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Rules for Tech Likely Won't Close Regulatory Gap With Media

By Cory Weinberg and Tom Dotan Nov. 08, 2017 1:27 PM PST

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Media giant Comcast's annual report lists 10 pages of regulations that the company operates under, running to 6,200 words. Alphabet, in contrast, summarizes all the regulations that could apply to it in just 682 words.

U.S. lawmakers are grappling with how to write new rules for internet-based giants like Facebook and Google, amid a broader debate about the power these firms have amassed. What regulations they devise, though, are still likely to fall short of the wide-ranging regulations that cover media and telecom companies. Media and telecom executives complain about the disparity as they lobby for loosening the rules governing their businesses.

THE TAKEAWAY

- **Lawmakers question lack of regulation for big tech**
- **Media, telecom firms operate under decades-old rules**
- **Key issues across sectors include antitrust, advertising, data privacy**

Media and telecom firms operate under rules that go back decades, to a time when people got their news from newspapers, broadcast television and radio. For instance, rules severely limit how many TV and radio stations can be owned in individual markets, and they prohibit a company owning a newspaper and a TV station in the same market. While the Federal Communications Commission proposes to repeal many of these later this month, it's tried before, only to be blocked by the courts. Meanwhile, telecom firms like Verizon and AT&T are governed by a thicket of rules that govern everything from pricing of old fashioned "wireline" phone service to transfer of wireless spectrum used in cellular phone service. (See accompanying table, below.)

In contrast, there are few comparable rules relating specifically to the internet, although antitrust laws apply to internet firms as to all other industries. (The Justice Department's current review of AT&T's proposed purchase of Time Warner highlights how tough the antitrust regulators can be in demanding changes to deals.) Some laws make life easier for internet firms. While broadcasters can get fined for airing indecent material—such as allowing someone to curse—internet firms generally aren't

liable for what's posted on their sites or apps. That's thanks to 1990s-era laws like Section 230 of the Communications Decency Act and the Digital Millennium Copyright Act.

Meanwhile, online streaming video services like Netflix and YouTube are exempt from a 1992 law that forced cable operators to give access to their content to satellite TV firms and other competitors.

Years of Complaints

Media executives have complained for years that the rules were outdated. But last week, lawmakers touched on the same issue for tech. At congressional hearings with representatives of Facebook, Alphabet and Twitter, lawmakers questioned whether tech firms like Facebook and Google are performing the same function as media firms and should be regulated in the same way.

Markham Erickson, an attorney who has represented internet and cable companies for Steptoe & Johnson LLP, said it was unlikely that policymakers would consider adopting a comprehensive regulatory structure for internet companies but rather consider regulations for specific activities—such as rules for artificial intelligence, drones and medical devices.

“If you have an entity from which 95% of Americans are getting news or search results, it's not unreasonable for policymakers to say, ‘Let's think about this and open up this conversation,’” Mr. Erickson added.

Internet companies do have some obligations to get parents' permission for children to use their services, and they may have a take a more active role to police their platforms for sex trafficking if a pending Senate bill becomes law. But the federal government doesn't tap specific government agencies to regulate the internet the same way the FCC makes rules for broadcasters and cable firms. (The Federal Trade Commission has used its powers to enforce consumer-protection laws against Google, Facebook and others.)

One example of how internet companies have avoided regulation has been particularly relevant lately: political advertising. The Federal Election Commission has considered digital platforms exempt from disclosure rules on political ads. A pending Senate bill sponsored by Democratic Sens. Mark Warner and Amy Klobuchar would force Facebook, Twitter, Google and others to publicly disclose who bought political ads and what characteristics of people they targeted.

European Heat

Google and Facebook have faced the most regulatory heat in Europe. In their annual reports, both companies call out as regulatory risks the EU's General Data Protection Regulation. Next year, it will add extensive privacy rules for companies to follow and will allow people to transport their personal data across different platforms.

To be sure, many of the rules applying to broadcast media have been on the chopping block for years. The Federal Communications Commission tried to repeal the TV-newspaper cross-ownership ban 15 years ago, for instance, only to have the repeal overturned by an appeals court. Later this month, the FCC is scheduled to vote once again to repeal many of the ownership rules.

