

May 28, 2010

Congress To Launch Review Of Communications Act

Leaders of the House and Senate Commerce committees are planning to solicit proposals for updating the 1934 Communications Act for the broadband age, in a process that would constitute the most significant revamping of communications law since the Telecommunications Act of 1996. In a joint press release issued on Monday, Senate Commerce Committee Chairman John Rockefeller (D-WV), Senate Communications Subcommittee Chairman John Kerry (D-MA), House Energy and Commerce Committee Chairman Henry Waxman (D-CA), and House Communications Subcommittee Chairman Rick Boucher (D-VA) said they would launch the process next month with “a series of bipartisan, issue-focused meetings” in which interested stakeholders would be invited to participate. Although the lawmakers stressed that “topics for discussion and details about this process will be forthcoming,” sources on Capitol Hill said any legislation crafted through the meetings will likely focus on the FCC’s jurisdiction over broadband and on the codification of the agency’s net neutrality principles. In the wake of the recent Comcast-BitTorrent court ruling in which the D.C. Circuit determined that the FCC lacked the authority to enforce its 2005 net neutrality principles, FCC Chairman Julius Genachowski outlined proposals earlier this month to classify the transmission component of broadband Internet services as a Title II telecommunications service. Declaring that “the significant regulatory impact of reclassifying broadband service is not something that should be taken lightly,” seventy-four House Democrats advised Genachowski in a letter this week that such a step should not be taken “without additional direction from Congress.” In a statement issued Monday, ranking Senate Commerce Committee member Kay Bailey Hutchison (R-TX) described the proposed Communications Act update as “a clear signal to Chairman Genachowski to stand down on his recently announced plan to reclassify broadband.” Welcoming the lawmakers’ announcement, AT&T agreed that “questions about the FCC’s legal authority should be decided by the Congress itself and not by applying to the Internet a set of onerous rules designed . . . for a different era.” Although Genachowski offered no comment on Monday’s developments, he emphasized in an earlier blog posting that, “should congressional leaders decide to take up legislation to clarify the statute and the [FCC’s] authority regarding broadband, the agency stands ready to be a resource to Congress as it considers any such legislative measures.”

FCC Approves Transfer Of Verizon Landlines To Frontier

Last Friday, Verizon Communications won FCC approval to sell 4.8 million landlines to Frontier Communications after the agency agreed to accept voluntary commitments that cover the deployment of new broadband facilities and the maintenance of operations support systems. Announced a year ago, the \$8.6 billion cash-and-stock deal covers all of Verizon’s landlines in 13 states that include Arizona, Illinois, and South Carolina, and a portion of Verizon’s rural landline network in California. The transaction would also



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triple the size of Frontier, a key provider of competitive local exchange, video, and broadband services to rural customers in 24 states. Verizon contends that the proposed sale of expensive-to-maintain landlines will better enable it to serve its wireless, broadband, and global IP customers. Opponents have, however, drawn parallels between the Frontier deal and the 2008 sale of Verizon's New England landline network to Fairpoint Communications in a deal that ultimately forced Fairpoint into bankruptcy. To make the proposed transfer more palatable, the parties presented to the FCC a list of 29 voluntary commitments that, among other things, cover (1) the expansion of broadband services with minimum download speeds of 4 Mbps to at least four million households, (2) the continuation of all of Verizon's existing wholesale service contracts, and (3) the submission of operations support systems reports to the FCC and affected state regulatory commissions if Frontier transitions from any of the support systems acquired from Verizon within three years of closing. While acknowledging that "no transaction is without risk and this one has its fair share," FCC Chairman Julius Genachowski proclaimed that, when the companies' commitments are taken into account, "the likely public interest benefits outweigh the potential public interest harms." The parties are expected to complete the transaction in July.

FCC Initiates Media Ownership Inquiry

The FCC laid out plans on Tuesday to revisit the contentious issue of media ownership with the release of a notice of inquiry (NOI) that seeks comment on the extent to which current FCC rules promote the agency's goals of competition, localism, and diversity and what revisions to those rules, if any, are needed to promote those goals in the rapidly-changing U.S. media marketplace. Tuesday's NOI represents the first step in a congressionally-mandated review of media ownership that the FCC is required by law to complete on a quadrennial basis. The last such review took place in 2006 and was capped by the adoption of an order in 2007 that relaxed the FCC's long-standing ban against the common ownership of a newspaper and television station in the same market. That order, however, is currently under review by the Third Circuit Court of Appeals, which had previously struck down a 2003 FCC order that relaxed or eliminated TV-newspaper cross-ownership restrictions and that also raised the agency's cap on national TV station ownership. Noting, "we live in an ever-changing media world, but the core public interest goals [are] the same," FCC Chairman Julius Genachowski stressed that the purpose of the NOI is to "[foster] a strong and independent broadcast medium that provides Americans with multiple and diverse sources of news, public affairs, and entertainment programming." Among other things, the NOI requests public input on (1) how localism, competition, and diversity in the U.S. media marketplace should be promoted, measured, and defined, (2) what regulatory approach (*i.e.*, broad, case-by-case, or bright-line rules) the FCC should use if it is determined that the current rules no longer serve the public interest, (3) the costs and benefits of "outlet specific" rules as compared to regulations that apply to all types of media, and (4) the impact of the FCC's National Broadband Plan on the agency's media ownership rules. Citing statistics that show a 30% decrease in the number of broadcast station owners even as the number of commercial radio and television stations continues to rise, FCC Commissioner Michael Copps—an opponent of the 2003 and 2007 media ownership orders—voiced hope that "the third time [will be] the charm," as "our country urgently needs a media that is reflective of our diverse communities and interests."

