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Genachowski Circulates New Order on Deadlines for Tower Siting Decisions

FCC Chairman Julius Genachowski circulated late Thursday a revised version of an order that would impose a shot clock for wireless tower siting decisions, FCC officials said Thursday. Meanwhile, CTIA has put on a full-court press asking the FCC to reduce the deadline for making decisions on co-location applications, but those efforts are likely to fail, FCC officials said. The revised order is expected to have broad support among commissioners.

CTIA has sought a 60-day shot clock for co-location decisions, versus the 90-day deadline in the order. FCC officials said there's little eighth floor enthusiasm for making this change. The order requires decisions on new builds within 150 days after an application is filed.

The revision further refines language on the commission's legal authority to impose a deadline for decisions by local authorities, after at least one member of the commission asked the chairman's office to tighten that part of the order. One FCC official said the order doesn't raise the same degree of questions as those presented by 2006 and 2007 orders prohibiting franchising authorities from unreasonably refusing to award competitive franchises for the provision of video services.

Lobbying on the order continued up to the point it was placed on the Sunshine agenda Tuesday, for next week's FCC meeting. CTIA reported early this week on arguments it made in a meeting with John Giusti, chief of staff to Copps, making the case the FCC has the authority to impose a shot clock. "CTIA observed that Congress enacted Section 332(c)(7) of the Communications Act to ensure that the wireless siting process involves a balance of local review and federal goals," CTIA said. "By withholding action on siting requests, states and localities have been able to evade the judicial oversight contemplated by 332(c)(7), and disturb the balance of state, local and federal power envisioned by Congress. Thus, CTIA asked the Commission to establish timeframes within which local zoning authorities must act on tower siting and wireless facility applications -- 45 days for co-location and 75 days for other facilities."

CTIA also said adoption of a shot clock "in no way intrudes on decisions left by Congress to the courts. The Commission is entitled to issue determinations interpreting the meaning of terms set forth in the Communications Act, and adoption of a shot clock would clear up the ambiguity ... regarding when 'a failure to act' occurs."

But "even if congress had given the FCC authority, the FCC could not read fixed timelines into section 332(c)(7)(b)" of the Communications Act, said the Coalition for Local Zoning Authority, reporting on meetings with Giusti, Angela Giancarlo, chief of staff to Commissioner Robert McDowell, and Charles Mathias, aide to Commissioner Meredith Baker. "Section 332(c)(7)(B) does not expressly contain fixed timelines for local action. Instead, Section 332(c)(7) uses flexible language to allow analysis of particular requests in context: a 'reasonable period of time after the request is duly filed ... taking into account the nature and scope of such request.' Congress contemplated and rejected specialized timelines."

Law firm Davis Wright Tremaine offered anecdotal evidence of delays carriers face getting towers and other wireless facilities approved by local authorities, in an ex parte it filed at the commission. "Each day, across all types of urban and rural landscapes and throughout all geographic regions, we encounter the type of unreasonable delays and arbitrary local zoning decisions described in CTIA's petition," the firm said. It added they "have a very real and significant impact on wireless carriers' ability to construct efficient forward-looking networks capable of providing reliable, state-of-the-art communications services to businesses, residents and public safety personnel." -- *Howard Buskirk*

'Housekeeping' OK

Net Neutrality Stakeholders Finding Agreement, Misener Says

The net neutrality debate has evolved away from "bumper sticker" campaigns to a growing consensus among stakeholders, Amazon.com Vice President Paul Misener told an Institute for Policy Innovation seminar Thursday. Most agree network operators should have control over "housekeeping" issues of network management, such as blocking malware and downloads of illegal content. But differences remain, largely over the question of whether operators, if allowed to prioritize traffic, would wield their market power to favor services they offer, Misener said.

This issue "need not be partisan," Misener said. Net neutrality arguments were highly political five years ago, prompted in part by Republican-led legislation that could have prevented the FCC from enforcing non-discrimination rules. There was a period of "detente" after the bill died. Now the debate has taken on new intensity with an administration committed to regulating, he said, but stakeholders are starting to sit down and find areas of agreement. His appearance at a summit with an AT&T official and others opposed to neutrality rules reflects the more thoughtful mood, Misener said.

Given the complexity of the regulation, the FCC should have undertaken a thorough market analysis before embarking on a rulemaking, FCC Commissioner Robert McDowell told the seminar. The lengthy comment period will help provide expertise to the commission, and the Supreme Court's decision in the Comcast case will also provide guidance, McDowell said, asking attendees to "tell us what you think." Rules must be based on sound economics or they won't stand judicial review, he said.

"We should ask ourselves, is the Internet broken?" McDowell said. And if it's determined the Internet is broken, is government the best entity to solve the problem, he asked. "Do you really want us making these highly technical decisions" that may be more the province of engineers, he asked. The commission's action also will be viewed closely by foreign governments that are also grappling with net neutrality issues. Overly prescriptive regulation could influence less-democratic powers to stifle Internet users' rights of expression, he said.

“I agree with Paul Misener that we are at a very important moment,” said Mike McCurry, co-chairman of Arts + Labs, a coalition of creative and technology interests that support flexible network management. McCurry, former press secretary for President Bill Clinton, who advocated against regulation five years ago, said today’s debate is “more robust and transparent.” People are not talking past each other, he said. “The discussions are not about people slinging their slogans.”

McCurry supports “reasonable network management” that protects consumers from malware and unlawful content. But it’s still up in the air whether the commission has the legal authority to act on its own, which is why Congress is keeping a close eye on the process, he said: “I personally think we can get this right.”

But there is a risk that politics could intrude and spin the rulemaking into something that’s bad for Democrats, said McCurry, who describes himself as a “partisan Democrat.” This is the era of big government, and its intervention in the auto, financial and health care industries has conservative Republicans on the offense. If FCC rules are too proscriptive, he said, people may view it as Democrats trying to “socialize the Internet,” he said. “And you can just hear the tea party folks waving their tea bags when they [FCC] start down that path.”

