2024 AVIA Regulating for Growth – Pay TV Matrix for the United States

Questions	Pay TV	Foreshadowed changes?
1. How regulated? *Details of regulator/s*	• Pay TV is regulated by the Federal Communications Commission (FCC). The FCC is an independent, bipartisan, transparent federal agency with a long history of regulating video programming services. • Local and state governments also have franchise requirements over cable system operators that offer subscriber-based television (pay TV). About half of states have created state-wide franchising for cable as well as fibre (IPTV) to supplant patchwork local regulations. In some cases, this is beneficial to pay TV system operators by granting state-wide local monopolies. • The FCC's decisions must comply with U.S. administrative procedure laws, which require notice and the opportunity to comment on proposed rules prior to their implementation and due process in enforcement actions. The FCC is generally consistent in its application of its authority and is open to industry comments, including comments from the international pay TV industry where relevant to the proceedings. • Judicial review of FCC action is readily available in U.S. federal courts, including review of rulemakings and adjudications. Courts may invalidate a challenged action if it conflicts with the FCC's statutory authority or directives from Congress, is not rationally connected to the facts at issue, violates a right under the U.S. Constitution, or did not follow the proper procedures.	• The 2024 Supreme Court decision in *Loper Bright Enterprises v. Raimondo* overruling the *Chevron* doctrine (reasonable interpretations of an agency, such as the FCC, of an ambiguous statute given substantial deference), and other recent challenges under the "major questions doctrine" and "nondelegation doctrine" to agency rulemaking and actions could have a significant impact on application of a number of regulations, such as those related to net neutrality[1] and the universal service programme,[2] or at least result in lengthy litigation. • Under a new Trump administration, it would likely seek to further deregulate pay TV providers and services, though the *Loper* decision, which was advanced by conservative organisations, could have the unintended consequence of limiting such changes.
2. Copyright protection?	• Domestic copyright laws, e.g. the Digital Millennium Copyright Act (DMCA),[3] provide generally strong protection with civil and criminal penalties. The government regularly brings lawsuits against "onshore" infringers. • However, there is no provision for site blocking and therefore, protection against offshore piracy is inadequate.	• No significant changes expected.

[1] *In re MCP No. 185*, Appeal No. 24-7000 (6th Cir. 2024); 49 Fed. Reg. 45404 (FCC May 22, 2024)
[2] *Consumers' Research v. FCC*, Appeal No. 22-60008 (5th Cir. 2024); 47 U.S. Code § 254
[3] The Digital Millennium Copyright Act

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	• There is no "three-strike rule" set forth in the law, however, some ISPs implement their own "three-strike policy" for infringers using their service. • Cable signal theft, including wilful unauthorised use of encrypted overspill signals, is a criminal offence as well as a civil copyright infringement. • Courts have levied some large penalties on circumvention box syndicates: $628 million and $121 million. • Copyright holders and service providers vigorously pursue sellers of illegal streaming devices (ISDs), e.g., in 2024 Network and Sling TV obtained a $1.25M judgment against Marcelino Padilla and Danny Contreras,[4] to obtain removal of the devices from the market. • In 2020, California enacted Penal Code Section 593d[5] that targets IPTV, illegal live streaming that can result in significant fines or prison. Since enacted, the FBI and other law enforcement agencies have used the law to target and shut down streaming services such as iStreamitAll, Gears Reloaded and other IPTV sites. • Copyright law is generally applied equivalently for pay TV and OCC TV, however, there is a compulsory licensing regime for pay TV entities that want to offer broadcast TV content. • There is no specific exemption from copyright law for news programming to use sports clips. Using the clips for news or commentary could be allowed under the "fair use" exception for copyright infringement, which allows for limited use of copyrighted materials without permission "for purposes such as criticism, comment, news reporting, teaching … scholarship, or research."[6] However, because such use is context-specific and heavily litigated in court, pay TV providers likely cannot rely on the fair use doctrine for routine use of sports clips. • Royalty payments to copyright holders are required when broadcasting content. Copyright law does not specifically require these payments go to collection societies. In practice nonetheless, many artists join collection societies to collect royalties and have licences negotiated on their behalf.	

