DOJ APPROVES VERIZON/ALLTEL MERGER; ORDERS DIVESTITURES IN 100 MARKETS

To gain antitrust approval of its $28.1 billion acquisition of Alltel, Verizon will be required to divest overlapping wireless assets in 100 markets in accordance with a consent decree announced by the Justice Department (DOJ) yesterday. Verizon, which anticipates FCC approval of the transaction soon, agreed voluntarily to the divestitures after meeting with DOJ officials. According to DOJ antitrust chief Thomas Barnett, the proposed divestitures “are necessary to protect wireless consumers and are among the most extensive ever required by the [DOJ] in a wireless case.” An antitrust complaint filed by the DOJ and by various state attorney generals in the U.S. District Court in Washington contends that Verizon and Alltel are primary competitors in 94 cellular market areas. To resolve competitive concerns in these areas, the proposed DOJ settlement requires Verizon to divest overlapping assets throughout the states of North and South Dakota in their entirety and within portions of 20 other states that include California, Colorado, Illinois and Ohio. The settlement also modifies certain consent decrees that pertain to the 1999 mergers of Bell Atlantic (Verizon’s predecessor-in-interest) and GTE and Bell Atlantic and Vodafone to allow Verizon to regain control of divested markets that were later purchased by Alltel and “where competition is now sufficiently robust.” As part of its draft merger order, the FCC is also requiring Verizon to divest assets in the markets covered by the DOJ consent decree as well as in five additional markets that consist of small rural counties in Iowa, Michigan and Tennessee.

HOUSE, SENATE LAWMAKERS CALL ON FCC TO POSTPONE USF VOTE

Lawmakers from both houses of Congress and from both sides of the political aisle have joined the growing chorus of voices that are urging the FCC to delay its scheduled November 4 vote on intercarrier compensation and universal service fund (USF) reform. Arguing that public input has not been sought on many of the rule changes contained in the FCC’s draft order, sixty-one House members wrote to FCC Chairman Kevin Martin on Monday to ask the agency to “put the full proposal on record and seek public comment for a period of at least two months.” Signed by Representatives Bart Stupak (D-MI), Lamar Smith (R-TN) and Nathan Deal (R-GA) among others, the letter was written by Representatives Rick Boucher (D-VA) and Lee Terry (R-NE), both co-sponsors of USF reform legislation now pending before the House. While stating that “the Commission stands to gain by understanding the positions of all parties interested in its potentially sweeping decision,” the lawmakers emphasized that “elected and accountable representatives in Congress should properly design the reform” that, in turn, would equip the FCC “with the tools and guidance necessary to adopt regulations pursuant to the statutory reforms that best serve the public interest.” Meanwhile, in a separate letter, nine senators including Max Baucus (D-MT), Ron Wyden (R-OR) and Tom Harkin (D-IA) recommended against the FCC’s “moving forward with this proposal until more steps have been taken to weigh the potential disadvantages to rural customers.” Voicing concern that the FCC’s plan “may actually hinder” broadband deployment in rural areas, the senators warned: “great care needs to be taken to craft a policy which is comprehensive in nature and mindful of rural customers when dealing with intercarrier compensation and USF reform.”

CENTURYTEL STRIKES $5.76 BILLION STOCK DEAL FOR EMBARQ

In a deal uniting two of the nation’s leading regional wireline phone carriers, CenturyTel, Inc. agreed Monday to acquire Embarq, a larger rival and former landline service arm of Sprint Nextel, for $5.76 billion in stock. Respectively, Embarq and CenturyTel rank as the fourth and seventh largest phone companies in the U.S., and the
combined entity would control 7.9 million subscribers across 33 states. Monday’s announcement also marks the end of Embarq’s two-month long effort to sell itself through an auction process that was nearly abandoned when several prospective buyers found themselves unable to raise capital needed for a cash bid. In the midst of the current financial market climate, observers say that CenturyTel’s stock offer proved to be the deciding factor. The transaction—which could represent a first step toward further consolidation among the nation’s smaller landline carriers—is also expected to help CenturyTel and Embarq cut their operating costs and compete more effectively against Verizon and AT&T. Under the terms of the deal, Embarq shareholders would receive 1.37 shares of CenturyTel stock for every Embarq share held. Sources say that the proposed exchange would provide the equivalent of $40.42 per share, which represents a 36% premium over Embarq’s closing price as of last Friday. CenturyTel would also assume $5.8 billion in Embarq debt. At closing, Embarq and CenturyTel would hold stakes of 66% and 34%, respectively, in the combined entity, which has yet to be named.

