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1 Overview

1.1 Please describe the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction, in particular by reference to each sector's: (i) annual revenue; and (ii) 3–5 most significant market participants.

AT&T and Verizon are the largest and most diversified telecommunications companies in the United States. Each provides residential and business customers with 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, particularly fixed and mobile 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.

According to the most recent subscriber numbers released by the Federal Communications Commission (FCC), Comcast, the largest internet access provider, reported over 26.4 million residential broadband subscribers in 2019, while AT&T claimed 14.7 million. Charter Communications reported approximately 24.9 million residential subscribers.

Per that same source, the largest wireless carriers are Verizon Wireless (169.6 million connections), AT&T (163.4 million), and T-Mobile, which merged with Sprint as of April 1, 2020 (the combined company now reports over 110 million subscribers). These figures represent 2019 data, the most recent data made available by the FCC (which can be accessed at <https://www.fcc.gov/document/fcc-releases-2020-communications-marketplace-report>).

The audio-visual media distribution sector includes traditional multichannel video programming distributors (MVPDs), such as cable and telephone companies, satellite television providers, broadcast television stations, and online video distributors. According to the FCC's most recent consolidated competition report, the average monthly video revenue per traditional MVPD subscriber increased from \$95.14 at the end of 2020 to \$99.60 at the end of 2021. At the same time, Comcast was the largest provider in this sector (with over 18.2 million subscribers), followed by Charter (over 15.8 million subscribers), and satellite television provider DIRECTV (11.1 million subscribers) and DISH (8.2 million subscribers). The report can be accessed at <https://www.fcc.gov/document/2022-communications-marketplace-report>. MVPDs generally must obtain authority to provide service from local or state franchising authorities. There are no significant barriers to

foreign investment for cable operators. For satellite, broadcast TV, and radio companies, special regulatory requirements apply for foreign entities seeking a greater than 25 per cent interest.

1.2 List the most important legislation which applies to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction and any significant legislation on the horizon such as the regulation of online harms, regulation of social media or artificial intelligence (please list the draft legislation and policy papers).

The Communications Act of 1934, as amended (Communications Act) – codified in Title 47 of the U.S. Code – is the primary statute governing regulation of the telecommunications and media industries, including governance of the 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, including internet; (b) audio-visual media distribution sectors; (c) social media platforms; and (d) artificial intelligence in your jurisdiction.

Traditional intrastate wireline telecommunications providers primarily are regulated by a public utility commission (PUC) in each state. Some PUCs also claim authority over and lightly regulate wireless companies and/or interconnected Voice over Internet Protocol (VoIP) providers. Cable operators are licensed and regulated by local or state-level franchising authorities.

In addition to any state or local regulation, interstate telecommunications providers, wireless companies, interconnected VoIP providers, Internet Service Providers (ISPs, which may be telephone companies, cable companies, or other types of providers), radio and TV broadcasters, cable providers, and satellite companies primarily are regulated by the FCC. The FCC is an independent agency that is directed by up to 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 Chair.

Federal government use of radio spectrum is supervised and coordinated by the National Telecommunications and Information Administration (NTIA), an executive branch

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.

Separately, the Federal Trade Commission (FTC), another independent agency, has jurisdiction over certain consumer protection laws that are applicable to telecommunications, media, and internet companies. 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.

As described below (see question 6.5), bills have been introduced – but not passed – in the U.S. Congress to regulate social media platforms in some way.

No single government agency is charged with developing or implementing artificial intelligence (AI) regulations. Congress passed legislation that required the federal government to take a comprehensive approach to AI policy issues, and the White House, through agencies such as the Office of Management and Budget and the Office of Science and Technology Policy, coordinates that effort. In addition, a range of federal agencies utilise their expertise to develop rules and policies for AI use cases within their jurisdictions. Most recently, the Biden Administration issued an executive order directing various agencies to undertake specific tasks to establish new standards for AI safety and security, protect privacy and promote competition, among other goals.

1.4 In relation to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors: (i) have they been liberalised?; and (ii) are they open to foreign investment including in relation to the supply of telecoms equipment? Are there any upper limits?

