

The Brattle Wire

Telecommunications, Media & Entertainment

Happy 2023! Although the experts in Brattle's Telecommunications, Media & Entertainment (TME) practice are already full steam ahead on many projects for the coming year, we wanted to look back and provide a quick recap of some of our team's achievements in spectrum and broadband work throughout 2022.



To start off with and most recently, Brattle Principal Dr. Coleman Bazelon testified on behalf of Finesse Wireless in a patent infringement lawsuit against AT&T. The case involved a complex valuation of the benefits that radio interference cancellation technology embedded in the patents at issue.

The valuation involved translating the technology's interference-cancelling capabilities into an amount of radio spectrum salvaged and then applying a well-established spectrum valuation method. The value of the technology, measured as the value of the salvaged spectrum, was then apportioned to Finesse Wireless and AT&T according to a bargaining model representing the hypothetical negotiation that, in a non-infringing but-for world, the two parties would have engaged in. Dr. Bazelon's bargaining model incorporated important case-specific facts, which influenced the bargaining power of each party.

Consistent with Dr. Bazelon's analysis and testimony, the jury verdict required AT&T to pay \$166,303,391 to Finesse Wireless. Dr. Bazelon was supported by Principal Dr. Paroma Sanyal, Senior Consultant Dr. Douglas Frank, and Senior Associate Dr. Yong Paek.

Read on to learn about other team highlights from the past year!

A Recap of Brattle's Spectrum Work

In the spectrum realm, Brattle's experts participated in several forums and speaking engagements in 2022. They discussed whether a lack of coordination among federal agencies negatively impacts US spectrum policy, the rollout of 5G, auction authority, and more. A few highlights include:

- At a fireside chat hosted by R Street in November, Dr. Sanyal joined Federal Communications Commission (FCC) Commissioner Brendan Carr and others to discuss auction authority and spectrum allocation in the US. Takeaways from the panelists were highlighted in [a Forbes article](#).
- At the TPRC 2022 conference in September, three Brattlers – Dr. Bazelon, Senior Research Analyst Ryan Taylor, and former Research Analyst Austin Lajoie – shared key findings from their paper (coauthored with Drs. Paek and Sanyal), “[Understanding Spectrum Prices in Recent Upper Mid-Band FCC Auctions](#).”
- In August, Dr. Bazelon [testified at a US Senate Hearing on Wireless Spectrum](#) – convened by the Subcommittee on Communications, Media, and Broadband – to discuss the oversight and management of spectrum. As a consensus witness, he joined other witnesses in covering coordinated agency management of spectrum and important policy considerations that ensure spectrum is utilized to maximize benefits to the public.
- Dr. Sanyal moderated [a session](#) at the Technology Policy Institute (TPI) Aspen Forum in August, discussing whether a lack of coordination among government agencies negatively impacts US spectrum policy.
- A Brattle team [filed a report](#) with the FCC in May that was presented as part of a Notice of Proposed Rulemaking related to opening up the 12 GHz band for 5G services. Brattle provided economic analysis showing that flexible-use licenses for two-way mobile broadband in the 12 GHz band will satisfy the increasing need and demand for spectrum.
- In February, Dr. Bazelon was quoted in [a Brookings Institute piece](#) commenting on the contentious 5G

rollout, noting that he doesn't fault the government administration for pushing C-band (part of the 5G spectrum): “My take is that's the only way a major spectrum reallocation happens. Their mistake was not having a process that surfaced and dealt with the real issues early on.”

A Recap of Brattle's Broadband Work

In between their expert reports and regulatory filings, Brattle's consultants penned broadband-related articles and participated in several industry speaking engagements last year. Here's a sampling:

- Three Principals – Dr. Lisa Cameron, Dr. Steven Herscovici, and Dr. Sanyal – participated in the Masters of Advertising Law Conference in Hollywood, Florida in November. There, they [joined a session on surveys in false advertising cases](#), where they reviewed the types of surveys often used in Lanham Act matters, consumer class actions, and trademark disputes.
- Dr. Sanyal and former Senior Research Analyst Divya Goel [presented at The 50th Research Conference on Communications, Information, and Internet Policy](#) (TPRC) in September, sharing a [paper they coauthored](#) with Dr. Bazelon on broadband labeling. In the paper, they argue that broadband labeling would likely lead to higher quality internet plans at lower prices – though it would also present economic and legal challenges.
- Law360 published an article written by Dr. Sanyal and Dr. Bazelon in July. In “[Assessing the Pros and Cons of Broadband Product Labels](#),” they discuss how product labels – standard on food products, medications, and many consumer goods – could benefit broadband internet service. They also explore the complexities the FCC would have to navigate were such labels to be created.
- At the American Bar Association's 70th Antitrust Law Spring Meeting in April, Dr. Sanyal [joined a session](#) covering the challenges – and opportunities – for companies seeking to challenge competitors' advertising.

