



# Consumer Protection & Oversight of Community Services

2024 NATOA Annual Conference

Charleston, SC

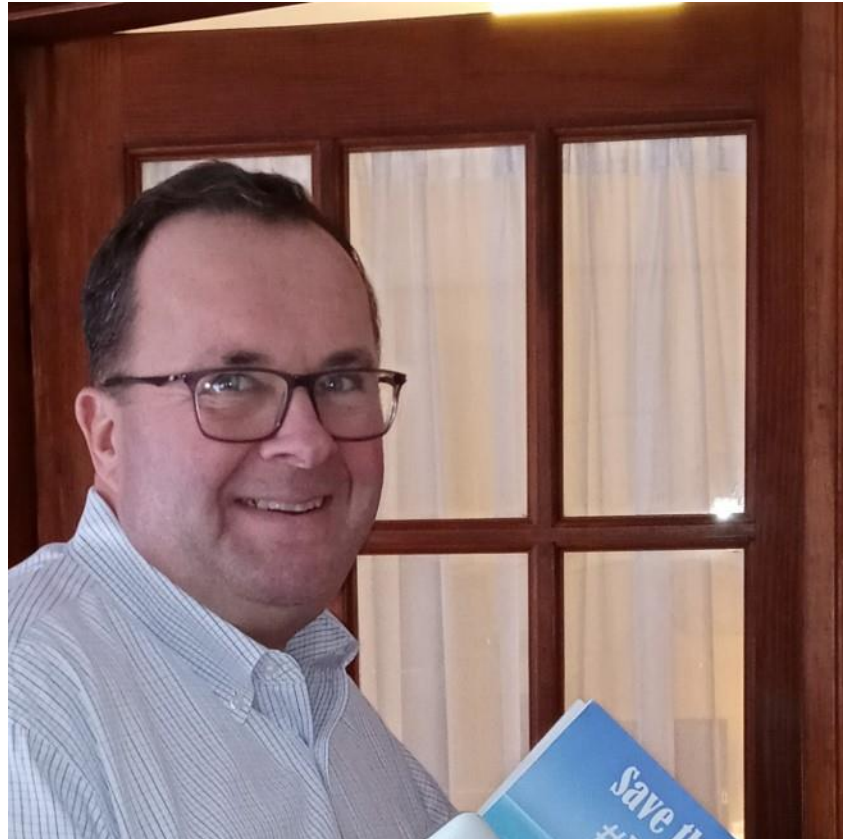
August 25 - 28, 2024



# Moderator



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW



**Mike Lynch**

Legislative Director, NATOA

[mlynch@natoa.org](mailto:mlynch@natoa.org)

# Presenters



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW



## Rick Ellrod

DIRECTOR, COMMUNICATIONS POLICY & REGULATION DIVISION  
FAIRFAX COUNTY, VA

[Frederick.Ellrod@fairfaxcounty.gov](mailto:Frederick.Ellrod@fairfaxcounty.gov)



## Tillman "Tim" Lay

Partner,  
Best Best & Krieger LLP

[tillman.lay@bbklaw.com](mailto:tillman.lay@bbklaw.com)



## Amina Fazlullah

HEAD OF TECH POLICY ADVOCACY,  
COMMON SENSE

[afazlullah@commonsense.org](mailto:afazlullah@commonsense.org)

# Agenda



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

1. Introduction
2. Cable Act & FCC Rule Consumer Protection Provisions
3. Recent FCC Consumer Protection Initiatives
  - Cable/MVPD/Video
  - Broadband
  - General
4. LFAs' On-the-Ground Experiences with Consumer Protection
5. Labeling and Digital Discrimination: Consumer Perspectives, Concerns, and Opportunities
6. Q&A

# Cable Act & FCC Rule Consumer Protection Provisions

# Cable Act



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

- 47 USC Section 552
  - LFAs may establish and enforce customer service requirements
  - FCC shall adopt customer service standards
- 47 USC Section 544(h): LFA may require operator to provide notice of changes in channel lineup or programming services
- 47 USC Section 562 (added in 2019): requires MVPDs to give consumers a breakdown of all video service charges before entering into a contract, and gives consumers 24 hours after receipt to cancel

