

WATOA ANNUAL SPRING CONFERENCE

CHELAN, WA
APRIL 28-29, 2016

Pending Federal Communications
Legislation and Litigation Affecting
Local Government and Consumers

Gail A. Karish
Best Best & Krieger LLP



- **UPDATE ON LAST YEAR'S REPORT**

- **PENDING FEDERAL LEGISLATION**

- **Broadband**

- **Wireless**

- **Consumer Protection/Emergencies**

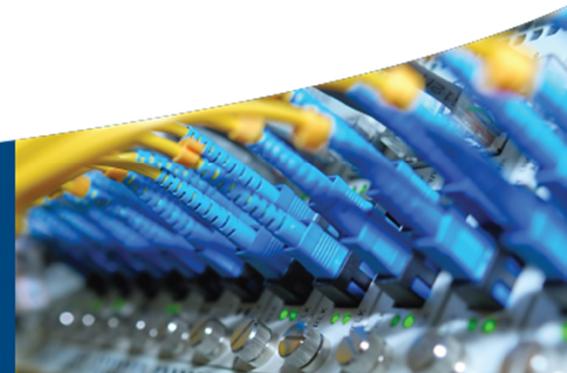
- **FCC Reauthorization and Administration**

- *Bills marked with * are being considered by Energy and Commerce Committee this week*

- **KEY CASES**

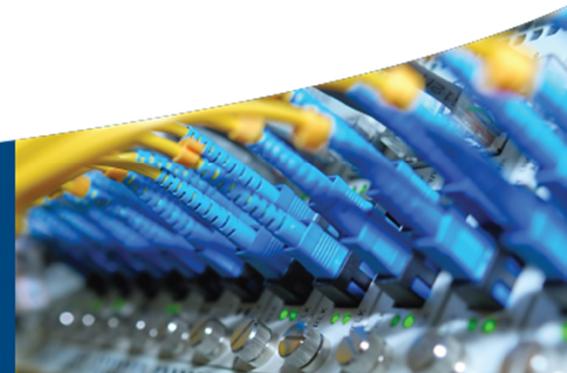
- **Recently Decided**

- **Pending**

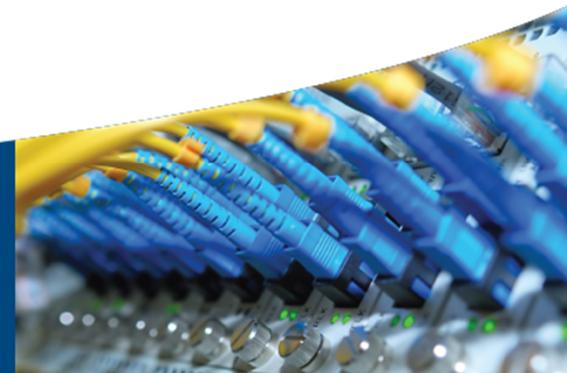


UPDATE

- ✓ Internet Tax Freedom made permanent
(Trade Facilitation and Trade Enforcement Act of 2015 signed into law on Feb. 24, 2016)



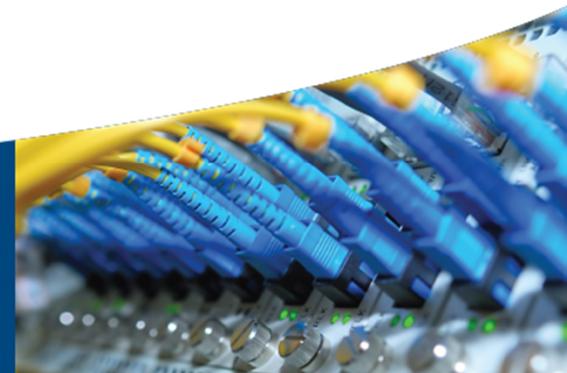
BROADBAND LEGISLATION



RURAL HEALTH CARE CONNECTIVITY ACT OF 2015*

(H.R. 4111 and S. 1916)

- H.R. 4111 sponsor – Rep. Leonard Lance (R-NJ-7); 2 co-sponsors
- S. 1916 sponsor – Sen. John Thune (R-SD); 3 co-sponsors
- *Expands definition of health care provider in 47 USC 254 to include “skilled nursing facilities” extending right to request under Universal Service Fund necessary telecommunications and information services in rural areas at reasonably comparable rates for similar services in urban areas*



