

# TELECOMMUNICATIONS LAWS OF THE WORLD

United States



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# UNITED STATES



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## OVERVIEW OF LEGAL LANDSCAPE

In the United States, interstate telecommunications are regulated at the Federal level by the Federal Communications Commission (FCC) and intrastate telecommunications are regulated by the state public utility commissions/public service commissions. The FCC also regulates, but to a lesser extent, Voice Over Internet Protocol (VoIP), which, according to the FCC, is a jurisdictionally mixed service.

All 50 states and the District of Columbia regulate intrastate telecommunications, including intrastate portions of VoIP service. There is great variation in telecommunications regulation under state law. However, all states generally require telecommunications providers to register with the state public utility/service commission, some require particular types of carriers to file tariffs for applicable services, and about half of the states requires carriers to contribute to state universal service funds and other similar programs. Additionally, some states and many localities collect emergency 911 fees.

The states do not have jurisdiction over either information services or wireless services, both of which are inherently interstate.

## KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The Communications Act of 1934, as amended (the Act), authorizes the Federal Communications Commission (FCC) to regulate telecommunications, cable, wireless, satellite and other similar services in the US. Please see [Chapter 5 of Title 47 of the United States Code](#) (47 U.S.C § 151 et seq.) and [47 C.F.R Chapter I](#), the rules of the FCC implementing the Act.

## REGULATORY BODIES OR AUTHORITIES

The Act authorizes the [FCC](#) to regulate and license telecommunications services and the use of the radio spectrum, as well as to enforce the Act.

Where not pre-empted by the Act, state public utilities commissions/public service commissions regulate intrastate telecommunications, including by requiring a state authorization.

Either the US Congress (through the Act) or the FCC has designated certain non-governmental or quasi-governmental entities with the authority to administer and audit compliance with certain programs. For example, the [Universal Service Administrative Corporation](#) (USAC) is authorized by the Act to administer the Universal Service Fund (USF), which subsidizes telephone and broadband services in rural and high-cost areas and to low-income individuals, and Internet service to schools and libraries. USF is supported by the revenue contributed by telecommunications carriers and other providers of telecommunications. USAC is authorized to audit contributor compliance with the FCC rules on USF contributions. USAC also makes disbursements from the USE programs to service providers qualifying for support.

## TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

The FCC regulates:

- Telecommunications services generally and some Voice over Internet Protocol (VoIP) offerings
- Submarine cables
- Wireless services including, but not limited to, commercial mobile wireless, private mobile wireless, microwave, and satellite through rules on licensing, technical requirements, and interference applicable to both commercial, private, and non-commercial spectrum users (ie local governments/public safety) except Federal government agencies
- TV and radio broadcast services
- Experimental radio services
- Access to telecommunications, advanced communications services, cable/video programming, and customer premises equipment for people with disabilities
- Intercarrier compensation for the exchange of traffic
- Use and protection of customer information by telecommunications carriers
- Cable television (but not "Over the Top" streaming services) rates at the basic level
- Equipment authorizations for both intentional and unintentional emitters of radio frequencies

## **OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES**

Entities are authorized to provide domestic telecommunications services in the US pursuant to a Section 214 authorization, which is automatically granted by the FCC upon registration with the FCC (and USAC). There is no requirement to renew a Section 214 authorization.

Entities seeking to utilize the radio spectrum to provide domestic telecommunications service must apply for and obtain a radio license for the frequencies to be used before commencing service. Providers of licensed wireless, broadcast or satellite services are required to operate consistent with the terms of their FCC license and applicable FCC rules, including those limiting operating parameters to protect against interference. Licensees providing commercial mobile radio services are classified as telecommunications carriers. Radio licenses are term-limited and must be renewed to permit continued operation beyond the license term.

Entities seeking to provide telecommunications services between the United States and any foreign point must apply for and obtain an international Section 214 authorization from the FCC before commencing service. There is no requirement to renew a Section 214 authorization.

Telecommunications carriers must obtain an FCC Registration Number (FRN).

Telecommunications carriers and other providers of telecommunications must file an FCC Form 499-A registration with USAC prior to commencing service and contribute to USF pursuant to the revenue reported in quarterly filed Form 499-As.

FCC radio licenses and Section 214 authorizations generally may not be transferred or assigned except with the prior approval of the FCC (internal reorganizations and involuntary bankruptcy being exceptions). Approval of applications for license transfers or assignments may occur as rapidly as overnight or can take many months, depending on the nature of the license(s), the competitive issues raised, and whether foreign ownership is involved. Some state laws also require approval by the state's respective public service/utilities commission prior to the transfer of control or assignment of state telecommunications authorizations.

## DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES

With respect to non-wireless services, there are no outright prohibitions on foreign telecommunications carriers serving US customers and no requirement for foreign carriers to hold the Section 214 authorization through a US subsidiary. However, an applicant for Section 214 authority that is a foreign telecommunications carrier, an entity that is affiliated with one or more foreign carriers, and/or an entity with a 10% or greater direct or indirect foreign owner, generally will experience a more rigorous and much longer application process often taking six months or more. This is because the FCC will refer such application to an interagency review body called Team Telecom to review the application with respect to national security, law enforcement, foreign policy, and trade concerns. Team Telecom is comprised of officials from the Department of Justice, Department of Homeland Security, Federal Bureau of Investigation, Department of Defense, and potentially other agencies. Team Telecom will typically seek more information from the applicant regarding its ownership (particularly foreign ownership), affiliates, the nature of the facilities and equipment used, the provisioning of services, the protection of customer data, network security, and how the applicant will respond to law enforcement service of process. The FCC will not act on the application until Team Telecom indicates it has no objection to the grant. In some cases, the applicant may be asked to execute a network security agreement or take other mitigating measures to address potential concerns. On rare occasions, Team Telecom may object, in which case the FCC will generally not grant the license application.

