



WASHINGTON COMMUNICATIONS & MEDIA POLICY UPDATE – JUNE 30, 2006

I. Legislative Branch Activity

The legislative news of the month surrounded the three-day markup and subsequent passage on June 28 of the Senate telecom bill (S.2686) by the Commerce Committee. The bill passed by a vote of 15-7. Perhaps more importantly, there was an 11-11 tie on the primary network neutrality amendment offered, which Chairman Stevens then broke to defeat the measure. One Republican, Sen. Olympia Snowe (R-Maine), a co-sponsor of the bill, crossed over to vote with the Democrats. If the network neutrality amendment had passed, the overall bill likely would not have made it through the full Senate and any subsequent conference with the House, because the issue is so divisive.

The Committee also rejected a plan to require Bell telecommunications companies providing video services to expand those offerings to all neighborhoods throughout the regions where they offer service. But the unexpectedly close margin -- the proposal was defeated by a 12-10 vote -- led cable industry lobbyists to predict that the issue would resurface when the full bill reaches the Senate floor.

Some Wednesday additions to the bill that were approved include an amendment making room for as many as 2,000 new low power FM stations; an amendment requiring the FCC to seek comment on specific new ownership rules before it issues a final order in its just-launched regulatory review; and an amendment essentially declaring the FCC's deregulatory ownership rules null and void and officially declaring the old rules restored.

Digital content-protection technology issues were also raised during mark-up. The Senate bill would grant the FCC authority to adopt both audio and video flag, but with carve-outs for fair use.

Chairman Stevens predicted that any floor action on the bill would come after the August recess.

Earlier in the month, the House voted 321-101 to pass its version of telecom reform, the Communications Opportunity, Promotion and Enhancement (COPE) Act. The bill would set video franchising rules for competitors to cable. A controversial amendment on net neutrality was voted down.

On June 7, Sen. John McCain (R-AZ) finally introduced his cable 'a la carte' bill (S.3457). Not gathering the support he had hoped, McCain offered his bill as an amendment to the Senate telecom bill. The amendment would have denied new streamlined video franchising to video service providers that do not offer their programming on a per-channel basis, and it would have denied broadcast-flag protection to TV stations that do not allow their channels to be offered on a stand-alone basis. The amendment was voted down by a 20-2 margin.

Also on June 7, the Broadcast Decency Enforcement Act of 2005 (S.193), which passed the Senate in May, breezed through the House by a vote of 379 - 35. It was signed into law by the President a week later. The bill increased to \$325,000 the per-incident fine the FCC can impose on licensees for broadcasting indecent or obscene material.

II. Federal Communications Commission (FCC) Activity

A. FCC Meeting

The Commission held an open meeting on June 21, 2006. At the meeting, the Commission adopted two items, one concerning media ownership and one concerning the Universal Service Fund (USF). Just prior to the meeting, an item that was expected to mandate cable carriage of multiple streams of digital television broadcast signals was removed from the agenda.

FCC Opens Media Ownership Proceeding for Public Comment. (Docket: 02-277) The FCC adopted a Further Notice of Proposed Rulemaking that seeks comment on how to address the 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 Further Notice also opens a comprehensive quadrennial review of all of the media ownership rules, as required by statute. The text of the FNPRM has not yet been released.

FCC Updates Approach for Assessing Contributions to the Federal Universal Service Fund (USF). The FCC adopted two modifications to its approach for assessing contributions. First, the Commission raises the existing wireless "safe harbor" percentage used to estimate interstate revenue from 28.5 percent to 37.1 percent of total end-user telecommunications revenue to better reflect growing demand for wireless services. Second, the Commission expanded the base of USF contributions by extending universal service contribution obligations to providers of interconnected voice over Internet Protocol, or VoIP, service.

B. Other FCC Activity

1. Commission Proposes Rules for New Broadcasting Satellite Service.

The Commission adopted a Notice of Proposed Rulemaking (NPRM) seeking comment on licensing and service rules for satellites authorized to provide service to the United States in the 17/24 GHz Broadcasting Satellite Service (BSS).

The NPRM seeks comment on proposals related to operations in the 17/24 GHz BSS band, including: (1) the appropriate method for processing applications; (2) license terms, replacement satellites, access to the U.S. market from non-U.S. satellites, and milestone requirements; (3) public service obligations, geographic service and emergency alert system (EAS) requirements; (4) use of spectrum allocated internationally, but not domestically, by receiving earth stations located outside the United States; (5) orbital spacing and antenna performance standards; (6) inter- and intra-service sharing; and (7) other technical requirements, such as reverse band operations.

2. FCC Approves Intelsat/PanAmSat Merger.

The FCC approved the merger of Intelsat Holdings, Ltd. with PanAmSat Holding Corporation. Upon completion of the transaction, PanAmSat will become an indirect wholly-owned subsidiary of Intelsat. Post-merger, PanAmSat and its subsidiaries will continue as separate corporate entities. The transaction involves the transfer of control, to Intelsat, of Commission-issued licenses and authorizations held by PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp., two subsidiaries of PanAmSat. The Commission did not impose any conditions on its approval of the transaction, expect that Intelsat must comply with certain national security, law enforcement and public safety commitments it has made to the Department of Justice, Defense and Homeland Security.

