
***Cable Television Update 2015
A Look at Federal Regulatory
Developments***

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Presented by: Brian T. Grogan, Esq

FCC 621 Order – Part III

- **Jan. 21, 2015**
- **State Level Franchising**
 - **621 Orders apply only to actions or inactions**
 - at the local level where a state has not specifically circumscribed the LFA's authority.
 - **Prior 621 rulings on**
 - Franchise fees
 - PEG and I-Net obligations
 - Non-cable related services and facilities
 - **Do not apply to state level franchising**

FCC 621 Order – Part III

- **In-kind payments**
 - noncash payments, such as goods and services
 - **FCC held**

“Non-incidental in-kind fees must count toward the 5 percent franchise fee cap, and does not limit the franchise fee exception to in-kind payments that are unrelated to cable service.”

FCC 621 Order – Part III

- **Cable Act provides:**
 - Requirements or charges “incidental” to the award or enforcement of the franchise are exempt from franchise fees.
 - See Section 622(g)(2)(D)

FCC 621 Order – Part III

- **“Incidental” includes**
 - Payments for bonds
 - Security funds
 - Letters of credit
 - Insurance
 - Indemnification
 - Penalties
 - Liquidated damages
 - Other “minor” expenses

FCC 621 Order – Part III

- **FCC held that “Incidental” does not include**
 - Consultant fees
 - Application fees
 - that exceed reasonable costs
 - Acceptance fees
 - Free or discounted services
 - Leased LFA equipment above market rates

FCC 621 Order – Part III

- **Mixed use Networks**

- Under the Cable Act -
- LFAs have jurisdiction only over the provision of “cable services” over “cable systems.”
- **FCC held**

“LFAs may not use their franchising authority to regulate non-cable services provided by either an incumbent or new entrant.”

FCC Open Internet Order

- **March 12, 2015 (3-2 vote)**
- **Order appealed to DC Circuit Court by**
 - United States Telecom Association
 - Cellular Telephone Industries Association
 - AT&T, Wireless
 - Internet Service Providers Association
 - CenturyLink
 - American Cable Association
 - National Cable & Telecommunications Association

FCC Open Internet Order

- **The FCC's 2010 Net Neutrality Order was challenged:**
 - In 2014 the DC Circuit Court struck down the FCC's 2010 conduct rules against blocking and unreasonable discrimination.
 - *Verizon v. FCC* 740 F.3d 623 (D.C. Cir. 2014).
- **The *Verizon* court affirmed the FCC's conclusion that:**
 - "broadband providers represent a threat to Internet openness and could act in ways that would ultimately inhibit the speed and extent of future broadband deployment."
- **New FCC order – Three key issues**

No Blocking

- **A person engaged in the provision of broadband Internet access service**
 - Shall not block
 - lawful content
 - applications
 - services or
 - non-harmful devices
 - subject to reasonable network management
- Consumers must get what they paid for
 - access to all (lawful) destinations on the Internet.

No Throttling

- **A person engaged in the provision of broadband Internet access service**
 - Shall not impair or degrade lawful Internet traffic on the basis of
 - Internet content,
 - Application
 - service or
 - Use of a non-harmful device,
 - subject to reasonable network management.
- Order creates a separate rule to guard against degradation targeted at specific uses of a customer's broadband connection

No Paid Prioritization

- **Fast lanes**
- **“Paid prioritization”** refers to the management of a broadband provider’s network to directly or indirectly favor some traffic over other traffic.
 - Prohibits
 - Traffic shaping
 - Prioritization
 - Resource reservation, or
 - Other forms of preferential traffic management.
 - Either in exchange for consideration (monetary or otherwise) from a third party, or
 - to benefit an affiliated entity.

FCC Order Preempting TN & NC Municipal Broadband Restrictions

- **March 12, 2015 (3-2 vote)**
- **FCC preempts certain challenged provisions of Tennessee and North Carolina law restricting municipal provision of broadband service pursuant to section 706 of the Telecommunications Act of 1996.**
- **Based on petitions of**
 - The Electric Power Board of Chattanooga, Tennessee
 - The City of Wilson, North Carolina
- **FCC concluded that TN and NC state laws were barriers to broadband infrastructure investment and thwart competition.**

Effective Competition Order

- **June 3, 2015 (3-2 vote)**
- **FCC concludes that all cable operators are subject to**
 - “Competing Provider Effective Competition”
- **LFAs are prohibited from regulating basic cable rates - *unless***
 - LFA successfully demonstrates that the cable system is not subject to Competing Provider Effective Competition
- **Burden of proof shifted entirely to LFA**

Effective Competition Order

- **First update of Effective Competition rules, in over 20 years**
- **FCC states the below reasons for order**
 - Reflect the current MVPD marketplace
 - Reduce the regulatory burdens on all cable operators, especially small operators, and
 - More efficiently allocate the FCC's resources.

Effective Competition Order

- **August 31, 2015 challenge filed in DC Circuit**
 - National Association of Broadcasters (NAB)
 - NATOA
 - Northern Dakota County Cable Communications Commission
- **NAB is concerned because the order may result in no obligation for cable operators to carry broadcasters channels**
 - Under negotiated retransmission consent agreements which typically require carriage on the basic service tier that must be offered to every subscriber.

Effective Competition Order

- **NATOA has stated that the order is in conflict with a congressional directive to simply streamline the effective competition process for “small cable providers”**
 - NATOA argues that the order will result in higher consumer prices
 - May result in the removal of PEG and local broadcast channels from the basic tier of service.

MVPD Proceeding

- *In re Franchising Innovation & Competition in the Provision of Multichannel Video Programming Distribution Services*
 - *Released December 2014*
- *2 key issues raised*

MVPD Proceeding

- **Managed linear IP video service**
 - AKA – plain old cable service
 - FCC tentatively determines that
 - It is a “Cable Service” under the Cable Act
 - 47 U.S.C. § 522(6)
 - If an entity crosses a ROW with a closed transmission system
 - Or where affiliates have a significant interest in such system
 - Then = “Cable Operator” of a “Cable System”

MVPD Proceeding

- **Over The Top (OTT) video programming**
- **FCC tentatively concludes that**
 - A Cable Operator's OTT video programming is not a “cable service.”
 - If this tentative conclusion is maintained
 - Could have massive ramifications for cities nationwide
 - Franchise fees
 - PEG fees
 - PEG programming carriage

Questions

Brian T. Grogan, Esq.
Moss & Barnett, A Professional Association
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402
(612) 877-5340 phone / (612) 877-5031 facsimile
E-mail: Brian.Grogan@lawmoss.com
Web site: www.lawmoss.com