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How to Comply With Key  
Federal Regulatory Requirements

Jim Baller  
The Baller Herbst Law Group, PC  
Washington, DC  
(202) 833-1144  
[Jim@Baller.com](mailto:Jim@Baller.com)

Overview

- See BHLG memo for much more detail.
- Focus today: Federal *communications* compliance issues affecting *service providers*, as such
  - not requirements of general applicability
  - not BTOP requirements
  - not state law counterparts
  - not requirements other capacities
  - not requirements on *others* – poles, towers, content, programming, MDUs, etc.
- Approach:
  - Key classifications
  - Major requirements

Disclaimer

This presentation does not constitute legal advice and should not be interpreted as such.

For advice on federal, state or local law, please consult qualified legal counsel.

Key Classifications

- Communications Act and State counterparts
    - Separate “silos” for telecom, cable, wireless, and “enhanced” or “information services”
    - Each has its own history, policies, definitions, benefits, burdens, FCC rulings, court decisions, constituencies
  - Convergence: Technological + Corporate + Market
- For compliance, it's critical to know how an activity is classified for regulatory purposes.

### “Telecommunications”

“[T]he transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.”

47 U.S.C. § 153(43)

“Telecommunications” can be provided by *either* private carriers *or* common carriers.

### “Cable Service”

“The one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.”

47 U.S.C. § 602(6)

### “Telecommunications Service”

“[T]he offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.”

47 U.S.C. § 153(46)

“Telecommunications service”  $\equiv$  common carriage

### “Information Service”

“The offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications...”

47 U.S.C. § 153(20)

FCC: Telecommunications  $\Leftrightarrow$  Information Service = Information Service, which is generally *unregulated*.

### IP-Enabled Services?

- IP-Enabled Services – not yet classified (2004 docket)
- “Interconnected Voice over Internet Protocol”:  
“[I]nterconnected VoIP services include those VoIP services that: (1) enable real-time, two-way voice communications; (2) require a broadband connection from the user’s location; (3) require IP-compatible customer premises equipment; and (4) permit users to receive calls from *and* terminate calls to the PSTN”
- Internet Protocol Television: Not defined or regulated

### Registration Requirements

- FCC Registration Number (FRN)
  - Required to do business with FCC
  - <https://fjallfoss.fcc.gov/coresWeb/publicHome.do>
- Form 499 Filer ID
  - Entities that must file universal service Form 499-A (telecom, VoIP) (obtained after first 499-A filed)
  - <http://transition.fcc.gov/Forms/Form499-A/499a-2012.pdf>
  - Required for E-Rate SPIN
- USF Service Provider Identification Number (SPIN)
  - For E-Rate subsidies, file Form 498 [www.usac.org](http://www.usac.org)
- PSID / CUID
  - All new cable operators, for all new communities served, must file Form 322 online at <https://apps.fcc.gov/coins/>

### Application of Definitions

- *Intra*-governmental provisioning
- *Inter*-governmental provisioning
- Infrastructure leasing (e.g., poles, dark fiber, towers)
- Point-to-point data (“lit” or “dim” fiber)
- Transmission + Info Service = Info Service
- Telephony (“traditional” v. VoIP)
- Video (“traditional cable” v. SMATV v. IPTV)
- Emerging services (games, security, interactive, etc.)

### Construction and Discontinuance

- 47 U.S.C. § 214 requires all telecommunications carriers and I-VolP providers to obtain FCC approval before constructing, acquiring, operating, or extending a line that is interstate in nature or is a local, branch, or terminal line within a single state and is more than 10 miles in length
- Telecommunications carriers and I-VolP providers must also obtain FCC approval before discontinuing service:
  - Provide prior notice to all affected customers of its proposed discontinuances.
  - Submit a copy of the discontinuance application to the public utility commission and governor of the state of discontinuance as well as to the Secretary of Defense.

### "Broadband" Reporting

- Form 477 – Local Telephone Competition and Broadband Reporting
  - Who:
    - Local exchange carriers
    - Interconnected VoIP
    - Retail facilities-based broadband
  - "Broadband" begins at 200 kbps for reporting
  - Info on what types of services, number of connections, etc., by Census Tract
  - Deadlines: March 1, September 1

### Universal Service (continued 2)

- Filing and contribution obligations based on "end-user revenues" from sale of covered services
- "End-user" does not just mean a retail customer, but also any customer that does not contribute to the USF
  - Sellers of exempt services (Cablecos, ISPs)
  - Sellers subject to *de minimis* exemption
  - Sellers that do not make required payments
- Wholesalers can avoid liability on sales to resellers by maintaining information required by FCC
- Wholesalers can pass through USF contributions

### Universal Service Program

- Providers of interstate telecom, telecom service, or I-VoIP must file FCC Forms 499A and 499Q and must contribute to the USF and other universal service support mechanisms (TRS, LNP, NANPA)
- USF contributions can add 15-17% to costs, which can have major competitive impact
- Telecom vs. Telecom Service vs. I-VoIP
  - Affects when provider must register, file reports, and contribute to USF and other support mechanisms

### Universal Service (continued 3)

- *De minimis* exception
  - contribution/year < \$10,000 (~ \$58,824 @ 17%)
  - *De minimis* providers of telecom service and Interconnected VoIP must still file 499-A and contribute to TRS/NANPA/LNP
- Public Safety or Government Entities exception
  - "[A]ny entity providing interstate telecommunications exclusively to public safety or government entities who does not offer services to others."
- Self-service exception
  - "Government entities that purchase telecommunications services in bulk on behalf of themselves, such as state networks for schools and libraries."
- Intrastate service exception
  - Endpoints in same state and traffic 10% < interstate

