

Communications and Information Technology Alert

February 9, 2015

Communications and Technology 2015 Forecast

Regulators and legislators focused on the communications and technology sectors have fertile ground for issues consideration in 2015. In this forecast, the Akin Gump Strauss Hauer & Feld LLP team shares its views on issues to watch this year, including a new net neutrality proposal from the Federal Communication Commission (FCC), continuing work on the broadcast incentive auction (“Incentive Auction”), a potential rewrite of the Communications Act, new spectrum bands for wireless broadband service, developments in aviation for small unmanned aerial vehicles and in-flight broadband service, progress on privacy, data security and cybersecurity issues, copyright and patent reform, a code of conduct related to facial recognition data, and trade issues that are part of the Trans-Pacific Partnership (TPP).

Big Issues for the Federal Communications Commission

Net Neutrality/Open Internet

An order on net neutrality is now circulating at the FCC, and Chairman Tom Wheeler released a teaser—a fact sheet—describing the general direction of the proposed rules. The foundation for the new Open Internet rules is found in both Title II of the Communications Act and Section 706 of the Telecommunications Act of 1996. The plan is to consider and vote upon the net neutrality item during the February 26, 2015 open FCC meeting. Application of Title II, extension of the rules to mobile wireless services, and potential extension of the rules to interconnection and peering arrangements are the most significant developments. Highlights from the fact sheet include:

- **Breadth of the Rules.** Broadband Internet access service, the retail service to which consumers subscribe, whether through cable, phone or wireless, will be reclassified under Title II, with forbearance from certain regulations. However, reclassification may not stop there. The FCC also makes clear that “if a court finds that it is necessary to classify the service that broadband providers make available to ‘edge providers,’ [that service] too is a Title II telecommunications services.” Edge providers include companies that offer content, applications and websites that are accessed through the Internet. This extension would grant the FCC jurisdiction to hear complaints over interconnection and peering arrangements that are viewed as failing the “just and reasonable” standard that applies to common carriers. To date, these arrangements have been left purely to commercial negotiations.
- Data services that do not traverse the public Internet, such as Voice over Internet Protocol (VoIP) over a cable system or a dedicated heart monitoring service, would not be subject to Title II oversight, but the fact sheet notes that Chairman Wheeler’s proposal “will ensure these services do not undermine the effectiveness of the Open Internet rules.”

- **Consumer Protections.** The anticipated consumer protections will apply and will ban practices that are presumed to be harmful to the Open Internet: no blocking, no throttling and no paid prioritization. There also will be an “enhanced” requirement of transparency. Broadband providers may not favor some traffic over others and cannot create paid “fast lanes.” The proposal also would create a “general Open Internet conduct standard” that would prevent Internet service providers (ISPs) from “harming” consumers or edge providers.
- **Reasonable Network Management.** ISPs may engage in reasonable network management practices related to their technology (fiber, DSL, cable, unlicensed wireless, mobile, etc.), but the practice must be tailored to the legitimate network management need, and not a commercial purpose.
- **Forbearance.** Certain aspects of Title II regulation will apply to ISPs, but the fact sheet is quick to note that the proposals do not include “utility-style” rate regulation. There will be no explicit rate regulation or tariffs (including no explicit ban against “zero-rating” plans), no last-mile unbundling requirements, no administrative filing and accounting standards, and no requirement of Universal Service contributions. The parts of Title II that will apply to ISPs include the prohibitions against unjust and unreasonable practices, authority to investigate consumer complaints, consumer privacy protections, fair access to poles and conduits to encourage broadband deployment, and protections for people with disabilities.

The Senate and House Republican leadership, including Senate Commerce Committee Chairman John Thune (R-SD), disagree with imposing Title II regulation on the Internet and have introduced net neutrality legislation. There also is talk of bipartisan net neutrality legislation, but senior Democrats, including House Commerce Committee Ranking Member Frank Pallone (D-NJ) and Senate Commerce Committee Ranking Member Bill Nelson (D-FL), plan to wait until after the FCC takes action in late February before deciding whether legislative intervention is necessary. Chairman Greg Walden (R-OR), from the House Communications Subcommittee, has suggested that Democrats should seek to compromise on net neutrality in order to avoid another round of litigation on the issue.

FCC's Implementation of the Broadcast Incentive Auction

The FCC is in the midst of a complex and multifaceted proceeding to implement the Incentive Auction, pursuant to which the FCC seeks to recapture television broadcast spectrum in the UHF band to be auctioned for flexible use. The Incentive Auction will consist of two components: (i) a reverse auction whereby television broadcasters may elect to relinquish all or some of their spectrum rights in exchange for compensation and (ii) a forward auction of new, flexible-use licenses suitable for mobile broadband services.

