

July 9, 2010

## DISH Sues To Block STELA HD Signal Mandate

A provision in the recently-enacted Satellite Television Extension and Localism Act (STELA) that requires direct broadcast satellite (DBS) operators to transmit noncommercial television stations in high-definition (HD) format by 2011 is being challenged in court by DISH Network. In its petition, filed last Thursday with the U.S. District Court in Las Vegas, DISH is seeking an injunction against FCC enforcement of the HD mandate, which, according to DISH, violates the company's First Amendment right to select the programming that it offers to subscribers. Although DISH and rival DirecTV are already required by the FCC to adhere to a phased-in timetable that envisions the carriage of all TV channels in HD format by 2013, STELA mandates carriage of 50% of non-commercial stations in HD by the end of this year and all remaining non-commercial stations by the end of 2011 in all markets in which DISH currently offers any station in HD. (The provision does not impact DirecTV as that company has already agreed to carry non-commercial stations in HD pursuant to a contract with the Association of Public Television Stations.) Noting that it currently delivers the standard-definition feeds of non-commercial PBS stations in 181 markets—the most of any U.S. multichannel video service provider—DISH told the court that its complaint “is not . . . about whether PBS provides important and worthwhile programming” but “is about who gets to make the editorial judgment whether to carry local PBS stations in HD—DISH or the government.” DISH further stated that it would not be able to satisfy STELA's HD deployment schedule as DISH is unable to expedite deployment of a new satellite (scheduled for launch in 2012) that is intended to provide the capacity needed to meet the FCC's phased-in schedule. Maintaining that “I and millions of other Americans depend on public television to deliver truth, entertainment, facts and beauty,” Representative Anna Eshoo (D-CA), one of the driving forces behind the HD provision in STELA, criticized the lawsuit as “an affront to [DISH] customers who expect and deserve this service.”

## Bill Proposes Uniform Tax Framework For Digital Goods

Observing that “existing sales and use taxes are inadequate and ill-equipped to address today's digital economy,” House Communications, Technology & Internet Subcommittee Chairman Rick Boucher (D-VA) introduced legislation that would establish a uniform national framework for the taxation of digital goods and services. Co-sponsored by ranking House Judiciary Committee member Lamar Smith (R-TX), the Digital Goods and Services Tax Fairness Act (HR-5649) is supported by a host of telecommunications, electronics and media groups that include Verizon Communications, Apple, Inc., Time Warner, the Recording Industry Association of America, and wireless association CTIA. In a letter addressed to Boucher and Smith, CTIA joined the National Cable & Telecommunications Association, US Telecom, TechAmerica and NetChoice in describing the bill as “critical to the continued growth of digital commerce and the

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overall economic competitiveness of the United States.” The bill seeks to eliminate the imposition of “discriminatory” and duplicative state taxes on digital goods by specifying that the ultimate tax jurisdiction is determined by the customer’s tax address. Goods and services covered by the bill include (1) digital music, movies and games, (2) software downloads, and (3) e-books. Telecommunications services, Internet access, and digital audio or visual programming services that are comparable to broadcast television programming are not covered by the bill, which also exempts online medical, education and energy management services from taxation. (The measure stipulates, however, that taxes could be applied to interactive on-demand and pay-per-view services.) The legislation would also prohibit state and local tax authorities “from retroactively construing taxes imposed on tangible personal property to also apply to digital goods and services through administrative rulings or regulations.” Observing that “consumers face potential multiple and discriminatory taxation of the music, movies, games and other goods and services they download from the Internet,” Peter Davidson, the senior vice president of federal government regulations for Verizon Communications, praised the bill as “a smart solution to a growing Internet-age problem.”

