TechComm Industry Update

PATTON BOGGS LLP

Patton Boggs TechComm Industry Update
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Senate Vote on FCC Commissioners

After a long delay caused by the "hold" imposed by Senator Chuck Grassley (R-IA), the Senate voted on May 7 to approve FCC Commissioner nominees Ajit Pai and Jessica Rosenworcel. Rosenworcel and Pai had sailed through a confirmation hearing in the Senate Commerce Committee in December 2011. Rosenworcel, a Democrat, was formerly the senior legal advisor to Commissioner Copps, whose seat she will fill, and most recently served as Senior Communications Counsel for the Senate Commerce Committee, working for Senator Jay Rockefeller IV since 2009, and previously for Senator Daniel K. Inouye from 2007 to 2008. Pai, filling the Republican seat held by Ms. Baker, was the Deputy General Counsel of the FCC under then-Chairman Kevin Martin from 2007 to 2011.

FCC Approves TV Channel Sharing as a Precursor to Incentive Auctions

The FCC released a Report and Order establishing new rules to allow television broadcast stations to voluntarily share a single 6 MHz channel in connection with the spectrum incentive auction required by the Middle Class Tax Relief and Job Creation Act of 2012. The new rules, which go into effect 30 days after publication in the Federal Register, were adopted as part of the FCC's broader effort to repurpose additional spectrum from broadcast and other bands for wireless use. Key points of the Order include:

- All channel sharing will be voluntary.
- Channel sharing rules apply only to broadcasters participating in incentive auction.
- Stations that share a channel will be treated as separate licensees.
- Only full power and Class A stations may participate in channel sharing.
- Each station that shares a channel will retain its existing carriage rights.

This Update can be accessed at:
http://www.pattonboggs.com/newsletters/techcomm/2012_04_25_TechCommUpdates.htm

FCC to Hold Channel Sharing Workshop

The FCC will hold a workshop on May 22, 2012 on financial and strategic opportunities available to broadcasters through channel sharing. The panel discussion will focus on the practical business and operational challenges and potential solutions faced by broadcasters who are considering channel sharing. Panelists include:

- John Cunney, Head of Telecom Media Technology Practice, Santander, former Vice President, Patrick Communications
- Eric De Silva, Partner, Wiley Rein
- John Hane, Counsel, Pillsbury Winthrop Shaw Pittman
- Lonna Thompson, Executive Vice President and COO, Association of Public Television Stations

The audience also will have an opportunity to ask questions and make comments. Questions may be submitted confidentially via email.

Walden and Eshoo Announce Creation of Bipartisan Federal Spectrum Working Group

Chairman Greg Walden (R-OR) and Ranking Member Anna Eshoo (D-CA) of the Subcommittee on Communications, Technology and the Internet, from the House Energy and Commerce Committee, announced the appointment of bipartisan membership in a new informal Federal Spectrum Working Group. The working group will attempt to improve the federal government's use of spectrum, increase efficiency, and seek to improve commercial spectrum allocations through incentive auctions and other policies. The working group includes a bipartisan blend of senior and junior members of the Energy and Commerce Committee, in addition to members with leadership responsibility in the national security arena such as Representative Mike Rogers (R-MI), who chairs the U.S. Permanent Select Committee on Intelligence. While the working group plans generally to “take a comprehensive, thoughtful, and responsible look” at improving federal spectrum policy, it could consider the FCC’s management of proceedings related to the L band, among other issues.

Bloomberg v. Comcast: FCC Sides with Bloomberg

Last summer Bloomberg filed a complaint against Comcast alleging that Comcast violated the neighborhooding condition contained in the FCC’s Comcast-NBCUniversal merger order. In the FCC’s order granting in part Bloomberg’s complaint, it concluded that Comcast did violate the neighborhooding merger condition. The order requires Comcast to provide additional channel lineup information to the FCC and Bloomberg within two weeks. Comcast has 30 days to file a request for the FCC to review its decision.

ICANN gTLD Registry Problems - Update

On May 4, ICANN issued another update on it effort to fix a technical software “glitch” in the online application system for the new generic top-level domain (gTLD) names. As we reported before, ICANN is in the process of notifying applicants whose applications may have been affected by the security breach in the gTLD application system. ICANN now expects that it will finish these notifications by May 8. ICANN will then announce the revised schedule for completing the applications. A new “Reveal Day” – when the names of the applicants and their desired gTLDs or “strings” will be made public – also will be announced. “Reveal Day” is important for many reasons, including triggering the objections period for trademark owners and other legal rights owners to object to proposed gTLDs. It also will identify the entities that are seeking to control their own top level domains and their desired domains.