Even with a White House that made net neutrality a campaign plank, the issue is not on the top of the agenda, McCurry said. “I meet with a lot of friends at the White House and the concern is jobs,” he said. So any regulation that could have a significant impact on industry will be examined closely from that perspective, he said. “It is incumbent on us to explain what our vision is,” he said, which means getting more clarity about what constitutes “reasonable” network management. He hopes the FCC won’t embark on a cumbersome regulation that “is going to require everyone in this room to load up on lawyers and lobbyists and spend the next five years down at the commission debating about stuff that engineers ought to be deciding.”

There is a “huge risk” that net neutrality rules could inhibit innovation, said NCTA President Kyle McSlarrow, who agreed that defining “reasonable” is important. Regulators should have a “special humility” when writing net neutrality rules, given the potential impact they could have on investment and consumers, said AT&T Vice President Hank Hultquist. Rules that define broadband Internet access “very broadly,” could raise questions about “how the multitude of applications may fare.”

“The touchstone for us” is the lack of competition at the edge of the network, Misener said. Allowing network operators to charge big users more “makes perfect sense,” he said, saying Amazon pays “handsomely” for its Internet access. But it ought to be “explicitly stated in the rules” that if network operators are allowed to create new technologies or add capacity that allows them to provide new services, they not be allowed to degrade other traffic in favor of their own. -- *Anne Veigle*

McDowell Concerned

Many Startups Can’t Get Financing in Tough Economy, FCC Told

Small and minority-owned business are having a tough time getting financing for most projects in the current economy, the FCC was told during an agency broadband workshop on capitalization strategies. Commissioner Robert McDowell repeated his concerns that financial issues will play a major role in broadband deployment.

McDowell chaired an earlier FCC broadband forum on capital formation, which raised similar questions (CD Oct 2 p1). “I have consistently called for greater awareness of the financial realities that face small enterprises and new entrants,” he said. “In today’s economy, of course, businesses of all size are struggling to survive through

the worst economic downtown in generations. It may be rather cold comfort . . . to know that many big companies now empathize with small entrepreneurs concerning cash flow and the state of their balance sheets, but I'm hopeful that new opportunities for small entities may arise from today's challenging economic environment."

The Small Business Administration has a loan program for minority investors in communications, said Major Clark, its assistant general counsel for policy and procurement. "You have to get the bank to make that loan," Clark said. "If the bank is looking at your assets and net worth and . . . whatever you're bringing to the table is at a minimum, no matter how great FCC and the world says it is that minorities should be in telecommunications, the banks simply are not going to make those loans."

Anita Stephens Graham with Opportunity Capital discussed the problems minorities are having investing in broadcasting as banks look more aggressively at all loan applicants. "The marketplace has changed," she said. "We have always been able to rely on what we call the downside protection that the value of the licenses always provided. With the significant decline in valuation of those licenses, what it has created in this industry is companies that are upside down, where the value of the business is no longer sufficient to cover the debt on the stations." Investors are still trying to get a better handle on the current economic climate, Graham said. "We're struggling to find out where is bottom," she said. "It's a crazy time, quite honestly, to be investing in this marketplace."

But Mark Levine, managing director of Core Capital, said he's optimistic about the outlook for entrepreneurs to get funding, especially as the economy improves. "We're seeing really interesting investing opportunities," he said. "Even though this is a pretty tough market right now, there are several big companies that get formed in recessions and great investments get made in recessions. We are very actively investing in this market."

Big industry players like Cisco, Microsoft and IBM, which traditionally buy smaller companies, are "flush with cash," Levine said. "What we've seen in the past is coming out of recessions, when internal programs are closed down or trimmed down, we've seen these companies be particularly acquisitive."

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The Telecommunications Development Fund has played a major role in getting funds to communications startups, said Jenell Trigg of the Lerman Senter law firm. "Small business can have big plans," Trigg said. "There are three major obstacles to fulfilling that reality -- 1) access to capital, 2) access to capital, 3) access to capital. It's not surprising that these major issues were present with passage of the 1996 Telecommunications Act. This was one of the number one issues."

Meanwhile Thursday, the FCC sought additional comment on the "relationship between broadband and economic opportunity." In its 18th public notice under the National Broadband Plan, the FCC asked a series of questions about small businesses, medium and large businesses, nonprofits, economic opportunity and workforce development. Comments are due Dec. 4. -- *Howard Buskirk*

'Not Inevitable'

Copps, Barnett Say Broadband Plan a Chance to Finish Public Safety Network

FCC members urged industry, government and public safety officials to pull together to finish the nationwide interoperable public safety network that's been in limbo since 2001. At an agency field hearing Thursday at Georgetown University, Commissioner Michael Copps said he hopes and expects the National Broadband Plan will provide "some real compass direction on how the spectrum should be used to bring our public safety hopes to reality." The plan provides "as good a shot at getting a broadband public safety network up as we're going to have for a long, long time," but that doesn't guarantee the opportunity will be seized, he said.

Public Safety & Homeland Security Bureau Chief Jamie Barnett agreed that while the national plan provides "our best opportunity yet" to set up the network, "it's not inevitable." Action is "an imperative, but we have to work on this to make it real." The commission is "carefully looking at all options to see how best to structure" the network, he said. One solution under consideration is the creation of "some type of emergency response interoperability center that will ensure emergency communications work," he said. The final network must provide sufficient capacity, resiliency and coverage, he said. It's critical that public safety have communications options when traditional systems go down in an emergency, he added.

Partnerships must be formed and strengthened, Commissioner Meredith Baker said. Efforts to establish the public safety network must be all-encompassing and ensure all federal, state and local interests are accommodated, she said. Public safety and emergency responders need all levels of entities to communicate and share resources and information, particularly when budgets are tight, she said. The government sometimes can be the problem, she said, citing the Oklahoma City bombing and Hurricane Katrina as examples of mis-communication and lack of interoperability.

