



Washington Communications & Media Policy Update – July 31, 2006

I. Legislative Branch Activity

A. House Passes Interoperability Bill.

On July 25, the House passed 414-2 a bill (HR-5852) that would coordinate national, state, and local emergency communications efforts through a new Department of Homeland Security. The head of the new DHS emergency communications office would oversee all such communications nationwide. States would have to write plans and coordinate regionally among federal, state, and local officials. The bill would tie award of DHS grants to development of “effective statement interoperable communications plans.”

B. Legislative Calendar.

On July 31, the House enters its summer recess. The Senate will remain active for another week, before stopping work on August 7. Both Houses of Congress will reconvene post Labor Day on September 5.

II. Federal Communications Commission (FCC) Activity

A. FCC Meeting.

The Commission held an open meeting on July 13, 2006. At the meeting, the Commission adopted four items: the Adelphia/Time Warner/Comcast license transfer, a proposed forfeiture involving its CPNI investigation against LocateCell, a rulemaking to establish a new “MedRadio” service for medical radio communication devices, and a rulemaking on TRS compensation. Just prior to the meeting, an item concerning digital audio broadcasting systems was removed from the agenda.

1. FCC Approves Adelphia/Time Warner/Comcast License Transfer. The FCC approved the sale of substantially all of the cable systems and assets of Adelphia Communications Corporation to Time Warner and Comcast Corporation, the exchange of certain cable systems and assets between affiliates or subsidiaries of Time Warner and Comcast, and the redemption of Comcast’s interests in Time Warner Cable and Time Warner Entertainment Company.

The Commission determined that subscribers would benefit from the resolution of the Adelphia bankruptcy proceeding in the form of new investment and upgrades to the network. Additionally, the transactions would accelerate deployment of VoIP and other advanced video services, such as local VOD programming, to subscribers.

Conversely, the Commission found that the proposed transactions may increase the likelihood of harm in markets in which Time Warner or Comcast has, or may in the future have, an ownership interest in Regional Sports Networks. The Commission imposed remedial conditions similar to those imposed in the News Corp.-Hughes order to address its concerns.

2. FCC Proposes Forfeiture in Context of Its CPNI Investigation – Commission Proposes Maximum Forfeiture Of \$97,500 Against LocateCell. The FCC found that LocateCell apparently “willfully or repeatedly” violated a Commission order by failing to provide information and documents required by a subpoena. For this failure, the Commission issued a \$97,500 Notice of Apparent Liability for Forfeiture against LocateCell.

LocateCell received the subpoena as part of the Commission’s investigation into the apparent offering and sale of customer proprietary network information (CPNI) by data brokers. The subpoena sought to determine how LocateCell was able to access sensitive personal subscriber information that telecommunications carriers are obligated to protect under section 222 of the Telecommunications Act and the Commission’s rules.

3. FCC Begins Rulemaking to Establish A New “MedRadio” Service for Medical Radio Communication Devices. (Docket: 06-135) The FCC initiated a proceeding to establish a new service for advanced medical radio communication devices in the 401-406 MHz band. In the NPRM, the FCC proposed designating an additional two-megahertz of spectrum for these devices, at 401-402 MHz and 405-406 MHz, adjacent to the existing Medical Implant Communications Service (MICS) band at 402-405 MHz, for a total of 5 megahertz specifically designated for medical device radio communications.

4. FCC Seeks Comment on Broad Range of Issues Concerning TRS Compensation. (Docket: 03-123) The Commission is seeking comment on a broad range of issues concerning the compensation of providers of telecommunications relay services (TRS) from the Interstate TRS Fund for their costs of providing TRS. Title IV of the Americans with Disabilities Act of 1990 (ADA) requires common carriers offering “telephone voice transmission services” to also provide TRS so that persons with hearing and speech disabilities will have access to the telephone system. The ADA also mandates that eligible TRS providers will be compensated for certain costs associated with providing TRS.

B. Other FCC Activity.

1. FCC Releases FNPRM for Media Ownership Proceeding. (Docket: 02-277)

The FCC released a Further Notice of Proposed Rulemaking on July 24 that seeks comment on issues raised by the U.S. Court of Appeals for the Third Circuit in *Prometheus v. FCC*, which two years ago stayed and remanded several media ownership rules that the Commission had adopted in its 2002 Biennial Review Order. The FNPRM seeks comment on the following ownership rules:

- Local Television Ownership Limit
- Local Radio Ownership Limit
- Newspaper Broadcast Cross-Ownership Ban
- Radio Television Cross-Ownership Limit
- Dual Network Ban
- UHF discount on the National Television Ownership Limit

C. Next Commission Meeting.

The next Commission meeting is currently scheduled for 9:30 AM on Thursday, August 3, 2006. The agenda for that meeting will include three items: 1) An Order concerning the classification of Broadband over Power Line Internet access service; 2) An Order in response to petitions for reconsideration of the rules applicable to Broadband over Power Line systems; 3) A Notice of Proposed Rulemaking regarding the rules governing wireless licenses in the 698-746, 747-762, and 777-792 MHz Bands.

D. Pending Proceedings.

There are several pending proceedings that may be acted upon in the near term, including the following.

