

# Communications Daily

THE AUTHORITATIVE NEWS SERVICE OF ELECTRONIC COMMUNICATIONS

TUESDAY, JULY 12, 2011

VOL. 31, NO. 133

## TODAY'S NEWS

**2 GHz SPECTRUM** critical to addressing a growing spectrum crunch, CEA tells FCC. Wireless carriers sound note of caution. (P. 1)

**BUREAU GOES AGAINST COMCAST:** Maximum fine, Tennis Channel carriage same as Comcast sports networks sought from ALJ. (P. 5)

**NARROWER CALM ACT RULES** than FCC proposed are sought by all types of MVPDs, NAB. They want responsibility only for ads they insert. (P. 6)

**CARRIERS PROTECTING NETWORKS** from disaster as part of staying competitive, so rules aren't necessary, CTIA says. (P. 7)

## Wireless Carriers Urge FCC Caution in Reallocating 2 GHz Spectrum

The FCC and the Administration should press forward on their "diligent efforts" to evaluate all commercial and federal government spectrum that could be reallocated for wireless broadband, CEA said in a filing responding to an FCC public notice asking for technical input on the best approaches to encourage the growth of terrestrial mobile broadband services in the 2 GHz range. But wireless carriers said in individual filings that the FCC must proceed with care as it determines how to get 2 GHz spectrum into play for wireless broadband.

Additional spectrum is "urgently needed to fuel the continued growth" of wireless broadband, CEA said. The group cites statements about the spectrum crunch by Chairman Julius Genachowski. "There is no debate that a spectrum crunch exists," CEA said. "Study after study supports this conclusion." CEA cited the explosive growth in smartphones and tablets, but also machine-to-

## At Our Deadline

Reps. John Dingell, D-Mich., and Gene Green, D-Texas, late Monday said they will introduce an alternative version of legislation that would reallocate the 700 MHz D-block to public safety. Key differences with a bill introduced by Sen. Jay Rockefeller, D-W.Va., are that the bill would allow only one incentive auction of broadcast spectrum, would require "that broadcasters not be coerced into relinquishing spectrum" and would also stipulate that the broadcasters would be "fully compensated for costs associated with repacking, and that if broadcasters are repacked they maintain the same capabilities and broadcasting footprint that they had prior to the auction," said a news release. "It is disgraceful that nearly 10 years after 9/11, our country's first responders have neither sufficient spectrum nor a national interoperable network to use in saving American lives," said Dingell, the senior member of the House.

machine (M2M) communications, projected by Cisco to grow 40-fold between 2010 and 2015, CEA said. "As mobile data networks become ubiquitous, bandwidth-intensive M2M connections will become more prevalent," the filing argued. "Traditional appliances and devices, such as home appliances, vehicles, energy meters, and vending machines — which traditionally have not been connected directly to mobile broadband networks — are now connecting directly to these networks."