Meanwhile, the telecom lobby has had policy wins lately. The new FCC chairman Ajit Pai has said the commission will roll back the net neutrality rule put in place by the Obama administration. That rule required broadband providers to treat all internet traffic the same, preventing them from charging Netflix for the huge volumes of traffic it sends through the internet.

For years, the FCC has been debating how to regulate broadband internet providers like Comcast, Time Warner Cable and

AT&T. Mr. Pai has been advocating for them to face less federal oversight as an information service rather than a utility-like telecommunications service.




And Congress earlier this year repealed privacy rules the Obama administration had wanted to block internet providers from using or selling customers' web browsing history without their consent. (Tech companies like Google and Facebook supported the move, too.)

Phone carriers want similar deregulation and are advocating in Washington, D.C. that tech companies should get some of the same antitrust scrutiny that AT&T and others have historically received, said Tim Sparapani, Facebook's first director of public policy who is now principal at SPQR Strategies.

The policy issues of newer and older industries are converging as internet, phone and TV companies battle over how to use data to boost their advertising dollars, he said. "The single most lucrative market is not about delivering phone or TV or internet. It's all about who gets data to do advertising with," he said.

The Media-Tech Regulation Gap

An overview of regulations applying specifically to media, telecom and tech industries

 Media	 Telecom	 Internet
<p>Broadcast TV and radio can't</p> <ul style="list-style-type: none"> • own more than 2 TV stations in a market • own TV station and newspaper in same city • own two of the top four national broadcast networks • own TV stations reaching more than 39% of households • broadcast anything considered indecent <p>And</p>	<p>Telecom firms must</p> <ul style="list-style-type: none"> • let rivals use parts of their wired networks to offer competing service • allow wireless customers to roam onto other providers networks at "commercially reasonable" rates • let consumers use devices and apps of their choice on networks • get approval to stop using copper wires for wired phone service 	<p>Internet firms must</p> <ul style="list-style-type: none"> • Follow user privacy and data-collection guidelines from FTC. • obtain parental consent before collecting personal information from children under 13. • report child exploitation • remove user-submitted content that infringes on copyright.

- Must get broadcast licenses renewed regularly

- Direct foreign ownership limited

Cable firms can't

- restrict access to programming they own
- slow lawful internet traffic on basis of content
- favor traffic from one site over another
- demand exclusive rights to programming

Other rules governing cable

- Have to carry broadcast TV without being paid
- Need franchise rights from local authorities to operate
 - set-top boxes
 - network management disclosures
 - VOIP service

Cable and broadcast

- Have to disclose who pays for political ads

wired phone service

- provide wired telephone and broadband service to everyone
- comply with emergency 911 rules
- report network outages
- submit annual report on service offerings
- Submit to federal oversight over what services they offer and at what price
- Adhere to regulation of wholesale network pricing and interstate access charges
- Follow state rules on local telephone service

- Limited in children’s content

Source: The Information Research



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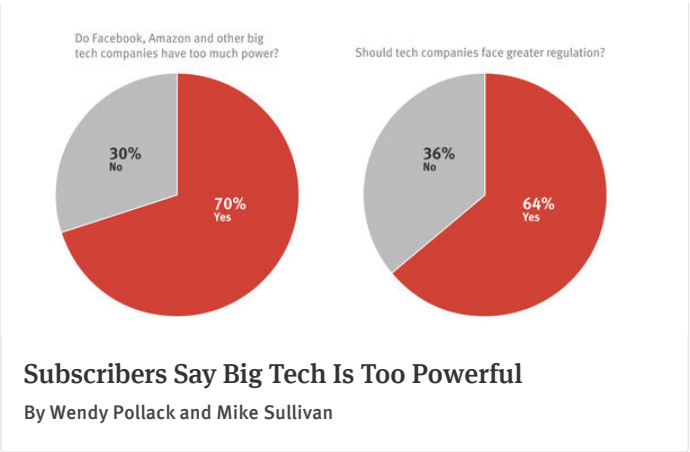
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