

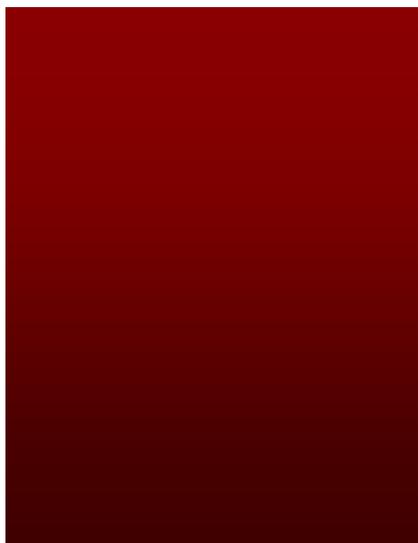


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# **The Wireless Regulatory System: Federal, State, and Local Roles**

## **Wireless U**

Bryan Tramont  
October 7, 2010







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# Outline

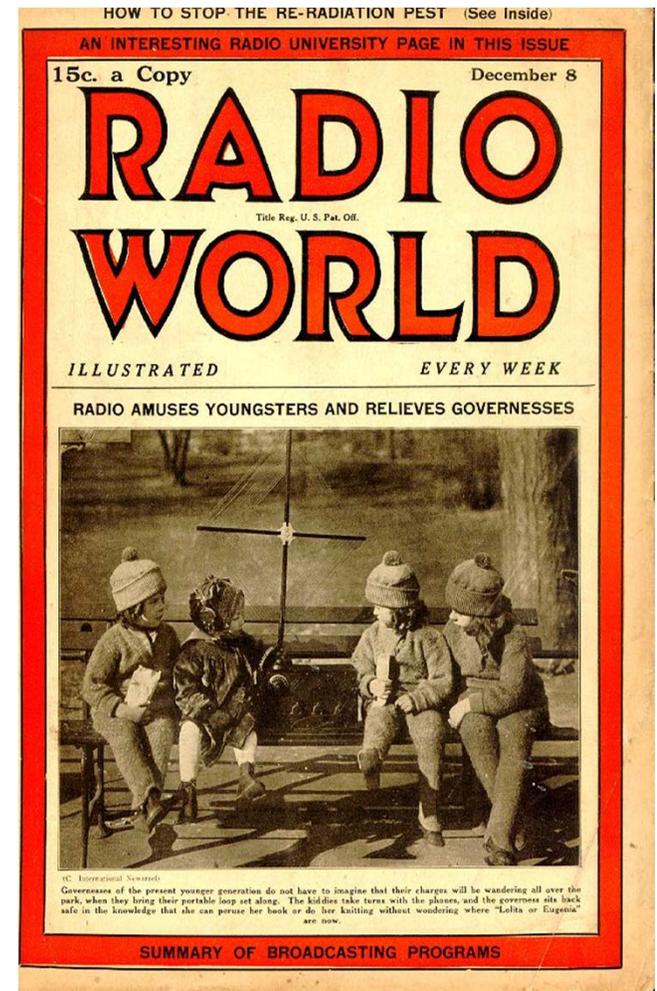
- Wireless Policy Process
  - History
  - International & Federal Policy Makers
  - State and Local Governments
- Hot Topics



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# Wireless Policymakers: Historical Background

- **1887** – Interstate Commerce Comm. (ICC), the first independent regulatory agency, was created to regulate railroads
- **1910** – Mann-Elkins Act brought interstate telecommunications within the jurisdiction of the ICC
- **1912** – Radio Act gave Secretary of Commerce and Labor authority to issue spectrum licenses and control broadcasting
- **1927** – Radio Act created *Federal Radio Commission* with authority to issue radio licenses and assign specific frequencies





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# Wireless Policymakers: Historical Background

- **1934** – Communications Act created the Federal Communications Commission
- **1982** – Judge Greene approves Modification of Final Judgment (MFJ) providing for divestiture of AT&T
- **1984** – Cable Communications Policy Act preempted local rate regulation where the FCC found *effective competition*