CITIES URGE FCC TO ABANDON D-BLOCK REAUCTION PLAN

Arguing that FCC plans calling for the reauction of the 700 MHz D-block on a nationwide or regional basis are “unworkable for large municipalities,” six major cities urged the FCC to abandon the reauction in favor of allocating the spectrum directly to “locally-controlled public safety networks that are tied together on the basis of interoperable national standards.” The ex parte letter, filed jointly by the cities of New York, Boston, Denver, San Francisco, Seattle, and San Jose, California, addresses a further rulemaking notice issued by the FCC in September, that concerns the disposition of the 700 MHz D-block license that failed to sell during the 700 MHz auction last spring. Under rules in force during that auction, the D-block license had been earmarked for a hybrid nationwide wireless broadband network to be shared by commercial and public safety users. In addition to seeking comment on the possibility of a regional licensing scheme, the FCC is soliciting input on other proposed rules that are intended to encourage commercial bids for the D-block license, such as a 50% reduction in the reserve price, less stringent coverage requirements, and an extension of the build-out period from ten years to fifteen. In their joint filing, the cities warned the FCC that, “by sharing the spectrum that was allocated to public safety with the proposed D-block bidders . . . while also lowering the performance/coverage requirements of the system, you are designing a system that fails to serve the critical performance needs of public safety.” Characterizing the proposals contained in the further rulemaking notice as “critically flawed,” the cities therefore called on the FCC to “stop plans to auction the D-block and return the public safety spectrum to those charged with protecting the safety of our constituents.”

COX COMMUNICATIONS TO BUILD WIRELESS NETWORK

Cox Communications, the nation’s third largest cable company, launched a key competitive challenge against established wireless industry heavyweights as it confirmed plans to launch mobile phone services via its own wireless network infrastructure. Wireless would form the fourth prong of the Cox service bundle, which already includes digital video, high-speed Internet and IP-based phone services carried over the company’s nationwide cable network. Through FCC auctions of advanced wireless service and 700 MHz spectrum conducted between 2006 and this year, Cox has acquired enough wireless spectrum to cover 76% of its existing wireline footprint as well as a population of 23 million. (Cox’s residential and business subscriber base now stands at 6.2 million.) Under the plan, Cox intends to build out its FCC-authorized wireless spectrum in areas surrounding New Orleans, Atlanta, San Diego, Omaha, Las Vegas and throughout much of Kansas and southern New Mexico, with the goal of launching service next year. Cox would also join forces with Sprint Nextel, which has agreed to provide roaming services for Cox wireless customers outside of areas covered by the Cox network. According to Stephen Bye, the vice president of Cox’s wireless operations, customers would be able to purchase Cox-branded handsets equipped with a host of features that would enable subscribers to interact with or access Cox video, Internet and e-mail offerings via their cell phones. Asserting that, “wireless service will be a key driver to Cox’s future growth,” Cox President Pat Esser proclaimed: “we are uniquely positioned to deliver the entertainment and communications services our customers want, whenever, however and wherever they want them.”

