FCC APPROVES H-BLOCK ALLOCATION FOR WIRELESS SERVICES

Over the vigorous protests of many wireless carriers and the mobile satellite service (MSS) industry, the FCC unanimously approved the allocation of the “H-block” for advanced wireless services as it opened further proceedings on service, licensing, and auction rules. The newly allocated frequencies consist of paired 5 MHz channel blocks at 1915-1920 MHz (designated previously for unlicensed personal communications services) and at 1995-2000 MHz (assigned previously to MSS operators). An additional channel pair at the 2020-2025 MHz /2175-2180 MHz bands, which had once belonged to the MSS industry, was also reallocated for advanced wireless use. Fearing potential interference to existing adjacent personal communications service (PCS) operations, many of the major wireless industry players, backed by the Cellular Telecommunications and Internet Association (CTIA), objected to the H-block plan. In support of wireless industry claims, Sprint PCS and Nokia Corp. provided the FCC with the results of independent tests demonstrating that millions of existing PCS handsets “would experience significant ‘overload’ interference from H-block transmissions.” Noting, however, that preliminary tests conducted by the FCC failed to produce the same interference concerns, Edmond Thomas, the Chief of the FCC’s Office of Engineering and Technology, asserted that the “staff is very confident . . . this is usable spectrum” and pledged that the agency would “apply . . . caution in the service rules, specifically in the masks, to make sure that the incumbents are protected.” In advance of promulgating such service rules, the agency urged the industry to conduct further tests and to submit “comment on . . . how best to control in-band and out-of-band interference.”

FCC REPORT CITES CONTINUED BROADBAND GROWTH; AGENCY DEMOCRATS SAY U.S. LAGS BEHIND OTHER COUNTRIES

Yesterday’s release of the FCC’s fourth report to Congress on the state of the U.S. advanced services market triggered a debate among the FCC’s Commissioners who, in spite of agreeing with statistics showing continued strong growth of broadband service deployment within the U.S., came to differing conclusions about the state of the U.S. market in comparison with foreign countries. The FCC’s report, produced in accordance with Section 706 of the 1996 Telecommunications Act, shows that U.S. subscription to advanced services (defined as providing two-way connectivity to the Internet at speeds of 2000 kbps or greater) surged from 5.1 million lines in June 2001 to 20.3 million lines as of December 2003. Currently, cable modem services account for 75.3% of such lines (as compared to 56% of advanced lines in 2001), followed by DSL (14.9%) and other technologies, such as satellite (9.8%). While FCC Commissioner Kathleen Abernathy characterized the rate of growth as “phenomenal,” Commissioners Copps and Adelstein disagreed with the majority’s conclusion that advanced telecommunications capabilities are being deployed to Americans “on a reasonable and timely basis.” Citing “higher speeds and lower prices” available to broadband subscribers in other countries and statistics ranking the U.S. in eleventh place internationally in terms of broadband subscription, Adelstein said there are “serious warning signs” that the U.S. is lagging behind foreign markets.

DIRECTV COMMITS SPACEWAY BIRDS AND $1 BILLION FOR HD SERVICES

DirecTV signalled a key shift in strategy for its moribund SpaceWay project this week, adding two SpaceWay birds under construction to a fleet of three high-powered satellites that will provide U.S. direct broadcast satellite (DBS) customers with access to as many as 1,500 high-definition (HD) local TV channels by 2007. The much-delayed SpaceWay system, originally scheduled to debut four years ago, had been designed for the provision of broadband Internet services in the Ka-band. Company officials
confirmed Wednesday that two SpaceWay satellites being built by Boeing and slated for launch to the 99° and 103° West Longitude orbital positions next year would be used primarily for high-definition video services and “possibly in combination” with broadband data transmissions. The company also announced the signing of a new contract with Boeing for three new Ka-band spacecraft (including one ground spare), to be based on Boeing’s 702 platform, which will transmit 1,000 local HD channels as well as 150 nationwide HD channels.

**LAWMAKERS QUESTION DOJ, FBI ON VOIP NETWORK ACCESS**

Justice Department (DOJ) and FBI officials complained about their difficulties in establishing wiretaps and in conducting other surveillance activities via voice-over-Internet protocol (VOIP) networks during a House subcommittee hearing on proposed legislation that would extend the requirements of the 1994 Communications Assistance for Law Enforcement Act (CALEA) to VOIP operators. The bill containing the CALEA provision—the “VOIP Regulatory Freedom Act”—was introduced in April by Rep. Charles Pickering (R-MS) and is one of two pending House bills that define the FCC’s role in regulating VOIP networks. Earlier this year, the DOJ, the FBI, and the Drug Enforcement Administration petitioned the FCC for rule revisions that would extend CALEA requirements to VOIP networks. The FCC responded in July by launching rulemaking proceedings on the tentative conclusion that VOIP networks should be subject to CALEA requirements, despite current statutory exemptions for “information services.” At the hearing before the House Telecommunications and Internet Subcommittee, DOJ and FBI officials told lawmakers that access problems stem largely from the introduction of VOIP products and infrastructure designed “without thought” as to law enforcement access. However, targeting a pre-approval process, advocated by the DOJ and FBI, that is intended to ensure the compatibility of future broadband technology to CALEA standards, a representative of the Telecommunications Industry Association charged that, under the DOJ and FBI proposal, “you need permission to innovate.”

