CURRENT TELECOM DEVELOPMENTS®

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LIBERTY MEDIA INCREASES NEWS CORP. STAKE, WON’T BID FOR DIRECTV

Quelling speculation that the company would make a bid for DirecTV this week, Liberty Media announced a deal late on Thursday whereby Liberty will purchase an additional $500 million in News Corp.’s U.S.-listed securities, while also announcing that Liberty had decided not to pursue DirecTV, leaving the way open for a News Corp. bid. The deal will bring Liberty’s total holdings in News Corp. to 19% of the outstanding equity, though Liberty’s stake is held as non-voting stock. Although News Corp. representatives had earlier denied rumors that a joint bid for DirecTV was in the works, both companies raised eyebrows when they made moves this week to raise significant cash reserves, with each closing bond sales worth approximately $1.5 billion. Liberty Media raised its funds through the sale of 20-year bonds convertible to AOL Time Warner common stock, while News Corp. sold bonds convertible into common stock in British Sky Broadcasting, a leading direct-to-home satellite operator in the U.K.

SUPREME COURT DECLINES TO HEAR TWO TELECOM CASES

The U.S. Supreme Court this week decided not to hear appeals in two telecom cases, leaving intact appeals court decisions on the FCC’s unbundled network element (UNE) rules and on the power of local governments to regulate telecom carriers. The high court declined a petition by several competitive local exchange carriers (CLECs) to review the decision by the U.S. Court of Appeals for the D.C. Circuit, in which that court remanded the FCC’s UNE rules back to the agency for further consideration. The D.C. Circuit had held that the FCC’s rule were not compliant with an earlier Supreme Court decision on the subject, leading the Commission to re-evaluate its regulations on UNE and issue the recent Triennial Review decision reinterpreting them. (See CTD, Feb. 21, 2003.) After the Commission complied with the D.C. Circuit’s remand order, many court observers thought it unlikely that the Supreme Court would grant review in the case, but additional litigation over UNE is considered a near-certainty after the FCC issues its final order on the subject. The Supreme Court also turned down a request to review how local governments may regulate telephone companies operating in their jurisdictions. The lower court’s decision invalidated an ordinance passed by the city of White Plains, New York, in which the municipality sought to exercise control over the rights-of-way of a local phone company, a subsidiary of AT&T. The ordinance imposed a payment of 5% of gross annual revenues on the company in order to be granted a franchise, along with a requirement that free space be made in the company’s right-of-way for municipal use, but the rule was struck down last year, because it placed burdens on the company that were not imposed on other telecom carriers.

SES AMERICOM, ECHOSTAR SIGN SERVICE AGREEMENT

SES AMERICOM, the U.S. subsidiary of leading European satellite operator SES GLOBAL, announced an agreement this week with EchoStar Communications to provide capacity for TV programming and high-speed Internet access. The service, which will be provided by AMERICOM’s new AMC-15 spacecraft due to launch in late 2004, is part of the AMERICOM2Home program, under which the company hopes to market its satellite capacity as a “wholesale platform” that will provide subscribers with access to a wide variety of direct-to-home programming bundles. The AMERICOM2Home program will be modeled on AMERICOM’s sister company, SES ASTRA, which provides a broadcast platform for several of the largest pay-TV operators in Europe. The agreement will provide EchoStar with additional spot beam coverage, which allows the operator to target signals to particular regions of the country. Spot beam technology is a vital component in EchoStar’s continuing competition with rival DirecTV to provide ever-expanding local television channels to subscribers, as well as in the emerging market for satellite-delivered broadband service. Until the launch of AMC-15,
EchoStar will begin testing its offerings using interim capacity from AMERICOM. AMERICOM’s parent, SES GLOBAL, announced this week that its revenues increased nearly 40% for 2002, due in part to the full year of operation of the AMERICOM unit after its acquisition from GE in 2001.

