Senate Confirms FCC Nominees Wheeler and O’Rielly

By a unanimous vote, members of the U.S. Senate confirmed the nominations of Tom Wheeler and Michael O’Rielly to the FCC to restore the agency to its full slate of five commissioners for the first time since May. The Senate conducted its vote late Tuesday just hours after Senator Ted Cruz (R-TX) lifted his hold on the nomination of Tom Wheeler, a Democrat who once served as chief of wireless association CTIA and the National Cable & Telecommunications Association, to the FCC’s chairmanship. Two weeks ago, Cruz put the Wheeler nomination on hold on the grounds that Wheeler had given insufficient testimony at his confirmation hearing on whether the FCC would attempt to enact through the rulemaking process regulations on political advertising that had been rejected by Congress under the now-defunct DISCLOSE Act. After meeting with Wheeler on Tuesday, Cruz told reporters that Wheeler had stated explicitly that an FCC proceeding to enact DISCLOSE Act provisions was “not a priority.” Announcing his decision to lift the hold, Cruz said he looked forward to working with Wheeler in his capacity as FCC chairman “to expand jobs and economic growth.” Congratulating both Wheeler and O’Rielly—a Republican and one-time Congressional aide designated to assume the FCC seat vacated by former FCC Commissioner Robert McDowell—Senate Commerce Committee Chairman Jay Rockefeller (D-WV) predicted that Wheeler “will be a strong advocate for consumers and the public interest at a time when the FCC is facing decisions that will shape the future of our nation’s telephone network and the wireless, broadband and video industries.” While agreeing that Wheeler “will competently and capably serve the nation,” ranking Senate Commerce Committee member John Thune (R-SD) voiced confidence that O’Rielly “will use his extensive legislative background to advocate free market principles and a light regulatory touch.” Wheeler and O’Rielly will take up their duties at the FCC once they are sworn in, most likely within days. Declaring, “the FCC family enthusiastically welcomes” both Wheeler and O’Rielly, interim FCC Chairwoman Mignon Clyburn, who is slated to return to her role as FCC commissioner upon Wheeler’s installation as chairman, proclaimed: “I look forward to working with them, along with my current colleagues at the Commission, to further communications policies that advance the public interest.”

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700 MHz Interoperability Mandate Approved by FCC

In a Report and Order adopted last Friday, the FCC implemented provisions of a recent agreement among AT&T, DISH Network, and 700 MHz A-block licensees to support wireless device interoperability in the lower 700 MHz band. Crafted through a series of stakeholder meetings last summer that were brokered by interim FCC Chairwoman Mignon Clyburn, the agreement was built on AT&T’s voluntary commitment to support the usage of Block A “Band 12” wireless devices on the carrier’s “Band 17” LTE network, which encompasses 700 MHz channels in the lower B- and C-blocks. The pact is expected to boost availability of wireless broadband services in rural areas by giving wireless device manufacturers the incentive to produce Band 12 handsets to be marketed by small, regional wireless carriers to their customers. Under the agreement, and pursuant to the FCC’s order, AT&T is required to offer by September 15, 2015 wireless devices that are capable of operating on both Band 17 and Band 12 and to install network software that would support such operations. AT&T may seek a six month extension of that deadline, however, if it demonstrates that deployment of interoperable devices “will result in significant negative consumer impact.” To resolve interference concerns associated with the usage of Band 12 devices in the lower B- and C-blocks, DISH Network agreed to reduce power limits on its authorized spectrum in the 700 MHz E-block. In exchange for DISH’s pledge, the FCC approved an extension of the interim build-out deadline for all E-block licensees to March 7, 2017 and an extension of the final build-out deadline to March 2021. (DISH’s previous interim E-block milestone expired on June 13 of this year, and the company’s final build-out deadline had been set at June 13, 2019.) While approving reduced power limits in the E-block, the FCC also mandated reduced power limits in the 700 MHz D-block. Applauding the FCC’s action as a “critical step,” AT&T vice president Joan Marsh said: “we are pleased to see the FCC moving swiftly to address . . . interference issues consistent with the negotiated solution.” As a spokesman for the Competitive Carriers Association observed that the order “sends a clear message that the FCC is committed to ensuring all Americans, especially those in rural and hard-to-reach areas, reap the benefits of high-speed mobile broadband,” DISH Chairman Charlie Ergen thanked FCC officials “for their extraordinary efforts in bringing the industry together.”