The nation's public safety is probably the FCC's most important issue, said Commissioner Mignon Clyburn. The National Broadband Plan should lead to improvements in many areas including health care and public safety, and ensure public safety and emergency response communities have access to broadband technologies, she said. It's imperative for the emergency medical response and public safety communities to take advantage of broadband, she said. A mobile broadband network raises situational awareness, efficiency and effectiveness, she said.

The bad economy makes an already hard road to establishing the public safety network even tougher, Copps said. A public-private partnership approach already failed, "and now the economic downturn adds new obstacles to the many obstacles that already existed." Although he prefers a public approach, Copps said he hopes to find a way to make public-private partnerships work: "But getting from here to there is daunting to say the least." Allowing a fragmented public safety network is not an option, Copps said. "What we cannot afford to end up with

is individual public safety entities going in dozens of different directions without assurance that their individual systems can work seamlessly with other systems.” Cops noted several jurisdictions have filed waiver petitions so they can build their own new networks. “That’s completely understandable to me given the time that this has taken,” but Cops worries “that without guarantees that these systems can become functioning parts of a nationally connected and interoperable system,” the approach will fall short of national public safety goals, he said.

The Department of Homeland Security believes a standard-based and vendor-neutral approach to promoting compatibility and interoperability across agencies, communities and jurisdictions is a way to leverage existing systems and migrate to new technologies, Under Secretary Rand Beers said. Legacy mobile radio services will stay for a long time, especially for “mission critical voice,” he noted. The National Broadband Plan should consider the operating environment within the emergency response communities, current use of broadband applications and how these two factors influence the communities’ approach to obtain new broadband capabilities, he said. The plan must address the unique availability, reliability, security and interoperability needs in the public safety and homeland security communities at all levels of government, he said.

Homeland Security has started to develop a technology road map and is updating the national emergency communications plan, Beers said. It will monitor recommendations as the FCC develops the broadband plan and, when appropriate, will include those recommendations in a revision of the emergency communications plan, he said. Network convergence could be a challenge to development of a nationwide public safety network, Beers said. So the plan must consider the development, implementation and management of preempted access capabilities which will enable prioritization and interruption capability for homeland security applications, he said. Successful emergency treatment hinges on the speed of communication, coordination and execution, he said, saying wireless broadband will play an important role in public safety communications interoperability and effectiveness. Some potential broadband applications could include real-time video, digital imaging, remote access to databases and management, mapping and mobile emergency management, he said.

Technologists, cities and first responders are starting to “talk the same language,” Paul Mankiewich, Alcatel-Lucent chief technology officer of wireless networks, said on a panel about mobile network requirements. Mankiewich said he sees “no technological impediments” to completing the nationwide public safety network, but stakeholders still need to “work closely” to outline what specific requirements are needed in a such a network. One open question is whether higher ranks of public safety should get better guaranteed service quality on the network than lower ranks, he said.

The benefits of public-private shared spectrum remain contentious. Harris Corp. Vice President Dennis Martinez called it a “tenuous business model” because the arrangement may force companies to kick commercial customers off the network during an emergency. But Fire Chief Charles Werner of Charlottesville, Va., said a joint network ensures that public safety won’t get left behind when operators upgrade network technology for commercial customers.

Panelists cautioned the FCC against calculating a rigid number of how much spectrum public safety requires. One can never have “more than enough” spectrum, said Werner. Mankiewich agreed that it’s “dangerous” to predict how much spectrum and capacity is needed, because how end-users will end up using a network is unpredictable.

In a separate panel, American Telemedicine Association CEO Jonathan Linkous urged the use of telemedicine by Disaster Medical Assistance Teams (DMAT). The FCC should initiate a dialogue with the Department of Health and Human Services to explore how such broadband applications can improve the use of DMAT teams, he said. Fixing universal service support is important, he said, saying the commission’s rural health program has numerous flaws and is “badly in need of an overhaul.” He also urged completion of a mandated national study and inventory and implementing federal report recommendations. The 2006 Pandemic

and All-Hazards Preparedness Act directed Health and Human Services to assess the use of telemedicine for disaster response and develop a national inventory of such capabilities and a plan for integrating the use of technology in such emergencies. Yet to date practically every suggestion, recommendation and requirement has been ignored, he said. -- *Yu-Ting Wang, Adam Bender*

Radio vs. TV Spectrum

AM and FM Spectrum Sit Out FCC Repurposing Quest

The FCC isn't eyeing AM and FM spectrum as it evaluates repurposing TV and other radio waves for mobile broadband -- and that's unlikely to change -- our informal survey of a dozen industry and commission officials found. Total terrestrial radio spectrum consists of about 21 MHz nationwide, engineers said, versus the hundreds of megahertz the wireless industry wants and government is said to be looking for (CD Nov 2 p1). A far higher portion of Americans listen to radio over-the-air than get TV terrestrially, making it even less politically palatable or technically feasible to repurpose radio than TV, said the engineers, executives and lawyers we surveyed.

Staff at the FCC Omnibus Broadband Initiative are "looking primarily at the prime mobile bands of 300 MHz to 3 GHz and radio isn't in that range," a commission spokesman said. "It is a limited amount of spectrum, so it's not a priority anyway." Other commission officials said they were aware of no efforts by Blair Levin, the initiative's executive director, or colleagues to evaluate AM and FM spectrum.

"It would seem to me that it's almost a no-brainer given the small amount of spectrum involved and the vast amount of [radio] receivers" in use, said engineer Charles Jackson of Jackson Telecom Consulting. "The TV band has much more spectrum in it and it's probably the case that changing technology offers many more ways to free up spectrum in the TV band than in the AM and FM bands." AM spectrum is "still a viable revenue source for a lot of station owners -- not every AM station is dying," Senior Engineer Mark Peabody of Cavell Mertz said. "In a lot of places that's the only spectrum available to broadcasters and it's experienced almost a rebirth in some cases."

