SUPREME COURT REFUSES APPEAL IN RATE SETTING CASE

Qwest Communications received good news on Monday from the U.S. Supreme Court, which declined to hear an Iowa carrier’s appeal of two lower court rulings that concern a protracted billing dispute with Qwest. Those rulings focused on whether certain wireless calls at the heart of the case are interstate calls that fall under the FCC’s long distance rate regime or intrastate calls that are subject to state mandated rates. The case at hand pits Qwest against Iowa Network Services, Inc. (INS), which claims that Qwest owes it money for the routing of wireless phone traffic, via the INS network, to local phone companies in Iowa. Although third-party wireless operators originated the calls, INS looked to Qwest for payment, claiming that it was impossible for INS to determine which carriers were responsible for the calls. INS also attempted to subject Qwest to FCC-mandated long-distance rates, which are substantially higher than local calling rates adopted on the state level. At the behest of Qwest, the Iowa Utilities Board decreed in 2000 that Qwest could not be held liable for the FCC rates billed by INS, as the board determined that the calls in question were local rather than long distance. INS then challenged the utilities board decision before a U.S. district court and before the 8th Circuit Court of Appeals. Both courts, however, sided with Qwest and the utilities board, declaring that FCC-mandated rates are not applicable to local traffic. The Supreme Court’s rejection of INS’s appeal leaves those rulings in place, thus allowing Qwest to save millions of dollars it would otherwise have owed to INS.

SENATE BILL SEeks LIMITS ON WEBCASTING ROYALTIES

Following on the introduction of a House bill last month that would overturn the recent decision of the Copyright Royalty Board (CRB) to enact steep increases in webcasting royalty rates, Senators Ron Wyden (D-OR) and Sam Brownback (R-KS) have sponsored legislation that is intended as a companion to the House measure. Like the pending Internet Radio Equity Act (HR-2060) that now boasts upwards of 60 sponsors in the House, the Wyden-Brownback bill of the same title would roll back the CRB ruling that, as it currently stands, would apply retroactively to all music streamed online since January 2006. (Collections under the new rate regime are now scheduled to commence on July 15.) Both bills would bring webcasters under the same rate rules that apply to satellite radio operators, which pay 7.5% of their revenues to record companies and artists. The Senate bill would also establish special rate rules for non-commercial webcasters, which, through 2012, would be required to pay a rate that constitutes 105% of 2004 royalties paid, with a $5,000 yearly cap on payments. (By contrast, the House bill mandates a rate of 150% of 2004 royalties paid with no annual cap.) Proponents of the webcasting industry had warned that the CRB rate increases, which could amount to 40%-70% of revenues of large webcasters, and exceed the revenues of smaller players, could threaten the health of the entire Internet radio sector. Declaring that “I am alarmed by the recent [CRB] decision and the effect it will have on Internet radio—especially small webcasters with limited revenue streams,” Brownback expressed hope that, “with this bipartisan legislation, Internet radio will continue to flourish.”

JUDGE GRANTS CLASS ACTION STATUS IN COMCAST CLUSTERING SUIT

A federal district court judge has granted class action status in a lawsuit that accuses Comcast of “clustering” various Philadelphia-area cable systems in an attempt to boost cable bills. Asserting that Comcast’s actions violate the Sherman Act, the antitrust suit is said to be one of the first of its kind to receive class-action status. Plaintiffs in the suit include several Comcast cable subscribers in Philadelphia. According to the complaint,
Comcast purchased Philadelphia-area cable systems from rivals that include cable overbuilder RCN, then raised rates annually by 11% throughout the Philadelphia market where Comcast commands an 87% share of all pay-TV subscribers. Claiming that 1.8 million Comcast customers in Philadelphia are paying higher rates as a direct result of Comcast’s actions, the lawsuit charges that, “Comcast . . . has market power because it does not face sufficient competition to constrain prices, [with] competition from satellite providers and overbuilders being insufficient to constrain prices.” In assigning class action status to the case, U.S. District Court Judge John Padova noted that the harms allegedly suffered by the plaintiffs were similar enough to make them representative of a larger group that may have been harmed by Comcast. Padova also added that the plaintiffs had “succeeded in demonstrating the sine qua non of class-wide proof of impact: damage to each class member because the prices charged by Comcast were higher than the range which would have existed under competitive conditions.” Disputing the allegations, Comcast asserts that per-channel prices have actually decreased for 11% of Philadelphia residents and that 50% of Philadelphia customers were subjected to smaller per-channel rate increases than pay TV subscribers in other markets.