As part of the Incentive Auction, the FCC will require certain television broadcasters that elect to remain on the air to relocate to another broadcast channel in order to reduce the amount of spectrum in the UHF band occupied by television stations. Each broadcaster applying to participate in the reverse auction may elect to (i) relinquish all spectrum usage rights and go off-air; (ii) relinquish its spectrum usage rights and channel share with another market station; (iii) move from a UHF channel to a high-VHF channel; (iv) move from a UHF channel or high-VHF channel to a low-VHF channel; or (v) if involuntary relocated,

reject reimbursement of relocation costs and file a waiver request for enhanced spectrum flexibility. The FCC is statutorily required to make all reasonable efforts to protect the coverage areas and populations served by television stations that elect not to participate in the Incentive Auction. This legislative mandate applies to only full-power and Class A television facilities licensed as of February 22, 2012, subject to certain limited exceptions. The Incentive Auction is currently expected to be held as early as 2016. The FCC has taken multiple actions over the past several months towards this goal, including:

- **Incentive Auction Report and Order.** On June 2, 2014, the FCC released an order establishing the general rules for the Incentive Auction. This order is the subject of a significant number of administrative appeals, as well as appeals before the D.C. Circuit filed by the National Association of Broadcasters (NAB) and Sinclair Broadcast Group (“Sinclair”). The NAB and Sinclair raise concerns with the methodology that the FCC will use to determine a station’s coverage area for purposes of the repacking process. Oral argument in the D.C. Circuit currently is scheduled for March 12, 2015. If the D.C. Circuit overturns the FCC order, it is likely to delay commencement of the Incentive Auction.
- **Broadcaster Information Package.** On February 6, 2015, the FCC’s Incentive Auction Task Force released an updated information package for broadcasters to use in evaluating whether to participate in the Incentive Auction. The FCC released its initial broadcaster information package, prepared by Greenhill & Co., LLC, in the fall of 2014. The updated package released today takes into account the FCC’s proposals in the Comment Public Notice described below and includes, inter alia, the maximum and median opening bid prices in each television market, calculated using the methodology proposed by the FCC in the Comment Public Notice; details on channel sharing and UHF-to-VHF bidding options; information on bidding processes; and a summary of how the repacking process will work for stations that do not relinquish spectrum rights in the Incentive Auction.
- **Pre-Auction Licensing Deadline.** On January 28, 2015, the FCC’s Media Bureau announced May 29, 2015 as the Pre-Auction Licensing deadline, i.e., the date by which the following television stations (previously deemed to be entitled to discretionary protection under the Spectrum Act) must obtain a license in order to be eligible for protection in the repacking process: (i) full-power facilities authorized by construction permits issued to effectuate a channel substitution (including moves to channel 51 pursuant to voluntary relocation agreements with Lower 700 MHz Block licensees); (ii) modified facilities of full-power and Class A stations authorized by construction permits granted on or before April 5, 2013; (iii) modified facilities of full-power and Class A stations authorized by construction permits granted after April 5, 2013, if such construction permits comply with the Media Bureau’s order freezing the filing of certain applications in advance of the Incentive Auction; and (iv) Class A digital facilities not initially licensed until after February 22, 2012. The public notice released by the Media Bureau further specified that television stations whose facilities were destroyed in the 9/11 attacks must elect, on or before May 29, 2015, to protect either their current facilities at the Empire State Building or the facilities at One World Trade Center proposed in a construction permit granted by the Pre-Auction Licensing Deadline.
- **Comment Public Notice.** On December 17, 2014, the FCC released a lengthy public notice seeking comment on establishing auction design requirements, such as determining the initial broadcast

television spectrum clearing target, opening bid prices and establishing the final television channel assignment procedures. Comments and reply comments to the Comment Public Notice are due by February 20 and March 13, respectively.

- **Low Power Television (LPTV) Services.** The FCC is not required to protect LPTV services in the repacking, nor are LPTV stations eligible to participate in the Incentive Auction. Accordingly, on October 10, 2014, the FCC released a Notice of Proposed Rulemaking (NPRM) seeking comment on measures to facilitate the final conversion of LPTV and TV translator stations to digital service and additional means to mitigate the potential impact of the incentive auction and the repacking process on LPTV and TV translator stations to help preserve the important services they provide. Reply comments were due by February 2, 2015.