A Deeper Dive into Cases

The Anticompetitive Impacts of Subsidies in ISP Markets

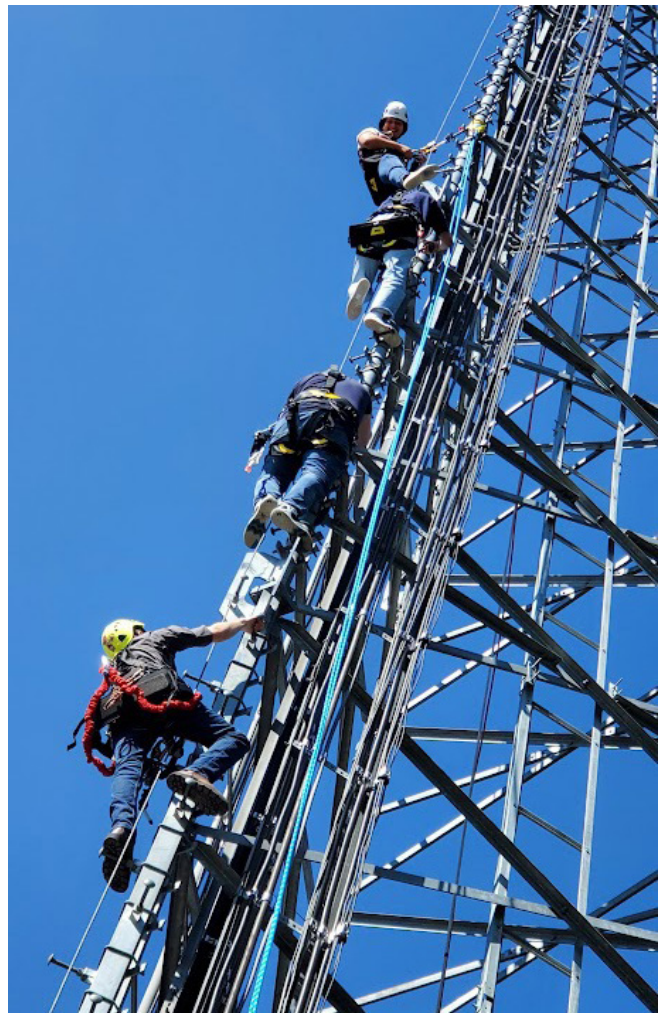
Could well-meaning government intervention targeted at increasing competition in a local internet service provider (ISP) market actually lead to the opposite effect, an anticompetitive outcome? That's the key finding in "The Anticompetitive Impacts of Exclusive Rights-of-Way and Unequal Subsidies in the Wireline Broadband Market," a paper coauthored by Drs. Sanyal and Bazelon, Senior Associate Dr. Paek, and Associate Dr. Rui Yu. Dr. Paek presented their findings at the TPRC conference in September.

In the paper, the Brattle team presents a game-theoretic model in which a mid-size city government provides generous subsidies for infrastructure to a new ISP entrant. The authors examine how other competitors in the local ISP market – which, like most markets requiring network infrastructure, functions as a natural monopoly – could have faced harm from the city providing subsidies that were not technology-neutral. This is a potential violation of Section 253 of the Telecom Act, which preserves a provider's right to access public infrastructure and conduit networks and, in turn, prohibits policies that inhibit competition among users of this infrastructure.

In addition to analyzing the model for entry and competition in the broadband ISP market, the coauthors discuss the considerations that local authorities must weigh before offering subsidies to entrant ISPs – an essential subject given increasing political efforts to provide more equitable and affordable access to high-speed internet in the US.



Group photo of the climbers



The climb up a communications tower

Who Should Pay for Replacement Poles?

