

**REMARKS OF  
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***2012:  
THE YEAR OF U.N. REGULATION OF THE INTERNET?***

**(AS PREPARED FOR DELIVERY)**

Thank you, Yaron. And thank you for inviting me to the 29<sup>th</sup> annual PLI and FCBA Telecommunications Policy & Regulation Institute.

**2011: THE YEAR IN REVIEW**

As most of it starts to grow smaller in the rear view mirror, 2011 was a busy year across the globe. Headline grabbing world events included:

- The rise of the Arab Spring and possible onset of an Arab Winter;
- The beginning of the “Occupy” movement;
- The ups and downs of the Republican presidential race;
- The British royal wedding;
- The deepening of both the European and American sovereign debt crises;
- An earthquake that rocked Washington; and
- Perhaps the most sensational tabloid-driven event of absolutely no significance to anyone: the Kardashian wedding/divorce.

2011 was also a busy year for the FCC. Although many of our deeds did not grab tabloid headlines, included among them were:

- Approving the Comcast/NBCUniversal transaction;
- A once-in-a-generation overhaul of the distribution of the Universal Service High Cost Fund and intercarrier compensation regime;
- Moving to begin testing of databases for unlicensed use of the television white spaces;
- Bringing home the much neglected Alfred Mann petition to improve the lives of the paralyzed;
- Working to improve E-911 location accuracy;

- Testing the new EAS system on November 9;
- Taking steps to implement the Local Community Radio Act and the Twenty-First Century Communications and Video Accessibility Act of 2010;
- Working on that roller coaster ride known as the AT&T/T-Mobile transaction, and that other adventure called the AT&T/Qualcomm deal;
- Implementing the CALM Act; and
- Much, much more.

## AN OUTLINE OF A POSSIBLE 2012 FCC AGENDA

So what lies ahead for the Commission in 2012?

Our media ownership notice of proposed rulemaking is poised to launch soon. Historically, those reviews have never lacked for controversy and excitement, or appellate litigation for that matter. It is my hope that the Commission can modernize its rules to reflect the economic realities of the marketplace. Maintaining decades-old industrial policy in this age of competition, mobility and new media is not in the public interest and is not what Congress envisioned when it crafted Section 202(h).<sup>1</sup>

Until it actually happens, I will keep talking about launching and concluding a proceeding to reform our Universal Service program's contribution methodology by mid-year. I am still optimistic that we can accomplish this badly needed reform while the sun is still high in the summer sky, all while we implement our reform from last October. We have to. The last projection I saw for the contribution factor, which is a "tax" on phone consumers, has it climbing to a historic high of nearly 18 percent.<sup>2</sup> That's outrageous, and it should be abated as soon as possible.

The indecency issue is sure to generate headlines in 2012. Come to think of it, maybe the FCC will make it back into the tabloids after all. The Supreme Court is certain to hand down a landmark decision affecting the balance between the First Amendment rights of broadcasters and the Commission's statutory obligation to protect children from indecent content. Regardless of the Court's decision, the Commission will have a lot of work to do as about 1.5 million complaints regarding more than 9,000 broadcasts wait to be processed. I'll be interested to see whether the Court addresses the doctrine of spectrum scarcity in its opinion.<sup>3</sup> At some point, it will have to.

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<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 111-12 § 202(h) (1996) ("1996 Act"); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004) (amending Section 202(h) of the 1996 Act).

<sup>2</sup> This percentage is based on 1<sup>st</sup> Quarter 2012 Universal Service Administrative Company (USAC) filings. See FCC Filings - 2012, USAC, <http://www.universalservice.org/about/governance/fcc-filings/2012/> (last visited Dec. 7, 2011).

<sup>3</sup> See generally *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969).

Although it is still unclear as to whether spectrum legislation will be signed into law this year, if that were to occur in 2012, suddenly the Commission could be working furiously on auction and service rules, band plans and such throughout the year.

While we're on the subject of wireless, I urge the Commission to initiate a rule making early in 2012 on the service rules for AWS spectrum and wrap it up by year's end. American consumers are hungry for more spectrum and quick government action on this project will offer them some sustenance.

And just for sport, how about issuing the "annual" Video Programming Competition Report? Such a release would be the first in several years. The Commission last voted on one in 2007, but did not release it until 2009.<sup>4</sup> So the latest industry data we have available is from 2006. I think Congress's mandate for an *annual* report was more than just a suggestion. And the intent wasn't for the term "years" to be measured by slower moving planetary bodies. I'm pretty sure that lawmakers meant *earth* years.