Enhanced Online Disclosure Requirements for TV Broadcasters

New rules adopted by the FCC will require television broadcasters to post their public files online. Under the new rules, which go into effect 30 days after OMB approval, broadcasters will have thirty days to upload new public file documents and six months to upload the contents of their existing public files to a publicly accessible website hosted by the FCC. Broadcasters will be required to upload new public file materials on an ongoing basis.

Although the new rules will eventually require all broadcast stations to include their political files in the materials posted online, this requirement will be phased in over a two-year period. For the first two years – until July 1, 2014 – only stations affiliated with the Big Four networks (ABC, CBS, NBC, FOX) in the top 50 markets will be required to post their political files online on a prospective basis. After this two-year period, all stations will be required to post their political files to the Commission's website, again on a prospective basis. Pursuant to these rules, stations will be required to post all contents of their political files and will not be permitted to post ad rate information in the aggregate. Stations will also be required to add contents to its political file "immediately absent unusual circumstances."

Additional information to be uploaded to the FCC's server includes main studio contact information and Issues/Programs Lists. Broadcaster websites will also need to be updated to include a link to the FCC's local public file server and the station's main studio contact information in the FCC's electronic local public file records for the station. Stations will need to maintain an electronic back-up of their online political file. The following materials are now excluded from online Local Public Files: "The Public and Broadcasting," letters and emails from the public, and metadata showing when and who posted documents.

FCC Adopts New Cramming Rules and Seeks Further Comments

The FCC adopted new rules against cramming – the practice of placing unauthorized charges on a consumer's monthly phone bill. The Commission is now requiring carriers to: (1) notify subscribers at the point of sale, on each bill and on their websites of any offered option to block third-party charges from their landline telephone bills; and (2) separate third-party charges from the landline telephone company's charges on phone bills. While the new rules do not apply to wireless telephone companies, or Voice over Internet Protocol (VoIP) providers, the Commission signaled that it will examine how such carriers are implementing third-party billing, stating that it "will monitor complaints" related to these services. Carriers must implement the required changes to their billing systems within 60 days after publication in the Federal Register. Carriers also must implement required disclosures on their websites and at their points of sale within 15 days of publication in the Federal Register. The Commission also seeks comment on possible additional protections, such as requiring landline telephone companies to obtain consumer consent before placing certain charges on their telephone bills. Comments are due 30 days and 45 days, respectively, after publication in the Federal Register.

FCC Seeks Comment on The USF Contribution System

In a recent Further Notice of Proposed Rulemaking, the FCC seeks comment on how to reform the USF contribution process, and on the following:

- What services and service providers should be required to contribute to the USF?
- How should contributions be assessed – by revenues, the number of connections, phone numbers, or a hybrid approach?
- What can be done to reduce costs, promote transparency and increase the clarity of the USF contribution system?
- How can consumers benefit from increased transparency and limitations on how providers recover their USF costs?

- How long should the transition period be in order to allow services providers and consumers time to adapt to a revised USF contribution scheme?

Comments on the Further Notice of Proposed Rulemaking are due 30 days and 60 days, respectively after publication in the Federal Register.

FCC Implements Phase I of the Broadband Connect America Fund (CAF)

The FCC is implementing Phase I of the CAF and the amount of CAF funds available to price cap carriers across the United States. Carriers are not required to participate in the CAF but, if they participate, they have only 90 days to accept the funding and the associated, aggressive buildout requirements. In a separate reconsideration order, the FCC decided to permit carriers accepting incremental Phase I CAF funds to receive credit for deploying broadband to certain unserved locations in partially served census blocks. With respect to VOIP intercarrier compensation, the FCC adopted a temporary, prospective, transitional default rate LECs may tariff, which is equal to LECs' intrastate originating access rates when they originate intrastate toll VoIP traffic until June 30, 2014.

The FCC also adopted new rules to limit the amount of capital and operating expenses a rate-of-return carrier is permitted to recover in the form of high-cost loop support. Under the new framework, the FCC will apply a regression analysis to compare the costs of carriers found to be "similarly situated" based on a set of pre-determined variables such as geography and housing density. The FCC will then cap carriers' reimbursable capital and operating expenses to exclude any costs that fall above the 90th percentile when compared to the "similarly situated" carriers.

Implementation of the new regression analysis will be phased in. Beginning in July 2012, the FCC will reduce support by 25 percent of the difference between the amount of support calculated using a carrier's reported cost per loop and the support the carrier would receive under the new regression analysis – unless that reduction would exceed 10 percent of the carrier's support under the previous rules. Beginning January 1, 2013, the 25 percent reduction will be increased to 50 percent. The new caps will then be fully implemented on January 1, 2014.