Pursuant to Section 310(b) of the Communications Act, common carrier wireless licensees and radio and television broadcast licensees may have direct foreign ownership of no more than 20 per cent and indirect foreign ownership of no more than 25 per cent without prior FCC approval, which is generally granted upon application. In addition, pursuant to Section 310(a), common carrier wireless licenses and radio and television broadcast licenses may not be directly held by a foreign government or its representatives. Non-common carrier wireless licensees, wireline providers (including internet access providers), television cable companies, and most satellite licensees are not subject to statutory foreign ownership caps.

Notwithstanding the foregoing, if a transfer of control, assignment, or common carrier wireline application filed with the FCC proposes a 10 per cent or greater direct or indirect foreign owner, the FCC generally submits the application to an interagency working group composed of members of the Departments of Justice, Defense and Homeland Security, among others, for review of any law enforcement or national security concerns raised by such foreign ownership. (In 2023, the FCC proposed and is considering potential changes to the ownership threshold and other aspects of this review process.) Historically, this body is colloquially referred to as Team Telecom, although it has been reconstituted and formalised in recent years as the Committee for the Assessment of Foreign Participation in the United States Telecommunications Service Team Telecom. This interagency process conducts an independent review of the proposed foreign ownership, and the FCC will not approve the underlying application until that review is complete. On occasion, this process concludes with the parties to the transaction entering into a national security agreement with the national security agencies to mitigate any concerns raised by the transaction arising from the foreign ownership.

In addition, the Committee on Foreign Investment in the United States (CFIUS), which is an interagency committee led by the Department of Treasury and authorised by the 1988 Exon-Florio Amendment, reviews whether certain foreign investments in U.S. businesses pose risks to national security. CFIUS may impose conditions on a transaction or refer the transaction to the President, who may block the foreign investment. The scope of CFIUS's authority and the types of transactions subject to mandatory CFIUS review were significantly expanded by the Foreign Investment Risk Review Modernization Act of 2018, which was adopted into law in August 2018.

In recent years, the U.S. government has acted to limit the purchase or use of certain foreign-made equipment by U.S. telecommunications providers. For instance, pursuant to the Secure Equipment Act, enacted in November 2021, the FCC has adopted rules providing that it will not review or approve any application to authorise telecommunications equipment for use in the United States filed by a company on the FCC's "Covered List" – a list of companies determined to pose national security risks. The FCC has also prohibited the use of universal service support to purchase equipment made by such companies.

2 Telecoms

2.1 Is your jurisdiction a member of the World Trade Organization? Has your jurisdiction made commitments under the GATS regarding telecommunications and has your jurisdiction adopted and implemented the telecoms reference paper?

The United States has been a WTO member since the organisation's inception. The United States has undertaken specific commitments under the General Agreement on Trade in Services (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 and 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 is primarily deregulatory. Nevertheless, incumbent local exchange carriers (ILECs), which enjoyed local monopoly status prior to the deregulation of local markets, remain highly regulated at federal and state levels. Competitive carriers are subject to lighter regulatory requirements at the federal level and varying degrees of regulation by the individual states.

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 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 was, initially, largely pre-empted by the FCC, the FCC has recently been permitting increased state regulation. States have sought to regulate VoIP, although some of these efforts have been challenged in the courts.

The FCC's regulatory approach to mass-market broadband has varied significantly over time. Currently, mass-market broadband is subject to disclosure requirements under federal law, generally relating to the performance and prices of service. That treatment may change in the near future, as the current FCC has initiated a proceeding that would subject mass-market broadband to net neutrality rules, and it is considering imposing other requirements (such as certain reporting obligations and requirements intended to promote access to broadband and thereby prevent "digital discrimination"). Some states have also adopted net neutrality and other laws applicable to mass-market broadband. The ability of states to regulate mass-market broadband is being contested in court, and is also at issue in the FCC's net neutrality proceeding.

2.3 Who are the regulatory and competition law authorities in your jurisdiction? How are their roles differentiated? Are they independent from the government? Which regulator is responsible for social media platforms? What statutory basis do they have?