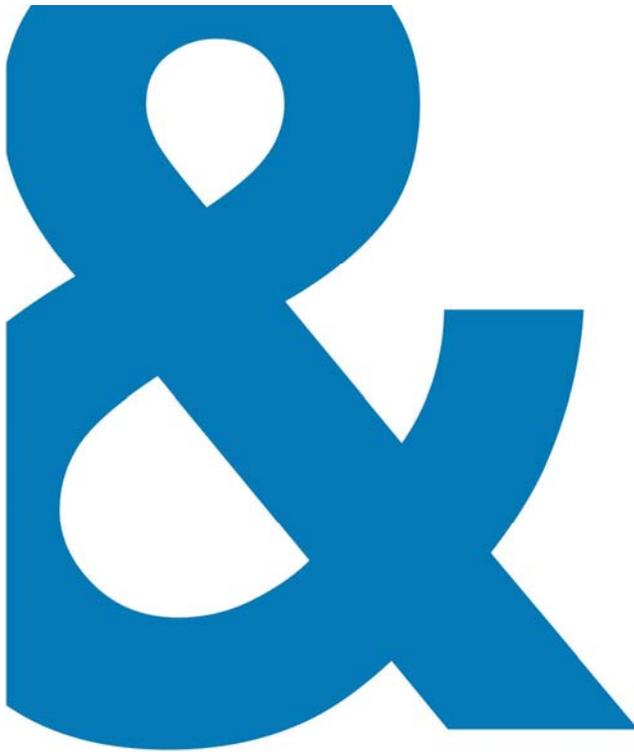
The 2 GHz band "is already an important band for mobile broadband," Verizon Wireless said (<http://xrl.us/bkzp4i>). But the carrier said the FCC shouldn't make any more decisions about 2 GHz spectrum until it resolves the future of the 1755-1850 MHz band, a prime carrier target for broadband use. The 1755-1780 MHz band in particular "offers a valuable opportunity to establish a long-term spectrum plan that is harmonized with global spectrum allocations," Verizon said. "There is broad industry support for reallocation of the 1755-1780 MHz band and the pairing of that spectrum with the currently unassigned 2155-2180 MHz band." The FCC should make that assignment before making other calls on how other spectrum in the 2 GHz range will be reassigned, the carrier said.

T-Mobile made similar arguments about the need for the FCC to first resolve the future of the 1755-1780 MHz band (<http://xrl.us/bkzp8a>). "The Commission should work with NTIA to make the 1755-1850 MHz band available for commercial broadband paired with the AWS-2 upper J Block spectrum (2175-2180 MHz) and the AWS-3 spectrum (2155-2175 MHz)," the carrier said. T-Mobile said two of the three proposals floated by the FCC for the 2 GHz range would "extract spectrum from the AWS-2 and AWS-3 bands." In addition, T-Mobile said, "if the entire 1755-1850 MHz band is made available for commercial broadband, the FCC may wish to evaluate whether some of that spectrum may be effectively paired and used with the 2 GHz MSS band." Sprint Nextel also suggested caution (<http://xrl.us/bkzp72>), saying whatever the FCC does it must protect incumbent PCS licensees from interference and not relent in requiring 2 GHz Mobile Satellite Service entrants to pay their fair share of Broadcast Auxiliary Service relocation costs incurred by Sprint under the 800 MHz rebanding.

Sprint argued that H Block uplink operations at 1915-1920 MHz "would pose a serious interference threat to G Block transmissions and other PCS operations." Sprint said, "at a minimum, new 1917-1920 MHz users would need to be subject to restrictive transmitter power and [out of band emissions] limits to protect the millions of existing PCS devices operating in the 1930-1990 MHz band from harmful intermodulation interference."

AT&T said the FCC should move carefully in reallocating the 2 GHz spectrum (<http://xrl.us/bkzp7q>). "Rather than moving forward with the band plan concepts proposed in the 2 GHz Public Notice, the Commission should focus on collaborating with NTIA to pursue the reallocation of key federal spectrum resources, and on developing voluntary mechanisms for repurposing of commercial spectrum that will extract appropriate value for the public interest and will enable the creation of a comprehensive mobile broadband band plan," AT&T said. Allocations should be "large enough to support several contiguous spectrum blocks," AT&T said. "Equally important to identifying a sufficient quantity of additional spectrum is ensuring that the bands repurposed are spectrally located in such a manner as to be most useful for mobile broadband uses upon being repurposed. The spectrum bands identified should have sufficient uplink and downlink separation to allow full-power mobile broadband use of the entire band with conventional and commercially available filtering technologies."

The Telecommunications Industry Association also advised the FCC to proceed with care (<http://xrl.us/bkzp9s>): "TIA believes that the Commission should ensure that market certainty and license values



## What could educators do with the latest mobile broadband technology?



Distance learning allows students to collaborate around the globe.



A handheld tablet can replace an entire backpack full of textbooks.



Interactive applications provide real-time access to a world of learning tools.

The planned combination of AT&T and T-Mobile will allow us to build a national LTE mobile broadband network that covers 97% of all Americans.

