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Land-Mobile Radio Will Remain Critical for Public Safety After FirstNet Built, APCO Summit Hears

Traditional land-mobile radio will remain critical for public safety well after FirstNet is launched, speakers said Monday at the Association of Public-Safety Communications Officials Broadband Summit. An NTIA official said implementation grants are likely to be awarded starting in July.

"There are many people in this room who are in the mainstream of public safety communications," said Harlin McEwen, chairman of FirstNet's Public Safety Advisory Committee (PSAC). "That mainstream is land-mobile radio, that is voice mission-critical communications." Some "think you can magically abandon" LMR and "jump to the next" technology, he said. "That's the problem that we are really facing. ... We have to maintain these mission-critical voice systems and at the same time we've got to be visionary and look at what is going to come in the future. It's just as simple as that."

"Mission-critical voice is different than business voice," said Tom Sorley, Houston's deputy director-Radio Communication Services. "We just cut over to a \$100 million radio system. We didn't spend that money because there was another solution sitting over here. We spent it because that's the only choice we had." Sorley said he's going to go before the Houston City Council to ask for a doubling of the department's budget. Public safety communications is built on traditional LMR systems and can't count on FirstNet as a substitute, he said. "It's very speculative and as public safety folks we don't tend to operate out of the edge of how this might work," he said. "It's got to work. Until we can know that it works, we can't go there, and that's the key to this discussion."

McEwen said FirstNet seems to be taking PSAC's recommendations seriously. On Dec. 11, PSAC sent launch requirement documents to FirstNet, he said. In March, the PSAC's executive committee met

with the FirstNet consulting team. “We were given very high level kinds of presentations on various things, various options that are just being considered by the technical team,” McEwen said. “Everything we saw and had a chance to comment on had a basis from these launch requirements. They kept mentioning ‘we did this because you said this.’”

Much technical work remains, said Andy Thiessen of the Institute for Telecommunication Sciences. “One huge place that was left unquantified was the definition of public safety grade,” he said. “That is something that is near and dear to all public safety officials' hearts.” Thiessen predicted data interoperability will prove “the biggest hairball of all.” In LMR, technology is spread across numerous bands and different technologies and interoperability has been a challenge, he said. “I think that was a cake walk compared to what we’re looking at on this LTE network.”

Also at the summit, Brett Haan of Deloitte Consulting, program director of the 800 MHz Transition Administrator, said FirstNet should take a page from that process and be as open as possible. Deloitte was selected through an open, transparent process to manage the TA, he said. “We did a nationwide, regional prioritization plan in three months that was put on the public record so that your state and local officials could respond to it,” he said. “That sort of clarity increases your confidence. That way your officials ... know what’s going to happen, when it’s going to happen and why and how.”

FirstNet needs to be attuned to the states, Haan said. “Fiscally, it will be a new item, a new budget item, whether it’s for a city, a county or a state,” he said. “Make sure that your officials, not just public safety, but administrators and others, can plan for it and budget for it. It will have a fiscal impact on what you want to do.” Procedurally, “many states have biennial legislatures,” he told the APCO attendees. “As you’re planning for this, you have to make sure it falls within your cycles.”

Stephen Fletcher, association administrator of NTIA's Office of Public Safety Communications, said further instructions are coming on the new \$135 million State and Local Implementation Grant Program, which is part of FirstNet. “There will be probably some changes, or some recommended changes, for all those who applied for grants,” Fletcher said. “We look forward to getting an award for those grants in the middle to end of July.” — *Howard Buskirk*

'Live Still Matters'

ABC Live-Streaming App Still Leaves 'Huge Opening' for Mobile DTV, Stakeholders Say

ABC's Internet Protocol-based live-streaming application doesn't change mobile DTV strategy "in the least," an executive from the Dyle mobile DTV service told us. Instead, the coming application validates mobile DTV, proving "there is demand for live-streamed content," said the executive, Salil Dalvi, Dyle co-general manager. Broadcasting and mobile DTV consultant John Lawson also said the app offers a cheaper streaming option than Aereo. The app still leaves a "huge opening" for a service like mobile DTV that does not require a Wi-Fi or cellular data connection, said Lawson, principal at Convergence Services.

ABC said Monday it will launch a new app this week that will allow cable subscribers in New York and Philadelphia to watch its network and local programming live on iOS devices and the Kindle



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Fire (<http://bit.ly/166hP61>). Unlike mobile DTV, the app will stream over the Internet and require either a wireless connection or a cellular data package. Although the network's content is available for free over the airwaves, only cable subscribers will be able to use the mobile app. ABC has plans to expand the service to other markets in the coming months, it said.

Lawson said ABC's move could signal a willingness to get on board with mobile DTV. ABC doesn't offer its network content over mobile DTV, several DTV industry members confirmed. "It's hugely significant that ABC is allowing their content to be streamed because they've been a bit reluctant regarding mobile DTV," said Lawson. "I think this is a step closer to where ABC truly will be serving all mobile consumers." He also said ABC probably does not see the two types of offerings as an either/or scenario, but rather as one more way for the consumer to get content. ABC had no comment by our deadline.