And if Santa could bring me just one gift this year, it would be to close the proceeding that seeks to classify broadband Internet access services under Title II for the first time. But I don't know if Santa will be that generous to me.

Of course, we will have two new commissioners at some point, and I look forward to working with them on these and all other matters.

These are just a few ideas, and we could address dozens more as well. I look forward to hearing your ideas during our dialogue in a few minutes.

## **2012: THE YEAR FOR U.N. REGULATION OF THE INTERNET?**

The communications public policy effort that may affect all of us the most in 2012, however, will take place far from our shores. As we sit here today, scores of countries, including China, Russia and India, are pushing hard for international regulation of Internet governance.<sup>5</sup> While we have been focused on other important matters here in the U.S., the effort to radically reverse the long-standing international consensus to keep governments from regulating core functions of the Internet's ecosystem has been gaining momentum. The reach, scope and seriousness of this effort are nothing short of massive. But don't take my word for it. As Russian Prime Minister Vladimir Putin said last June, the goal of this effort is to establish "international control over the Internet using the

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<sup>4</sup> Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket No. 06-189, *Thirteenth Annual Report*, 24 FCC Rcd 542 (2009).

<sup>5</sup> See, e.g., *Further Directions for Revision of the ITRs*, Russian Federation, CWG-WCIT12 Contribution 40 (Geneva, 2011); Statement by Mr. Dushyant Singh, Member of Parliament, On Agenda Item 16 - Information and Communication Technologies for Development, 66th Session of the United Nations General Assembly (Oct. 26, 2011), available at <http://www.un.int/india/2011/ind1945.pdf> (last visited Dec. 7, 2011); White Paper, Information Office of the State Council, *The Internet in China*, (rel. June 2010), available at [http://english.gov.cn/2010-06/08/content\\_1622956.htm](http://english.gov.cn/2010-06/08/content_1622956.htm).

monitoring and supervisory capabilities of the International Telecommunications Union [ITU].”<sup>6</sup>

The 146-year-old ITU is a treaty-based organization under the auspices of the United Nations.<sup>7</sup> Despite the global economic and political implications of this push to regulate, the story of this effort has received little to no attention in the press anywhere in the world.

But first, some background: In 1988, delegates from 114 countries gathered in Australia to agree to a treaty that set the stage for dramatic liberalization of international telecommunications.<sup>8</sup> As a result, the Internet was insulated from government control and quickly became the greatest deregulatory success story of all time. For instance, in 1995, shortly after the Internet was privatized, only 16 million people used the Internet worldwide.<sup>9</sup> By the beginning of this year, however, well over 2 billion people were online – and that number is growing by as much as half a million new users *per day*.<sup>10</sup> This phenomenal growth was the direct result of governments keeping their hands off the Internet sphere and relying instead on a private-sector, multi-stakeholder Internet governance model to keep it thriving.

Internet access, especially through mobile devices, is improving the human condition more quickly – and more fundamentally – than any other technology in history. Nowhere is this progress more obvious than in the developing world where unfettered Internet technologies are expanding economies and raising living standards. For example, subsistence farmers are now able to find buyers for their crops through their Internet-connected mobile devices without assuming the risks and expenses of traveling with their goods. Worried parents are able to go online to locate medicine for their sick children. And proponents of political freedom are better able to share information and organize. It is no coincidence that these wonderful developments blossomed as the Internet migrated further away from government control.

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<sup>6</sup> Vladimir Putin, Prime Minister of the Russian Federation, Working Day, GOV'T OF THE RUSSIAN FED'N, <http://premier.gov.ru/eng/events/news/15601/> (June 15, 2011) (last visited Dec. 7, 2011).

<sup>7</sup> History, ITU, <http://www.itu.int/en/about/Pages/history.aspx> (last visited Dec. 7, 2011).

<sup>8</sup> See International Telecommunications Regulations, Dec. 9, 1988, S. TREATY DOC. No. 13, 102d Cong., 1st Sess. (1991) (“ITRs”).

<sup>9</sup> Internet Growth Statistics, INTERNET WORLD STATS, <http://www.internetworldstats.com/emarketing.htm> (last visited Dec. 7, 2011).