What does that mean?

It means the Internet is about to take a big leap forward. LTE is a super-fast mobile broadband technology that provides a better mobile experience — improving video conferencing, streaming video, and other real-time applications.

We see it as an evolution in network technology.

But educators see it as something else.

They see a new platform for innovation. The ability to make subjects come alive in a true interactive environment. The potential to overcome the barriers of distance and time. A game-changing technology that redefines what's possible.

The opportunities are boundless.

We can't wait to see what they do with it.



[MobilizeEverything.com](http://MobilizeEverything.com)

for existing allocations are not threatened or disadvantaged in any way by new mobile and fixed broadband allocations, and that a holistic approach that includes consideration of existing and future pairing possibilities be considered."

The S-band licensees, DBSD and TerreStar, didn't provide much insight into the future use for their spectrum in their filings. Both recently received bankruptcy court approvals for sales to Dish Network, though they still need FCC approval (CD July 11 p3). Dish didn't file in the proceeding. FCC action to harmonize 2 GHz spectrum specifications "would significantly improve scale economies and availability of S Band infrastructure and devices and enable" faster broadband delivery, said DBSD (<http://xrl.us/bkzpz>). Existing MSS operations must be protected from new terrestrial use in the 2 GHz band, it said. For instance, harmonized operations with adjacent band uplink and downlink with compatible power levels and emissions can help reduce interference with MSS operations in the band, it said. "Coordination with existing S Band licensees may be warranted in some circumstances, but with sufficient guidance from the Commission in advance on the expectations and rights of licensees in the band, coordination through industry practice can likely be achieved," the company said.

Ancillary terrestrial component operations should also be protected said DBSD. If the FCC licenses spectrum in the 2155-2180 MHz range as downlink or flexible-use spectrum and the lower portions of the 2 GHz range as uplink spectrum, the licensees could make more efficient use of their spectrum, said DBSD. If the FCC decides to license the lower spectrum as flexible-use, as was done in the 700 MHz auction, new licensees would have to work with international standards bodies to coordinate with surrounding bands, DBSD said. The spectrum around S-band should be evaluated to ensure co-existence and guidelines may be necessary to facilitate agreements with operators in nearby bands that result in "optimum broadband capacity," it said.

# Communications Daily

(ISSN 0277-0679)

PUBLISHED BY WARREN COMMUNICATIONS NEWS, INC.

Michael Feazel . . . . . Managing Editor  
 Howard Buskirk . . . . . Associate Managing Editor  
 Jonathan Make . . . . . Assistant Managing Editor

Warren Communications News, Inc. is publisher of Communications Daily, Warren's Washington Internet Daily, Consumer Electronics Daily, Green Electronics Daily, Washington Telecom Newswire, Telecom A.M., Television & Cable Factbook, Cable & Station Coverage Atlas, Public Broadcasting Report, Satellite Week and other special publications.

Send news materials to: [newsroom@warren-news.com](mailto:newsroom@warren-news.com)

Copyright © 2011 by Warren Communications News, Inc.  
 Reproduction in any form, without written permission, is prohibited.

**EDITORIAL & BUSINESS HEADQUARTERS**  
 2115 Ward Court, N.W., Washington, DC 20037  
 Phone: 202-872-9200 Fax: 202-318-8984  
[www.warren-news.com](http://www.warren-news.com)  
 E-mail: [info@warren-news.com](mailto:info@warren-news.com)

## WASHINGTON HEADQUARTERS

Albert Warren  
 Editor & Publisher 1961-2006

Paul Warren . . . . . Chairman and Publisher  
 Daniel Warren . . . . . President and Editor  
 Michael Feazel . . . . . Executive Editor  
 Howard Buskirk . . . . . Senior Editor  
 Dinesh Kumar . . . . . Senior Editor  
 Jonathan Make . . . . . Senior Editor  
 Adam Bender . . . . . Associate Editor  
 Bill Myers . . . . . Associate Editor  
 Yu-Ting Wang . . . . . Assistant Editor  
 Tim Warren . . . . . Assistant Editor  
 Kamala Lane . . . . . Assistant Editor  
 Bryce Baschuk . . . . . Assistant Editor

