

ACA's 2016 Regulatory Achievements

In a year in which ACA members faced the risk of being subject to many new regulatory requirements, including some that would have imposed extreme burdens, ACA succeeded in avoiding or at least mitigating many significant potential harms. At the same time, we were able to make some substantial progress on other issues. The following is a summary of what we achieved in 2016. With the new administration favoring a more pro-investment and less regulatory agenda, we expect to continue making progress in 2017 and beyond.

Set Top Box Proceeding

The Set Top Box proceeding posed a major threat to ACA members, with Chairman Wheeler's proposed approach holding out the potential to saddle members with enormous unplanned costly technical mandates. Although the Set Top Box Order ultimately was never adopted, ACA secured Chairman Wheeler's commitment that, if new rules were to be adopted, all MVPDs with fewer than 400,000 subscribers would be exempt, and MVPDs with more than 400,000 and fewer than 1 million would have an additional two years to comply. The item is unlikely to move forward under the next administration.

Business Data Services

Chairman Wheeler's original proposal would have reversed almost four decades of "light-touch" regulation and subjected non-incumbent providers of business data services to rate regulation. ACA and other industry participants filed extensive, well-documented comments in opposition, and they succeeded in convincing the Chairman to make clear that even if new regulations were to be adopted, non-incumbents would not be subject to rate regulation for the provision of packet-based (Ethernet) BDS. In the end, the final order was deemed too "controversial" to pass after the November election, and it is unlikely to be considered by the next administration.

Broadband Privacy Rules

ACA and other industry participants urged the Commission to reject Chairman Wheeler's proposed broadband privacy rules because, if adopted, they would be overly prescriptive for broadband Internet service providers, imposing unwarranted and burdensome obligations. In addition, the proposed rules would not apply to other participants in the Internet ecosystem, particularly edge providers. Although the final rules adopted remain unsatisfactory, at the urging of ACA and others, the FCC made key changes to the original proposal that reflect some industry concerns. In addition, the Commission took steps to ease implementation of the rules by smaller ISPs. For example, the FCC provided greater flexibility for ISPs to develop the format and content of privacy notices and adopted a general reasonableness standard for data security that takes into account the size of the provider. Moreover the FCC gave smaller providers (with 100,000 or fewer connections) an additional twelve months to implement the notice and approval requirements once these rules take effect for larger providers. While ACA was able to mitigate some of the harms of the Chairman's original proposal, we are hopeful and think it likely that the rules will be repealed and/or replaced by less burdensome and more competitive neutral ones in the next Congress or Commission.

Open Internet Transparency Guidance

The Open Internet enhanced transparency requirements obligated ISPs to measure and disclose packet-loss and provide geography-specific performance of their broadband service. Because ACA members considered these requirements to be unduly burdensome, ACA asked the FCC to provide guidance to make clear that, in implementing these requirements, smaller ISPs can continue to follow the 2011

Guidance as to acceptable methodologies to measure and disclose actual network performance. Crucially, the 2011 Guidance allows ISPs to provide the required performance information using “reliable, relevant data from third-party sources,” which saves them the burden of doing expensive internal testing. The 2016 Guidance issued by the FCC’s Chief Technology Officer incorporated ACA’s request that this same approach be used for the measuring and disclosure of packet-loss and geography-specific performance, mitigating the most burdensome aspects of the new requirements.

Regulatory Fees

Heeding ACA’s continuing call for regulatory parity between cable/IPTV and DBS providers, the FCC raised the regulatory fees paid by DBS providers for the 2016 fiscal year to \$0.27 per subscriber, more than double what they paid last year. Because the Commission increased the DBS fee by \$0.15, it only increased the cable rate by \$0.04. While the DBS rate remains significantly lower than the cable/IPTV rate of \$1.00, the FCC has reiterated its commitment to ensuring an appropriate level of regulatory parity, and ACA will continue to urge the FCC to increase the DBS rate over time.

Cable Statutory License Royalty Rates

Working in conjunction with NCTA, ACA successfully negotiated an agreement with several groups representing copyright holders of broadcast programming under which the compulsory license royalty rates currently paid by cable operators would not increase royalty rates paid by MVPDs for the next five years. Several groups representing sports copyright holders separately sought to establish an additional sports surcharge in light of the repeal of the sports blackout rule, and the Copyright Royalty Board incorrectly concluded that the separately negotiated agreement should not be approved without also resolving the sports surcharge issue. With ACA’s support, the Copyright Royalty Board was convinced to separate these matters but to accept the negotiated agreement leaving the royalty rates paid by MVPDs unchanged for the next five years.

Closed Captioning of Video Programming

Consistent with ACA’s advocacy, the FCC amended its closed captioning rules so that the liability for receiving, serving, and resolving complaints about the quality of close captioning is no longer borne entirely by MVPDs, but instead is shared between distributors and video programmers. The FCC also adopted a “ladder of compliance” for TV closed captioning quality issues which increases likelihood that only complaints indicating a pattern or trend of noncompliance would be subject to enforcement action, thus helping to ease small operators’ concerns about being liable for real-time technical problems that are beyond their control.

Online Public Inspection File

When the FCC updated its public inspection file rules to require cable operators to upload their required documents onto an FCC-run online database, ACA asked for, and was granted, an exemption from all online file requirements for cable systems with fewer than 1,000 subscribers, and extra time for systems with 1,000-5,000 subscribers to upload their political files. The Commission’s rules also allow third parties to upload documents on an operator’s behalf.

Connect America Fund

At ACA’s behest, the FCC adopted CAF Phase II competitive bidding rules that make it easier for smaller operators to bid for and receive support to deploy broadband in unserved areas. For instance, the FCC eased the Letter of Credit requirements by allowing winning bidders to obtain such letters not just from one of 70 big banks, but from more than 3,000 banks, including regional and local banks that typically do business with ACA members. Additionally, under the adopted procedures, bidders who are existing

broadband service providers do not need to provide audited financials until after they become winning bidders.

Media Ownership

In the FCC's Report and Order bringing to a close the 2010 and 2014 Quadrennial Review proceedings, the FCC clarified, consistent with ACA's advocacy, that transactions involving changes of network affiliation must comply with the top-four prohibition. This decision, which ACA supported, will rein in the practice of a single owner of a top-four and non-top-four rated station circumventing the FCC's duopoly prohibition thereby increasing their leverage in retransmission consent negotiations by swapping their network affiliations outside the purview of the FCC.

Elimination of UHF Discount

The FCC eliminated the 50 percent "discount" in determining a UHF broadcast stations' reach, and will now count the entire potential audience when computing the reach of a television station for purposes of calculating compliance with the national ownership cap of 39% of television households. ACA participated in the proceeding, arguing that the DTV transition rendered the UHF discount obsolete, and that continuation of the discount would unfairly permit station groups to exceed the national cap in terms of actual audience reach. Elimination of the UHF discount limits large broadcast station owners' ability to acquire more stations and attain even greater leverage over MVPDs in retransmission consent negotiations.

Lifeline

As part of its efforts to reform and modernize the Lifeline and Link Up programs, which help provide low-income Americans with affordable access to vital communications services, the FCC adopted ACA's and others' proposal to establish a third-party entity to verify subscribers' eligibility for Lifeline services, which significantly eases the administrative burdens of Lifeline participation.

Independent Programming NPRM

Partially in response to ACA's continued advocacy for rules to address large programmers' ever-increasing demands for unfair bundling and penetration requirements, the FCC initiated a rulemaking that asked questions about the impact that these and other issues have on the ability of independent programmers to gain MVPD carriage.