FCC Adopts Rules to Remedy Rural Call Completion Issues

At its monthly open meeting on Monday, the FCC approved rules intended to provide “immediate solutions” to the problem of call completion in rural areas, where it is estimated that one out of five long distance landline calls fail to connect to the intended recipient. Approved unanimously by the FCC’s three commissioners, the rules require “designated service providers,” defined as wireline carriers with more than 100,000 lines that make the initial choice on how to route calls, to collect and retain for six months data on the completion of rural calls and to submit that data in quarterly reports to the FCC. Such data will be used by the FCC to ascertain the extent of call completion problems and will also enable state regulators to monitor call performance. To encourage carriers to improve their call completion performance, the rules also include a safe-harbor provision that eases data retention and reporting requirements for certain providers that incorporate industry best practices. The rules further prohibit carriers from transmitting audible ring tones to a caller’s handset when the recipient handset is not actually ringing, and a further rulemaking notice adopted as part of the FCC’s order seeks input on additional issues that relate to call completion such as autodialers. Commenting that “we’ve heard about calls from doctors to nursing homes that are not going through, that calls to business aren’t getting completed,” interim FCC Chairwoman Mignon Clyburn voiced confidence that the rules “will enhance our ability to investigate and crack down on call completion problems.” As FCC Commissioner Jessica Rosenworcel added that the data to be gathered by the FCC will “ensure that rural customers receive service on par with their urban counterparts,” Senator
Tim Johnson (D-SD) praised the FCC’s order as “a positive step forward” that “will give the Commission additional tools to stop the bad actors.”

AT&T to Postpone Special Access Contract Move

Faced with mounting protests by Sprint and other competitive carrier customers, AT&T has decided to postpone for 30 days the implementation of previously-announced policy changes that would eliminate long-term wholesale contracts for special access services. In accordance with its plan to transition its landline network to an IP-based platform by 2020, AT&T notified wholesale customers last month that, effective on November 9, it would no longer offer contract terms in excess of 36 months for special access time-division multiplexing (TDM) services that include DS1, DS3, DS0 and analog private line services. Pointing out that, by terminating long term contracts, AT&T is also eliminating the price discounts that are typically offered with extended contract terms, Sprint and six other competitive telcos told the FCC in a recent complaint that AT&T’s move constitutes an abuse of the carrier’s dominant position in the special access market. Writing to Sprint and other special access customers last Friday, AT&T said it would put off the policy change for 30 days to “enable discussion of your questions and concerns and exploration of alternative arrangements.” As such, AT&T said it would notify the FCC officially of the special access policy change on November 25, after which the new policy would go into effect automatically on December 10 absent further FCC action. Touting its planned IP network as one that “will be more modern, more efficient, more versatile and more resilient than a traditional TDM network,” AT&T further defended its decision to eliminate long-term TDM special access contracts as “a necessary part of that modernization process.” Countering, however, that IP network connections are more costly than TDM connections that remain subject to rate regulation, a Sprint official quipped: “a 30-day delay does not address our concerns with AT&T’s exercise of market power or their ability to unilaterally raise the rates.”

