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FCC Launches Inquiry On Classification Of Broadband

The FCC took its first official steps yesterday toward the potential reclassification of broadband service with the release of a notice of inquiry (NOI) that seeks input on the appropriate regulatory scheme for such services in light of the D.C. Circuit court's decision in the Comcast-BitTorrent case. Adopted by a 3-2 vote with both FCC Republicans dissenting, the NOI follows on FCC Chairman Genachowski's pledge last month to pursue a narrowly tailored framework for broadband through which only the transmission component of broadband Internet services would be regulated under Title II of the Communications Act. Under Genachowski's proposal, the FCC would also forbear from subjecting Internet content, services, applications and rates to Title II requirements. As expected, the NOI seeks comment on this "third way" approach and on two other possible regulatory schemes that would (1) retain the current FCC framework that treats broadband as an unregulated Title I information service, or (2) apply all of the requirements of Title II to broadband. With respect to the "third way" option, the NOI asks whether that approach would "constitute a framework for broadband . . . that is fundamentally consistent with what the Commission, Congress, consumer groups and industry believed the Commission could pursue under Title I before the Comcast decision." In the event the FCC maintains the current framework, the NOI also asks how continued use of the Title I classification would permit the FCC to accomplish its goals regarding universal service, privacy, public safety, and vigilance against ISP practices that harm consumers and competition. Declaring that his third-way plan rejects "both the extreme of applying extensive regulation to broadband and . . . the extreme of eliminating FCC oversight of broadband," Genachowski pleaded with his colleagues and with the industry to "remain open minded" as he stressed that the agency's goal is to restore "the status quo . . . that existed prior to the court case." Although Commissioner Michael Copps proclaimed that the NOI presents the FCC with the opportunity to "reclaim our authority" in the wake of the Comcast-BitTorrent ruling, Commissioner Robert McDowell rejected that notion in a dissenting statement, charging: "not only is the idea of classifying broadband Internet access as common carriage under Title II unnecessary, already it has caused harm in the marketplace." Agreeing with McDowell, Commissioner Meredith Baker added that, while retention of the current Title I framework "is not without some legal risk . . . it is, however, substantially less risky than reclassifying broadband and overturning 40 years of Commission precedent codified by Congress and affirmed by the courts."

FCC Considers Options For Shifting Broadcast TV Spectrum To Wireless Users

Addressing National Broadband Plan (NBP) recommendations that call for the assignment of 500 MHz of additional spectrum to the wireless industry within the next decade, the FCC's Omnibus Broadband Team issued a technical paper on Monday that

lays out possible methods for repurposing unused or underused broadcast television spectrum for wireless broadband use. The 500 MHz allocation outlined in the NBP includes 120 MHz of spectrum that is currently assigned to digital television broadcasters. The paper noted that the "strong propagation characteristics" of the 470-698 MHz band currently assigned to digital TV (DTV) broadcasters make that band "well suited for wireless broadband applications." The paper attempts to demonstrate how the 19.4 Mbps data stream transmitted by each 6 MHz DTV licensee could be flexibly usedby broadcasters and wireless broadband licensees. Arguing that standard DTV broadcasts only need 1.5-6 Mbps and that high-definition (HD) broadcasts require a maximum of 17 Mbps, the paper asserts that "up to six stations that do not broadcast in HD may choose to share a channel in a given market following a voluntary, incentive auction." Several methodologies are suggested for accomplishing such sharing. The first method consists of a two-step auction in which broadcasters would first announce the minimum price at which they would be willing to surrender all or part their spectrum to the FCC, after which the agency would conduct a "repacking analysis" that takes into account the cost of clearing that spectrum for transfer to a wireless carrier. Alternatively, the FCC would host an exchange through which groups of broadcasters would offer up their spectrum for sale and wireless firms would bid on that spectrum simultaneously. A third method lies in the creation of an overlay regime through which the FCC would divide the TV broadcast bands into "large, contiguous blocks and auction all or a portion of those blocks as overlay licenses with flexible use." Winners of the overlay licenses would have co-primary spectrum rights with DTV stations and primary rights in any portion of the license area that is not served by a DTV station. While maintaining that the paper "represents the start of the process," Julius Knapp, the chief of the FCC's Office of Engineering and Technology, emphasized that any spectrum contributions by the broadcast industry would be entirely voluntary and "consumers will continue to have access to free over-the-air TV broadcasting service."

