FCC Launches Rulemaking On Terrestrial Wireless Use Of MSS Bands

The FCC took important steps to enable terrestrial wireless carriers to operate in the mobile satellite service (MSS) bands with the unanimous adoption of a notice of proposed rulemaking (NPRM) that would set forth licensing, technical and operational rules for service in the newly-named AWS (advanced wireless services)-4 band. The action, undertaken at the FCC’s monthly open meeting on Wednesday, was precipitated by DISH Network’s request for waiver of the MSS/ancillary terrestrial component (ATC) “integrated service” rule in the wake of DISH’s recent acquisition of 2 GHz MSS S-band licenses from DBSD North America and TerreStar Networks, Inc. DISH had sought the rule waiver to permit terrestrial-only wireless devices to operate on ATC spectrum that is designated for hybrid satellite/terrestrial services. Earlier this month, the FCC approved the DBSD/TerreStar license transfer but turned down the waiver request on grounds that the agency would consider conditions for terrestrial use of MSS/ATC spectrum through the rulemaking process. The NPRM is one of two items adopted at Wednesday’s meeting that are intended to facilitate wireless broadband services. (The second item launches proceedings on rules to develop interoperability standards for wireless carriers that use the 700 MHz band.) The NPRM would apply the FCC’s Part 27 flexible wireless service rules to the S-band while establishing a band plan for AWS-4 channels, build-out requirements, and technical and interference rules. FCC Chairman Julius Genachowski lauded Wednesday’s action as evidence of “the Commission’s broad commitment to allow flexible use of spectrum.” Welcoming the FCC’s vote, a DISH official voiced hope that “the process will move forward expeditiously so that more wireless innovation can be introduced to American consumers.”

Senate Subcommittee Holds Hearing On SpectrumCo Deal

At a Senate Antitrust Subcommittee hearing on Wednesday, executives of Verizon Wireless and Comcast defended Verizon’s proposed acquisition of wireless licenses held by the SpectrumCo venture, arguing that the transaction will give Verizon the spectrum it needs to address consumers’ ever-increasing demand for wireless broadband services. Democrats on the panel, including subcommittee chairman Herb Kohl (D-WI) and Senator Al Franken (D-MN), questioned whether the proposed sale as well as a related marketing agreement between the parties would indeed promote the competitive goals of the Telecommunications Act of 1996. Announced in December, the $3.6 billion deal would give Verizon, the nation’s largest wireless carrier, access to 700 MHz wireless licenses held by SpectrumCo—a joint venture of cable companies consisting of Comcast, Time Warner Cable, and Bright House Networks—and by Cox Communications, a former SpectrumCo member. Maintaining that the deal serves the public interest, Verizon General Counsel Randal Milch stressed to lawmakers that the transaction will...
give Verizon the spectrum it needs to meet demand. Declaring, “we’re . . . in a critical situation,” Milch explained that “customer demand for mobile bandwidth is growing faster than spectrum [is being made available].” Comcast executive vice president David Cohen added that the emergence of new technologies—notably, the advent of the iPhone and the iPad—have changed the market since SpectrumCo acquired its licenses in 2008. In response to such changes, Cohen said that his company has “changed the tactics” of its strategy for offering quadruple play services that include wireless offerings. Cohen emphasized that there was no “viable business alternative” to selling those assets to Verizon in the current market environment. Kohl urged the FCC and the Justice Department to “ensure that nothing in these deals reverse the historic gains in competition between phone and cable companies ushered in by the Telecom Act of 1996.” Ranking subcommittee member Mike Lee, however, urged regulatory restraint, asserting that “government may have a proper role to make sure companies don’t collude” but “it doesn’t have a role in picking winners and losers.”

**McDowell, Others Predict FCC Will Fall Short Of NBP Spectrum Goals**

Reflecting on the adoption of the National Broadband Plan (NBP) two years ago last Friday, FCC Commissioner Robert McDowell, NBP manager Blair Levin and various industry officials and analysts conceded that the FCC is unlikely to meet the NBP’s goal of making available 300 MHz of spectrum for wireless broadband use by 2015 and an additional 200 MHz of spectrum for wireless use by 2020. As such, McDowell and Levin suggested that the FCC should examine other potential solutions, such as spectrum sharing, unlicensed spectrum usage, and spectrally-efficient technologies, which hold promise for addressing capacity concerns. Adopted at the FCC’s March 16, 2010 open meeting, the NBP projected that 120 MHz of the spectrum needed to address wireless broadband needs would be recovered from TV broadcasters and auctioned to carriers between 2012 and 2013. While emphasizing that reallocation of federal government spectrum could play a key role in fulfilling commercial spectrum objectives, the NBP further recommended that 90 MHz from the mobile satellite service (MSS) be converted and auctioned for wireless use. In a press interview last week, Levin acknowledged that incentive auctions of broadcast TV spectrum are likely to add only 60-80 MHz of spectrum recommended by the NBP. Levin also admitted that prospects for terrestrial wireless usage of the MSS bands remain questionable at this time. (However, as reported above, the FCC launched rulemaking proceedings this week to consider standards under which terrestrial wireless carriers could operate on spectrum currently allocated for MSS use.) Describing Levin’s comments as “spot-on,” Medley Global Advisors analyst Jeff Silva said “the notion that less spectrum will be freed up than originally anticipated is undoubtedly a hard pill to swallow . . . but such acknowledgement is essential in sizing up the wireless market and crafting policies going forward.”

