

Telecom Developments To Watch In 2020

By **Kelcee Griffis**

Law360 (January 1, 2020, 12:04 PM EST) -- As attorneys in the telecommunications industry look toward 2020, many expect the Federal Communications Commission to forge ahead with an aggressive agenda of auctioning spectrum to support 5G service, combating robocalls and increasing broadband in rural areas.

While the consumer protection initiatives will certainly extend into the new year, experts predict the months ahead will be marked by spectrum shakeups as the burgeoning ultrafast 5G wireless service goes mainstream.

"In my view, activity surrounding 5G and spectrum will dominate 2020," said Angela Giancarlo, a former FCC adviser and current Mayer Brown LLP partner. "This is the case because the issues are dynamic, and they are complex economically, politically and technically."

With those factors in mind, here is a look at the top three telecom policy areas to watch in 2020.

5G Spectrum Moves

The FCC will have its hands full keeping a promise to conduct several major auctions designed to make valuable spectrum chunks available to mobile wireless providers, which the agency hopes will provide the public with better mobile connectivity.

After FCC Chairman Ajit Pai announced that he will pursue a public auction of repurposed satellite spectrum in the so-called C-band, ending a contentious debate over the right way to reorganize the spectrum, the agency expects to start the bidding by the end of 2020.

Before that happens, however, the FCC will have to work through thorny details pertaining to auction logistics. Although the fight over a public auction or the alternative private spectrum sale turned into a political football last year, smoothing out the kinks of the public auction appears feasible, said Andrew Jay Schwartzman, senior counselor at the Benton Institute for Broadband & Society.

"The C-band is a challenge, but there's bipartisan support to do an auction and to generate a lot of revenue," he said. "So I think that is difficult but doable and probably will be a focus of a tremendous amount of resources and attention."

The agency has already set a time frame for selling off licensed portions of the so-called Citizens Broadband Radio Service in the 3.5 GHz band, which is expected to support a host of connected devices. The auction for exclusive-use licenses that will run for 10-year terms will be based on county-size tracts, with bidding slated to kick off June 25.

The FCC has also laid the groundwork for auctioning off unclaimed licenses in the 2.5 GHz band directly to commercial carriers sometime in 2020 by nixing a requirement that educational institutions be the primary license-holders and speeding up a process in which Native American tribes can claim free licenses first.

The FCC is also likely to be laser-focused on making spectrum-sharing regimes in the 5.9 GHz and 6 GHz bands a success. Although the federal government prefers to clear entire bands for a single use, the commission is working through details that will allow 5G and WiFi to share the bands alongside auto safety and critical infrastructure communications.

"The 6 GHz and 5.9 [bands] are both very active, and I would expect progress on those proceedings next year," said Michele Farquhar, who leads Hogan Lovells' communications practice.

Fallout from Court Rulings

The FCC experienced a mixed bag of victories and defeats in high-profile appellate decisions in the last year, saddling the agency with homework and outlining some issues it could revisit in 2020 rulemaking.

In October, the D.C. Circuit mostly upheld the Republican-led FCC's net neutrality deregulation, finding that the agency could change the regulatory regime covering internet infrastructure but ordering the agency to hash out how the order affects public safety organizations and others.

The court also scrubbed a provision that prevented states from stepping up to fill any perceived regulatory gaps. This could be seen as an invitation for states to enact their own stopgap measures to enforce online consumer protections, said Marc S. Martin, a Perkins Coie LLP partner who chairs the firm's communications practice.

"There hasn't yet been a ton of activity on the state level in the wake of that decision, but it seems unfortunately inevitable that this is going to continue to be a 'to and fro' until there's a federal-level bipartisan resolution of this issue," he said.

Martin also noted that the upcoming presidential election and state races have the potential to shift the appetite for net neutrality regulation and legislation. For example, if Democrats take the Senate majority, they might be able to rally around a piece of federal legislation to codify the proper regulatory definition for internet service providers. Arriving at that kind of consensus will probably be necessary to settle the question of net neutrality regulation once and for all, he said.

The FCC also got handed more homework when the Third Circuit ordered the agency to revisit its justifications for relaxing its media ownership rules. The D.C. Circuit also rebuked the agency for aggressively trying to allocate subsidies for phone and internet service in low-income communities to carriers who maintain their own networks and to customers who live in rural areas, ordering the FCC to start over on formulating a rule to distribute enhanced subsidies to tribal areas.

While the FCC has many pending items on its plate, it remains to be seen whether it can find the motivation to address those thorny issues amid the push for more 5G-friendly policies. Pai may choose to sit on the issues and hand them off to a future chairman, Schwartzman said.

"I'm not sure that we should expect a whole lot. Their focus is on spectrum and trying to sort of make everything 5G," he said.

Consumer Protection Issues

The FCC has made expanding the availability of broadband service in rural areas and cracking down on unwanted phone calls two of its top priorities, and experts expect this focus to continue into the new year.

Last year, Congress mobilized around anti-robocall legislation by hammering out a bipartisan bill approved by both chambers, and Pai dangled the threat of future regulations over carriers that don't adopt new call-authentication protocols.

Carriers are likely to feel the squeeze from the additional scrutiny in 2020, with voluntary best practices morphing into mandatory safeguards, said Mike Keegan, CEO of robocall detection firm Transaction Network Services.

"We're moving towards an area where there will be additional requirements placed upon telecommunications providers that in the past were authorized but weren't really required," he said. "A lot of those developments will get codified, and [we'll see] additional authority to help the FCC deal with this issue."

On the rural broadband front, the agency has set in motion a future \$20.4 billion allocation for wired infrastructure through the new the Rural Digital Opportunity Fund and is contemplating beefing up mobile networks with a new 5G Fund, which would allocate \$9 billion to rural wireless carriers over a decade while adding safeguards to ensure carriers report broadband availability accurately.

The agency also has its eye on public safety initiatives, such as continuing to improve the location coordinates available to first responders. "I'd expect more progress on that front," Farquhar said.

--Additional reporting by Andrew Westney. Editing by Jill Coffey and Adam LoBelia.