Universal Service Reforms

Ongoing revisions to universal service reforms (USR) are expected at the FCC. In December 2014, the FCC moved forward with reforms to the Connect America Fund (CAF), moving it closer to finalizing the pieces needed for price cap carriers to receive support for deployment of broadband under Phase 2 of the CAF. The FCC also announced requirements for rural broadband experiment participants and adopted interim reforms to the high-cost loop support program for rate-of-return providers. Further FCC action to the CAF program remains, with a decision expected in early 2015 on the competitive bidding process for areas where price cap carriers decline model-based support. The FCC may also take further steps to reform support for rate-of-return carriers.

Congress is considering reforms to the universal service provisions of the Communications Act as part of its update effort. Respondents to the White Paper agree that universal service is still needed, but there is disagreement on its specific content. This will be an area of keen Capitol Hill interest as many members of Congress look to ensure that their constituents either obtain access to, or continue to have access to, robust communications services.

E-rate Reboot

On December 19, 2014, the FCC released a Second E-rate Modernization Order, taking additional steps toward meeting the more robust Internet connectivity targets for eligible schools and libraries that were set out in the first E-rate Modernization Order adopted last July. Those targets included high-speed broadband Internet access of at least 100 Mbps per 1,000 students and staff in the short term, 1 Gbps per 1,000 users in the longer term and connections scalable to 10 Gbps per 1,000 students for wide area networks for schools. In the Second E-rate Modernization Order, the FCC raises the E-rate program's spending cap from \$2.4 billion to \$3.9 billion and takes steps to maximize schools' and libraries' options for purchasing affordable high-speed broadband connectivity. These steps include (i) providing greater flexibility for applicants with respect to payment options for large, non-recurring capital costs for high-speed broadband; (ii) equalizing the treatment of lit and dark fiber to offer applicants an additional cost-effective option for deploying high speed broadband; (iii) allowing schools and libraries receiving E-rate funding to build high-speed broadband facilities themselves or use a managed-services option; and (iv) increasing predictability of funding for Wi-Fi by providing support for Category 2 internal connections

through funding year 2019. As the 2015 E-rate funding cycle begins, the FCC's focus will shift to implementation of the new rules, which will go into effect in the 2015-2016 school year.

Spectrum

Success of Advanced Wireless Services-3 Auction

The Advanced Wireless Services (AWS)-3 auction concluded on January 29, with overall bids reaching almost \$45 billion. The nationwide average for the spectrum, including the paired and unpaired bands, was roughly \$2.21 an MHz-pop, and AWS values for spectrum in the paired bands in many major metropolitan markets averaged \$4-\$5 an MHz-pop. The success of this auction bodes well for future auctions, including the broadcast incentive auction, where anticipated values for broadcast spectrum in the reverse auction may be adjusted upward. The success of the AWS-3 auction also bodes well for first responders, assuring the First Responder Network Authority ("FirstNet") of the \$7 billion needed to begin building the first nationwide wireless interoperable network for first responders. FirstNet is expected to release its request for proposals for comprehensive network solutions in the coming months.

Notice of Inquiry on Use of Spectrum Bands Above 24 GHz for Mobile Radio Services

On October 17, 2014, the FCC released a Notice of Inquiry (NOI) to explore the potential for permitting mobile radio services in spectrum bands above 24 GHz. Mobile broadband networks generally use spectrum bands below 3 GHz for service due to the propagation characteristics and the ready availability of equipment. Until recently, the prevailing assumption was that mobile service in higher frequency bands, such as bands above 24 GHz, was infeasible because radio waves at those frequencies travel in straight lines and could provide only line-of-sight service. As technology has advanced, however, operators have begun developing ways to provide non-line-of-sight services in the higher-millimeter wave bands. These innovations have occurred in the context of broader efforts to develop technical standards for Fifth Generation (5G) mobile services. With these technological and marketplace developments as a backdrop, the FCC's NOI seeks to determine what frequency bands above 24 GHz would be most suitable for mobile services, and begin to develop a record for mobile service rules and a licensing framework in those bands. Initial comments were filed January 15, 2015. Reply comments are due February 17.