[4] DISH Network LLC v. Padilla, 8:24-cv-01028-JVS-ADS
[5] California Penal Code Section 593d
[6] 17 U.S. Code § 107

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3. Convergence and new technologies	• Delivery platforms based on different technologies are not treated even-handedly. The underlying technology helps determine which set of regulations applies to the platforms. Traditional technologies for pay TV, such as cable and satellite, evoke substantially more regulation compared to OCC. • Direct Broadcast Satellite Television (DBS or DTH) is licensed and regulated by FCC. • Widely varying regulatory situation for IPTV across state and local governments. About half of states have created state-wide franchising for cable and IPTV to avoid need for city/county-level governmental approvals.	• The number of households with a traditional pay TV subscription is projected to continue its decline over the next decade. Currently, less than 50% of US households now have pay TV subscriptions, whereas in 2024, 99% of US households subscribe to at least one streaming service.
4. Licensing of foreign channels *Allowed, prohibited or unregulated?*	• Foreign programmes face no restrictions when entering the market. • Foreign channels do not require government permission to achieve legal distribution in country. However, channels distributing informational materials on behalf of a foreign government may be required to register with the Department of Justice under the Foreign Agents Registration Act (FARA), 22 U.S.C. § 611 et seq. Channels required to register must also label their programming according to FARA. • Certain U.S.-based foreign media outlets that are Multichannel Video Programming Distributors (MVPDs) or that produce content for MVPDs must disclose to the FCC every 6 months their relationship with their foreign principles including funding structure.[7] • No meaningful restrictions on uplink/downlink; licences readily granted.	• In 2021, a "clarification and modernization" of the regulations implementing FARA were proposed[8] that could significantly expand the scope of activity for which registration is required (such as promoting a non-governmental entity's own interests. However, with the Supreme Court's overturning of the *Chevron* doctrine, any such regulatory change is likely to face legal challenge.
5. Licence fees and taxation	• There is no nationwide, industry-specific licence for pay TV. However, Local Franchising Authorities (LFA) for cable may charge a fee of no more than 5% of revenue, including for non-cash (in-kind) assessments. • Wireless licences are readily granted. The cable television relay service station licence fee for 2019 was US$1,225 per licence. • Some pay TV providers must pay government-mandated infrastructure support fees. Platforms offering VoIP service must pay modest contributions to Universal Service Funds (USF).	• Generally, changes are not expected. However, as noted above, the US Court of Appeals for the Fifth Circuit in *Consumers' Research v. FCC*, the court held that the funding mechanism for the USF was unconstitutional for violating the "nondelegation doctrine". The FCC has filed a petition for writ of certiorari (an appeal) with

[7] 47 U.S. Code § 624
[8] 86 Fed. Reg. 70,787 (2021)

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	• Cable, IPTV, and DBS must pay yearly regulatory fees to the FCC. The fees in 2024 are $1.27 per subscriber for Cable, IPTV and DBS.[9] • These fees are the same for domestic and international entities.	the Supreme Court and it is likely the Court will take up the case.
6. Rate regulation *Including wholesale and retail rate regulation and whether there are any price controls on eg. basic tier*	• There is no rate regulation of MVPDs in most areas. • If a cable provider does not face effective competition in an area, LFAs may impose rate regulations on their basic service tier. • The FCC has adopted a rebuttable presumption that cable operators are subject to "effective competition" from satellite networks. State and local regulatory authorities must demonstrate to the FCC that there is no effective competition, i.e. competitors with more than 15% of the market share, before they can regulate cable rates. Recently, the availability of OCC has been considered effective competition by the FCC for a cable provider in two markets where that provider was previously subjected to rate regulations.[10] • Services beyond the basic tier are not subject to rate regulations by LFAs. • There is a free market for both wholesale and retail rates.	• Pay TV rate regulations are likely to become less common in the future as OCC is considered effective competition for pay TV providers and is reflected in the continuing drop in subscribers to cable TV subscriptions.
7. Programme packaging *Including tiering, bundling, any mandatory a la carte*	• MVPDs face few restrictions for programming packages. Both tiering and bundling are allowed. Offering channels "a la carte" is not mandatory. • LFAs may require cable providers to offer a basic tier of service. • In practice, MVPDs typically offer various tiers/bundles of services with premium channels and pay-per-view events available as addons to the service. True a la carte pay TV is not offered. • Content providers can file complaints against MVPDs if they can show the MVPD prioritised its own channels on the basis of affiliation over the content providers' channels, such as by placing unaffiliated but similar channels on worse tiers. However, the content provider must show adequate evidence of unlawful discrimination.[11]	• A la carte and "local choice" proposals could be reconsidered in future, but will face fierce opposition from programmers, and are unlikely to pass Congress in the current environment. Apple and other manufacturers of TV digital media have attempted to negotiate with programmers to provide a la carte programming on their devices, however, to date, none has brought such a service to market.