**GLOBAL CROSSING ACKNOWLEDGES PROXY DISCUSSIONS**

Bankrupt fiber optic network operator Global Crossing, in an FCC filing this week, acknowledged for the first time, as has been reported in some news media, that it is in discussions with the Committee on Foreign Investment in the United States (CFIUS) regarding the proposed investment of Hong Kong’s Hutchison Telecommunications. Hutchison and Singapore Technologies Telemedia agreed last August each to purchase about 30% of Global Crossing for $125 million each; the deal is subject to FCC and CFIUS approval. The letter from Global Crossing’s lawyers said that the CFIUS discussions included consideration of a proxy structure; such a structure, in other contexts, has resulted in dramatically reduced involvement by a foreign company in the workings of the U.S. company it is seeking to acquire. Meanwhile, amid charges of conflict of interest and Congressional calls for investigation, Richard Perle -- one of the architects behind America’s Iraq policy who had been advising Global Crossing on CFIUS and related issues -- simultaneously announced his resignation as chairman of an influential defense advisory panel, and terminated his consulting agreement with Global Crossing.

**PENTAGON HAS CONCERNS OVER SPECTRUM RELOCATION, AS HOMELAND SECURITY EVALUATES ITS HOLDINGS**

In a hearing of the House Subcommittee on Telecommunications and the Internet held Tuesday, the Pentagon’s senior official for spectrum issues, Stephen Price, told lawmakers that the military supports making more spectrum available for commercial users, but that the timelines for doing so -- set forth in a bill recently introduced by Rep. Fred Upton (R-MI), the Chairman of the Subcommittee -- were unrealistic. According to Price, the new legislation could potentially leave the Pentagon with only three months to evaluate the costs required for relocating military users once a portion of spectrum has been marked for transition to commercial use, a process that Price estimated would take at least a year and possibly 18 months. Other members of the Subcommittee, including the Commerce Committee’s ranking Democrat John Dingell (D-MI), expressed concern over the level of accountability and oversight of the proposed spectrum relocation fund -- which would defray the costs of spectrum relocation for other government agencies in addition to the Pentagon -- considering the multi-billion dollar price tag for the program. While the Pentagon comes to terms with losing spectrum, the new Department of Homeland Security (DHS) is trying to get a handle on exactly how much spectrum it has. DHS has directed the Federal Emergency Management Agency (FEMA) to conduct an inventory of the spectrum holdings of the 22 agencies that were folded into the new department, including some branches of other federal departments that were grafted onto DHS. The inventory has worried some officials in the newly-formed department that they may lose frequencies that have been assigned to them, either because they serve redundant functions or because the spectrum was actually assigned to the parent department (such as the Treasury Department) of an agency or bureau that now resides within DHS (such as the Customs Service). A spokesman for FEMA emphasized, however, that there will be no real loss involved, as “it’s all within the federal government and the frequencies will still be part of the federal government.”
DOJ JOINS THE FRAY IN E-RATE INVESTIGATION

Inter-Tel, Inc., a telecommunications service provider based in Arizona, confirmed this week that it is the subject of an investigation by the U.S. Department of Justice (DoJ) concerning the company’s involvement in the “E-rate” program, which has been the subject of considerable scrutiny by the FCC and Congress in recent months. The E-rate program, which is administered by the FCC and the Universal Service Administrative Company (a private, not for profit corporation responsible for administering the Universal Service Fund), provides assistance to schools, libraries, and health care facilities in obtaining telecommunications and Internet services and hardware, with some recipients qualifying for up to a 90% discount on purchases made under the program. Inter-Tel’s revelation makes DoJ just the latest government entity to become involved in the investigation, which has already sparked outrage on the House Commerce Committee over allegations that as much as $200 million may have been lost to fraud, waste, and abuse. The FCC Office of the Inspector General estimates that up $180 million annually may go to improper or fraudulent expenditures. FCC Commissioner Kathleen Abernathy has announced plans to hold a public forum on the issue in May, which will bring together both private and public sector actors to find ways to “avoid wasteful expenditures and prevent gaming of the system.”

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