<sup>10</sup> *Id.* The estimated number of new users per day, as calculated by determining the change in the number of Internet users over a year divided by 365, has varied greatly over the last 5 years. Between June 2010 and June 2011, the estimated number of new online users was 394,520 per day. Last year's growth, however, was not as substantial previous years. For instance, between June 2009 and June 2010, the number of new users per day was approximately 813,700 people. If you take an average of the last 5 years, the average daily increase in online users was approximately 584,660.

Today, however, several countries within the 193 member states of the ITU<sup>11</sup> want to renegotiate the 1988 treaty to expand its reach into previously unregulated areas. Here are a few proposals that could be codified next December at a conference in Dubai:

- Establish ITU control over the functions of multi-stakeholder Internet governance entities such as ICANN,<sup>12</sup> which oversees domain name administration for the .com's and .org's of the world, as well as the Internet Engineering Task Force (IETF), the Internet Society (ISOC) and others, which establish the engineering and technical standards that allow the Internet to function;
- For the first time, regulate rates of Internet backbone peering as well as establishing a regime for termination charges for data traffic with the goal of generating revenue for domestic treasuries across the globe, perhaps even on a “per-click” basis for certain Web destinations;
- Regulate international mobile roaming rates and practices;
- Subject cyber security and data privacy to international control;
- And much more.<sup>13</sup>

Some countries in the developing world are intrigued by these ideas for a variety of reasons. Even though Internet-based technologies are improving billions of lives everywhere, some governments feel left out. They have formed impressive coalitions, and their efforts have progressed significantly. So merely saying “no” to any changes to the current structure of Internet governance is likely to be a losing proposition. Accordingly, we should encourage a dialogue among all interested parties and broaden the multi-stakeholder umbrella to find ways to address all reasonable concerns.

As part of this conversation, we should underscore the tremendous benefits that the Internet has yielded for the developing world through the multi-stakeholder model. Upending the fundamentals of the multi-stakeholder model is likely to Balkanize the Internet at best, and suffocate it at worst. A top-down, centralized, international regulatory overlay is antithetical to the architecture of the 'Net, which is a global network of networks without borders. No government, let alone an intergovernmental body, can make decisions in lightning-fast Internet time. Economic and political progress everywhere, but especially in the developing world, would grind to a halt as engineering

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<sup>11</sup> Overview, ITU, <http://www.itu.int/en/about/Pages/overview.aspx> (last visited Dec. 7, 2011).

<sup>12</sup> Internet Corporation for Assigned Names and Numbers (ICANN), which was formed in 1998, “is a not-for-profit public-benefit corporation with participants from all over the world dedicated to keeping the Internet secure, stable and interoperable. It promotes competition and develops policy on the Internet’s unique identifiers.” About, ICANN, <http://www.icann.org/en/about/> (last visited Dec. 7, 2011).

<sup>13</sup> See *Draft Compilation of Proposals*, CWG-WCIT12/TD – 43 (Geneva, 2011); See also *Further Directions for Revision of the ITRs*, Russian Federation, CWG-WCIT12 Contribution 40 (Geneva, 2011); *Contribution from Iran*, The Islamic Republic of Iran, CWG-WCIT12 Contribution 48, Attachment 2 (Geneva, 2011); Internet Society Background Paper, *International Telecommunications Regulations*, available at [http://www.isoc.org/pub/pol/pillar/docs/itr-background\\_201108.pdf](http://www.isoc.org/pub/pol/pillar/docs/itr-background_201108.pdf) (last visited Dec. 7, 2011); *Add New Articles on Network and Information Security to ITRs*, People’s Republic of China, CWG-WCIT12 Contribution 59 (Geneva, 2011).

and business decisions inevitably would become politicized within a global regulatory body.

Instead, the international dialogue leading up to next December's pivotal meeting should help expand the multi-stakeholder process, include a constructive role for the ITU and directly address concerns expressed by developing countries. At the same time, new rules, issued in seemingly innocuous increments through the ITU, or worse, through a new intergovernmental body, should be resisted. Modernization and reform can be constructive, but not if the end result is a departure from the multi-stakeholder model that would create a new overarching layer of international regulation.

Thus far, those who are pushing for new intergovernmental powers over the Internet are far more energized and organized than those who favor the Internet freedom and prosperity that comes from the multi-stakeholder approach. It is time to awake from our slumber and engage before it is too late. I will be working hard on this matter throughout 2012. I urge you to learn more about it yourselves. These developments have the potential to affect the daily lives of all of us.

Thank you for having me here today, and I look forward to your questions.