There are far fewer TV stations than radio stations, said engineer Ed DeLaHunt, whose family owns eight FM and AM broadcast outlets in Minnesota. "It's pure numbers." Unlike broadcast TV, "the radio broadcast operator doesn't rely on any other form of distribution to reach their listeners," noted Chief Technology Officer Paul Brenner of Emmis. "They have to justify the use of that spectrum when other distributors are reaching more households with content" directly.

Arbitron's most recent radio study found that 91 percent of Americans over age 12 listen, said a spokeswoman. Nielsen's estimate for U.S. "broadcast-only" TV homes is 11.3 million, or 9.8 percent of them, said a spokeswoman. The Government Accountability Office estimated in 2005 that 19 percent of U.S. households rely on terrestrial TV, an NAB spokesman noted. "Whether it's 10 million or 20 million, that's still a heck of a lot of homes that rely exclusively on over-the-air television for a critical and often lifeline service."

"No one's approached me about radio repackaging or bandwidth reallocation like you've seen in television," Brenner said. Nor have FCC officials approached CTO Mike Starling of National Public Radio about using the bandwidth for other purposes. "It just wouldn't make sense," Brenner said. "I've never heard a mention of radio spectrum being made available for broadband purposes, and I would attribute that to the fact that people looking at spectrum understand that virtually 100 percent of the radio audience gets their radio from over-the-air spectrum," Starling added. "I can't imagine a time in the future that radio broadcast spectrum would be considered as a potential point for deployment of wireless broadband technologies."

There's "just no gold in them there hills" in terms of plentiful AM and FM spectrum, said President Adam Thierer of the Progress and Freedom Foundation. Finding vacant radio waves set aside for government use is difficult, so "at least in the short-term, all the action is in the broadcast TV band," he added.

The radio industry has far greater fears than having spectrum taken away, lawyers representing radio broadcasters said. Inside and outside the FCC, there doesn't seem to be much demand to use AM-band spectrum for other purposes, a veteran attorney said. In most parts of the U.S., the FM band is considered to be heavily congested, said the lawyer and radio executives. "The radio industry's danger is not a forced sell-back of its spectrum," lawyer John Garziglia of Womble Carlyle said. "Rather, radio's danger is the slow, steady diminution of the listenability of its signals, due to substandard AM/FM receivers and antennas in favor of satellite radio, and due to imminent potential interference from the HD [Radio] power increase." -- *Jonathan Make*

No Cord Cutting

Comcast On Demand Online to Be Available Everywhere by Mid-December

SAN FRANCISCO -- Comcast's new online service will make programming available to pay-TV subscribers wherever they are and will be available within a month, Amy Banse, president of Comcast Interactive Media, said on Thursday. The company previously hadn't promised Comcast On Demand Online before year-end and hadn't said it would be available beyond its cable-TV service areas.

"It works quite nicely," Banse said at the NewTeeVee Live conference. She offered a qualified rejection of a prediction by Boxee CEO Avner Ronen at the conference that by 2015, Apple will have more subscribers than Comcast: The cable company will have more customers in its service territories than Apple does.

The 5,000 subscribers who have taken part in "alpha-beta" testing since July "really love it" for the programming available -- corresponding to their TV packages -- along with the video quality, interface and navigation online, Banse said. "I think they are probably using it as both" a way to catch up on programming missed on TV and as a replacement for home viewing, she said. With a required player download to start, a subscriber can register three devices for the service, available through Comcast's homepage and its Fancast site, Banse said. Later, Netflix CEO Reed Hastings called the scope of Comcast's service "really impressive" and the broader TV Everywhere technology effort across the pay-TV industry "very exciting."

With the required authentication, "we have yet to talk to a network who didn't fundamentally like the concept and embrace the concept," despite programmers' fear that online viewing will undermine their subscription revenue from pay TV. Banse said. "You're going to see different programmers play with different ad loads" during an experimentation period with the online outlet, she said. "It's essential that the programmers get credit" in Nielsen ratings from the viewing of program regardless of how it's seen, Banse said.

"We don't really see any cord-cutting going on" by viewers, Banse said. "That's not to say we're not mindful of the concept." She pointed to continued strength in pay-TV signups and the amount of time spent watching sets. But "online consumption will continue to grow," Banse said. Comcast wants Fancast eventually to allow subscribers to make all kinds of arrangements, on various payment plans, to watch a program at the times and on the devices they want, she said. "I think it's going to be a smorgasbord for the consumer."

Hastings conceded that viewing of TV shows and movies on Internet-connected sets hasn't arrived as he predicted at this conference a year ago. But "it's coming along great," he said, and will hit next year. "Vizio's got a

pretty neat little TV with Flash" technology, and Wi-Fi connected sets will be prominent at the Consumer Electronics Show in January, Hastings said.

"We're going to try to wire up every device" that's Wi-Fi-connected with the Netflix online service, Hastings said. Blu-ray players and TV sets are getting the connectivity and game consoles already have it, he said. But asked about adding access through Nintendo's Wii console to that available through Microsoft's Xbox and Sony's PS3, Hastings said, "I can't help you on that one."

Online video over TV will remain the province of big brands like Netflix, Amazon and Blockbuster using proprietary software on particular appliances for two or three years, Hastings said. But then the browser will take over and "the tail brands come in," he said. The two software vehicles aren't incompatible, Hastings said. "The key thing" is to introduce the "open HTML-based interface" of the browser so services will work with thousands of devices, he said. But the browser may well come with a "wrapper of applications" to make "the common use cases" easy for viewers to reach, Hastings said.

With 42 percent of Netflix subscribers having streamed programming Q3, a substantial majority still haven't, Hastings said. "This has got a long way to go. It's really at an early stage." He said he expects to keep delivering subscribers DVDs for 20 years. "DVD's still growing for us. ... We're expecting it to keep on growing for several years."