Louis Trager . . . . . Consulting News Editor  
 Josh Wein . . . . . West Coast Correspondent  
 Dugie Standeford . . . . . European Correspondent  
 Scott Billquist . . . . . Geneva Correspondent  
 Greg Piper . . . . . Seattle Correspondent

## Television & Cable Factbook

Michael Taliaferro . . . . . Managing Editor & Asst. Pub.  
 Gaye Nail . . . . . Assoc. Managing Editor  
 Kari Danner . . . . . Sr. Editor & Editorial Supervisor  
 Colleen Crosby . . . . . Sr. Editor & Editorial Supervisor  
 Bob Dwyer . . . . . Sr. Research Editor  
 Marla Shepard . . . . . Senior Editor

## Business

Brig Easley . . . . . Exec. VP-Controller  
 Deborah Jacobs . . . . . Information Systems Manager  
 Gregory Jones . . . . . Database/Network Manager  
 Gina Storr . . . . . Director of Sales & Marketing Support  
 Annette Munroe . . . . . Asst. Dir., Sales & Mktg Support  
 Susan Seiler . . . . . Content Compliance Specialist  
 Katrina McCray . . . . . Sr. Sales & Mktg. Support Specialist  
 Greg Robinson . . . . . Sales & Marketing Support Assistant  
 Loraine Taylor . . . . . Sales & Marketing Support Assistant

## Sales

William R. Benton . . . . . Sales Director  
 Agnes Mannarelli . . . . . National Accounts Manager  
 Jim Sharp . . . . . Account Manager  
 Brooke Mowry . . . . . Account Manager  
 Norlie Lin . . . . . Account Manager

## NEW YORK BUREAU

276 Fifth Ave., Suite 1002, N.Y., N.Y. 10001  
 Phone: 212-686-5410  
 Fax: 212-889-5097

Paul Gluckman . . . . . Bureau Chief  
 Mark Seavy . . . . . Senior Editor  
 Jeff Berman . . . . . Senior Editor  
 Rebecca Day . . . . . Senior Editor  
 Razia Mahadeo . . . . . Editorial Asst.  
 Barry Fox . . . . . Contributing Editor

Dir. of Advertising: Richard Nordin  
 Phone: 703-819-7976  
 Fax: 202-478-5135

By using our e-mail delivery service, you understand and agree that we may use tracking software to ensure accurate electronic delivery and copyright compliance. This software forwards to us certain technical data and newsletter usage information from any computer that opens this e-mail. We do not share this information with anyone outside the company, nor do we use it for any commercial purpose. For more information about our data collection practices, please see our Privacy Policy at [www.warren-news.com/privacypolicy.htm](http://www.warren-news.com/privacypolicy.htm).

TerreStar said it's supportive of an emphasis on voluntary approaches on increasing terrestrial broadband in the 2 GHz band in its comments (<http://xrl.us/bkzp3f>). "Ultimately, it is private sector investment that can optimize use of the band, but only if the marketplace is permitted to make rational choices with regard to service deployment," said TerreStar. The FCC should make sure to consider the interference issues that could be created by an adjacent base station downlink band and a mobile terminal uplink band, which the FCC previously proposed, TerreStar said. — *Howard Buskirk, Tim Warren*

### \$375,000 Fine Sought

## **Bureau Asks ALJ to Recommend That FCC Make Comcast Widely Distribute Tennis Channel**

The FCC Enforcement Bureau sided with an independent cable programmer and went against Comcast in the first program carriage case to be heard by an administrative law judge under Chairman Julius Genachowski. Chief FCC ALJ Richard Sippel should recommend that commissioners fine Comcast \$375,000 and require it to carry the network as extensively as sports channels the cable operator owns, the bureau said. Sippel should find Comcast discriminated on the basis of affiliation, hurting the indie channel's ability to compete, said the recommended decision. It was distributed privately by the bureau late Friday, unavailable Monday in docket 10-204 but sent to us by an agency official.