NO RATE REGULATION OF BROADBAND INTERNET ACCESS ACT (H.R. 2666)

- Sponsor – Rep. Adam Kinzinger (R – IL); 19 co-sponsors
- Passed in House on April 15, 2016
- Read in Senate and placed on Legislative Calendar (not to committee)
- Already subject of Presidential veto threat
- *Prohibits FCC from regulating rates charged for broadband internet access service*
- *Does not affect FCC's authority to enforce regulations relating to truth-in-billing requirements or paid prioritization*
- *BIAS does not include data roaming or interconnection for purposes of this Act*



CURB LIFELINE ACT OF 2016

(H.R. 4884)

- Controlling the Unchecked and Reckless Ballooning of Lifeline Act of 2016
- Sponsor – Rep. Austin Scott (R-GA-8); 1 co-sponsor
- *Prohibits total amount of annual support provided through the FCC's Lifeline program from exceeding \$1.5 billion*
- *Lifeline program support not applicable to:*
 - *Any amount charged to consumer for sale, lease, or other provision of mobile telephone or similar device; or*
 - *Mobile service offerings limited to voice communications service*
- **NOTE: March 31 FCC Lifeline reform order set budget of \$2.25 billion, indexed to inflation**
- **Industry opposes bill**

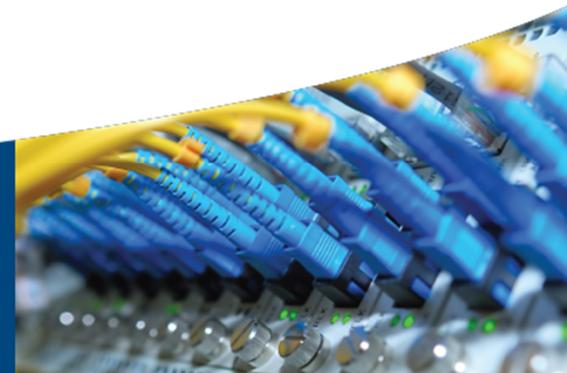


WIRELESS LEGISLATION



Telecommunications Law

The
Media



MOBILE NOW ACT

(S. 2555)

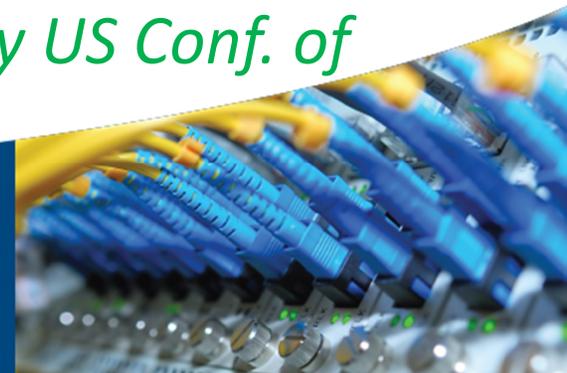
- Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act
- Sponsor – Sen. John Thune (R-SD); 1 co-sponsor
- March 3, 2016 – approved by Senate Commerce Committee
- Allocate More Spectrum:
- *By Dec. 31, 2020, NTIA and FCC must make available at least 255 MHz of spectrum below frequency of 6 GHz for mobile and fixed wireless broadband use*
- *Must be available on licensed or unlicensed basis for shared use by federal and non-federal users to enable wireless broadband services deployment*
- Further Facilitate Deployment of Small Wireless: *Before 2017 FCC to act on WT Docket 15–180 (Program Alternatives for Small Wireless Communications Facility Deployments)*



MOBILE NOW ACT

(S. 2555)

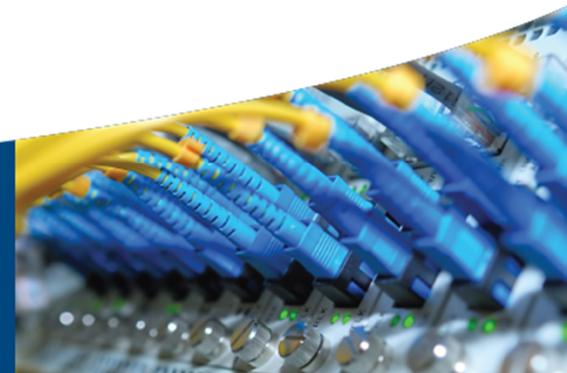
- Facilitate Access to Federal Property:
- *Requires executive agencies, within reasonable period of time, to grant or deny applications for easements or rights-of-way to, over, in, or on federal property to install, construct, modify, or maintain communications facility installation*
- *Establish single database of real property owned, leased, or managed by executive agencies that is capable of supporting communications facility installation*
- *Note: earlier version had attempted to include rewrite of Section 332(c)(7) to further restrict local authority over wireless siting; removed due to efforts of local government led by US Conf. of Mayors and TeleCommUnity*



