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Workshop on New Developments
In Communications Law

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Overview

- **The Big Picture** – Public Broadband and a National Broadband Strategy
- **Services in Transition** – IP-Enabled Services and DTV
- **Competition** – Access to Content and Customers
- **Infrastructure** – Poles, Towers, and Tunnels
- **Privacy, Law Enforcement, and Property Rights**
– CALEA, CPNI, Copyrights
- **Other Issues** – Universal Service, E911, etc.

Barriers To Public Entry

Nixon v. Missouri Municipal League

State “barriers” today: AL, AR, CO, FL, LA, MN, MO, NE, NV,
PA, SC, TN, TX, UT, VA, WA, WI

15-1-2 in State battles in 2005-07

Federal measures

S.1821 – Lautenberg-Smith-Kerry-McCain-
Snowe-McCaskill-Stevens-Inouye

H.R.3281 - Boucher-Upton

What's Really at Stake – America's Global Competitiveness

- Much of what we do at work, at home, and at play will increasingly be done through broadband, at much faster speeds than today
- World economy is growing interconnected and “flat”
- We are going to lose most of our manufacturing jobs to China, India, and other low-cost nations
- Our best hope: prepare our communities and population ASAP for high-tech, info-based jobs
- **Critical need: a national broadband policy to promote prompt, affordable, and ubiquitous access to advanced communications networks**

America's National Broadband Policy



Source: Gary Bolles

So, How Are We Doing?

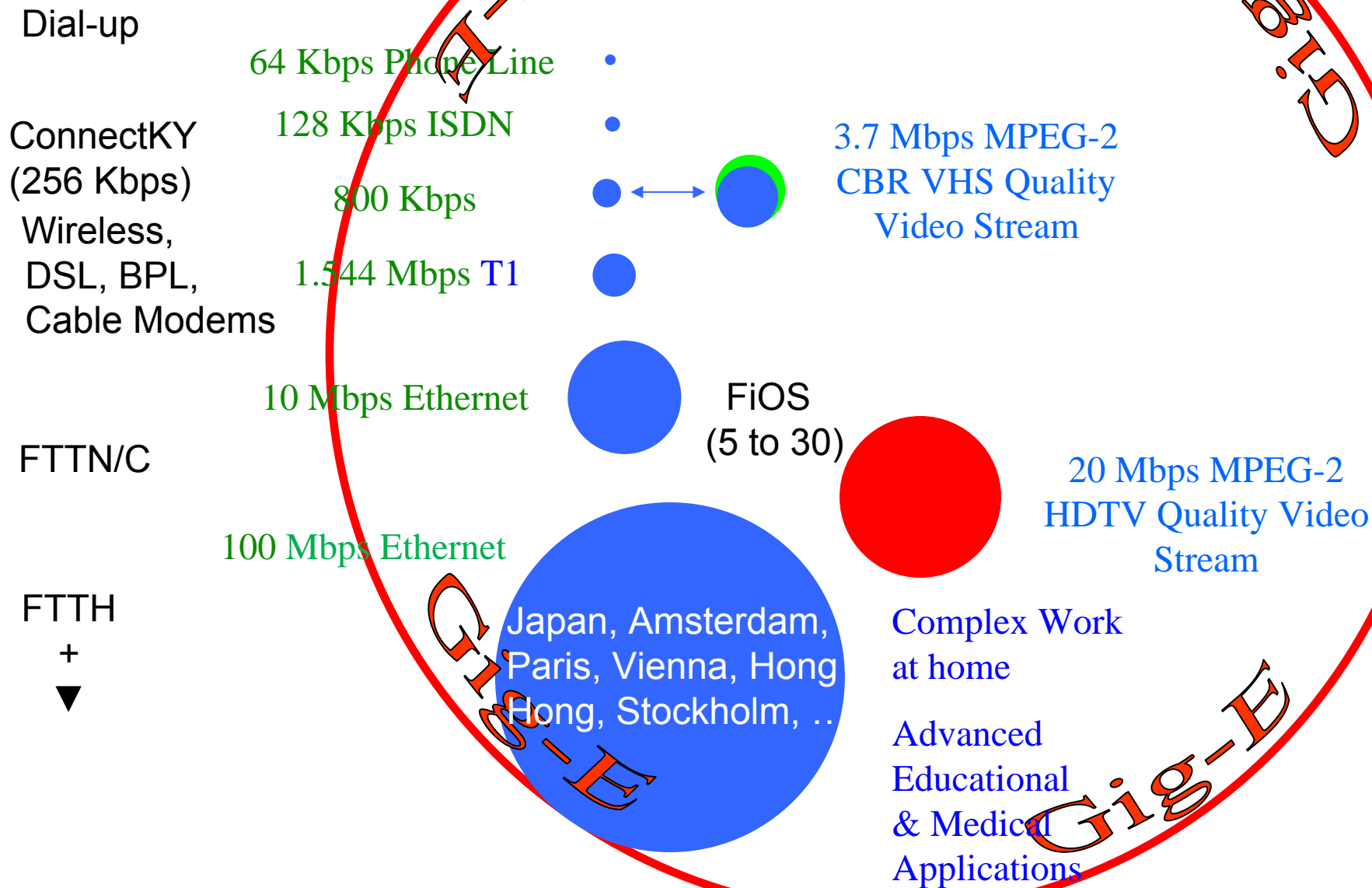
“America's record in expanding broadband communication is so poor that it should be viewed as an **outrage** by every consumer and businessperson in the country. Too few of us have broadband connections, and those who do pay too much for service that is too slow. It's hurting our economy, and things are only going to get worse if we don't do something about it.”