Citizens Broadband Radio Service

On April 23, 2014, the FCC released a Further Notice of Proposed Rulemaking (FNPRM) proposing specific rules for a new Citizens Broadband Radio Service in the 3.5 GHz band. The new service would encompass 100 MHz of spectrum from 3550 to 3650 MHz, and an additional 50 MHz of spectrum, from 3650 to 3700 MHz, also could be added. The service would authorize small cellular and other broadband operations on a shared basis with incumbent federal and nonfederal users already licensed in the band, which include Department of Defense (DoD) radar systems using ground-based, shipboard and airborne platforms, as well as non-federal fixed satellite service (FSS) earth stations. The FCC proposes to establish a three-tiered authorization framework consisting of (i) incumbent access, (ii) priority access and (iii) general authorized access. Incumbent users already licensed in the band would maintain primary status, and all other licensees would be required to protect the incumbent users from interference. Priority

access licensees would be protected from interference from general authorized access users and would be licensed by census tract to use 10 MHz channels that would be dynamically assigned by a Spectrum Access System based on demand and availability. Consistent with the FCC's unlicensed rules, general authorized access users would have no protection against interference from other users in the band; would have an obligation to avoid causing harmful interference to Priority Access Licensees and Incumbent Licensees; and would not be assigned specific frequencies or bandwidths. At least half of the available spectrum in each census tract, however, would be devoted to general authorized access users. Licensees would be required to register with the Spectrum Access System, which would be used to coordinate their use of the spectrum and avoid interference between users. The FCC released an initial NPRM in this proceeding in December 2012. The public comment cycle for the FNPRM ended on August 15, 2014, and we understand that the FCC is aiming to release an order adopting final rules in the first half of 2015.

Radars for Vehicular Collision Avoidance

On February 5, 2015, the FCC released an NPRM to permit additional and enhanced vehicular radar services in the 76-81 GHz band. The NPRM addresses issues raised in two separate petitions filed by Honeywell International, Inc. and Robert Bosch, LLC. The Honeywell petition asks the FCC to amend its Part 15 rules to clarify that vehicular radar devices operating in the 76-77 GHz band may be used on aircraft as long as they are on the ground. Part 15 of the FCC's rules currently permits unlicensed use of vehicular radar devices in the 76-77 GHz spectrum, but specifies that such devices cannot be used "on aircraft or satellites." Honeywell seeks clarification that this prohibition is intended to only restrict the use of such devices in aircraft while in flight. Additionally, the Bosch petition asks the FCC to open a rulemaking to permit unlicensed use of ground-based vehicular radars in the 77-81 GHz band, in addition to the 76-77 GHz band, which is already in use. In the NPRM, the FCC seeks to develop a flexible and streamlined regulatory framework that will encourage efficient, innovative uses of the spectrum. The FCC seeks comment on a number of proposals, including expanding radar operations in the spectrum band on a licensed basis under Part 95 of the FCC's rules, rather than on an unlicensed basis under Part 15. The NPRM also evaluates the compatibility of incumbent operations, including amateur radio, with radar applications in the spectrum band. Initial comments will be due 30 days after the NPRM is published in the Federal Register. Reply comments will be due 15 days later.

Aviation

Small Unmanned Aircraft Systems Notice of Proposed Rulemaking

We are actively watching for the Federal Aviation Administration (FAA) to publish its long-awaited small unmanned aircraft systems (sUAS) NPRM for the commercial operation of small unmanned aerial vehicles (UAVs) and systems. By "small," the FAA is likely to limit its rule to operations of UAVs weighing under 55 pounds with payload. We expect the proposed rule will restrict small UAV operations to within the line-of-sight of a pilot in command who holds a FAA private pilot certificate. We also anticipate that the proposed rule will prohibit operations closer than five miles to any airport, limit operations to daylight hours and prohibit operations over any populated area. The FAA is likely to set a comment period of 60 to 90 days, and, given the interest in this proceeding, we expect the FAA will receive thousands of

comments. (Its interpretation of the congressional requirements for UAV modelers and hobbyists has generated more than 30,000 comments.) A final rule is not expected until some time in 2016. Congress also authorized the FAA to grant exemptions to allow commercial UAV operations in advance of the sUAS rule. To date, the FAA has granted only 15 Section 333 petitions, while more than 260 have been docketed. The exemptions to date have imposed a number of conditions, and we believe those conditions will be reflected in the proposed sUAS rule. Congress is likely to address this issue again in the FAA reauthorization debate this year.

