

Iowa Association of Municipal Utilities

Ankeny, IA

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**Legal Solutions For Successful
Communications Initiatives**

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Part 3

Net Neutrality, Acceptable Use
Policies, and Other Key Issues

Overview

- Net Neutrality
- Acceptable Use Policies
- Predatory Pricing
- Targeted Rate Discrimination
- Access to content
- Access to customers
- Other issues

Net Neutrality

- How did we get here?
 - Michael Wu, Larry Lessing, et al.
 - Michael Powell's "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"?
- Where are we going?

Acceptable Use Policies

- Contract between provider and users
- Specifies kinds of lawful/unlawful uses
- Digital Millennium Copy Act
 - Register with Copyright Office
 - Put takedown policies on website
- Privacy Issues
- Website Issues

Predatory Pricing

- Formal definition:
 - Selling below average variable costs
 - Intent to drive out competitor
 - Ability to recoup
- Extremely difficult to prevail
- Scottsboro / MediaCom

Targeted Rate Discrimination

- “Winbacks” – both phone and cable companies do it
- Uniform Rate Requirement - 1992
 - Exception for “effective competition” - 1996
- FCC: a big problem, but we can’t solve it
- Publicity the best answer

Access to Content

- Cable-based programming
 - National Cable Television Cooperative
 - FCC Programming Access Rules
 - Exclusive contracts – terrestrial exception
 - VOD and other services?
- Broadcast-based programming
 - Must Carry / Retransmission Consent
 - Network non-duplication rules

Access to Customers (MDUs)

- Marco Island Cable v. Comcast
(unfair competition + antitrust)
 - “Door fees” to developers
 - Exclusive bulk agreements (100% take or pay)
 - Exclusive easements
 - Exclusive right to use inside wiring
 - Suits or threats to sue associations
 - Crews to pull inside wiring

Other Issues?