FCC Commissioner Michael Copps
Washington Post, January 8, 2007

“Broadband” in the United States

- FCC defines “broadband” as the capacity to transmit 200 kilobits/second in one direction – ridiculously low
- US currently has about 65 million broadband lines, tops in the world, but China will soon overtake us
- FCC pretends that everyone in 99 percent of US zip codes now has access to broadband – but everyone knows that this is indefensible
- FCC’s flawed assumptions and practices under review in FCC rulemaking, subject to Markey and Inouye bills

Broadband Comparisons



US Broadband Compared to Other Nations

Broadband lines as **US 1st in 1990s** ↓ **4th in 2001** ↓↓
% of Population: **10th in 2004** ↓↓↓ **15-24th now**

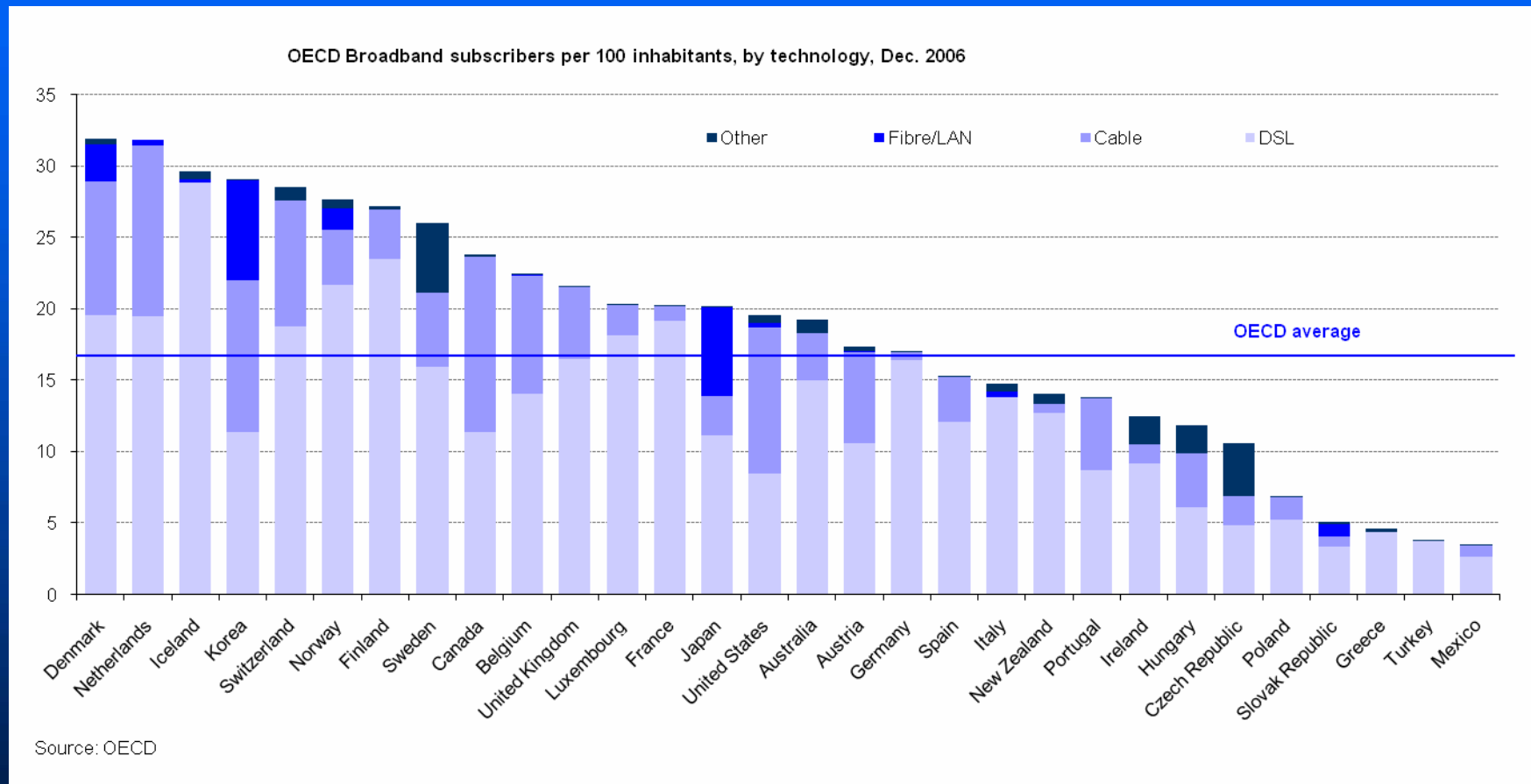
Average Speed (15th): US: 1.97 Mbps Japan: 61 Mbps

Price/Mbps (13th): US: \$3.18 Japan \$0.22

In short, Americans get less than 1/30 the bandwidth that the Japanese do and pay more than 20 times as much.