The Communications Act does impose foreign ownership limitations on radio licenses. Section 310 of the Act prohibits any radio license from being held by a foreign government or its representative. Commercial mobile radio licenses, broadcast licenses, certain types of aeronautical licenses are subject to additional restrictions. These restrictions prohibit such licenses from being held by any foreign entity and any US corporation with more than 20% direct foreign ownership or voting power. In addition, where an application for a commercial mobile radio, broadcast, or aeronautical license has indirect non-controlling foreign ownership of 20% or more or indirect controlling foreign ownership of 25% or more, the FCC will refer the application to Team Telecom for review. The FCC will not act until the executive agencies indicate no objection.

Telecommunications common carriers, providers of interconnected VoIP and non-interconnected VoIP are required to have an agent in Washington, DC to receive service of process related to FCC matters (47 U.S.C. § 413; see also 47 C.F.R. § 1.47(h)).

## EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Telecommunications carriers are required to interconnect facilities and equipment with other carriers in order to exchange traffic. Generally, interconnection is negotiated between telecommunications carriers. State public service/public utilities commissions approve interconnection agreements and adjudicate interconnection disputes between carriers. Carriers are required to pay various forms of intercarrier compensation for the exchange of traffic.

Providers of wireline local exchange service are sometimes required to file intrastate tariffs with state public service/public utilities commissions pursuant to state law. Carriers file interstate tariffs for a decreasing number of legacy services with the FCC.

Mobile wireless service providers enter into roaming agreements with each other in order to allow customers to receive service outside of their home network. Providers of commercial mobile data services must offer data roaming arrangements on commercially reasonable terms and conditions, subject to certain limitations.

## TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The FCC has adopted numerous [consumer protection rules](#), which generally do not apply to telecommunications services provided to enterprise/business customers or to wholesale services provided to other carriers.

FCC consumer protection rules include:

- The protection of telecommunications proprietary information generally and customer privacy by telecommunications carriers (including both wireline and wireless) based upon the requirement under the Act to protect and hold confidential, Customer Proprietary Network Information (CPNI), which is defined as:

- 'Information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information. Subscriber list information is the information in a telephone directory' (47 U.S.C. § 222)
- The FCC Truth-in-Billing policy, which applies to telecommunications services offered to consumers and is designed to improve consumers' understanding of their telephone bills. Among other things, the rules require that a telephone company's bill must:
  - Be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered
  - Identify the service provider associated with each charge
  - Clearly and conspicuously identify any change in service provider
  - Contain full and non-misleading descriptions of charges
  - Identify those charges for which failure to pay will not result in disconnection of the customer's basic local service
  - Provide a toll-free number for customers to call in order to lodge a complaint or obtain information (47 C.F.R § 64.2401)
- The regulation by the FCC of the process for switching a consumer's telecommunications carrier in order to protect against unauthorized changes (47 C.F.R §§ 64.1100 - 64.1190)
- Telemarketing including using robocalls, robotexts, and auto-dialers
- Access to telecommunications services and equipment by persons with disabilities, including hearing aid compatibility, access to advanced communications services and equipment, access to Internet browsers built into mobile phones, telecommunications relay services, and accessible video programming and video programming apparatus

## REGULATORY TAXES AND FEES

Telecommunications carriers and other providers of telecommunications are required to pay various regulatory fees and surcharges. These fees and surcharges, however, are not classified as 'taxes' and must clearly be distinguished from taxes on any invoice.

Specifically, a telecommunications carrier must contribute to the Universal Service Fund, absent an applicable exemption. The current contribution factor for USF is approximately 25% of qualifying interstate revenues.

Telecommunications carriers and other providers of telecommunications may be required to pay contributions to Telecommunications Relay Service, Local Number Portability (LNP), and the North American Numbering Plan Administrator (NANP) for numbering resources (invoiced following registration with USAC). It is permissible under FCC rules to pass these contributions and fees through to end user customers.

Telecommunications carriers, submarine cable licensees, and wireless, broadcast and satellite licensees are required to pay an annual FCC regulatory fee (which is established annually in August based upon the service category).

Most states have instituted state universal service fund and emergency 911 fees (emergency 911 fees are also frequently assessed at the local/municipal level).

## KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

Compliance with the Act, the FCC rules, and the terms and conditions of licenses and authorizations are investigated and enforced by the Enforcement Bureau of the FCC. The Enforcement Bureau may first contact the licensee through a notice of inquiry or proceed directly to a Notice of Apparent Liability. If the Bureau finds noncompliance, the investigation is typically resolved through an Order of Forfeiture, which can mandate fines or order the seizure of property. Alternatively, the Bureau and licensee can resolve the investigation by jointly entering into a Consent Decree, which may involve an admission of liability, a reduced fine, and a multi-year compliance plan. Violations of a consent decree's terms is considered a violation distinct from any subsequent violation of the FCC's rules. In cases of egregious violation, the FCC may revoke some or all of a wrongdoer's licenses. The FCC has delegated investigative capacity to USAC to review (in the first instance) a carrier's compliance with its Universal Service Fund contribution obligations.

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