The FCC has broad authority to regulate telecommunications marketplaces under the Communications Act of 1934, as amended. The DOJ and the FTC hold more limited authority over telecommunications providers with respect to competition and consumer protection issues. DOJ and FTC authority arises under general federal antitrust (Sherman Act, Clayton Act) and consumer protection (FTC Act) laws. The FTC's consumer protection authority under Section 5 of the FTC Act does not extend to common carriers regulated by the FCC, but it does encompass a wide variety of other participants in the communications marketplace. Either the DOJ or FTC, in addition to the FCC, typically reviews larger mergers and acquisitions of telecommunications companies to determine whether a proposed transaction would substantially lessen competition.

State PUCs play a significant role in regulating intrastate telecommunications, including the review of mergers of intrastate providers. The Communications Act allows states to regulate intrastate but not interstate telecommunications, and states have enacted their own laws authorising PUC regulation of intrastate communications services.

No single regulator has oversight over social media platforms, although the U.S. Congress and some state legislatures have introduced or enacted bills regarding the usage of or access to social media platforms. The U.S. Supreme Court has agreed to rule on the lawfulness of such laws, with a ruling expected in 2024.

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 made by FCC Commissioners may be appealed to the federal courts. Generally, parties that appeal FCC decisions assert that the decisions are arbitrary and capricious under the standards set forth in the Administrative Procedure Act (e.g., they are not sufficiently explained or do

not take account of record evidence), that they fall outside of the FCC's statutory authority, are inconsistent with underlying federal statutes or contrary to the U.S. Constitution.

2.5 What types of general and individual authorisations are used in your jurisdiction? Please highlight those telecom-based authorisations needed for the installation and/or maintenance of infrastructure?

U.S. telecommunications service providers may be required to obtain regulatory authorisations depending on the nature of the services they provide. Carriers providing only domestic interstate services generally do not need to seek an individualised authorisation. To provide international common carrier services, U.S. carriers must apply for and receive individualised authorisations under 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. The FCC's auction authority expired in March 2023 and Congress has yet to reauthorise it.

VoIP providers are generally not required to seek federal authorisation to provide service, although "interconnected" VoIP providers are required to seek federal permission to discontinue service. In other respects, FCC regulation of VoIP services has increased. In addition, some states require that VoIP providers register as local exchange carriers (LECs) to offer interconnected VoIP services to the public, and some VoIP providers elect to obtain state authorisations in light of particular regulatory considerations.

Cable television providers must obtain local or state "franchise" authorisations.

The ability to install or maintain infrastructure generally does not depend on possessing telecom-based authorisations. Certain statutes and forms of authorisation, including common carriage status and cable franchises, provide certain infrastructure access rights on regulated terms.

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

The United States does not issue a general telecommunications authorisation. Instead, specific state and federal authorisations must 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. Are there restrictions on the change of control of the licensee?

Radio spectrum licences are issued by the FCC to cover particular radio spectrum frequencies and geographic areas. Although their terms vary depending on the type of licence, many last for eight to 10 years and are subject to a renewal expectancy. Satellite authorisations (covering spectrum access and the launch and operation of satellites) are granted by the FCC for a period of 15 years and are also generally subject to a renewal expectancy.

Intrastate wireline services are generally 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 wireline 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.

The transfer of individual authorisations is generally 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 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. (See question 3.5.) For wireless licences, the FCC permits carriers to engage in the secondary market, with opportunities to sublease, partition, or disaggregate spectrum. (See question 3.6.)

2.8 Are there any particular licences or other requirements (for example, in relation to emergency services) in relation to VoIP services?

VoIP providers are generally not required to seek federal authorisation to provide service. Some states require VoIP providers to register as LECs to offer interconnected VoIP services to the public, and some VoIP providers elect to obtain state authorisations in light of particular regulatory considerations.

VoIP providers are subject to many federal requirements. Most, though not all requirements apply only to VoIP providers that enable two-way calling interconnected with the public switched telephone network. Requirements applicable to some or all VoIP providers include E911 (emergency calling), payment of regulatory fees and contributions to the Universal Service Fund, preventing robocalls, disability access, maintaining privacy of customer proprietary network information (CPNI), call completion, lawful intercept, obtaining permission to discontinue service, number portability, reporting requirements, and suicide prevention hotline access via dialling 988.

