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IIC TMF Washington 2012: Policy frameworks adapting to industry changes

The IIC Telecommunications and Media Forum in Washington, DC in November 2012 explored the challenges of adapting legal and regulatory regimes in the light of rapid technological and market changes. The two-day conference included panels on the spectrum crunch, policy paradigms for Internet-based services, and privacy and data protection issues.

Solutions to the spectrum crunch

The panelists agreed that the increasing use of mobile broadband and smartphones has resulted in explosive growth of data usage over wireless networks, thereby creating a shortage of spectrum. The speakers discussed solutions to the "spectrum crunch," including using technical solutions, deploying more spectrum, sharing spectrum, and conducting secondary market transactions.

Technical solutions. The panelists supported technical solutions to ease the spectrum shortage. Representatives from US wireless carriers stated that their companies are moving to more spectrally efficient technologies as they upgrade their networks. For example, 4G Long-Term Evolution (LTE) networks are 45 percent more spectrally efficient than 3G networks.

Wireless carriers are also using network management techniques to address the increasing demand on their networks. For example, wireless carriers are using Wi-Fi to offload data traffic from their cellular networks. In addition, carriers are deploying more towers and splitting cells to increase capacity in a given geographic area. However, a panelist from a wireless carrier noted that, while this approach is effective, it is also expensive.

Deploying more spectrum. The speakers expressed contrasting views regarding whether more spectrum needs to be made available and, if so, where it should come from. Wireless carriers supported deploying more spectrum, while a television broadcast industry representative challenged the assumption that it is necessary to provide more spectrum for wireless broadband. One panelist contended that, while the Federal Communications Commission (FCC) has made efforts over the past few years to deploy additional spectrum, much of the remaining spectrum that wireless carriers seek is used by TV broadcasters or the government - entities that currently have little incentive to relinquish spectrum.

One speaker expressed the hope that the TV broadcasters will relinquish a substantial amount of spectrum as part of the FCC's upcoming incentive auction - in which broadcasters will voluntarily relinquish spectrum usage rights in exchange for a share of the proceeds from auctioning that spectrum - but noted that this will depend on how many broadcasters participate in the auction. A broadcast industry representative noted that the growth of mobile broadcasting could affect broadcasters' willingness to give up spectrum.

Sharing spectrum. One panelist discussed the high cost and challenges of clearing US federal government spectrum and supported the recommendation of the President's Council of Advisors on Science and Technology (PCAST) that federal and commercial users share certain federal spectrum. The panelist noted that PCAST is seeking to develop "spectrum superhighways" with large "lanes" of spectrum that can be shared by federal and commercial wireless services. Sharing could get federal spectrum to commercial users in three years, which is faster than the eight to ten years it would take to clear such spectrum.

A wireless carrier panelist contended that federal agencies do not have incentives to use spectrum efficiently and cited an example in which one agency with an analog system used 20 MHz of spectrum while another agency with a digital system only used 5 MHz for similar purposes.

Another panelist suggested that adopting a sharing approach would make federal systems more efficient in the short-term, while clearing federal spectrum over time.

Secondary market transactions. Several speakers noted that the secondary market for spectrum has been very active in the past few years. Wireless carriers have engaged in a number of swaps and trades to rationalize their spectrum holdings and obtain contiguous spectrum. Transactions have included Verizon Wireless acquiring spectrum from SpectrumCo, AT&T acquiring Wireless Communications Service (WCS) spectrum and working with the FCC to modernize the WCS rules, and T-Mobile merging with MetroPCS Communications.

Policy chasing the platform

The ongoing evolution from the traditional telco model to mobile and Internet-based services also generated much discussion at the Forum. One panelist noted that one-third of customers in the US no longer have a wireline phone. At the same time, significant voice traffic is migrating onto IP-based networks. Several speakers addressed the consumer benefits that have resulted from these developments, as well as the challenges and opportunities that this has created for many industry members.

