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## Senator Calls For FCC Probe Into Competitive Practices Of Large Wireless Carriers

In the wake of media reports concerning the launch of a preliminary Justice Department (DOJ) probe into exclusive handset deals and other potentially anticompetitive practices involving Verizon Wireless and AT&T, Senate Antitrust Subcommittee Chairman Herb Kohl (D-WI) wrote to FCC Chairman Julius Genachowski and to DOJ Antitrust Chief Christine Varney to urge “action to ensure that the wireless telephone market is open to competition and to remove undue barriers to entry and expansion by new competitors.” Delivered on Monday, the letters cite recent hearings conducted by Kohl’s committee on alleged collusion among the top U.S. wireless carriers on text message pricing, which, according to Kohl, constitutes “a warning sign for the state of competition in the cell phone market.” Voicing fears that “the concentrated nature of the cell phone marketplace could lead to future price increases for this and other cell phone services relied upon by millions of Americans,” Kohl called on Genachowski to initiate an investigation into wireless industry competitive practices. Among other things, Kohl also recommended that the FCC (1) require large wireless carriers to enter data roaming partnerships with small providers, (2) take action “to prevent the dominant cell phone providers from gaining exclusive access to the most in-demand cell phones, and (3) regulate special access rates to ensure they “do not constitute an additional barrier to competition.” Meanwhile, as DOJ officials declined comment, press sources reported this week that members of the DOJ Antitrust Division are interviewing representatives of competitive wireless carriers as part of an “initial review” of Verizon and AT&T to determine if they “have abused the market power they’ve amassed in recent years.” Although critics of both carriers welcomed the news, a spokesman for AT&T stressed, “we are not aware of any formal investigation by the [DOJ], nor have they asked us to provide any information.”

## Sprint Outsources Network Operations To Ericsson

In the first agreement of its kind to involve a major U.S. carrier, Sprint Nextel announced yesterday that it has transferred management and operational responsibility for its wireline and wireless networks to Ericsson in a deal valued at between \$4.5 billion and \$5 billion. The seven-year outsourcing pact is expected to bring about significant cost savings for Sprint, which is transferring about 6,000 employees to a subsidiary of the Swedish telecom equipment maker that will be based near Sprint’s headquarters in Kansas. Although Ericsson already manages global telecom networks that serve more than 275 million subscribers, the agreement with Sprint represents Ericsson’s first network operation deal in North America. While Ericsson will assume responsibility for the day-to-day maintenance and monitoring of the Sprint Nextel networks, Sprint will retain full ownership and control of those networks. The deal is also expected to free up money and resources for Sprint that can be invested in other business lines to enable the

company to compete more effectively against Verizon Wireless and AT&T. Asserting that the pact “is all about improving the customer experience,” Sprint network operations president Steve Elfman told reporters, “while we get the benefits of Ericsson’s expertise . . . we can focus our attention to bringing great devices, great services, [and] great applications to [customers].” Ericsson Vice President Scott Willis, meanwhile, touted the contract as “a significant opportunity for us to expand” and as “something we will look to leverage in North America going forward.”

## FCC Lays Out Roadmap For National Broadband Plan

At Julius Genachowski’s first open meeting as FCC chairman, officials detailed the agency’s approach over the coming months to the national broadband plan that the FCC is required to present to Congress next February 17 under the auspices of the American Recovery and Reinvestment Act (ARRA). Although the FCC has already issued a rulemaking notice on the broadband plan for which reply comments are due on July 21, Blair Levin—a former FCC chief of staff who rejoined the agency last month to oversee the plan’s development—emphasized that the FCC would launch a “transparent, inclusive and participatory” public process, including a series of staff workshops in August and September. The workshops would be open to the public and would focus on various aspects of the broadband plan that include healthcare, e-government, education and job training. Comments on the workshops would be accepted through September 11, with field hearings to follow later in the fall. Noting that the FCC’s annual report to Congress on advanced communications services pursuant to Section 706 of the 1996 Telecommunications Act is due on February 3, Levin told the FCC’s commissioners that data gathered on the broadband plan would be incorporated into the Section 706 report and vice-versa as part of an omnibus initiative. Asserting that the plan’s compilation “will be data driven,” Genachowski told reporters that the FCC’s goal in developing the broadband plan “means not starting with conclusions, but using data to develop analysis” and “find concrete solutions that supersede ideology.”