#### Universal Service (continued 4)

- Forms 499A and 499Q are long and labor-intensive
  - Need to get internal or outside accountant involved
- Deadlines:
  - Form 499A: April 1
  - Form 499Q: Feb. 1, May 1, August 1, Nov. 1
- FCC's aggressive enforcement
  - The number of contributors is dropping while demand for subsidies is increasing
  - FCC demands back payments + interest + forfeitures
  - City of Manitowoc case

#### CPNI

- 47 C.F.R. § 222 requires providers of telecom service and I-VolP to safeguard Customer Proprietary Network Information (CPNI)
- CPNI includes phone numbers, frequency, duration, and timing of calls and any call services (e.g. call waiting) that a customer purchases
- Opt-in/opt-out customer approval for use of customer's individually identifiable CPNI for the purpose of marketing communications-related services to that customer

#### CALEA

- Communications Assistance for Law Enforcement Act requires facilities-based telecom carriers to adopt technical features that will enable them to assist law enforcement officials to execute promptly lawful interception orders
- Definition of "telecom carrier" is broader than under the Telecom Act and includes ISPs and I-VolP providers
- "Private network" and "Interconnection" exceptions
- Providers must file a compliance plan via FCC Form 445
- Potential fines of \$10,000/day for violating CALEA
- See <http://www.baller.com/calea.html>

#### CPNI (continued 2)

- Before use of CPNI, a provider must notify the customer of the customer's right to restrict use, disclosure, or access to customer's CPNI. Must maintain record of notification.
- A provider must properly authenticate a customer prior to disclosing CPNI.
- Providers must train their personnel as to when they are and are not authorized to use CPNI and must have an express disciplinary process in place.
- Providers must notify law enforcement of breaches.

### CPNI (continued 3)

- By March 1 each year, providers must file a certification of compliance signed by an officer setting forth the provider's procedures for protection CPNI. A FAQ and compliance form are available here: <http://goo.gl/LKdWc>
- Recent FCC enforcement actions -- \$20,000 fines for failure to file timely reports.

### Special Access Requirements

- Special access service encompasses all transmission services that do not use local switches. It offers a way for fiber networks to reach off-network sites. Fiber networks may also be providers of special access service.
- For years, the FCC regulated special access service provided by dominant local exchange carriers. In 1999, the FCC adopted a process to relax these requirements.
- In August 2012, the FCC suspended this process, finding that it was not working, and in December 2012, the FCC launched an inquiry to determine whether and to what extent special access rules may still be necessary.

### Accessibility Requirements

- 47 U.S.C. §§ 255, 716-718 require providers of telecommunications service, advanced communications services, I-VoIP, and equipment manufacturers to make changes to their services or equipment if they can "readily" make such services and equipment accessible to individuals with disabilities.
- Providers must maintain records of their efforts to ensure that their services and equipment are accessible to individuals with disabilities.
- By April 1 of each year, providers must file also file with the FCC, a certification of their actions to comply with this requirement and their contact information. The FCC's notice of this requirement is at <http://goo.gl/7FAoR>

### Special Access (continued)

- On September 18, 2013, the FCC issued an order requiring massive amounts of information from all providers and purchasers of special access in ILEC price-cap areas and all entities that provide best efforts business broadband Internet access services in these areas (unless they have fewer than 15,000 customers and fewer than 1,500 business broadband customers as of December 18, 2012).
- OMB began review in December 2013
- Fines of up to \$150,000 for each violation or each day of a continuing violation, up to a maximum of \$1,500,000 for any single act or failure to act that is a continuing violation.

### Net Neutrality

*FCC Open Internet Order*, 2010 WL 5281676 (12-23-10), *aff'd in part and rev'd in part*, *Verizon Corp. v. FCC*, 740 F.3d 623 (D.C. Cir. 2014):

- Transparency. Fixed and mobile broadband providers must disclose the network management practices, performance characteristics, and terms and conditions of their broadband services. (Affirmed) The FCC's guidance on compliance with this requirement is available at <http://goo.gl/evL6c>.
- No blocking. Fixed broadband providers may not block lawful content, applications, services, or non-harmful devices; mobile broadband providers may not block lawful websites, or block applications that compete with their voice or video telephony services; (Reversed)
- No unreasonable discrimination. Fixed broadband providers may not unreasonably discriminate in transmitting lawful network traffic. (Reversed)

### Intellectual Property / Privacy

- Digital Millennium Copyright Act of 1998 (DMCA)
  - Establishes "safe harbor" for providers of Internet access and hosting services. Providers must:
    - Adopt and publish policy providing for takedowns and termination of repeat infringers' accounts "in appropriate circumstances"
    - Register designated agent with U.S. Copyright Office
- Potential Section 230 Liability
- Other

### Net Neutrality (continued)

- Wireless BIAS providers are subject to even less extensive requirements.
- Providers of BIAS must disclose accurate information about network management practices, performance, and commercial terms of its BIAS sufficient for consumers to make informed choices regarding use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings.
- Providers of BIAS must disclose their practices on a publicly available, easily accessible website and at the point of sale. The FCC's guidance on compliance with this requirement is available at <http://goo.gl/evL6c>.

### Other Requirements

- See BHLG memo for details
- Numerous special Cable System requirements
- Intellectual Property/ Privacy (DCMA)
- E911
- Form 395: Common Carrier Annual Employment Report
- Other requirements ....

Questions?