There's "substantial evidence" Comcast has previously decided how to carry Tennis by consulting with executives of the Golf and Versus channels it owns, the bureau said. "Tennis Channel points out that when Comcast polled its division chiefs to determine if there was significant interest in distributing Tennis Channel more broadly, Comcast's corporate culture influenced the answers," the filing said. "Tennis Channel successfully undermines Comcast's argument that there was a lack of interest from the divisions in distributing Tennis Channel more broadly." The FCC's order approving the cable operator's buy of control in NBCUniversal "noted similar evidence that Comcast favors its wholly-owned affiliates," the bureau said. It sought the commission's maximum penalty because any less "would be unlikely to deter a company as large as Comcast from future violations of our rules in its future cable carriage decisions."

It's the first time the bureau sided recently with a complainant in a program carriage case. The commission dismissed last month a complaint by WealthTV against Comcast and three other cable operators, after the bureau asked the ALJ to find against that independent network and Sippel did so in 2009. ALJs often hew to what the bureau recommends (CD Aug 13/09 p9). Gary Oshinsky of the bureau was skeptical at a spring hearing in *Tennis Channel v. Comcast* of how Comcast consultant Michael Egan suggested the plaintiff had less popular programming than Golf and Versus (CD April 29 p7). The bureau called Egan's comments "subjective testimony" and said he didn't "refute the compelling quantitative evidence presented by Tennis." Bureau Chief Michele Ellison and Oshinsky were among the filing's signers. Tennis and Comcast representatives had no comment.

The bureau said Sippel should ask the regulator to require Tennis be carried on Comcast's systems nationwide on a "broadly distributed tier," within 30 days of the FCC's decision and at a price and terms similar to what the operator gives to Golf and Versus. "The evidence shows" the three networks are "closely aligned" on programming, ads, ratings and viewer demographics, the bureau said. "Despite differences in the type of sports televised, Tennis Channel also established that sports programming occupies

a distinct portion of advertisers' spending budgets and that all three channels compete for the same pool of advertising dollars." Sippel should ask the commission to require Comcast carry the plaintiff in channel slots close to those occupied by Golf and Versus, except where limited bandwidth on analog systems would require kicking another network off, the bureau said.

Comcast should be required to "end its discrimination in terms of channel placement" of the plaintiff and either be required to carry Golf, Versus and Tennis in proximate positions or create a sports neighborhood of channel slots to include the three networks, the bureau said. A carriage proposal the plaintiff made to the cable operator in 2009, which Comcast turned down, could have "an appropriate price schedule" for such broad distribution, the recommendation stated. Such carriage would cost Comcast many millions of dollars, an executive of that operator testified during the ALJ hearing. That Comcast puts Golf and Versus in slots between 7-20 while Tennis goes in the 700 range is "undisputed evidence" of discrimination of channel assignments, which the Comcast/NBCUniversal order said is an indication of such behavior, the bureau wrote: "DirecTV, Dish and Verizon FiOS carry" Golf, Tennis and Versus in the same neighborhood of sports programming. — *Jonathan Make*

### **Broad Safe Harbor Sought**

## **Narrower CALM Act Rules Than FCC Proposed Are Sought by MVPDs and Broadcasters**

The FCC should enact narrower rules on keeping a lid on the volume of TV ads than what it proposed, all types of multichannel video programming distributors and TV stations said. They said the Commercial Advertisement Loudness Mitigation (CALM) Act is more limited in scope than an FCC rulemaking notice on last year's legislation. The notice said "we also interpret the statutory language 'the transmission of commercial advertisements' to apply to all such transmissions by stations/MVPDs." Instead, the act is meant to apply only to ads originated by broadcasters and providers of cable, DBS and telco-TV, those entities said in comments posted Monday in docket 11-93. Even before the rulemaking was released in May, the commission was lobbied by industry to adopt that interpretation (CD May 26 p7).