In-Flight Broadband/Air to Ground: Present Status of Rulemakings

The FCC is nearing conclusion of its rulemaking proceeding that will make a third spectrum band available to support broadband services aboard airplanes. The item is on circulation at the FCC now. The new air-ground service, initially proposed by Qualcomm, will use 500 MHz in the 14-14.5 GHz band on a secondary basis for air-ground mobile service over the contiguous United States. The service will enable multi-gigabit broadband service on airplanes. The FCC predicts that the number of aircraft offering broadband will rise from 3,000 in 2012 to 15,000 by 2021. The two options for in-flight broadband today are (i) the 800 MHz service Gogo offers, an air-ground service that utilizes just 3 MHz of spectrum (to be expanded to 4 MHz) for air-ground communications and (ii) the Earth Stations Aboard Aircraft (ESAA) service, which communicates with satellite antennas that are mounted to the exterior of airplanes. According to the FCC, the new spectrum option for air-ground service will “increase competition, improve the quality of service, and lead to lower prices for broadband aboard aircraft.” Interference to, and coordination with, other users of the 14 GHz band was a primary issue under consideration in the rulemaking. We understand that the order in this proceeding has been vetted by federal law enforcement and national security agencies. We also understand that the FCC will authorize at least two, and up to three, licensees. Nationwide, there will be one block of 250 MHz and two blocks of 125 MHz each.

Privacy/Data Security/Cybersecurity

In 2014, Chairman Wheeler made clear that he expects industry to be proactive in cyber readiness and that private-sector-led efforts to accomplish this will work, even while noting that, if they do not, “we must be ready with alternatives.” One key way the FCC works to enhance cybersecurity is through its primary federal advisory committee on these issues—the Communications Security, Reliability and Interoperability Council (CSRIC). In March 2015—as the culmination of a massive effort involving numerous trade associations, companies, government agencies and many others—CSRIC is scheduled to issue an important report and set of recommendations and best practices on cybersecurity that builds on its prior work and that of many others, and advances understanding and application of the National Institute of Standards and Technology (NIST) Cybersecurity Framework to critical communications infrastructure. Chairman Wheeler has said that he is looking for CSRIC to provide “[m]eaningful, measurable, accountable assurances.” After this milestone report, the FCC will then focus on implementation as it continues to work closely with other government agencies, and as it provides a reconstituted CSRIC with additional assignments. The FCC has been adding staff to aid in its increasing focus on cybersecurity issues.

Facial Recognition Code of Conduct

Use of biometrics and facial recognition data and technologies expanded in 2014, and that expansion is expected to continue. Privacy questions are obvious, and the White House is expected to release a privacy “bill of rights” by the end of February. The bill of rights will set forth “basic baseline protections across industries,” limiting the ability to collect data without consumer consent or to collect data for one purpose and then use it for another.

The 11th meeting of the National Telecommunications and Information Administration (NTIA) privacy working group took place in December and focused on drafting a voluntary code of conduct that will govern commercial uses of facial recognition technology and data. Security and strong encryption for facial recognition data have been centerpieces of the work to date, as well as language to address how biometric and facial recognition data will be collected, stored, transmitted and handled. Also under discussion are consumer opt outs or withdrawals, authentication, access limitations, retention and disposal policies, and how crime fighters can use facial recognition data. The hope is that the multi-stakeholder process, involving leading facial recognition companies, trade associations and privacy advocates, will forestall formal rulemaking or legislation around facial recognition data. The next meeting is expected in early 2015, and further work on the voluntary code will be the focus.

Telephone Consumer Protection Act Developments: Petitions on Tap

The FCC continues to consider a long list of petitions seeking clarification or waiver of various rules implementing the Telephone Consumer Protection Act (TCPA). On October 30, 2014, the FCC released an order to address the backlog of petitions requesting clarification or waiver of the opt-out notice requirement for faxes under the TCPA. The FCC confirmed that senders of fax advertisements must include certain information on each fax that will allow consumers to opt out, even if the consumers previously agreed to receive fax advertisements from the senders. The FCC, however, granted retroactive waivers of the opt-out notice requirement and gave petitioners until April 30, 2015, to become fully compliant. Additionally, the FCC is permitting similarly situated parties to file their own petitions for retroactive waivers until April 30.

Many of the other pending TCPA petitions seek clarification regarding the requirement that parties obtain prior express consent before making calls to a wireless number using an automatic telephone dialing system or an artificial or prerecorded voice. In particular, a number of petitions seek clarification that callers do not run afoul of this requirement when they call wireless numbers that have been reassigned, without the caller’s knowledge, to individuals who have not consented to receive such calls. A number of petitions also seek clarification that the TCPA’s prior express consent requirements do not apply in certain situations, such as on-demand texts sent in response to a consumer’s request, and certain time-sensitive informational calls to consumers concerning fraud, identify theft or data breach notifications. Additionally, a number of petitions seek clarification regarding the definition of an “automatic telephone dialing system” and what types of equipment fall within the scope of this definition.