# FCC Rules



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

- 47 CFR Section 309
  - LFAs may enforce FCC standards
  - LFAs may impose more demanding requirements via franchise agreement or through state or local consumer protection law (if not otherwise preempted)
- 47 CFR Section 310: Implements FCC's All-In Pricing Order (discussed below)
- Additional FCC cable-related subscriber notification rules: 47 CFR Sections 76.1602, 76.1603 and 76.1619

# Recent FCC Consumer Protection Initiatives



# Cable/Video/MVPD Initiatives



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

- Report & Order, All-In Pricing for Cable and DBS TV Service, MB DN 23-203
  - Requires cable & DBS providers to state, in promo materials and subscribers' bills as a single line item, the aggregate price of video service (including broadcast & regional sports fees but excluding franchise fees & taxes). Permits supplemental itemized explanation of elements included in "all-in" price.
  - Rules found at 47 CFR Section 310.
  - NATOA & other local govt interests filed a petition for clarification/recon asking FCC to remove statement in R&O that PEG fees are franchise fees (petition is pending).

# Cable/Video/MVPD Initiatives (cont'd)



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

- NPRM, Cable & DBS Provider Billing Practices, DN 23-405
  - Proposes to prohibit cable & DBS providers from imposing on subscribers early termination fees (ETFs) and billing cycle fees (BCFs) on subscribers
  - Given the FCC's shared jurisdiction with LFAs over cable customer service issues, NPRM sought input from LFAs on (1) their experiences with subscriber complaints and enforcement mechanisms, and (2) how enforcement mechanisms at the local level could inform & be coordinated with enforcement at the federal level
  - Also sought comment on enforcement of an ETF or BCF ban on bundled cable & non-cable services, and the impact of the mixed-use rule on state or LFA enforcement

# Cable/Video/MVPD Initiatives (cont'd)



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

- Local Station Blackout-Related Proceedings
  - NPRM, Rebates for Undelivered Video Programming During Blackouts, DN 24-20
    - Proposes to require cable and DBS providers to give subscribers rebates when their subscribers are deprived of video programming due to failed retrans consent or other video programming carriage negotiations.
  - NPRM, Reporting Requirements for TV Station Blackouts, DN 23-437
    - Proposes requiring MVPDs to notify the FCC of local TV station blackouts arising from retrans consent disputes

# Broadband Initiatives



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

- Report & Order & FNPRM, Broadband Labeling Requirements, DN
- Adopts rules that –
  - Require ISPs to display, at point of sale, labels disclosing info about broadband prices, intro rates, data allowances and broadband speeds, with links to info on network management practices, privacy policies and the (now defunct) FCC's ACP
  - Set forth requirements for uniform broadband label format & display location to facilitate comparison shopping

# Broadband Initiatives (cont'd)



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

- R&O, Preventing Digital Discrimination, DN 22-69
  - Defines “digital discrimination” to encompass both disparate treatment & disparate impact (with the latter being the major issue in pending court appeals of the R&O)
  - Prohibits digital discrimination
  - Amends FCC’s existing enforcement rules to authorize investigations regarding alleged digital discrimination
  - Revises the FCC’s informal consumer complaint process to facilitate digital discrimination complaints
  - Adopts model policies and best practices for state, local and Tribal gov’ts to support their efforts to combat digital discrimination

# General FCC Consumer Protection Initiatives



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

- Draft NPRM on Bulk Billing
  - Chairwoman Rosenworcel has announced the circulation of a draft NPRM on bulk billing arrangements to the other Commissioners
  - Proposes to prohibit bulk billing arrangements by which tenants in MDUs are required to pay for broadband, cable and/or satellite service provided by a specific provider (with whom the MDU owner has entered into a bulk billing arrangement)
  - Tradeoff: Bulk billing does lower the price of service per MDU unit, but also renders competition within the MDU impractical