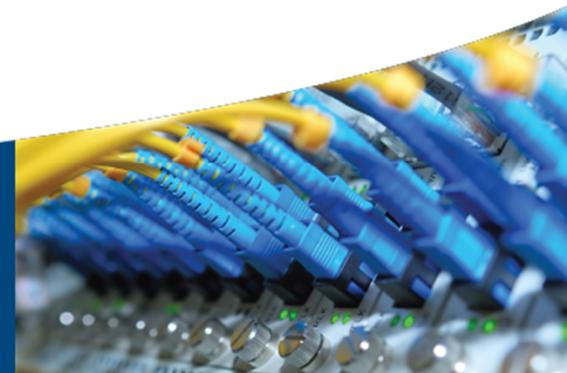
SPECTRUM CHALLENGE PRIZE ACT OF 2015*

(H.R. 4190 and S. 2366)

- Sponsors: Rep. Doris Matsui (D-CA-6) and Sen. Tom Udall (D-NM)
- *Requires NTIA to conduct prize competitions to accelerate development and commercialization of technology that improves spectrum efficiency and is capable of cost-effective deployment*



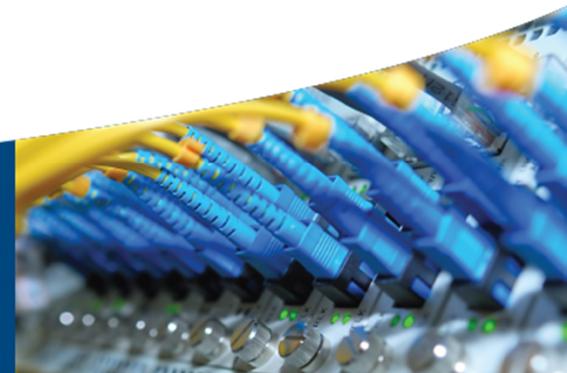
CONSUMER PROTECTION & EMERGENCY RESPONSE LEGISLATION



KELSEY SMITH ACT*

(H.R. 4889 and S. 2770)

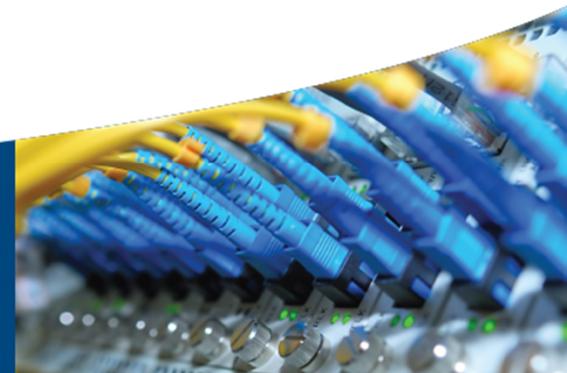
- H.R. 4889 – Rep. Kevin Yoder (R-KS-3); 3 co-sponsors
- S. 2770 – Sen. Pat Roberts (R-KS); 1 co-sponsor
- *Requires telecommunications carriers to provide call location information of user's device to law enforcement for:*
 - *Emergency situations involving risk of serious injury or death; or*
 - *Responding to user's call for emergency services*
- *Might be moving to FCC Reauthorization Act in Senate*



KARI'S LAW ACT OF 2015*

(H.R. 4167 and S. 2553)

- H.R. 4167 sponsor – Rep. Louie Gohmert (R-TX-1)
 - 23 co-sponsors, including Rep. Dan Newhouse (R-WA-4)
- S. 2553 sponsor – Sen. Amy Klobuchar (D-MN); 4 co-sponsors
- *Requires multi-line telephone systems to have default configuration allowing users to directly initiate 911 call (without dialing 9 first)*
- *Moved to FCC Reauthorization Act in Senate*



