

## Legal Update:

# Regulations Affecting Voice, Video and Data Services



**Henry Pye of JPI Partners (far left) rides herd on a gaggle of attorneys. Left to right: Doug Jarrett of Keller and Heckman, Matt Ames of Miller & Van Eaton, Carl Kandutsch of DirecPath.**

**T**he Federal Communications Commission's pending vote on exclusive contracts between apartment owners and video service providers was foremost on the minds of the Broadband Summit panel.

Moderator Henry Pye, an assistant VP at property owner JPI Partners,

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said the FCC staff was rumored to have already drafted a ban on exclusive contracts, and that a vote could take

Nevertheless, panelists agreed that if the rule carved out an exemption for private cable operators, many

owners might not be severely affected by it.

DirecPath attorney Carl Kandutsch, himself an FCC staff veteran, questioned whether the FCC had legal authority to intervene in this issue at all, much less to invalidate contracts retroactively. "They're inviting massive litigation," he said. Attorney Doug Jarrett of Keller and Heckman agreed that the cable industry was likely to move quickly to request a stay of the ban.

## Where's the Demarc?

Another issue that confused and worried a number of owners was the FCC's recent decision about cable home-run wiring. Kandutsch explained that home-run wiring is the wiring that runs down an apartment hallway from the point at which it becomes dedicated to a single customer to the actual demarcation point separating telco wiring from the owner's wiring. The new ruling effectively moves the demarc point back down the hallway away from the dwelling unit, to the point where the wiring first becomes accessible to a provider. This gives the incumbent provider fewer rights and options if the owner wants to free up the wire (or coax or fiber) at the end of a contract.

Matt Ames, an attorney with the law firm of Miller & Van Eaton, said the FCC's goal was to promote competition by making it easier for competitors to gain access to wiring. "It's good for competition and consumer choice," he said, adding that he didn't see the change as a dramatic one.

Panelists agreed that the FCC's detailed definition of what wiring is affected could also be a source of litigation – it includes fuzzy wording about wall types.

## Carrier-Of-Last-Resort Statutes

Turning their attention to carrier-of-last-resort (COLR) statutes, the panelists discussed telcos' attempts to gain relief from COLR responsibilities in subdivisions that use other providers for data and video. Last year the state of Florida passed

a law giving ILECs automatic relief from providing carrier-of-last-resort service under special circumstances – thus limiting owners’ flexibility to contract separately for separate telecom services.

BellSouth tried to expand the law’s coverage to include any subdivisions with exclusive contracts for data or video services, but was quickly “slapped down,” as Jarrett put it, by the Florida public service commission.

“I think this [attempt to expand COLR relief] will die a slow death,” Ames predicted, noting that Verizon and AT&T (which now owns the former BellSouth) do not want to pursue the issue. Kandutsch noted that telcos’ COLR status gave them tremendous leverage (in part because some

the right to enter a property, let alone to provide services other than voice. However, they might be able to gain entry by filing an eminent domain action – a strategy that they were generally disinclined to use.

Pye questioned whether eminent domain actions would even work anymore, noting that it was now possible to provide life-safety phone service without the telco (using VoIP service from a cable company, for example).

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vice was not “cable TV” (in an attempt to avoid having to obtain cable franchises) and then potentially claiming to be a cable company in order to gain access to MDUs whose owners did not want it to provide services. According to Kandutsch, most laws say that landlords can’t stop a cable provider from entering a building if a single tenant in the building wants its service. Pye noted, however, that mandatory-access laws were difficult to enforce and easy to frustrate.

## CALEA

Finally, the panel considered the implications of the new rules for CALEA, the Communications Assistance for Law Enforcement Act. Ames explained that CALEA is an updated version of the old wiretapping statute, made necessary by rapidly changing technology. The FCC had delayed writing CALEA rules because of the statute’s complexity, he said, until the FBI forced the issue. Entities covered by the CALEA rules include not only telcos but VoIP providers and possibly PCOs or even property owners.

According to Jarrett, CALEA doesn’t change the legal basis for obtaining wiretaps, but it does force service providers to open their networks to facilitate taps. He noted that an exemption had been carved out for retail establishments like Starbucks, which make Internet access from a third-party provider available to their customers; all property owners might be exempt under similar reasoning.

However, an owner that directly provided WiFi services in MDU common areas might well be liable for CALEA compliance. Ames agreed, saying that any entity that was performing call routing or switching could well be covered by the rules.

Kandutsch pointed out, however, that even if PCOs or property owners were liable under the FCC rules in theory, they were unlikely to be affected by them in practice. “That’s not where the subpoena would go,” he said.

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insurers demand telco-specific service for specific purposes such as fire and elevator alarms), and that they should have corresponding obligations.

The discussion then turned to whether COLR statutes could be used in reverse, as a vehicle for telcos to enter MDUs where owners had agreed to exclusive contracts with other providers. Pye asked whether the demarc point in an MDU had any meaning if the ILEC could claim the right to serve as carrier of last resort.

Ames explained that being carrier of last resort did not give a telco

up to the MDU’s demarc point. “It’s not regulated for the cable company,” he pointed out.

Ames said the FCC had not really thought through the issue, or considered the implications of the many MDU wiring designs that were being used by Verizon and AT&T. “They won’t listen to property owners unless Congress gets involved,” he said.

Could telcos use cable mandatory-access provisions to gain entry to MDUs, making exclusive contracts moot? Jarrett noted the rich irony of AT&T first claiming that its video ser-