



Telecom 101: Legislative Primer

Nancy L. Werner, NATOA General Counsel

Dan Cohen, Attorney, Cohen Law Group

NATOA Annual Conference 2021

OBJECTIVES

Understand the Framework of the Communications Act of 1934

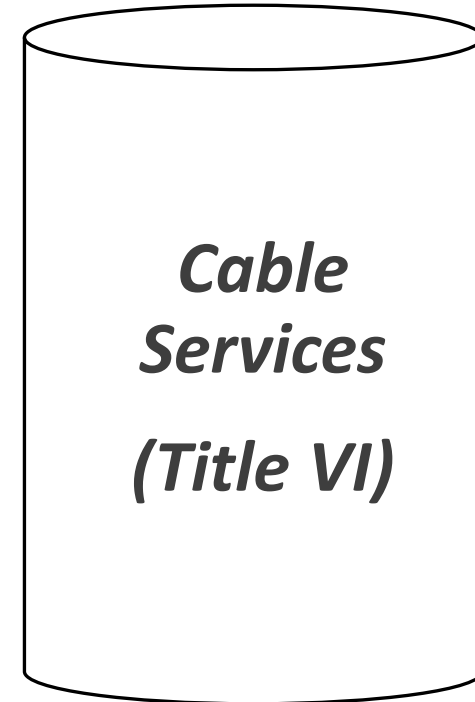
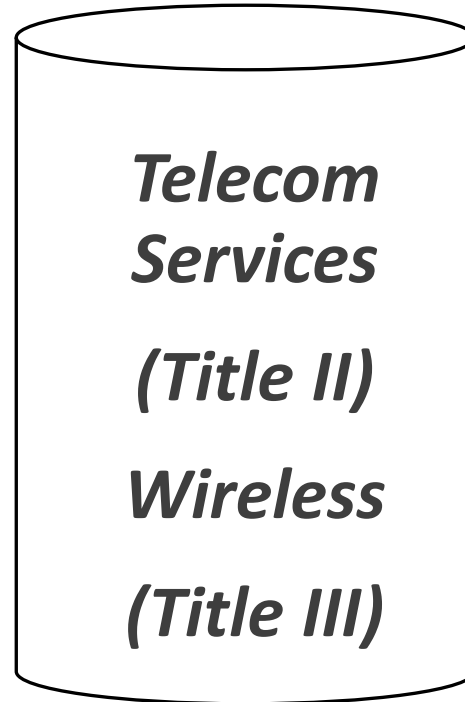
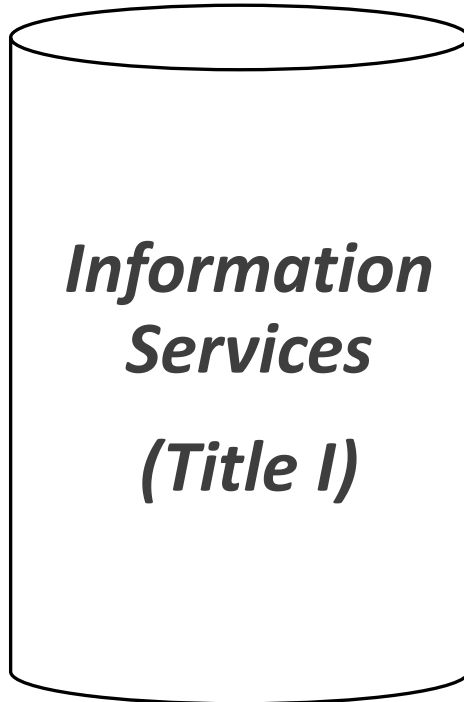
Become Familiar with Significant Laws Impacting Various Services

- Telecommunications Act of 1996
- Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012
- Cable Act
- Internet Tax Freedom Act

Access Reference Guide for Acronyms



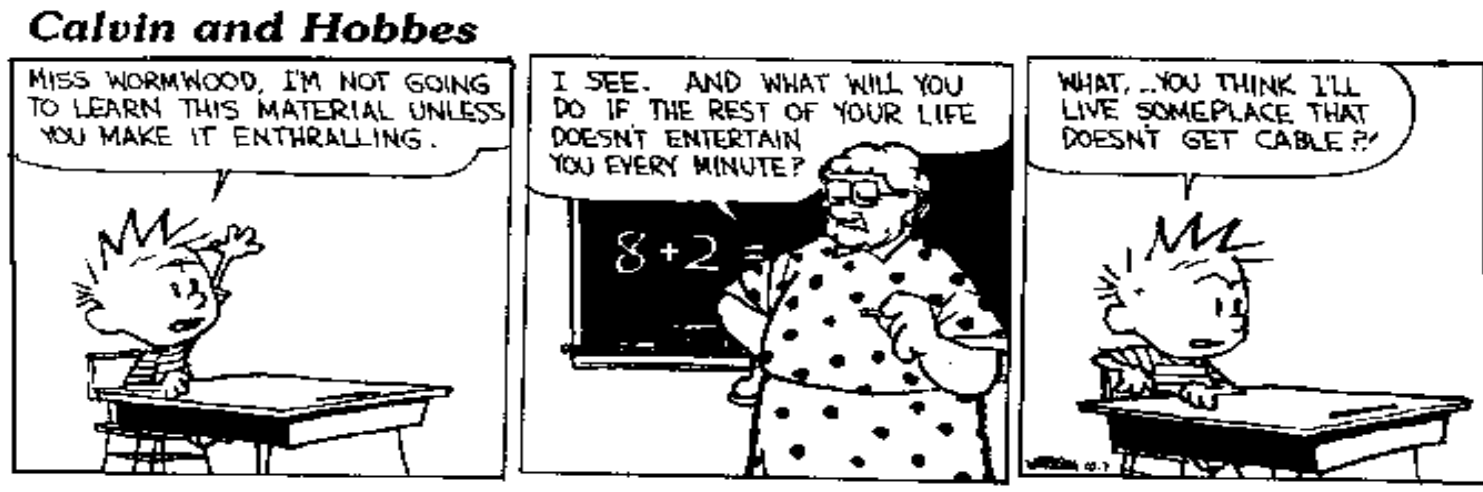
BASIC FRAMEWORK OF THE COMMUNICATIONS ACT