The notice proposes some measures that "appear to exceed the CALM Act's limited scope," the NCTA said in comments. "Given this large volume of commercials and consistent with the Commission's goal of mitigating loud commercials, the Commission should adopt rules that are readily enforceable and impose minimal administrative burdens." That means holding cable companies responsible for "the content they create and insert" — such as for local ad insertions into national network programming — and companies "should not be liable for commercials that they simply receive at the headend embedded in the network programming they carry and send to their customers," NCTA said.

The regulator should "follow the same practical, balanced approach" of the legislation, the NAB said. "As long as the station follows commercially reasonable practices to ensure compliance with Annex J" of the Advanced TV Systems Committee's A/85 standard, "the safe harbor should cover not only commercials that the station inserts, but also those inserted by networks and third-party programming providers," the association said. "Annex J of ATSC A/85, by its terms, does not require stations to measure the loudness of every single commercial that they transmit or to prescreen commercials obtained from networks or syndicators."

The regulator should adopt a blanket waiver to put off the rules for all small businesses, which could include all stations in TV markets below No. 149, the NAB said. A one-year financial hardship exemption for small MVPDs should be approved by the commission, which should also consider extending the delay for another year, the American Cable Association said. "It is clear that the obligations placed on MVPDs by ATSC A/85 are much more limited" than what the rulemaking proposed, the ACA said. "That standard, at most, only requires MVPDs to be responsible for the loudness of commercial advertisements when they insert the material."

The rulemaking notice "proposes to disregard that careful balancing" of various approaches that was incorporated in the CALM Act to place "broader and more costly regulatory mandates on providers," Verizon said. That's "presumably in an effort to more fully address the issue of loudness than would the approach set out by Congress in the statute." The telco sought a "straightforward and more balanced approach" in the act by not placing "total responsibility on distributors, potentially including responsibilities to monitor or correct the loudness levels for all commercials." ACA said it knows of no equipment being sold that lets MVPDs monitor in real-time, decode and re-encode all types of content in accordance with ATSC A/85.

"To the extent the Commission concludes (wrongly, in AT&T's view) that a MVPD is liable" for ads in all programming, the agency should allow the company to rely on contracts requiring noise levels fit with the standard, the telco said. That standard wasn't meant "to lock stations/MVPDs into a particular network architecture, equipment or loudness management system" and AT&T's own audio encoding standards ought to fall under FCC rules, the company said. DirecTV asked the commission to "bear in mind the practical limitations of those who would be subject to its requirements." No gear now available can identify ads, versus other programming, measure their volume and adjust the sound level before they're transmitted to viewers, the DBS company said. "Under the Commission's tentative interpretation, a programmer that used appropriate equipment but nonetheless inserted a commercial at an incorrectly coded loudness setting would be protected by the safe harbor, while an MVPD whose equipment operated properly to send that programming stream along could be liable for a violation." — *Jonathan Make*

### Incentives Not Needed

## **Carriers Already Spending Billions to Harden Networks, They Tell FCC**

Wireless carriers have plenty of incentives to protect their own networks, without additional government rules, CTIA said in a filing at the commission in docket 11-60 (CD July 11 p7). Industry comments due last week, but posted by the FCC Monday, largely agreed that the FCC need not step in and should not impose overly prescriptive rules for making networks more robust and able to survive disaster.

"There is no incentive that the Commission could give that would be greater than a wireless broadband service provider's existing incentive to protect its significant network investment and customer confidence," CTIA said (<http://xrl.us/bkzpznm>). "In addition to the individual efforts undertaken by carriers, the wireless industry has worked collaboratively to develop industry best practices, and CTIA and its members have coordinated closely with Federal, State and local government officials to develop strategic plans for maximizing service continuity and reliability." If the FCC steps in to mandate a network survivability strategy carriers must embrace, "the end result is nearly certain to be either too specific to be relevant to many network operators or too vague to be useful for all," CTIA said.