One panelist noted that, as broadband usage has grown, European telecommunications providers' revenues have declined, and suggested that operators were not capturing a sufficient portion of the revenue generated by the growth of broadband services. Another panelist described different regulatory approaches to "sender pays" arrangements, in which Internet Service Providers (ISPs), such as Comcast or AT&T, charge content and application providers (CAPs), such as Google or Amazon, for delivering traffic to the ISPs' end users. The FCC's "Open Internet" rules expressly prohibit this practice in the US, while current EU regulations appear to allow it, and a proposal made by a group of facilities-based European telecommunications operators would make it the international norm.

The panelists went on to discuss Verizon's pending appeal of the FCC's "Open Internet" Order. Verizon argues that the agency impermissibly imposed legacy "common carrier" requirements on ISPs by requiring them to deliver all CAP traffic on non-discriminatory terms and that it violates the ISPs' constitutional freedom of speech rights by precluding ISPs from exercising "editorial control" over what they carry on their networks. One conference participant warned that if the court of appeals were to accept Verizon's constitutional argument, it would eliminate the ability of the US Congress to adopt policies governing basic elements of the telephone network, such as the duty to provide universal service. One of the panelists responded that, if the court agreed that the FCC had impermissibly imposed common carrier regulations on ISPs, it would be unlikely to decide the constitutional issue. In that case, both Congress and the FCC would retain significant latitude to impose regulation on ISPs.

The panelists agreed that, given rapidly changing technologies and evolving business models, regulatory uncertainty is likely to continue for the foreseeable future.

Privacy and data protection

The privacy panel opened with a presentation of new research into users' perspectives on personal data management. Examining the habits of average users in Canada, China, Germany, and the US, the research provides a qualitative look at the types of information users are most sensitive about, the factors that affect their sensitivity, and their self-help strategies for negotiating data transactions. This research shows that users increasingly expect privacy options to occupy a middle ground between complete secrecy and complete disclosure. Users want to be able to permit limited release or use of information, while remaining confident that the limitations they impose will be complied with after the information moves beyond their control.

The panel considered whether robust consumer privacy regulation is at odds with sustainable economic development. The speakers noted that, despite increasing sensitivity toward data collection and personal data protection, consumers routinely provide personal information voluntarily in order to obtain services. For example, a customer who uses a store "loyalty card," which typically offers discounts on specific products, provides the store with significant information regarding the items the customer purchases. Users' willingness to provide the information reflects their perception that the value of the benefit received exceeds the risk that their sensitive information will be used inappropriately. Users decide whether to make such exchanges based on their perception of the trustworthiness of the entity to which they provide the information. In making this assessment, users consider typical insignia of trustworthiness, such as website appearance and brand familiarity. Users' confidence is also affected by how consistently privacy protections are applied by different entities and in different countries.

The panelists discussed whether the Fair Information Practice Principles (FIPPs) continued to foster an environment in which users are willing to disclose personal data, given the difficulty of adapting them to current realities of data collection and use.

The FIPPs are baseline principles – including notice, consent, access, and, redress – that have formed the basis for US and European privacy regulation since the 1970s. Panelists noted that the FIPPs assume users are an active part of the process, an assumption that has been called into question by the proliferation of machine-to-machine (M2M) transactions and the sheer volume of data collection that modern users encounter. For example, while "consent" is a fundamental FIPPs principle, the vast number of times a consumer discloses personal data every day makes "opt-in" regimes – in which the consumers must affirmatively consent to the use of their data – cumbersome.

Europe's forthcoming General Data Protection Regulation, due out in 2013, drew both optimism and caution. Panelists noted that the Regulation will recognize that the sensitivity of data varies and that data that is particularly sensitive or connected to fundamental rights requires a higher level of protection than other data. This distinction, if carried into practice, is seen as a way to temper the potentially large regulatory burden of the new Regulation by permitting greater flexibility with regard to less sensitive data. On the other hand, the potentially broad definition of "data subject" could bring new and expansive types of data under the Regulation. Panelists also expressed concerns that the requirement that data breaches be disclosed to the regulator and to the data subject within 24 hours could result in so many notifications as to be a burden to both businesses and consumers.

Conclusion

The Forum advanced the dialogue regarding the spectrum crunch, Internet-based services, and privacy. Regulators and the communications industry will continue to discuss policies to address these topics in 2013.

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