SECURING ACCESS TO NETWORKS IN DISASTERS ACT*

(H.R. 3998)

- Sponsor – Rep. Frank Pallone Jr. (D-NJ-6); 4 co-sponsors
- Expands Essential Services Restoration:
 - *Expands Disaster Relief and Emergency Assistance Act to include all categories of communications service providers (wireline and mobile telephone, Internet, radio and television broadcasting, cable, and direct broadcast satellite services) among essential service providers that may access disaster site to restore and repair essential services in emergency or major disaster*
 - *FCC must create master point of contact directory for communications between telecommunications service providers and public safety answering points*



SECURING ACCESS TO NETWORKS IN DISASTERS ACT* (CONT'D)

(H.R. 3998)

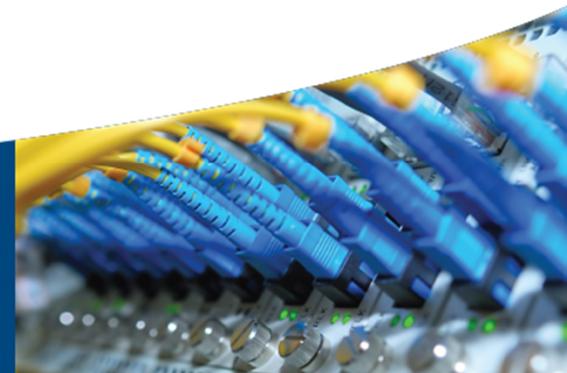
- Roaming Rates: FCC to commence proceedings on provision of roaming agreements between mobile service providers to:
 - Allow for mobile service at reasonable rates during certain emergencies where outage lasts longer than 24 hours; and
 - Provide roaming agreements at no charge for communications during emergencies to or from 911 services
- FCC Study: FCC to do study on mobile service providers supplying outage data to public safety answering points and on making WiFi access points available to public for 911 services during emergencies



ANTI-SWATTING ACT OF 2015*

(H.R. 2031)

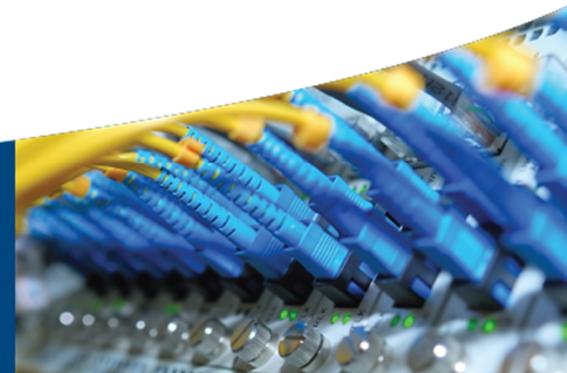
- Sponsor – Rep. Eliot Engel (D-NY-16)
 - 12 co-sponsors, including Rep. David Reichert (R-WA-8)
- *Provides for enhanced penalties for transmission of misleading or inaccurate caller ID information with intent to trigger response by law enforcement agency*
- *Directs court to order defendant convicted of such offense to reimburse any law enforcement or government agencies or private non-profit organization providing fire, rescue, or emergency medical services for expenses incurred in responding to such conduct*



Spoofting Prevention Act of 2016

(S. 2558)

- Sponsor – Sen. Bill Nelson (D-FL); 3 co-sponsors
- Expands protections against “spoofing” e.g.,
 - *Prohibition on inaccurate caller ID information includes persons outside U.S. if recipient is within U.S.*
 - *Applies to text messages as well*
 - *FCC must publish on its website a report that identifies existing technologies that consumers can use to protect against misleading or inaccurate caller identification information.*
 - *GAO must report on: (1) actions taken, or actions that could be taken, by the FCC or the FTC to combat spoofing; and (2) any recommendations to combat spoofing*
- *Moved to FCC Reauthorization Act in Senate*



ROBOCOP ACT

(H.R. 4932)

