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TelecomLAW

The candidates' telecom policies and you

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Like me, I suspect you have had just about enough of the misleading, slanted and just plain distorted rapid-fire television and print ads that have overpowered the usual rush of cleaning supplies and HUGE car sales spots that normally ratchet up the volume between segments of those programs you regularly watch.

Now that we can see the finish line of the election season, it's important to consider telecommunications issues that major party candidates view differently. Some differences are greater than others.

There's nothing particularly inconsistent in the differences of their approaches. Generally speaking, Democrats tolerate — and even encourage — greater levels of regulation than Republicans do. However, in the telecommunications world, it's important to recognize that greater regulation enabled the creation and continued existence of companies such as PAETEC and One Communications.

It is my belief that artificial competition is better than no competition and I, for one, believe the existence of these two competitive local exchange carriers (CLECs), among others, has helped to make Verizon more competitive and more responsive to consumer needs than it would be if no one was breathing down its neck in, at least some, markets.

Verizon would argue that the existence of its competitors, and the regulatory structure that has required it to “share” (“forced march,” might be more accurate) facilities with competitors has been a disincentive to innovation and, while this may be true, the claim rings hollow to me.

I want to highlight some of the differences in policy and outlook between the candidates on several key technology issues. Because of space limitations, the discussion on each will be brief.

Net neutrality

The phrase “net neutrality” is defined as the issue of whether carriers can discriminate based on “type, quality, content, sites contacted or applications that can be interconnected to or transported over the Internet,” according to a note written by Saponov & Associates PC of Atlanta and Washington, D.C.

The issue pits the large telecom, cable and broadband providers who are willing to pay (and charge, of course) a premium to offer sexier services to customers against the smaller providers who cannot. Sen. Barack Obama's campaign supports network neutrality because he believes all users of high speed Internet should not be blocked or hindered from accessing content or applications.

Sen. John McCain does not support “net neutrality,” although he is not rabid in his opposition. McCain, while cognizant of the poten-

tial for abuse by the larger players in the marketplace, would prefer to address problems on a case-by-case basis and, therefore, is much more “hands-off” in his approach. He also prefers to rely on federal antitrust law to control bad behavior once it occurs rather than create rules and regulations that add to existing communications regulation in anticipation of such difficulties.

Universal Service Fund and broadband deployment

There is no question the “digital divide” mentioned during the Bush-Kerry election has morphed into the broadband deployment divide, where those who live in and near major metropolitan areas have access to broadband from multiple sources, while those who live in the hinterlands either are precluded from broadband access or limited to satellite or dial-up access.

McCain supports municipally-owned broadband networks, which historically have not been successful, either from a technology or bottom-line perspective. He also has suggested tax credits to providers who offer broadband service to low-income consumers. McCain, like Obama, supports public-private partnerships to encourage additional broadband deployment, along with low interest and/or government-backed loans (if the government has any money left after the recent bailouts), although he also is supportive of allowing market forces to finish the job of

pushing broadband availability to the boonies.

On the other hand, Obama believes the Universal Service Fund mechanism that is about to be overhauled (regardless of who wins the election) should be used to fund the expansion of broadband deployment, even to the exclusion of its originally-stated mission to provide traditional land-line services in rural and high-cost areas.

Because the FCC has not yet released its new vision of the USF (to be announced at the FCC meeting later today), it is impossible to know how it will be implemented. It is fair to say Obama prefers the government's taking a more proactive role, while McCain feels that government should take part, albeit a limited part, in supporting and directing the roll-out of such services.

Merger reviews

Consistent with their parties' larger platforms, it is fair to assume an Obama administration would place a heavier hand on the approval process required by the Department of Justice, the Federal Trade Commission (whose involvement is based on the nature of the businesses being merged) and the FCC than a McCain administration would be. The FCC's determination involves not only the antitrust perspective, but also whether the merger is in the public interest.



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Certainly, the candidates' perspectives on how the phrase "public interest" is defined surely will affect the scrutiny given the merger and its ultimate outcome. McCain has proposed removing the FCC from the telecom merger review process because of what he views as the conditions the FCC — in addition to antitrust regulators — has applied in recent transactions. (Remember AT&T's being required to move jobs from overseas to the New Orleans area as a term of its acquisition of SBC?)

Other issues that are of interest to those who follow telecommunications policy can expect slightly different foci placed on additional hot topics of public safety networks, wireless billing and telecom taxes and fees, based on the election's winner. The hottest of those,

certainly, is public safety. After all, no candidate, or president for that matter, wants to be viewed as an impediment to (vastly) improved emergency communications networks, particularly after the colossal communications failures during Hurricanes Katrina and Rita. Key decisions need to be made in the area, and new leadership at the top of the FCC, regardless of who wins, will enable critical policy priority to be advanced quickly.

Martha Buyer is an attorney concentrating in the practice of telecommunications law. Her clients range from Fortune 500 companies to small family-owned businesses where she has provided a range of telecommunications consulting and legal services, primarily geared to support corporate end-users working with carriers and equipment providers. She can be reached at martha@marthabuyer.com.