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VIRGINIA AND INDIANA ENACT FRANCHISE LAWS, AS CITIES WEIGH FINANCIAL IMPACT OF PROPOSED FEDERAL LEGISLATION

Virginia and Indiana have become the latest states to enact video franchise reform, as the governors of both states signed laws that eliminate or curtail the traditional (and lengthy) process of obtaining franchise approvals on a county-by-county basis. Like legislation adopted last year by the State of Texas, the measure signed Tuesday by Indiana Governor Mitch Daniels enables the Bell companies and other cable competitors to enter the market under a single, statewide video service franchise. The bill signed last Friday by Virginia Governor Tim Kaine creates an “ordinance franchise” that requires a market entrant to negotiate with local authorities for at least 45 days before the entrant certifies its intention to provide video service within the targeted localities. Once the certification is filed, an entrant may offer video services within the affected locality 30 days after the filing date, and the local government must enact ordinances that cover franchise terms and fees within 120 days of filing. Representatives of the cable industry and phone company entrants, such as Verizon, complimented the Virginia law, which, according to sources, struck a compromise between those two opposing interests. As Verizon Virginia president Robert Woltz Jr. predicted that the new law “will produce tangible benefits for Virginians,” National Cable and Telecommunications Association President Kyle McSlarrow proclaimed: “Virginia has set the bar for federal and state legislators as they too ponder changes in telecommunications law to ensure fair and robust competition.”

Meanwhile, the National League of Cities (NLC) released the results of their latest annual opinion survey, in which a majority of city officials warn that proposed federal legislation limiting their use of local video franchise fees would strain local budgets. The study, entitled “The State of America’s Cities, 2006,” shows that 86% of the cities responding to the survey impose franchise fees on cable and other multichannel video operators. Of that number, 83% of respondents claim that federal legislation placing franchise authority in the hands of the states or the FCC would affect city budgets either somewhat (46%) or greatly (37%).

FCC LEVIES $4 MILLION IN BROADCAST INDECENCY FINES

The CBS television network again found itself in the cross-hairs of a controversy over indecent programming, as the FCC issued a series of rulings Wednesday that, among other things, found CBS liable for fines of $3.6 million for complaints arising from a December 2004 episode of Without a Trace, in which sexual activity between teenagers (without nudity) was depicted. The orders, which resolved indecency complaints against 49 programs aired between February 2002 and March 2005, are the first issued by the FCC since the departure of former FCC Chairman Michael Powell. Under Powell, the FCC imposed a record $7.9 million in indecency fines that included a penalty of $550,000, assessed against CBS, for singer Janet Jackson’s “wardrobe malfunction” during the 2004 Super Bowl halftime show. While the proposed $3.6 million fine against the Without a Trace episode constitutes the single largest penalty assessed by the FCC this week, total fines handed down by the agency approached $4 million for violations involving seven television programs, including ABC’s N.Y.P.D. Blue. The agency also upheld the $550,000 penalty assessed in connection with the 2004 Super Bowl halftime show, which leaves CBS with the choice of paying the fine or taking its case to court. Noting that “the number of complaints

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A proposed bill under discussion by the House Energy and Commerce Committee would create a national video franchise that would facilitate the entry of the Bell companies into the video services market.
received by the Commission has risen year after year,” FCC Chairman Kevin Martin proclaimed that the decisions, “taken both individually and as a whole, demonstrate the Commission’s continued commitment to enforcing the law prohibiting the airing of obscene, indecent and profane material.” Voicing strong disagreement with the FCC’s findings, CBS vowed to “pursue all remedies necessary to affirm our legal rights.”

PETITIONERS URGE FCC TO REVERSE RULES ON CONSORTIUM BIDDING

Warning that certain provisions of an FCC order adopted in January could discourage or prevent the participation of small rural carriers in the upcoming advanced wireless service (AWS) auction, the National Telecommunications Cooperative Association (NTCA) and a coalition of rural carriers asked the FCC to reverse new rules that would deny bidding credits to certain small businesses that form bidding consortia. In an effort to promote “greater transparency,” the FCC amended its auction rules in January to mandate the combining of consortium member revenues for the purpose of determining eligibility for bidding credits. If the collective revenues of individual consortium participants exceed the FCC’s limits for small businesses, the consortium would be required to repay the bidding credits or disband after the auction. Noting that the AWS auction offers significant amounts of spectrum that is usable by small rural wireless carriers, a spokesman for the rural carrier coalition said the rule change could hit coalition members especially hard, as the formation of consortia enables small carriers to create economies of scale through the collective use of spectrum. As the NTCA termed the rule change “a Catch 22 which discourages the formation of new small business [consortia],” the rural carriers coalition asserted that “small businesses are less likely to join forces for the purposes of an auction if they know that they must either operate alone after the auction, or give up the very bid credits earned by joining the small business consortium.” Urging the FCC to restore eligibility for bidding credits “if each member of the consortium individually meets the financial caps for small business,” NCTA told the agency that such an action “will . . . further Congress’s goal of ensuring that rural telephone companies have access to spectrum.”