Utility poles are a critical input to many telecommunication services. They are widely used by utilities that attach equipment – such as radios, antennae, and cables – to the poles to connect customers to their networks. Since pole infrastructure is commonly owned by one firm in specific geographic areas – giving the pole-owner (often, a utility) market power – the rates that telecommunications providers ("attachers") must pay pole owners to attach equipment to poles are regulated at the federal level.

A Brattle FCC filing, "The Economics of Pole Replacement and Efficient Cost Allocation," explores an interesting issue in this context: pole replacement costs. Should the owner or the attacher – or some combination of the two – pay to replace an aging or insufficiently sized pole? On one side, pole owners argue that the entire pole replacement cost should be borne by the attacher that induces the

replacement. On the other side, attachers argue that they should bear only some incremental cost.

In their filing, Drs. Bazelon, Sanyal, and Paek show that for replacement cost regulation to mimic a competitive market – and, hence, achieve economic efficiency – the costs borne by the attacher should reflect the long-run incremental costs.

Out of Sync: Outdated Financial and Operational Reporting for Competitive VoIP Providers

In their 2022 rulemaking, the California Public Utilities Commission (CPUC) explored whether voice over internet protocol (VoIP) services should be included under the CPUC’s regulatory purview, and whether and how to collect financial and operational data from VoIP providers that are similar to those reported by Plain Old Telecom Service (POTS). In November, Drs. Sanyal and Bazelon filed a report at the CPUC discussing why the data-reporting requirement would provide no insight into service quality and is more likely to harm consumers than to promote high-quality service.

Drs. Sanyal and Bazelon found that 98.9% of Californians are covered by four or more voice providers, while 99.6% are covered by three or more voice providers; imposing reporting regulations in such a competitive market will not help regulators with service quality monitoring and, instead, will create significant new reporting and compliance costs for providers. Such regulatory requirements may actually harm consumers by putting upward pressure on pricing. Additionally, increases in regulatory costs to comply with new obligations may divert resources from network investment and innovation that might otherwise have accelerated service quality improvements.

Federal Jury Convicts Pair in Connection with Fraudulent Spectrum Investments, Supported by Brattle Analysis

In a nationwide investment scheme running from approximately 2011 through 2017, Arizona resident David Alcorn, California resident Aghee William Smith II, and several co-conspirators deceived hundreds of investors into more than \$20 million in fraudulent wireless spectrum license applications and dental franchises. In 2019, Alcorn

and Smith were named in a 19-count federal indictment in the US District Court for the Eastern District of Virginia, facing securities fraud and related charges. Dr. Bazelon, supported by Dr. Sanyal, provided testimony about the true value of the spectrum investments. A federal jury convicted Alcorn and Smith on charges of conspiracy to commit mail fraud and wire fraud, wire fraud, and money laundering in February 2022. Learn more about Brattle’s work on [this case here](#).



The Brattle team in gear and ready to climb

It’s not all work and no play for the Brattle team. In September, five Brattlers – Coleman Bazelon, Austin Lajoie, Yong Paek, Paroma Sanyal, and Ryan Taylor – joined FCC Commissioner Brendan Carr to climb a communications tower (yes, this is real!) as the winners of the Federal Communications Bar Association Foundation’s 31st Annual Charity Auction prize.

[Learn more about the climb here](#)

CONTACT US

For additional information about our work and expertise in this practice, please visit brattle.com/practice/telecommunications-internet-and-media.



Steve Herscovici

PRINCIPAL | BOSTON

Steve.Herscovici@brattle.com

+1.617.234.5629



Paroma Sanyal

PRINCIPAL | WASHINGTON, DC

Paroma.Sanyal@brattle.com

+1.202.419.3373

ABOUT BRATTLE

The Brattle Group answers complex economic, regulatory, and financial questions for corporations, law firms, and governments around the world. We aim for the highest level of client service and quality in our industry.

We are distinguished by our credibility and the clarity of our insights, which arise from the stature of our experts; affiliations with leading international academics and industry specialists; and thoughtful, timely, and transparent work. Our clients value our commitment to providing clear, independent results that withstand critical review.

Brattle has 500 talented professionals across four continents. For additional information about our experts and services, please visit brattle.com.

NORTH AMERICA

EUROPE

ASIA-PACIFIC