## Public Safety Advocates Respond To FCC White Paper On 700 MHz D-Block

Debate intensified this week on FCC plans to auction the 700 MHz D-block as Motorola, Inc. and the National Public Safety Telecommunications Council (NPSTC) took issue with a recent agency white paper that contends that first responder broadband needs can be met without reallocating D-block spectrum directly to the public safety community. Issued on June 15, the FCC white paper argues that the 10 MHz swath of spectrum assigned to the Public Safety Spectrum Trust next to the D-block can meet public safety broadband needs as long as public safety users are provided priority access to the nationwide wireless broadband network to be built by the commercial D-block auction winner. Appearing on a Washington, D.C. public radio show on Tuesday, FCC Public Safety Bureau Chief Jamie Barnett stressed that the FCC’s plan will enable the public safety community to leverage commercial deployment of fourth-generation wireless broadband network technologies and thus significantly reduce network deployment costs. Charging, however, that the FCC’s paper ignores findings outlined in a document filed last February by the City of New York, the NPSTC advised the FCC to “provide more deference to input from actual public safety users who are on the ground and have had experience with public safety incidents than calculations from academia.” In particular, NPSTC pointed out that the New York paper demonstrates the failure of commercial wireless networks during periods of congestion associated with major emergencies and the difficulties faced by first responders in obtaining access to commercial networks. According to the NPSTC, such difficulties stem from the fact that public safety entities lack “preemptive access” to commercial networks that are operated for profit and are only “placed at the ‘top of the queue’” at times of emergency. The NPSTC also faulted FCC estimates that data rates of 256 kilobits per second are adequate to support public safety video demands, explaining that the FCC’s figure is based on an NPSTC statement that was developed three years ago “to help define the minimum requirements the Commission should impose on the D-block operator.” That complaint was echoed in an *ex parte* filing by Motorola, which cited research indicating that data rates of 400 to 1200 kbps are required to support “tactical decision making” by first responder agencies. Adding, “it is contradictory to predict that public safety will be limited in its broadband requirements while at the same time accepting that consumer requirements for broadband will soar,” Motorola warned that failure to allocate the D-block to public safety “will result in the need for future public safety broadband allocations that ultimately will have to be sourced from another spectrum band, further hampering interoperability.”

## Carriers Tell FCC That “Bill Shock” Rules Are Unnecessary

Responding to an FCC proposal that would require wireless carriers to send “bill shock” alerts to subscribers, wireless association CTIA and all of the major U.S. wireless operators stood together in opposition to the plan, which they claim is unnecessary and targets a problem in European Union (EU) markets that does not exist in the U.S. Consumer advocates, meanwhile, urged the FCC to enact the proposed mandate on grounds that existing carrier mechanisms for preventing excessive charges are inconsistent and are often subject to enrollment fees. In a public notice issued in May, the FCC sought comment on the establishment of an alert system for wireless carriers “that would provide wireless voice, text, and data consumers in the United States with a way to monitor, on a real-time

basis, their usage of a wireless communications service as well as the various charges they may incur.” Pointing to the results of an agency survey showing that 17% of non-business wireless subscribers have experienced bill shock, the FCC said it was modeling its approach on existing EU regulations that require carriers to alert customers who are approaching the limits of their monthly usage allotments. Arguing that the proposal is unnecessary, CTIA told the FCC in comments filed Tuesday that “carriers already provide [account management] tools, the market is innovating to bring new tools, and carriers have incentives to meet customers’ needs in a competitive market.” As AT&T stressed that it “already provides customers with more and better disclosures than the EU requires,” Verizon Wireless said the problem of excessive cross-border roaming rates that triggered the EU rules does not apply to the U.S. as “the majority of U.S. consumers are not constantly traveling between different countries with different wireless rates and policies.” That view was seconded by Sprint Nextel, which also claimed that the FCC’s recent consumer survey “does not support the conclusion that bill shock is a major issue in the United States.” In joint comments, however, Consumer Action and the National Consumer League described the current system as “unacceptable,” as they noted that three of the four top U.S. wireless carriers charge their customers additional fees for managing their usage. While acknowledging that various operators “have taken affirmative steps to improve consumer disclosures,” a coalition of 14 public interest and media groups that include the Consumers Union, the Media Access Project and the New America Foundation warned: “the Commission cannot rely on the consistency or accuracy of voluntary commitments that are likely to ebb and flow depending upon the potential threat of regulation.”