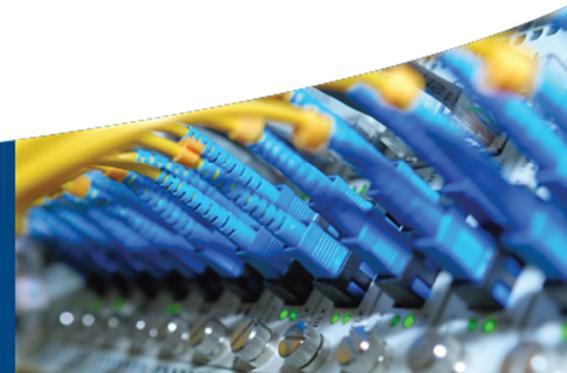
- Repeated Objectionable Bothering of Consumers on Phones Act
- Sponsor – Rep. Jackie Speier (D-CA-14); 5 co-sponsors
- Expands protections against “spoofing” e.g.,
 - *Prohibition on inaccurate caller ID information includes persons outside U.S. if recipient is within U.S.*
 - *Requires providers of telephone service to offer technology to subscribers to block calls with falsified caller ID information, identify and block autodialed calls*
 - *Some exemptions such as autodialed calls public safety entities, emergency operations centers, law enforcement agencies*
 - *Imposes requirement for FCC to report to Congress on the issues every 4 years*



FCC-REFORM LEGISLATION



Telecommunications Law



FCC REAUTHORIZATION ACT OF 2016

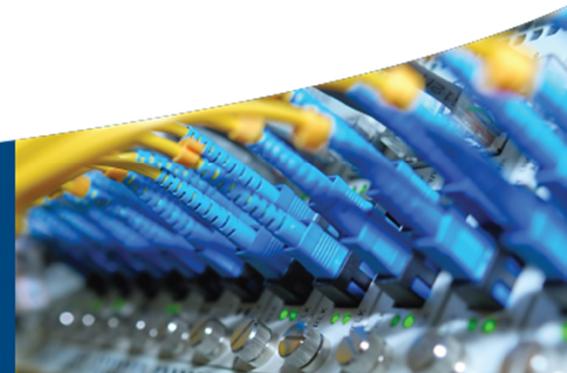
(S. 2644)

- Sponsor – Sen. John Thune (R-SD); no co-sponsor
- Reauthorizes FCC for fiscal years 2017 and 2018
- **Note: FCC has not been reauthorized in decades**
- *Miscellaneous changes proposed, for example:*
- Commissioner Terms: *Can serve after terms expire until end of next session of Congress unless replacement is confirmed before then*
- Info sharing: *Requires FCC to provide Congress with docs that it shares with Exec. Branch*
- GAO study of FCC's regulatory fee structure and reform:
 - *Does it “correlate to the actual workload” of FCC?*
 - *Are fees “reasonably related to the benefits provided” ?*
 - *Does current regime have “disparate impact” on payers or technologies?*



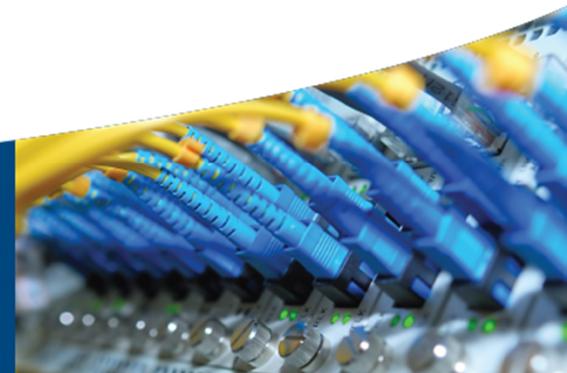
H.R. 2592*

- Sponsor – Rep. Adam Kinzinger (R-IL-16); 1 co-sponsor
- Pre-Vote Posting:
- *Prohibits FCC from adopting orders, decisions, reports, or actions by vote unless text is published on FCC website not later than:
 - (1) 24 hours after text circulated for commissioners' review,
 - or
 - (2) 21 days before vote*
- *Exemptions for classified national defense or foreign policy matters, internal personnel practices, trade secrets, personal information, law enforcement investigation*