2.9 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?

Historically, the ability to site telecommunications facilities has been governed primarily by state and local land use law. Today, the Communications Act largely preserves state and local authority over the siting of telecommunications facilities, but sets limitations on that authority. Specifically, state and local governments may not unreasonably discriminate among providers of functionally equivalent services, or adopt regulations that have the effect of prohibiting the provision of service. They must also act on siting requests within a reasonable period of time.

Pursuant to the Communications Act, the FCC has undertaken several efforts aimed at expediting siting timeframes and streamlining the deployment of services. It has initiated several recent rulemakings, and its efforts to streamline the siting processes are ongoing, although some are being challenged in federal court. Congress and inter-agency working groups are also maintaining ongoing efforts to streamline the siting of infrastructure, including such siting on federal lands.

2.10 How is wholesale interconnection and access mandated? How are wholesale interconnection or access disputes resolved?

All telecommunications carriers are required to interconnect with each other, either directly or through other carriers' facilities. 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. ILECs also are required, in specified circumstances, to offer other carriers access to network elements on an unbundled basis at cost-based rates, although the FCC has discretion to refrain from applying this requirement in markets deemed to be competitive. The FCC recently granted ILECs relief from some unbundling obligations. Disputes regarding interconnection are resolved at state level by PUCs, whose decisions are then reviewable in relevant federal district courts.

Internet interconnection is not currently regulated, but the FCC's net neutrality proceeding may result in certain requirements.

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?

Historically, charges for the exchange of telecommunications traffic have varied based on the type of traffic (e.g., local or long-distance, intrastate or interstate) and the types of carriers involved (e.g., wireline or wireless). Historically, LECs have been 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 has transitioned to a "bill and keep" framework, pursuant to which all carriers will 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 has reduced the scope of unbundling obligations in recent years.

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

Due at least in part to existing and expired regulatory

requirements, the Bell Operating Companies (BOCs) often utilise separate business entities for the provision of different services, with such separations maintained through a combination of structural, transactional, and accounting safeguards. 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 the relevant regulatory authorities to establish just, reasonable and non-discriminatory rates.

2.14 Describe the regulation applicable to high-speed broadband networks. On what terms are passive infrastructure (ducts and poles), copper networks, cable TV and/or fibre networks required to be made available? Are there any incentives or 'regulatory holidays'?

Broadband facilities are generally not required to be unbundled. Although the FCC ruled in 2015 that broadband providers would be regulated like public utilities, the agency more recently reversed itself and eliminated most of the rules, except for requirements governing the disclosure of ISPs' network management practices. The current FCC is exploring regulating broadband providers like public utilities. (See question 6.3.) The FCC has also established notice and other requirements relating to copper retirement to facilitate carriers' transition from legacy technologies to next-generation networks that use Internet Protocol (IP)-based technologies.

LECs and utilities must make ducts and poles available at just and reasonable rates, terms and conditions. Such access is generally regulated by federal law, but states may choose to regulate in lieu of federal regulation. Government entities, railroads and cooperatives are not subject to mandatory federal pole and duct access requirements. Transmission facilities are generally not required to be made available, except for limited unbundling requirements applicable to ILECs.

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

Wireline ILECs are generally 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 regulated. The FCC has eliminated pricing regulation for certain high-capacity offerings that are generally targeted to business customers and government institutions, known as business data services (BDS), although such services may still be subject to regulation in areas deemed non-competitive.

2.16 Is the provision of electronic communications services to consumers subject to any special rules (such as universal service) 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 CPNI. They are restricted with respect to the purposes for which they can use such information without customer consent. Starting around mid-2024, wireline and wireless broadband providers must include "consumer labels" that disclose prices, speeds, data allowances, and other important information about broadband plans. 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. The FCC also has ruled that telephone companies may, as a default, block unwanted robocalls before they reach consumers. The agency continues to explore a variety of additional steps to limit robocalling. Broadband providers are currently subject to limited requirements, although that treatment could change following the FCC's net neutrality and other pending proceedings. (See question 2.2.)