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# Wireless Policymakers: Historical Background

- **1992** – Cable Television Consumer Protection and Competition Act required cable companies to offer a *basic tier* and allowed local authorities to regulate rates in certain circumstances
- **1993** – Omnibus Budget Reconciliation Act authorized competitive bidding for spectrum licenses “if . . . mutually exclusive applications are accepted for any initial license or construction permit” with certain exceptions
- **1996** – Telecommunications Act substantially revised the Communications Act to promote competition (particularly in local telephone markets) and deregulation
- **2010 - ?**



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# Wireless Policymakers: Historical Background

- 2010 – On May 24, Sen. John D. Rockefeller, Chairman of the U.S. Senate Commerce, Science and Transportation Committee, Rep. Henry A. Waxman, Chairman of the House Committee on Energy and Commerce and the subcommittee chairmen announced they would begin a process to develop proposals to update the Communications Act.
- In September, Congressmen Boucher and Stearns reiterated their support for a rewrite of the Communications Act in the next Congress, “regardless of which party controls the House....”



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# Wireless Policymakers: Federal

- *International*
- Congress
- Federal Communications Commission
- Executive Branch



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# Wireless Policymakers: International Bodies

- International Telecommunications Union (UN)
  - Standardization
  - Allocation of the radio spectrum
  - Interconnection arrangements
- Internet governance (mostly US-centric with international pressures): ICANN, IETF
- International Electrotechnical Commission, International Organization for Standardization (ISO), etc.
- OECD
- State Department leads US effort



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# Wireless Policymakers: Federal

- International
- *Congress*
- Federal Communications Commission
- Executive Branch





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# Wireless Policymakers: Congress



- Power to legislate and set broad policies
- Universal service and broadband policy are key areas of activity
- Primarily fall under Commerce Committees



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# Wireless Policymakers: Congress

- Senate Committee on Commerce, Science, & Transportation
  - 25 members (14 D, 11 R)
  - Sen. Rockefeller, *Chairman*, West Virginia (D)
  - Sen. Hutchison, *Ranking Member*, Texas (R)
- Full committee oversight



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# Wireless Policymakers: Congress

- House Committee on Energy and Commerce
  - 59 members (36 D, 23 R)
  - Henry Waxman, *Chairman*, California (D)
  - Joe Barton, *Ranking Member*, Texas (R)
- Subcommittee on Telecommunications and the Internet
  - 36 members (22 D, 14 R)
  - Rick Boucher, *Chairman*, Virginia (D)
  - Cliff Stearns, *Ranking Member*, Florida (R)



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# Wireless Policymakers: Federal

- Congress
- *Federal Communications Commission*
- Executive Branch





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# Wireless Policymakers: FCC Governing Statutes

- Communications Act of 1934, as amended (“Communications Act”)
  - Created the FCC “for the purpose of regulating interstate and foreign commerce in communication by wire and radio...” (Communications Act, § 1)
  - Amended many times, including by the Cable Act of 1992 and the Telecommunications Act of 1996.
- Administrative Procedure Act of 1946, as amended
  - Governs proceedings
    - Rulemakings
    - Adjudications
  - Provisions for openness, public comment, and reasoned decision-making
  - Ensures consideration of all views

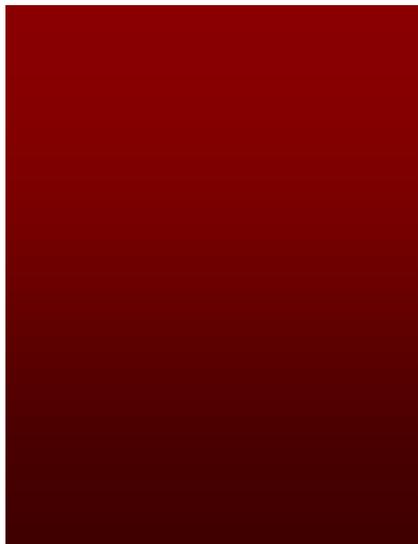


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# Wireless Policymakers: The FCC