The Netflix online service offers "a killer app" for cable broadband and gives the providers a "halo effect" that helps them compete against telco DSL and satellite TV services, Hastings said. This counterbalances the competition that Netflix represents to cable "on the margin" of its business, he said. The studios 'love us when we write big checks to them and they don't when we don't," Hastings said. "People like to say that Hollywood's all about the relationships," he said, but he finds that economics is the real story. -- *Louis Trager*

5 Percent Tax

Broadcasters Already Have Authority to Re-Use Spectrum, Sook Says

Broadcasters can offer services other than over-the-air TV with their spectrum as long as they pay a 5 percent tax to the government, a provision laid out in the law that gave stations authority to broadcast in digital, Nexstar Chairman Perry Sook told investors Wednesday. "The congressional act that granted broadcasters our digital spectrum ... provided for a 5 percent tax on revenue for uses other than TV." The government shouldn't take the spectrum away from broadcasters to repurpose it, he said. Instead, broadcasters should be allowed to use it however they want, he said.

"Our position is there may be other uses for the spectrum," Sook said. "There is already a provision from Congress that would require us to pay a tax on that, if it's not used for TV. ... So I say let the market determine the highest and best use for that." Asked how he felt about the possibility that the government may try to auction some TV band, Sook quoted James Madison: "I believe there are more instances of the abridgement of freedom of the people by gradual and silent encroachment by those in power than by violent and sudden usurpations."

There's no shortage of bandwidth for wireless applications today, Sook said. "This is an eventual problem that may need to be dealt with." And the government should look at its own use of spectrum before it considers taking it from TV stations, he said. Over-the-air broadcasting will remain an important part of the TV business, even as new technologies and distribution methods develop, he said.

Meanwhile, Sook said he too would consider sharing retransmission consent revenue with the networks, but only if Nexstar would get more money by throwing in with the network and other affiliates than it otherwise would have negotiated on its own. “If the networks are able to negotiate better deals ... than I'm able to generate as a small company, then I'd be able to share that upside with them on a 50-50 basis,” he said. But if the networks just want a cut of Nexstar's carriage fees that it has negotiated on its own, he said, “we'll fight just as hard to keep that retrans revenue as we did to create it in the first place.” -- *Josh Wein*

Explanation Changes User Views

Behavioral Ad Bill Unlikely to Get Through Congress, FCC Aide Says

Congress has no pressing reason to approve a bill regulating behavioral targeting this year, government and industry lawyers told a Practising Law Institute audience Thursday. One of the biggest impediments to a bill going through is the plight of media companies and their reputations with readers, said Sherrese Smith, aide to FCC Chairman Julius Genachowski and former general counsel for Washington Post Digital; and Google Senior Product Counsel Mike Yang.

A recent study of consumer attitudes toward behavioral targeting shows the practice is “striking a chord” with Americans, said Joel Reidenberg, director of the Center on Law and Information Policy at Fordham University School of Law. The survey by the Berkeley Center for Law & Technology and the Annenberg School for Communication at the University of Pennsylvania found two-thirds of adults don't want targeted ads, and a slight majority of those 18-24 feel the same. Two-thirds also said companies and possibly their executives should go bankrupt or be imprisoned for the practice, Reidenberg said: “There's a really deep antagonism” toward targeting of any kind. Legislation to regulate deep-packet inspection, a related issue, most likely won't happen “any time soon,” though. It's more likely Congress would apply a legal regime similar to the Gramm-Leach-Bliley rules for financial privacy disclosure, he said.

I'm a little more skeptical on whether we could get something passed,” because it's doubtful the Judiciary and Commerce committees in each chamber, which would all have jurisdiction, could agree on the provisions in a bill, Smith said. The proliferation of states last year drafting their own privacy laws had given “urgency” to the push for a federal law that would set national standards as well, but that factor is now missing, she said. The economic downturn may also halt interest in preventing forms of advertising that newspaper executives consider crucial to their business going forward, Smith said. The Federal Trade Commission (FTC) has spooked the media and advertising industries into devising better self-regulatory schemes as well, since FTC Chairman Jon Leibowitz has repeatedly emphasized “this is the last chance” before the commission drafts its own rules, she said. “My sense, at least this year,” is self-regulation will be broadly accepted before the FTC could devise rules.

The push for targeting rules “appears to have a lot of momentum” until one considers that any new law would hit respected media organizations such as *The Washington Post*, *The Wall Street Journal* and *The New York Times*, who all use some form of targeting, Google's Yang said. People tend to associate targeting with “companies they don't know,” who silently collect browsing information and sell it.

Users' negative views usually come from a “gut reaction” to the knowledge that their activities are being tracked, Smith said. But when they learn how targeting works and the function it serves, namely subsidizing content, users generally accept it, she said.

Reidenberg said Smith and Yang were contradicting the results from the Annenberg study, the “first really proper social science study” that asked “non-loaded questions” to participants. “It isn't just the invisible data gatherers” that work on behalf of Web publishers that bother people: “It is the very basic concept that they're being tracked.” -- *Greg Piper*

Comm Daily® Notebook

The Harvard broadband study commissioned by the FCC “is so flawed that it cannot be relied upon to formulate public policy,” said the Phoenix Center as it released a new paper Thursday. The Harvard Berkman Center for Internet & Society’s study concluded that open-access policies spurred broadband in other countries. But Phoenix Center Chief Economist George Ford said Berkman “first improperly estimates its econometric model and then incorrectly interprets the results from it. The error in the interpretation is significant. While the [Berkman] Study’s authors verbally conclude that open access policies stimulate increased consumption of broadband, the econometric model they rely upon shows the opposite -- open access reduces the consumption of broadband.” For example, the Berkman study shows a downward sloping supply curve indicating that network operators provide less broadband when prices rise, Ford noted. “Intuitively, this result makes little sense, violates the law of supply and muddles interpretation.”