The FCC reached a voluntary accord with wireless providers, pursuant to which they agreed to provide certain billing and usage alerts. Many state PUCs also apply similar state consumer telecommunications protections to intrastate telecommunications providers.

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

The FCC has jurisdiction over U.S. telephone numbers in Country Code 1, and it has delegated day-to-day administrative duties to neutral third-party administrators pursuant to various contracts. Somos, Inc. acts as the administrator for (i) issuance of new numbers as the North American Numbering Plan Administrator and Pooling Administrator, (ii) tracking reassigned numbers as the Reassigned Numbers Database administrator, and (iii) issuance of toll-free numbers as the Toll-Free Numbering Administrator. iconectiv (formerly known as Telcordia) oversees local number portability. Welch & Company serves the Billing and Collection Agent, responsible for the collection and disbursement of funds to support numbering administration.

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

Only regulated telecommunications carriers and certain interconnected VoIP providers are allowed to obtain telephone numbers from the numbering administrator, and only based on showings of need. Providers holding numbers must report semi-annually on their use. Unused numbers in provider inventories are subject to reclamation.

2.19 Are there any special rules relating to dynamic calling line identification presentation?

No – ISDN is not widely implemented in the United States. However, the FCC has mandated that voice providers implement STIR/SHAKEN caller ID authentication for IP-based calls.

2.20 Are there any obligations requiring number portability?

All wireline carriers, mobile carriers and interconnected VoIP providers that hold telephone numbers are required to allow customers to port their numbers to another provider. This includes porting between and among the three types of

providers. There are currently geographic restrictions on porting, based on the physical limitations of providers' network infrastructure.

The FCC has developed specific processes and timelines for various types of intramodal and intermodal porting.

3 Radio Spectrum

3.1 What authority regulates spectrum use?

Radio spectrum licensed to private/commercial 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 the NTIA.

3.2 How is the use of radio spectrum authorised in your jurisdiction? What procedures are used to allocate 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 would result in spectrum being put to its most efficient use in the marketplace. Since then, the FCC has used auctions to assign most such licences. The FCC's spectrum auction authority expired in March 2023, and Congress has yet to reauthorise it.

As an initial matter, the FCC must determine the type of use for which it is allocating a particular band of spectrum. For instance, in the broadcast incentive auction, the FCC sought to reallocate portions of the current TV band for use by commercial wireless services.

Once a particular frequency band is allocated for a particular 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 among auctions. The FCC may apply certain bidding or eligibility restrictions on potential auction participants.

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. Relatedly, the FCC has adopted a rural business bidding credit for that purpose.

3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions? Are there penalties for the unauthorised use of spectrum? If so, what are they?

The FCC reserves certain spectrum bands for unlicensed uses, such as Wi-Fi. 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. The FCC will bring enforcement action against unauthorised use of spectrum, which often results in a prohibition of such use along with monetary penalties.

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

The FCC awards most commercial spectrum licences through competitive bidding. Once a licence is awarded, it is not subject to ongoing spectrum user fees, though federal legislation has been considered for this purpose. Licensees in many FCC radio services are required to pay annual regulatory fees, which are typically calculated based on the number of licences held or the number of end users being served.

3.5 What happens to spectrum licences if there is a change of control of the licensee?

Transfers of control of spectrum licensees are generally treated the same as assignments of spectrum licences, and both are permitted with prior FCC approval (in some cases, *pro forma* transactions require a post-closing notification only). The FCC has established procedures that provide for immediate processing of most non-controversial 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.

The FCC uses a "spectrum screen", or aggregate per-market threshold, to trigger its review of potential competitive harm from transfers of most bands of commercial wireless spectrum. The screen is set at approximately one-third of spectrum that is suitable and available for mobile telephony/mobile broadband services, and is periodically updated when the FCC allocates additional spectrum for these services. The FCC is currently seeking comment on its spectrum screen policies.

