



Big Data in the Communications Industry

Big Data raises profound opportunities, but also fundamental challenges, for the communications industry. Dizzying innovation and lightning-fast transformation in sectors ranging from mobile broadband to IP voice and interactive cable offerings present novel and complicated issues on a daily basis. All players in the industry will need to grapple with these issues, including infrastructure providers, cloud computing companies and service providers. From privacy to cybersecurity, data mining, antitrust and surveillance, Big Data issues will define the future of the entire industry.

PRACTICE AT A GLANCE

- Our practice brings together talented lawyers from around the world with experience in wireline and wireless communications and video, as well as deep familiarity with national security, law enforcement, privacy and Internet-law issues. This diversity enables us to spot and address complex sector-specific issues facing our communications clients.
- Big Data issues in the communications sector can cut across multiple state and federal regulatory regimes, and can invite scrutiny from the FCC, FTC, and state attorneys general. Our breadth of government experience equips us to handle fast-moving and pressing regulatory issues.

INDUSTRY-SPECIFIC ISSUES

Privacy and cybersecurity: Communications companies can monitor data transmissions to and from individuals, as well as most websites, video, and other media that customers view. And the vast repositories of sensitive data processed by communications companies give rise to immense cybersecurity challenges as well. Navigating these challenges, as well as complying with industry-specific privacy and cybersecurity laws and regulations, raise profound compliance, enforcement and litigation issues.

Transactions and agreements: Big Data is a valuable resource, and increasingly communications providers are entering into commercial agreements with respect to it. Given the unique position of communications companies in the online ecosystem and the additional regulatory burdens that they face, deep regulatory expertise is essential to Big Data transactions in the communications industry.



The percentage of surveyed global telecom companies that have considered or made investments in Big Data and analytics.

After surveying executives from 273 global telecom companies representing nearly a quarter of industry revenues, a top management consultant firm (McKinsey & Company) found that nearly half of the responding companies are considering investments in Big Data and analytics, while 30% of companies surveyed have actually made them.

INDUSTRY-SPECIFIC ISSUES *continued*

Intellectual property: Many communications companies have developed a range of technologies that are used to generate, analyze or store Big Data, leading to disputes and controversies over IP as well as the need for strong contracts.

Strategic response: Big Data issues give rise to unique and often high-profile political and public relations challenges. Communications companies need guidance on how best to avoid controversy and how to address it when it arises.

EXPERIENCE

- We represented a leading technology company in an investigation concerning a communications provider’s Internet tracking mechanisms—namely, “supercookies”—that analyzed the online browsing behavior that individuals engaged in on different devices.
- We represented a major communications company in an investigation conducted by a federal consumer regulator. We prepared and filed a formal request to cease the investigation on jurisdictional grounds. The investigation was closed by the regulator without action.
- We help companies, and especially cloud service providers, online services and software providers, grapple with issues created by US intelligence programs involving the acquisition of communications data in foreign jurisdictions.
- We assist communications companies in structuring their collection, use and sharing of customer data to comply with domestic and foreign legal requirements, local registration obligations, and rules about notice and opt-in.
- We draw on skilled data protection counsel on the ground in Europe and Asia to advise on foreign data laws and directives, e-commerce regulations and cross-border data issues that apply to communications companies.
- We have advised and represented major telecommunications companies in litigation relating to government surveillance efforts.
- We have counseled and negotiated on behalf of a variety of companies, including third-party service providers, on transactions and other agreements involving communications providers and the data that they collect and share.
- We have filed comments and advocacy papers with the FCC and FTC on a range of regulatory proposals affecting Big Data in the communications sector.
- We have counseled a major mobile communications provider on how to lawfully leverage location data, telecommunications content and other data from mobile devices for a range of purposes, including interest-based advertising.

KEY POINTS

- In 2015 and 2016, the FCC promulgated two orders, applying Section 222 of the Communications Act to broadband Internet access services, and imposed substantial privacy and data security obligations on Internet Service Providers.
- Maintaining privacy is particularly challenging as information is multiplied and distributed at lightning speed around the world.
- In a study conducted by Telecoms Intelligence, 47% of operators had Big Data investments in place and 19% were expecting to implement a Big Data strategy at some point in 2015, with an additional 16% looking to implement Big Data in 2016 or beyond.
- Hyper-competition, slow revenue growth and increasing network costs will compel telecom companies to deploy advanced analytics solutions.
- Issues associated with Big Data have been a stumbling block in recent communications mergers.
- When data breaches occur, the consequences of a Big Data compromise are often more severe than for other types of breaches, making them more costly to address and more likely to invite scrutiny from regulators and the class action bar.

For more information visit us at wilmerhale.com/big-data | contact us at big.data@wilmerhale.com