White Paper Defends Shared Network For 700 MHz D-Block

The FCC added fuel to the debate surrounding the disposition of the 700 MHz D-block with the release of a white paper on Tuesday that contends that public safety broadband needs would be best met through the agency's long-standing plan for a shared nationwide wireless broadband network on which emergency first responders would be given priority access. Entitled *The Public Safety Nationwide Interoperable Broadband Network: A New Model For Capacity, Performance and Cost*, the paper argues against claims by various public safety entities that the 10 MHz swath of spectrum abutting the 700 MHz D-block that is licensed to the Public Safety Spectrum Trust (PSST) provides insufficient capacity to meet the needs of first responders. As an alternative to the FCC's plan that would auction the 700 MHz D-block to a commercial carrier that would share its network with public safety agencies, the New York City Department of Information and Technology (NYDIT), the National Governors Association and similar groups have called for the direct assignment of D-block frequencies to public safety agencies. That plan is also supported by AT&T, Verizon Wireless and backers of pending legislation (H.R. 5081) that would bar the FCC from auctioning the D-block and require the agency to allocate the D-block directly to public safety. Examining a hypothetical dirty bomb attack on New York City and two actual events—a 2007 bridge collapse in Minneapolis and Hurricane Ike's strike upon Houston in 2008—the white paper concludes that 10 MHz of spectrum currently licensed to the PSST "provides more than the required capacity for day-to-day communications and for each of" the three emergency situations studied. Asserting that "spectrum is only one factor," the FCC added that its shared network plan "provides extraordinary capacity to public safety" that is akin to providing first responder agencies with their "own, expandable high-speed lane." The FCC also described its plan as a "cost-effective investment," as the direct allocation plan advocated by NYDIT and others "would be like building a separate, stand-alone highway system, and one so expensive that it would not even reach every community in America for years." Noting that, in the worst emergency situations, "even access to another 10 MHz of spectrum would be insufficient," the FCC further argued that its plan to give public safety entities priority roaming rights on the commercial D-block network "is a cost-effective way to improve the resilience of public safety communications, along with its capacity, in a way that a single network cannot provide." The Rural Cellular Association, an advocate of the FCC's auction proposal, applauded the release of the paper, declaring: "spectrum alone will not satisfy public safety's needs—a new broadband technology with interoperable devices and funds to build the network is the best prescription."

Cablevision Strikes $1.4 Billion Deal For Western Cable Firm

New York-based Cablevision set its sights westward Monday with a $1.4 billion deal to acquire Bresnan Communications, a mid-size provider of cable, Internet and phone services to 300,000 customers in Colorado, Montana, Wyoming and Utah. Cablevision, the fifth-largest cable operator in the nation, emerged triumphant in an auction for Bresnan's assets that also attracted bids from cable firms Charter Communications, Time Warner Cable and Suddenlink Communications as well as from investment firm TPG Capital. Sources attribute the high level of interest to the fact that Bresnan operates in a region with no major competitors other than Qwest Communications. (Neither Verizon's FiOS network nor AT&T's U-Verse IPTV service are offered in areas covered by Bresnan.) Observers also note that Bresnan has experienced a 15% boost in revenues since it was acquired by a consortium led by Providence Equity Partners in 2004. The company also averages revenues of $250 per home per year for bundled services as compared to Cablevision, which generates about $450 per home yearly for such services. Proclaiming that "this $200 per home gap presents us with a significant opportunity," Cablevision COO Tom Rutledge said a key goal for his company will be "in growing the amount of services to all potential customers . . . as well as adding new services to existing subscribers." Cablevision is expected to finance $1 billion of the purchase price with non-recourse debt and to pay the remaining amount in cash. Contingent upon receipt of regulatory approvals, the transaction is slated for completion late this year or early next year.

