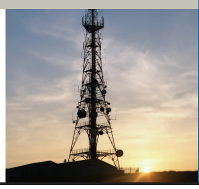

Washington Update — Confidential & Privileged — January 25, 2006

I. Legislative Branch Activity

The Senate Commerce Committee recently unveiled an aggressive schedule of sixteen full committee hearings to be held during a two-month time frame. Fourteen of these hearings concern rules and policies governing media and telecommunications. If the schedule is completed, the hearings will cover virtually every area of communications law that has been identified as a potential target for revision. Below is a list of hearings and related information.

Thursday, January 19, 10:00 AM - Decency

- Jack Valenti, Former Chairman and CEO, Motion Picture Association of America
- Charles W. Ergen, Chairman & CEO, EchoStar Communications Corporation
- David Cohen, Executive Vice President, Comcast Corporation
- Bruce Reese, Joint Board Chairman, National Association of Broadcasters (NAB)
- L. Brent Bozell III, President, Parents Television Counsel
- Martin Franks, Executive Vice President, CBS
- Alan Rosenberg, President, Screen Actors Guild
- Jeff McIntyre, Legislative and Federal Affairs Officer, American Psychological Association

This is the second part of a set of Senate Commerce Committee hearings on indecency. In opening remarks, Committee Chairman Ted Stevens (R-AK) that the current goal is to “develop a bipartisan consensus to get a bill to the floor as soon as we can.” It is not clear that such consensus can be achieved in the Senate.

The indecency bill passed by the House would apply to broadcasting, not pay television services, and would raise fines for indecent broadcasts from $27,000 to $500,000. The bill also provides the FCC with authority to revoke licenses as a penalty for indecency violations. If this bill passes, broadcasters are likely to seek relief in court, where television broadcasters will fare better than radio broadcasters because of their ability to offer parental controls. Thus, radio broadcasters would be disproportionately impacted by the legislation, if passed.

One of the bills before the committee would mandate à la carte cable pricing. At the Jan. 19 hearing, Sen. Stevens drew a distinction between indecency on broadcast versus cable and direct broadcast satellite (DBS), stating that “the First Amendment does impose some restrictions and constraints on what Congress can mandate.” Sen. Stevens stated that given these limitations and multichannel video programming distributor (MVPD) efforts to develop family-friendly tiers, Congress should “try to explore this voluntary option first.” Stevens also stated that further consideration of a la carte legislation should be delayed until Congress can review a revised report from the FCC on a la carte pricing. FCC Chairman Kevin Martin has stated that a new report which will be released soon demonstrates that mandating such pricing would reduce consumer costs, which contradicts the findings of the 2005 a la carte report released by the FCC last year.

On the day of the hearing, several media entities launched a campaign to educate the public about existing parental controls (i.e., ratings, v-chip, other blocking). Campaign participants include the "Big 4" television broadcast networks (NBC, ABC, CBS, and Fox), DirecTV, EchoStar Communications, the Ad Council, the MPAA, the NAB, the National Cable & Telecommunications Association, the Consumer Electronics Association, Viacom and Time Warner. Although he praised the media pan-education campaign, Sen. Stevens noted some problems with v-chip blocking, which also screens out blocks emergency announcements, news programming, and sports content because these programs aren't rated.

Tuesday, January 24, 10:00 AM - **Broadcast and Audio Flag**

- Andy Setos, President of Engineering, Fox Entertainment Group
- Jonathan Band, Counsel to the American Library Association, Technology Law and Policy
- Thomas B. Patton, Corporate Vice President of Government Relations, Philips Electronics North America Corporation
- Leslie Harris, Executive Director, Center for Democracy and Technology
- Mitch Bainwol, Chairman & CEO, Recording Industry Association of America (RIAA)
- Gary Shapiro, President & CEO, Consumers Electronics Association (CEA)
- Dan Halyburton, Senior Vice President and General Manager of Group Operations, Susquehanna Radio, representing the NAB.

With the FCC's broadcast flag vacated by the D.C. Circuit and an increasing amount of digital video and audio content moving across more platforms and onto more devices every year, content providers are looking to Congress for digital copy protection measures. Consumer electronics manufacturers have a lot at stake in digital rights management (DRM) debates, because DRM mandates impact product development and deployment. Organizations including the American Library Association, Electronic Frontier Foundation and Center for Democracy and Technology seek to limit DRM protections that might adversely affect consumers' use of content.

On Friday, January 20, 2006, Sen. Gordon Smith (R-OR) released a draft bill that would reinstate the video broadcast flag and related certifications previously adopted by the FCC. The bill also would establish an audio flag advisory panel, which would consist of representatives from various affected industry segments and consumer groups, including: the information technology, software, and consumer electronics industries; the broadcast radio, satellite radio, and cable industries; the audio recording and music publishing industries; performing rights and public interest organizations; and any other groups the FCC determines would be affected by audio flag rules. The advisory panel would be able to submit a single proposal to the FCC before it considers adoption of final audio flag rules.