- Independent Regulatory Agency
  - Responsible for commercial spectrum allocation, service rules, licensing, policy and regulation
- Quasi-legislative, quasi-judicial, quasi-executive responsibilities



# Wireless Policymakers: FCC



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- Chairman and Commissioners
  - Chairman Julius Genachowski (D) (June 2013)
  - Commissioner Michael J. Copps (D) (June 2010)
  - Commissioner Robert M. McDowell (R) (June 2014)
  - Commissioner Mignon Clyburn (D) (June 2012)
  - Commissioner Meredith Attwell Baker (R) (June 2011)



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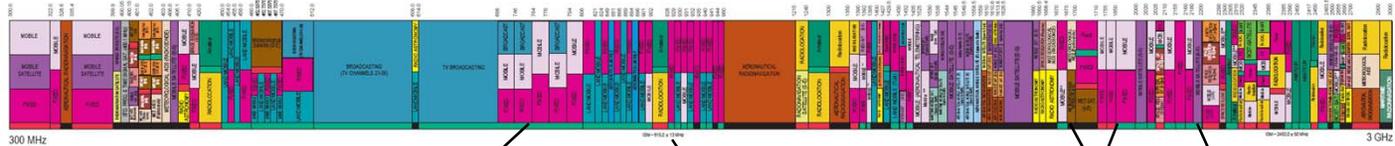
# Wireless Policymakers: Licensed Spectrum

- Responsible for allocating spectrum for commercial uses
  - Determines broad categories of uses: Fixed, Mobile, Satellite, Broadcast, *etc.*
  - Limit interference by placing compatible uses near one another. Usually consistent with international allocations
- Responsible for the development of commercial service rules. More specific rules of the road – license areas, length of license terms, build-out requirements, *etc.*
- Responsible for Licensing
  - Section 301: No person shall use or operate *any apparatus* for the transmission of energy or communications or signals by radio . . . except in accordance with this Act and with a license in that behalf granted under the provisions of the Act
  - 1993: Auctions authorized
    - 70 auctions - approximately \$78 billion in auction revenues.
    - Interest on auction “upfront payments” are deposited into the Telecommunications Development Fund for investment in small businesses

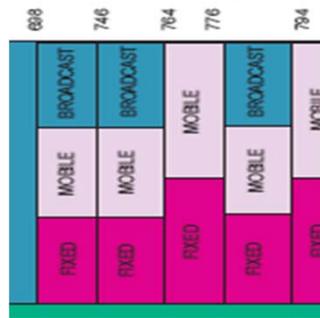
# Select Commercial Mobile Radio Services (CMRS)



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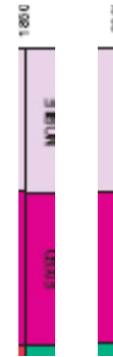
300 MHz – 3 GHz



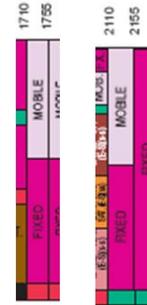
700 MHz



Cellular/SMR/PCS



Broadband PCS



AWS



# Wireless Policymakers: Spectrum as Zoning

- Allocation  $\approx$  Zoning
- Service Rules  $\approx$  Building Codes
- Rights Distribution  $\approx$  Title

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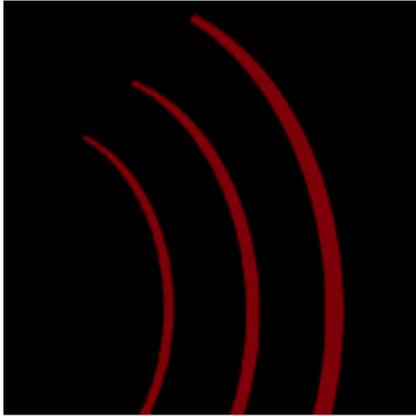




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# Wireless Policymakers: Unlicensed Spectrum

- The “Commons” Model of Spectrum Policy
  - 3 Primary Bands
    - 900 MHz
    - 2.4 GHz
    - 5 GHz
    - TV White Space (September 23, 2010 vote of 5-0 in favor)
- Service Rules Dictate Technical Specifications
  - No interference protection
  - Tragedy of the Commons?