Proceeding	Issue(s)	Likely Timing of FCC Action
Broadcast and Wireless Auctions	<p>1710-1755 and 2110-2155 MHz Advanced Wireless Services Auction # 66. Short-form applications were filed June 19. Upfront payments due July 17. A mock auction will be held on August 7.</p> <p>Digital LPTV Auction # 85 – LPTV stations can convert to digital operations on their analog channels or by obtaining a companion digital channel. Applications were due June 30. An auction seminar was held on June 12 and can be viewed via streaming video on the FCC's website.</p>	<p>Begins 8/9/06</p> <p>Not yet scheduled; expected 3Q 2006</p>
Local Franchising NPRM	Rules would facilitate the franchise approval process for telcos seeking to enter the video market.	4Q 2006
Distributed Transmission System (DTS) Technologies	Allows broadcasters to use transmitters to fill-in service gaps caused by geographic barriers. FCC is 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	<p>One-Way: FCC action on reconsideration pending; Court of Appeals held in abeyance.</p> <p>Two-Way: Ongoing negotiations and reporting to FCC throughout 2006; potential NPRM.</p>	3Q or 4Q 2006
Cable Horizontal and Vertical Ownership Limits	May 2005 further notice seeks to update record. An earlier notice sought comment on how to address D.C. Circuit remand of cable ownership regulations.	4Q 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

Proceeding	Issue(s)	Likely Timing of FCC Action
"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
AT&T-Bellsouth Merger	Comments filed June 5; replies filed June 20.	4Q 2006 or 1Q 2007
Digital Must-Carry	Outstanding issues include: material degradation, program-related material, DBS carriage of DTV signals.	2007 or 2008

III. Executive Branch Activity

A. NTIA Seeks Public Comment on Digital Television Converter Box Program.

The Deficit Reduction Act of 2005 imposes a deadline of February 18, 2009 for completion of the transition to digital television. The Act also requires the National Telecommunications and Information Administration (NTIA) to implement and administer a program to provide coupons to consumers for use towards the purchase of digital-to-analog converter boxes. The converter boxes are necessary for consumers who wish to continue receiving broadcast programming over the air using analog-only televisions after the February 2009 transition deadline. Without converter boxes, consumers with analog-only television sets will be unable to view full-power television broadcasts unless they purchase digital television sets or subscribe to cable or satellite service. The NTIA's Notice of Proposed Rulemaking seeks public comment on such issues as which U.S. households should receive the coupons to help purchase a digital converter box, restrictions for the coupons, the application process, coupon expiration manufacturing standard for the converter box, and the coupon distribution system. The deadline for filing comments is September 25, 2006.

IV. Antitrust Agency Activity/Deal Announcements

A. Court Reviews DOJ Action on Verizon-MCI and SBC-AT&T Mergers.

U.S. District Court Judge Emmet Sullivan is overseeing a Tunney Act review of the Department of Justice's ("DOJ's") approval of the Verizon-MCI and SBC-AT&T mergers. The Tunney Act provides the judiciary with the authority to evaluate the effectiveness of consent decrees and whether those decrees will protect the public interest. The Act also directs judges to consider the impact of a transaction on "competition in the relevant market or markets."

Earlier this month, Judge Sullivan requested unredacted versions of the consent agreements entered into by the telecommunications companies and the DOJ in connection with the two mergers. Judge Sullivan later requested additional supporting information and gave the government until Aug. 7 to file the necessary documents with the court. It is not anticipated that Tunney Act review will ultimately unravel either merger, although some observers note that the review may result in additional merger conditions, such as further asset divestitures.

V. Litigation

A. Consumer Protection Groups take CALEA case to Court of Appeals En Banc.

The U.S. Court of Appeals in June upheld a newer and broader definition of the Communications Assistance for Law Enforcement Act (CALEA). The original CALEA bill, passed in 1994, required telephone companies to set up their infrastructure to more easily allow for law enforcement wiretaps. The law's revision would expand the requirement to broadband providers and voice over Internet protocol.

A coalition of groups, including the Electronic Frontier Foundation, the Electronic Privacy Information Centre, Pulver.com, Sun Microsystems, and the National Association of College and University Business Officials, intend to seek en banc review of the legislation. Those organizations argue the Internet is technologically different from phone companies and that expanding the 1994 law would create security loopholes. They also maintain that the FCC went too far when it framed the requirements for ISPs and argue that the FCC is demanding changes that are outside of its legal scope.

B. FCC Seeks an Additional Review of Indecency.

The FCC on July 5 asked an appeals court to return a case to the agency so it could reconsider for another 60 days whether some episodes of "The Early Show," "NYPD Blue" and Billboard music award shows violated decency standards. Taking the case back "would allow the Commission to hear all of the licensees' arguments, which is necessary for the broadcasters to make these same arguments before the court," the Commission said. The court will hear oral arguments from "any party desiring" to weigh in on the FCC remand request and oppositions to that request on August 8 at 2 p.m.

C. Settlement Approved in Gabelli Fraud Case.

Mario Gabelli, and related companies, will pay \$130 million to resolve civil fraud allegations that Gabelli created fake companies to gain an unfair advantage in the auctions of cell phone spectrum. According to the terms of the settlement, neither Gabelli nor any of the affiliated entities or individuals admitted any wrongdoing or liability. The lawsuit had accused Gabelli of rigging the system by creating sham companies that bid for wireless phone licenses at a discount under rules favoring minority and small businesses. He then resold the licenses at a profit, according to the government.

D. CBS to appeal FCC ruling on Jackson fine.

On July 28, CBS paid a \$550,000 indecency fine for the Janet Jackson Super Bowl incident, but it intends to take the decision to court. The television network said the fine was "unconstitutional, contrary to the Communications Act and FCC rules and generally arbitrary, capricious and contrary to law."

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