



**Bradley Law**  
Attorneys at Law

## MEMORANDUM

**To: North Metro Telecommunications Commission**  
**From: Mike Bradley, Michael Athay, and Tou Xiong**  
**Re: August, 2022 Legal Report**  
**Date: August 3, 2022**

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### **Mike Bradley Named a 2022 Super Lawyer**

Mike Bradley was recently selected as a top-rated communications lawyer in Minnesota by [Super Lawyers](#). 2022 is the fifth year Mike has received this distinction. [Super Lawyers](#) is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The rigorous selection process includes independent research, peer nominations and peer evaluations.

### **FCC Supports Local Government in OTARD Litigation**

The FCC recently told the D.C. Circuit Court of Appeals that it sides with the City of Rancho Palos Verdes, California in revoking permits that a property owner relied on to install 13 antennas and supporting masts on a residential roof. The property owner lost in federal and state court, then petitioned the FCC for a declaratory ruling in its favor under the FCC's Over The Air Reception Devices (OTARD) Rule. When the FCC dismissed its petition, it again petitioned the FCC and sought a writ of mandamus from the Court ordering the FCC to decide its petitions. The FCC's Opposition pointed out that no one is living at the property, a requirement under the OTARD Rule, and that it is not clear the devices are entitled to OTARD protection even if a resident of the property received protected services there. The matter is of interest in part because the FCC has consistently sided against local government attempts to regulate the placement of satellite TV antennas and other OTARDS. The FCC's Opposition is at [DOC-385608A1.pdf](#); the D.C. Circuit case is *In re Indian Peak Properties LLC*, case number 22-1098.

### **New Minnesota Law Facilitates Background Checks for City Hiring and Licensing Authorities**

The 2022 Minnesota Legislature passed a new law ([Chapter 59](#)) that authorizes a city or county's law enforcement agency to disseminate criminal history data to the hiring and licensing authorities of a city or county requesting background checks for applicants, licensees, or current employees. Under the law, municipal hiring and licensing authorities are no longer required to obtain the full criminal history data from the state Bureau of Criminal Apprehension (BCA). The law was signed by Gov. Tim Walz with an effective date of Aug. 1, 2022.

The law requires both the authorized law enforcement agency and the municipal hiring or licensing authority to maintain the criminal history data securely, and to act consistently with

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[Minnesota Statutes, section 364.05](#). That Section requires that a hiring or licensing authority notify an applicant in writing if it denies the applicant a position of public employment, or disqualifies the applicant from a license, solely or in part because of the individual's prior conviction of a crime. For more information on the law and sources of guidance on performing background checks, see the Minnesota League of Cities article [here](#).

### **Missouri Court Certifies Class In City's Action Against Netflix and Hulu Seeking Fees For OTT Video Services**

In a significant state court victory for municipalities seeking franchise fees for over-the-top (OTT) Internet video services, the Circuit Court of St. Louis (Missouri) County granted the City of Creve Coeur's Motion for Class Certification on July 11, 2022. The City sued Netflix and Hulu in Missouri state court in 2018 in a putative class action seeking declaratory judgment that the service providers do business within the state but fail to remit fees as required by the 2007 Missouri Video Services Providers Act ("VSPA"), Mo. Rev. Stat. § 67.2675, et seq., and local code provisions. The Defendants removed the action to federal court but the City subsequently petitioned successfully for remand back to state court. On December 30, 2020, the Court denied Defendants' motion to dismiss: [Order Denying MTD](#).

As requested by the City, last month's Circuit Court decision certifies the class as "[a]ll Missouri cities, towns, villages, and counties with a population exceeding 400 people (according to the 2010 U.S. Census) that have charged a video service provider fee or franchise fee at any time between July 19, 2013 and the present and in which Defendants have done business." The Court ordered that the City be appointed class representative. The decision can be found in *City of Creve Coeur v. Netflix Inc. et al.*, Case No. 18SL-CC02819, Circuit Court of St. Louis County, Missouri (July 11, 2022).

