LORAL, JUSTICE DEPARTMENT SETTLE CHINESE EXPORT CASE

Ending a five-year controversy that reached its zenith with the Congressional passage of tougher satellite export regulations in 1999, Loral agreed to pay $14 million in civil fines to settle a government investigation into allegations that Loral violated export control laws when it provided assistance to China following a launch failure in 1996. Under the civil settlement between Loral and the Justice Department (DOJ), the DOJ agreed to close the investigation without charging Loral with any wrongdoing. Loral, which will pay the fine over a period of seven years, did not admit or deny guilt in the case; the company also committed to spend $6 million on internal controls designed to strengthen Loral’s compliance with export laws and to hire a corporate compliance officer who will oversee export matters. Similar charges had also been directed at Hughes Space & Communications, which was sold to Boeing in 2000. Sources indicate that settlement negotiations are planned for later this month between Hughes and the DOJ, which confirmed that it would not file charges against the company.

REAUCTION WINNERS ASK FCC TO REFUND DOWNPAYMENTS

Facing uncertain prospects for revival of the settlement agreement that failed to win Congressional approval by December 31, thirteen winning bidders in last year’s reauction of PCS licenses revoked from (and later restored to) bankrupt C-block auction champion NextWave petitioned the FCC for a refund of more than $3.2 billion in down payments for the licenses in question. The petitioners include AT&T-backed Alaska Native Wireless, the BellSouth-Ameritech Cingular Wireless venture, and reauction champion Verizon Wireless, which is seeking the return of $1.7 billion. Through the settlement, NextWave would have emerged with net proceeds of $5 billion in exchange for its agreement to relinquish its licenses to the reauction winners. As a consequence of Congress’s failure to ratify the agreement prior to the December 31 deadline, the petitioners told the FCC that they face “an indefinite period of time before there is any prospect that the Commission could lawfully provide . . . the NextWave licenses that they won.” Noting that they are losing more than $3 million per week “because [the FCC] has kept the money in a non-interest-bearing account for as long as 13 months,” the petitioners warned that “any further delay in returning these funds not only continues to cost the Auction 35 winners millions of dollars each week but also requires them to forego other actions to initiate, expand, or improve service.” Verizon also asserted that it would not consider joining any effort to renegotiate the settlement “until we get our deposit back.”

NAB SEEKS FCC RULING ON ECHOSTAR LOCAL DISH PLAN

Filing an emergency petition with the FCC, the National Association of Broadcasters (NAB) railed against EchoStar’s plan to require its subscribers to order a second satellite dish to receive “‘disfavored’ local stations,” as it condemned EchoStar’s policy as “a mockery of the carry-one, carry-all provisions” of the 1999 Satellite Home Viewer Improvement Act (SHVIA). NAB’s petition seeks a clarification of FCC rules as to whether direct broadcast satellite (DBS) providers can require viewers to obtain a separate dish to obtain local broadcast channels; under SHVIA “must carry” provisions, effective January 1, 2002, DBS operators were required to offer subscribers all local broadcast channels in areas where at least one local channel is currently provided. Although EchoStar said it would not charge customers for the cost of installing a second dish, the NAB blasted the offer as “a blatant form of discrimination,” calling “the hassles, inconvenience, and aesthetic costs” of obtaining a second dish a “strong deterrent” to subscribers. Describing the plan as “an interim solution” necessitated by the failure of two
satellite manufacturers to timely ship new spacecraft built for the delivery of local programming, EchoStar asserted that its offer “complies with the law” and meets “the statutory and regulatory prohibitions against price discrimination.”

DOJ ENDORSES VERIZON SECTION 271 REQUEST FOR RHODE ISLAND

In one of the more positive evaluations of a Baby Bell request to provide long distance service within its local calling region, the Department of Justice (DOJ) recommended FCC approval of Verizon Communications’ application, filed under Section 271 of the 1996 Telecommunications Act, for authority to offer interexchange service to local exchange customers in Rhode Island. The FCC is required to act upon Verizon’s request by February 24. Declaring that “Verizon has generally succeeded in opening it local markets in Rhode Island to competition,” the DOJ found that high levels of competitive entry, “as well as the absence of complaints regarding . . . modes of entry, leads the department to conclude that, in Rhode Island, opportunities to serve business and residential customers by fully facilities-based carriers and resellers are available.” Noting, however, that “significantly less competition” exists among carriers that enter Rhode Island’s market through the use of unbundled network elements, the DOJ urged the FCC to carefully examine comments filed by competitive local exchange carriers “in determining whether Verizon’s prices are cost-based.”

