FCC EXTENDS NUMBER PORTABILITY RULES TO VOIP PROVIDERS

At its monthly open meeting on Wednesday, the FCC made it easier for voice-over-Internet protocol (VoIP) subscribers to take their existing numbers with them when switching carriers, as the agency approved an order that extends local number portability (LNP) obligations to interconnected VoIP providers. In adopting the rules, the FCC addressed complaints from consumers who have found themselves unable to transfer their phone numbers to or from VoIP operators. The agency also responded to a petition for declaratory ruling, filed by Sprint Nextel and T-Mobile USA, which sought ways to speed the intermodal porting process between local exchange and wireless carriers. As FCC Chairman Kevin Martin stressed the importance of allowing consumers “to transfer their numbers to and from [VoIP] providers just like transfers between carriers,” Commissioner Robert McDowell described the FCC’s decision as “critical” as VoIP continues to evolve as a substitute for traditional phone service. To expedite the porting process between all carriers, the FCC further ruled that requests for porting validation can require only four items: (1) the customer’s ten-digit phone number, (2) the customer account number, (3) the customer’s five-digit zip code, and (4) a password, if applicable. As part of a further rulemaking notice, the FCC concluded tentatively that porting requests be completed within 48 hours. Claiming that local phone companies were making the process of moving telephone numbers more difficult than it needed to be, Sprint Nextel praised the FCC for taking “a strong stand.”

FCC BANS EXCLUSIVE CABLE CONTRACTS IN MULTI-UNIT DWELLINGS, AS IT EXTENDS VIDEO FRANCHISE RULES TO CABLE FIRMS

The cable industry was spotlighted in a pair of orders adopted Wednesday by the FCC, which voted to ban exclusive cable access arrangements that cover apartment buildings as it extended to cable operators some of the franchising relief accorded to competitive video service providers last year. By allowing owners of multi-unit dwellings to contract with video service competitors—such as Verizon and AT&T—as well as the incumbent cable provider, the FCC reverses a four-year old ruling in which it endorsed the right of cable operators and apartment building owners to strike exclusive deals. Calling the exclusive agreements “a significant barrier” to competition, FCC Chairman Kevin Martin proclaimed: “there is no reason that consumers living in apartment buildings should be locked into one service provider.” AT&T, which had lobbied in favor of the rule change, applauded the FCC’s move, observing, “without Commission action, the anti-competitive effects would have been felt for many years as these exclusive access agreements may last for several years or even perpetually.” Meanwhile, in a decision that echoes many of the tenets of last year’s video franchise order, the FCC extended to cable incumbents some of the pre-emptive franchise relief that was granted to competitive video service market entrants, such as Verizon and AT&T, last year. Specifically, the FCC’s ruling requires certain fees and other compensation assessed by local franchising authorities (LFAs) on cable incumbents to be counted toward the cap on franchise fees, which stands at 5% of gross revenues. The order also extends to cable incumbents (1) prohibitions, adopted in the video franchise proceeding last year, on “unreasonable” LFA obligations that pertain to public, educational and governmental channels, and (2) the preemption of LFA jurisdiction over mixed-use networks. The FCC, however, declined to apply to incumbents build-out rules and time limits for franchise negotiations that were
enacted last year and further emphasized that the order “does not give incumbents any right to breach their existing contract obligations.”

**ALLTEL PRIVATIZATION APPROVED WITH CONDITIONS**

Last Friday, the FCC approved the proposed sale of Alltel to a holding company controlled by the principals of two private equity firms—TPG Capital and GS Capital Partners, an affiliate of the Goldman Sachs Group. However, the FCC’s decision to impose conditions relating to universal service fund (USF) support and E911 location accuracy drew protests from several FCC members who complained that such terms bear no relevance to the transaction at hand and are premature in the face of ongoing FCC proceedings to implement USF reform. Alltel ranks as the fifth largest wireless carrier in the U.S. with 12 million subscribers. Declaring that the $27.5 billion acquisition serves the public interest, the FCC found that the transaction would not harm competition in the U.S. mobile telephony market, and would give Alltel access to additional capital necessary to deploy advanced services to rural customers. Notwithstanding the absence of competitive concerns, the agency decided, however, to cap the high-cost USF support that Alltel receives as a competitive eligible telecommunications carrier (CETC) at 2007 levels on an annualized basis, unless Alltel (1) files cost data showing that its per-line costs are less than the capped funding level, and (2) shows compliance with E911 location accuracy standards as measured at the public safety answering point (PSAP). Criticizing the condition as “a jack-in-the-box surprise” and as “an illogical afterthought,” Commissioner Jonathan Adelstein—in a concurring statement—questioned how Alltel could fulfill the E911 provision “given that the Commission currently has an open proceeding addressing the details of how carriers must implement PSAP-level accuracy.” Commissioner Michael Copps, who dissented in part, expressed fear that the CETC cap “will be an even greater hindrance to rational, comprehensive USF reform.” Although voting in favor of the order, Commissioner Robert McDowell warned that the CETC cap “prejudices the Commission’s open docket considering [USF] support distribution,” adding that CETC support “is not raised or discussed in the record of this proceeding.”

