Paul | Weiss

Current Telecom Developments

January 14, 2011

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Verizon To Launch iPhone Next Month

Verizon Wireless heralded a long-awaited shake-up of the U.S. wireless industry with the official confirmation of plans to market the Apple iPhone to its customers starting on February 3. Tuesday's announcement ends AT&T's four-and-a-half year monopoly on U.S. iPhone sales and imposes new competitive challenges on Sprint-Nextel and T-Mobile USA, the two U.S. national wireless carriers that currently lack access to the iPhone. Unlike the 2007 licensing contract between AT&T and Apple that expired last year, Verizon's agreement with Apple is non-exclusive and thus opens prospects for similar licensing deals between Apple and other U.S. carriers. Although Apple offered no information on its plans with other carriers, the computer giant's agreement with Verizon covers iPhone devices that will operate on Verizon's third-generation (3G) CDMA network. Emphasizing that "Verizon customers told us they want the iPhone now," Apple COO Tim Cook told reporters that his company designed a version of the iPhone 4 for use on Verizon's legacy CDMA network as development of an iPhone model for Verizon's recently-launched fourth generation LTE network would have "forced design changes we wouldn't make." (It remains unclear if and when Apple will develop a 4G iPhone that would run on the Verizon LTE network.) Customers will have their choice of two iPhones—a 16-gigabyte model that sells for $199 with a two year contract and a 32-gigabyte version that retails for $299. Both models are capable of functioning as mobile hotspots that support up to five Wi-Fi devices. Verizon iPhone subscribers will also be offered data plans that provide unlimited usage, although details on pricing have yet to be disclosed. Apple, which sold 11.1 million iPhones through AT&T during the first nine months of 2010, is expected to net 2.5 million new users and an additional $5.9 billion in annual revenues through its agreement with Verizon. In turn, analysts predict that Verizon will sell more than nine million iPhones this year to new subscribers, existing Verizon customers, and AT&T iPhone users that switch to Verizon. As Verizon Communications President Lowell McAdam observed that "two industry innovators are coming together to deliver something to customers that they've been hungry for for years," Cook proclaimed: "we're incredibly pleased to give Verizon customers the choice they've been waiting for."

FCC To Conduct Incentive Auctions In A Year Or Two, Says Genachowski

Speaking to reporters at the Consumer Electronics Show in Las Vegas last Friday, FCC Chairman Julius Genachowski confirmed that the FCC is "creating the framework" for incentive auctions of broadcast television spectrum to the wireless industry that could start within a year or two if Congress adopts legislation that would allow broadcasters to recoup a portion of the auction proceeds. At a question and answer panel, Genachowski said that the auction plan forms a key component of the FCC's agenda to promote the expansion of fixed and wireless broadband services during 2011. Defending voluntary incentive auctions as "an essential tool to unleash spectrum and a vital part of seizing the opportunities of mobile," Genachowski told reporters, "if we don't tackle the spectrum crunch now . . . we'll put our country's economic competitiveness at risk and squander the opportunity to lead the world in mobile." With respect to prospects in Congress, former House Communications Subcommittee chairman Rick Boucher (D-VA) affirmed that a bill to authorize the incentive auction process won bipartisan support last year, as he predicted that such legislation would emerge as "a candidate for early action" in the current congressional session. Addressing lingering fears that broadcasters will be forced to relinquish spectrum, senior FCC advisor Rebecca Hanson voiced surprise that "people believe these [auctions] will not be truly voluntary." Countering, however, that broadcasters may soon face their own "looming spectrum crisis," an official of the National Association of Broadcasters cautioned that broadcasters that relinquish channels through incentive auctions could be left without sufficient spectrum to offer ultra high-definition television services of the future. Nevertheless, Tom Wheeler, a former president of both wireless association CTIA and the National Cable & Telecommunications Association predicted a "bright future" for broadcasters, as he declared: "the question is what they will do with the rest of their digital signal, and the auction is a way that broadcasters can make that economic decision."

Wireless Industry, Consumer Advocates Clash On Proposed Bill Shock Rules

In comments with the FCC on Monday, players throughout the wireless industry clashed with consumer advocates and state regulators on the need for FCC rules that would require wireless carriers to alert subscribers who approach or exceed the limits of their monthly usage plans. Issued in October, the FCC's rulemaking proposal is intended to address the issue of "bill shock" that, according to the FCC, impacts as many as one in six wireless customers. In addition to requiring wireless carriers to notify subscribers who are about to incur overage charges for voice, data, or text use, the proposed rules would also require carriers to alert customers who are about to incur international or other roaming charges that are not covered by their monthly service plans. Striking a common chord, wireless firms and their supporters said the proposed rules are unnecessary and would also impose technical and other burdens on carriers that would lead to higher consumer costs. As wireless association CTIA advised the FCC against "initiating prescriptive rules that . . . would likely cost carriers (and therefore consumers) tens, if not hundreds of millions of dollars," AT&T argued that rules are unneeded as "wireless competition compels providers to offer consumers effective means of avoiding unexpected charges." Agreeing that "intense competition has led wireless carriers to provide consumers with detailed information about usage allowances," Verizon urged the FCC to "focus its efforts on consumer education." The Rural Telecommunications Group, meanwhile, warned of the economic impact on small carriers that would have "to reconfigure their billing systems to provide the frequent notifications proposed," as MetroPCS charged that "unnecessarily excessive regulations would drive up the costs of services, especially those provided by small and mid-sized carriers." Meanwhile, a coalition of nine public interest groups that includes the Consumers Union, Free Press and the Center for Media Justice, maintained that the proposed FCC regulations "reflect a common sense approach to protecting consumers in an increasingly complex and frequently confusing wireless marketplace." The California Public Utilities Commission joined with other state regulators in endorsing the proposed rules, noting that "wireless industry efforts to provide assistance to consumers, while not ineffective, have proven to be, as the Commission states, 'insufficient for many consumers.'"