CABLE SERVICE

What is Cable Service?

- “Cable Service” is (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- What exactly this includes is more complicated than Calvin’s need for “cable”





CABLE SERVICE

Title VI of the Communications Act – Cable Communications

- “Cable Operators” must obtain franchise agreements (Section 621) and pay annual franchise fees of not more than 5% of gross revenue from the use of the cable system to provide cable service (Section 622)
- Cable franchises might include other cable-related obligations
 - Public, Educational and Government Access Channels
 - Build Out of the Cable System
 - Institutional Networks
 - Customer Service Standards
 - Right-of-Way Protections
- Establishes a franchise renewal process (Section 626)
- Cable franchise generally cannot be used to regulate other communications services



CABLE SERVICE

Recent FCC Order

- “Section 621 Order” (2019 edition)
 - Found that most non-monetary cable franchise obligations are “franchise fees” subject to the 5% cap
 - Ruled that the value of these “in-kind contributions” may be offset against franchise fees
 - FCC said value should be “fair market value,” but Sixth Circuit Court said “marginal cost”
 - Preempted state and local authority over cable operators’ non-cable services

TELECOMMUNICATIONS SERVICES

What is a Telecom Service?

- “Telecommunications Service” is the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.
- “Telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received

That clears it up, right?

- POTS – yes
- Wireless (PWS) – yes
- VOIP – sort of but not really
- Broadband – no then yes and now no again

How about now?

TELECOMMUNICATIONS SERVICES

Telecommunications Act of 1996

- Purpose: “to promote competition and reduce regulation”
- Includes (among many other things): Common carrier regulations for telecom services, including interconnection, access, intercarrier compensation, public safety and law enforcement requirements, and provisions to fund universal service



"I upgraded it. I bought a longer cord."



TELECOMMUNICATIONS SERVICES-GENERAL

Section 253 - Removal of Barriers to Entry

- Section 253(a): “No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”
- Section 253(c): “Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.”

TELECOMMUNICATIONS SERVICES-WIRELESS

Section 332(c)(7) - Preservation of Local Zoning Authority



- Subsection (A): “Except as provided in this paragraph, nothing in this chapter 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 service facilities.”
- But, local regulation of wireless service:
 - (I) shall not unreasonably discriminate among providers of functionally equivalent services; and
 - (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.” Section 332 (B)(1)



TELECOMMUNICATIONS SERVICES-WIRELESS

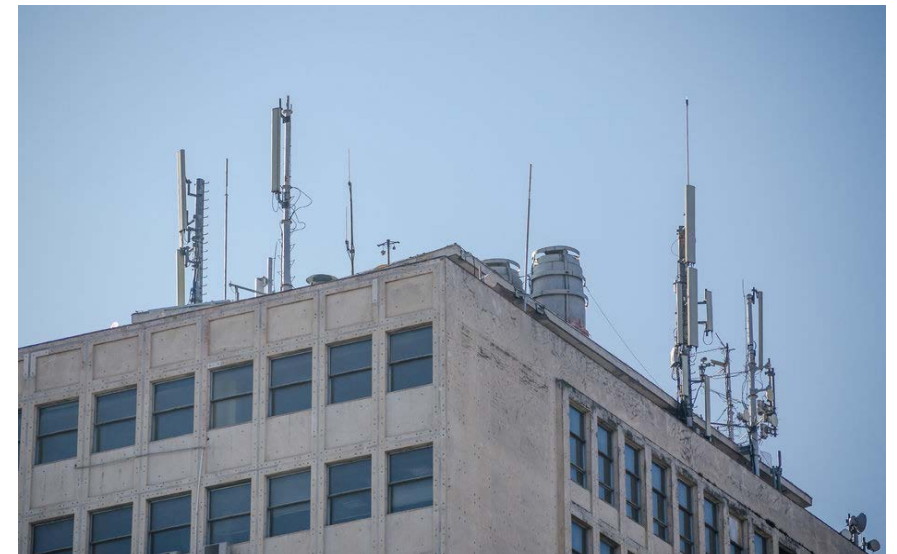
Section 332(c)(7) - Preservation of Local Zoning Authority (cont.)