Regardless of ABC's plans regarding mobile DTV, Dyle executives said the technology remains relevant even as broadcasters roll out Internet-based apps. Erik Moreno and Dalvi, co-general managers of Dyle, said the proliferation of network- and channel-specific applications shouldn't be seen as competition for mobile DTV. Instead, the apps would highlight the advantages of the technology, including that it can offer multiple channels in one application. Its biggest advantage is that it does not use bandwidth, so consumers won't need to find a hotspot or face data-related charges for using the service frequently, they said. On an IP-based app, "without having bandwidth, either the experience becomes poor or becomes too costly for the average consumer," Dalvi said. "That's the fundamental problem that we solve."

ABC's app, in contrast, practically requires a Wi-Fi connection, said Sam Matheny, vice president of policy and innovation at Capitol Broadcasting. "I think that's what this application is probably targeting — more of a Wi-Fi [distribution] as opposed to a truly mobile distribution." As one looks "at the best

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available network and the one that's going to truly scale the most, be the most cost-effective for a station to offer the service and provide the true mobile coverage, I think really that mobile DTV is the answer," he said.

More than anything, the ABC app validated what Dyle and others are doing with mobile DTV, Dalvi said. "There is demand for live-streamed content. One of the things we've seen is that as these networks are starting to launch live-streamed content, it's kind of a validation that live actually still matters to the consumer," he said. "I think that's a very good indicator, that you've got some of the largest media companies in the world deciding [to] go ahead and offer a 24-hour live stream of [their] content — that tells me that we're playing in the right sport." Moreno said consumers "won't care which radio it comes over. They won't care if it's coming over Dyle, or if it comes over the IP network. What they want is the content and we want to make it available, as networks and affiliates. We want our consumers happy and getting the content, especially if it's behind an authenticated service." For that reason, Fox offers its content for live-streaming "jointly" over its IP-based application and on Dyle's mobile DTV services, he said. He hopes ABC and other networks can be convinced to do the same, he said.

But Lawson said the mobile DTV industry has not yet cemented its relevance with consumers. "The window is not going to be open forever for mobile DTV to be successful in the marketplace," he said. "It's because the carriers will train people that they can get video content they want, but they have to pay for it through their data plans. We've seen many technologies come and go that might have been more suited for a particular application, but other market forces render them irrelevant." He said there is certainly space for mobile DTV and demand for its bandwidth advantages, but warned that the technology could also be rendered irrelevant if "more broadcasters don't make the modest investment to light up their stations." — *Erin Mershon*

NAB: Market Works Well

Satellite, Cable and Broadcasters Set Table for STELA Reauthorization Debate

Dish General Counsel Stanton Dodge will appeal to lawmakers Tuesday for retransmission consent reform and characterize broadcaster opposition to Dish's DVR Hopper service as anti-consumer. His written testimony circulated among lobbyists ahead of the Senate Communications Subcommittee's second "state of" communications hearings under Chairman Mark Pryor, D-Ark., scheduled for 10:30 a.m. in 253 Russell. The hearing comes as lawmakers prepare for the December 2014 expiration of Satellite Television Extension and Localism Act (STELA) and the arrival of a new FCC chairman. Dodge and Public Knowledge Senior Staff Attorney John Begmayer will tell lawmakers that the outdated rules that govern the video market are hurting consumer choice and the public interest. Meanwhile, representatives from NAB and NCTA plan to say the video marketplace is working well and there's little need for regulatory change, according to their prepared testimony.

A majority memo that circulated ahead of the hearing said recent retrans disputes appear to be the result of "structural market changes" since the 1992 Cable Act. Increased competition among video distributors has "emboldened broadcasters that air popular programs to demand more favorable terms for the right to carry that programming," the memo said. "Ironically, increased competition in the distribution market may be resulting in higher programming costs that MVPDs pass on to their subscribers."

Dodge will say "outdated laws and regulations need to be updated to reflect changes in the market and changes in how consumers view their content," according to his prepared remarks. Dodge will tell lawmakers to use the upcoming expiration of STELA as an opportunity to "safeguard viewer choice from the increasingly frequent and highly unfortunate phenomenon of retrans consent disputes." Consumers are the "losers" in broadcast retrans consent disagreements and lawmakers "can restore balance to the negotiating table by allowing cable and satellite carriers to substitute a network signal from a non-local market during an impasse in retransmission consent negotiations with a local market affiliate of that same network," his testimony said.

Broadcasters are "accusing millions of subscribers of being copyright infringers" for wanting to use Dish's ad-skipping technology, Dodge will say. CBS, ABC, Fox and NBC have sued Dish in federal court seeking injunctions that would bar the AutoHop feature based on their claims that it amounts to contributory copyright infringement (CD Dec 5 p19). Broadcasters are "fighting to preserve the status quo," said Dodge's testimony, "rather than embracing consumers' evolving expectations and tastes."