The bill was discussed at the Jan. 24 Senate Commerce Committee hearing on the flag technologies. Andy Setos of Fox Entertainment Group contended that the flag and fair use are not mutually exclusive, and stated that he would not oppose clarifications to the bill to protect fair use. NAB supported reinstatement of the video broadcast flag, but deemed an audio flag premature at this time. RIAA, on the other hand, is very concerned about audio copy protection. Representatives of the consumer electronics industry, the American Library Association, and the Center for Democracy and Technology expressed concerns about the bill, pointing to the need for clarifications that would protect fair use.

There seems to be broad support on the Committee for the video broadcast flag, albeit with exemptions for certain types of content. There appears to be less consensus on the audio flag.

Upcoming hearings:
[Thursday, January 26, 10:00 AM - Competition and Convergence] – Postponed
Tuesday, January 31, 10:00 AM - **Video Franchising**
Tuesday, January 31, 2:30 PM - **Video Content**
Tuesday, February 7, 10:00 AM - **Net Neutrality**
Tuesday, February 14, 10:00 AM - **State and Local Issues and Municipal Networks**
Wednesday, February 15, 10:00 AM - **FCC Activities and Policy**

Tuesday, February 28, 10:00 AM - **USF Contributions**
Tuesday, February 28, 2:30 PM - **USF Distributions**
Thursday, March 2, 10:00 AM - **Wireless Issues/Spectrum Reform**
Tuesday, March 7 10:00 AM - **Rural Telecommunications**
Tuesday, March 14 10:00 AM - **Voice-over Internet Protocol (VoIP)**
Tuesday, March 14 2:30 PM - **Wall Street's Perspective on Telecommunications**

Subsequent updates will address these hearings and related legislative developments.

II. Federal Communications Commission (FCC) Activity

A. Filling In Empty Seats

New FCC Commissioner Deborah Taylor Tate was sworn in on January 3, 2006 for the remainder of the term expiring June 30, 2007. Many anticipate that Commissioner Tate's votes will line up closely with those of Chairman Martin.

Several news outlets report that President Bush is expected to nominate Robert McDowell to the available Republican seat at the FCC. McDowell currently serves as Senior Vice President and Assistant General Counsel at COMPTEL, the principal trade association for competitive local exchange carriers ("CLECs"). The White House has not publicly commented on the news stories. Senate Commerce Committee Chairman Ted Stevens told press that he has suggested McDowell "and others" for the open seat, and that he would support McDowell's confirmation if he is nominated.

The most likely opponents of such a nomination would be incumbent local exchange carriers. Another potential hurdle for McDowell is that he could be recused from certain significant FCC proceedings due to recent experiences as a lawyer and lobbyist. It is premature to conclude that McDowell will be nominated at this time, but we expect a nomination within the next few weeks.

B. Meetings and Actions

For the past several years, the FCC's January meeting agenda has consisted of Bureau and Office presentations that summarize the previous year's activities and describe how the activities effectuate the agency's strategic plan. The FCC will not vote at this meeting, nor are any significant policy initiatives likely to be announced. The next FCC meeting is scheduled for Friday, February 10, 2006. The agenda has not yet been published.

No recent FCC actions warrant comment. There are several pending proceedings that are likely to generate FCC action in the near term, including the following:

Proceeding	Issue(s)	Likely Timing of FCC Action
Broadcast and Wireless Auctions	• FM Auction #62 (171 permits) • Full Power TV Auction #64 (11 permits) • 800 MHz Air-Ground Radiotelephone Service Auction #65 • 1710-1755 and 2110-2155 MHz Advanced Wireless Services Auction	Began 1/12/06 Begins 3/15/06 Begins 5/10/06 Not scheduled; expected summer 2006
Annual Video Competition Report	Usually a routine "state of the industry" report, this year's report may also signal important policy/regulatory actions plans for the future.	Jan./Feb. 2006

