction.

4 Data Retention and Interception

4.1 Are operators obliged to retain any call data? If so who is obliged to retain what and for how long?

Obligations to retain call data and other subscriber information apply to telecommunications carriers, providers of wire or electronic communication services, and providers of remote computing services. These categories encompass wireline and wireless telephone companies, ISPs, and providers of email and other Internet-based services. Carriers that provide toll services are required to retain certain billing-related records for 18 months. In addition, various state PUCs require carriers to retain certain call records for up to three years.

Further, under the Electronic Communications Privacy Act (ECPA), a governmental entity may require a provider of wire or electronic communication service to preserve records and other evidence in its possession for up to 180 days pending the issuance of a court order or other process requiring disclosure to the governmental entity. Also, pursuant to a court order or subpoena obtained in accordance with ECPA, a service provider may be required to retain a back-up copy of the contents of electronic communications in order to preserve those communications.

Finally, under the FCC's CPNI rules, telecommunications carriers must maintain records of certain disclosures of customer information, and of customers' permissions for such disclosures, for a minimum of one year. There is some support in Congress for the imposition of more general data retention obligations, but no such legislation has yet been enacted.

4.2 Are operators obliged to maintain call interception (wiretap) capabilities?

Under ECPA and the Foreign Intelligence Surveillance Act (FISA), telecommunications carriers, providers of wire and electronic communication services, and remote computing services are required to cooperate with wiretap requests and requests for access

to stored call data and subscriber information. In order to facilitate cooperation with such requests, the Communications Assistance for Law Enforcement Act (CALEA) requires telecommunications carriers to ensure that their equipment, facilities, or services are capable of expeditiously isolating and delivering wire and electronic communications and call-identifying information to the government pursuant to lawful authorisation. CALEA requirements do not apply to information services or to private networks and interconnection services and facilities. However, the FCC has found that interconnected VoIP services, and the underlying switching and transport components of facilities-based broadband Internet access services, are not information services for purposes of CALEA and therefore are subject to CALEA requirements.

5 Distribution of Audio-Visual Media

5.1 How is the distribution of audio-visual media regulated in the USA?

The basic regulatory framework rests on the identity of the programming provider's technology, rather than on the content itself. Television broadcasters operate under a licence issued by the FCC pursuant to Title III of the Communications Act, and are subject to fairly extensive regulatory obligations at the federal level. Cable operators are regulated under Title VI of the Communications Act, and face a different array of FCC obligations. In addition, cable operators are also regulated by local community or state regulators with respect to certain rights and obligations. Like broadcasters, satellite TV providers, also called direct broadcast satellite (DBS) providers, operate pursuant to an FCC licence under Title III of the Act, but DBS licences differ from broadcast licences in that they are subject to certain obligations applicable to all "multichannel video programming distributors" (MVPDs), including cable providers, as well as a few mandates unique to DBS. Wireline telephony providers that provide a subscription multichannel video service via fibre or hybrid fibre/copper networks are generally subject to most Title VI regulations applicable to cable operators.

5.2 Is there a distinction between the linear and non-linear content and/or content distributed over different platforms?

The basic regulatory structure outlined above applies to the service providers' use of their facilities to provide traditional linear programming. The FCC has not attempted to significantly regulate non-linear content directly – such as that delivered on a video-on-demand basis or via the Internet.

5.3 Describe the different types of licences for the distribution of audio-visual media and their key obligations.

There are three different sets of regulatory and licensing requirements imposed on providers of video programming. First, TV broadcasters are licensed by the FCC with the right to use a particular frequency in a specific community to transmit a free, over-the-air video service, subject to various technical requirements. TV broadcasters face the most regulatory obligations, including requirements to air political candidate advertising, educational programming for children, emergency alerts, and programming that serves the "needs and interests" of the broadcasters' community. Further, the FCC has adopted a variety of restrictions on the ability of TV licensees to own multiple media

outlets (*i.e.*, TV and radio stations and daily local newspapers) in a market, and prohibits foreign ownership of TV stations in excess of 25%.

Second, cable operators are not licensed by the FCC, but instead are authorised by state and local cable franchising authorities. These franchising authorities generally impose certain territorial coverage obligations, as well as require the cable operators to reserve certain channels for public, educational, or governmental programming and/or local programmers. The FCC also regulates cable operators, although they are subject to far less content-based regulation than TV broadcasters. Importantly, the FCC requires cable operators to carry every local TV station's main programming signal if the station has opted for guaranteed carriage (known as "mandatory carriage" or "must carry"). In addition, federal regulations require cable operators that also own cable programming networks to sell their programming to rival MVPDs on non-discriminatory terms and to avoid favouring their own programme networks over unaffiliated networks seeking carriage.