Dodge will stump for the company's \$25.5 billion bid for Sprint Nextel, which he said would offer a "game-changing" nationwide fixed and mobile service for voice, video and data. The deal is better for consumers, Sprint shareholders and U.S. national security than the competing offer from Japan's No. 3 carrier, SoftBank, his testimony said. Last year, Sprint accepted an offer from SoftBank, a \$20.1 billion bid for 70 percent ownership (CD Oct 16 p1).

The video market regulation system "is not broken," NAB President Gordon Smith will tell lawmakers. "Changing these laws is not in the public's best interest and will do nothing more than pick winners and losers in what is today a very competitive marketplace." Smith will emphasize how broadcasters provide "a public good that cannot be replaced" in keeping local communities informed of weather and emergency alerts, among other public affairs. "I would ask that you, as policymakers, ensure that changes to laws and regulations do not harm this unique and crucial local television broadcasting system," he will say. Smith said broadcasters "stand ready to roll up our sleeves and help in any way possible to conclude the [FCC spectrum] auction in a successful and timely fashion to the benefit of consumers and the public's safety."

"If market failure is characterized by a lack of new entry, there is clearly no failure in the video marketplace," NCTA President Michael Powell will say. He will emphasize the increase in quantity, quality, and choices that cable companies offer to consumers in addition to the proliferation of companies that stream video content online. Other than some "surgical changes" to the market's regulatory framework, "a broad rewrite is not necessary and could even be counterproductive," he will say. Powell's prepared testimony defends cable bundling and makes no mention of decreasing the cost of cable services to consumers.

"It is time for Congress and the FCC to revamp the rules of the video industry to promote the public interest," Begmayer's prepared testimony said. He will advocate for the repeal of the sports blackout rules and a legislative update of the "dysfunctional retransmission consent system." Video regulations should "better serve the public interest, allowing all creators to be fairly compensated while bringing down bills and increasing the choices available to viewers," said his prepared testimony. Lawmakers should also extend video regulations and protections to online video providers as well as restrict "discriminatory data caps," his testimony said.

Sen. John McCain, R-Ariz., who recently introduced the Television Consumer Freedom Act (S-912), plans to deliver testimony, his spokesman said. That's even though he's no longer a member of the

Senate Commerce Committee. On Friday, McCain said the "current regulatory structure is rigged in favor of corporate interests over consumers, resulting in Americans paying ever-higher cable bills for channels they do not want to watch." His bill aims to encourage video programmers and distributors to offer a la carte video to consumers, deter broadcasters from downgrading their over-the-air services and amend the sports blackout rules (CD May 10 p2).

Guggenheim Securities analyst Paul Gallant said it's "unlikely that Congress would pass such an aggressive move toward a la carte. But merely raising the issue of a la carte could encourage discussion of other policies aimed at limiting content company power." It's "far from clear at this point" whether McCain's pro-Aereo provision in the Television Consumer Freedom Act will gain traction, said Gallant in an email to investors Monday. Under the bill, broadcasters that decide to "downgrade" or stop providing on-air programming would forfeit their spectrum licenses, which would subsequently be auctioned for mobile broadband use. Executives at several networks have publicly threatened to take their programming off the air to thwart the business model of online-TV startup Aereo, which streams broadcast-TV signals to consumers via the Web. Dodge will endorse the so-called Aereo provision of McCain's bill.

Last year, members of the Senate Commerce Committee generally agreed that consumers should have more choice and control of the video content they receive but disagreed about how to achieve that (CD July 25 p1). Chairman Jay Rockefeller, D-W.Va., said the video market "isn't working" when consumers are "paying too much" to "have very little choice" in their viewing options. Absent from this year's examination of the issue are former committee members and ex-Sens. Jim DeMint, R-S.C., and John Kerry, D-Mass., who previously sparred over whether to tweak or deregulate the rules that govern the video market. -- *Bryce Baschuk*

Consent Decree Policy

FCC Eases Forfeiture Policy for Student-Run Station Violations

The FCC Media Bureau eased its policy on public file violations at student-run stations. In a consent decree Monday with William Penn University in Iowa, the bureau tailored its enforcement policies toward student-run stations in the context of their educational mission, it said in a policy statement and order (<http://bit.ly/17mmJeX>). Last year, WPU filed a license renewal application for KIGC(FM) Oskaloosa, Iowa, but filed a number of reports after the due date, the bureau said. Instead of receiving a notice of apparent liability, the university was directed to make a \$2,500 voluntary contribution to the U.S. Treasury, the bureau said.

The bureau has the discretion to take into account the educational mission of student-run stations, "their reliance on inexperienced volunteers and the unique benefits these stations provide, both to their student staffs and their communities of license," said the order. As colleges and universities are seeking ways to reduce expenditures, "some have decided to sell their [non-commercial educational] NCE stations," the bureau said: "We are very concerned that the imposition of forfeitures in the amount otherwise called for by the [Communications] Act, the rules and pertinent precedent may accelerate this trend."

