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Current Telecom Developments

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Supreme Court Refuses Review of Media Ownership Rules, Super Bowl Indecency Fine

Broadcasters were dealt a defeat last Friday by the U.S. Supreme Court, which refused to consider their appeal of a Third Circuit Court ruling that upheld the FCC's decision in 2008 to retain the television-radio cross ownership and television duopoly rules. At the same time, the FCC was handed its own defeat by the high court's refusal to review a Third Circuit decision that invalidated a $550,000 indecency fine assessed by the FCC against the CBS broadcast network for the inadvertent airing of singer Janet Jackson's "wardrobe malfunction" during the 2004 Super Bowl halftime show. Capping its most recent statutory review of the media ownership rules, the FCC decided in 2008 to maintain limits on TV/radio cross-ownership while permitting waivers of the cross-ownership rule, under certain conditions, in the top 20 media markets. The agency also relaxed its 30-year-old ban against the cross-ownership of broadcast stations and newspapers in a single market. Although the Third Circuit overturned the revised broadcast/newspaper cross ownership rule on procedural grounds, it upheld the FCC's decision on TV-radio cross ownership, prompting broadcasters to seek redress before the Supreme Court. Urging the high court to repeal its landmark ruling in *Red Lion Broadcasting v. FCC,* which cited the scarcity of public airwaves in affirming the right of the FCC to impose media ownership restrictions on broadcasters, Tribune Co., Media General, Fox Television, Clear Channel and other broadcasters argued that airwave scarcity no longer applies to the current marketplace in which the Internet, cable and satellite television services, and other alternative media sources prevail. Separately, the National Association of Broadcasters (NAB) asserted that a split in the lower courts (whereby the Third Circuit upheld the duopoly rules but the D.C. Circuit vacated those rules as arbitrary and capricious) necessitated Supreme Court review. Notwithstanding these arguments, the justices rejected the appeals without comment. Lamenting the Supreme Court's refusal "to review rules that limit local broadcasters' ability to compete with our national and multinational pay programming competitors," NAB vowed to "continue to advocate for modernizing ownership rules that stem from an era of *I Love Lucy*." Meanwhile, there was not much surprise at the Supreme Court's refusal to review the Third Circuit vacatur of the Janet Jackson fine, as that ruling followed on the high court's decision last month to overturn fines and other penalties imposed by the FCC on the Fox and ABC networks for utterances of "fleeting" expletives and the display of brief nudity. Applauding the court's action, a spokesman for CBS said the network looks forward "to the FCC heeding the call for the very balanced enforcement which was the hallmark of the commission for many, many years."

News Corp. to Split Entertainment, Publishing Groups

Members of the News Corp. board have approved plans to split the media conglomerate into separate entertainment and publishing divisions, in a move that chairman and CEO

Rupert Murdoch proclaimed is intended to "simplify operations and greater align strategic priorities." Announced last Thursday, the restructuring plan creates one company to encompass News Corp.'s entertainment assets that include the Fox television network, the 20th Century Fox film studio and various Fox cable channels. A second company will contain News Corp's publishing assets that include, among others, the *Wall Street Journal*, the *Times* of London, and the Harper Collins publishing house. News Corp. shareowners will receive one share of stock in the new companies for every current share held. (Sources indicate that, as a group, members of the Murdoch family will retain voting stakes of approximately 40% in both companies.) Murdoch will serve as CEO and chairman of the new entertainment company and as chairman of the publishing company, with News Corp. COO Chase Carey to continue in his current role at the entertainment company. Acknowledging that a CEO has yet to be named for the publishing business, Murdoch told reporters: "this will take many months to complete, and we are in no hurry to make a decision." Murdoch also explained that, because "our publishing assets are greatly undervalued," the spinoff plan "will unleash their real potential." Contingent upon receipt of required regulatory approvals and tax rulings, New Corp. officials hope to complete the restructuring in about a year.

Judge Bars U.S. Sales of Samsung Nexus Smart Phone

Samsung Electronics, the world's largest producer of wireless smart phones, has been banned from selling its Galaxy Nexus smart phone in the U.S. after a California district court judge decreed that Apple, Inc. is likely to prevail on the merits of a pending lawsuit that accuses Samsung of infringing various technology patents held by Apple. In a 101-page opinion handed down last Friday, U.S. District Court Judge Lucy Koh approved Apple's motion for a preliminary injunction, concluding that Apple had made a strong case that Samsung was infringing key Apple iPhone patents and that Apple would suffer "irreparable harm" if injunctive relief was not granted prior to trial. Koh's ruling deals a double blow to Samsung, as, just three days earlier, Koh had also barred Samsung from marketing the Galaxy Tab 10.1 tablet PC, which is alleged to contain technologies that infringe upon patents used in the Apple iPad. Statistics compiled by research firm IDC indicate that Samsung accounts for 29.1 percent of global smart phone shipments, with Apple ranking second with a 24.2% global share. In documents filed with the court, Apple described the Nexus smart phone as "the most credible competitor to the iPhone so far." Voicing dismay with Koh's decision, a Samsung spokesman vowed: "we will take all available measures, including legal action, to ensure the Galaxy Nexus remains available to consumers."