## Senate Committee Approves Spectrum Inventory Bill, As Similar Measure Is Introduced In House

Members of the Senate Commerce Committee approved legislation on Wednesday that would require the FCC and the National Telecommunications and Information Administration (NTIA) to conduct an inventory of the nation’s spectrum resources. House Energy and Commerce Committee Chairman Henry Waxman (D-CA) meanwhile introduced a companion bill that encompasses a greater range of frequencies and that would also require both agencies to identify and recommend for reallocation spectrum that is underutilized. Introduced by Senate Communications Subcommittee Chairman John Kerry (D-MA) and Senator Olympia Snowe (R-ME), the Radio Spectrum Inventory Act has been endorsed by wireless association CTIA, which said, “as the wireless industry continues to invest to meet consumers’ increasing demand for broadband services, we appreciate Senator Kerry and Snowe’s commitment to work with stakeholders to fashion a bill that identifies where the next allocation of spectrum for commercial use will come from.” While the bill covers frequency bands between 300 MHz and 3.5 GHz, lawmakers adopted an amendment that would add intentional and unlicensed radiators to the required inventory as well as contour maps that depict signal coverage and strength. The FCC and NTIA would also be required to set up “a centralized portal or website . . . to make the inventory bands of such [agencies] available to the public.” Kerry also confirmed that, at the urging of Senator Mark Warner (D-VA), committee leaders are considering adding a further amendment before the bill goes to the Senate floor that would require “measurement of spectrum use by licensees.” While resembling the Senate bill in many respects, the House measure introduced by Waxman would encompass spectrum between 225 MHz and 10 GHz and would require the FCC and NTIA to submit annual reports in which they identify “the least utilized blocks of spectrum inventories” and recommend “which, if any, of such spectrum identified” should be reallocated. In a statement accompanying the bill, Waxman declared that the measure “will complement the Obama Administration’s initiatives to provide universal, high quality broadband access for all Americans.”

## Dish Wins Stay Of TiVO Patent Injunction

One month after being told by a Texas federal district court that it had 30 days to disable digital video recorders (DVRs) that continue to violate patents held by TiVO, Inc., DISH Network won at least a temporary reprieve as the Federal Circuit Court of Appeals stayed the lower court's injunction upon concluding that DISH had demonstrated "it has a substantial case on the merits." Handed down last Wednesday, the Federal Circuit decision allows more than 4 million DISH customers to continue using their DISH-issued DVRs pending a ruling on DISH's appeal of the June 2 district court order that also awarded TiVO an additional \$103 million in damages. Although DISH contends that DVR technology workarounds developed in response to earlier court pronouncements in the five-year-old case fulfill the requirements of TiVO and the court, TiVO convinced U.S. District Court Judge David Folsom last month that the workarounds in question continue to violate TiVO "time warp" patents and thereby continue to violate the terms of the injunctive order handed down previously by the district court. While granting DISH's motion for stay, the Federal Circuit also expedited its schedule for the appeal, raising the possibility that a final order will be issued as early as November. As DISH proclaimed that it was "pleased" with the court's decision, a TiVO spokesman voiced confidence of a favorable outcome for his company, noting: "the Court of Appeals stayed the district court's order the previous time this case was heard on appeal and ultimately affirmed the judgment against [DISH]."

## Webcasters, Soundexchange Reach Royalty Resolution

Capping two years of negotiations, several "pureplay" webcasters struck a revenue sharing agreement with SoundExchange on Tuesday that observers say will ensure the survival of Internet radio broadcasters that had been threatened with a potentially crippling increase in royalty fees set by the Copyright Royalty Board (CRB). The pact was signed by three webcasters that broadcast exclusively through the Internet—AccuRadio, radioIO and Digitally Imported—although Pandora Media and other Internet radio firms are also expected to adopt the agreement as well. In accordance with legislation passed by Congress, the agreement will also be binding on all copyright holders, including those not associated with SoundExchange, a non-profit organization that collects royalties from digital radio service providers on behalf of copyright holders. Under the pact, large commercial webcasters would pay copyright owners up to 25% of their revenues or a "per-song, per listener" fee that is substantially below CRB rates that webcasters once claimed would put them out of business by consuming upwards of 70% of annual revenues. Small webcasters would have the option of paying a percentage of revenues or a percentage of expenses. Predicting that the deal will give webcasters the opportunity to "flesh out various business models," SoundExchange executive director praised the agreement as one that enables copyright holders to "share in the success their recordings generate." Pandora founder Tim Westergren proclaimed, "we are relieved, happy and super excited about the resolution because it means we now have long term security."

## Coalition Announces Privacy Principles To Govern Online Advertising

Addressing the concerns of lawmakers, a coalition of advertising industry organizations released a self-regulatory code last Thursday that includes principles governing the collection and use of personal information for behavioral and other online advertising practices. Developed by the American Association of Advertising Agencies, the Association of National Advertisers, the Direct Marketing Association, and the Interactive Advertising Bureau, the principles follow recent congressional hearings on the privacy implications of behavioral advertising practices used by Google and other web-based firms and are intended, in part, to pacify House leaders who are considering regulatory mandates as part of draft legislation that would provide online privacy protections for consumers. Seven principles are at the heart of the self-regulatory code which would take effect at the beginning of 2010. These include: (1) an education principle that would promote public understanding of how behavioral advertising works, (2) a transparency principle that requires "multiple mechanisms for clearly disclosing and informing consumers about data collection and use practices," (3) a consumer control principle that gives web site users the right to decide whether data is collected or used or transferred to non-affiliates, (4) a data security principle that provides protections for collected data, (5) a material changes principle that requires entities to obtain consent from users

before changes in behavioral advertising policies are implemented, (6) a sensitive data principle that requires higher levels of security for medical records and similar sensitive classes of data, and (7) an accountability principle that encourages entities to develop and implement policies that promote compliance with the aforementioned principles. As Federal Trade Commissioner Pamela Jones Harbour congratulated the coalition for responding “to so many of the privacy concerns raised by my colleagues and myself,” an official of the Progress and Freedom Foundation applauded the principles as “a vastly superior approach to imposing preemptive regulations.”

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