Under the new policy, instead of issuing an NAL, the bureau will first afford the licensee an opportunity to negotiate a consent decree "in which the licensee agrees to a compliance plan and makes a volun-

tary contribution to the U.S. Treasury," it said. It applies to student-run station licensees with first-time violations of certain documentation requirements, said the order. The commission isn't departing from the concept that each licensee "is responsible for the actions of its station's staff," it said. However, in the particular context of student-run NCE stations, allowing a forfeiture reduction for first-time documentation violation in exchange for a consent decree that includes a compliance plan, "will promote rather than undermine compliance with the rules," it added.

The policy change shows that the FCC recognizes that student-run stations are different and should be treated differently from commercial stations on fining them for violations, said John Crigler, a broadcast attorney at Garvey Schubert who previously expressed concern for the impact of FCC fines on such stations (CD Aug 13 p3). He often represents public stations. "They typically have small budgets and limited faculty oversight and the commission realizes that there's no point in treating them harshly."

The policy change helps student-run stations, said radio station lawyer David Oxenford of Wilkinson Barker, who represents WPU. The base fine to WPU would have been \$20,000, the bureau said. Under normal circumstances, the fine would have been much higher, and "we agreed to \$2,500," said Oxenford. "There were other fines in other cases where the fines have been extremely high." There were a lot of complaints about that generally, he said. "It's a very important step in the right direction to making these fines for noncommercial student-run stations a bit more reasonable by taking into account the circumstances of these stations."

But "the ruling is pretty narrow," Crigler said. The policy is limited to the roughly 500 student-run stations out of about 3,800 noncommercial FM stations, he said. It also applies to violations of requirements concerning documentation, but not technical or indecency violations, Crigler added. — *Kamala Lane*

'One-Stop-Shop'

USTR Should Tout US Privacy Standards, Promote Free Flow of Data in US-EU Talks, Says Industry Coalition

Promoting the free flow of data and better understanding of U.S. privacy standards should be priorities for the Office of the U.S. Trade Representative in trade negotiations with the EU, trade associations said in response to a call from the USTR for comments on an upcoming trade negotiation between the U.S. and the EU. Public Knowledge advocated that the negotiations — named the Transatlantic Trade and Investment Partnership Agreement (TTIP) — remain open and not interfere with U.S. copyright law reform.

Through this process, the USTR can correct the inaccurate view held by some EU countries that U.S. law does not protect digital privacy, Digital Trade Coalition (DTC) said (<http://1.usa.gov/10uosGC>): "This unjustified, unduly negative view of the US regulatory and enforcement regime results in American businesses facing explicit and implicit barriers to doing business in and with Europe." The TTIP process can lead to "greater understanding, consistency and interoperability" of U.S. and EU privacy standards, DTC wrote. Though the standards are similar, the agreement could establish a bilateral working group "to identify and reconcile key differences in order to promote interoperability," DTC said. The group would

have no regulatory power, but “could help develop bilateral interpretations and understandings that avoid conflicts and promote mutual recognition,” the filing said. It said privacy standards are being evaluated in both places, and “this acute focus on privacy and data protection provides a great opportunity for greater regulatory cooperation and coordination going forward.”

DCT encouraged USTR to advocate for “a meaningful effective lead ‘supervisory’ privacy regulator, or ‘one-stop-shop’ model, for US multinationals doing business throughout the EU, based on the company’s main establishment in the EU.” Creating a system by which U.S. businesses answer to a single regulatory body will decrease the burdens of doing business abroad, the comments continued.

TTIP shouldn't include a copyright chapter, said Rashmi Rangnath, director of Public Knowledge’s Global Knowledge Initiative, in PK’s comments (<http://1.usa.gov/YFp0wN>). Though trade negotiations “may call for some harmonization of exclusive rights of copyright owners to ensure easier movement of copyrighted products across national borders,” that harmony already exists between the EU and U.S., both of which have regimes that “provide for similarly strong exclusive rights,” she said. Congress is reevaluating copyright law in the digital age, and a copyright chapter could “impede Congress’ ability in crafting copyright law and policy,” Rangnath wrote.

Any copyright chapter must “spell out specific limits to exclusive rights” for copyright holders, Rangnath said. She backed “a more balanced approach to copyright” than in previous trade negotiations, including the Trans-Pacific Partnership (TPP). Rangnath advocated against the three-step test, seen in leaked TPP drafts, which “provides a mechanism to determine whether national limitations and exceptions comply with provisions of particular agreements.” The test is subject to “uncertainty and controversy” as stakeholders debate whether it gives participating countries the flexibility to craft their own limitations and exceptions, she said. Placing specific limits and exceptions on exclusive rights “is essential to ensure that U.S. companies are not encumbered in their ability to sell products in Europe,” she said, citing technology such as MP3 players and search engines as examples of U.S. products that make use of copyrighted material. Limiting exclusive rights has non-economic benefits as well, including the “promotion of free expression and cultural enrichment,” Rangnath said.