### **Virginia Supreme Court Finds Municipal Tax On Internet Access Services Violates Internet Tax Freedom Act**

In a decision instructive for municipal efforts to tax Internet access services, the Supreme Court of Virginia ruled on July 14, 2022, that Fairfax County could not charge Coxcom a Business and Professional Occupation License (BPOL) tax for the sale of such services under the Internet Tax Freedom Act (ITFA). Specifically, the Court found that ITFA's moratorium on State and local imposition of taxes on internet access defines a "tax on internet access" broadly enough to apply to the County's BPOL tax and that no ITFA exception applies to that tax. The Court further found that ITFA's grandfather clause for taxes imposed prior to October 1, 1998 does not apply to the BPOL tax because it fails to meet the ITFA grandfather requirement (1) that the appropriate agency of the County, the Department of Tax Administration, must have issued a rule or proclamation *interpreting* the BPOL tax as applying specifically to Internet access services – i.e. simply publishing the BPOL tax ordinance was not sufficient; or (2) the County must have generally enforced the tax on Internet service providers (ISPs) prior to October 1, 1998 – specifically, the BPOL tax was not "generally imposed and actually enforced" and "generally collected ... on charges for Internet access" prior to October 1, 1998, as required by ITFA. The Court found that the County did not meet its burden to prove it had satisfied either of these requirements.

Coxcom sued the County for a refund after being charged BPOL taxes on its sale of Internet access services for several years. The implementing ordinance provided that BPOL taxes applied to “business services occupations,” including “online computer services and computer time share services.” AOL was the only major ISP that was charged the BPOL prior to Coxcom, although other ISPs did business in Fairfax County, contrary to the ITFA grandfather condition that the tax must have been generally enforced prior to October 1, 1998. The court’s decision is available here: [Coxcom LLC v. Fairfax County](#)

### **FCC Chair Rosenworcel Announces Staff Changes**

On July 11, 2022 Federal Communications Commission Chairwoman Jessica Rosenworcel announced an addition to her staff and adjustments to policy portfolios for select legal advisors. Effective that day, Carmen Scurato will serve as the Chairwoman’s Legal Advisor for Consumer and Public Safety issues. David Strickland will now serve as Legal Advisor, Media. Ethan Lucarelli will serve as Legal Advisor for Wireless and International issues. Ramesh Nagarajan will serve as Legal Advisor for Wireline and Enforcement related issues.

### **FCC Grants Reply Extension In 2nd FNPRM Proceeding On Pole Replacement Costs**

On July 19, 2022 the Wireline Competition Bureau [granted a request](#) for an extension of the deadline to file replies in the FCC’s [Second FNPRM](#) regarding pole replacement costs. The requesting parties asked for 60 days and the Bureau granted 30 days, making replies now due by August 26, 2022.

### **Agenda For FCC’s August 5 Open Meeting Has Two ACP Draft Items, Favorably Cites Local Government Comments**

The [Tentative Agenda](#) for the FCC’s August 5, 2022 Open Meeting included two Report and Order items on the Affordable Connectivity Program (ACP), which provides households a discount of up to \$30 per month for broadband service (up to \$75 per month for households on Tribal lands), and a one-time discount of up to \$100 for a computer or tablet. The first item, [ACP Outreach](#), among other things, would establish the Outreach Grant Program to provide eligible governmental and non-governmental entities funding to conduct outreach to increase awareness of and encourage participation in the Affordable Connectivity Program among eligible low-income households. The second item, [ACP Pilot Program](#), would establish a one-year pilot program, “Your Home, Your Internet,” with the goal of increasing awareness of the Affordable Connectivity Program among recipients of federal housing assistance and facilitating enrollment in the Affordable Connectivity Program by providing targeted assistance with the ACP application.

Both items are on the final [Sunshine Agenda](#) for the August 5 Open Meeting as Report and Order items. Other Sunshine Agenda items include a Notice of Inquiry on *Space Innovation and Facilitating Capabilities for In-Space Servicing, Assembly, and Manufacturing*; and a Report and Order and NPRM on Amendment of Parts 2 and 25 of the Commission’s Rules to Enable GSO Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3-17.8 GHz Band. The Open Meeting is at 10:30 a.m. Eastern.

In its [Report and Order and NPRM](#) implementing the ACP, the FCC sought comment on establishing a grant program for outreach regarding the ACP and on a potential pilot program focused on increasing the awareness and enrollment of eligible households participating in Federal Public Housing Assistance Programs (among other things). NATOA filed [Reply Comments](#) supporting a grant program that includes local governments and PEG access providers. Both Tentative Agenda items on the ACP favorably cite NATOA's reply comments and the reply comments of a coalition of local governments numerous times.

### **Protecting Community Television Act ([S. 3361](#)) ([H.R. 6219](#))**

Local governments and the associations representing them continue to seek co-sponsors for this legislation, which was reintroduced by Sen. Markey and Rep. Eshoo to amend the Cable Act to clarify that franchise fees do not include "in-kind" franchise obligations. The current list of Senate cosponsors can be found [here](#) and House cosponsors [here](#). We are happy to assist clients who want to support this effort and need assistance contacting members of Congress and/or setting up meetings.