**GREAT BRITAIN OPENS CONSULTATION ON VOIP REGULATION**

In another VOIP development that parallels rulemaking proceedings now pending before the FCC, British telecom regulator Ofcom opened a public consultation this week on the appropriate regulatory environment for VOIP services within the United Kingdom. Similar proceedings are also underway before the European Commission (EC), which last week received comments from a host of U.S. and European carriers that are urging a light regulatory approach. Declaring that “our first task as a regulator is to keep out of the way,” Ofcom asserted that its primary goal is to promote an environment that encourages new services and that gives customers all the information they need to choose between traditional voice and VOIP providers. Noting that the adoption of final guidelines is contingent upon the conclusion of EC proceedings later this year, Ofcom said it would solicit comment on various tentative conclusions; the deadline for comments is November 15. In a separate, but related action, Ofcom enacted number portability rules enabling customers to keep existing numbers when switching to VOIP providers. VOIP subscribers may also select new non-geographic numbers with “location-independent” area codes.

**COMPETITOR CALLS JAPANESE WIRELESS SPECTRUM PLAN UNFAIR**

Taking issue with a Japanese ministry proposal to give incumbent wireless carriers exclusive access to third-generation (3G) mobile service spectrum, broadband service provider Softbank—which hopes eventually to compete against established Japanese wireless providers NTT DoCoMo and KDDI Corp.—condemned as “unfair” a ministry plan that would allocate 800 MHz frequencies to those carriers. Softbank’s remarks, included in comments filed with Japan’s Ministry of Public Management, Home Affairs, Posts and Telecommunications, were delivered against the backdrop of a new ITU report that points to explosive growth in wireless, fixed line, and broadband Internet subscribership throughout the Asia-Pacific region. (See story below.) Noting that the 800 MHz band is ideally suited to 3G services, requiring less capital expenditure than higher channel bands, Softbank told the ministry that the proposed exclusive allocation to DoCoMo and KDDI would make Softbank’s entry into the wireless market “extremely difficult.” Complaining that Softbank would not have another opportunity for such a spectrum assignment until the next scheduled frequency allocation in 2012, a spokesman declared that “giving more frequencies to operators who already have extra frequencies isn’t an effective allocation.”
ITU REPORT DEPICTS RAPID TELECOM GROWTH IN ASIA-PACIFIC REGION

A report on “Asia-Pacific Telecommunications Indicators” released this week by the International Telecommunications Union (ITU) points to vigorous telecom service growth throughout the region which, in large part, is attributable to a favorable regulatory environment that has “been critical in helping the roll out of broadband.” Statistics provided by the ITU study show that, between 2000 and 2003, mobile phone subscribership in the Asia-Pacific region grew at a healthy annual rate of 31%; as a result, the region now tops North America with the greatest number of wireless lines in service, at 560 million. The report also points to “exponential growth” in broadband services, with South Korea, China-Hong Kong, Japan, and Taiwan now ranked among the top ten broadband-connected economies in the world. Fixed-line services are also experiencing strong growth, at an annual rate of 14% during 2000-2003. According to the ITU, regional governments have assisted this growth by “becoming preeminent adopters of the technology themselves,” by promoting “development of adequate national backbone networks,” and by creating “incentives for the establishment of competition.” Other factors behind the success of broadband deployment include the emergence of regional equipment manufacturers and urban demographics within the Asia-Pacific region.

HUTCHISON TELECOM PLANS U.S. STOCK LISTING

Following through on plans first disclosed in March, Hong Kong-based Hutchison Whampoa filed a prospectus for an initial public offering of stock for its Hutchison Telecommunications International (HTI) unit that, according to SEC documents, is expected to raise $100 million within the U.S. HTI, the operator of a 3G wireless network serving Hong Kong, offers wireless services in six other countries, including India, Thailand, Israel, Macau, Sri Lanka, Ghana and Paraguay. For the first six months of this year, HTI posted revenues of $883 million and profits of $99 million primarily from its operations in India. (HTI’s parent, Hutchison Whampoa, operates 3G businesses separately from HTI in Australia and in several European nations.) Notwithstanding the $100 million estimate provided to the SEC, sources note that the parent company hopes to raise as much as $2 billion in a global offering encompassing up to 30% of HTI’s shares. Trading in HTI shares is expected to begin next month.

BELLSouth TO LAUNCH $3 BILLION BOND SALE

BellSouth--a partner with SBC Communications in the Cingular Wireless venture--will sell $3 billion in bonds to finance its share of Cingular’s upcoming $41 billion acquisition of AT&T Wireless (ATTW), according to a prospectus approved by the Securities and Exchange Commission (SEC) this week. The bond offer, consisting of a mixture of five- and ten-year senior notes, is the latest in a series of recent transactions that were intended, in part, to raise funds for the ATTW deal. Last March, BellSouth agreed to sell various Latin American wireless stakes to Spain’s Telefonica Moviles for $3.2 billion. SBC followed in July with an agreement to spin off its Illinois directory business to RH Donnelley for $1.4 billion.

SES AMERICOM PRESIDENT STEPS DOWN

SES Americom (SESA) announced this week that President and CEO Dean Olmstead has left the company to pursue “other interests.” Chief among Olmstead’s accomplishments is the formation of SESA’s “Americom2Home” wholesale satellite TV platform at the 105° W.L. orbital location, for which EchoStar recently signed on as chief tenant. SESA Board Chairman Romain Bausch, the CEO of SESA parent SES Global, will help to lead SESA until a successor is found. Praising Olmstead’s “successful integration of [SESA] into the SES Global family,” Bausch said that, as a result of Olmstead’s leadership, SESA “is on track to grow in each of its market sectors, thus maintaining its industry leadership in North America.”

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For information about any of these matters, please contact Phillip Spector (e-mail: pspector@paulweiss.com) in the Paul, Weiss Washington office. To request e-mail delivery of this newsletter, please send your name and e-mail address to telecom@paulweiss.com.