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EARTHLINK TO BUILD PHILADELPHIA WI-FI NETWORK

On Tuesday, Atlanta-based Internet service provider (ISP) Earthlink secured rights to build Philadelphia's planned 135-square mile Wi-Fi network—the largest municipal wireless Internet project to date—beating out twelve other bidders for the contract. The deal brings Philadelphia one step closer to its goal of offering reduced-price Internet services to city residents who otherwise could not afford to buy Internet access from commercial operators. Dianah Neff, the chief information officer for the City of Philadelphia, estimates that up to 30% of Philadelphia's residents—or 1.5 million persons—would qualify for the $10 monthly rate that would be offered to low-income households. All remaining users would be charged $20 per month to connect to the network (although access in parks and in other public areas constituting 10% of the city's total space would be free of charge). Earthlink, which plans to spend between $10 and $15 million of its own funds to build the network, would manage the system and is expected to recoup costs by charging other ISPs wholesale rates to offer their own services through the network. The network is scheduled for completion next year. Anticipating that the Philadelphia project will translate into similar opportunities elsewhere, Earthlink Municipal Networks president Donald Berryman said "success for us, in the next three years, would be to have 15 to 20 markets rolled out."

APPEALS COURT ALLOWS BELL ANTITRUST SUIT TO PROCEED

Regional Bell operating companies Verizon Communications, SBC Communications, Qwest Communications and BellSouth will have to answer allegations, brought in a class-action antitrust suit, that they conspired to block the entry of competitors into the local exchange market, as the Second Circuit Court of Appeals overturned a prior district court ruling that dismissed the complaint. The class action suit, entitled *William Twombly et al. v. Bell Atlantic Corp. et al*, alleges that the Bell companies—which, together, control more than 90% of the U.S. local exchange market—conspired not to compete against each other in their respective geographic service areas in an effort to block the entry of local exchange and Internet service competitors and to drive rival carriers out of business. Declaring that the plaintiffs' case had to go beyond mere allegations of "conscious parallelism," the U.S. District Court for the Southern District of New York dismissed the suit on grounds that the complainants had failed to state a claim upon which relief could be granted. However, without deciding on the merits of the case, a three-judge panel of the Second Circuit reinstated and remanded the suit on Monday, ruling that the lower court had applied an incorrect standard for evaluating the plaintiffs' claim. Although officials of Verizon, SBC, and Qwest offered no comment, BellSouth proclaimed that "the claims are without merit, and we plan to vigorously defend the case."

MCI SHAREHOLDERS APPROVE UNION WITH VERIZON

Verizon and MCI took another important step in fulfilling their merger plans as MCI shareholders approved the $8.5 billion transaction yesterday. Pointing to Qwest Communications' earlier $9.74 billion bid that was ultimately withdrawn, several large stakeholders urged rejection of the deal on concerns that Verizon's offer undervalued the company. Nevertheless, 88.2% of the MCI votes cast favored the Verizon transaction. Regulatory and antitrust approvals by the FCC and Justice Department, respectively, remain pending. The FCC, which had been expected to vote on the Verizon-MCI and AT&T-SBC mergers at its October 12 open meeting, decided this week to postpone that meeting until October 28. As MCI CEO Michael Capellas described the shareholder vote as "a key milestone," Verizon

Chairman Ivan Seidenberg said: "we look forward to creating a company that is better able to compete in today's large business and government marketplace."

FCC, CTIA REPORTS POINT TO VIGOROUS WIRELESS COMPETITION

In its tenth annual report to Congress on the state of the U.S. wireless market, the FCC has concluded that "effective competition" continues to characterize the commercial mobile radio service (CMRS) industry in spite of merger activity during the past year that removed three major carriers from the market. Since late 2004, Cingular and AT&T Wireless combined to form the nation's largest wireless company, while Sprint and Alltel acquired Nextel and Western Wireless, respectively. While acknowledging that "consolidation during the period covered by the report has reduced the number of nationwide mobile carriers," the FCC found that "none of the remaining carriers has a dominant share of the market and that the market continues to behave and perform in a competitive manner." In support of that contention, the FCC cited statistics showing a rise in the number of mobile telephone subscriptions during 2004, from 160.6 million to 184.7 million at the end of the year, representing a 62% penetration rate nationwide. The agency also noted that monthly average minutes of use per subscriber continue to rise as rates—indicated by revenue per minute and the cellular consumer price index—continue to fall. According to the report, competitive pressures and price rivalry continue to impact the market, inducing carriers to offer innovations such as family and pre-paid plans and to invest in next-generation technologies. Although the advent of wireless local number portability (LNP) in 2003 did not affect churn rates significantly, the report states that "LNP has put added pressure on carriers to improve service quality in order to retain existing customers." Many of the FCC's conclusions were supported in a related study, released this week and commissioned by wireless industry association CTIA, that predicts that the U.S. wireless industry will grow to exceed the U.S. automotive and agricultural sectors within five years. Noting that demand for wireless services and products created a $157 billion consumer surplus in 2004, the CTIA report forecasts that, "over the next ten years, the U.S. wireless industry will create an additional two to three million new jobs, add a cumulative additional $450 billion in [gross domestic product], create another $700 billion in consumer surplus, and provide cost savings to U.S. business of more than $600 billion."