TTIP should be “an open and inclusive” process, Rangnath wrote. In the past, Public Knowledge has been critical of the closed TPP Agreement negotiation process. USTR should “seek broad public input at all stages of the negotiation” of TTIP, including “sharing U.S. proposed treaty language with all stakeholders,” Rangnath said. Maintaining an open approach will prevent “an outcry against the agreement among members of the public” and will “ensure that the considered expertise and perspectives of a broad range of stakeholders ... inform the TTIP resulting in an agreement that protects and promotes the interests of all Americans,” she said.

TTIP should have a balanced approach to copyright, said CEA (<http://1.usa.gov/10uq3fz>). The USTR should advocate for “a balance between copyright holders’ exclusive rights and the rights of consumers to use lawfully acquired content” under the fair use principle, CEA wrote. “Such a balance of interests is crucial not only to the rights of consumers and copyright holders, but also to the notion of fostering innovation.” CEA also advocated for the flow of information across borders. “To the extent that privacy is a legitimate concern when considering cross-border information flow issues, CEA supports provisions in the TTIP that would ensure that privacy protection is done carefully so as to avoid unintended consequences on innovation and economic growth,” the group said.

Through the TTIP negotiations, USTR should “not in any way narrow” the expansion of the Information Technology Agreement (ITA), CEA wrote. The association wants the expanded ITA to include connected devices, such as videogames and TVs, that “are hugely popular with consumers and often essential to their daily lives,” the group wrote. “Updating the ITA to include these products, and thereby eliminating associated tariffs, will benefit consumers by making them more affordable, encourage competition, and promote manufacturing of these devices, which will create new jobs.” — *Kate Tummarello*

Comm Daily® Notebook

The latest version of the FCC’s mobile broadband smartphone app reduces the default data cap to 100 MB and collects “only passive metrics during scheduled tests once data cap is reached,” the agency said in a filing discussing its app (<http://bit.ly/100RDW5>). The app is still in beta, and hasn't been made available for general release. The connectivity type of the active tests is now identified in the archived results. Location technology used for observations, and units of measurement of the location accuracy, are identified in the passive metrics, the FCC said.

Capitol Hill

Suddenlink applauded the introduction of the Television Consumer Freedom Act (S-912) for putting a spotlight on “a real industry problem,” said a news release Monday. “There is clearly a need for greater flexibility on the part of distributors like us, to offer smaller, more-economical packages of channels that are better targeted to diverse consumer interests and incomes,” said Suddenlink CEO Jerry Kent. “The ability of powerful TV network owners to force more channels and higher costs on distributors and consumers threatens to price some households out of the multichannel video market. We welcome an open-minded discussion about ways to fix the current, unsustainable system.” The bill, introduced last week by Sen. John McCain, R-Ariz., aims to encourage video programmers and distributors to offer a la carte video to consumers, deter broadcasters from downgrading their over-the-air services and amend the sports blackout rules (CD May 10 p1).

Wireline

The FCC’s proposal for three trials of narrow Internet Protocol transition issues is “more likely to discourage future investment in Internet infrastructure than to accelerate it,” said Fred Campbell, director of the Competitive Enterprise Institute’s Communications Liberty and Innovation Project, in a blog post Monday (<http://bit.ly/16vifm4>). The commission Friday said its Technology Transitions Policy Task Force was seeking comments on potential trials relating to the transition from copper to fiber, wireline to wireless, and time-division multiplexing to IP (CD May 13 p1). But those trials “wouldn’t address the full range of issues raised by the IP transition,” Campbell said. The three “limited issues” addressed by the trial — VoIP interconnection, next-generation 911, and wireless substitution — “omit the most important issue of all,” he said: “The transition of the wireline network infrastructure itself.” The trials are unlikely to yield much data about the challenges of shutting down legacy technologies, he said. All three issues are already being examined in ongoing proceedings, he said. “I expect the FCC was unwilling to propose a comprehensive trial that could jeopardize its assertion of regulatory jurisdiction over the Internet, espe-

cially its potential authority to impose Title II regulations if it loses the net neutrality case pending in the DC Circuit.”

As it facilitates the transition to IP networks, the FCC should take steps to preserve competition in the business market, Granite Telecommunications told an aide to Commissioner Jessica Rosenworcel Wednesday (<http://bit.ly/10IPK1I>). If ILECs remove copper without being required to give CLECs access to its replacement, “the type of competition provided by Granite would not be possible,” the CLEC said in a Friday filing recounting the meeting. Wireless and other forms of communications are “not an adequate substitute” for businesses, Granite said. Granite also expressed concern about AT&T’s proposed wire center trials, which “may interfere with the services Granite currently provides its customers in those locations.” Granite suggested that the FCC’s Technology Transitions Policy Task Force focus on preserving competition in the business market. Granite has expressed concern that the trials would impact its existing business contracts (CD April 18 p3).