News Corp. Offers $11.5 Billion For Remaining BSkyB Stake

In hopes of seizing upon the full potential of one of its prime overseas assets, News Corp. offered US$11.5 billion to acquire full ownership of British satellite TV firm BSkyB, Europe's largest pay television service provider. Disclosed on Tuesday, News Corp's bid of 700 pence (US$10.37) per share covers the 61% stake in BSkyB that News Corp. does not own already. Explaining the rationale behind the offer, News Corp. COO Chase Carey told reporters that his company would benefit by "increasing the geographic diversification of our earnings base, reducing our exposure to cyclical advertising revenues and increasing our direct consumer subscription revenues." Among News Corp.'s European pay TV ventures, BSkyB is considered to be the most successful. While other free and pay TV broadcasters have taken a financial hit with the decline of advertising revenues in the midst of the recent recession, BSkyB's fiscal health has remained strong. News Corp. CEO Rupert Murdoch also noted that the proposed deal would present his company with the opportunity to "develop an innovative subscription model that will deliver digital content to consumers wherever and whenever they want." Although members of the BSkyB board rejected the offer as one that undervalues the company, independent directors have confirmed that they would be willing to support a higher offer of at least 800 pence (US$11.85) per share. BSkyB also indicated that it would cooperate with News Corp. in seeking British merger clearance before negotiating a higher offer.

Auction Of Wireless Broadband Licenses Reaps $8.25 Billion For Indian Government

After netting US$14.6 billion last month in an auction of third-generation (3G) wireless spectrum that brought in more than twice the proceeds anticipated, India repeated that success this week with the completion of auctions for wireless broadband licenses that reaped another $8.25 billion for the government's coffers. Up for sale were two slots of wireless broadband bandwidth to cover each of India's 22 service areas. At the end of 16 days and 117 rounds of bidding, Infotel Broadband Services stood on the podium as the surprise top bidder, committing US$2.75 billion for wireless broadband spectrum encompassing all 22 telecom circles nationwide. Qualcomm, the U.S.-based pioneer of the 3G CDMA standard, took second place with total winning bids of US$1.05 billion for four markets, while Aircel came in third with posted bids of $741 million for eight service areas. Other top winners include current Indian market leader Bharti Airtel, which pledged $714 million for four licenses, and Tikona Digital Networks, which bid $228 million for five service areas. Vodafone Essar and Reliance Communications, the nation's second- and third-ranked wireless operators, withdrew from the auction, citing excessive prices. Meanwhile, on the heels of the last auction round, Reliance Industries—India's largest company by market capitalization—announced its agreement to acquire a 95% controlling stake in auction winner Infotel in a deal valued at US$1.02 billion. Outlining his company's plan to use Infotel's newly-won spectrum to "provide end-to-end data solutions for

businesses enterprises, social organizations, and health care institutions," Reliance chief Mukesh Ambani predicted that the acquisition will "pole-vault India's economy into the digital world."

Televisa-Backed Group Awarded Concession For Mexican Fiber Network

A consortium led by Grupo Televisa has been awarded a 20-year concession by the Mexican government to lease 12,000 miles of unused electrical utility capacity to deploy a fiber-optic network that officials hope will emerge as a viable competitor against dominant wireline carrier Telmex. In partnership with Mexican cable firm Megacable and a subsidiary of Spain's Telefonica, Televisa—Mexico's top-ranked television broadcaster—submitted the required bid of US$69.3 million for rights to lease fiber-optic capacity from Mexico's Commission Federal de Electricidad for the provision of competitive fixed line voice, Internet and video services. Sources close to the consortium also say the group intends to invest an additional $103 million in new infrastructure deployments that will support network operations. As of the end of March, Telmex held control over 82% of Mexico's 19.3 million fixed phone lines. Prospective rivals have long complained about high interconnection fees that are charged by Telmex for access to its network, and officials hope the new fiber network will spark competition that will bring down prices. Observers also say that Televisa's involvement in the consortium provides further evidence of the broadcaster's increasing shift toward telecommunications services that was last seen with Televisa's recent agreement to invest US$1.44 billion for a 30% stake in Nextel Mexico, a competitor in Mexico's wireless sector against dominant operator America Movil.

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