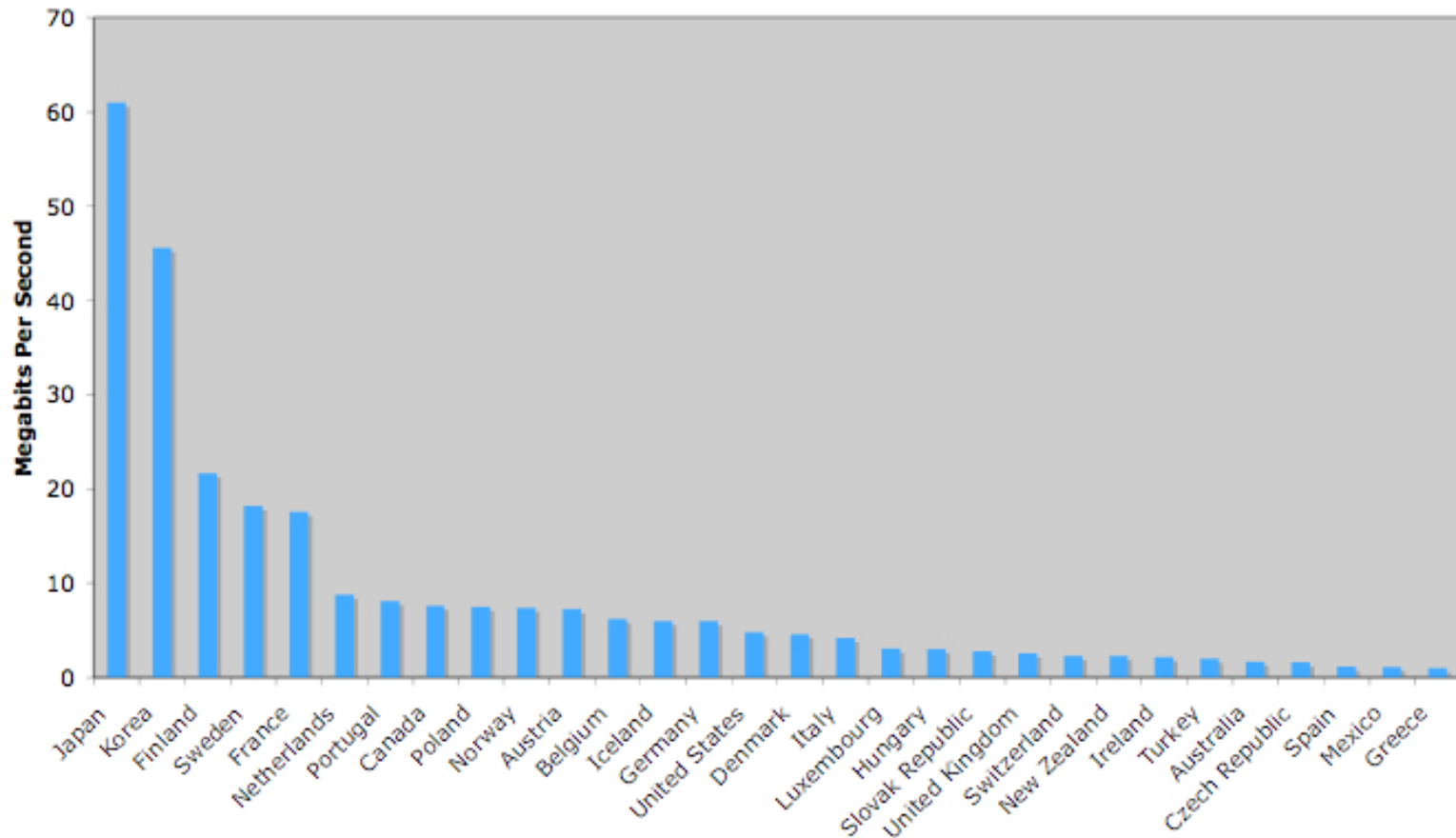
More details follow

Broadband Subscribers/100 Inhabitants (as of December 2006)



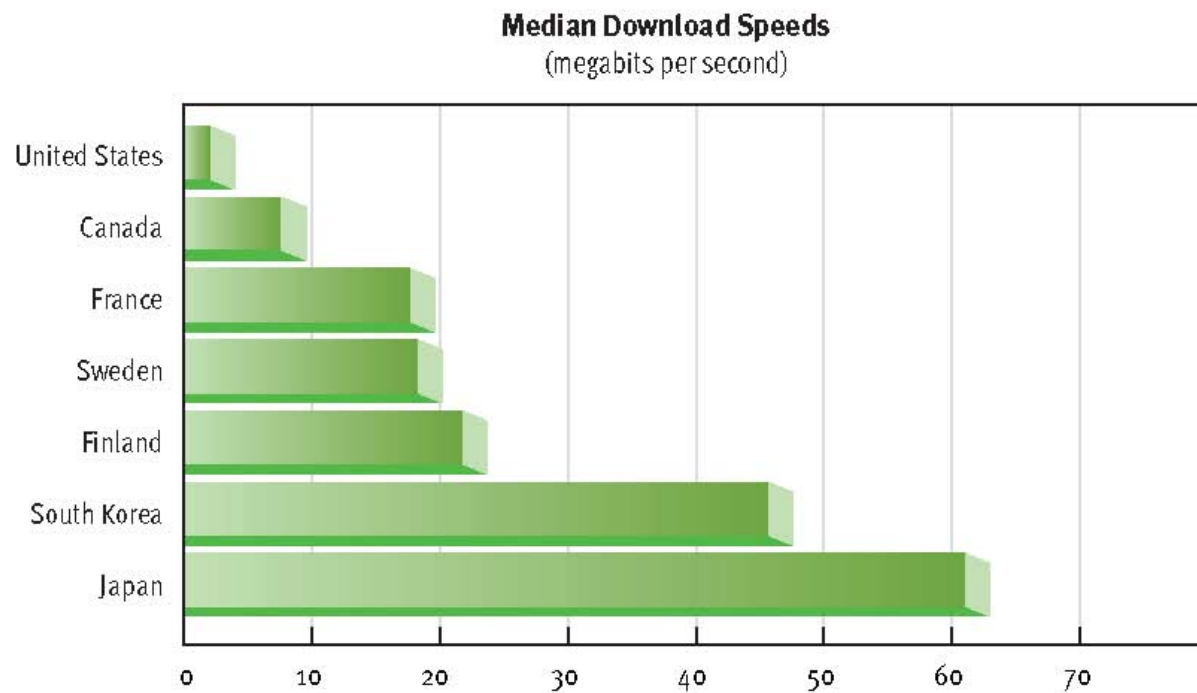
Source: OECD

Average Broadband Speed by Country



Source: Information Technology and Innovation Foundation

U.S. Internet is Far Behind the Rest of the World



Source: International data from the Information Technology and Innovation Foundation;

US data from speedmatters.org test results. Most test participants had DSL or cable modem connections.

