

February 5, 2010

Comcast-NBC Merger Application Offers Program Access, Other Commitments

In documents that request FCC approval of the transfer of control of broadcast and other licenses held by NBC Universal (NBCU) to Comcast, the merger partners touted the public interest benefits of the proposed \$30 billion transaction, as they offered a smorgasbord of voluntary commitments that are intended to alleviate the concerns of critics of the merger. These concerns include the effects of the transaction on program access, the journalistic independence of NBCU networks and stations, and the migration of educational and governmental programming to digital tiers. The FCC is expected to take up to a year to review the merger, which would create the largest producer and distributor of video programming in the nation. Describing the deal as a “content-focused joint venture,” Comcast and NBCU promised that the combined entity (which is slated to operate under the NBCU name) would advance the FCC’s goals of diversity, localism and competition and would pose “no cognizable risk of harm in any market.” Responding to charges that Comcast-NBCU would have the incentive to discriminate against competitive multichannel video program distributors (MVPDs) that seek access to the merged company’s huge stable of program assets, Comcast and NBCU told the FCC that they would extend voluntarily the application of “key components” of the FCC’s program access rules when negotiating with MVPDs on rights to retransmit stations owned and operated by NBCU and Telemundo. Such a step, said Comcast and NBCU, “will benefit consumers by lessening uncertainties concerning continued carriage of popular broadcast programming” that was spotlighted in recent retransmission disputes pitting Time Warner Cable against News Corp. and Mediacom against Sinclair Broadcasting. While promising to maintain the journalistic independence of news programming offered on NBCU stations, Comcast and NBCU also pledged, among other things, to (1) refrain from migrating public access, educational and governmental (PEG) channels to digital cable tiers until Comcast digitizes its entire cable system, (2) add two independently-owned channels to its digital lineup each year for the next three years, and (3) continue to offer Comcast cable customers access to more than 15,000 video on demand (VOD) offerings at no additional charge and to expand that VOD lineup to 20,000 within three years of merger approval. The companies also urged the FCC to condition merger approval upon their adherence to these pledges as they reminded the FCC of its conclusion in the 2004 order approving the merger of News Corp. and DirecTV that the union of a broadcaster and an MVPD does not “present horizontal combination issues.”

FY 2011 Budget Calls For Joint FCC-NTIA Spectrum Plan

Describing spectrum availability as “a key policy lever to unleash the value of [the] . . . mobile broadband revolution,” U.S. Chief Technology Officer Arneesh Chopra unveiled

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tenets of the Obama Administration's proposed FY 2011 budget that call upon the FCC and the National Telecommunications and Information Administration (NTIA) jointly to develop a plan that would free up significant amounts of spectrum "for public and private sector needs" over the next decade. At a press briefing on Monday, Chopra stressed that the goal of the FCC and NTIA in developing such a plan should be to make "spectrum available for exclusive use by commercial broadband providers or technologies, or for dynamic, shared access by commercial and governmental users, on both a licensed and unlicensed basis." The budget proposes \$352.5 million in FY 2011 funding for the FCC that would be applied toward the implementation of the National Broadband Plan, which is due for release next month, as well as for spectrum management, improvement of the FCC's data systems, and support of the FCC's role in promoting public safety communications and cybersecurity. NTIA, meanwhile, would be provided with \$24 million to cover administrative expenses associated with the disbursement of broadband stimulus funds through the Broadband Technologies Opportunities Program. As Steve Largent, the president of wireless association CTIA, applauded the Obama Administration's "clear commitment to making additional spectrum available for wireless broadband," FCC Managing Director Steven VanRoekel declared, "with the President's proposed budget, the FCC can continue its important work of supporting and enhancing the nation's economic growth by promoting innovation and investment throughout the telecommunications and information technology industries."

Apple To Allow iPhone VoIP Calls Over The AT&T Network

Several months after responding to an FCC probe on its decision to block the Google Voice web calling application from the iPhone store, Apple, Inc. reversed its policy against the use of voice-over-Internet protocol (VoIP) software on iPhones for the purpose of placing Internet calls on third-generation (3G) wireless networks, as an Apple spokesman announced the release of an updated software development kit for the iPhone that includes "the ability for developers to create VoIP apps that utilize other cellular networks." Although iPhone users have been allowed to use VoIP software to place calls via Wi-Fi hot spots, the company told the FCC in its response to the Google Voice inquiry that its agreement with exclusive iPhone distributor AT&T barred Apple from enabling VoIP applications that utilize the AT&T network. In the months since the FCC's inquiry, AT&T has undertaken various technology adjustments to enable iPhone VoIP applications to operate on the AT&T 3G network. Several providers of VoIP products and services have confirmed the approval of applications for use on the iPhone, and Skype has said it will apply for the addition of its popular web calling software to the iPhone store upon receipt of certain service and technical clarifications. Apple officials also indicated that software updates enabling the use of VoIP applications on the iPhone will also cover the Apple iPod and the company's newly-introduced iPad. FCC Chairman Julius Genachowski praised Apple's decision as one "that will create new opportunities for entrepreneurs and provide more choices for consumers."