Cyber/Data Security Lessons

In late 2014, the FCC broke new ground by bringing its first data security case and its largest privacy case ever. It announced plans for a \$10 million fine against TerraCom, Inc. and YourTel America for failing to protect the privacy of phone customers' personal information, which it said included storing unencrypted social security numbers, addresses and other personal information on servers without the most basic and readily available security protections, thereby enabling easy access through the Internet by almost anyone. The litany of FCC allegations included that the companies misled consumers, were deceptive and did not live up to representations they made in their privacy policies about privacy safeguards. The FCC also asserted that the companies failed to act in a reasonable fashion and failed to notify potentially affected consumers after learning of the security breach so that consumers could take steps to protect themselves. This may well be a guide to what to anticipate in 2015, with the FCC acting through enforcement to try to incentivize a better level of security in the industries it regulates.

911 and Public Safety

As Chairman Wheeler recently explained in a blog entry, "one of our top public safety priorities has been improving the effectiveness of 911." Building on the experience of prior years and on an important Report and Order approved at the January 2015 FCC meeting to improve the accuracy of information on the location of wireless callers to 911 that is automatically transmitted to public safety agencies (particularly from indoor locations), the FCC will continue in 2015 to focus on reliable and effective 911 service in light of changing technologies, threats and consumer trends.

There are other 911-related issues pending at the FCC that will garner attention and, possibly, action. With fewer consumers using traditional wireline phones on copper lines that continue to work even when the power goes out, the FCC has an open proceeding to consider possible requirements for providing backup power for customer premises equipment that could continue to enable 911 and other emergency communications. As part of its efforts to facilitate the adoption and availability of Next Generation 911 (NG911), the FCC will continue to take steps to facilitate the availability of text-to-911 and track its adoption, although it is ultimately up to local public safety officials whether to enable it in their areas and adopt other NG911 technologies. The FCC will also continue to address concerns about reliability, resiliency and various types of outages affecting 911 service, building in part on detailed investigative reports it issued in 2013 concerning 911 outages affecting more than two million people in the wake of a storm, and in 2014 pertaining to service outages affecting more than 11 million people in pockets across the country due to a software glitch in one Colorado server. In an IP world, there are some different and emerging risks to 911 service, including cybersecurity. Another example of the numerous 911 issues under consideration and evaluation is the efforts of FCC Commissioner Ajit Pai and others to ensure that dialing 911 reaches public safety agencies, even in places such as hotels that might otherwise require dialing 9 to get an outside line before dialing 911, which is something children, for example, may not understand.

Transactions/International

Executive Branch Input by “Team Telecom” on Foreign Ownership Issues Pending Before the FCC

Under the public interest standard, the FCC considers whether there are national security, law enforcement or trade/foreign policy concerns in its review of various applications, licenses, petitions, declaratory rulings or transfers of control that include certain levels of foreign investment. On these questions, the FCC typically seeks input and defers to the executive branch (which gathers and coordinates input by a group of agencies referred to informally as “Team Telecom”). The executive branch usually asks the FCC to wait for answers from Team Telecom before acting. The February 2014 Process Reform Report issued by the FCC recommended that FCC staff meet and coordinate with the executive branch on an ongoing basis to determine what improvements can be made to the timeliness and efficiency of this process. It also recommended seeking to establish firm time frames for these executive branch reviews of foreign ownership issues. Subsequently, the International Bureau of the FCC engaged, on a regular basis, with the executive branch in meetings, phone calls and information sharing to improve understanding of the process, issues and status of particular matters, and to identify potential ways to improve timeliness where possible. While it does not appear that firm timetables have been established, there are reports that this closer, more frequent and ongoing dialogue—as recommended in the Process Reform Report—is bringing about some improvement. That said, many of those awaiting Team Telecom action on their foreign investment matters will not find the transparency and timeliness that they may desire. Although this may be inevitable for some matters, given the sensitive nature of these reviews and the information that may be considered by the executive branch, it is also expected that the FCC will continue work in 2015 to improve the process.

Impact of the Trans-Pacific Partnership

U.S. trade officials are optimistic regarding the prospects for completing negotiations on the TPP in 2015. The agreement ultimately will cover 40 percent of the world’s economic output, making it an integral component of the Obama administration’s economic agenda. Trade expansion also represents an opportunity for bipartisan cooperation and, consequently, the administration is already working closely with congressional Republicans to enact “trade promotion authority,” which would smooth the path for TPP and other trade agreements by disallowing amendments and limiting congressional action to an “up or down vote” on free trade agreements.