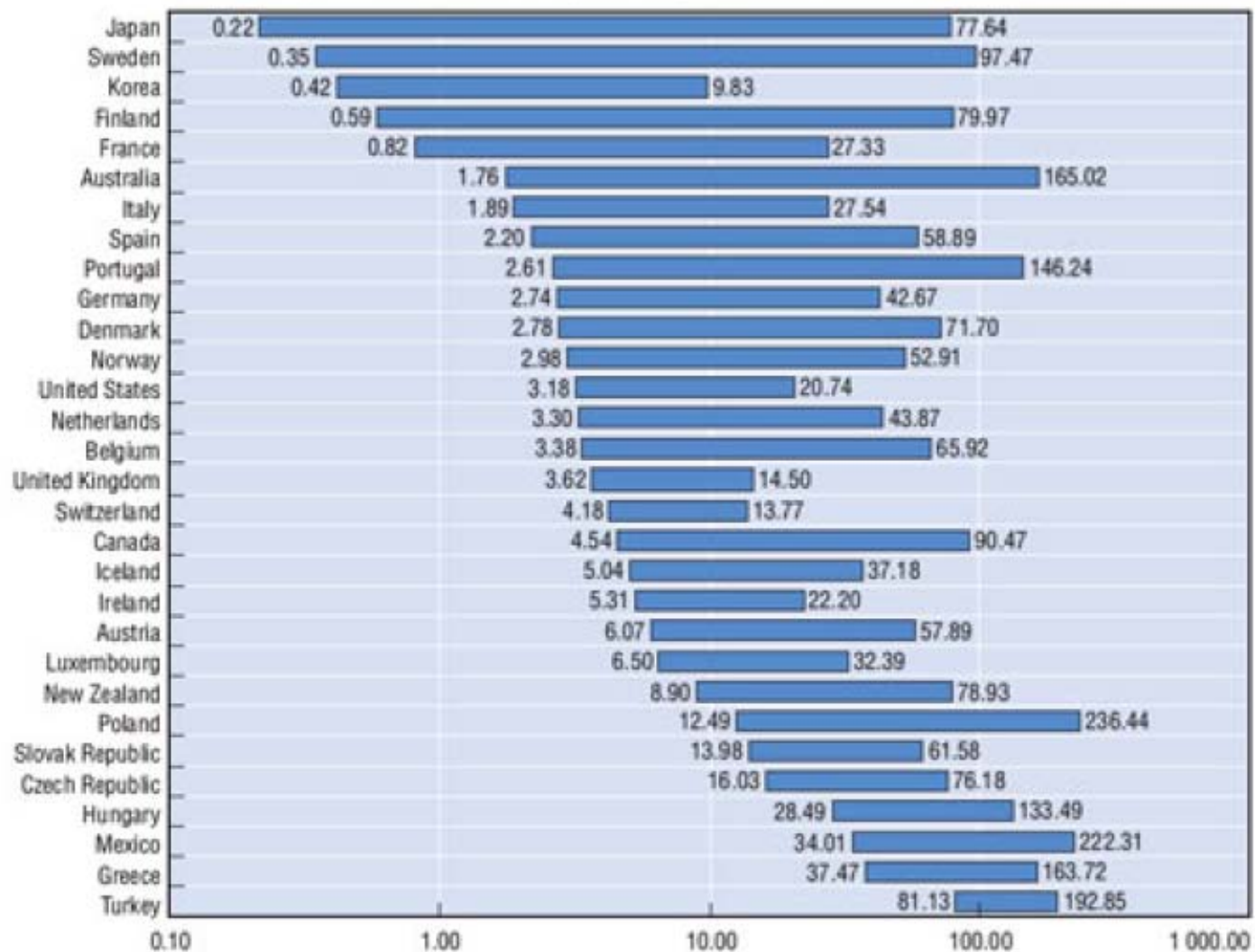
Source: CWA, Speed Matters

Population Density Excuse Doesn't Hold Up

Country	Average Data Speed (Mbps)	Population/ Square Km	World Rank in Density
South Korea	45	480	19
Japan	61	339	30
France	17	89	110
United States	1.9	31	172
Sweden	18	20	185
Finland	21	15.5	190
Canada	7.6	3.2	219

Source: Wikipedia

Range of broadband prices per Mbit/s, October 2006, USD PPP



Source: OECD Communications Outlook 2007

Fiber Service in Paris

For € 29.99 / month (~\$41) a subscriber can get --

- 100 Mbps download, 50 Mbps upload
- Unlimited calls to fixed lines throughout France and to many other countries
- More than 100 TV channels and High Definition (HD) channels on two televisions
- Various free equipment options

Hong Kong Broadband Network v. Verizon FiOS

Hong Kong BB Network

5 Mbps	Not available
10 Mbps	Not available
25 Mbps	?
100 Mbps	\$48.50/mo
200 Mbps	\$88.20/mo
1000 Mbps	\$215.40/mo

Verizon

5/2 Mbps	\$39.99/mo
15/2 Mbps	\$49.99/mo
30/5 Mbps	\$179.99/mo
100 Mbps	Not Available
200 Mbps	Not Available
1000 Mbps	Not Available

Opponents: Why Municipalities Are Horning In

- So they can “use cut-throat means in an effort to establish marketplace monopolies”
- So they can “recklessly undercut incumbent providers in hopes of forcing them to capitulate and leave the market place”
- So they can “snuff out the prospects for real competitive benefits for consumers”
- So they can fulfill “self-centered goals – fattening pay-checks, collecting political chips, and saving their jobs”

Source: *WiFi Waste: The Disaster of Municipal Communications Networks* (Feb. 2007)

The Real Drivers

- Economic development
- Educational and occupational opportunity
- Public safety and homeland security
- Digital equity
- Local, regional, and global competitiveness
- Affordable modern health care
- Reduced traffic and environmental burdens
- Cultural enrichment
- Control own destiny
- Quality of life

Key Shortcomings of Opponents' Arguments

- “Studies” contain many significant errors and omissions, dubious analytical methods, flawed conclusions, and harsh rhetoric reflecting strong bias
- Studies acknowledge significant data gaps but still draw preconceived negative conclusions
- Studies focus on early years, when costs high and revenues just beginning to grow – **all capital-intensive projects lose money during their early years, whether public or private**
- Studies selectively apply private-sector criteria to public projects, while ignoring indicia of success (e.g., EBITDA)
- Studies ignore **huge non-fee financial benefits** to community

The Myth of Municipal Cross-Subsidies

- For legal and political reasons, municipalities rarely engage in cross-subsidization – would be very visible
- Private entities routinely cross-subsidize broadband on a massive scale

“Telco TV providers might not break even, on an annual basis, for 10 to 15 years, says Albert Lin, an analyst at American Technology Research.”