The FCC did not include millimetre wave (mmW) bands in the existing spectrum screen. But, similar to the spectrum screen used for review of secondary market transactions involving lower frequency spectrum bands, the FCC adopted a mmW spectrum threshold for secondary markets review that identifies those markets that may warrant further competitive analysis. The mmW threshold is 1,850 megahertz.

The FCC does not consider the screen to be a cap on spectrum acquisitions, and has approved transactions which result in granting one licensee control of more than one-third of the available spectrum in a market. Conversely, the FCC may find that competitive harm from a transaction is likely even though the spectrum screen would not be exceeded, and may in that case impose licence divestiture requirements or other conditions on its approval, which are intended to prevent such competitive harm.

3.6 Are spectrum licences able to be assigned, 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 and assignments are permitted with prior FCC approval, and subject to a spectrum screen, as discussed in question 3.5 above.

4 Cyber-security, Interception, Encryption and Data Retention

4.1 Describe the legal framework for cybersecurity. Are there any specific requirements in relation to telecoms operators?

Currently, the United States has no baseline federal cybersecurity law that imposes specific requirements on companies. Rather, various regulators have taken or at least contemplated action that would introduce some degree of cybersecurity regulation for entities within their jurisdiction.

The FCC imposes information security and breach notification requirements on telecommunications carriers with respect to certain proprietary information they obtain about their customers. The FCC has recently proposed security-related regulations in several contexts and is expected to continue doing so; the FCC has also taken various actions to enhance national security, largely by excluding entities believed to pose a national security risk from the U.S. telecommunications marketplace and adopting (or proposing) requirements that companies certify as to their cybersecurity practices. The U.S. Securities and Exchange Commission also has increasingly sought to hold public companies accountable for cybersecurity practices through disclosure requirements. Meanwhile, numerous states have adopted information security laws, and every state now has a data breach law. Enforcement agencies such as the FTC and state attorneys general can bring actions against companies that deceive consumers about their security practices, or cause harm to consumers through security practices that rise to the level of being unfair.

To date, much of the framework for cybersecurity has been driven by the development of best practices and guidance by industry, often in collaboration with agencies such as the NTIA and the National Institute of Standards and Technology (NIST), both under the Department of Commerce. The voluntary Cybersecurity Framework, developed by NIST in conjunction with the private sector, supplies the preeminent framework for the development of standards, guidelines and best practices to manage cybersecurity-related risk. The industry is also active in publishing its own cybersecurity best practices, including through the Communications Security, Reliability and Interoperability Council (an advisory committee to the FCC that includes public and private sector representatives) and in response to a recent Administration initiative to promote action against botnets and other automated threats.

More recently, presidential-level executive orders have dictated the direction of some cybersecurity policy initiatives. In May 2019, President Trump signed an executive order declaring a “national emergency” under the International Emergency Economic Powers Act (IEEPA) in connection with threats posed by the acquisition or use of “information and communications technology or services” that are “designed, developed, manufactured, or supplied by” entities owned or controlled by “foreign adversaries”. Generally, the executive order prohibits a range of transactions involving such technologies or services if the Secretary of Commerce, in consultation with other agencies, determines that the transactions pose a security risk. In May 2021, President Biden signed an executive order on “Improving the Nation’s Cybersecurity” in order to remove barriers to information sharing and to establish baseline security standards for software development, among other objectives. Subsequently, President Biden’s Administration has issued a “National Cybersecurity Strategy” among other actions intended to set the direction for cybersecurity policy and further regulation.

4.2 Describe the legal framework (including listing relevant legislation) which governs the ability of the state (police, security services, etc.) to obtain access to private communications.

Compelled governmental access to private communications, whether in the course of transmission of those communications or from electronic storage, is governed at the federal level by the Electronic Communications Privacy Act (ECPA) and the Foreign Intelligence Surveillance Act (FISA). Those statutes also define the circumstances and means by which federal law enforcement agencies may compel access to subscriber information and information concerning the time, place, and addressing and routing of communications. In 2018, the United States enacted the Clarifying Lawful Overseas Use of Data Act (or CLOUD Act), which primarily amended the ECPA to allow law enforcement to compel U.S.-based companies to provide data stored, even if on foreign servers. Separately, constitutional protections under the Fourth Amendment apply, and the Supreme Court recently held that a warrant is required for cell-site location records. Most states also have laws that define the circumstances under which state law enforcement agencies may require access to private communications.