While negotiators still must resolve a number of difficult items in the current TPP framework, telecommunications issues have proven to be non-controversial. The telecommunications text is designed to promote access for foreign telecommunications providers in TPP markets and covers issues related to technology choice, the high cost of international mobile roaming, reasonable network access for suppliers and access to physical facilities. As early as June 2013, officials from Malaysia revealed that the telecommunications chapter was “substantially closed.” Subsequent reports have confirmed that telecommunications is one of seven closed TPP chapters.

114th Congress

Communications Act Update

As the 114th Congress gets under way, there is renewed interest in moving forward expeditiously with reforms to the Communications Act. This effort will benefit from the White Paper series conducted in the last Congress, which explored a range of issues, including FCC jurisdiction and structure, competition, universal service reform, interconnection, media and spectrum policy. More than 350 comments were filed from parties representing the various providers of the specific communications services, edge companies, and public and consumer interest groups.

A review of the filings reveals few areas of consensus. There is disagreement on both the general and specific direction to reform our country's communications law. A number of interests believe that a fundamental overhaul is warranted, given changes in the market, new entrants, removal of barriers and evolving consumer expectations. Others call for minor tweaks to address shortcomings they have identified as barriers in their particular market segment. The 114th Congress will provide a forum for discussion with an eye on updating the Communications Act. While net neutrality is a potential threat to moving forward on broader reforms, both chairman of the Senate Committee on Commerce, Science and Transportation John Thune (R-SD) and chairman of the Subcommittee on Communications and Technology of the House Energy and Commerce Committee Greg Walden (R-OR) have indicated a desire to move forward sooner rather than later.

Copyright Reform

In the last Congress, Chairman of the House Judiciary Committee Bob Goodlatte (R-VA) held a series of hearings exploring topics for consideration in reform of the copyright laws to better reflect new technologies. As Chairman Goodlatte noted at a copyright hearing, "In a world of instant and constant access to entertainment options on Internet-connected devices, laws that hinder or stunt access to legal music not only hurt consumers, but also the artists and the services that provide music to consumers. Unfortunately, consumers who want to be able to easily access their favorite songs anytime on all of their digital devices face a legal framework written for the world of vinyl albums and 8-track tapes." These challenges in the current law, and others throughout the copyright law, have raised concerns and interest in reform.

On February 4, 2015, the Copyright Office released a report outlining the findings of its comprehensive review of the music licensing framework. In it, the Copyright Office outlines issues that the "aging music licensing framework" faces and more than 20 recommendations for reforms that "respect the needs of those who create and invest in music." The recommendations touch on licensing parity, compensation and streamlining of the government's role in licensing and royalty. We expect the report will help inform Congress's decision-making process as it moves forward with reform in this area of the copyright laws.

Patent Reform

The 114th Congress is poised to consider patent reform legislation as an early priority. There is bipartisan agreement on the need for legislation to curb so-called patent trolls, entities that assert patent rights in

frivolous and costly litigation. We expect the congressional debate to focus on litigation reforms aimed at ending patent troll litigation while preserving the enforcement rights of legitimate patent holders and examining the implementation of reforms at the U.S. Patent and Trademark Office (PTO) under the America Invents Act of 2011, which was the first major overhaul of the patent system in the last 60 years.

On February 5, Chairman Goodlatte re-introduced his Innovation Act, which won broad bipartisan support in the House in the previous Congress, as well as the support of the Obama administration. Rep. Darrell Issa (R-CA), the new chair of the Intellectual Property Subcommittee of the House Judiciary Committee, will be working with Chairman Goodlatte, and others possibly, to update the legislation in order to take into consideration litigation and judicial developments since the House passed the Innovation Act in 2013.

On the Senate side, the new Senate Judiciary Chairman Chuck Grassley (R-IA), along with Sen. John Cornyn (R-TX) and Sen. Orrin Hatch (R-UT), plans to introduce similar patent reform legislation in the first quarter of 2015. Ranking Member of the Senate Judiciary Committee Patrick Leahy (D-VT), Sen. Chuck Schumer (D-NY) and Sen. Chris Coons (D-DE) have expressed interest in support of various reforms to the patent system. Chairman Grassley has committed to moving patent reform legislation as one of the first legislative items for the Senate Judiciary Committee.

Leadership Changes in Congress and on Committees of Jurisdiction

With Republicans now controlling both the U.S. House of Representatives and the U.S. Senate for the first time since 2007, the dynamics of policy-making in Washington have shifted dramatically. While many Republicans view this as their opportunity to put the conservative imprimatur on the work product of both chambers of Congress, all Republicans are keenly aware of the coming 2016 elections and the less than two years they have to convince voters to extend their lease on the congressional leadership. Unlike the Senate, where the political balance of power switched to put Republicans in charge of the chamber, the House remains in Republican control. However, that constancy should not be overvalued as a predictor, since the House now has a Republican Senate with which to coordinate its efforts. The legislative agenda has changed for this new Congress, but the list of House luminaries and leaders on technology and communications issues remains largely the same, with a few notable changes.