- Telcos use telephone and wireless revenues to X-Sub
- Cablecos use cable television revenues to X-Sub
- Companies don't ask phone, wireless, or TV subs
- Cablecos also often engage in cross-market predatory or discriminatory pricing

Is Municipal Wireless Dead?

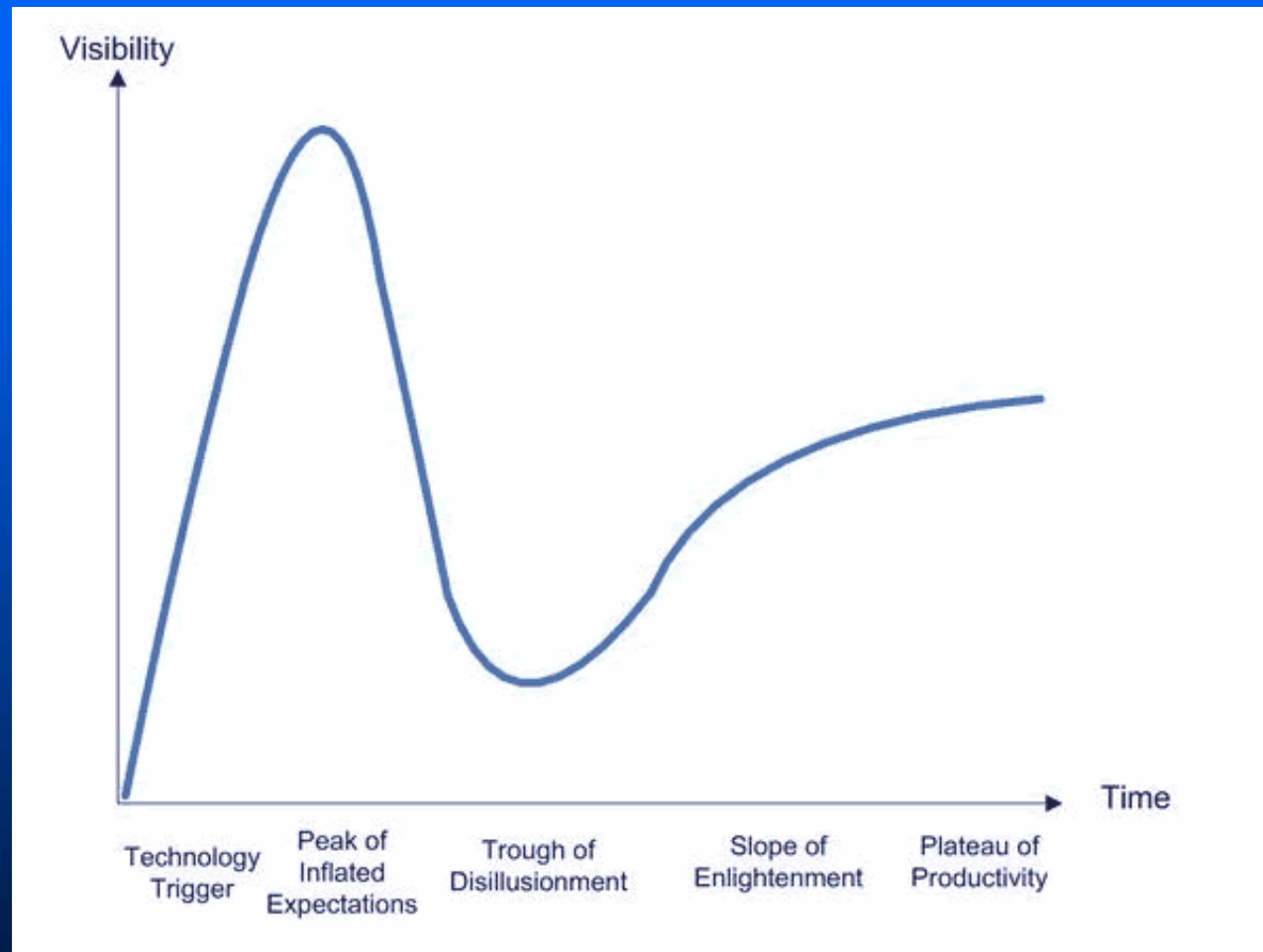
Opponents

- EarthLink and others in big markets are backing out
- Cost and time-to-market higher than expected
- Take-rates lower than projected for paid services
- Private sector is improving services, dropping rates
- Wireless has insufficient bandwidth for today, future
- Won't penetrate to interiors

Supporters

- Media overreacting – again
- Only “free lunch” models failing
- For most localities, “free lunch” was never an option
- Key drivers still there (last slide)
- “Anchor tenancy” to reduce risks
- Ways exist to increase take-rates
- For some localities, wireless is the only option, or a key option
- Some consultants advise focusing solely on municipal uses

The Gartner Group's "Hype Cycle"



SOURCE: The Gartner Group via Gary Bolles

IP-Enabled Services

- Traditional “Silos” – Telecom, Cable, Radio, CMRs, “Enhanced” or “Information”
- Convergence – technology, business models, etc.
- Internet access service
 - FCC Cable Modem Declaratory Ruling (upheld in *Brand X*), FCC Wireline, BPL, Wireless rulings
 - **Beware: Bundled v. pure transport service (more later)**
- VoIP
 - FCC’s *Pulver*, *AT&T*, *Vonage* rulings, IP-Enabled Docket
 - Interconnected VoIP obligations -- E911, Universal Service, CALEA, CPNI, and capabilities for people with disabilities
- IPTV
 - AT&T “U-Verse” litigation in CA, IL, CT