DINGELL URGES FCC TO INVESTIGATE AT&T USF RATE HIKE

Calling AT&T’s explanation behind its recent decision to raise customer universal service (USF) fees “puzzling at best,” Representative John Dingell (D-MI), the ranking Democrat on the House Energy and Commerce Committee, urged the FCC to launch an investigation to determine whether or not AT&T is collecting more USF fees from its subscribers than it actually pays into the fund. Dingell’s plea was contained in a letter, sent to FCC Chairman Michael Powell, on January 7; earlier, AT&T had said it was necessary to raise USF fees from 9% to 11.5%, effective January 1, because the FCC’s contribution factor is based on revenues that are six months old and because the company’s interexchange revenues have declined since that date. Noting that the Commission’s current contribution factor is 6.9% (as compared to the 9% figure that AT&T had been charging its customers prior to the rate hike) and AT&T’s own admission that, without the revenue lag, the new factor would “be closer to 9%,” Dingell questioned “why, then, is AT&T charging its customers 11.5% to accomplish the same thing?” Declaring that carriers should be prohibited from collecting more from customers than is contributed to the USF, Dingell said “it appears that AT&T may be padding its pockets.” House Commerce Committee Chairman Billy Tauzin (R-LA) is said to be giving “serious consideration” to conducting hearings on the issue.

MOTOROLA ORDERED TO PAY IRI DIUM LOAN GUARANTEE

Troubles for Motorola--which has slashed its workforce by 32% since August 2000 and is in the midst of a restructuring effort that will include further massive layoffs--continued this week, as a U.S. District court judge ordered the company to pay $300 million in guarantees (plus $65 million in accrued interest) to Chase Manhattan Bank in connection with $800 million loan intended to support the Iridium satellite mobile phone venture. Motorola had been a prime backer of Iridium, prior to the venture’s bankruptcy filing in August 1999 and its subsequent sale to Iridium Satellite LLC. In February 1999, Iridium certified its compliance with the Chase credit agreement and that it was meeting goals of $30 million in sales and 52,000 subscribers by March 31, 1999, thereby causing Motorola to be released from the Chase loan guarantee.
Charging that Iridium (which, at the time the certificate was signed, had only 6,000 subscribers and $535,000 in revenues) misled Chase into releasing Motorola from the guarantee, Chase demanded and later sued for reinstatement of the guarantee. Declaring that Iridium had no “realistic hope” of meeting its targets, the court held that Iridium “had no good faith basis” for its assertions. Accordingly, the court ruled “there is an obligation on the part of Motorola to deliver that guarantee . . . in response to the demand that [Chase] made.”

**CHINA UNICOM LAUNCHES CDMA MOBILE NETWORK**

After three years of delays, China Unicom officially launched operations on a mobile phone network, built on Qualcomm’s digital code division multiple access (CDMA) standard, that will offer high-end customers so-called “2.5G” services that, in addition to voice, will also carry streaming audio and video. The network’s debut caps a long, yet triumphant struggle by Qualcomm to bring CDMA to China; Unicom’s new CDMA network will operate alongside the company’s existing GSM system, which currently commands a 30% share of the Chinese market. Within three years, Unicom aims to expand the network (for which the first phase cost U.S. $2.8 billion) to a capacity of 50 million subscribers. By that time, Unicom will likely face greater competitive pressures, as Information Industry Minister Wu Jichuan confirmed Tuesday that the government intends to issue mobile phone licenses to four integrated telecom operators that would provide fixed, mobile, and advanced services.

**LIBERTY PLANS TELEPHONY SERVICES IN GERMANY**

Hoping to satisfy regulators who have expressed concern over Liberty Media’s planned acquisition of German cable networks owned by Deutche Telekom, the U.S. media firm said this week that it intends to offer telephony via its cable facilities that would compensate for any loss of cable competition. A ruling from German antitrust authorities is expected soon on whether the U.S. $4.9 billion transaction should be allowed to proceed; officials are said to be particularly worried about Liberty’s plan to merge the backbone cable networks it is acquiring with other “last-mile” companies. Responding to competitive concerns, Liberty (which is also in the process of purchasing German cable systems owned by Deutche Bank) said that it aims to launch telephony services on its cable network, using voice-over-IP technology, within 18 months, although the scope and extent of that service remains to be determined.

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For information about any of these matters, please contact Phillip Spector (e-mail: pspектор@paulweiss.com) or Lionel Olmer (e-mail: lolmer@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.