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Global Practice Guides

**TMT**

Introduction

Contributed by  
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# INTRODUCTION

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Contributing Editor

**Richard E. Wiley**

Wiley Rein LLP

**Wiley Rein LLP** has the largest Telecom, Media & Technology (TMT) law practice in the United States with more than 60 attorneys and engineers engaged full-time. The practice encompasses virtually all aspects of federal, state, and international laws governing the telecommunications, media, and technology industries. The size and experience of the Practice enables the firm to handle the full scope of telecommunications, wireless, litigation, international, satellite, and media issues – from

headline-setting, billion-dollar mergers to business disputes and regulatory initiatives. The team has extensive familiarity with the government institutions that shape and administer all manner of communications regulations and policies. Group members include individuals who have occupied high-level positions at the Federal Communications Commission (FCC), the US Department of State, and the US Department of Commerce, as well as in the US Congress.

### Contributing Editor



**Richard E. Wiley**, Chairman Emeritus of the firm, is described by peers as “the godfather of the industry” and “a legend in telecommunications.” As former chairman

of the FCC, Wiley adds great depth to his practice and clients appreciate his extensive network in Washington, DC. Wiley also is a frequent author and lecturer on telecommunications and information law.

### Assisted by



**Jennifer D. Hindin**, chair of the firm’s Space and Satellite Group, specialises in regulatory, policy, and transactional matters related to satellites, earth stations, undersea cables, and international telecommunications. Hindin represents some of the largest and most successful operators of global fixed satellite service, mobile satellite service, direct broadcast service, satellite radio service, and emerging space-based global broadband internet access. She is a two-time former co-chair of the Federal Communication Bar Association’s (FCBA) International Telecommunications Committee and an internationally recognised practitioner in the industry.



**Henry Gola** is an associate in the firm’s Telecom, Media & Technology Practice. He assists clients in a variety of complex regulatory, transactional, litigation, and compliance matters in the areas of telecommunications and media. While head of regulatory for one of the nation’s largest broadcast television companies, Henry developed and implemented the company’s strategy for FCC proceedings and compliance, including the company’s successful participation in the FCC’s recent 600 MHz spectrum auction.

### Overview

Regulation of the telecommunications, media, and technology (TMT) sector continues to be a key policy issue globally. Over the past few decades, liberalisation has increased competition, mobile networks have succeeded in connecting half of the world’s population, data traffic has superseded voice traffic and is expected to continue to increase dramatically, smartphone adoption is reaching critical mass in developed markets, and Internet Protocol (IP)-based networks are proliferating. In addition, the Internet has transformed the way we live, touching nearly every facet of our lives and influencing every corner of the world.

Against this backdrop, the TMT industry is transforming. Information and communications services increasingly are

being provided by transnational and multinational companies. Historically separated markets, such as telecommunications and media and voice and data, are converging and becoming a single market. Content-providers and network operators are vertically integrating, forcing industry participants to rethink their role in the value chain. In many countries, spectrum allocations are failing to keep pace with wireless service demands. While in some respects the digital divide is shrinking, new separations in broadband access and speeds have emerged. The TMT industry is advancing at a swift pace with the rapid progress in cloud-based services, the wireless industry sprinting to 5G adoption, the emergence of global low-Earth-orbit constellations of small satellites promising global internet access and connectivity,

and the Internet of Things increasing collaboration, agility, and scale. As these developments make content and services more easily available to anyone and anywhere, geographic borders seemingly are becoming less relevant. Without appropriate security and privacy solutions, however, these potentially revolutionary advances could falter.

In the face of such a rapid pace of technological change, regulators face an understandably daunting challenge. In many cases, officials are seeking to cope with the challenges of convergence and the implications of internet-related growth while at the same time reviewing the continuing viability of liberalisation and competition-based policies. This change is being expressed in many ways around the world — for example, through network neutrality rules; national and regional broadband infrastructure initiatives; spectrum reallocation efforts; a heightened focus on privacy, security, and domestic consumer protection regulation; and, in some cases, an increased role of national governments and inter-governmental organisations in previously unregulated or loosely regulated markets.