**JUSTICE DEPARTMENT ANNOUNCES CONSENT DEGREE ON AT&T-DOBSON DEAL**

On Tuesday, the Justice Department (DOJ) unveiled the details of a consent decree that will allow AT&T to proceed with its $2.8 billion acquisition of Dobson Communications as long as the merged entity divests overlapping wireless assets in five states. Dobson, which serves 1.7 million customers in 17 states under the Cellular One brand name, is the ninth largest provider of mobile services in the U.S. Because AT&T competes directly against Dobson or holds minority equity interests in cellular licensees that compete against Dobson in various markets, the DOJ concluded that, “in certain areas, the transaction, as originally proposed, would have resulted in higher prices, lower quality, and diminished investment in network improvements, and would have substantially lessened competition to the detriment of consumers.” To address these concerns, the DOJ will require AT&T to (1) divest licenses currently held by Dobson in three rural service areas (RSAs) within Kentucky and Oklahoma, (2) sell minority interests held in licensees that compete against Dobson in two Missouri and Texas RSAs, and (3) relinquish the Cellular One brand name and its associated rights in two markets within Texas and Pennsylvania. Parties will have 60 days in which to comment on the proposed consent decree. The merger also remains under consideration by the FCC where a draft order approving the transaction is said to be circulating.

**CONGRESS ADOPTS SEVEN YEAR EXTENSION OF INTERNET TAX BAN**

Web users throughout much of the U.S. will be free of taxes on Internet access for at least seven more years, under compromise legislation that was adopted within the past week by both houses of Congress and signed by President Bush on Wednesday. Although the House had passed a measure last week calling for an additional four-year extension of the tax ban, the Senate—until days ago—had been deadlocked on whether to extend the ban temporarily or to make the current moratorium permanent. In a breakthrough late last Thursday, the Senate agreed on an amended version of the House bill that would extend the current moratorium (with grandfather provisions exempting several states that had Internet tax laws on their books prior to 1998) by seven years. As part of that bill, Senate lawmakers also revised the definition of “Internet access” to cover e-mail, instant messaging, video clips, homepage and personal electronic storage capacity that are purchased independently of a customer’s Internet service provider. On Tuesday, the House approved the Senate measure by a unanimous vote, thus setting up the bill for President Bush’s signature. Players throughout the telecom industry heaped praise on the seven-year moratorium, which Verizon Communications proclaimed would “ensure continued investment and growth in the
While Representative Linda Sanchez (D-CA) applauded the bill as “bipartisan legislation at its best,” Senator Mitch McConnell (R-KY) promised to continue the quest toward a permanent tax ban, declaring: “the job is not finished.”

COPPS URGES FCC TO CONDUCT INQUIRY INTO NEWS CORP-DOW JONES MERGER

Describing News Corp.’s proposed $5.6 billion acquisition of Dow Jones as “unprecedented,” FCC Commissioner Michael Copps urged Kevin Martin, the agency’s chairman, to launch an investigation into the News Corp.-Dow Jones merger, which, according to Copps, “would appear directly to affect the New York metropolitan market in terms of localism, diversity and competition.” Dow Jones is the parent of the Wall Street Journal, which, for the purposes of the FCC’s newspaper-broadcast cross-ownership rule, is deemed to be a national publication. News Corp., meanwhile, counts among its vast assets the Fox Television Network, the New York Post, several cable channels, and 35 full-power television stations that include two New York area outlets: WNYW and WWOR. Although the merger would result in a single entity owning two of the five largest newspapers in the U.S. as well as a major broadcast network, the transaction is not under FCC review as News Corp.’s proposed ownership of the Wall Street Journal falls beyond the scope of the cross-ownership rule which applies to locally-owned newspapers and TV stations within the same market. Emphasizing “the implications of this proposed acquisition on the national media market,” Copps nevertheless told Martin: “I think it is essential that the FCC determine whether approval of this transaction accords with our public interest responsibilities and whether our existing media ownership rules and precedents are adequate to deal with this . . . transaction.” Observing that “the FCC has never had occasion to receive comment . . . on the important public interest issues raised by (1) a national network owner owning one or more newspapers that are read across the nation, or (2) a company already operating under waivers of the newspaper-broadcast cross-ownership ban acquiring a second newspaper published in that locality,” Copps added: “these are important issues that surely deserve serious consideration by the Commission and the American public.”

SPRINT NEXTEL TO ALLOW DEPARTING CUSTOMERS TO UNLOCK THEIR PHONES

Settling a class action suit brought by customers in California, Sprint Nextel has agreed to provide its departing customers with the software codes needed to “unlock” their handsets so they can be used on the networks of competing carriers. Experts say that the settlement—which affects customers who signed contracts with Sprint between August 1999 and July 2007—could signal a shift in long-standing wireless industry policies that have tied handsets to specific carriers and that have forced customers to purchase new handsets every time they switch providers. The class action suit filed last year against Sprint claimed that the company’s practice of locking its handsets was anticompetitive as it discouraged customers from switching carriers. As part of a proposed settlement approved tentatively this month with the Alameda County, California Superior Court, Sprint would share unlocking codes with all current and former subscribers as soon as they complete the terms of their contracts, pay their final bills, and have their phones deactivated. The unlock codes would work with Sprint CDMA handsets, thereby enabling customers to use those phones on the networks of competitive CDMA carriers such as Alltel and Verizon. The phones, however, are not compatible with the networks of AT&T and T-Mobile, which use GSM technology. Sprint-Nextel branded phones that use iDEN technology are also not subject to the offer. Sources also say that the settlement would cover a similar lawsuit filed against Sprint in Palm Beach County, Florida. Terming the settlement as “a step in the direction of opening up the possibility of letting people own their own phone and use it with the carrier they want,” one telecom industry analyst predicted: “over the next two or three years, we’ll see the U.S. carriers go the way of the European market,” where handsets and services are purchased separately.

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