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Current Telecom Developments

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FCC Enacts Reforms To USF Lifeline Program

With the goal of eliminating fraud and waste, the FCC has enacted reforms to its Lifeline program, which subsidizes phone services for low-income households. The Commission also established a pilot program that expands Lifeline support to broadband. Adopted on Tuesday, the Lifeline reform order was approved unanimously by the FCC's three current members, although Commissioners Robert McDowell and Mignon Clyburn voiced concerns with various aspects of the order. Established 25 years ago, the Lifeline program forms part of the $9 billion Universal Service Fund (USF) and has ballooned from $488 million per year in 2000 to $1.3 billion in 2010. Statistics also indicate that program expenditures exceeded $800 million for the first half of 2011 alone. Tuesday's order, which sets a savings target of $200 million for 2012 and $600 million for 2013, cuts costs by largely eliminating one-time "Link-Up" fees that are paid to carriers to reimburse the cost of activating new Lifeline services. The order also mandates a uniform reimbursement rate of $9.25 per line in all areas except for tribal areas. To combat fraud, the order also calls for (1) the creation of an accountability database over the next year to prevent multiple carriers from receiving Lifeline support for the same subscriber and (2) the establishment of an eligibility database by the end of 2012 that would verify consumer eligibility for the Lifeline program. Meanwhile, the broadband pilot program established by the order would be funded by up to $25 million in savings achieved from other Lifeline reforms. In a further notice of proposed rulemaking issued with Tuesday's order, the FCC will also seek input on whether savings achieved through other USF reforms should be used to fund digital literacy training. Highlighting abuses associated with the Link-Up program that "gave a bounty for signing people up" but did not ensure that program participants received service, FCC Chairman Julius Genachowski described Tuesday's ruling as "major." Asserting, "there are numerous reasons why the [Lifeline] program has grown," Commissioner Clyburn stressed: "it's important that the steps we take today . . . are balanced with the purpose and goals of the program—to ensure that affordable phone service is available for low-income consumers."

Markey Bill Would Mandate Disclosure Of Cell Phone Monitoring Software

Citing threats to privacy posed by the presence of monitoring software on consumer wireless devices, Rep. Ed Markey (D-MA) unveiled draft legislation on Monday that would require sellers of wireless devices, carriers, and developers of mobile applications to inform consumers about any monitoring software installed on their cell phones and to obtain "express consent" before such software is used for monitoring. Markey, the co-chairman of the Bi-Partisan Congressional Privacy Caucus, drafted the bill after AT&T, T-Mobile USA, and Sprint Nextel admitted in December that they use "Carrier IQ" monitoring software to diagnose subscriber service problems and to improve services for

their customers. Announcing the bill, Markey voiced alarm about recent press reports that spotlight the ability of the Carrier IQ software to relay information on subscriber phone conversations and web activities. (AT&T, Sprint, and T-Mobile, meanwhile, have denied using the Carrier IQ software to track such activity.) Known as the Mobile Device Privacy Act, the draft bill covers wireless device software that "has the capability automatically to monitor the usage of a mobile telephone or the location of the user and to transmit the information collected to another device or system, whether or not such capability is the primary function of the software." Within one year of the bill's enactment, the Federal Trade Commission (FTC) would be required to adopt regulations that require carriers and other marketers of wireless devices to (1) disclose the presence of monitoring software at the point of sale or when consumers sign service contracts, (2) obtain express consumer consent before information is collected or transmitted through such software, and (3) disclose the "identity of any person to whom any information collected will be transmitted and of any other person with whom such information is shared." The FTC would be directed to consult with the FCC in developing regulations that fulfill the bill's requirements, and both agencies would be authorized to undertake enforcement action in cooperation with state attorneys general and other state officials.

Kohl Plans Hearing On Verizon-SpectrumCo Deal

Verizon Wireless's plan to acquire the spectrum assets of Cox Communications and the SpectrumCo cable consortium and a related cross-marketing arrangement among the companies has attracted the attention of Senate Antitrust Subcommittee Chairman Herb Kohl (D-WI), who announced on Wednesday that his subcommittee will soon conduct hearings to assess the competitive implications of the deals. SpectrumCo, whose members include Comcast, Time Warner Cable, and Bright House Networks, agreed in December to accept Verizon's offer of $3.6 billion for advanced wireless service (AWS) spectrum acquired by the consortium in a 2006 FCC auction. Separately, Verizon has also agreed to pay Cox, a former SpectrumCo member, $326 million for its AWS spectrum assets. Meanwhile, a separate cross-marketing agreement involving Verizon, Cox, and SpectrumCo is under review by the Justice Department, which is considering whether the deal would curb competition for broadband Internet access services, as Verizon's FiOS service competes directly against broadband services offered by Cox and the SpectrumCo members. In a statement, Kohl merely affirmed that the subcommittee "examines questions about competition in the wireless and video markets with the ultimate goal of protecting consumers and reducing their cable and phone bills, and these deals are no exception." While Kohl did not specify the date of the hearing or provide a witness list, sources anticipate that the hearing will take place at the end of the President's Day recess.

