

Telecommunications Law Update

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Telecommunications Law Update

- Net Neutrality – What is it and why does it matter?
- Regulation of Broadband Internet Access – Good vs. Evil (Depends on your interests)
- Nationwide Inter-carrier Compensation Litigation – Why now?

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Net Neutrality – What is it?

- A catch phrase coined for the “Open Internet”
- The FCC defines the "*Open Internet*" as “the Internet as we know it. It's open because it uses free, publicly available standards that anyone can access and build to, and it treats all traffic that flows across the network in roughly the same way.”

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Net Neutrality – What is it?

Net Neutrality/Open Internet – is the principle that Internet Service Providers should permit access to all legal content and applications on an equal basis, without:

- favoring or blocking some sources
- charging content providers for speedier delivery of their content on "fast lanes"
- deliberately slowing content from content providers that may compete with the ISP

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Net Neutrality – Why does it matter?

- Consumers should have access to all lawful content (no blocking content)
- ISPs should not be able to pick favorites by allowing certain content providers to purchase fast lanes while other content providers are stuck in slow lanes

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Net Neutrality – Why does it matter?

- Competition
 - Established content provider (e.g., Netflix) vs. Start-up content provider (e.g., Webflix)
 - Large ISPs (e.g., Comcast) vs. Small ISPs (e.g., the local telephone company)
- Investment
- Innovation

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Regulation of Broadband Internet Access

- The FCC has previously classified Broadband Internet Access as an “Information Service” not a “telecommunications service”
- As such, Broadband Internet Access is not subject to Title II regulation under the Telecommunications Act, which is the regulation applied to telephone companies
- Generally, regulation of the Internet has been characterized as a “hands-off” approach

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Regulation of Broadband Internet Access

- In December 2010 the FCC released its Open Internet Order which established high-level rules to protect Internet openness:
 - Transparency
 - No blocking
 - No unreasonable discrimination
- The FCC relied on the authority granted the FCC under § 706(a) of the Telecommunications Act

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Regulation of Broadband Internet Access

Transparency -- Fixed and mobile broadband providers must disclose the network management practices, performance characteristics, and terms and conditions of their broadband services.

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Regulation of Broadband Internet Access

No blocking -- Fixed broadband providers may not block lawful content, applications, services, or non-harmful devices; mobile broadband providers may not block lawful websites, or block applications that compete with their voice or video telephony services.

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Regulation of Broadband Internet Access

No unreasonable discrimination -- Fixed broadband providers may not unreasonably discriminate in transmitting lawful network traffic.

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Regulation of Broadband Internet Access

- On January 14, 2014, the United States Court of Appeals for the District of Columbia Circuit in *Verizon v. FCC* upheld the transparency rule, but vacated the no-blocking and no-unreasonable discrimination rules
- The court invited the FCC to act to preserve a free and open Internet

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Regulation of Broadband Internet Access

- On May 15, 2015, the FCC launched a rulemaking seeking public comment on how best to protect and promote an open Internet. The Notice of Proposed Rulemaking posed a wide array of questions to elicit a broad range of input from everyone impacted by the Internet, from consumers and small businesses to internet service providers and start-ups
- Millions of consumers commented

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Regulation of Broadband Internet Access

- On November 10, 2014, President Obama urged the FCC to set strict rules to ensure net neutrality (an open internet)
- President Obama favored reclassifying Broadband Internet Access so that it would be regulated under Title II of the Telecommunications Act – the regulation applied to telephone companies

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Regulation of Broadband Internet Access

- On February 26, 2015, the FCC at its open meeting voted to regulate Broadband Internet Access as a public utility under Title II of the Telecommunications Act
- The vote was 3 to 2 along party lines
- The Order which has not yet been issued is in excess of 300 pages

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Regulation of Broadband Internet Access

- Chairman Tom Wheeler said the FCC was using “all the tools in our toolbox to protect innovators and consumers”
- The new rules are intended to ensure that no content is blocked and that the Internet is not divided into pay-to-play fast lanes for Internet and media companies that can afford it and slow lanes for everyone else

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Regulation of Broadband Internet Access

- Mobile data service for smartphones and tablets, in addition to wired lines, is being placed under the new rules
- The order also includes provisions to protect consumer privacy and to ensure that Internet service is available for people with disabilities and in remote areas

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Regulation of Broadband Internet Access

- Those that believe Title II regulation of the Internet is **GOOD** would say:
 - Ensures net neutrality (an open Internet)
 - Promotes fair competition
 - Protects consumers

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Regulation of Broadband Internet Access

- Those that believe Title II regulation of the Internet is **EVIL** would say:
 - Imposes unnecessary regulation
 - Does not solve the problem
 - Increases consumer costs
 - Stifles innovation and investment

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Regulation of Broadband Internet Access

- Who supports Title II regulation:
 - The President
 - Democrats
 - Consumer interest groups
- Who does not support Title II regulation:
 - Republicans
 - Internet Service Providers

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Regulation of Broadband Internet Access

- What is next?
 - Congress may act
 - Legal challenges

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Inter-carrier Compensation Litigation

- Sprint and Verizon (in their capacity as long distance carriers) have filed approx. 60 federal lawsuits across the country
- More than 400 defendants have been named in these lawsuits
- 3 Wisconsin lawsuits

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Inter-carrier Compensation Litigation

- The lawsuits seek a refund of access charges paid by Sprint and Verizon to local exchange carriers (i.e., local telephone companies)
- Access charges are the fees that a local exchange carrier charges long distance carriers to gain access to the local exchange carrier 's customers

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Inter-carrier Compensation Litigation

- The FCC Established the IntraMTA Rule in 1996
- The “IntraMTA Rule” provides that a local exchange carrier cannot charge a CMRS provider (i.e., a wireless provider) access charges related to a call between their end user customers if the call originates and terminated within a pre-described geographic territory known as a Major Trading Area (MTA)

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Inter-carrier Compensation Litigation

- In 2014 Sprint and Verizon sought to expand the scope of the IntraMTA Rule
- Sprint and Verizon contend that the IntraMTA Rule also prohibits a local exchange carrier from charging a long distance carrier access charges when the long distance carrier transports an IntraMTA call between a local exchange carrier and a CMRS provider

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Inter-carrier Compensation Litigation

- The local exchange carrier defendants contend that Sprint and Verizon seek to impermissibly extend the scope of the “IntraMTA Rule” which is intended to only apply to compensation as between CMRS providers and local exchange carriers
- Some of the defendants have filed a Petition for Declaratory Ruling with the FCC seeking clarification

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Inter-carrier Compensation Litigation

The local exchange carriers also contend that Sprint and Verizon are barred from recovery because for more than 18 years Sprint and Verizon have paid access charges in relation to the exact type of calls that they now contend are not subject to access charges

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Inter-carrier Compensation Litigation

- The lawsuits have been consolidated as part of multidistrict litigation in the Northern District of Texas
- It may be years before the court reaches a decision

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Questions?

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