FCC rules permit CLECs working in conjunction with over-the-top VoIP providers to tariff and collect end-office switching charges, Inteliquent told FCC officials Wednesday (<http://bit.ly/166K1FM>). The Internet telephony company, formerly known as Neural Tandem, said it agreed with arguments by Level 3 and Bandwidth.com that AT&T has mischaracterized the core function of end-office switching in order to avoid paying end-office access charges. The commission must decide quickly, because “the lack of certainty hinders the ability of legitimate carriers like Inteliquent to compete, creates opportunities for other carriers to engage in arbitrage, and will lead to further litigation over access charges for VoIP traffic,” the company said.

Wireless

The FCC should ignore a Department of Justice filing (<http://bit.ly/16S6zag>), which suggested that the commission limit spectrum ownership in the interest of competition, the Phoenix Center said in a new paper. “While the DOJ’s ex parte is long on self-promotion about its purported expertise regarding the economics of mobile wireless markets, the DOJ’s pleading is remarkably short on substance,” said study co-author and Phoenix Center President Lawrence Spiwak. “The FCC should accord the DOJ’s pleading little probative weight.” DOJ’s “notion of ‘foreclosure value’ is not a sufficient justification for rigging the auction,” the paper said (<http://bit.ly/10J4zBb>). “The efficiency of an auction’s outcome should instead be based on relative ‘use value,’ and there are good reasons to suspect the use value of larger carriers exceeds that of smaller carriers. Economic theory therefore suggests the presumption should be in favor of non-interference.” DOJ’s filing is also “inconsistent with its own depiction of the mobile wireless market, where firms ... face spectrum exhaust, and realize a type of economies of scale in the use of spectrum,” the paper said. “Published research shows that under such conditions, spectrum exhaust turns the standard antitrust analysis on its head — namely, that more competitors may, in fact, lead to higher prices and lower quality.”

The FCC should establish a metric for measuring the number of a carrier’s towers that are non-functioning in each county during disasters, and the percentage of the carrier’s cell towers in that county that the number represents, for use following future disasters. That’s in light of problems seen last year following Superstorm Sandy, Consumers Union wrote commissioners on Monday. “This measurement could be taken and reported one or more times each day, until all towers are restored to full function,” CU said. “Another cornerstone metric would similarly measure a carrier’s performance in maintaining and

restoring backhaul and other connectivity for which the carrier is legally or contractually responsible. The Commission could use this metric to set a schedule for phasing in improved performance standards as rapidly as practicable, with appropriate incentives for achieving them and appropriate penalties for unexcused failure to achieve them.” CU also said the FCC should make such information available to the public “in a reasonably timely manner, so that mobile phone users can assess for themselves how well each carrier is meeting the applicable standards.”

Clearwire shareholders should vote in favor of Sprint Nextel’s \$2.2 billion buyout offer, Clearwire’s board said in a letter to shareholders Monday. Although Dish Network made a competing \$5.15 billion bid, Clearwire said Sprint’s offer is the “best strategic alternative for all stockholders because it delivers fair, attractive and certain value.” If shareholders don’t approve the deal, Clearwire’s “options become increasingly limited and, day by day, the future value for stockholders becomes even more unclear,” the board said in the letter (<http://bit.ly/17lYopt>). Shareholders are set to vote on the Sprint offer May 21. Clearwire said proxy advisory firm Institutional Shareholder Services (ISS) endorsed the deal last week. ISS had said the deal was fair and that Clearwire is becoming “increasingly unviable on a stand-alone basis” (CD May 13 p14).

Mobile payments provider Blaze Mobile said it recently won three near field communication (NFC) mobile payment-related patents. U.S. Patent No. 8,290,433 covers NFC mobile payments; No. 8,332,272 covers the combined use of NFC mobile payment and coupon redemption; and No. 8,275,312 covers Blaze Mobile’s “original NFC payment sticker,” the company said Monday. The patents will help Blaze Mobile “build great software and a compelling end user experience,” CEO Michelle Fisher said in a news release (<http://bit.ly/YRgTiO>).

Internet

The European Commission will develop an online database for monitoring Internet policy, regulatory and technological developments across the world, it said in a Monday release (<http://bit.ly/166T7CF>). The Global Internet Policy Observatory will collect academic information, briefings, reports and monitorings of Internet-related policy developments, it said. “The objective of GIPO is to increase expertise and understanding among all actors, including countries, NGOs and interest groups which may have so far been marginalised in Internet debates and decisions,” the commission said. Brazil, the African Union, Switzerland, the Association for Progressive Communications, DiploFoundation and the Internet Society have said they will be involved, the commission said.

