

MuniWireless

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Key Legal Issues For Successful WiFi Projects

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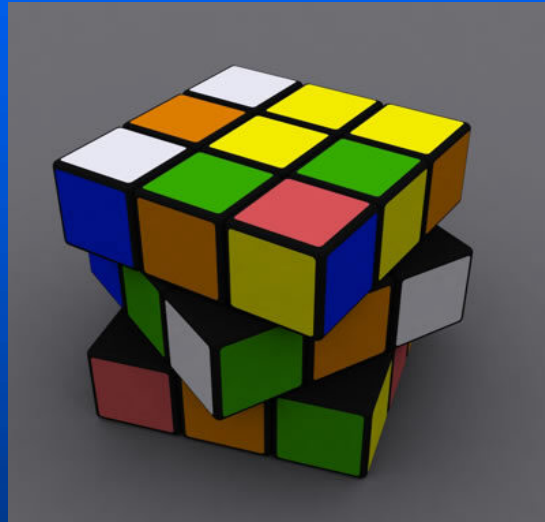
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Jim Baller

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The Big Picture



Overview

- Authority Issues
- Key Federal Classifications
 - Definitions
 - Implications
- Public Involvement Models and Structures
- Infrastructure Issues
- Other Significant Legal Issues

Authority Issues

Barriers v. Authority

Federal law encourages, but does not authorize

Public entities must have state/local authority

- State laws, interpretations, procedures differ widely
- Dillon's Rule v. Home Rule
- Service-by-service (cuts both ways)

Charters, ordinances, finance laws and instruments, pole agreements, franchises, contracts, tax issues, etc.

State Barriers To Public Entry

Nixon v. Missouri Municipal League

State barriers by end of 2004

- AR, FL, MN, MO, NE, NV, PA, SC, TN, TX, UT, VA, WA, WI

State battles in 2005

- CO, FL, IA, IL, IN, LA, MI, OH, OR, NE, TN, TX, VA, WV

State battles in 2006

- IN, TN, LA

Pro-Municipal bills:

- LA, PA, NH, others

No nation has ever litigated its way
to greatness.

-- Richard Lamm

Typical Cases 2005-06

Bristol, VA

Lafayette, LA

Lebanon, OH

Portland, OR

North Kansas City, MO

Reedsburg, WI

Truckee-Donner PUD, CA

UTOPIA, UT

Federal Legislation

House

Sessions → X
(5-26-05)

Barton (COPE)
(6-8-06)