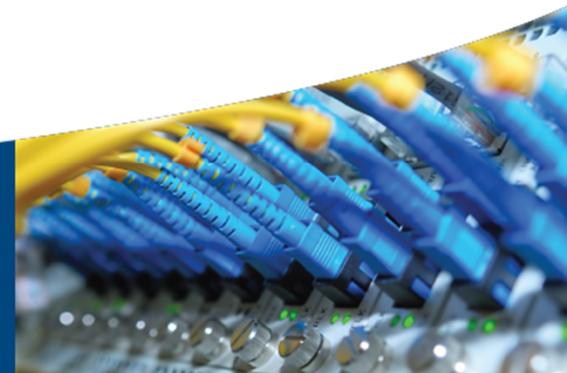
H.R. 2593*

- Sponsor – Rep. Robert Latta (R-OH-5); no co-sponsor
- Pre-Vote Posting:
- *Requires identification and description on FCC website of items to be decided on authority delegated by FCC*
- *Must be published on FCC website at least 48 hours before order, decision, report, or action is taken*

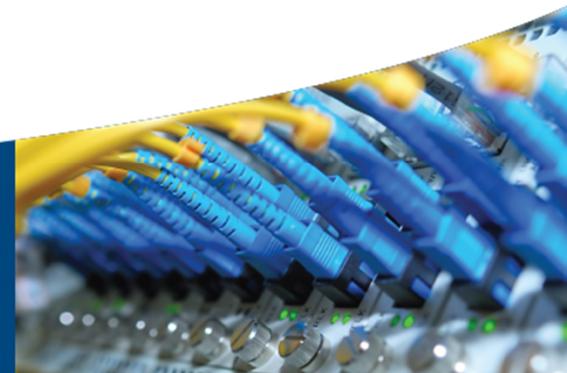


H.R. 2589*

- Sponsor – Rep. Renee Ellmers (R-NC-2); 6 co-sponsors
- Post-Adoption Posting:
- *Requires FCC, within 24 hours after adopting, repealing, or amending provision that appears or will appear in Code of Federal Regulations, to publish its website text of provisions it is adopting or repealing or text indicating how provision is being amended.*

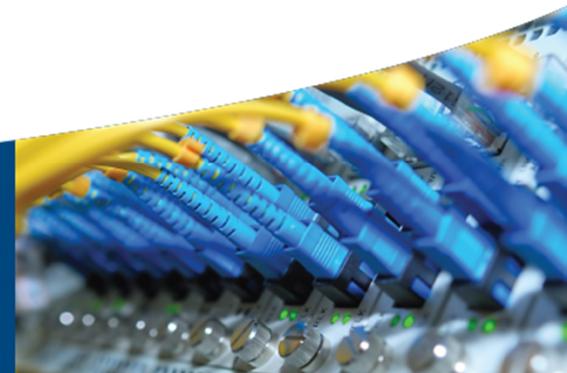


Key Cases



Recent Cases

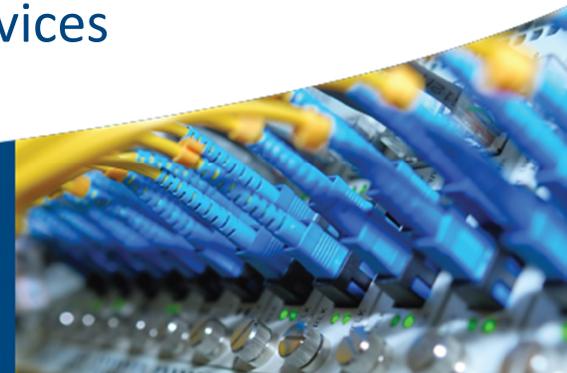
- ***Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015)**
 - 4th Circuit upheld FCC rules/federal law requiring localities to approve modifications to base station and towers that do not involve a significant change in physical dimension of base station or tower.
 - Advisable for practitioners to read FCC briefs
- ***Verizon v. Town of East Fishkill* (S.D.N.Y. 2015)**
 - Court held that “speculation based on what may or may not happen in the future [regarding Section 6409(a) expansion rights] cannot provide substantial evidence for denying [permit application].”



