During oral arguments on Vonage Holdings’ appeal of a jury verdict that found Vonage liable for infringing voice-over-Internet protocol (VoIP) patents belonging to Verizon Communications, a judge with the U.S. Court of Appeals for the Federal Circuit suggested that the parties could reach a “middle ground” that would provide Verizon with compensation for Vonage’s use of the technologies in question while enabling Vonage to remain in business. In March, Vonage was found guilty of violating three Verizon patents that cover the connection of VoIP calls to wireline local exchange networks, VoIP calls via WiFi handsets, and features such as call waiting and voice mail. At the request of Verizon, U.S. District Court Judge Claude Hilton imposed an injunction that bars Vonage from signing up new customers as long as Vonage’s infringing technology remains in place. That injunction, however, was stayed by the Federal Circuit pending the outcome of the appeal that was the subject of Monday’s hearing. Casting doubt on the notion that “Verizon has an interest in putting Vonage out of business,” Judge Timothy Dyk questioned, “isn’t there . . . a middle ground in these cases when the injunction would put someone out of business” in which the lower court could “consider allowing time for a workaround as part of the injunction?” Asserting that Vonage had never set forth a specific timeline for a workaround or suggested any other compromise to the court, counsel for Verizon argued that, if such an approach were taken, Vonage should be required to produce evidence that a workaround would be achieved in the additional time given. Counsel for Vonage, meanwhile, expressed willingness to accept a modified injunction “if that’s the least we got.” Although Vonage is contesting the validity of the March verdict on grounds that Hilton gave improper instructions to the jury, counsel for Vonage told Dyk that, if the district court verdict is upheld, there would be “no irreparable harm” in a compromise that would require Vonage to pay Verizon a 5.5% royalty on future sales in addition to the jury’s previous damage award of $58 million.

Fiber optic cable maker CommScope succeeded this week in its second try at acquiring wireless equipment firm Andrew Corp., as Andrew accepted CommScope’s latest offer of $2.6 billion that consists mainly of cash. The agreed-to purchase price of $15 per share represents a significant premium over CommScope’s original unsolicited bid of $1.5 billion that was submitted last August and that the Andrew board rejected as inadequate. At the time of CommScope’s initial offer, Andrew had already accepted a stock offer of $2 billion submitted by ADC Telecommunications. That agreement, however, was terminated after ADC’s stock price declined. Between them, CommScope and Andrew boast 16,000 employees worldwide as well as combined 2006 revenues of $3.8 billion. The pact would give Andrew stockholders $13.50 per share in cash and an additional $1.50 per share in CommScope stock or cash or both. Continuing a consolidation trend among telecom equipment makers that was capped with the merger of Alcatel and Lucent Technologies last year, the CommScope-Andrew deal is expected to provide CommScope with the capacity to meet growing demand for devices and applications that combine video, voice, and broadband while offering constant connectivity. Noting that the combined entity will sell wireless antenna and cable products, carrier and network solutions, enterprise products and broadband/cable TV solutions, CommScope Chairman Frank Drendel predicted that the union of the two companies “will expand our global
service model and create an enhanced offering of communications-infrastructure solutions that addresses a broader spectrum of customer needs.”

**FTC REPORT WARNS AGAINST NET NEUTRALITY REGULATION**

Incumbent providers of broadband Internet services are applauding a report issued Wednesday by the Federal Trade Commission’s (FTC) Internet Task Force, warning against the imposition of net neutrality regulations on grounds that there is no evidence of market failure or harm to consumers caused by the conduct of broadband network operators. The FTC report, entitled *Broadband Connectivity Competition Policy*, is based on workshops conducted by the FTC in February, discussions between task force members and interested parties, and FTC staff research. Concluding that the effects of potential conduct by broadband providers on consumer welfare is “indeterminate,” the report cautions that, “no regulation, however well-intended, is cost-free, and it may be particularly difficult to avoid unintended consequences here, where the conduct at which regulation would be directed largely has not yet occurred.” In support of its claim that net neutrality rules are currently unnecessary, the report cites growth in consumer demand for broadband services, the proliferation of new market entrants, improvements in broadband access speeds and falling prices as proof that the broadband market is competitive. FTC Chairwoman Deborah Platt Majoras, in comments about the report, proclaimed that “policy makers should be wary of enacting regulation solely to prevent prospective harm to consumer welfare.” Welcoming the report’s findings, Verizon Communications Vice President Thomas Tauke noted that “proposals to impose new regulation actually threaten further advancements in broadband Internet connections.” Although Steve Largent, the president of wireless association CTIA, praised the report as one that “clearly depicts the Internet regulation plot as a solution in search of a problem,” the Open Internet Coalition—a supporter of net neutrality regulation—warned: “if policy makers wait until widespread discrimination occurs, it will be extremely difficult for Washington to put the new revenue genie of content discrimination back in the bottle.”