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# Wireless Policymakers: Other FCC Responsibilities

- Universal Service
- E911
- CALEA
- Consumer Protection
- Other



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# FCC Responsibilities: Universal Service

- Federal Act creates a federal-state partnership to preserve universal service
- Four USF programs – wireless industry received approximately \$1.6 billion in total in 2008
  - High-Cost program: for telecommunications services in rural, insular, and high-cost areas
  - Low-Income program: in the wireless space, for MVNOs providing service to qualified low-income consumers
  - Schools and Libraries program: for affordable telecommunications services to eligible schools and libraries, particularly in rural and economically disadvantaged regions
  - Rural Health Care Program: for telecommunications services and broadband to rural health care providers
- Most federal support is explicit (USF), while much state support is still implicit in rate design
- Technology changes and competition have created enormous pressures for policy changes
- Current FCC proposals have significant state rate design component



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# FCC Responsibilities: E911

- Wireless E911 largely a federal creation with technical flexibility in paths to compliance
  - Phase I: Provide the Public Safety Answering Point (“PSAP”) with the telephone number and the location of the cell site or base station
  - Phase II: Provide more precise location information to PSAP
  - September 23: FCC unanimously adopts Second Report and Order requiring wireless carriers to meet Commission’s wireless location accuracy requirements in more numerous and geographically smaller areas. FCC also releases FNPRM and NOI, continuing the proceeding
- VoIP E911 applies to Wi-Fi enabled mobile services
- PSAP funding/deployment remains subject to state/local law (although NET911 Act provides some federal support)

# FCC Responsibilities: CALEA



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- CALEA preserves the ability of law enforcement agencies to conduct electronic surveillance by requiring that telecommunications carriers and manufacturers of telecommunications equipment modify and design their equipment, facilities, and services to ensure that they have the necessary surveillance capabilities. The FCC has implementing regulations that carriers must follow
- Wiretap orders and legal standards remain subject to federal and state criminal procedure laws



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## FCC Responsibilities: Consumer Protection

- **CPNI** – protects privacy of confidential information
- **Truth in Billing** – ensures billing entries are accurate
- **Disabilities Access** – hearing aid compatibility, in-store education
- **Outage Reporting** – monitor network for reliability





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# FCC Responsibilities: Other

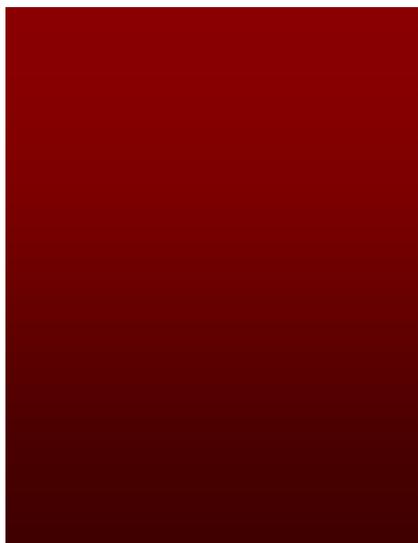
- **Mergers**
  - Spectrum license transfers
- **Numbering**
  - FCC jurisdiction; state delegation to conduct number conservation and area code relief
  - Local Number Portability (“LNP”)
- **Equipment Authorization**
  - Authorization of devices using radio frequency spectrum



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# Wireless Policymakers: Federal