British Regulator Seeks EC Permission To Review T-Mobile-Orange Deal

On Wednesday, Great Britain's Office of Fair Trading (OFT) petitioned the European Commission (EC) for rights to review the proposed merger of T-Mobile and Orange's mobile phone operations in the United Kingdom (UK), warning that "the joint venture threatens significantly to affect competition in mobile telecommunications in the U.K." Announced last fall, the combination of Orange and T-Mobile, which rank respectively as the third- and fourth-largest wireless carriers in the U.K., would leapfrog current market leader O2 as the largest mobile telephony provider in the nation with 29.5 million subscribers and a 37% share of the U.K. market. The transaction would also reduce the number of national U.K. wireless carriers from four to three. Although T-Mobile and Orange have already filed merger documents with the EC to trigger a formal EC review process that is slated for completion on February 15, the OFT told the EC that was seeking authority to examine the proposed joint venture "with a view to deciding whether it should be referred to the [U.K.] Competition Commission for an in-depth investigation." Wednesday's development is expected to postpone the transaction at least through March 1—the deadline by which the EC is required to act on the OFT petition. If the EC grants the request, much longer delays are expected, especially if the OFT refers the transaction to the Competition Commission. Asserting that "a referral of the case is not needed," a spokesman for Deutsche Telekom, the parent of T-Mobile, proclaimed, "we

strongly believe that the transaction is pro-competitive and are therefore confident that we will be able to resolve the remaining concerns.”

France Outlines Auction Plans For Remaining 3G Licenses

French mobile phone operators Bouygues, SFR, Iliad and Orange (the wireless unit of France Telecom) will be given the opportunity to bid on remaining blocks of third-generation (3G) wireless spectrum in May, with the release of auction rules anticipated later this month. Disclosed in a press interview by Jean-Ludovic Silicani, the president of French telecom regulator Arcep, the auction plan follows the government’s decision in December to authorize Iliad as the nation’s fourth national wireless operator. The license, awarded recently to Iliad, constitutes the first of three 5 MHz license blocks that have been designated by Arcep for wireless 3G services that include video, music and data in addition to voice offerings. Silicani indicated that the two remaining 5 MHz blocks will be auctioned in May, adding, “we will consider all offers from all operators.” Although auction rules are yet to be disclosed, Arcep is expected to set a minimum bid price of US \$168.5 million for each license, and auction winners may be required (depending upon the final bid price) to provide network access to competitive mobile virtual network operators. The government, which disclosed plans last month to implement a US \$2.9 billion loan program to accelerate broadband deployment, is also expected to announce an auction of fourth generation wireless licenses later this year that would support wireless mobile broadband services.

Satellite Operators Experience Anomalies

An unusual outbreak of technical failures struck key players in the global satellite industry during the past ten days, with Eutelsat, Satmex and Intelsat all reporting difficulties that resulted in the shifting of customer traffic to neighboring satellites or in the reduction of the affected spacecraft’s anticipated service life. The troubles began on January 27 as an unspecified anomaly impacted the M2 satellite owned by Eutelsat. Built by Thales Alenia Space, M2 provides Ku-band capacity to various central and eastern European broadcasters from the 16° East Longitude orbital position. The cause of the failure remains under investigation, and Eutelsat officials confirmed last Friday that service had been fully restored through the transfer of capacity to three other satellites—EUROBIRD 16, SEASAT 1, and W2M—that are collocated with W2 at 16° E.L. Meanwhile, as Eutelsat restored service to affected customers, Satmex confirmed the failure of the primary propulsion system on its Satmex 5 spacecraft. The anomaly affects the XIPS electronic propulsion system used to maintain Satmex 5’s in-orbit position at 116.8° West Longitude. Although no customers were affected, engineers were forced to activate the satellite’s backup propulsion system—an action that is expected to shave more than a year off the satellite’s remaining life. Satmex, which lacks insurance for the XIPS failure, said it would seek financing for a replacement satellite as engineers are not expected to restart the primary XIPS system. Finally, Intelsat announced on Monday that it had “experienced an anomaly” with its Asian region IS-4 satellite, which was slated to be removed from service later this year. Known formerly as PanAmSat-4, IS-4 was built by Boeing and was launched into service in 1995. The satellite had been operating on back-up systems since a failure of its primary satellite control processor in 1998. Noting that affected customers were being transferred to neighboring spacecraft, Intelsat maintained that Monday’s anomaly would not “impact significantly the company’s financial position or its planned capital expenditures.”

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(No. 2010-5)