The DTV Transition

- Background
- Converter box separation issues
 - July 1, 2007 – Compliance deadline
 - Comcast waiver denied
- FCC's Recent DTV Order
 - DTV transition deadline February 16, 2009
 - Post-deadline analog obligations for 3 years
 - Cable operators can “downconvert” analog signals
 - Case-by-case exceptions for small cable systems
- NTIA coupon and educational programs

Access to Content

- Video Programming From Broadcasters
 - Must Carry/Retransmission Consent/Network Non-Duplication
 - No “dual must carry”
 - “Good Faith” negotiations
 - FCC rejects ACA petition
- Video Programming From Satellite Distributors
 - Exclusive contract rules extended 5 years
 - NPRM: terrestrial loophole, tying arrangements, shared headends, security measures, etc.
- NCTC “Moratorium”

Access to Customers

- FCC Rulemaking on exclusive agreements at MDUs and other multi-resident real estate developments
 - Key stakeholders: Incumbent cable operators, new entrants, developers, MDU owners
 - Focus on exclusive service agreements, but also other forms of exclusivity
 - Possible exemptions
 - The “buzz” in Washington
- *Marco Island Cable v. Comcast*
 - Federal jury: deceptive and unfair trade practices
 - Wide range of anticompetitive practices surrounding inside wiring

Infrastructure Issues

- Poles, ducts, conduits, rights of way
- Towers
- Street lights and traffic signals
- Tunnels, rooftops, and other facilities

Public Power Exemption -- “Utility”

- The term "utility" means any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include...any person owned by...any State.”

“The term "State" means any State . . . or any political subdivision, agency, or instrumentality thereof.”

47 U.S.C. §§ 224(a)(1),(a)(3).

Historical Background of FCC Rules

- Before 1978 -- telephone and electric utilities
- The federal Pole Attachment Act of 1978
 - Cable only
 - No access -- just price, terms and conditions
 - Exemption for municipals, coops and railroads
- FCC decisions in the 1970's and 1980's
- State preemption and other actions
- The federal Telecommunications Act of 1996 adds access requirements and telecom carriers, and continues municipal exemption

General Duty to Provide Access

“A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.”

“ [A] utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.”

47 U.S.C. §§ 224(f)(1), (f)(2).

Implications of the Municipal Exemption

- Municipals are not subject to federal **access** rules
- Municipals are not subject to federal **rate requirements**, including distinctions among providers and time periods
- Municipals are not subject to federal **procedural requirements**
 - timing and content of responses to requests for access
 - 60-day written notice of changes
 - complaint processes

Section 253 -- Ban on Barriers to Entry

“(a) In General.--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.”

“(c) State and Local Government Authority. -- 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.”

Implications of Section 253

- Section 253(a) can be read to prohibit municipal entities from demanding unjust, unreasonable or discriminatory terms or conditions that have effect of a barrier to entry
- Section 253(c) literally imposes no affirmative duties, but cases and FCC orders have read it that way
- Legislative history and several recent cases say that “non-discriminatory” does not mean “equal”
- **CONCLUSION:** municipal entities have substantial flexibility but cannot discriminate unreasonably

Other Potentially Relevant Requirements

- State statutes and public service commission rulings, especially in states that have preempted federal authority to regulate pole attachments
 - Note state laws on municipal entry (e.g., Virginia)
- Local ordinances, franchises and charters
- Existing pole use agreements
- Imputation requirements for municipal utilities that provide telecommunications services.

Federal Access Requirements

- Not a comprehensive regime of rules
- 5 specific rules plus guidelines and presumptions
- Procedures for requests, responses and dispute resolution
- Enforcement through complaint process
- FCC ongoing monitoring

The FCC's Five Access Rules

- 1 FCC will recognize industry standards -- e.g., NESC
- 2 FCC will honor federal requirements -- e.g., FERC, OSHA
- 3 FCC will defer to State requirements
 - Where State has preempted, FCC has no authority
 - Where not, federal guidelines will control, but only if a direct conflict exists
- 4 All terms and conditions must be non-discriminatory
- 5 A utility may not favor itself

Access -- Guidelines and Presumptions

- Capacity expansion
 - Need not expand capacity to meet needs of third parties if no such need for utility itself
 - utilities must explore potential accommodations in good faith
- Reservation of space
 - only for core electric service, pursuant to “bona fide plan”
 - must make reserved space available until needed
 - when need space, can get it back or require payment for expansion
- Threshold for access duty
 - if any facilities available to third parties, all facilities available
 - if use any wire communications, including for electric service, open all poles, conduits, ducts and ROW to access by third parties

Guidelines and Presumptions (Continued...)

- **Non-electric utilities**
 - exception for capacity, safety. . . does not apply only to “electric” utilities
- **Property rights**
 - utility need not exercise available eminent domain rights on behalf of third parties
- **Safety considerations**
 - cannot insist on using own workers, but can require that attacher’s workers meet same training standards as electrical workers

Modifications to Facilities

- **Timing and Manner of Notice** -- absent private agreement or emergency, 60 days written notice
- **Allocating Costs of Modifications and Maintenance**
 - initiating party pays all costs unless others join
 - if others join, base allocation on proportion of new space occupied
 - “piggybackers” must pay proportionate share
 - paying parties can recover from subsequent attachers
 - owner keeps additional revenues from excess capacity

Overlapping

- Host and third-party overlapping must be permitted, subject to safety, reliability and engineering constraints
- Utilities should handle additional burdens through standard engineering practices
- Overlap **is not** an additional attachment
- Overlap by either host or third party presumed to share one foot of host's space for purposes of allocating costs of usable space
- **No additional attachment fee for overlapping**

Federal Rate Requirements

- Rules apply only when negotiations fail
- Telecom Act distinguishes by:
 - **Types of providers** (e.g., cable system, telecom carrier) but not between technologies (wire and wireless)
 - **Types of facilities** -- poles, conduits, ducts, ROW
 - Rate formulas generally apply only to traditional poles and conduits, NOT to streetlight poles, light standards, traffic lights and booms, rooftops, steam tunnels, etc.
 - **Types of space** -- usable or unusable
- Rules rely heavily on rebuttable presumptions

What Formulas Apply?