### **Biden Nomination for Open FCC Seat**

Awaiting Senate vote to discharge Sohn's nomination to the Senate floor, which is required because the Commerce Committee moved the nomination on 14-14 vote. Undecided (and necessary) votes include Sens. Catherine Cortez Masto of Nevada, Mark Kelly of Arizona and Joe Manchin of West Virginia.

### **Proposal to Increase Minimum Broadband Speeds Circulating In FCC**

Chairwoman Rosenworcel [announced](#) on July 15, 2022 that she has circulated a Notice of Inquiry as part of the FCC's annual evaluation of the state of broadband across the country, in which she proposes to increase the national standard for minimum broadband speeds to 100 Mbps for download and 20 Mbps for upload, and proposes setting a long-term goal for broadband speed of 1 Gbps/500 Mbps.

### **Comcast Broadband Growth Flat In Second Quarter**

Comcast added no broadband subscribers in the second quarter, in an apparent first for the company. The company attributed this result to lower connection activity, increased competition from fiber and fixed wireless access services and a resurgence of users substituting mobile internet access for traditional fixed broadband. Nonetheless, Comcast's broadband revenue grew 6.8% in Q2 2022. T-Mobile posted 560,000 fixed wireless net additions for Q2, while Verizon grew by 256,000. For detail, see Fierce Telecom's story [here](#).

### **Charter Communications Posts Broadband Subscriber Net Loss in Second Quarter**

Charter Communications announced that its subscriber growth crossed into the red for the first time in the second quarter of the year, with a loss of 21,000 high-speed data customers –

mainly lower income households that did not transition from the Emergency Broadband Benefit (EBB) federal subsidy program to the new American Connectivity Program (ACP) federal subsidies. About 59,000 subscribers did not make the transition. Overall, Charter lost 42,000 residential broadband subscribers and gained 21,000 business subscribers in the period. Excluding the EBB losses, Charter said it would have added 38,000 broadband customers in the period. Charter announced the loss a day after [Comcast said its broadband customer growth was flat in the second quarter](#). Charter nonetheless reported that revenue was up 6.2% to \$13.6 billion, cash flow rose 9.7% to \$5.5 billion and net income rose 44.2% to \$1.5 billion in Q2. The Multichannel News analysis is available [here](#).

## **NCTC Drops “Cable Television” From Its Name**

The National Cable Television Cooperative – universally known by its acronym NCTC – announced last week that it is dropping “Cable Television” from its name and rebranding to become the *National Content & Technology Cooperative*. The trade group has more than 700 independent communication service providers as members, and in its nearly 40-year history has been known for negotiating bulk-buy programming discounts for its members. This name change and shift of focus comes at a time of much change in the cable industry, including a growing consumer shift to over-the-top streaming services, when many traditional providers see broadband services as a key element of growth. Looking at major providers in satellite, cable and telco, a [July report from MoffettNathanson](#) showed that traditional pay TV distributors – satellite, cable and telco – collectively lost 1.86 million video customers in the quarter, with the industry shrinking 5.1% year over year. For a detailed discussion, see Fierce Video’s story [here](#).

## **Charter Spectrum Owes \$7 Billion In Punitive Damages For Murder Of Texas Customer**

A Dallas County, Texas jury found Charter Communications, which also operates as Charter Spectrum and Spectrum, acted negligently in hiring a field technician who killed one of its customers. The jury awarded \$7 billion in punitive damages against Charter for "systemic safety failures" in connection to the 2019 murder of 83-year-old Betty Thomas by one of the technicians. Earlier in June, a jury also said Charter had to pay 90% of \$375 million in compensatory damages to Thomas' family. In that verdict, the jury found Charter liable for the robbery and stabbing death of Thomas. In December 2019, officers arrested 43-year-old Roy Holden Jr., and he later pleaded guilty to murder and was sentenced to life in prison in April 2021. The complaint against Charter alleged the cable company eliminated an employee screening program that Time Warner Cable had in place when Charter bought the multiple-system operator in 2016. Spectrum allegedly hired Holden without verifying his employment history, which would have shown he lied about his work history and would have revealed firings for forgery, falsifying documents and harassment of fellow employees, according to trial testimony. Holden was the Spectrum field technician who visited Thomas' house in December 2019 to help with her phone line. He went back to her place the next day using a Spectrum van, and stabbed her with a utility knife supplied by the cable company. Holden took her credit cards and went on a "spending spree," attorneys said in June. They also said Thomas' death could have been prevented and Spectrum had "systemic failures" in its hiring practice. Detailed news coverage can be found [here](#).