Governors Urge FCC Approval Of Comcast-NBC Deal

Predicting that the proposed union of Comcast and NBC Universal (NBCU) will bring "consumers across the nation more programming choices over more communications technologies," the governors of three states in which Comcast and NBCU boast a large corporate presence wrote to the FCC on Monday to recommend "timely government approval" of the \$13.75 billion transaction. Meanwhile, a fourth governor—Haley Barbour (R) of Mississippi—cited Comcast's significant investments in his state in a similar letter that also urges swift FCC approval. Comcast, the nation's largest cable operator, announced plans last December to acquire a 51% stake in NBCU in a deal that would give Comcast control of two television broadcast networks, cable channels such as CNBC, Bravo, and Oxygen, and the Universal Pictures film studio. As rival multichannel video program distributors have voiced fears that the transaction will induce Comcast to restrict or drive up prices for competitive access to NBC programming, consumer groups have warned that the post-merger entity could charge web users for NBC and other content that is accessed online. Notwithstanding these concerns, California Governor Arnold Schwarzenegger (R) joined Governor David Paterson (D) of New York and Governor Ed

Rendell (D) of Pennsylvania in recommending FCC approval. The governors lauded the merger partners' "strong commitment to help preserve national and local broadcast television by getting the NBC and Telemundo television networks on a solid footing." The governors also praised the companies' "commitments to grow their new media businesses, bringing consumers across the nation more programming choices over more communications technologies." Separately, Barbour told FCC Chairman Julius Genachowski that Comcast's proposed union with NBCU "can only be good news for . . . job creation in our country and for continued innovation and competition in the communications market," given Comcast's "robust investment in broadband infrastructure despite one of the worst economic climates in 70 years."

AT&T To Hike Early Termination Fees For Smart Phones

Following the lead of rival Verizon Wireless, AT&T said late last week it will soon raise early termination fees (ETFs) from \$175 to \$325 for wireless contracts that cover netbooks and other "smart" devices that include the Apple iPhone. AT&T—the exclusive distributor of the iPhone in the U.S.—disclosed the policy change as Apple prepares to roll out a new version of the iPhone next month that is expected to bring new flocks of customers to AT&T. Sources also anticipate that Apple will end its exclusive contract with AT&T within a year to enable Verizon and other U.S. carriers to offer the iPhone to their subscribers. Announced six months after Verizon doubled its smart phone ETF from \$175 to \$350, AT&T's revised ETF will go into effect next month for new smart phone customers. Conversely, AT&T said it would reduce contract ETFs for users of standard wireless handsets by \$25. Commenting on the policy change, an AT&T spokesman said it was a "fair approach" to reduce ETFs for customers with less expensive devices while raising ETFs for subscribers who purchase expensive smart phones. That explanation, however, did little to satisfy Senator Amy Klobuchar (D-MN), the author of pending legislation that would limit wireless ETFs. (Verizon's fee hike last year also induced the FCC to request information from Verizon and other top U.S. wireless carriers on their ETF policies.) Lamenting that, "once again, wireless providers have shown that they would rather use arbitrary fees than network and service quality to keep customers," Klobuchar declared: "it is time for Congress and the [FCC] to act to ensure competition and consumer protection in the cell phone marketplace."

Germany Raises \$5.5 Billion In Wireless Spectrum Auction

An auction of third- and fourth-generation wireless spectrum has raised €4.4 billion (US\$5.5 billion) for Germany's government, with the lion's share of coveted frequencies in the 800 MHz band going to British wireless giant Vodafone, Telefonica's O2, and German market leader Deutsche Telekom (DT). Encompassing analog channels that were surrendered by German broadcasters in the transition to digital television, the month-long auction covered 41 blocks of spectrum to rank as Germany's largest auction to date in terms of available licenses. (Although auctions for 3G wireless channels held ten years ago in Germany encompassed far less spectrum, total bids in that event reached a whopping €50 billion.) The auctioned spectrum is expected to be used toward the expansion of 3G wireless voice and data services in rural markets and toward the deployment of 4G mobile broadband services. Vodafone, the second-largest wireless carrier in Germany, earned the auction's top spot with US\$1.73 billion in winning bids. O2 and DT followed closely behind with total bids of \$1.68 billion and \$1.59 billion, respectively. Meanwhile, KPN of the Netherlands—the operator of Germany's E-Plus mobile network—pledged \$347 million for various 3G licenses although it failed to win any 800 MHz spectrum sought for 4G mobile broadband services.

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