**Leap Wireless Forges LTE Capacity Deal With Clearwire**

Clearwire Corp.’s effort to transform itself into a wholesale supplier of capacity to the wireless broadband industry bore fruit late last week as Leap Wireless agreed to pay Clearwire an undisclosed sum for wholesale rights to the Clearwire long-term evolution (LTE) network. Leap, the smallest U.S. wireless carrier with a nationwide reach, is the second major operator to sign a wholesale contract with Clearwire. Sprint Nextel, the majority owner of Clearwire, affirmed its commitment to Clearwire in December with a $1.6 billion agreement to supplement its own LTE network with LTE capacity provided by Clearwire for the next four years. Clearwire, which had once aspired to offer wireless broadband services on a retail basis through a nationwide WiMax network, is reinventing itself as a wholesale provider of LTE network services that, potentially, could enable Verizon Wireless, AT&T and other providers of fourth-generation LTE services to relieve their own spectrum capacity constraints. Statistics show that, during the fourth quarter of 2011, wholesale services accounted for nearly half of Clearwire’s revenue as compared to just 15% the year before. Meanwhile, a spokeswoman for Leap, which sells its service under the “Cricket” brand name, explained that the five-year agreement “provides us with another option for supplementing our own 4G LTE roll-out and for roaming in non-Cricket markets.” Eric Prusch, the CEO of Clearwire, applauded his company’s agreement with Leap as “another milestone, and it’s not going to stop here.”
NetZero Unveils Free Wireless Broadband Service

NetZero, which gained fame in the late 1990s as the first of a number of ISPs to offer free dial-up Internet services, announced on Monday that it will offer fourth-generation (4G) mobile Internet services free of charge as an enticement for the company’s paid wireless data plans that start at $9.95 per month. A spokesman for NetZero parent company United Online, Inc. told reporters that customers would be able to take advantage of the free wireless broadband offering—which is capped at 200 megabytes of usage per month—for one year. Subscribers will need to purchase a USB dongle at $49.99 that plugs into their laptop PCs or a mobile hotspot device at $99.99 to access the service. Like Leap Wireless, NetZero is contracted with Clearwire, which is providing wholesale capacity for the service through its nationwide 4G LTE network. Subscribers may also opt to purchase a range of data plans that start at $9.95 per month for 500 MB and that provide up to 4 GB of usage for $49.95 per month. NetZero will not charge overage fees or require customers to sign contracts or pay an activation fee to receive service. As free and paid subscribers approach their monthly usage limits, NetZero will send out alerts that will give subscribers the choice of “topping up” with extra data, upgrading to a higher data plan, or waiting until the next billing cycle to resume service. Touting NetZero’s service as one that “gives customers the freedom to take the Internet anywhere in our coverage area, without being tied to public Wi-Fi service or having to purchase higher-cost . . . plans offered by other mobile broadband providers,” United Online CEO Mark Goldston proclaimed that NetZero “is bridging the digital divide.”

India Supreme Court Upholds Vodafone Tax Ruling, As Government Proposes Retroactive Amendments To Tax Code

As anticipated, the Supreme Court of India on Tuesday turned down a government appeal of a January Supreme Court ruling that held British wireless giant Vodafone not liable for US$2.2 billion in capital gains taxes accruing from its $11 billion acquisition of Hutchison Essar in 2007. While sources hailed the high court’s judgment as a complete victory for Vodafone in its five-year long battle against Indian tax authorities, the government raised the possibility that the case could be opened yet again with the introduction of an amendment to the nation’s tax code last Friday that could impose capital gains taxes retroactively on cross-border transactions completed as far back as 1962. Tuesday’s decision responds to a government “review petition” that most experts had predicted would have little chance of success. Vodafone, the world’s largest wireless operator by revenue and the biggest foreign player in the Indian market, convinced the Supreme Court in January that India’s tax department lacked jurisdiction to tax the Hutchison Essar deal because the transaction took place between two offshore entities. However, documents released in connection with India’s annual national budget last Friday outlined a proposed change to the nation’s tax law to ensure transactions between Indian companies with foreign subsidiaries would be held liable for domestic capital gains taxes. According to the documents, the amendment would “take place retrospectively from 1st April, 1962.” The proposal requires the approval of India’s parliament, and observers expect that the measure will pass by the end of May. Although analysts warned that adoption of the measure could erode investor confidence in India, a Vodafone spokesman told reporters: “we do not believe this retrospective change in tax law should have any impact on the final judgment handed down.”

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(No. 2012-12)