3. FCC Seeks Public Comment on Creation of a Spectrum Sharing Innovation Test-Bed.

Comment Date: July 10, 2006

Reply Comment Date: July 24, 2006

ET Docket No. 06-89

The FCC and NTIA are each seeking 10 MHz of spectrum, which will be used to evaluate innovative methods for spectrum sharing among disparate users. The Public Notice sought comment on a wide range of issues that are integral to the creation of such a test-bed, which will be called the Spectrum Sharing Innovation Test-Bed. NTIA is also soliciting comment on many of these same issues through a Notice of Inquiry.

4. Tribal Representatives, FCC Officials and Telecommunications Industry Representatives to Participate in an Interactive Educational Workshop and Roundtable Sessions.

As part of the FCC's Indian Telecommunications Initiatives program ("ITI"), and in cooperation with Southern California Tribal Chairman's Association ("SCTCA") Tribal Digital Village, the National Congress of American Indians ("NCAI"), and the Center for Native American Public Radio ("CNAPR"), the FCC will host its fifth ITI Regional Workshop and Roundtable ("ITI San Diego") on July 27th and 28th in San Diego, California. This workshop is designed to increase the FCC's and Tribal Nations' understanding of essential telecommunications issues impacting the deployment of telecommunications services in Indian Country and to perpetuate intergovernmental consultation between the parties in order to identify and remove barriers to telecommunications deployment in Indian Country.

C. Next Commission Meeting.

The next Commission meeting is currently scheduled for Thursday, July 13, 2006. The agenda is not yet available.

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	800 MHz Air-Ground Radiotelephone Service Auction #65. - Auction raised \$38,339,000. Two winning bidders won two licenses: AC BidCo LLC and LiveTV, LLC.	Ended 6/2/06
	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.	Begins 8/9/06
	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	Not yet scheduled; expected 3Q 2006

Proceeding	Issue(s)	Likely Timing of FCC Action
2006 Quadrennial Review of Broadcast Ownership Rules	FCC must respond to Prometheus remand and reconsideration petitions and begin 2006 review.	NPRM adopted June 21, but not yet released
Time Warner/Comcast - Adelphia	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. Bankruptcy court approved plans for sale of Adelphia's assets in late June. FCC approval is expected very soon. Program access conditions are widely anticipated.	July 2006
Local Franchising NPRM	Rules would facilitate the franchise approval process for telcos seeking to enter the video market.	3Q 2006
Digital Must-Carry	Outstanding issues include: material degradation, program-related material, DBS carriage of DTV signals.	3Q or 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	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
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

Proceeding	Issue(s)	Likely Timing of FCC Action
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
"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 due June 5; replies due June 20.	4Q 2006 or 1Q 2007

III. Executive Branch Activity

A. NTIA Seeks Public Comment On Creation Of Spectrum Sharing Innovation Test-Bed

The Commerce Department called for public comment on a proposed spectrum sharing test-bed to explore innovative ways to make more intensive use of the nation's airwaves and promote continued economic growth and national security. The test-bed proposal, a key recommendation of President Bush's Spectrum Policy Initiative, would enable federal and non-federal users of spectrum to test ideas on new ways to share the finite radio spectrum. Two years after establishment of the test-bed, NTIA and the FCC will develop reports outlining the results and suggesting appropriate procedures for expanding the test-bed as appropriate.

IV. Antitrust Agency Activity/Deal Announcements

A. Univision's Board Approves \$12.3 Billion Sale

Univision Communications Inc.'s board agreed to sell the nation's largest Spanish-language broadcaster for \$12.3 billion in cash to a consortium of investors. The consortium, led by private equity firms Texas Pacific Group Inc. and Thomas H. Lee Partners, also includes Madison Dearborn Partners LLC, Providence Equity Partners Inc., and Haim Saban. The deal, if approved by Univision shareholders and regulators, is expected to close in the fourth quarter of this year or first quarter of 2007.

V. Litigation

1. DC Circuit Upholds FCC Unbundling Rules

Ruling in *Covad v. FCC*, the court rejected various challenges to the Feb. 2005 FCC order limiting competitor access to Bells' high capacity facilities based on tests of whether competitors would be "impaired" without such access. Known as the Triennial Review Remand Order, the FCC decision also dropped mass market switching from the list of UNEs available to competitors at TELRIC rates, eliminating the UNE platform as a vehicle for low-cost entry. The court disagreed with CLEC arguments that they're "universally impaired" unless they have unbundled access to high-capacity DS1 and DS3 facilities. The CLECs sought nationwide unbundling of DS-1 loops, a blanket action earlier court rulings denied.

2. DC Circuit Upholds Extension of CALEA to VoIP

Several VoIP providers and organizations concerned with consumer privacy appealed the FCC's decision to extend the lawful intercept obligations of the Communications Assistance for Law Enforcement Act (CALEA) to VoIP and broadband services. Appellants argued that the Commission's extension of CALEA obligations to VoIP providers is contrary to Congress' intent and the FCC's own regulatory treatment of information services, which include IP-enabled services like VoIP. On June 9, the D.C. Circuit upheld the FCC's extension of CALEA obligations to VoIP in split decision. Judges David Sentelle and Janice Brown voted to uphold the decision, but Senior Judge Harry Edwards dissented.

3. Third Circuit Denies Stay Request in Litigation on Designated Entity ("DE") Rules

On June 29th, a U.S. appeals court refused to delay the August auction of valuable wireless airwaves despite concerns raised by some smaller carriers. Although the court found that the petitioners had failed to establish that they would suffer irreparable harm without a delay, it expressed no opinion as to the merits of petitioners claims, which remain pending.

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