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The Wheeler Federal Communications Commission--What Can We expect?

2014 Outlook on Congress and the FCC

IMLA Annual Meeting

San Francisco – September 30, 2013

PRESENTED BY

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FCC Issues

- When will we have a 5 person Commission?
- Issues
  - E Rate and help for broadband adoption
  - Demise of Title II regulation and the rise of net neutrality?
  - "Best Practices" or Federal Preemption and shot clocks for zoning and permitting?
  - FCC “Process Reform” proposals



Players May Change, But Not the Issues

Caveat: This presentation was done before Congress returned and some of the facts and the status regarding dockets and legislation referenced in this presentation may have changed since its creation.



Old Team



Genachowski



McDowell



Clyburn



Rosenworcel



Pai

New (Current) Team?
And for How Long?



Mignon Clyburn



Jessica Rosenworcel
2015



Ajit Pai
2016

Future Team?



Thomas Wheeler



Jessica Rosenworcel



Mignon Clyburn



Mike O'Rielly



Ajit Pai

FCC Deadlines

September 3, 2013	**RF Radiation Comments due**
September 16, 2013 **[WC Docket No. 13-184]**	E-Rate Comments are due
October 16, 2013 **[WC Docket No. 13-184]**	E-Rate Reply Comments are due
November 1, 2013	RF Radiation Reply Comments due



FCC Issues

- E-Rate
  - ALERT -- ***Should the Commission condition certain forms of E-rate funding on changes in local permitting practices or other state and local policy changes (e.g. state and local dig-once initiatives) to help reduce new build costs?*** (paragraph 164)
- Next Steps on Cell Towers and Collocations
  - Awaiting release of FCC NPRM/NOI/Report & Order -- also release of NATOA "Best Practices" document.
- No actions to report on OTARD other than there is a novel interpretation being used against San Francisco



WHAT WILL REMAINDER OF 2013-14 BRING?

YEARS OF TAX DEBATE AND POSSIBLE DEFINITIONS, BUT I AM NOT SURE IT IS THE FIRST YEAR OF A REWRITE



Do Definitions Matter?

- If definitions did not matter, every one of your cities for the past ten years would have been receiving almost double your current cable franchise fees.
  - *See Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, *Declaratory Ruling and Notice of Proposed Rulemaking*, FCC 02-77 at ¶ 41 (rel. Mar. 15, 2002)



What the Industry Wants

- Congress should delete “silos” that treat like companies and services differently
- Create a world defined as intrastate information services -- problem is all the obligations carriers have now are found in Titles II, III and VI
- Industry – Gypsies curse – Beware what you ask for you may just get



2013-14 YEAR OF TAXES AND DEFINITIONS

- What is the classification of broadband?
  - Telecomm
  - Cable
  - Interstate information
- What services/goods are subject to state and local taxation?
  - Local purchases
  - Local purchases over the internet/catalog sales



CAVEATS/GIVENS

- Communications tax "reform" at the federal or state level is a very dangerous game for local governments who have the most to lose, the least to gain.
- Local governments' future ability to tax or impose fees on any type of communications service provider is at serious risk.
- Tim Lay Rule: ***"Beware if it has 'fairness' in the title of the bill!"***
- Communications tax reform *may be inevitable* in 2013-14 at the Federal level. Don't lose at the state level before then.
  - Reform need not be bad for local governments.
  - Locals must be far more active participants if interests are to be protected.



TAXES

WHAT IS TAXABLE

N.B. This is not only a federal issue!



CAN CONGRESS HARMONIZE ELECTRONIC TAXATION?



The Permanent Internet Tax Freedom Act
(S 31/HR 434) or (S. 1431)
Internet Tax Freedom Forever Act ("ITFFA")

- ITFA has been in effect since 1998, currently scheduled to expire in November, 2014
- Expect activity in next Congress (2013) as 2014 deadline approaches
- ITFA "walls off" from state and local taxation the largest, and fastest growing, form of communications — broadband
- ITFA must be repealed or allowed to expire as a condition of reform or this is simply an industry tax reduction exercise, not true tax reform



ITFA

- As what was formerly telecom is supplanted by broadband, states and locals are left with a shrinking communications service tax base.
- Left in place, the ITFA will eventually “tax exempt” all, or almost all, of the entire telecommunications industry’s services.
- Unless telecom tax “reform” is coupled with ITFA repeal, industry will have no incentive to ever let ITFA expire.



Wireless Tax Fairness Act
H.R. 2309, S.1235

- Last Congress (HR-1002) passed the House, went nowhere in the Senate
  - Would impose a 5-year moratorium on any new "discriminatory", or any increase in existing, state or local taxes on wireless services; would grandfather existing taxes and exclude taxes imposed by vote of community
- Will return in 2013



The Digital Goods and Services Tax Fairness Act of 2013 -- S.1364

- Legislation creates a nationwide "tax preference" for online goods and services over competing brick-and-mortar sales by limiting state and local taxes on "digital goods and services."
  - Downloaded music and videos;
  - Pay-per-View (PPV) and video-on-demand (VoD) revenue from the cable franchise fee revenue base



Main Street Fairness Act
(S. 743 and H.R. 684)

- Passed Senate on a strong bi-partisan basis
- Pending in House Judiciary
- Allows states and local governments to collect sales and use taxes on remote (typically online) sales to their residents
- Aims to eliminate the current disadvantage suffered by brick-and-mortar retailers vis-à-vis online retailers
- Generate funds



DON'T FORGET THE THREAT AT THE STATE LEVEL:

State Communications Tax Reform



Communications Tax "Reform"

- Basic approach
  - Collapse all communications-related taxes and fees (cable franchise fees, perhaps PEG fees, DBS, landline telecom & wireless) into a single tax
  - Move responsibility for imposition, collection and auditing of the tax to the state level
  - Examples include VA, FL, KY, OH, and NC
  - DOWNSIDE: Eliminate communications-related ROW fees



Communications Tax "Reform" (cont'd)

- Benefits for industry:
  - Lower tax administration costs
  - Lower taxes, except perhaps for DBS
  - Greater protection against future tax increases

- Risks to local governments:
  - Loss of ability to control local tax structure and policy, and thus control over local budget revenues
  - Loss of auditing authority to ensure correct amounts are paid




Q&A

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