Verizon and Verizon Wireless together spend an estimated \$17 billion "to build, maintain, and protect the health of" their networks, they said in joint comments (<http://xrl.us/bkzpzp>). Verizon said the carrier already works closely with the government on disaster preparation, through such groups as the National Coordinating Center for Telecommunications and the Communications Security, Reliability, and Interoperability Council (CSRIC). But mandated best practices don't make sense, Verizon said: "(a) potential disasters evolve and prescriptive practices will be overcome by evolving threats; (b) mandates may discourage open participation and collaboration in future CSRICs; and (c) mandated implementation of best practices is not consistent with their intent." AT&T similarly cautioned the FCC to adopt a light-handed approach. "The remarkable resiliency of the Nation's communications infrastructure is a direct result of fierce competition in both the consumer and enterprise markets, which drives service providers to protect their networks and prepare for and mitigate the effects of emergencies," AT&T said (<http://xrl.us/bkzpz3b>).

PCIA focused on possible backup power mandates at cell towers and other wireless facilities, asking the FCC to allow flexibility (<http://xrl.us/bkzpz2t>). "Any rigid 'one-size-fits-all' approach to backup power threatens to make wireless facility siting extremely burdensome and could potentially reduce the number of cell sites by subjecting them to federally-mandated backup power that cannot meet local, state, and federal obligations," PCIA said, in a filing with the Distributed Antenna System Forum. Just because a site has backup power doesn't mean that it is "hardened" against disaster, PCIA said: "There are myriad other issues that the Commission must consider first; for example, availability of fuel and access to roads are also serious gating issues." Carriers and infrastructure providers themselves "are in the best position to determine which sites could provide the most effective service if equipped with backup power," the group said. In 2008, the Office of Management and Budget rejected the backup power requirements for cell sites established in the FCC's Hurricane Katrina order (CD Dec 2/08 p1). — *Howard Buskirk*

### Cable Act Still Needed

## **Leave Online Video Distributors Unregulated, Say Comcast, NCTA**

The FCC should reject calls to regulate the "thriving" online video distribution marketplace and leave online video distributors (OVDs) free from rules, Comcast said. The marketplace is working fine but its existence doesn't give "the Commission any authority to apply, or indeed any factual support for applying, outdated regulations to either OVDs themselves or to MVPDs that interact with OVDs" it said. Public Knowledge and DirecTV have both raised the issue in comments with the agency.

The FCC should reject calls by Public Knowledge to expand to OVDs many of the rights enjoyed by traditional multichannel video programming distributors (MVPDs), Comcast said. Public Knowledge had sought a declaratory ruling saying pay-TV operators must work fairly with OVDs. "Although facially such a regulation would seem to be relatively innocuous, the similar language in Section 628(b) of the Communications Act has been interpreted broadly and in unpredictable ways," it said. And it is "questionable, at best" for the FCC to draw its authority for regulating online video from the 1992 Cable Act, a law adopted at a time when the platform of online video had yet to be conceived, Comcast said.

"Protectionist" rules aren't needed to help online video distributors, NCTA said in its comments. Though Netflix said in its initial comments that MVPDs that are also ISPs have both the means and motive for discriminating against OVDs, it provided no evidence that "any such conduct has had or would have" the result of curbing the growth of OVDs, NCTA said. "Indeed, it's the regulatory constraints sug-

gested by Netflix that would unfairly hamper competition by artificially preventing cable operators from marketing their services in ways that are most fair, efficient and valuable to their customers,” NCTA said.

The FCC should also be careful not to apply language and classifications to online video that could have “unwarranted regulatory consequences,” NCTA said. For one, the FCC shouldn’t “simply borrow the distinct classification of Online Video Distributors (“OVDs”) that it adopted in the Comcast-NBCUniversal transaction proceeding,” NCTA said. There, the agency was looking at a specific set of facts and a single transaction, it said. “If the Commission does attempt to define a category of OVDs in its report to Congress, it should do so in a manner that does not encompass all websites with video content,” NCTA said.