No Relief From USF Burden on Long Distance Carriers Expected This Year

Despite recent USF reform proposals, the 18 percent fee on interstate long distance revenues imposed by the existing funding scheme is unlikely to be resolved during this election year.

FCC Announces Mobility Fund Phase I Reverse Auction Procedures

The Mobility Fund phase I reverse auction is scheduled for September 27, 2012. The FCC released a Public Notice seeking comment on the procedures, terms and conditions that will govern the auction and the post-auction application procedures. The auction will award a total of $300 million in one-time support to carriers that agree to provide 3G or faster mobile voice and broadband service in unserved census blocks. Bidders will need to choose the option of launching 3G service within two years or 4G service within three years of receiving funding. Support will be awarded to the lowest bidder for a particular census area. The auction short-form application filing window opens on June 27, 2012 and closes at 6:00 pm on July 11, 2012.

FCC Seeks Comment on Noncommercial Educational Station Fundraising

Acting on a recommendation from last year's "The Information Needs of Communities" report, the FCC proposed new rules to allow public broadcasters to use 1 percent of their total annual broadcast time to conduct on-air fundraising for third parties. Current policy only allows fundraising for the benefit of the station. The proposed rules would allow stations to bypass a waiver process to conduct fundraisers in support of natural disasters such as Hurricane Katrina and the 2010 earthquake in Haiti. The Commission requests comment on whether 1) the ban on third-party fundraising remains necessary to preserve the noncommercial nature of public broadcasting; 2) there should be limits on such third-party fundraising; 3) the 1 percent annual broadcast time is appropriate; 4) durational limits should apply on specific fundraising efforts; 5) to require annual reports with respect to third-party fundraising; and 6) stations should be required to certify in their renewal applications that they complied with fundraising limits. Comments on the Notice of Proposed Rulemaking are due 30 days and 60 days, respectively after publication in the Federal Register.

Comments Sought on VPAAC Second Report

The FCC released two Public Notices requesting comments on the VPAAC (Video Programming Accessibility Advisory Committee) Second Report related to the 21st Century Communications and Video Accessibility Act (CVAA). Pursuant to upcoming rulemakings required by the CVAA, the first Notice requested comment on the portions of the VPAAC Second Report that address access to emergency information and device capabilities, while the second Notice seeks comment on user interfaces, video programming guides, and menus accessible on video programming apparatus and navigation devices discussed by VPAAC in its Report. The FCC is specifically interested in whether commenters agree with the recommendations VPAAC makes in its most recent Report. Comments for both Notices are requested by June 4 and reply comments are requested by June 19, 2012.

FCC PLMRS Narrowbanding Rule Waiver

The FCC waived its narrowbanding requirement for entities operating in the T-band (470-512 MHz) spectrum. Absent this waiver, those licensees had been required to modify their operations to 12.5 kHz channels by the end of the year. However, the Middle Class Tax Relief and Job Creation Act of 2012, requires T-band licensees to migrate out of the 470-512 MHz band. Consequently, the FCC found that it would be inequitable to require the licensees to invest in narrowband systems that would need to be relocated. The requirement for licensees to move to narrowbanding operations in the 150-174 MHz and 420-470 MHz bands remains in place.

Verizon’s Proposed Sale of Its 700 MHz A and B Spectrum Licenses

Verizon recently announced it is selling its A- and B-Block AWS spectrum licenses. In a Verizon earnings call, Chief Financial Officer Fran Shammo stated that Verizon’s proposed purchase of AWS spectrum from SpectrumCo and Cox fits better with Verizon’s C-Block spectrum and it decided to sell its A- and B-Block AWS spectrum licenses. Shammo defended the timing of the announced spectrum sale and, while the sale of the A and B licenses is contingent on the closing of the SpectrumCo and Cox AWS spectrum deals, he stated that the spectrum was not being sold because of any regulatory roadblocks in receiving approval of these other deals.

FCC Extends the 180-Day Clock for Verizon Wireless/Cable Transaction

The FCC has extended its informal 180-day transaction review period for the Verizon Wireless/SpectrumCo and Verizon Wireless/Cox transactions by 21 days because of production delays by the Applicants. According to the FCC, none of the applicants completed their responsive production by the requested date of March 22. Nearly two-thirds of responsive documents were submitted after April 6, and more than half of the Applicants’ total production was submitted after April 19. Other parties to the proceeding also complained of problems with gaining access to the documents, and the Applicants recently committed to take additional steps to facilitate third-party review of the record materials.