House Committees:

The **House Energy and Commerce Committee** will continue to be led by Chairman Fred Upton (R-MI), although he now has a new ranking member in Rep. Frank Pallone (D-NJ). Ranking Member Pallone is a 14-term representative and has a long history serving on the Energy and Commerce Committee.

The **Subcommittee on Commerce, Manufacturing and Trade** will now be led by Rep. Michael Burgess (R-TX). He replaces Rep. Lee Terry (R-NE), who was defeated in the midterm election. Rep. Jan Schakowsky (D-IL) will serve as the new ranking member. The subcommittee is already working on data breach and security legislation and will also focus on reforms to promote innovation and technology in the delivery of health care. The subcommittee will take a look at the Internet of Things in an upcoming hearing.

The ***Subcommittee on Communications and Technology*** will continue to be led by Chairman Greg Walden (R-OR) and Ranking Member Anna Eshoo (D-CA). The lack of change in leadership on the subcommittee bodes well for preserving its momentum to update the Communications Act to reflect the sea change in communications platforms, technologies and offerings, and, no doubt, net neutrality will be a focus for Chairman Walden.

The **House Judiciary Committee** will be led by Chairman Bob Goodlatte (R-VA) and Ranking Member John Conyers (D-MI). Patent and copyright reform are likely areas of interest to the committee.

The ***Subcommittee on Courts, Intellectual Property, and the Internet*** will be led by Chairman Darrell Issa (R-CA) and Ranking Member Jerry Nadler (D-NY).

Senate Committees:

The **Senate Committee on Commerce, Science and Transportation** will be led by Chairman John Thune (who, as Republican Conference chairman, also serves as the third highest-ranking member of the Senate Republican Leadership). Sen. Bill Nelson (D-FL) replaces outgoing Sen. Jay Rockefeller (D-WV) as the new Ranking Member for the Committee. Former Chairman Rockefeller counted as his recent achievements the expansion of E-Rate funding and the creation of a public safety network funded by proceeds for a series of spectrum auctions. We expect Chairman Thune will focus on a broad range of technology and telecommunications policies, including net neutrality and a full review of the Communications Act. Ranking Member Nelson and Chairman Thune are also expected to work on data breach and security legislation early in the 114th Congress.

The ***Subcommittee on Communications, Technology, Innovation and the Internet*** will be led by Chairman Roger Wicker (R-MS) (who is also the new chairman of the National Republican Senatorial Committee (NRSC)) and Ranking Member Brian Schatz (D-HI). This subcommittee will play an integral role in any Senate effort to update the Communications Act.

The ***Subcommittee on Consumer Protection, Product Safety, Insurance and Data Security*** will be led by Chairman Jerry Moran (R-KS) and Ranking Member Claire McCaskill (D-MO).

Contact Information

If you have any questions regarding these or other issues, or require further information, please contact any member of Akin Gump's communications and information technology regulatory and policy team.

Tom W. Davidson

tdavidson@akingump.com
202.887.4011
Washington, D.C.

Jennifer L. Richter

jrichter@akingump.com
202.887.4524
Washington, D.C.

Joel Jankowsky

jjankowsky@akingump.com
202.887.4082
Washington, D.C.

Douglas I. Brandon

dbrandon@akingump.com
202.887.4021
Washington, D.C.

Ed Pagano

epagano@akingump.com
202.887.4255
Washington, D.C.

Arshi Siddiqui

asiddiqui@akingump.com
202.887.4075
Washington, D.C.

David S. Turetsky

dturetsky@akingump.com
202.887.4074
Washington, D.C.

Michael E. Drobac

mdrobac@akingump.com
202.887.4043
Washington, D.C.

Greg W. Guice

gguice@akingump.com
202.887.4565
Washington, D.C.

Karen Lynn Milne

kmilne@akingump.com
202.416.5024
Washington, D.C.

Ryan Thompson

thompsonr@akingump.com
512.499.6268
Austin

Gregory S. Walden

gswalden@akingump.com
202.887.4213
Washington, D.C.

Benjamin C. Bartlett

bbartlett@akingump.com
202.887.4214
Washington, D.C.

Lyndsey M. Grunewald

lgrunewald@akingump.com
202.887.4413
Washington, D.C.

Steven A. Rowings

srowings@akingump.com
202.887.4412
Washington, D.C.