The U.S. Court of Appeals for the Federal Circuit ruled that Alice Corp. can’t claim four of its patents on a computerized currency trading platform because they’re too abstract. Friday’s ruling prevents that trading risk management and investment firm from suing CLS Bank International for patent infringement. Alice had argued that even if the four patents in question were based on abstract ideas, they could still be patentable because of the computer’s role in the invention (<http://1.usa.gov/Yz3Yjh>). Multiple companies filed amicus briefs in the case. A Google-led group including Dell, Facebook, HomeAway, Intuit, Rackspace, Red Hat and Zynga had said software patent standards were too low. BSA/The Software Alliance said the court shouldn’t limit protections on software patents because software plays a “critical role” in the U.S. economy. The court was divided in the ruling, with five of the nine judges issuing opinions that partially or fully dissented from the majority opinion. Judge Kimberly Moore wrote in a partial dissent that she was concerned the ruling could mean the

“death of hundreds of thousands of patents, including all business method, financial system, and software patents as well as many computer implemented and telecommunications patents.” Adam Perlman, a partner with the law firm of Williams & Connolly who represented Alice, said his client had no comment. A CLS Bank spokesman said the company was pleased with the ruling, which “strikes an appropriate balance between innovation and competition, and allows CLS Bank to continue its important operations.”

Targeted cyberattacks rose 42 percent last year from 2011, said a Symantec report Monday (<http://bit.ly/17XrYiQ>). Globally, there was an average of 116 target attacks per day in 2012, it said. Small businesses, “the path of least resistance for hackers,” were the target of 31 percent of the attacks, it said. Manufacturers were targeted for more attacks in 2012 than governments, which topped the list in 2011, it said. Attacks on social network sites and mobile devices continue to increase, Symantec said, while spam and phishing attacks have continued to decrease.

State Telecom Activities

Author and broadband activist Susan Crawford emphasized her message of faster bandwidth, during an event with the Code for America Peer Network Monday. Code for America is intended to connect local governments. Crawford, a law professor at the Yeshiva University Cardozo School of Law and former White House telecom adviser, criticized what she considers to be a lack of competition in the telecom world, split between cable companies on the one hand and a duopoly of wireless companies. “There’s nothing evil about any of this,” she said. “It’s not bad, it’s not evil.” But she said when consolidation is possible, competition is impossible. She advocated for certain regulatory oversight, and said providers need to be made to connect with one another. Her presentation advocated for communities’ freedom to build their own broadband networks and showed the many states that have restricted that ability. “We need to preempt those barriers,” she said. U.S. politicians need to address these challenges, which should become a greater part of the country’s dialogue, said Crawford: “I’m hoping Code for America can play an important role.”

AT&T distanced its 1-Gbps network plans for Austin, Texas (CD April 10 p10), from the announcement that Google Fiber will be building there. “That was not in response to Google’s announcement,” said Bill Smith, the telco’s president of network operations, at the Jefferies 2013 Global Technology, Media & Telecom Conference last week. “We had a team suit up and had been, you know, developing that plan for some time. [Google] accelerated our need to go public with it a little bit. But we had been planning to do that.” AT&T issued a press release hours after Google Fiber’s Austin announcement, promising a gigabit network in Austin conditioned on receiving similar regulatory treatment as Google. Smith called Austin a “great market” with lots of high-tech businesses. AT&T doesn’t see gigabit speeds as “anything new” and has “had that tool in our toolkit,” he said. He doesn’t think people need gigabit speeds today or “in the near term,” he added. “I have yet to have a customer complain that our U-verse network didn’t give them the speed they needed.”

The National Association of State Chief Information Officers has assembled a catalog of state mobile apps, it said Monday (<http://bit.ly/13eI2YW>). There are more than 160 apps for smartphones and tablets that “are searchable by state/territory, by category and through an overall browse function,” NASCIO said. It said topics include “public safety, health and wellness, public assistance, employee assistance, state portal, traffic/road conditions, parks and recreation.”

Broadcast

Clear Channel's iHeartRadio service surpassed the 30 million registered users benchmark in less than two years, it said in a Monday new release (<http://bit.ly/100wprn>). The digital radio service has added registered users at a rate second only to Instagram's as the fastest-growing digital service, Clear Channel said. "Since iHeartRadio listeners are not required to create an account to stream broadcast radio stations, the number of registered users reflects only a small snapshot of the service's overall reach."

Cable

Former FCC Chairman Reed Hundt is entering the cable business as a board member for NewWave Communications, Hundt said in an emailed press release Monday. Hundt is a strategic adviser at equity firm GCTR, which along with partner Rural Broadband Investments, bought NewWave last week. "Having been a regulator of cable and a consultant to cable, it's great now to be an owner and part of a management team," said Hundt. According to another release (<http://bit.ly/14hOsc1>), GCTR and RBI's acquisition of NewWave is part of a larger plan for the company to "acquire 300,000-400,000 cable subscribers in small-to-mid sized rural markets." NewWave has about 90,000 subscribers in rural Illinois, Indiana, Missouri and Arkansas, the release said.