BPL NETWORK LAUNCHED IN WASHINGTON, DC AREA

In another development that spotlights the involvement of municipalities in broadband communications, Communications Technologies, Inc. (Comtek)—a Virginia-based developer of broadband over power line (BPL) technology—completed construction of a BPL network laid across electrical infrastructure owned by the City of Manassas, Virginia, a suburb of Washington, DC. Touted as a potential alternative to cable modem and digital subscriber line (DSL) services, BPL promises the delivery of broadband Internet and other high speed services into the home via power lines. Because BPL is designed to piggy-back on the existing electrical grid, the technology may prove far less costly to deploy than fiber-optic cable or DSL. Experts believe that this cost factor may lead eventually to the proliferation of BPL networks in rural and underserved areas that currently lack access to broadband. Heralding the "achievement of a major national milestone," Comtek CEO Joseph Fergus said the newly-completed Manassas BPL network (which, already, has attracted nearly 700 customers) covers 12,500 city households. Subscribers will be charged $38.95 per month for the service, with revenues to be shared by Comtek and the city. As Fergus proclaimed that "what we are announcing today . . . is something that we could be rolling out in a year or two in literally scores of communities across the U.S.," Manassas Mayor Douglas Waldron predicted that the new network "will be a model for other cities and towns across the United States."

SPRINT-NEXTEL FILES PATENT CLAIM AGAINST VONAGE

Vonage Holdings, the nation's largest provider of voice-over-Internet protocol (VoIP) services, was accused of infringing patents, held by a subsidiary of Sprint Nextel Corporation, that relate to the delivery of voice calls via the Internet, according to a lawsuit filed Tuesday in the U.S. District Court of Kansas. The complaint charges Vonage with "willfully [infringing] seven patents relating to voice-over-packet technology" developed by Sprint Communications as early as 2001; no further details were available on how Vonage allegedly violated those patents. Florida-based Voiceglo, which operates a PC phone service similar to that of Skype, was also named in the suit along with its parent company, theglobe.com. The lawsuit also seeks unspecified damages and an injunction that would prevent the defendants from "further misappropriating Sprint-Nextel's technology." An officer speaking on behalf of Voiceglo/theglobe.com declared that the lawsuit has no merit.

ECHOSTAR, DIRECTV CHALLENGE FCC MULTICAST REQUIREMENT

In separate petitions filed this week with the FCC, DirecTV and EchoStar called on the agency to reconsider rules that impose digital multicast requirements upon DBS operators that serve the states of Alaska and Hawaii. The rules, issued in August as part of the FCC's effort to implement provisions of the Satellite Home Viewer Extension and Reauthorization Act (SHVERA), require DBS operators to transmit analog and digital local broadcast signals to Alaska and Hawaii customers commencing in December 2005 and June 2007, respectively. However, in contrast with FCC rules that require cable operators only to carry a broadcasters' primary digital signal stream, the August order also requires the DBS industry to carry the primary channel and any additional channels that a local broadcaster carves out of its digital spectrum allotment. Although that rule applies only to the states of Alaska and Hawaii, EchoStar and DirecTV protested that the rule is unfair, that it imposes undue technical burdens, and that it violates the First Amendment to the U.S. Constitution. Warning that it will have to divert capacity earmarked for the provision of local digital signal service in other markets, DirecTV complained: "the Commission has made an editorial decision so that citizens in other local markets across the country must forgo services they otherwise might get in order to guarantee Alaska and Hawaii broadcasters carriage of their secondary and tertiary program offerings." As EchoStar accused the FCC of "misconstruing the statute" and creating a constitutional problem, DirecTV said that the agency should not impose multicast requirements on the DBS industry unless it is also willing to subject cable operators in Alaska and Hawaii to the same regulatory treatment.

BRITISH CABLE RIVALS NTL AND TELEWEST PLAN $6 BILLION MERGER

Days after Liberty Global announced the acquisition of Swiss cable firm Cablecom for U.S. $2.19 billion, British cable operators NTL and Telewest confirmed plans to join forces in a U.S. $6 billion merger deal that aims to boost the companies' competitive stance against British Sky Broadcasting (BSkyB), the direct-to-home satellite TV venture controlled by Rupert Murdoch. In spite of holding the top position in Great Britain's cable market, NTL (which emerged from bankruptcy two years ago) has struggled to gain video market share against BSkyB, which boasts more than 7.4 million customers throughout the United Kingdom (UK). Upon completion of the transaction announced on Monday, the combined NTL-Telewest network would cover more than 50% of UK households and would serve nearly five million residential customers. The merged entity would rank as the largest residential broadband operator in the country and would also emerge as the second largest provider of fixed line telephone services. Subject to regulatory approval, Telewest stockholders would receive $16.25 in cash plus 0.115 NTL shares for every Telewest share owned, thus valuing the company at $6 billion. As a result, Telewest would own 25% of the merger entity. Heralding "the creation of a new competitive force in the communications and entertainment sectors," NTL CEO Simon Duffy praised the deal as "a transforming transaction for the U.K. cable industry."

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