- Must act on applications within a reasonable period of time
- Decision to deny a request must be in writing and supported by substantial evidence contained in a written record
- Cannot regulate the placement, construction, or modification of PWS facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions

TELECOMMUNICATIONS SERVICES-WIRELESS

Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. § 1455)

- A State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station
- “Eligible facilities request” means any request for modification of an existing wireless tower or base station that involves—
 - Collocation of new transmission equipment;
 - Removal of transmission equipment; or
 - Replacement of transmission equipment





TELECOMMUNICATIONS SERVICES

Recent FCC Orders

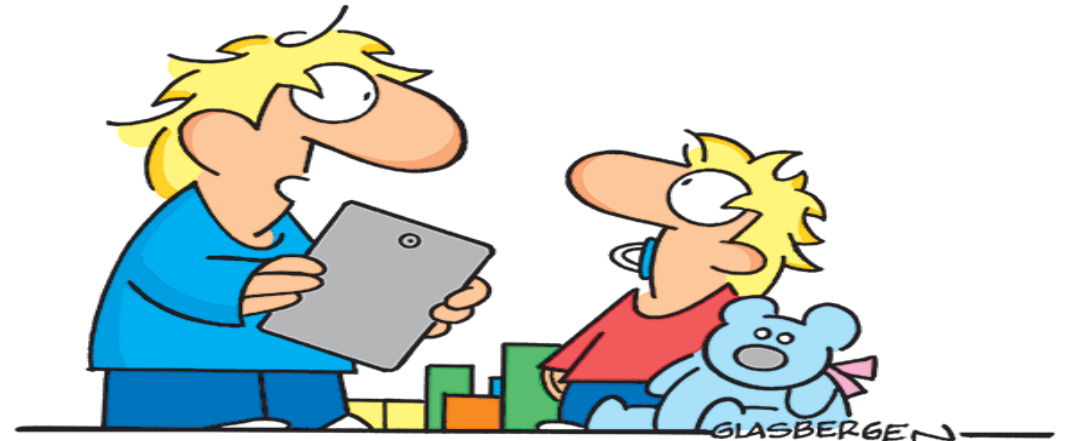
- Moratorium Order (2018)
 - State/local moratorium on acceptance, processing or approval of telecom applications violates Section 253/332
- Small Cell Order (2018)
 - Caps permit/ROW/attachment fees for small wireless facilities (SWF)
 - Codifies shot clocks for acting on applications
 - Imposes certain restrictions on design guidelines for SWF (some vacated by the 9th Circuit)
- 6409(a) Declaratory Ruling (2020)
 - “Clarifies” existing rules regarding when the 60-day shot clock commences and expands the definition of “substantial change” to allow more modifications to qualify for expedited, must-approve status
- 6409(a) Rulemaking (2020)
 - Allows excavation and/or deployment up to 30 feet outside a tower site to qualify as a modification of the site

INFORMATION SERVICES

What is Information Services?

- “Information service” means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications telecommunications service.
- For our purposes, let’s just say it’s broadband, at least as of September 2021!

© Randy Glasbergen
glasbergen.com



“I’m not sure Mom and Dad are qualified to be parents. They’re not on Angie’s List.”



INFORMATION SERVICES

Internet Tax Freedom Act (47 U.S.C. § 151, note 1)

Preempts Taxes on Internet Access

- Exempts VoIP
- “Tax” does not include “a fee imposed for a specific privilege, service, or benefit conferred”



INFORMATION SERVICES

Recent FCC Orders

- Protecting and Promoting the Open Internet (2015)
 - Classified broadband as a telecom service under Title II
- Restoring Internet Freedom Order (2017)
 - Reclassifies broadband as an information service under Title I

ACRONYMS

FCC

- Federal Communications Commission
- 5-member Commission appointed by the president and confirmed by the Senate; 3 members from the president's party; 2 from the other party
- Responsible for implementing the Communications Act
 - Includes authority to interpret ambiguous provisions of the Act...

NPRM: Notice of Proposed Rulemaking

FNPRM: Further Notice of Proposed Rulemaking

NOI: Notice of Inquiry

BDAC

- Broadband Deployment Advisory Committee
- Created by Chairman Pai in 2017
- Industry-heavy for first 2 years
- Recommendations cited in small cell proceeding



ACRONYMS

ISP: Internet Service Provider

IoT: Internet of Things

ROW: Rights of Way

POTS: Plain Old Telephone Service

VOIP: Voice over Internet Protocol

PROW: Public Rights of Way

PWS: Personal Wireless Services

SWF: Small Wireless Facilities

LFA: Local Franchising Authority

PEG: Public, educational and/or government access

EPG: Electronic program guide

VOD: Video on demand

GAAP: Generally Accepted Accounting Principles



QUESTIONS?

Nancy L. Werner
NATOA General Counsel
(703) 519-8035
nwerner@natoa.org

Daniel S. Cohen
Cohen Law Group
(412) 447-0130
dcohen@cohenlawgroup.org