Third, DBS operators are licensed by the FCC with the rights to use particular satellite frequencies to transmit video programming on a nationwide basis. Like cable operators, DBS licensees are not saddled with extensive content regulations, but they are required to devote 4% of their capacity to non-commercial "educational or informational" programming. They are also required to use their spot-beam capabilities to retransmit, TV signals into the broadcasters' local markets.

6 Internet Infrastructure

6.1 Are conveyance services over the internet regulated in any different way to other electronic communications services? Which rules, if any, govern access to the internet at a wholesale (*i.e.* peering or transit) and/or retail (*i.e.* broadband access) level? Are internet service providers subject to telecommunications regulation?

The FCC generally does not apply its telecommunications services regulatory framework to retail Internet access services or wholesale Internet transport services, such as transit and peering, except that retail Internet access providers are subject to certain network neutrality/open Internet regulations imposed by the FCC. The FCC characterises retail Internet access services as information services. The FCC only may regulate information services under its ancillary jurisdiction as necessary to achieve a specific statutory goal relating to its express statutory jurisdiction over telecommunications services. Further, the FCC has chosen to permit the wholesale Internet transport market to develop through commercial peering and transit contracts without regulation in order to avoid suppressing innovation.

6.2 How have the courts interpreted and applied any defences (e.g. 'mere conduit' or 'common carrier') available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

Telecommunications common carriers and ISPs are generally immune from liability arising from the content of the communications that they transport on behalf of their customers. However, ISPs may be required to comply with certain safe harbour provisions set forth in the Digital Millennium Copyright Act (DMCA) to ensure such immunity against copyright infringement by their customers.

6.3 Are telecommunications operators and/or internet service providers under any obligations (i.e. provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

Telecommunications operators and/or ISPs are not under any general obligation to assist content owners in prosecuting copyright or other intellectual property claims. However, content owners may seek a court order under the DMCA for the identity of an alleged infringer. If the court grants such an order, the alleged infringer's ISP must disclose the requested information to the copyright owner or person authorised by the copyright owner. This process may only be used to obtain the identity of alleged infringers who post content on an ISP-hosted server for access by others.

The DMCA also provides several safe harbours for ISPs, which insulate ISPs from liability for the infringing activities of their subscribers. ISPs must also terminate the accounts of repeat copyright infringers and inform all users of this policy. ISPs are not liable for the automatic transmission, routing, connecting, or temporarily storing infringing content at the direction of users.

6.4 Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks? Are there any 'net neutrality' requirements?

In 2010, the FCC enacted "net neutrality" or "open Internet" rules. As an initial matter, these rules require all broadband providers to transparently disclose their network management practices and the terms and conditions of their service. The rules also prohibit fixed broadband service providers from blocking lawful content, applications, and services, and prevent such providers from prohibiting the connection of non-harmful devices to their networks. By contrast, mobile broadband providers only are prohibited from blocking lawful websites and applications that compete with their voice or video telephony services. The FCC's anti-blocking rules prohibit practices that impair or degrade particular content, but do not prevent reasonable network management practices such as those required to prevent fraud and to deal with network congestions.

The FCC's network neutrality rules also forbid fixed broadband service providers from unreasonably discriminating when transmitting lawful traffic over a consumer's broadband service. This rule does not apply to mobile broadband providers, which have additional flexibility to discriminate with respect to content, such as by providing preferential service levels to particular types of content. The FCC's network neutrality regulations currently are being challenged on jurisdictional grounds in federal courts, and a decision is expected in 2013.

6.5 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content?

No. To the contrary, telecommunications carriers are prohibited from blocking traffic based on its content in almost all instances. In addition, under the FCC's network neutrality rules, providers of broadband Internet access are affirmatively precluded from blocking traffic in many instances.

6.6 How are 'voice over IP' services regulated?

The FCC has avoided formally characterising interconnected VoIP services as Title II common carrier services under the Communications Act, and therefore interconnected VoIP services are not subject to common carrier regulation. However, noting the substitutability of traditional voice services and interconnected VoIP, the FCC increasingly has created a mirror body of regulations applicable to interconnected VoIP services that bear a striking resemblance to traditional common carrier regulation. For example, interconnected VoIP providers are subject to a variety of regulatory fund contribution requirements that previously only were applicable to common carriers, as well as CPNI (customer privacy), E911, CALEA (lawful surveillance assistance), number portability, accessibility, and certain interconnection requirements. The FCC recently also subjected interconnected VoIP traffic to its intercarrier compensation regime, although that regime will be phased out by July 1, 2020. By contrast, non-interconnected VoIP service, *i.e.*, one-way VoIP service and VoIP service that is not interconnected to the public telephone system, generally currently is not regulated by the FCC.



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