GROUPS OUTLINE CONCERNS ON RETRANSMISSION CONSENT

Writing to both houses of Congress, EchoStar and representatives of small and rural cable providers urged lawmakers to reform what they characterized as “outdated” rules on retransmission consent that result “in higher costs, fewer choices for consumers, and required carriage of objectionable programming content.” Signatories of the March 9 letter also included the American Cable Association, the Broadband Service Providers Association, the National Telecommunications Cooperative Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies. Citing consolidation in the broadcast industry since 1992 that has solidified the power of the four major networks and that has enabled the networks to expand ownership and control of program content, the groups complained that “these conglomerates today use retransmission consent to force [multichannel video program distributors] to carry their content on basic [cable] tiers.” The groups further charged that “this lack of marketplace competition allows broadcasters to extract unreasonable fees for their programming” and added that the current retransmission consent rules “give broadcasters enormous leverage” and “prevent MVPDs from negotiating for lower-cost retransmission consent alternatives.” Suggesting that cable and satellite operators should not have to pay to carry broadcast programs as broadcast ad revenues are driven by the distribution of programming on cable and satellite systems, the signatories proclaimed: “Congress created the retransmission consent rules, and Congress can change them.”

BILL TARGETING LOCAL CONTENT ON SATELLITE RADIO IS INTRODUCED IN SENATE

In a development applauded by terrestrial radio broadcasters, Senators Olympia Snow (R-ME), Max Baucus (D-MT) and Trent Lott (R-MS) introduced legislation Wednesday that would require the FCC to rule on the provision of locally-produced content, such as local news reports, to satellite radio customers. The bill, entitled the Local Emergency Radio Service Preservation Act of 2006, is nearly identical to a pending House measure that now numbers more than 111 sponsors. Although the two FCC-licensed satellite radio providers, XM Satellite Radio and Sirius, are authorized to operate on a nationwide platform, both companies also offer local traffic and weather services to certain markets. Responding to broadcasters who claim that the provision of such local services runs against the intent of the FCC, the Senate bill would prohibit XM and Sirius from offering “locally differentiated” programming in any given market that differs from content delivered to customers in other markets and would require the FCC to issue a ruling within 270 days of the bill’s enactment. While the National Association of Broadcasters praised the introduction of “legislation designed to preserve the rich tradition of local broadcasting,” XM pledged to deliver local content “as long as the law and our FCC license continues to allow such programming,” adding: “we trust that the majority of policymakers agree that the availability of more information is good for consumers.”
MINNESOTA SEEKS SUPREME COURT REVIEW OF LAW ON WIRELESS CONTRACTS

A Minnesota law requiring wireless carriers to notify subscribers of changes to service contracts is the topic of an appeal to the U.S. Supreme Court, which has been asked to review an Eighth Circuit Court decision that struck down the statute as an attempt at rate regulation that is pre-empted by federal law. In response to numerous customer complaints, the Minnesota legislature in 2004 adopted the Consumer Protections for Wireless Consumers Act, which requires cell phone companies to (1) provide customers with copies of their contracts, (2) provide advance notice of amendments that could increase the cost or lengthen the term of contracts, and (3) obtain customer consent before raising the cost or extending the length of contracts. Over the objections of Verizon Wireless, T-Mobile USA and other major wireless carriers, the U.S. District Court in Minneapolis upheld the state law in September 2004, calling the act an appropriate consumer protection measure that merely regulates the terms and conditions of cell phone service agreements. At the behest of the wireless industry, however, the Eighth Circuit struck down the lower court decision, concluding that the state exceeded its jurisdiction by attempting to regulate cell phone rates. In a petition to the U.S. Supreme Court, Minnesota Attorney General Michael Hatch charged that the Eighth Circuit decision “leaves citizens at the mercy of cell phone companies, which are now allowed to change the terms of a customer’s contract, including the rates they charge, without the customer’s knowledge or consent.” Declaring, “our law provides basic fairness that is currently missing in the relationship between cell phone companies and their customers,” Hatch argued that the case “raises critical questions about the rights of all 50 states to protect their citizens from the unfair business practices of a very powerful industry.”

TELEFONICA TO BUY OUT MOBILE UNIT FOR $4.2 BILLION

Telefónica of Spain moved to assume full control of its fast-growing Moviles S.A. wireless unit, as it announced plans to purchase the 7.5% of Moviles it does not already own for U.S. $4.2 billion. Moviles—which recently bought the Latin American wireless assets of BellSouth for $5.8 billion—leads the Spanish wireless market with 20 million subscribers and is also a major contender in Latin America with 71 million customers in that region. Following on Telecom Italia’s repurchase of its mobile unit last year and on France Telecom’s move to assume full control of Orange S.A. in 2003, the transaction would remove Moviles as one of the last publicly-traded arms of a European fixed-line incumbent. Telefónica intends to swap four of its shares for every five Moviles shares, although the final exchange ratio remains subject to the valuation of both companies.

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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.