Groups Call For FCC Investigation Of MetroPCS Data Plans

Three public interest groups asked the FCC on Tuesday to launch an investigation of MetroPCS, the nation's fifth-largest wireless carrier, which is alleged to have violated newly-adopted FCC rules on net neutrality with the institution of wireless data plans that block or restrict access to video websites such as Netflix and Hulu. On December 21, the FCC approved rules that prohibit Internet service providers from blocking or degrading lawful web content while allowing for tiered pricing and reasonable network management practices that are aimed at mitigating the effects of network congestion. At issue is a new rate schedule published by MetroPCS that charges (1) $40 monthly for unlimited voice, text and web browsing services with unlimited access to YouTube, (2) $50 per month for the aforementioned services plus "premium" text messaging, mobile instant messaging, corporate e-mail, and 1 GB of data access, and (3) $60 monthly for all of the aforementioned features plus unlimited data and access to "MetroStudio" video and audio content. Asserting that that the new rate plans "create distinctions between different users of the Internet that lack any engineering merit," Free

Press, the Media Access Project and the New America Foundation complained that, "by permitting YouTube videos and web sites to be viewed without limit while simultaneously disallowing or restricting the use of other voice and video web sites and services, MetroPCS's actions harm competition, consumer choice, and innovation." Adding that "loopholes" for mobile broadband services adopted as part of the net neutrality order "are already leading to anti-competitive, anti-consumer practices," the groups further urged the agency "to investigate MetroPCS's service plans before similar blocking and content-based discrimination on wireless networks becomes an industry-wide problem."

Federal Agencies Urge Deferral Of LightSquared MSS/ATC License Modification

A request by mobile satellite service (MSS) operator LightSquared Subsidiary LLC to modify its MSS/ancillary terrestrial component (ATC) license to reflect the company's plan for an integrated nationwide terrestrial-satellite broadband network has prompted several federal agencies to urge deferral of FCC action until the potential impact of LightSquared's proposed terrestrial operations on critical government communications systems is assessed. Writing at the behest of the Defense, Transportation, Homeland Security and Interior Departments and the National Aeronautics and Space Administration, NTIA Administrator Larry Strickling told FCC Chairman Julius Genachowski on Wednesday that the LightSquared proposal "raises significant interference concerns that warrant full evaluation . . . to ensure that LightSquared services do not adversely impact Global Positioning System and Global Navigation Satellite System receivers, maritime and aeronautical emergency communications systems, and Inmarsat receivers used by federal agencies." Known formerly as SkyTerra, LightSquared has announced plans to deploy a nationwide fourth-generation terrestrial broadband network that would be integrated with the company's MSS satellites. Although LightSquared told the FCC that it has no plans to operate its terrestrial network on a stand-alone basis, it acknowledged that it intends to sell network capacity on a wholesale basis to partners that "will have the ability to offer terrestrial-only plans to their own end users." While a host of satellite and terrestrial wireless providers have voiced support for LightSquared's request, others have argued that LightSquared's proposal runs contrary to FCC "gating" criteria that ensures ATC services are purely ancillary to MSS offerings. Declaring that "NTIA understood the original construct of MSS/ATC operations to be that they would operate as 'satellite first, terrestrial second,'" Strickling advised Genachowski that "grant of the LightSquared waiver would create a new interference environment."

Fixed Satellite Industry Calls For Light Regulatory Approach To V-Band

Responding to an FCC notice, players in the fixed satellite service (FSS) industry voiced support for an agency proposal that would permit spectrum sharing between terrestrial and FSS users of 37.6-42.5 GHz channels in the V-band, as they argued that current International Telecommunications Union (ITU) regulations are sufficient to protect adjacent radio astronomy (RAS) operations from potential FSS interference. To promote efficient use of the V-band, the FCC issued a Notice of Proposed Rulemaking (NPRM) in November that, among other things, would add a primary allocation for FSS downlinks in the 42.0-42.5 GHz band and delete the current broadcasting satellite service (BSS) allocation in that band. At the same time, the FCC sought comment on what limits, if any, should be imposed on FSS licensees to protect RAS operations in the adjacent 42.6-43.5 GHz band. Endorsing the proposal, the Satellite Industry Association (SIA) called on the FCC to use "a light hand" in regulating FSS use of V-band spectrum, noting that the success of commercial FSS operators "depends upon a regulatory approach that allows satellite systems to operate with flexibility." SIA further advised the agency to refrain from constraining FSS operations to protect RAS as "limits adopted by the ITU . . . already protect—indeed, overprotect—RAS observations." Along the same lines, ViaSat maintained that "strict [power flux density] limits set forth in the NPRM would unduly constrain the ability of FSS operators to design and implement innovative V-band systems," as Northrop Grumman observed that "V-band downlink frequencies at 37.5-42.5 GHz present the opportunity for the Commission and NTIA to more closely align the federal and non-federal satellite allocations and establish more streamlined coordination processes that encourage sharing."

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(No. 2011-2)