Virginia Regulators Launch Investigation of Verizon 911 Service Failure

In the wake of a powerful line of hurricane-force storms that downed power lines and trees in a 300-mile swath across six states and the District of Columbia, the Virginia State Corporation Commission (VSCC) launched a probe on Tuesday into failures of the 911 emergency system that is operated by Verizon Communications in two northern Virginia counties. The storms that tore through Virginia, Maryland, the District of Columbia, West Virginia, Ohio and portions of Pennsylvania and New Jersey last Friday triggered what Virginia state officials described as the "largest non-hurricane related power outage in history." Communications services throughout the region were also impacted, with landline customers of Verizon, AT&T and Frontier Communications and wireless subscribers of the four national carriers reporting widespread service interruptions particularly during the initial 24-hour period after the storm. While officials of Verizon, AT&T and the national wireless carriers all reported significant progress in restoring service as of Monday, 911 system failures in two densely populated northern Virginia counties—Fairfax and Prince William—provoked the ire of local government officials as well as promises of a VSCC investigation into the reliability of Verizon's 911 network. While blaming the incident on damage to "multiple Verizon facilities inside and outside of offices in the affected area," Verizon officials confirmed on Tuesday that 911 service issues had been resolved. Emphasizing that "our 911 network is designed so that there is no one single point of failure anywhere in the network that can interrupt 911 service," Mike Daigle, the vice president of engineering for Verizon, promised: "we will thoroughly examine these issues to determine wither any design deficiencies exist, and we will take corrective action if any are found." The VSCC called on Verizon to respond fully to all requests for information "in a timely manner."

Telecom Executives Urge Senate Ratification of Law of the Sea Treaty

Verizon Communications CEO Lowell McAdam and other industry executives present at a Senate Foreign Relations Committee hearing last Thursday voiced strong support for Senate ratification of the Law of the Sea (LOS) Treaty, which would permit the U.S. to file suit on behalf of carriers when foreign nations block or otherwise hinder the deployment and repair of undersea cable networks. The U.S. is the only industrialized nation that is not currently a party to the LOS Treaty, which was first enacted in 1982. Asserting that undersea cables "provide a backbone for the world's voice and data networks," committee chairman John Kerry (D-MA) remarked that "a party to the treaty can bring suit on behalf of its companies within the context of a [LOS] agreement." Ranking committee member Richard Lugar (R-IN) agreed that the time had come for the Senate to vote on the treaty, stressing that "every major ocean industry, including shipping, fishing, telecommunications, oil and natural gas developers, drilling contractors, and ship builders, support U.S. accession." In testimony before the committee, McAdam said the LOS Treaty "[goes] beyond existing international law to provide a comprehensive legal regime for submarine cables wherever they are deployed," as he predicted that Senate ratification "will provide confidence to U.S. companies that their undersea submarine cable investments are protected." Noting that more than 95% of U.S. international voice, video and Internet traffic is carried over 38 submarine cables, McAdams further advised lawmakers that "several recent events underscore the urgent need for a clear and unambiguous framework for protecting this vital communications infrastructure." While support for ratification among committee Democrats appeared to be strong, some Republicans on the panel, including Senator Bob Corker (R-TN), voiced concerns about U.S. sovereignty and questioned whether adoption of the LOS Treaty would lead to improved dispute resolution for carriers, who would be forced to rely upon the government to pursue their grievances.

European Parliament Votes Against Anti-Piracy Agreement

Spurred by protests and by an online petition that garnered 2.8 million signatures, members of the European Parliament (EP) rejected a global agreement against online piracy that critics charged would unfairly penalize individual consumers who download copyrighted material for their own private use. By a margin of 478-39 with 165 abstentions, the EP on Wednesday voted against the Anti-Counterfeiting Trade Agreement (ACTA), which took four years to negotiate and had already been ratified by each of the European Union's (EU's) 27 member states. The groundswell of grassroots opposition throughout the EU against ACTA's enactment mirrored a similar effort in the U.S. that effectively killed the Stop Online Privacy Act earlier this year. While film studios, publishers and copyright owners fought for ACTA's enactment, Internet service providers and online firms such as Google warned that the agreement could make them liable for copyrighted content that is posted or shared illegally by website users. In remarks following the vote, EP President Martin Schulz observed that the EP concluded "that ACTA is too vague . . . raising concern about its impact on consumers' privacy and civil liberties, on innovation and the free flow of information." The European Commission (EC), which referred ACTA to the European Court of Justice earlier this year to determine whether the agreement would violate fundamental rights and freedoms, had recommended that proposals to update EU copyright law must be constructed in such a way as "to make sure that professional counterfeiters rather than individual consumers are targeted." Arguing, "the question of protecting intellectual property does need to be addressed on a global scale," EU Trade Commissioner Karel De Gucht stressed that, notwithstanding ACTA's defeat, "the need to protect the backbone of Europe's economy . . . does not disappear."

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