

Christopher S. Huther and Megan H. Troy
Sheppard Mullin Richter & Hampton LLP

Year in Review: Telecom in the United States

The past twelve months have been particularly active for the telecommunications industry in the United States. Regulatory actions of the Federal Communications Commission (“FCC” or “Commission”) have substantially impacted the provision of telecom and broadband services and will be of continuing significance to the industry over the near- and long-term. In addition, legislative and regulatory debates over a number of policy issues directly affecting the core businesses of many industry players have embroiled telecom providers in significant public policy discussions. Moreover, as the ownership consolidation continues in the United States, and products and services of communications providers increasingly penetrate every facet of American life, the industry will likely face heightened governmental scrutiny.

In this paper, we recount the major issues on which the FCC and U.S. Congress have acted over the past year and provide insights into what to expect in the year ahead. Among other important actions, the FCC took action to help broadcasters and consumers prepare for the mandatory transition to digital television (“DTV”) on February 17, 2009, and stepped up enforcement actions against those manufacturers and retailers who fail to comply with the Commission’s DTV regulations. The FCC also advanced the interests of a number of wireless broadband providers and public safety entities with its auction of the 700 MHz spectrum that will be recovered after the DTV transition is complete. And, the FCC continued its efforts to comply with the pro-competitive mandate of the 1996 Amendments to the Communications Act of 1934 (the “1996 Act”) by enhancing the ability of the telephone companies to enter the video services marketplace and instituting a proceeding to level the playing field among the traditional telephone companies, cable TV providers, and other competitive entities.

Meanwhile, the U.S. Congress continues to grapple with the debate over the Foreign Intelligence Surveillance Act of 1978 (“FISA”) and retroactive immunity for the telephone companies that cooperated with the Administration’s warrantless wiretapping program. In addition, issues such as net neutrality and reform of the Universal Service Fund (“USF”), though not expected to be acted upon this Congress, remain key issues for many U.S. lawmakers. The upcoming Presidential election, its impact on the make-up and priorities of the FCC, and the legislative priorities of the next Congress, will also weigh heavily on the future of telecom regulation in the upcoming year.