[9] *See* FCC, Regulatory Fees Fact Sheet (Sept. 16, 2024)

[10] *In the Matter of Petition for Determination of Effective Competition in 32 Massachusetts Communities and Kauai, HI* (HI0011), FCC Memorandum Opinions and Order, MB Docket No. 18-283 (Oct. 25, 2019)

[11] *See* *Comcast Cable Comm, LLC v. FCC*, 717 F.3d 982 (D.C. Cir. 2013)

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8. Restrictions on advertising *Including localisation rules, revenue and minutage restrictions*	• Pay TV ads are permitted, and ads during general programming do not have minutage restrictions. • Domestic and foreign ads are not treated differently. • Ads for children's programmes (geared toward ages 12 and younger) do have minutage restrictions. They are limited to 10.5/12 min/hour (weekends/weekdays). Transitions to advertising must also be clearly delineated. • There are no additional regulations for short home shopping-type segments within regular programme content.	• No significant changes expected.
9. (a) Content regulation *Including local content quotas, content control and insertion of classification and other content labels into international feeds*	• Pay TV has no content quotas. • There is no requirement for pre-broadcast programme censoring. • The FCC's watershed hours for indecent content apply only to terrestrial broadcast radio and TV and not to pay TV or OTT, but the more serious obscenity laws do apply to pay TV and OTT. • The industry has a well-functioning, self-regulatory scheme for content regulation. There is a voluntary, but widely used, content rating system (TV Parental Guidelines) with which channels label their content. • Content labels are completely voluntary, carry no legal weight, and do not have to be inserted into international feeds. • Channels do not require preapproval by the government.	• No significant changes expected.
9. (b) Content regulation *Including languages, dubbing/subtitling and captioning*	• Pay TV has no restrictions or requirements for dubbing or subtitling. • FCC requires a video description for the visually-impaired carried by a covered broadcast station or MVPDs for 87.5 hours of content per calendar quarter.[12] • Closed-captioning requirements for hearing-impaired viewers apply to most English and Spanish-language programming. • Responsibility for the quality of closed captioning falls on video programmers that prepare or make arrangements for the captions on their television shows, while the delivery and technical aspects of captioning are the responsibility of the MVPD.[13]	• No significant changes expected.

[12] *See* *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, FCC Report and Order, MB Docket No. 11-43 (2017)

[13] *See* *Closed Captioning of Video Programming*, FCC Second Report and Order, CG Docket No. 05-231 (2016)

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10. Programme supply restrictions *Including must provide rules and other restrictions on exclusivity and anti-siphoning rules*	• Other than the retransmission requirements discussed in section 12, there is no list of programmes that must be carried. • The FCC regulates contracts between MVPDs and video programmers to deter anticompetitive conduct. For example, MVPDs cannot: (a) obtain exclusive rights to a video programmer's content as a condition for carriage; (b) obtain a financial interest in video programmers as a condition of carriage; and (c) discriminate in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming.[14] • Regulation of vertically-integrated MVPD channels extended from satellite channels to include "terrestrially-distributed" regional sports channels.	• No significant changes expected.
11. Restrictions on FDI *Including platforms and wholesale supply of programming and cross-media ownership restrictions*	• Foreign and domestic pay TV are treated even-handedly. Foreign governments and representatives may not own cable television relay service stations. The FCC does not otherwise prohibit foreign ownership of cable television systems. • There are no FDI restrictions for pay TV channels, platforms, or content producers. • There is a spectrum related limit of 25% foreign private investment in terrestrial television broadcast licensees. However, the FCC will review petitions to exceed this limit on a case-by-case basis. Petitions may be approved for even up to 100% foreign ownership of a broadcast licensee. This process has been streamlined in recent years. • Vertical integrations are subject to general antitrust laws and are reviewed by the Federal Trade Commission and Department of Justice. The FCC also reviews proposed mergers to determine whether they serve the "public interest, convenience and necessity."[15] • Some constraints on cross-ownership of newspapers and terrestrial broadcast stations; no rules for pay TV operators.	• Over the past decade, the FCC has trended towards allowing more foreign investment. • In 2017, the FCC requested comment on whether it should or has the authority to continue to impose a media ownership cap for terrestrial broadcasters (currently at a reach of no more than 39% of US TV households).[16] • The Biden administration has taken a stricter scrutiny of mergers. However, as Trump has been elected, it is likely that mergers will be more readily granted.