Key Cases To Watch

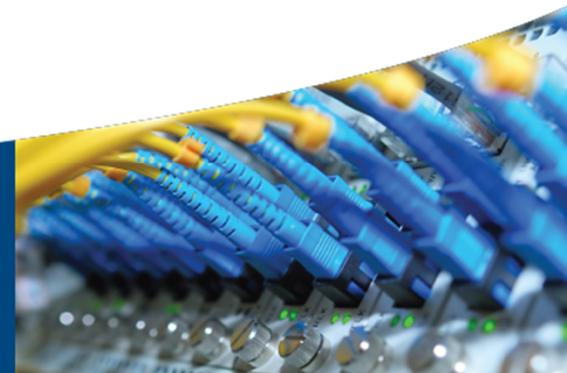
- **Net Neutrality - *U.S.T.A. v. FCC* (D.C. Cir.) – argued Dec. 2015**
 - Major Issue: reclassification of broadband as a “telecommunications service” under Title II of Communications Act
 - Many observers believe decision may be mixed
 - Decision likely imminent; likely to go to Sup. Ct.
 - Outcome may affect local debates regarding whether to build publicly owned broadband networks

- **Municipal Broadband: *State of Tennessee et. al. v. FCC*, (6th Circuit) – argued March 2016**
 - Challenges FCC order preempting TN and NC state laws restricting municipal competition in provision of broadband services
 - If FCC affirmed, may assist muni entry elsewhere



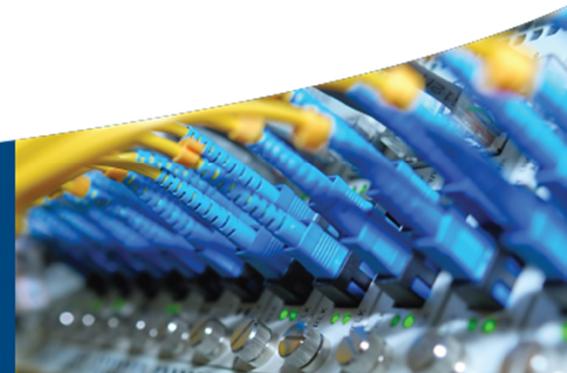
Key Cases To Watch (cont'd)

- **Franchising - *Montgomery County Md. v. FCC* (6th Cir.)**
 - Appeal of FCC 2nd Order and Recon Implementing Section 621
 - Currently held in abeyance
 - May Decide:
 - Can operators treat value of free services to schools as a franchisee fee?
 - Are localities limited to regulating “cable services” in cable franchises?
 - Are level playing field clauses enforceable?
- **Franchise Fees - *City of Eugene v. Comcast of Oregon II, Inc.* (Or. Sup Ct)**
 - Under state law, Eugene charges RoW fee, cable franchise fee, and “registration” fee
 - Appeal upheld RoW fee on Internet service
 - Comcast claims Cable Act preempts



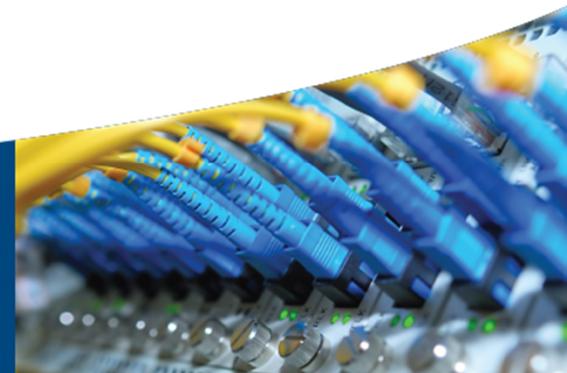
Key Cases To Watch (cont'd)

- **Rate Regulation: *NATOA et al. v. FCC*, (D.C. Cir.)**
 - Appeal of *FCC Order Concerning Effective Competition*
 - Order effectively deregulated rates even where cable operators do not face effective competition
 - Petitioners challenge FCC's adoption of presumption that cable operators are subject to effective competitions in franchise areas
- **Broadband: *Cox Communications v. Tempe*, U.S.D.C. Az**
 - Under local ordinance, Google Fiber is not classified as cable operator, like Cox, and is therefore exempted from certain regs
 - Cox claims, inter alia, Tempe is violating first amendment and equal protection by providing favorable permitting to Google Fiber



SUMMARY

- Expect court decisions in the coming year on significant components of Wheeler agenda
- FCC confirmations pending (O’Rielly confirmed for add’l 5 years but Rosenworcel held up likely until after the election)
- Proactive approach can impact policy, by participating in major cases and shaping legislative agendas



Questions?



Gail A. Karish

Gail.Karish@bbklaw.com

Best Best & Krieger
300 South Grand Avenue
25th Floor

Los Angeles, CA 90071

Tel: (213) 617-8100

Fax: (213) 617-7480

Website: www.bbklaw.com