- Cable systems that use pole attachments “solely to provide cable service” remain subject to the Section (d)(3) cable formula
- Telecom carriers and cable systems that provide telecom services are subject to new “Section (e)(1)” formula
- Cable systems do not lose the benefit of the cable formula by providing information services, including Internet access
- Cable systems do not lose the benefit of the cable formula if they lease “dark fiber,” unless the fiber is used to provide telecom service

The Section (d)(3) Cable Formula

Maximum Rate =

$$\frac{\text{Space occupied by CATV}}{\text{Total Usable Space}} \times \text{Net Cost of Bare Pole} \times \text{Carrying Charges}$$

Key Assumptions and Definitions

- Average height of pole is 37.5 feet
- Average usable space is 13.5 feet
- Cable attachment occupies 1 foot
- 40” clearance between electric and communications space charged to electric utility
- “Net cost of bare pole” calculated by formula in Appendix B to FCC R& O, 2 FCC Rcd 4387 (1987)
- “Carrying charges” are expenses of owning and maintaining poles without pole attachments, including administrative, maintenance and depreciation expenses, a return on investment, and taxes

The Section (e)(1) Telecom Formula

Maximum Rate = Unusable Space Factor + Usable Space Factor

Unusable Space Factor =

$$\frac{2}{3} \times \frac{\text{Unusable Space}}{\text{Pole Height}} \times \frac{\text{Net Cost of Bare Pole}}{\text{Number of Attachers}} \times \text{Carrying Charge Rate}$$

Usable Space Factor =

$$\frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}} \times \frac{\text{Total Usable Space}}{\text{Pole Height}} \times \text{Net Cost Bare Pole} \times \text{Carrying Charge Rate}$$

Additional Assumptions for Allocating Unusable Space

- Attaching entities include all providers of cable or telecom services, including pole owners, ILECs and government entities
- Each attacher uses same amount of space, regardless of number, size, location of attachments
- Each utility can calculate presumptive average number of attaching entities for rural, urban or urbanized areas, based on U.S. Census Bureau definitions
- If lease of “dark fiber” to third party results in provision of cable or telecom service, Section (e)(1) formula applies

Wireless Attachments

- Supreme Court has confirmed that pole attachment rights extend to wireless “telecommunications service” providers
- FCC has not established rates but assumes use of reasonable market rates (Philadelphia Electric case)
- Retail WiFi generally not a “telecommunications service” but if transmission is offered on a wholesale, non-discriminatory basis similar to common carrier service, provide may be a “telecommunications carrier” entitled to pole attachments
- Power issues (metered v. bulk, 24/7, “bank switched,” etc.)

Broadband over Powerlines

- FCC has held that it is an “information service”
- No attachment rights, as it not a “telecommunications service”
- If voluntary access, rate just for physical attachment to pole?
For share of wire?
- Cost allocation issues?

Opportunity to Take “High Ground” Confirmed in Seattle Case

- City exempt from federal law; subject only to state’s “just, reasonable, nondiscriminatory and sufficient” rates
- City can apply single formula for cable and telecom
- City can implement rate increases immediately
- City does not have to apply 2/3 limit for unusable space
- City can allocate “direct space” by usage (cable 1 foot, telephone 2 feet, electric utility the rest)
- City can allocate “support” space (including 4-foot safety clearance) per capita

TCI Cablevision of Washington, Inc. v. City of Seattle, No. 97-2-02395-5SEA (Super. Ct. for King Cty. , WA, 5/3/98)

APPA Model Agreement

- Attempt to balance need of all stakeholders
- Single uniform rate for all attaching entities
- Allocate 40" inch safety space to non-usable support space to all pole users on a per capita basis
- Up to date engineering
- Electronic rate calculator
- Can make adjustments based on degree of risk aversion

Negotiating New Agreements

- Check state law
- Review existing agreements to determine timing and process for termination
- Is agreement standard pole agreement? joint use? joint ownership? Combination?
- Develop draft
- Provide notice of termination and desire to negotiate new agreement
- Negotiate individually vs. ordinance or rule

Privacy, Law Enforcement, and Property Rights Laws

Selected Federal Laws

1. Communications Act
 2. Electronic Communications Privacy Act
 - Wiretap Act, Stored Communications Act, Pen Register Act
 3. Foreign Intelligence Surveillance Act
 4. **Communications Assistance for Law Enforcement Act**
 5. USA Patriot Act
 6. Cable Communications Policy Act
 7. ECPA: Stored Communication Act “Basic Subscriber Information”
 8. **Telecommunications Act and CPNI**
 9. Children’s Online Privacy Protection Act
 10. Child Protection and Sexual Predator Act
 11. **Digital Millennium Copyright Act**
 12. Communications Decency Act
 13. Video Privacy Protection Act
 14. Fair Credit Reporting Act
 15. Gramm-Leach-Bliley Financial Modernization Act
 16. Privacy Act
 17. Freedom of Information Act
 18. Health Insurance Portability and Accountability Act
- State Counterparts and other enactments**

Communications Assistance to Law Enforcement Act of 1994

When law enforcement agencies make lawful requests, entities subject to CALEA must provide assistance in:

- expeditiously **isolating** and enabling the government to **intercept** all wire or electronic communications to, or from, a subscriber, to the **exclusion of other communications**;
- accessing **call-identifying information** reasonably available to the carrier, before, during or after transmission of a wire or electronic communication and in a manner that allows it to be associated with the relevant communications;
- delivering intercepted communications and call-identifying information in a **format** that may be transmitted to a location other than the premises of the carrier;
- and in a manner that **protects privacy and security** of communications not authorized to be intercepted, and information regarding **the fact of the surveillance**.