[14] 47 U.S. Code § 536
[15] 47 U.S. Code § 310(d)
[16] *See Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, FCC Notice Of Proposed Rulemaking, MB Docket No. 17-318 (2017)

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12. Retransmission arrangements *Including must carry and remuneration*	• Cable systems must carry local commercial and non-commercial educational stations. The number of local channels they must carry depends on the total number of channels the cable systems offer. If less than 12 total channels, the cable systems must dedicate three channels for local commercial channels and at least one for a local non-commercial channel. If greater than 12 channels, cable systems must reserve a third of their channel capacity for local commercial stations. Between 13 and 36 channels, cable systems must carry at least three local non-commercial channels. Otherwise, if greater than 36, they must carry all local non-commercial channels that request carriage. • Satellite systems carrying any local stations must carry a feed from each local station if requested. • Licensed "full power" terrestrial broadcasters have the right to mandatory carriage of one digital program stream on local cable systems. Broadcasters who exercise this right give up the right to licensing fees. • Other channels are subject to "retransmission consent," i.e. negotiation of carriage agreements with fees. Television broadcast stations ranked among the top four stations (measured by audience share) cannot negotiate retransmission consent jointly with another top-four station if the stations are not commonly owned and if they serve the same geographic.[17] • Broadcasters choose between retransmission consent and asserting their must carry rights every three years.	• No significant changes expected.
13. Consumer protection *Including cooling-off period, termination rights and payment mechanism*	• Consumers may file complaints to the FCC or to local franchising authorities. • The Federal government generally mandates few consumer protections. There is no required cooling-off period or requirements specific to termination of rights that are applicable to pay TV.	• No significant changes expected.

[17] *See* *Amendment of the Commission's Rules Related to Retransmission Consent,* FCC Report and Order and Further Notice of Proposed Rule Making, MB Docket No. 10-71 (2014)

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14. Entering a new market: FAST TV	• No regulatory limitations on providing FAST TV services and currently around ½ of all US households use these services on a weekly basis.	• In 2023, the Coalition for Local News, backed by the major broadcast networks, advocated for an amendment of the rules to address the discrepancy between cable stations, which are required to carry local stations, and FAST platforms, which are not. No action has been taken, but such requirements could be required in the future.
15. Data handling	• There are no data localisation requirements in the United States for pay TV video providers. • The Cable Communications Privacy Act restricts the processing of data that identifies a person as having requested or obtained specific video materials from a cable provider, and requires cable operators to provide notice to subscribers about the personally identifiable information they have collected.[18] The act prohibits disclosing video viewing data that rises to the level of "personally identifiable information" unless one of a few specific exceptions apply, including with the consumer's consent or as required by law. The Cable Communications Privacy Act applies to cable operators who provide cable modem service over a cable system and not to all pay TV providers.	• U.S. lawmakers have proposed, but not passed, legislation to impose restrictions on collection of data by companies in China, Russia, or any other country designated by the Secretary of State) and imposes restrictions on storage and transfer of data to those countries.[19] • Executive Order 14117 entitled "Bulk Sensitive Data and United States Government-Related Data by Countries of Concern" signed by Biden in February 2024 could have impacts on the gathering of data in "designated" countries depending on how the order is implemented.[20] • In addition, data protection laws enacted by several states, such as California, Virginia, Colorado, Utah and Connecticut, demonstrate a continuing appetite by lawmakers in the US to consider enacting limited data control requirements.
Other country-specific information not already covered	• N/A	• N/A

[18] 47 U.S. Code § 551

[19] National Security and Personal Data Protection Act of 2019, S. 2889, 116th Cong. (2019-2020)

[20] *See* October 21, 2024, *FACT SHEET: Moving Forward with Publishing a Proposed Rule to Protect Americans' Sensitive Personal Data from Countries of Concern*