- Congress
- Federal Communications Commission
- *Executive Branch*



# Federal Policymakers: Coordination

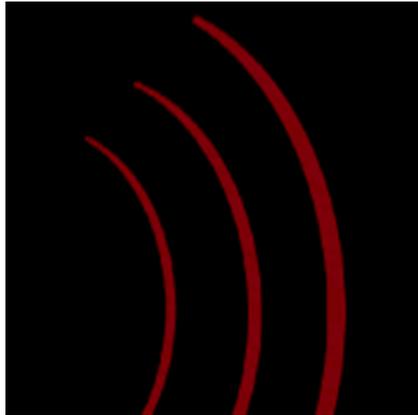


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- FCC as an independent agency still coordinates with the Executive Branch, especially NTIA, on shared policy issues
- Coordination is particularly important for wireless

# Wireless Policymakers: NTIA



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Part of U.S. Dept. of Commerce



Lawrence Strickling, Assistant Secretary for Communications  
and Information



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# Wireless Policymakers: NTIA

- President's Communications Advisor
- Federal Government Spectrum Policy / Commerce Spectrum Management Advisory Committee (CSMAC)
- Broadband/Stimulus (BTOP)
- Telecommunications Research and Engineering
- Public Safety Interoperable Grant Program



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# Wireless Policymakers: USDA - Rural Utilities Service



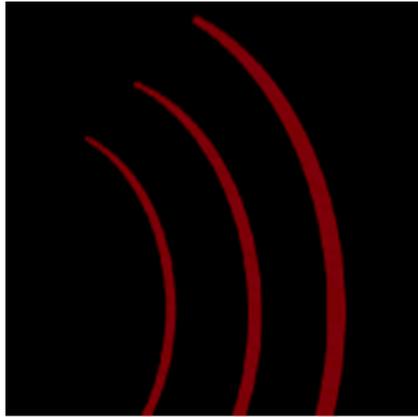
- Jonathan Adelstein, Administrator
  - Former FCC Commissioner
- Broadband Initiatives Program (Stimulus)
- Traditional Telecom Programs
  - Broadband Program
  - Distance Learning and Telemedicine Program
  - Community Connect Grant Program
  - Telecom Infrastructure Program



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# Wireless Policymakers: Other Executive Branch

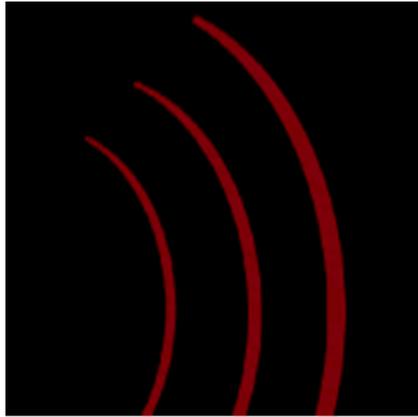
- White House
  - OSTP, OMB
  - Executive Orders
- State Department
- Department of Homeland Security



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# Wireless Policymakers: State & Local Governments





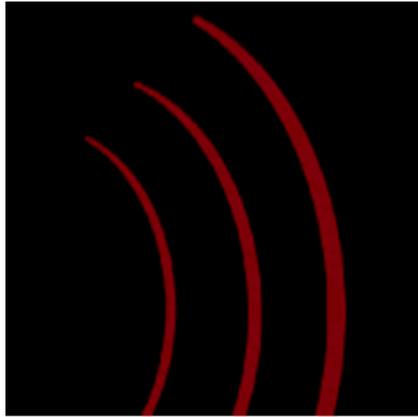
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## **Wireless Policymakers: State Governments**

- Key drivers of state and national policy imperatives – health care, education, energy independence, and homeland security. Mobility and broadband essential ingredients in tackling wide range of issues



# Wireless Policymakers: State Governments



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- 1993: Congress enacted § 332 of Communications Act, which preempts states from regulating *rates* and *entry* for commercial wireless services, but does not preempt regulation of “*terms and conditions* of service.”
- Limited Exception for States to petition to regulate rates, however no state has successfully done so.
  - 1995 Decision on California Petition
    - “The bottom line is unambiguous: cellular prices are falling, and falling appreciably.... On the whole, this evidence... undercuts the CPUC’s claim that market conditions fail to protect consumers from unjust and unreasonable, or unjustly and unreasonably discriminatory rates.”
- State Attorneys General enforce consumer protection laws