## France Telecom CEO Unveils 5-Year Plan

At a press conference on Monday, Stephane Richard, the newly-installed CEO of France Telecom (FT), laid out his company’s plans for the next five years, including the goal of signing up at least 5% of the world’s population to the FT Orange brand by 2015. Richard assumed the FT helm four months ago upon the departure of his predecessor, Didier Lombard. Declaring that a key goal of the five-year plan is to “create a more human company,” Richard said FT would add an additional 10,000 jobs by 2012 as part of a €900 million (US\$1.1 billion) “social contract” with FT workers that would offer improved benefits and working conditions. Richard also confirmed FT’s plan to invest US\$2.5 billion in new fiber optic infrastructure by 2015 and to seek new content partners for IP-based television businesses operated by Orange. In addition to boosting Orange’s subscribership total to 300 million (or 5% of the world’s population) over the next five years, Richard said FT would seek to double its revenues from emerging markets in Africa and other international regions. Citing the explosion of mobile data traffic and the resulting strain on limited wireless network capacity, Richard also told reporters: “we are thinking about changing the pricing approach of the access to data on mobile networks because we think—as do our peers—that the explosion of data traffic on mobile networks cannot be managed with unlimited pricing plans.”

## Global Wireless Subscriptions To Surpass Five Billion

Analysts at The Mobile World (TMW) report that wireless telecommunications connections are poised to reach five billion worldwide—or 73% of the global population—by the end of this week, owing largely to continued explosive subscriber growth in India and other developing markets. According to TMW, total wireless connections in use worldwide surpassed 4.82 billion at the end of the first quarter. Based on carrier data from that period and projections that are based on past growth rates for markets that do not declare subscriber data, one TMW analyst told reporters late last week: “it’s a pretty short-odds bet that today or maybe tomorrow, Mr. 5 billion will be connected.” The lion’s share of that growth is occurring in China and India, which, together, accounted for half of new wireless connections worldwide during the first quarter. In all, China, India, Brazil and Russia supplied three out of five of new net wireless subscriptions globally during the first quarter, while the “next eleven” countries, which include Indonesia, Vietnam and Mexico, supplied one out of five new additions. Meanwhile, TMW statistics show that mature wireless markets in G7 nations such as the U.S. supplied just 4.6% of new wireless connections worldwide. Although TMW predicts there will be one wireless connection in use for every person on earth by 2014, about a quarter of those connections are expected to be used for duplicate devices owned by a single subscriber.

## EU Court Proclaims Portugal Telecom Golden Share To Be Illegal

One week after the Portuguese government exercised its “golden share” rights to block Telefonica’s US\$9 billion bid for Portugal Telecom’s (PT’s) indirect stake in Brazilian wireless carrier Vivo, the European Court of Justice (ECJ) has ruled Portugal’s golden share to be illegal. Handed down yesterday, the decision potentially vindicates Telefonica in its two-month quest to acquire full control of the Brasilcel venture in which PT and Telefonica are 50-50 partners and which owns 60% of Vivo, the largest mobile telephony firm in Brazil’s fast-growing wireless market. Although Portuguese Prime Minister Jose Socrates asserted last week that the government acted with the intention of protecting the national interest, the ECJ determined that the state’s holding of golden shares in PT “constitutes an unjustified restriction” in the “free movement of capital.” While voicing disappointment with the decision, a spokesman for the prime minister said Portugal “will search for solutions that allow full respect for [European Union] law but that also safeguard the national interest.” In anticipation of the ECJ ruling, company officials also hinted on the eve of the court’s order that efforts were underway to reach a compromise as PT affirmed it was willing “to maintain a dialogue with Telefonica aimed at analyzing options that optimize the advantages for all parties.”

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(No. 2010-27)