SHAREHOLDERS FILE CLASS ACTION SUIT AGAINST BCE BUYOUT

The $52 billion sale of BCE, Inc., Canada’s largest telecom operator, to a private equity consortium is facing a fresh legal challenge in the form of a class action lawsuit, brought by holders of the company’s common stock, that seeks
$588 million plus punitive damages for recovery of dividends that were suspended during the second and third quarters this year. Last spring, BCE agreed to sell itself for $40.12 per BCE share (plus the assumption of $19.3 billion in debt) to a group linking the Ontario Teachers Pension Plan with Providence Equity Partners and Madison Dearborn Partners. If it closes as scheduled on December 11 and under the original contract terms, the transaction would rank as the largest leveraged buyout in history. In June, the Supreme Court of Canada struck down the decision of a Quebec appeals court to block the deal. (The Quebec court had issued the injunction at the urging of BCE bondholders who argued that the agreement of Bell Canada—the issuer of the debt held by the bondholders—to guarantee loans incurred by BCE’s private equity buyers was unfair.) The shareholder suit filed last week centers up on BCE’s decision in June to suspend the payment of quarterly dividend payments at the request of a banking consortium that is providing $32 billion in funding for the deal. Charging that BCE failed to seek shareholder approval, the class action plaintiffs told a Saskatchewan court that BCE acted “in bad faith” and “continues to act in a way that is oppressive and unfairly prejudicial to, and unfairly disregards, the interests of class members.” The judge involved in the case could decide to impose an injunction that would delay the deal until litigation is concluded, although such a move is considered doubtful. A spokesman for BCE also declared that the suit “is completely without merit and will be vigorously defended.”

EUROPEAN TELCOS SAY FINANCIAL MARKET CRUNCH HIGHLIGHTS NEED FOR MORE LIMITED REGULATION

Executives of 15 European telcos gathered at the European Telecommunications Network Operators Association CEO Summit told policy makers that, as a consequence of ongoing difficulties that have impacted financial markets worldwide, regulation of carrier operations must be limited to preserve incentives to invest in fiber-based network technology. In a joint declaration, the executives called on Europe’s national telecom regulators to adopt a “clear strategy” to encourage investment in high-speed broadband networks, especially during times of market uncertainty. Complaining that the European Union’s (EU’s) current regulatory regime “delays and hinders large scale investment in new fiber networks” and that the EU telecom sector “is already characterized by a very high density of ex-ante regulation,” the executives warned: “if regulatory policy continues to constantly focus on pushing prices down, even more capital will be withdrawn from the industry.” The executives further stressed that, because deployment of new fiber networks may require “new investment schemes, including risk sharing models . . . it is crucial to ensure the operators’ ability to manage their networks, instead of imposing strict ‘net neutrality’ or quality of service rules which would further hinder the deployment of these networks.” European Information Society and Media Commissioner Viviane Reding, however, rejected these arguments in a speech before summit attendees. Voicing her belief that “regulation taking care of competition always has a positive effect on the economy,” Reding maintained: “times of economic difficulties are thus not a reason to suspend the principles of competition law.”

TELENOR TO PAY $1.07 BILLION FOR MAJORITY STAKE IN INDIAN WIRELESS FIRM

This week, Telenor of Norway gained an important foothold in the world’s fastest growing wireless market with the purchase of a 60% stake in Unitech Wireless, a start-up Indian mobile phone carrier, for US $1.07 billion. India, which boasts 315 million wireless customers, overtook the U.S. earlier this year as the second-largest wireless market in the world in terms of subscribers. While India’s current subscriber tally is impressive, much untapped potential remains as India’s national wireless penetration rate stands at just 26%. India, which boasts a total population of 1.14 billion, continues to add 8 million new wireless customers each month. Assuming that the current rate of growth continues, experts predict that India will overtake China as the world’s largest wireless market before the middle of this century. Founded last year, Unitech holds licenses in each of India’s 22 telecommunications “circles” and is expected to commence operations next year. Following the lead of Vodafone, which last year gained control of India’s third largest wireless carrier, Telenor agreed to purchase the Unitech stake in four tranches, with the final installment scheduled for completion next September. Applauding the deal as “a major achievement,” Telenor CEO Jon Frederik Baksaaas said, “entering the Indian mobile market gives Telenor a unique possibility to further enhance the Telenor Group’s position as one of the leading emerging markets operators.”

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