This publication is designed to serve as a guide for companies navigating the evolving and sometimes conflicting requirements of multiple sovereigns. It offers a high-level snapshot of selected features of national laws as they currently stand in 21 jurisdictions across the world. It also provides a concise overview of the features of telecommunications, media, and technology regulations that often are of greatest practical significance to businesses, such as licensing requirements, spectrum allocations, opportunities for foreign participation, and preemption of local rules. Each chapter, organised by country, draws on the detailed knowledge of local practitioners to identify the general structure of TMT regulation and ownership in a particular country, as well as particular rules for broadcasting/media, telecom, wireless, satellite, and internet/broadband services. Every chapter also examines the fundamentally important, but often overlooked, policy and regulatory issues associated with managing consumer demand for communications and data. Finally, the chapters describe technology trends and their implications for future policy and regulation. These are issues that have been and will continue to be vigorously debated because they have a crucial influence over the direction of the industry and the success of individual players.

### **The Purpose and Experience of TMT Regulation**

Governments regulate industries in a variety of ways in an attempt to achieve a number of diverse goals. That said, the most fundamental objective of regulation is straightforward: to ensure that everyone has access to reasonable service at reasonable prices. Implementing this objective, however, has never been an easy task.

In the TMT sector, the dominant narrative in global regulatory debates for the past few decades has largely been based on the twin pillars of promoting competition and increasing liberalisation. Generally analogous to the “Washington Consensus” principles that focused on a market-based approach to policy questions, the move in global telecommunications policy since the late 1980s has been away from state-run monopoly service-providers toward a less regulated industry with increased private-sector competition from both domestic and international market players. The liberalisation of telecommunications markets was motivated by various factors, including:

- the development of international trade in telecommunications services, which increasingly have been provided by multinational companies;
- evidence that liberalised communications markets were growing and innovating faster and serving customers better;
- the need to attract private-sector investment to expand and upgrade network infrastructure;
- growth of wireless services, providing alternatives to fixed networks and introducing new service-providers to telecommunications markets; and
- growth of the internet, which caused data traffic to overtake voice traffic in many countries and led to the introduction of many new services.

As numerous state-owned telecommunications operators were privatised and a wave of pro-competitive and deregulatory policies swept the world, the number of national telecommunications regulatory authorities increased from 12 to over 100 around the world. Regulatory intervention was believed necessary to ensure that viable competition would emerge. Many countries concluded that the creation of a strong, effective, and independent regulator was beneficial to successful liberalisation.

Today, national regulators have considerable experience in telecommunications. Regulatory objectives have not been altered significantly in recent years. Changing circumstances have made it clear that old models for implementing the objectives need to be updated. Reforms now underway in many countries are being driven by a renewed emphasis on ensuring that services are supplied in a manner consistent with national perceptions of the public interest.

### **Who Regulates**

An increasing number of governments have developed separate, national regulatory authorities to oversee the TMT sector. A variety of factors distinguish these authorities, such as: the level of independence of the regulator, funding of the regulatory process, the scope of regulatory authority, and organisation of regulatory staff. In some countries, other government ministries or agencies also may play key roles.

For example, a competition authority may have relevant authority in the TMT sector in addition to a sector-specific regulator.

### **The Regulatory Process**

Regulators undertake various responsibilities, including, among others: licensing, management of spectrum resources, access to rights of ways, numbering and portability, standards and protocols, interconnection, addressing anti-competitive behaviour, price regulation, quality of service regulation, universal service, consumer protection, and privacy and security. In doing so, regulators employ a variety of direct procedures. Depending on the legal framework, they may issue various types of regulatory instruments, such as rules, decisions, orders, decrees, policies, notices, or resolutions. In general, these instruments implement regulatory policies, resolve disputes, or deal with other matters within the regulators' mandate. In addition, government officials generally also have the authority to investigate the actions of regulated entities and to enforce their oversight, including the power to impose sanctions and penalties for violations.

#### **Wiley Rein LLP**

1776 K Street, NW  
Washington, DC  
District of Columbia  
USA  
20006



Tel: +1 202 719 7000  
Fax: +1 202 719 7049  
Web: [www.wileyrein.com](http://www.wileyrein.com)