**SCHWARZENEGGER URGES FEDERAL GOVERNMENT TO IMPLEMENT NATIONWIDE PUBLIC SAFETY NETWORK**

California Governor Arnold Schwarzenegger (R) waded into the ongoing debate over a potential national public safety broadband network in the 700 MHz band, as he wrote to FCC Chairman Kevin Martin, Commerce Secretary Carlos Gutierrez, and Department of Homeland Security Secretary Michael Chertoff to urge the immediate start of “a process that will involve states, local governments, federal agencies, first responders and the private sector in addressing the issues surrounding the design and implementation of this national network” Schwarzenegger’s letter, sent on Monday, comes as the FCC continues to consider a proposal from Frontline Wireless that would allocate a swath of 700 MHz spectrum to a nationwide open access broadband network that would be shared by public safety and private sector entities. Describing such a network as “a crucial element to the continued effectiveness of our first responders and to the safety and security of our citizens,” Schwarzenegger urged the federal government “to take a leadership role in the development of this national network.” A nationwide network, according to Schwarzenegger, should “ensure the capability of public safety entities to use both voice and advanced data services” and also “provide first responders in rural and urban areas with the advanced technology necessary to protect the public.” Noting that an interoperable network meeting these requirements would cost at least $4 billion to deploy in California alone, Schwarzenegger further observed that “an investment of this size . . . must include federal resources and be guided by sound federal policy if we are to meet the communications needs of California’s, and our nation’s, first responders.”

**BOINGO TO OFFER FLAT RATE WI-FI SERVICE WORLDWIDE**

Boingo Wireless, the world’s leading wholesale aggregator of Wi-Fi services, announced a new global offering this week that will provide subscribers with unlimited access to any of the company’s 100,000 hot spots worldwide for a flat rate of €29.00 (U.S. $39.00) per month. Touted as one of the first services of its kind, Boingo’s “Global” plan is viewed as a key step beyond the current fragmented system of WiFi access in which users are typically subjected to per-minute charges that vary according to the WiFi provider and the user’s location. Currently, Boingo operates WiFi networks directly at 13 of the largest North American airports. As an aggregator, Boingo also has agreements in place with various international network operators that provide subscribers with access to affiliated hot spots at 23,000 locations in Asia, 27,000 locations in North America and 51,000 locations throughout Europe, the Middle East and Africa. Subscribers to the new flat rate service will not require any special software, although Boingo will make a special program (dubbed “GoBoingo”) available that will alert users when they move within range of a Boingo hot spot. Other WiFi aggregators, such as Cloud, are
expected to follow suit with similar flat-rate offerings in the months to come. Declaring, “we are targeting the globe-trotting international traveler who passes through many major cities,” Boingo CEO David Hagan proclaimed: “the days of per-minute charges and incremental roaming fees for Wi-Fi Internet access are over.”

**EC SUES GERMANY OVER DT NETWORK ACCESS LAW**

Fulfilling earlier threats, the European Commission (EC) filed suit Wednesday over the German government’s refusal to change a law, enacted in February, which exempts Deutsche Telekom (DT) from having to provide rivals with access to its high-speed VDSL network. DT, the dominant telecom operator in Germany, currently controls more than 9 million of the nation’s 12.9 million fixed phone lines. So far, DT has invested U.S. $1.3 billion to connect 10 major German cities to its broadband VDSL network, through which it will offer customers a three-way package of Internet, telephone and TV services. DT, which hopes to extend its VDSL network to 50 cities, had threatened previously to pull the plug on the project if it was forced to open the network to rivals. Ultimately, the government adopted the legislation that is the subject of the EC suit on grounds that an exemption from network sharing requirements was needed to allow DT to recoup the substantial cost of its investment. Charging, however, that the law contradicts EU rules that give telecom market entrants the right to access incumbent networks, the EC asserted that DT’s substantial share of Germany’s telecom market already gives DT a major advantage over competitors. Following on the failure of negotiations between the EC and Germany, EU Telecom Commissioner Viviane Reding confirmed this week that the EC had taken the matter to the European Court of Justice. Observing that the EC “has repeatedly warned Germany that its new telecom law violates EU telecom rules but without success,” Reding declared: “we want to ensure Germany can benefit from a healthy, competitive and fully functioning market.”

**FRENCH GOVERNMENT TO FURTHER PARE FT STAKE**

On Sunday, the French government laid out plans to pare down further its holding in France Telecom (FT), with the sale of between 130 to 180 million shares that represent up to a 7% stake in the company. The offer would constitute the first sale of state-owned FT shares in two years and would reduce the government’s interest in FT to between 25.5% and 27.4%. Sources also say that the sale corresponds with plans by newly installed French President Nicolas Sarkozy to reduce state involvement in the national economy and to cut taxes, as proceeds from the offer, according to Finance Minister Christine Lagarde, “will be fully used for state debt reduction.” If the full allotment of 180 million shares is sold, the state could reap as much as €3.8 billion (U.S. $5.1 billion) in proceeds. Lagarde also noted that the government “intends to remain a significant shareholder in [FT] in the medium term.”

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For information about any of these matters, please contact Patrick S. Campbell (e-mail: pscampbell@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.