Net neutrality rules and other regulation should be developed only to support universal Internet access goals and to ensure access to lawful apps and content, said Level 3. Level 3 CEO James Crowe had meetings this week with FCC Commissioners Michael Copps, Robert McDowell, Mignon Clyburn and Meredith Baker, an ex parte filing said. “Regulatory scrutiny should generally focus on broadband access services,” Level 3 said. It urged the federal government to mandate ISP reporting to measure progress in meeting universal access goals, and develop policies and programs that “effectively combine both service provider incentives and subscriber subsidies.” The FCC should define universal Internet access “not in terms of bandwidth speed and performance criteria, but rather as a right to participate in evolving online communities,” it said.

In the agency’s 17th public notice for its National Broadband Plan the FCC asked how broadband forwards health IT. “We wish to further understand gaps between current connectivity infrastructure and the connectivity requirements for various health IT applications across the healthcare ecosystem,” the commission said. The FCC also wants comment on how the universal service rural health care support mechanism and the rural health care pilot program can spur broadband. Comments are due Dec. 4.

Radio company CEOs told FCC members that putting FM receivers in cellphones would help public safety (CD Nov 10 p12). “Broadcasters want to work with the cellular industry to ensure widespread availability of FM radio on mobile handsets,” said a handout from the meetings Tuesday with all FCC members except the chairman. “Technical obstacles to incorporating FM chips in mobile handsets have been overcome” and their inclusion “should be a critical component” of creating a commercial mobile alert system. Heads of Citadel Broadcasting, Clear Channel, Cumulus Media, Emmis, Entercom and three other companies also said they supported a digital radio power increase compromise between National Public Radio and the licensor of HD Radio technology, according to an ex parte filing. “They urged the Commissioners to act quickly to adopt the recent proposal agreed upon between iBiquity and NPR for an interim, across-the-board power increase.” The Media Bureau is working on an item.

Broadband Stimulus Notes

The Agriculture Department announced \$34.9 million in grants for 111 projects in 35 states under its Rural Development’s Distance Learning and Telemedicine program. “The Obama Administration is working to ensure that rural citizens have access to a full range of educational opportunities and access to quality medical care,” Agriculture Secretary Tom Vilsack said. “The funding we are announcing today will deliver these opportunities by expanding telecommunications, educational resources and computer networks throughout rural communities.”

Wireline

Core AT&T wireline employees in its Southwest Region (CWA District 6) ratified a four-year agreement with the Communications Workers of America (CWA), AT&T said. The agreement covers about 26,000 CWA members in Arkansas, Kansas, Missouri, Oklahoma, and Texas. The contract expired April 4 and employees have worked under the terms of the expired contract while negotiations continued. Nearly 70 percent of the 120,000 employees covered under AT&T's core wireline contracts now have ratified agreements. Negotiations are continuing in CWA District 3 -- AT&T's nine-state Southeast Region, where the contract expired Aug. 8. CWA District 1 -- AT&T's East Region, covering employees in Connecticut -- is the only region where the contract expired on April 4 that is yet to reach a settlement. In both regions, employees continue to work under the terms of the expired contracts while negotiations continue.

Wireless

FCC Chairman Julius Genachowski visited American troops at the U.S. Central Command at Al Udeid Air Base in Qatar to get a better view of military communications issues, he said in an entry on Blogband. "My goal was to better understand the complexities and challenges of military communications, and explore ways the FCC can support the mission of our military," Genachowski said. "From a communications perspective, the military's challenges include using multiple radio, radar, and computer networks to support real-time battle management; conducting and defending against 'electronic warfare' designed to disable communications; and supporting construction or reconstruction of communications infrastructure in countries like Afghanistan and Iraq." Genachowski said the visit also made clear to him the importance of broadband to U.S. troops. "I visited the Base's innovative education and online learning center, where troops can work towards college degree and other continuing education," he wrote. "I spoke with an expert working to place military medical records online, with the potential of real life-saving benefits to soldiers. And I spoke with troops at the Base's recreational plaza, where WiFi access lets them keep in touch with families and friends through VoIP and social networking tools."

AT&T filed an amended complaint in federal court in Atlanta late Wednesday demanding that Verizon immediately pull all of the ads that compare 3G coverage of the two companies. It claimed the Verizon commercials are misleading because viewers might be led to believe that AT&T doesn't have any coverage in the white spots on AT&T's 3G coverage map used in the ads. AT&T first filed suit about the issue last week. Verizon had said the lawsuit is without merit and it doesn't plan to change the maps.

The market for femtocells didn't materialize as strongly as predicted, said ABI Research. The research firm expects only about 350,000 femtocells will be shipped by year-end versus its previous estimate of 790,000. Many operators use femtocells, including AT&T, Sprint Nextel and Verizon Wireless. But the uptake has been slow due to a weak economy, which may discourage customers from splurging on femtocells, concerns at carriers over how to devise pricing plans and a fear that a rapid increase in the number of femtocells could disrupt the macro network, ABI Research said.

Qualcomm launched a family of smartphone chipsets that have media features and have been optimized for the next generation of mobile broadband, the company said. The chips will support handsets with Android, Brew, Symbian, and Windows Mobile operating systems, and will potentially enable some advanced media features like 12-megapixel cameras, 720p video recording, and 3-D gaming. Qualcomm said devices using the chipsets could hit the market by the end of 2010. The chip manufacturer is sampling the mobile data modem chipsets, and the multi-mode chips can support 3G and LTE networks, it said.

The FCC Public Safety Bureau sought comment on a waiver request by the Garden City Park Fire District in New York to operate a new communications system using frequencies 476.0625 and 473.1250 MHz in TV channels 14 and 15. "The Fire District states that its volunteers 'currently use 'low band' (46 MHz) channels through agreements with neighboring fire departments' but continued '[u]se of a shared frequency is untenable because the frequency is overloaded and does not meet the District's requirements,'" the bureau said. "Furthermore, the Fire District argues that 'the current low band channel provides poor in-building coverage and only slightly better street-level coverage.'" Comments are due Dec. 3, replies Dec. 14.