4.3 Summarise the rules which require market participants to maintain call interception (wire-tap) capabilities. Does this cover: (i) traditional telephone calls; (ii) VoIP calls; (iii) emails; and (iv) any other forms of communications?

Under ECPA and 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 are therefore subject to CALEA requirements.

Email and other over-the-top messaging services continue to be classified as information services not subject to CALEA assistance capability requirements, but providers of such services are generally electronic communication service providers, and are required to comply with subpoenas and other processes requesting access to their customers’ email messages under the ECPA.

4.4 How does the state intercept communications for a particular individual?

Law enforcement agencies obtain compelled, real-time access to individuals’ communications by serving wiretap orders or other legal processes on their service providers. The technical methods by which interception is accomplished vary: for a wiretap on a voice telephone line, the law enforcement agency may arrange

with the service provider for a physical access line, attached to the individual subscriber's telephone line, that effectively makes the law enforcement agency party to the individual's telephone conversations. For emails and other non-voice electronic communications, interception capabilities may be implemented by routing an individual's communications to a server that is controlled by or accessible to the law enforcement agency.

4.5 Describe the rules governing the use of encryption and the circumstances when encryption keys need to be provided to the state.

Individuals are permitted to encrypt their communications and service providers are permitted to make encryption available to their customers. CALEA does not require telecommunications carriers to facilitate decryption of customers' communications for the benefit of law enforcement, unless the telecommunications carrier has provided the encryption capability. The legal obligation of non-telecommunications carriers to provide encryption keys to the government is currently a subject of some uncertainty and debate. Likewise, there is some debate about the ability of law enforcement, under the Fifth Amendment to the United States Constitution and its prohibition against compelled self-incrimination, to require individuals to decrypt their communications or provide law enforcement with the means to do so.

4.6 Are there any specific cybersecurity requirements on telecoms, cloud providers or social media platforms? (If so, please list the relevant legislation.)

As discussed above (see question 4.1), specific cybersecurity requirements have been adopted or considered by various regulators, although there have been relatively few mandates to date.

4.7 What data are telecoms or internet infrastructure operators obliged to retain 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.

Under the 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 processes requiring disclosure to the governmental entity. Also, pursuant to a court order or subpoena obtained in accordance with the 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.

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.

Any entity required to contribute to federal universal service support mechanisms must retain, for at least five years, all records that may be required to demonstrate to auditors that the contributions were made in compliance with applicable rules.

5 Distribution of Audio-Visual Media

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

The basic regulatory framework rests on the identity of the programming provider's technology rather than on the content itself. Television broadcasters operate under licences 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. Cable operators also are regulated by local community or state regulators via franchises (i.e., agreements setting forth certain rights and obligations). Like broadcasters, satellite TV providers, also called DBS providers, operate pursuant to FCC licences under Title III of the Communications Act, but DBS licences differ from broadcast licences in that they are subject to certain obligations applicable to all 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. Finally, although the FCC sought public comment on whether online video providers (including facilities-based providers that seek to offer separate online offerings) should be treated as MVPDs, it has not yet taken further action, leaving these providers generally unregulated.

5.2 Is content regulation (including advertising, as well as editorial) different for content broadcast via traditional distribution platforms as opposed to content delivered over the internet or other platforms? Please describe the main differences.

Content regulation can differ depending on the type of distribution technology and the type of content at issue. As a general matter, broadcasters are subject to greater content regulation than other platforms (e.g., cable operators and DBS operators). For instance, only broadcasters are subject to FCC guidelines concerning educational/informational children's programming. Similarly, the FCC's sponsorship identification rules apply to broadcasters and cable operators (at least to a limited extent) but not to DBS operators and online video providers. However, the FTC has guidelines for endorsements and testimonials that apply to any service. Broadcasters, cable operators and DBS operators are all subject to the same commercial limits in children's programming. Online video providers are generally not subject to content regulation.