Cox Enterprises completed two solar energy projects at subsidiaries in Massachusetts and Rhode Island, the company said Monday (<http://bit.ly/13VtkJq>). The release said the two solar installations together annually prevent close to "3,600 tons of carbon from entering the environment." The projects are part of Cox Conserves, the company's national sustainability program. The release said the North Dighton, Mass., project included ground- and roof-mounted collections of solar panels that produce enough energy to annually power 400 homes. Cox's Rhode Island project generates enough energy to power 77 average-sized homes, the release said. Cox Enterprises has also completed alternative energy projects in Arizona, California and several other states, it said.

The FCC Media Bureau granted a Time Warner Cable petition this week to exempt the cable provider from municipal rate-setting for basic-video and some other prices in 18 Wisconsin communities, said filings posted in FCC docket 12-1 (<http://bit.ly/1011QC7>). TWC's petition cited video competition from AT&T Wisconsin. The deregulation includes the communities of Bayside, Oak Creek, and South Milwaukee. The bureau also granted effective competition petitions for Comcast in Freeport, Ill. (<http://bit.ly/13Vn2cG>), and three communities in New Mexico (<http://fcc.us/YRrMkQ>). Comcast's petitions cited video competition from DirecTV and Dish Network. The deregulation in Freeport will affect about 11,000 households. The deregulation in New Mexico will affect just over 23,000 households in Portales and McKinley and Roosevelt counties.

Mass Media Notes

Media securities sales: **Nielsen** said as many as 40.25 million shares will be sold by some existing investors in a secondary offering in which the company won't get any proceeds (<http://bit.ly/166v1rJ>). That stake is worth about \$1.43 billion at current prices. ... **Suddenlink** affiliates are offering \$750 million

of senior notes due in 2021, and will use the proceeds to buy back other bonds maturing in 2017, the cable operator said in a news release Monday (<http://bit.ly/11yTVyQ>).

Satellite

Satellite company representatives reiterated their opposition to the FCC's proposed regulatory fees for the satellite industry. Representatives of SES, Inmarsat and Telesat endorsed objections previously made by the Satellite Industry Association to the proposals "that could substantially increase regulatory fees for satellite service providers," the companies said in a joint ex parte filing in dockets 12-201 and 08-65 (<http://bit.ly/15G6ZDQ>). They cautioned against a suggestion that the FCC consider requiring non-U.S. licensed satellite operators serving the U.S. market to pay regulatory fees, it said. Such a change is beyond the scope of the FCC's statutory authority and it could lead "to a proliferation of fees around the world that would have a serious impact on the economics of global satellite services," it said. The filing recounted a meeting last week with staff from Commissioner Mignon Clyburn's office.

The FCC International Bureau granted SES modification authorization for the AMC-2 satellite to specify operations at 80.85 degrees west, instead of 19.2 degrees east. SES may provide fixed satellite service, including direct-to-home services, to South America through AMC-2, the bureau said in a public notice (<http://bit.ly/13eAF3H>). SES also is authorized to do telemetry, tracking and command operations to maintain the satellite at 80.85 degrees west "with an east-west station-keeping tolerance of +/- .15 degrees using the following center frequencies: 3700.5 MHz and 4199 MHz, and 6423.5 MHz," it said. EchoStar was granted a 60-day special temporary authority to do telemetry, tracking and command operations to drift EchoStar 15 from its authorized location at 61.5 degrees west to 45.1 degrees west, it said.

International Launch Services and EchoStar signed a contract for a future heavy-lift mission launch on an ILS Proton launch vehicle. An EchoStar satellite is planned to be launched into geostationary transfer orbit on an ILS Proton Breeze M in the 2015-2016 timeframe from the Baikonur Cosmodrome in Kazakhstan, ILS said in a press release (<http://bit.ly/15GiRpA>). The agreement provides the flexibility and schedule assurance required for the execution of EchoStar fleet expansion programs, EchoStar said in the release.

Hughes signed Morsviazsputnik, the operator of Inmarsat's mobile satellite services in Russia, as a distribution partner for Hughes broadband global area network (BGAN) mobile satellite products. The Russian operator will resell Hughes' portfolio of BGAN products in Russia, Hughes said in a press release (<http://bit.ly/YRpwKd>). Hughes designs and manufactures a full line of mobile satellite terminals that operate over Inmarsat's BGAN, "serving a wide range of mobile workers who need reliable, high-speed connectivity on the move," it said.

Communications Personals

Nomination sent to the Senate for **Ryan Crocker** to be member of Broadcasting Board of Governors for term expiring Aug. 13, replacing **Victor Ashe**, whose term expired, and for Crocker to be reappointed to BBG for a term ending Aug. 13, 2016 ... New York State Wireless Association elections to board include: **Christopher Fisher**, Cuddy & Feder, as president; and as directors **Stephen Banks**, KMB Design Group; **David Bronson**, Phillips Lytle; **Carl Calabrese**, Masiello, Martucci, Calabrese & Associates; and **Joseph Messineo**, AT&T.