Senate Farm Bill & Broadband Funding

The Senate Agriculture Committee released a draft of the 2012 Farm Bill and moved it to Committee Mark-up as a measure to replace the 2007 Farm Bill which expires at the end of 2012. The 2012 bill contains a provision that would authorize $50 million annually for the Rural Utilities Service's "Rural Broadband Loan Program." The bill would thus fund as much as $250 million in rural broadband loans over its five-year term. Telecom projects serving communities with populations under 20,000, communities "experiencing outmigration," communities with a "high percentage" of low income residents and rural communities "isolated from other significant population centers" would receive priority treatment. The Farm Bill's broadband provisions were strongly endorsed by House Agriculture Rural Development Subcommittee leaders during the Subcommittee hearing on April 25, as members on both sides of the aisle expressed support for the expansion of broadband in rural communities. The 2012 Farm Bill also calls for greater transparency and reporting, including quarterly progress reports and a publicly searchable database identifying applicants and describing the status of every application.

House Passes Cybersecurity Legislation

The House recently passed four cybersecurity bills:

- ***The Cyber Intelligence Sharing and Protection Actt*** (H.R. 3523), known as "CISPA," introduced by Intelligence Committee Chairman Mike Rogers (R-MI), would require the sharing of cyber threat information between the intelligence community and cybersecurity entities in order to protect critical infrastructure -- this bill has been criticized by privacy advocates and the Administration has issued a threat of a veto of the bill.
- ***The Federal Information Security Amendments*** (H.R. 4257), introduced by Oversight & Government Reform Committee Chairman Darrell Issa (R-CA) -- would reform the Federal Information Security Management Act (FISMA).
- ***The Cybersecurity Enhancement Act*** (H.R. 2096), introduced by Representative Mike McCaul (R-TX) -- would aim to improve coordination of research and education conducted across federal agencies to better address evolving cyber threats.
- ***The Advancing America's Networking and Information Technology Research and Development (NITRD) Act*** (H.R. 3834), introduced by Science, Space, and Technology Chairman Ralph Hall (R-TX) -- would reauthorize the NITRD program, which represents the federal government's central R&D investment portfolio for computing, software and cybersecurity.

The bills are criticized for not going far enough to give the government oversight to protect cybersecurity in the U.S, and instead include largely voluntary measures. At the same time there are significant privacy and civil liberty concerns with the bills.

The Senate has its own version of a cybersecurity bill S. 2105, "Cybersecurity Act of 2012," sponsored by Senator Joe Lieberman, Chairman of the Senate Committee on Homeland Security. Majority Leader Reid has said cybersecurity is a priority for the Senate and intends to take up the cybersecurity measure when the Senate returns from recess, and after it votes on the student loan bill.

FCC Appeals "Janet Jackson" Case to the Supreme Court

The FCC filed an appeal with the U.S. Supreme Court asking that the Court uphold the FCC's $550,000 fine against CBS for the exposure of Janet Jackson's breast during the 2004 Super Bowl halftime show. The U.S. Court of Appeals for the Third Circuit ruled against the FCC after determining that the FCC's order imposing the fine was arbitrary and capricious. The FCC requested the Court wait to consider this case until after the Court issues an order in the Fox Television "fleeting expletive" case, expected by the end of the current term in June.

NHTSA Extends Distracted Driving Guideline Comment Period

The National Highway Traffic Safety Administration (NHTSA) extended its deadline for filing comments on guidelines designed to reduce distracted driving. The NHTSA guidelines are proposed for automobile manufacturers and manufacturers of in-vehicle devices to prevent those devices from being used by the driver to perform non-driving tasks while a driver is driving. NHTSA originally published the guidelines on February 24, 2012, and set the deadline for comments for April 24, 2012. However, NHTSA granted a petition filed by the Alliance of Automobile Manufacturers to extend the deadline for an additional 24 days so that interested parties may comment on additional research and data submitted into the public docket. Interested parties may comment on the guidelines by May 18, 2012.

FCC Launches New Bill Shock Website

The FCC's new bill shock website contains consumer-focused information, including a chart summarizing the status of wireless carriers' implementation of consumer usage alerts before and after consumers exceed their plan limits. Bill shock occurs when a consumer receives an unexpected increase in their monthly wireless bill due to exceeding their plan limits for voice, data and/or text services or incurring unexpected roaming charges.

The Community Connect Grant Program FY2012 Application Window is Open

The Rural Utilities Services' FY2012 Community Connect Grant Program (Program) application window is now open and closes on June 18. The Program provides funding for broadband services that will serve unserved, extremely rural, lower-income communities. There is $10.4 million in Program funding available for FY2012, with individual project awards in the $100,000 to $1.5 million range.

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If you have questions regarding any of the items discussed above, or if you are interested in filing comments or receiving copies of filed comments in any of the FCC proceedings mentioned, please contact the Patton Boggs TechComm practice group. More information about our team can be found at www.pattonboggstechcomm.com.

If you have any questions about the foregoing or if you require additional information, please contact:

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