SKYPE RESPONDS TO CARRIER OBJECTIONS AGAINST CARTERFONE PETITION

Defending its petition, filed with the FCC in February, that seeks the extension of Carterfone rules to the wireless industry, Skype Communications told the agency on Tuesday that carrier fears of interference and undue regulation were unfounded, as Skype expressed confidence that the FCC can find a “responsible middle ground.” In its 1968 Carterfone decision, the FCC allowed customers of the legacy AT&T wireline system to attach unbundled devices of their choice to the AT&T network as long as the devices caused no harm to that network. Urging the application of Carterfone rules and net neutrality principles outlined in the FCC’s 2005 Broadband Policy Statement (BPS) to the wireless industry, Skype argues that carrier policies requiring subscribers to purchase “locked” handsets that work only on a specific carrier’s network stifle competition and customer choice. Responding to objections raised in comments filed last month, Skype denied it is “seeking to overturn the carrier practice of subsidizing handsets and bundling their sale with that of wireless service,” claiming that the goal is to convince the FCC to “examine whether carriers are living up to the requirement of the 1992 [consumer premises equipment] bundling order that they give subscribers a meaningful opportunity to use an unbundled handset on the carriers’ network.” Addressing opponents’ assertions that Skype’s request will lead to burdensome regulation, Skype stated that, “by affirming the applicability of the [BPS], the Commission will take an important first step in ensuring that consumer choice is promoted—all without saddling the wireless industry with unnecessary regulation.” Wireless association CTIA had earlier warned, however, that “disassociating wireless service and handsets would degrade network performance, increase interference, impair compliance with important social obligations and undermine network and device security.” Skype questioned CTIA’s claims, observing that “carriers themselves suggest that consumers may purchase handsets independently and use them with their wireless services (consistent with the terms of the 1992 ‘CPE Bundling Order’), suggesting that the attachment of independent . . . devices will not cause harm to their networks.”

SPRINT NEXTEL TO CARRY ABC TV SHOWS ON CELL PHONES

In the first major mobile programming deal between a cellular carrier and a broadcast network, Sprint Nextel and the Walt Disney Company signed a multi-year agreement Tuesday that will enable Sprint wireless customers to access ABC and Disney television programming on their mobile phones. The pact is viewed as a key step beyond existing offerings, marketed by carriers such as Verizon Wireless, that provide short video clips to customers or live TV shows that are available only at specific times. For $20 per month, Sprint Nextel customers will be able to view a wide portfolio of full-length ABC television shows, including Desperate Housewives, Grey’s Anatomy and Lost, on demand. Each episode will be made available one day after its broadcast air date, and subscribers will be able to access the four most recent installments of each series. Customers will also be provided access to several mobile “linear” channels, such as an ABC news channel that provides live news on a 24-hour basis and a Disney channel that provides full-length episodes from the cable network. Proclaiming that Disney’s goal is to “[find] new ways to connect viewers to the content they want and brands they love on the platforms they choose,” Disney-ABC Television Group president Anne Sweeney praised the deal as one that “not only provides new viewing opportunities for consumers, but also gives advertisers another platform to reach viewers.”
EU REACHES COMPROMISE ON WIRELESS ROAMING RATES

On Wednesday, Europe’s Council Presidency approved a compromise agreement, reached by member nations of the European Union (EU), which would institute caps on international wireless roaming rates to go into effect this July. The preliminary deal on the revised rate caps represents the latest prong in EU Telecommunications Commissioner Viviane Reding’s yearlong campaign to slash mobile telephony roaming rates that, according to Reding, far exceed the cost of such calls. In contrast to the original proposal that would have mandated a €0.36 per minute cap on wholesale roaming rates, the council ratified a cap of €0.30 per minute for the first year that would be reduced by €0.02 per minute per year for the next three years. Maximum retail charges would be capped at €0.49 per minute for outgoing calls and at €0.24 per minute for incoming calls, with rates to drop by €0.03 per minute during each of the next three years. Within one month of the effective date of the new law, EU wireless customers would be given the option of retaining their current roaming agreement or switching to the EU tariff. After three months, any customer who remains undecided will be switched automatically to the new EU tariff. The European Parliament is expected to vote on the plan on May 24.

CHINA APPROVES USE OF FOREIGN 3G TECHNOLOGIES

Carriers gearing up for the introduction of third-generation (3G) wireless services in China will have three standards—two foreign, one domestic—to choose from as a result of a decision Wednesday by China’s Ministry of Information Industry to endorse the European W-CDMA and U.S. CDMA2000 standards. In approving the two foreign 3G standards, the ministry established specifications (with the help of foreign and domestic companies) for their use alongside the Chinese TD-SCDMA standard. Specifications for the TD-SCDMA standard were adopted last year, and tests on the standard are now underway in ten Chinese cities. Stressing that the ministry’s goal is to be “technology neutral,” a ministry official stressed: “we will let operators choose which standard they want to use.” Although the government has yet to set a timetable for 3G licensing, officials have promised that 3G wireless services will be made available in time for the 2008 Olympic Games in Beijing.

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