The FCC Public Safety Bureau approved the Public Safety Plan submitted by the 700 MHz Regional Planning Committee covering Indiana, the bureau said.

State Telecom Activities

Verizon generally met most New York thresholds for service quality in the third quarter, the Department of Public Service staff said in a report to the Public Service Commission. "We are aware that rainy summer months contributed to Verizon's poor performance in meeting timeliness of repairs this quarter," said commission Chairman Garry Brown. "I understand that Verizon is facing competitive pressures and needs to manage its business accordingly. However, despite company efforts, performance for timeliness of repairs continues to deteriorate. My staff has asked Verizon for a plan to address this matter and will work closely with the company to get performance back on track. I look forward to the company's response to this difficult challenge." Overall, Verizon met commission-established thresholds of performance 88 percent of the time during the quarter on those metrics it is required to report, the commission said. "This performance is down from the third quarter 2008 performance of 90.4 percent." The company's 539 central offices met or exceeded monthly trouble reporting rate thresholds almost 93 percent of the time. In terms of repair timeliness, the company had its worst quarter since at least 2002, the commission said. During this quarter, its 28 repair service bureaus met the performance threshold 39 percent of the time, even lower than the company's year-earlier performance of 58 percent. "Staff remains concerned about the overall declining trend, and the acceleration of deteriorating service quality trends despite company efforts to address the deficiencies," the commission said. Staff indicated that despite wet weather in recent years, especially in the summer months, the number of out-of-service trouble reports involving Verizon actually has dropped, while the percentage of incidents in which service is out longer than 24 hours has worsened, the commission said. "To address this concern, Staff has requested Verizon to provide a repair service improvement plan," it said. The plan must include any actions the telco intends to take to improve performance short- and long-term, including efforts to augment resources. Bad weather in July and August generated many more repair calls than usual, and repair call center answer performance in the company's three centers did not meet the state standard for answer time performance in those months. However, repair call center answer performance did return to above-threshold performance in September, the commission said.

International Telecom

An international campaign to protect the rights of citizens and artists in the digital era launched Thursday. The "Charter for Innovation, Creativity and Access to Knowledge" signals the start of an "unprecedented offensive" to defend rights in the face of pressure from culture industry lobbies on the European and national parliaments, said French citizens' advocacy group La Quadrature du Net. Despite the changes wrought by digital technology, the entertainment sector, most communications service providers, governments and international bodies continue to

base the sources of their profits on "control of content and tools and on managing scarcity," the charter says. That prevents individuals from accessing information, and harms free expression and privacy rights, it said. The financial crisis has shown the limits of market fundamentalism and the need for a "new kind of ethics" and way of doing business, it says. Free and open-source software has already developed a workable system in which artists and producers continue to control the production process and to receive a fair distribution of earnings without stifling users' rights, it says. The charter seeks: (1) Openness in intellectual property enforcement and lobbying activities. (2) Reforms to national laws and international treaties to close gaps in culture and knowledge dissemination. (3) Expansion of the public domain and contraction of the copyright term. (4) Defense of net neutrality principles. (5) The grant of copyright exceptions such as for fair use and private copying. (6) Access to knowledge for people with reading disabilities. Members of the coalition include the Electronic Frontier Foundation, Consumers International, La Quadrature, Knowledge Ecology International and European Digital Rights.

Telecom Notes

Thousands of pages of documents detailing "behind-the-scenes negotiations" among federal agencies and Congress, concerning potential immunity for telecom companies involved in warrantless surveillance, were posted online by the Electronic Frontier Foundation (EFF), the group said Thursday. They include drafts of legislation and communications among Congress, the Justice Department and Office of the Director of National Intelligence about amendments to the Foreign Intelligence Surveillance Act. EFF has been seeking the documents through a lawsuit filed in 2007. But "the government continues to hide important documents from the public," including communications within the executive branch and the identities of cooperating telcos, said senior staff attorney Kurt Opsahl. The 9th U.S. Circuit Court of Appeals will hear the government's appeal in January of an earlier decision to release those documents -- <http://www.eff.org/press/archives/2009/11/12>

Avaya's proposed acquisition of Nortel Enterprise Solutions received clearance from the U.S. and Canadian antitrust agencies, Avaya said. The \$900 million deal is subject to additional regulatory reviews and Avaya expects to close the transaction by year-end.

Broadcast

The DTV coupon program officially closed shop on Monday when the last coupon expired, and folded "quietly, efficiently and without complaint," the CE Retailers Coalition (CERC) said on Thursday in a statement. By its end, retailers had aided consumers by redeeming about 35 million government coupons. CERC's retailer members "were the core participants" in the program, the group said.

Radio broadcasters ought to think about whether various new interactive initiatives are a business or hobby, to find those that are likely to be most productive, Chairman Peter Smyth of Greater Media wrote in his monthly message. "There are growing pains that manifest themselves in different ways" such as not enough people to get everything accomplished and some technologies that don't have a good purpose, he wrote. "If it's a hobby, it gets one chance to be transformed into a business. If it cannot meet the litmus test, it should be abandoned in favor of more promising initiatives that have a clearer path to profitability."

The FCC should consider music-industry allegations against radio broadcasters (CD Sept 25 p13) in license renewal proceedings, representatives of labels and President Cary Sherman of Recording Industry Association of

America told an aide to Chairman Julius Genachowski Monday. They also talked about “the importance of content protection” to reasonable network management, said an ex parte filing reporting the meeting with Colin Crowell. Executives from Sony Music and Universal Music Group also attended.

Nexstar's WBRE-TV Wilkes-Barre, Pa., will produce a 10 p.m. news cast for New Age Media's nearby WOLF-TV Hazleton, Nexstar said. The terms weren't disclosed.