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 of any video programming provider, 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. The FCC has also 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, although these rules have been the subject of repeated court challenges.

Secondly, although cable operators hold some FCC licences and are subject to FCC regulations, their authorisations come from state and local cable franchising authorities. These franchising authorities generally impose certain territorial coverage obligations, as well as requiring the cable operators to reserve certain channels for public, educational or governmental programming and/or local programmers. The FCC requires cable operators to carry every local TV station’s main programming signal if the station has opted for guaranteed carriage. 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. DBS licensees must devote 4 per cent of their capacity to non-commercial “educational or informational” programming. They are also required to use their spot-beam capabilities to retransmit local TV signals into the broadcasters’ local markets.

5.4 Are licences assignable? If not, what rules apply? Are there restrictions on change of control of the licensee?

Transfers of control and assignments of over-the-air broadcast licences, satellite licences and wireless licences utilised by cable providers and other MVPDs are permitted with prior FCC approval. The FCC has established procedures that provide for immediate processing of most non-controversial 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.

6 Internet Infrastructure

6.1 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.

6.2 Are telecommunications operators and/or internet service providers under any obligations (i.e. to 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. Under the DMCA, ISPs must implement reasonable policies to terminate the accounts of repeat copyright infringers and must inform all users of this policy. Failure to execute and enforce such policies could remove safe harbour protections and expose an ISP to secondary liability for copyright infringement. ISPs are not liable for the automatic transmission, routing, connecting, or for temporarily storing infringing content at the direction of users.

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

The adoption of “net neutrality” or “open internet” rules has been a highly controversial topic in the United States. In late 2017, the FCC adopted the *Restoring Internet Freedom Order*, reversing its 2015 decision to apply common carriage obligations to mass-market broadband. The *Order* specifically undid the following rules implemented by the 2015 *Open Internet Order*: (i) its bright-line prohibitions on blocking or throttling (i.e., impairing or degrading) lawful online traffic; (ii) its ban on “paid prioritisation” arrangements (i.e., those favouring certain traffic in exchange for compensation or some other benefit); and (iii) its general “internet conduct standard” (under which the FCC investigated, on a case-by-case basis, certain ISP practices for unreasonable interference and/or the disadvantaging of consumers/edge providers). The FCC’s 2017 rules imposed a transparency requirement on ISPs, mandating public disclosure of practices including blocking, throttling, affiliate prioritisation, paid prioritisation, congestion management, application-specific behaviour, device attachment rules, security practices, performance characteristics and commercial terms. Several states, including California and Vermont, have adopted their own variations of net neutrality rules via legislation or executive orders. Although a federal court recently upheld California’s law, the scope of state authority to regulate mass-market broadband remains disputed. The current FCC is seeking to reclassify mass-market broadband as “common carriage” and impose various obligations as a result; that proceeding will likely extend to 2024.

6.4 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content? Are consumer VPN services regulated or blocked?

No. However, the FCC is considering reimposing such requirements in its net neutrality proceeding.

6.5 Is there any regulation applicable to companies that act as 'intermediaries' or 'platforms' in their role of connecting consumers with goods, services, content, or are there any proposals for such regulation? Include any proposals or legislation regulating social media platforms in relation to online content or safety.

Like all U.S. companies, firms that act as intermediaries between consumers and providers are subject to U.S. consumer protection and competition laws and regulations. Any interactive computer service that hosts user content is immunised by law (Section 230

of the Communications Act) from being treated as the speaker or publisher of information posted to its site by a third party and from liability for good faith actions taken to restrict access to or availability of material it considers to be "obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable".

Congress has considered numerous bills to modify the protections afforded to platforms under Section 230, and as noted above (see question 2.3), many states have sought to regulate social media platforms. These proposals include bills that would remove liability protections in certain instances, including when platforms engage in politically-biased content moderation practices or knowingly induce people to contribute to illegal content. In addition, some proposals would exclude from Section 230 protection violations of civil rights laws, antitrust laws, stalking or harassment or intimidation laws, international human rights laws or wrongful death laws. Other proposals would require platforms to publish reports about the usage of algorithms.



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