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## Wireless Policymakers: State Governments

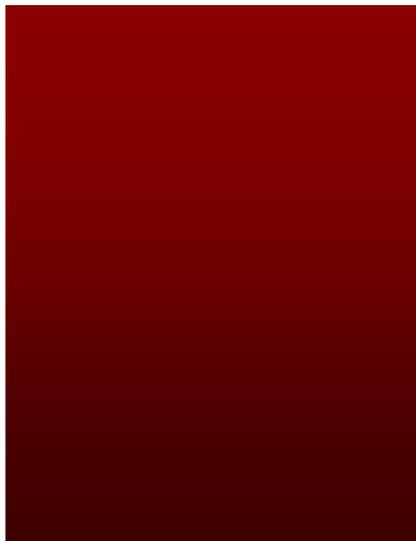
- PUCs authority as to wireless differs from state-to-state: 30+ states do not regulate wireless through the PUCs
- States operate universal service funds, numbering resources, consumer protection, and other aspects of wireless business

# Wireless Policymakers: Local Governments

- Section 332 preserves local zoning authority
  - Must act within a reasonable period of time
  - No unreasonable discrimination
- § 332(c)(7)
  - “[N]othing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless facilities.”
    - Exception: “No state or local government or instrumentality thereof may regulate the placement, construction and modification or personal wireless service facilities on the basis of the environmental effects of radio frequency emissions.”



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# Wireless Hot Topics





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# Hot Topics: Broadband Deployment

- FCC and State Efforts
  - National Broadband Plan
  - Broadband mapping
  - Data collection from providers
- Spectrum in the National Broadband Plan:
  - 10 Years: 500 MHz for broadband
  - 5 Years: 300 MHz between 225 MHz – 3.7 GHz
    - 120 MHz of broadcast spectrum targeted in National Broadband Plan
    - CEA study estimates reallocated broadcasting spectrum would have a market value of \$62 billion if made available for wireless broadband
  - Spectrum Transparency
  - Spectrum Reallocation
  - Spectrum Flexibility
  - Spectrum Access – Alternatives to Licensed



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# Hot Topics: USF Reform

- Universal Service Reform
  - Contribution: 12.9%
  - Distribution: \$7 billion+
    - Schools and Libraries
    - Rural Health Care
    - High Cost Support
    - Low Income Support
  - Overall Reform: The FCC initiated rulemakings in 2008 on USF reform
  - More to come



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# Hot Topics: Reclassification / Third Way

- Is broadband Internet access...a separable telecommunications service (transmission) plus an information service (processing, storage, retrieval) OR one integrated information service that uses telecommunications?
- 2008: In *Comcast Order*, FCC purports to rely on ancillary jurisdiction as basis for enforcement action relating to cable modem network management practices
- 2010: In *Comcast v. FCC*, D.C. Circuit determines that none of the arguments set out in the *Comcast Order* confers authority for FCC to regulate broadband
- Reacting to *Comcast v. FCC*, Chairman Julius Genachowski and General Counsel Austin Schlick offer a so-called “Third Way.”
  - FCC would find that broadband Internet access actually involves the provision of both (1) a telecommunications service and (2) an information service.
  - FCC would forbear from application of 42 of 48 Title II provisions
- In the Third Way NOI, FCC asks for comment on if “it would be preferable for the Commission to address wireless services at the same time that it addresses wired services, or whether there are reasons for the Commission to defer a decision on classification of non-wired broadband Internet services (and any associated forbearance if a wireless broadband telecommunications service is identified).”