CALEA (continued)

- Compliance Deadline: May 14, 2007
- Fines: up to \$10,000/violation/day
- Applies to all facilities-based providers of (1) Internet access or (2) “interconnected VoIP,” via any technology, and includes **BOTH** common **AND** non-common carriers (via “substantial replacement provision,” Sec. 102(8)(B)(ii))
- **No** exceptions per se for small providers, wholesale providers, free vs. fee, lack of knowledge of, or access to, customer information, etc.
- Very limited exemptions (details follow): (1) “information service;” (2) private networks; and (3) interconnection

CALEA (continued)

“Information service” exemption:

- Virtually same definition as in Communications Act, but narrower FCC interpretation upheld in *American Council on Education v. FCC*, 451 F.3d 226 (D.C. Cir. 2006)
- Exemption covers only information services that are **not integrated with transmission services**; i.e., only services such as e-mail storage functions, web-hosting, DNS lookup services are exempt
- “It is only the ‘switching and transmission’ component of [the facilities-based broadband] service that is subject to CALEA” *First Report and Order*, ¶13.

CALEA (continued)

“Private Network” Exemption:

- Exemption applies only to networks that enable a specific class of members “to communicate with one another and/or retrieve information from shared data libraries not available to the general public” See *Amer. Council on Educ. v. FCC*
- “To the extent...that these private networks are interconnected with a public network, either the [public voice network] or the Internet, providers of **the facilities that support the connection of the private network to a public network are subject to CALEA...**” *First R&O*, n.100.
- CALEA cannot be applied to internal portions of private networks

CALEA (continued)

“Interconnection” Exemption:

- CALEA exempts “equipment, facilities, or services that support the transport or switching of communications ... for the **sole** purpose of interconnecting telecommunications carriers” Section 103(b)(2)(B)
- Key question: Is there a “telecommunications carrier” on both sides of your transmission service?
- Presumably, “telecommunications carrier” defined broadly

CALEA (continued)

- Compliance Strategies:
 - “[U]nder section 103, a telecommunications carrier is entitled to implement whatever solution it believes best suits its network needs.” *Second Rept and Order*, ¶ 40
 - Industry standards and statutory “safe harbors”
 - Options
 - In house (e.g., Bristol)
 - “Trusted third party” (e.g., commercial, NoaNet)
 - “Just in time”
 - Section 109 petition for infeasibility exemption
 - Advice: (1) Get into compliance ASAP, (2) file System Security and Integrity Plan with FCC, (3) set up link to privacy counsel to enable prompt responses to requests from Law Enforcement

Customer Proprietary Network Information

- Section 222 of Telecom Act imposed the following general obligations on telecommunications carriers:

“Except as required by law or with approval of the customer [a telecom carrier] shall only use, disclose, or permit access to individually identifiable [CPNI] in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service . . .”

- FCC: “Practically speaking, CPNI includes personal information such as the phone numbers called by a consumer, the length of phone calls, and services purchased by the consumer, such as call waiting. Congress accorded CPNI – which includes personal, individually identifiable information – the greatest level of protection.” *Third CPNI Order*.

CPNI (Continued)

- In 1998, FCC issued first set of CPNI rules requiring customers to “opt in” before carriers could share or even use information for their own marketing; carriers successfully challenged rules under First Amendment
- In 2002, FCC revised rules to allow carriers to share CPNI with affiliates and third parties providing services to customers unless they “opt out”; for other sharing, affirmative “opt in” necessary
- In April 2007, FCC revised rules again in response to “pretexting”

CPNI (continued)

- April 2007 rules tightened CPNI protections:
 - Customer authentication requirements
 - Duty to notify of account changes, unauthorized disclosures
 - Opt-in for disclosures to independent contractors and joint venture partners
 - **Annual CPNI certifications**
 - Extended CPNI obligations to Interconnected VoIP
 - In enforcement cases, will presume unauthorized disclosures caused by lack of adequate diligence

Digital Millennium Copyright Act

- ISPs sometimes get caught between conflicting claims of their customers and copyright holders
- DMCA establishes immunities and safe harbors for ISPs based on their level of involvement (pure conduit, caching, hosting)
- For hosting, must post and comply with “takedown policy” and register with Copyright Office
- If follow procedures carefully, immune to suits by either customer (e.g., breach of contract) or copyright holder (e.g., contributory infringement)

State Privacy and Open Records Laws

- Many states mirror federal laws
- Wide variety of open records models
- Most states have presumption of openness and accessibility for “public records”
- What public entities and in what capacities are subject to such laws?
 - In some states, government entities acting in purely proprietary capacity are *not* subject
 - “State agency” / “political subdivision”
 - Receipt of govt. funds

State Laws (Continued)

- What material is subject to open records laws:
 - “Record” generally construed broadly
 - Electronic writings
 - In some states, limited to records of deliberation
 - “Draft” work product may or may not be subject
 - In others, mere possession by a qualifying entity
 - “Public record” probably does not include material produced *by* customers of municipally owned service provider (e.g., subscriber email)

State Laws (continued)

- Common Exceptions
 - Proprietary function
 - Competitive info, including customer databases, business plans
 - Certain RFP responses, pre-award
 - Critical infrastructure / CEII
 - Trade secrets
 - Security information
 - Personal privacy
 - Traditional privileges (attorney/client, etc)
 - Non-citizen requests

Universal Service Issues

- All providers of interstate “telecommunication service” must file reports (Forms 499A, 499Q) and contribute if owe more than *de minimis amount* (\$10,000/year)
- Providers of interstate “telecommunications” must file reports and contribute if owe more than *de minimis amount* (\$10,000/year)
- Contributions based on “end user revenues,” which includes retail customers and wholesalers (e.g., ISPs, cable companies) that do not make contributions
- Contribution factor about 11%, so obligations arise at about \$90,000 in “end user revenues”
- Stiff new FCC interest and penalty provisions for non-filing, non-payments, or underpayments

Other Issues?