FAA Approves Expanded Use of Electronic Devices in Flight

In accordance with recommendations issued by an FAA advisory committee in September, the FAA said yesterday that it would permit domestic U.S. airline passengers to use personal wireless devices such as tablet PCs, e-readers and MP3 players at all flight stages once airlines conduct a series of required tests to determine whether onboard communications systems can withstand interference from the electronic devices in question. Speaking to reporters, FAA Administrator Michael Huerta explained that the FAA based its decision on the advisory panel’s finding that, in most instances, personal electronic devices pose no danger to commercial aircraft communications systems. Although smart phones are also included in the expanded use policy, the FAA emphasized that such devices must still be used in “airplane mode,” in which cellular network connections are turned off, to comply with FCC rules that prohibit cell phone use in flight. Similarly, laptop PCs are not covered by the new policy and must be stowed during takeoff and landing. Huerta further noted that passengers may still be asked to turn off devices on one percent of flights, particularly those affected by low visibility conditions, during which “some landing systems may not be proven to tolerate . . . interference.” Before an airline may authorize expanded device use, the airline must conduct five separate tests to prove that cockpit equipment is capable of tolerating electronic emissions from passengers’ wireless devices and submit the results of those tests to the FAA for approval. Although the FAA anticipates that most airlines will satisfy testing requirements in time to implement the policy change by the end of this year, a spokesman for Delta Airlines affirmed that his company has already completed the tests and “is ready to allow its customers to be the first to use their portable electronic devices below 10,000 feet as early
as November 1.” U.S. Transportation Secretary Anthony Foxx applauded the FAA decision as one that “honors both our commitment to safety and consumer’s increasing desire to use their electronic devices during all phases of their flights.”

Vodafone Seeks Full Control of Indian Unit for $1.6 Billion

Following up on market liberalization measures that were approved in July by the Indian government, Vodafone confirmed on Tuesday that it intends to spend US$1.6 billion to acquire remaining shares it does not already own in Vodafone India (VI), the nation’s second-largest wireless carrier. Currently, Vodafone owns a direct stake of 64.4% in VI and an additional stake of 20.1% through various subsidiaries, and the company’s move corresponds with the government’s recent decision to permit full foreign ownership of domestic Indian carriers. India ranks as the world’s second-largest wireless market after China, and VI accounts for nine percent of Vodafone’s annual revenues worldwide. Vodafone filed its request for full ownership of VI in spite of the British carrier’s six year legal battle with Indian tax authorities over $2.5 billion in capital gains taxes that the government claimed was owed by Vodafone in connection with the company’s 2007 acquisition of Hutchison Whampoa’s 67% stake in Hutchison Essar—the domestic Indian wireless venture that ultimately gave rise to VI. The buy-out plan is targeted to various local investors that, collectively, hold 15.5% of VI’s shares. Vodafone also informed authorities with India’s Foreign Investment Promotion Board that the company would consider investing additional cash in VI through share subscriptions once the buy-out plan is approved. In remarks to reporters, a spokesman for Vodafone declared, “we have always said we would like to increase our holding in the business, and this further investment demonstrates Vodafone’s long-term commitment to India.”

Former FCC Chairman William E. Kennard to Join Grain Management

William E. Kennard, former U.S. Ambassador to the European Union and former Chairman of the U.S. Federal Communications Commission (FCC), will join private equity firm Grain Management, LLC this month as a Senior Advisor in its new Washington D.C. office. Mr. Kennard will focus on investment opportunities in the telecommunications sector, including global transactions. Mr. Kennard was previously appointed by President Barack Obama as the U.S. Ambassador to the European Union. Prior to that Mr. Kennard was a Global Partner and Managing Director of The Carlyle Group, where he headed telecommunications and media investments. Mr. Kennard served as FCC Chairman from November 1997 to January 2001, where he established policies that helped to create an explosion of new wireless services. During his tenure at the FCC, Internet access penetration reached a majority of American households. "Mr. Kennard’s breadth of domestic and international experience in addition to his deep understanding of the global communications and technology sectors make him an excellent fit for Grain and our strategy moving forward,” said David J. Grain, Founder & Managing Partner of Grain Management.

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