# Hot Topics: Net Neutrality

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- October 2009: Net Neutrality NPRM
  - To Propose to Add 2 New Net Neutrality Principles
    - Non-discrimination
    - Transparency
- April 2010: Comcast Case – D.C. Circuit determines that none of the arguments set out in the *Comcast Order* confers authority for FCC to regulate broadband (but leaves door open for alternative arguments).
- September 2010: FCC seek further public comment to determine whether wireless Internet service providers and “specialized” services should be subject to network neutrality rules



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# Hot Topics: Public Safety Interoperable Network

- 700 MHz D Block
  - Public safety interoperable broadband network
- Public Safety: Key Policy Imperative
- Third Further Notice of Proposed Rulemaking - Outstanding
- Open Questions
  - Public Private Partnership?
  - License Spectrum Directly to Public Safety?
  - Role of PSST?
  - Take spectrum away, but use revenue for public safety?
- Sen. Rockefeller bill
  - S-3756 would give 700MHz D Block to public safety / fund network with incentive auction revenue from broadcast spectrum



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# Hot Topics: Consumer Protection

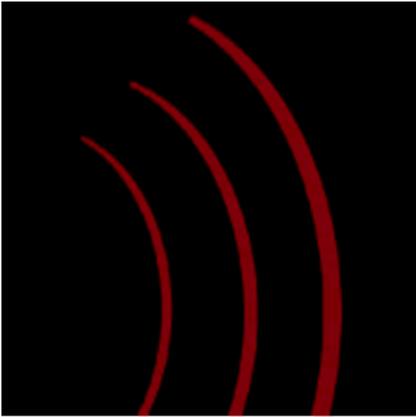
- CTIA Consumer Code
  - <http://www.ctia.org/content/index.cfm/AID/10352>
- FCC Exploring Regulation of Early Termination Fees
- Billing Practices



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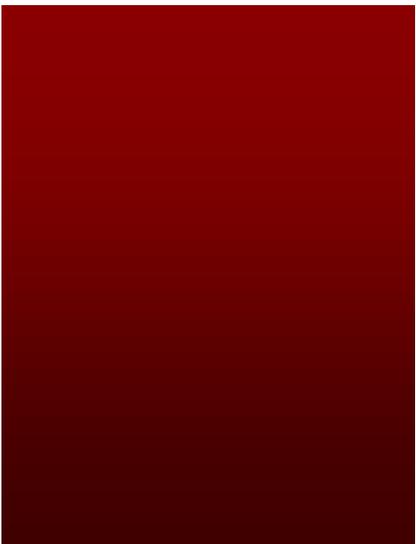
# Hot Topics: Privacy

- Increased scrutiny regarding how network and applications providers may use information collected from customers and users when they set up service, browse the Internet, etc.
- Policy Questions
  - Balance between privacy and assumptions behind the “free” (i.e., advertising-funded) Internet
  - Industry self-regulation vs. prescriptive requirements
- Legal Questions
  - Balance between FCC, FTC authority
  - Interaction between/among multiple overlapping privacy-related statutes (ECPA, FCRA, HIPPA, Communications Act, many others)
- Flashpoints
  - Deep Packet Inspection
  - Behavioral Advertising
  - Mobile Device Tracking
  - Social Media (Facebook, Twitter, Etc.)



# Hot Topics: Market Structure

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- 2010 Mobile Wireless Competition Report
  - FCC declined to find “effective competition” in the wireless industry for the first time since 2002
- Return of More Aggressive Market Regulation?
  - Current “competitive screen” is 95 MHz
    - Triggers in-depth analysis for markets where exceeded, but does not preclude owning more than 95 MHz
  - RTG Petition for Spectrum Cap Rulemaking
    - Urges the FCC to impose a 110 MHz cap on the commercial terrestrial wireless spectrum below 2.3 GHz per carrier/county
    - Claims a new cap is necessary given the market consolidation in recent years
- Return of Auction Eligibility?
- Merger Reviews?
- Other Tools?



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# Other Hot Topics

- Handset Exclusivity
- Roaming Regulations
- Am I missing anything?





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