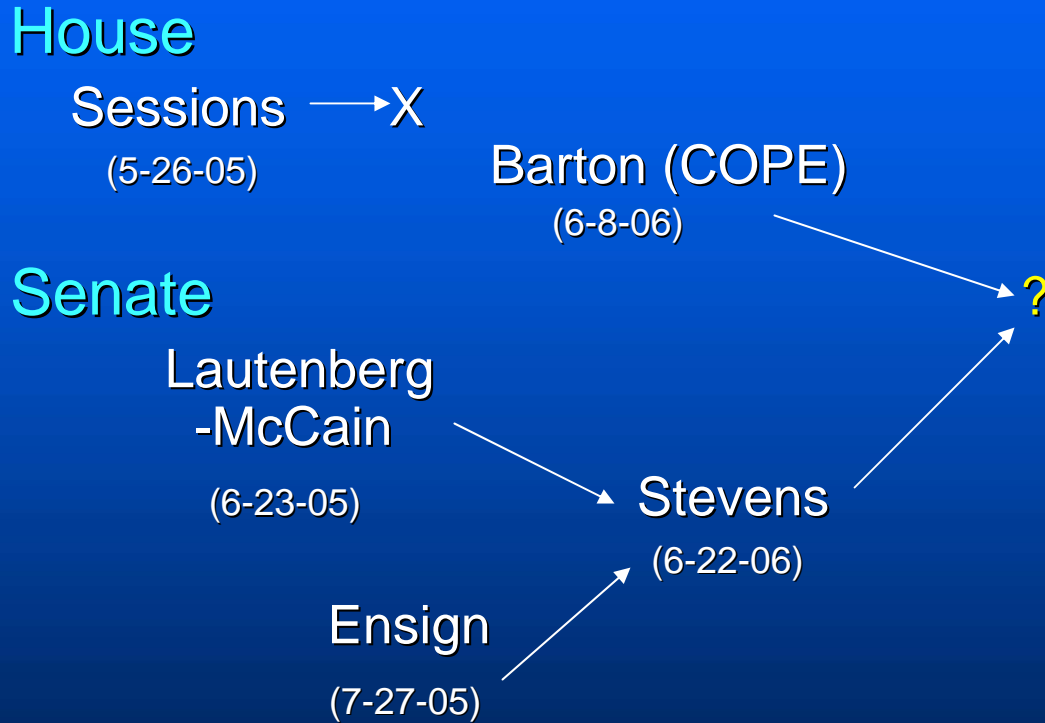
Senate

Lautenberg
-McCain
(6-23-05)

Ensign
(7-27-05)

Stevens
(6-22-06)

?



Key Classifications

Communications Act “Silos” in Face of Convergence

- Title II – Telecom Common Carriers
- Title III – Wireless (radio, cellular, PCS, etc.)
- Title VI – Cable Services
- Unregulated – “Information Services”
- “IP-Enabled Services” (e.g., VoIP, IPTV, etc.) ?

Implications – “Telecom Service”

Telecom Act allocated benefits and burdens via definition of “telecommunications service”

- **Burdens:** common carrier rules (e.g., registration, reporting, customer service, complaints, etc.), interconnection, handicapped persons, universal service contributions, pole attachments, privacy, ...
- **Benefits:** Interconnection, collocation, wholesale unbundled network elements, pole attachments, universal service subsidies, ...

Implications – “Cable Service”

Title VI of Communications Act and Copyright Act

- **Burdens:** (e.g., cable franchise, federal registration, reporting, customer service standards, technical standards (e.g., signal leakage); reporting and compliance with Copyright Act
- **Benefits:** No common carrier requirements; no universal service payments, and some subsidies available; access to pole attachments at preferred rates

Implications – “Information Service”

- Very few applicable federal or state rules
 - **Burdens:** Some CALEA (*ACE v. FCC*); Universal Service? Taxes?
 - **Benefits:** Few traditional benefits, but many federal or state grants, loans, other benefits encourage broadband deployment
 - **Challenges:** Pole attachments

What's What Today?

FCC Rulings

Internet Access

- *Cable Modem Ruling* (Upheld in *Brand X*)
- *DSL Order* + Internet Policy Statement

IP-Enabled Services

- VoIP: *Pulver, AT&T, Vonage* (preemption only)
- IP-Enabled Services Proceeding

CALEA Order (upheld in *ACE v. FCC*)

Other Decisions

- AT&T Project Lightspeed cases -- Walnut Creek
- Connecticut CPUC IPTV ruling

Net Neutrality

How did we get here?

- Larry Lessing, Michael Wu, CBUI, et al.
- Michael Powell's VON speech "Four Freedoms"
- FCC's *Madison* decision
- *Brand X* case / DSL Order (incl. policy statement)
- AT&T's Ed Whitacre put the issue on map

What exactly is "net neutrality"?

Users v. Providers

Congress

- Barton Bill
- Stevens Bill

Public Involvement Models

Local “hats”: User, facilitator, aggregator, lessor, seller

Services: Voice, video, data, security, safety, etc.

Roles: Infrastructure (e.g., poles, dark fiber, towers); self-provisioning; wholesale; retail; mixed ...

Organizational Structures:

- Branch of local government
- Board, authority or commission (~independence?)
- “Partnerships” -- public/public or public/private
- Non-profits (§ 501(c)(3)) or co-ops (§ 501(c)(12))
- Other models

Infrastructure Issues

What does the locality bring to the table, and how?

- Pole attachments
 - Who owns or controls poles, light standards?
 - Who has attachment rights? What are they?
 - Applicable law? Agreements? Franchises?
 - Dozens of technical issues
- Towers, buildings, other public facilities
- Public Rights of Way

Must comply with all applicable federal, state and local non-discrimination, procedural, and procurement rules

Other Important Legal Issues

- Privacy
- Copyright and Other Usage-Related Issues
 - DMCA, DRM, Defamation, etc.
- Health effects of radiofrequency radiation
- First Amendment (Adult content, COPA, ...)
- Service-related Issues (quality of service, outages, interference, bankruptcies...)
- Competition issues (antitrust, unfair competition...)
- Personal injuries and torts
- Tax issues
- Many other legal issues...



Questions?

Baller the Barbarian