# General FCC Consumer Protection Initiatives (cont'd)



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

- Chairwoman Rosenworcel has circulated a draft NOI to other Commissioners on ways to ensure consumers have adequate and efficient access to customer service resources when contacting their phone, cable and broadband providers
- Among the topics:
  - Access to live CSRs
  - Simple service cancellation
  - Establishing uniform requirements regarding installations, service outages and service calls
  - Special considerations for persons with disabilities

# LFAs' On-the-Ground Experience with Consumer Protection



# Local Customer Service Regulation



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

- As noted above, local communities can make consumer protection rules, as well as the FCC
- Authority stems from general police powers
- The Cable Act, 47 U.S.C. §552(a)(1), protects local authority to set customer service requirements
- The Cable Act provision is worded as an affirmative grant of authority: “A franchising authority may establish and enforce . . .”

# Local Customer Service Regulation



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

- FCC rule, 47 C.F.R. § 76.309(a), authorizes local franchising authorities to enforce the Commission's customer service standards
- The rule also recognizes, in subsection (b), that the LFA can agree with the cable operator on requirements (1), or enact and enforce additional standards (2-4)
- The FCC rules thus recognize that the LFA may embed requirements in a franchise agreement, or act unilaterally by ordinance

# Ordinance or Agreement?



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

- Cable operators prefer consumer protection rules to be in franchise agreements, so they cannot be changed without the operator's consent
- However, consumer protection rules ought to apply uniformly to all cable operators in the community
- This makes them classic examples of general laws, rather than contractual agreements

# Topics for Customer Service Rules



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

- Typical examples of customer service rules may include—
  - Deadlines for response to complaints
  - Deadlines for response to inquiries about line extension costs or availability of service
  - Deadlines for response to service interruptions
  - Pickup of equipment for customers with disabilities
  - Local office requirements

# Topics for Customer Service Rules



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

- Typical examples of customer service rules may include (cont'd)—
  - Refunds for outages (on request, or without a request)
  - Notice requirements for rate or programming changes (in addition to FCC's)
  - Clear and accurate bills
- If FCC and local rules both set requirements, an operator must comply with both (i.e., with the more stringent of the two)
- State law may also establish consumer protection requirements

# Who Enforces?



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

- FCC rule, 47 C.F.R. § 76.309(a), authorizes local franchising authorities to enforce the Commission's customer service standards, as well as their own
- The FCC does not generally enforce customer service standards, leaving that to localities
- Taking complaints may be handled in-house, or contracted out

# Who Enforces?



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

- Ordinances are typically enforceable by penalties; application may be difficult
- Franchise agreements typically include provisions for liquidated damages for violations of customer service rules
- If the agreement requires compliance with the ordinance, liquidated damages may also apply for ordinance violations

# Local Experience



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

- In practice, enforcement may depend on particular complaints by residents
- Individual cases may reveal more general problems
- Working with the cable operator to resolve problems is the most productive approach
- Whether that approach can succeed depends on whether the cable operator is willing to cooperate



# What About Broadband Internet?



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

- Broadband Internet access does not strictly fall under the Cable Act rules
- Since the services travel over the same system, the same complaints (e.g., line extension, outages) may address both
- Local governments may have independent authority under state law to adopt consumer protection rules for Internet service — varying by state

# Labeling and Digital Discrimination: Consumer Perspectives, Concerns, and Opportunities

# Broadband Labeling and Digital Discrimination



**BBK**  
BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW

- Multiple sectors are now invested in addressing the digital divide (Education, Banking, Healthcare)
- Frustration from institutions seeking to update services to use internet-based technologies for disadvantaged communities
- Families are using tech and applications for essential activities
- For vulnerable families, there is confusion around broadband plans and offerings
- Opportunity to engage local institutions who are already tracking digital needs



# BBK

BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW



## Questions?

DISCLAIMER: BBK presentations and webinars are not intended as legal advice. Additional facts, facts specific to your situation or future developments may affect subjects contained herein. Seek the advice of an attorney before acting or relying upon any information herein. Audio or video recording of presentation and webinar content is prohibited without express prior consent.