Cable

With Motorola's cable set-top box unit reportedly for sale, Arris could benefit, CL King analyst Lawrence Harris wrote. "Whenever a competitor in the cable equipment market goes on the market, it can create some confusion at the firm that is subject to sale." Arris has a track record of picking up market share during times of confusion, he said. The company probably doesn't have the cash to bid for the entire Motorola Home & Networks division, which could go for \$4.5 billion, Harris said. Beyond cable equipment, the division includes wireless and wireline infrastructure, he said.

Insight Communications lost about 1,900 basic cable subscribers in Q3, the company said, but it added 11,900 broadband customers and 12,300 phone subscribers. Total quarterly sales increased 12 percent from a year earlier to \$246 million.

Home Shopping Network Q3 sales fell 5 percent from a year earlier to \$641.2 million, the cable programmer said. Profit increased to \$16.5 million from \$2.1 million on lower expenses.

Bend Broadband will carry the NFL Network and the NFL RedZone channel. It will distribute the NFL Network on its "preferred" package in standard definition and HD, the cable operator said. It will carry the NFL RedZone channel on its HD Plus tier. The terms weren't disclosed.

Mass Media Notes

Sales at Disney for the three months ended Oct. 3 gained 4 percent from a year earlier to \$9.8 billion, the company said. Profit gained 18 percent to \$895 million. Increased syndication sales helped broadcasting revenue, which increased 14 percent to \$1.4 billion. Revenue at its cable networks gained 14 percent to \$3.3 billion as the unit logged revenue that had been previously deferred related to annual programming commitments, Disney said.

New Technologies

The FCC ought to deny MPAA's request for a selectable output control (SOC) waiver to stream HDTV movies to pay-TV subscribers (CD Nov 12 p11), Independent Film and Television Alliance President Jean Prewitt wrote Chairman Julius Genachowski Tuesday. "Cable companies should not be given this extraordinary and unnecessary power to essentially create a new, earlier (and perhaps first) window of exploitation from which realistically only the major studios as their designated" pay-TV partners "could initially benefit and receive revenues," she wrote. "Granting MPAA's request would constitute an unjustified waiver of the SOC rule."

Satellite

Boeing and Aker Solutions, two of the four companies that own Sea Launch Co., are considering significantly reducing or pulling out of the launch venture, said Sea Launch spokeswoman Paula Korn on Thursday. With Boeing and Aker, together representing 60 percent of Sea Launch's ownership, reducing their stakes, Sea Launch is looking for new partners to help it wade out of Chapter 11 bankruptcy, she said. A group of strategic investors, collectively named Space Launch Services, have already demonstrated interest, lending Sea Launch \$12.5 million in interim debtor-in-possession financing on Wednesday. The financing allows the company to continue operations through the first quarter of 2010, when the company is projecting it will come out of Chapter 11. Sea Launch has one more launch scheduled this year and has several other launch agreements, though they haven't been scheduled due to the company's bankruptcy. Sea Launch is also in the process of securing exit financing to allow the company to be fully operational again. Korn said it remains possible that the company will secure further interim financing and it has discussed the possibility with Space Launch Services. — *TW*

Iridium Holdings Q3 profit decreased 11 percent to \$15 million from a year earlier. The company had 359,000 subscribers, up 16 percent, but revenue fell 4.3 percent from to \$84.4 million. Revenue from its commercial service grew 23 percent to \$43.9 million due to growth in its machine-to-machine and short burst data sectors, the company said. Government service revenue grew 2.1 percent to \$19.4 million as sales from Defense Department contracts increased. The company's Q3, July 1 through Sept. 29, was cut short by GHL Acquisition's takeover of Iridium Holdings (CD Oct 1 p9). The Q3 earnings don't include the financials of Iridium Communications. Meanwhile, Iridium Communications will provide machine-to-machine satellite data links for Fastwave Communications, which won a contract from Chevron Australia to monitor water quality for the Gorgon gas project in Australia, Iridium said Wednesday.

Corporate Satellite Communications will distribute Intelsat's network broadband global maritime services as part of a multiple year agreement, Intelsat said Wednesday. The service allows for automatic beam switching technology and is part of Intelsat's GlobalConnex service, which uses C-band capacity on three ocean-region satellites.

Communications Personals

New staffers for FCC National Broadband Plan: Author **David Isenberg**, venture capitalist **Mohit Kaushaul**, University of Colorado computer science professor **Douglas Sicker**, and **Carol Matthey**, ex-Deloitte & Touche.

Sirius XM board member and ex-DirecTV head **Eddy Hartenstein** moves up to non-executive chairman, replacing **Gary Parsons**, who resigned ... Comcast promotes **Steven White** to West Division president ... CommScope promotes **Eddie Edwards** to president-chief operating officer, replacing **Brian Garrett**, retiring ... Brightpoint promotes **Anurag Gupta** to president, Europe, Middle East and Africa ... Disney changes: **Jay Rasulo** promoted to senior vice president-chief financial officer, replacing **Thomas Staggs**, moving to head of parks and resorts ... CBS Interactive Music Group promotes **Julie Davenport** to vice president/general sales manager ... Discovery promotes **Todd Zander** to vice president, digital media distribution ... Board members of new Broadband for America coalition: **Kay Alford**, National Black Chamber of Commerce; **Rob Atkinson**, Information Technology & Innovation Foundation; **Larry Darby**, American Consumer Institute; **Ev Ehrlich**, ESC Co.; **Jeff Eisenach**, Empiris; **George Ford**, Phoenix Center; **Allen Gutierrez**, Latino Coalition; **Karen Kerrigan**, Small Business & Entrepreneurship Council; **Joe Savage**, Fiber to the Home Council ... **Jessica Schafer**, ex-aide to Rep. Markey, D-Mass., named NTIA press secretary ... Sinclair Broadcast promotes **Rob Weisbord** to director, digital interactive marketing, and **Audra Swain** to general manager, Las Vegas TV stations.