Proceeding	Issue(s)	Likely Timing of FCC Action
A la Carte/Themed Tiering	Report and/or rulemaking proceeding concerning a la carte or themed tier offerings by MVPDs.	Report likely in 1Q 2006; other activity possible in 2006
Time Warner/Comcast – Adelphia	Several parties urge the FCC to impose conditions on the transaction. Proposed conditions would ensure: MVPD access to merged entities' regional sports networks (RSNs); carriage of unaffiliated programming content; and net neutrality on Comcast and Time Warner broadband platforms	1Q or 2Q 2006
Local Franchising NPRM	FCC has proposed rules that would facilitate the local franchise approval process for telcos seeking to enter the video programming distribution market.	2Q 2006
Designated Entity (DE) Rules for FCC Auctions	Some FCC observers report that there is an agreement among Commissioners for adoption of revisions to rules governing DEs (essentially small businesses and new entrants) prior to commencement of an advanced wireless services auction this summer. New rules would be significant should they restrict the permitted relationships between incumbent carriers and DEs.	2Q 2006
Cable Horizontal and Vertical Ownership Limits	May 2005 further notice seeks to update stale record. An earlier notice sought comment on how to address D.C. Circuit remand of cable ownership regulations.	3Q 2006
IP-Enabled Services	Will address the regulatory treatment of IP-enabled services, including video services.	4Q 2006
Program Access Rules	Rules governing MVPD access to certain programming owned by cable operators will sunset in October 2007. FCC to evaluate whether sunset date should be extended.	4Q 2006
2006 Quadrennial Review of Broadcast Ownership Rules	FCC must respond to Prometheus remand and reconsideration petitions and begin 2006 review.	By statute, NPRM must issue in 2006
"White Spaces" Proceeding	FCC proposes to allow unlicensed radio transmitters to operate in the broadcast television spectrum at locations where that spectrum is not being used; seeks comment.	4Q 2006

Proceeding	Issue(s)	Likely Timing of FCC Action
Digital Must-Carry	Outstanding issues include: material degradation, program-related material, DBS carriage of DTV signals.	3Q or 4Q 2006
Digital Television Distributed Transmission System ("DTS")Technologies	DTS allows broadcasters to use transmitters to fill-in service gaps caused by geographic barriers such as terrain. Some broadcasters are using DTS on an experimental basis. FCC is currently considering rules for permanent DTS operation.	3Q or 4Q 2006
DTV Second Periodic Review	Outstanding issue concerning upgrades to open v-chip.	3Q or 4Q 2006
Plug & Play	**One-Way:** FCC action on reconsideration pending; Court of Appeals held in abeyance. **Two-Way:** Ongoing negotiations and reporting to FCC throughout 2006; potential NPRM.	3Q or 4Q 2006

III. Executive Branch Activity: The National Telecommunications and Information Administration (NTIA)

NTIA released a report in December 2005 finding that federal government users could be moved out of the 1710-1755 MHz band at a cost far less than previously estimated. Transmittal of the report to the FCC paves the way for auction of this "beach front" spectrum, which is presently shared by 12 different government agencies. The report concluded that the 2,240 frequency assignments used by the federal agencies could be re-located for about $936 million, and that the relocation costs could be recovered through the auction.
The 1710-1755 MHz band is one of two bands identified in a 2002 NTIA Viability Assessment as spectrum that could be allocated for new commercial services without disrupting communications systems critical to national security. On November 25, 2003, the FCC adopted service rules for auctioning this spectrum, including provisions pertaining to application procedures, licensing, technical operations, and competitive bidding. On December 23, 2004, President Bush signed into law the Commercial Spectrum Enhancement Act, which provided a funding mechanism through which federal agencies can recover the costs associated with relocating their radio communications systems from bands to be auctioned for commercial purposes.
The auction is expected to commence in summer 2006. NTIA estimates that new services will benefit approximately 195 million U.S. wireless subscribers.

IV. Antitrust Agency Activity

A. Transactions

Adelphia. The Federal Trade Commission ("FTC") is presently reviewing the proposed sale of Adelphia cable systems to Comcast and Time Warner, along with several related transactions involving system swaps between Comcast and Time Warner. The transaction valued Adelphia at $17.6 billion, to be paid in a combination of cash and stock. FCC and bankruptcy court approvals also are required.

PanAmSat. The US Department of Justice ("DOJ") is presently reviewing Intelsat's proposed acquisition of PanAmSat. In their application before the FCC, the transacting parties contend that they are proposing a merger of complements, not competitors, because Intelsat is principally focused on the provision of telephony and data services, while PanAmSat's business has historically focused on video distribution. All but two commenters before the FCC have supported the proposed merger. In spite of the parties' claims and the lack of opposition in the record at the FCC, some observers believe that an antitrust authority and/or the FCC may impose conditions to avoid potential harms to competition in the market for video distribution services. The Intelsat-PanAmSat merger agreement provides that the transaction can still close even if regulatory authorities mandate a divestiture of up to three satellites from a list of three specified satellites. Thus, the imposition of certain merger approval conditions would not unravel the proposed transaction. If regulatory authorities mandate divestiture of assets different from or in addition to those specified in the Intelsat-PanAmSat merger agreement, agreement terms would have to be re-negotiated, potentially delaying or frustrating the proposed merger.

B. Enforcement

On December 13, 2005, the FTC announced that DIRECTV would pay $5,335,000 to settle FTC charges that, since October 2003, DIRECTV and companies it hired to promote DIRECTV programming have been violating the Do Not Call provisions of the Commission's Telemarketing Sales Rule. This is the largest civil penalty the FTC has ever announced in a case enforcing any consumer protection law.

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