AT&T Cites FCC Scrutiny Of Spectrum Transactions As Contributor To Capacity Restraints

In a conference call with reporters last Thursday, AT&T CEO Randall Stephenson targeted the FCC's review of spectrum transactions as a key contributing factor to the spectrum crunch faced by carriers throughout the wireless industry. Stephenson delivered his remarks as AT&T reported a fourth quarter loss of $6.4 billion that is largely attributable to the break-up fee paid by AT&T to T-Mobile USA upon withdrawal of the companies' merger plan in December. Noting that the FCC last conducted a major wireless spectrum auction five years ago, Stephenson said AT&T and other carriers have been forced to look toward spectrum acquisitions—including his company's failed deal with T-Mobile—as a means of boosting capacity needed to meet surging demand for broadband and other advanced wireless services. Taking issue with the "arbitrary" application of the FCC's spectrum screening standard in which the FCC found fault with the T-Mobile transaction yet approved AT&T's $2 billion spectrum deal with Qualcomm, Stephenson lamented: "we don't know how much spectrum we're allowed to hold and who we're allowed to do business with." The result, argued Stephenson, is that the industry is "stuck" in adding needed capacity, given the dearth of spectrum auctions and the FCC's "intense scrutiny" of spectrum transactions. Stephenson added that, until the FCC and Congress take steps to remedy the spectrum shortage, tiered data plans and price hikes for data usage are needed to manage usage in such a "capacity-constrained environment." Countering that the FCC "has approved more than 150 commercial wireless transaction applications in the past year and more than 300 in the past two years, including AT&T's nearly $2 billion spectrum deal with Qualcomm, an FCC official quipped: "these facts were completely ignored in the conference call."

OECD Urges Reforms To Mexican Telecom Policy

A report released on Monday by the Organisation for Economic Co-operation and Development (OECD) asserts that sweeping reform of Mexico's legal and regulatory regimes is needed to promote competition and investment in the national telecom sector and to drive down costs to subscribers. According to the OECD Review of Telecommunication Policy and Regulation in Mexico, incumbent operator Telemex's 80% share of Mexico's fixed-services market and 70% share of the nation's wireless telephony market have resulted in "ineffective competition and impaired regulation" in that nation. Due to this lack of competition, Mexico ranks at the bottom of the list of OECD countries in terms of penetration for fixed, wireless, and broadband services. (The report also notes that the average market share for mobile incumbents in OECD countries is 40%—a figure that stands in stark contrast to Telmex's 70% share of the Mexican wireless sector.) To provide "regulatory certainty and a level playing field" in Mexico's wireless market, the OECD urges that Mexican telecom regulator Cofetel should be authorized to regulate interconnection and "declare bottlenecks and essential facilities and to establish nondiscriminatory conditions for access to these facilities." Such facilities, added the report, should include local loop unbundling and cost-based collocation. The report also recommends that Cofetel be authorized to impose structural separation requirements on incumbents that abuse their dominant market power. Asserting that Mexico's legal system "allows the courts to suspend and overturn policy and regulatory decisions systematically" at the behest of incumbents who use the courts to delay or prevent implementation of pro-competitive policies, OECD further argued that "the most rapid way to stimulate a change in behavior of market participants is to ensure that [Cofetel's] decisions remain in force until the appeal process has run its course." The OECD also urged the elimination of restrictions on foreign investment in Mexican fixed-line operators as well as regulatory reforms to facilitate market entry of resellers and mobile virtual network operators.

India Supreme Court Cancels 122 Wireless Licenses

In a development with implications for foreign investors in India's telecommunications market, the Supreme Court of India ordered the cancellation of 122 second-generation (2G) wireless licenses that were awarded under questionable circumstances in 2008. The court's decision, which was handed down yesterday, impacts licenses for 2G "unified access" services in the 800 MHz, 900 MHz, and 1800 MHz bands that were awarded to 20 Indian joint venture companies. Some of these ventures include foreign partners such as NTT DoCoMo of Japan, Sistema JSFC of Russia, Norway's Telenor, and Emirates Telecommunications Corp. (ETC). In canceling the licenses, the court referred to the actions of former state telecommunications minister Andimuthu Raja, who has been accused of selling the licenses at a fraction of their value to preferred buyers. (Raja is currently awaiting trial on corruption charges with other government officials.) Contrary to the directives of India's Council of Ministers, the Telecom Regulatory Authority of India (TRAI) also enacted a first-come, first-served policy for awarding the licenses in question instead of a public auction. Condemning the license award process as an "arbitrary and unconstitutional exercise," the court directed the TRAI to make "fresh recommendations for the grant of [the licenses] and allocation of spectrum . . . by auction, as was done for the allocation of spectrum in the 3G band." The court also took aim at the first-come, first-served policy, noting that "any person who has access to the power corridor . . . may be able to obtain information from the government" and thus "immediately make an application and . . . become entitled to stand first in the queue." The decision, which goes into effect in four months, forces affected licensees to re-bid for their spectrum rights or to cease operation. Uninor, a joint venture of Telenor that holds 22 of the affected licenses, voiced outrage that it was "being penalized for faults the court has found in the government process," as it argued: "we simply followed government process we were asked to." An official of ETC, meanwhile, vowed that his company would work with its Indian subsidiary to "understand the judgment . . . as well as [ETC's] right to review of the Supreme Court's decision."

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