The growth in online video means local governments need more oversight over Internet services, said Montgomery County, Md., in its reply comments. The FCC should let local franchising authorities address Internet service issues just as they oversee cable service complaints, “It would be entirely logical to allow local governments to handle Internet customer, a.k.a. OVD subscriber matters,” the county said. “After all, residents live in the local jurisdiction, the two services are provided by the same provider over the same plant, and Internet service is often bundled with cable service,” it said. The complaints the Montgomery Office of Cable and Communications Services gets each year are skewing increasingly toward complaints related to Internet service, it said.

Innovations in online video by traditional pay-TV operators aren’t reasons for the FCC to ditch its AllVid plans, the AllVid Alliance said. “Examples of multichannel programming being made available through ‘apps’ or new devices continue to primarily rely on walled garden, proprietary implementations,” it said. “Ad hoc enabling of access to some multichannel content on some devices masks the competitive potential of assuring access to all multichannel content on all devices,” it said.

The suggestion that the increased competition in the MPVD market has left the Cable Act antiquated ignores FCC findings to the contrary, said DirecTV. While competition has increased in particular markets and submarkets, “cable operators still wield enormous and increasing market power in other markets,” including high-speed broadband and cable-affiliated programming. The DBS company said there will likely be more to say about those issues as the FCC considers the program access exclusivity provision. The City of New York said: “The wireline MVPD market is unlikely to be fully competitive for the foreseeable future. The competition offered by the entrance of large telephone companies ... is still in its infancy.” And DBS offerings are constrained in competing with wireline operators’ full bundle of services, it said. “It is the City’s experience that the Title VI framework has enhanced and will continue to enhance the deployment effectiveness and competitiveness” of wireline pay-TV services, it said. — *Josh Wein, Tim Warren*

## Efficiency or Domination

### **Sprint Assault Over Spectrum Concentration Enlivens California Debate on T-Mobile Sale**

SAN FRANCISCO — A Sprint executive laid into AT&T as seeking to dominate spectrum holdings and thereby the wireless market, rousing an otherwise staid three-round California Public Utilities Commission (PUC) debate about the T-Mobile deal (CD July 11 p5). Administrative Law Judge Jessica

Hecht repeatedly scolded Sprint's director of spectrum proceedings, Trey Hanbury, on behalf of executives from the deal parties that he appeared with late Friday.

In contrast to other speakers at the first of three technical workshops that the commission has scheduled for this month in a review of the purchase, Hanbury was so assertive that at one point he caught himself grabbing a question by a Sprint consultant in the audience directed to William Hogg, AT&T's senior vice president of network planning and engineering. The tag-team argument — with Andrew Merson, Cricket's engineering vice president helping Hanbury against Hogg and Peter Ewens, T-Mobile's chief strategy officer — was lively but never heated.

The lead commissioner on the inquiry, Catherine Sandoval, expressed concern about the prospect of AT&T holding most of the spectrum in California markets. Hogg replied that after the acquisition the carrier wouldn't be far ahead of Verizon Wireless and the combined portfolios of Sprint and the affiliated Clearwire in spectrum suited to broadband. In response to other questions from Sandoval, he said it's a "very rare instance" when AT&T takes a tower out of commission for redundancy after an acquisition, and he promised that every place in the carrier's California service territory will have LTE available within six years after the T-Mobile purchase closes.

AT&T has considerably more unused spectrum, including its AWS frequencies, than "spectrum constrained" T-Mobile does, undercutting capacity justifications for the purchase, Hanbury said. The efficiencies the buyer points to are "false, exaggerated or premised on a number of fictions," he said. AT&T has so little interest in the AWS spectrum that significant blocks are included in the breakup fee that the carrier has agreed to with T-Mobile, Merson said. Ewens declined to comment on grounds of confidentiality.

Hogg insisted that the deal would bring "tremendous capacity gains" from splitting cell sites, "free up spectrum for other uses" through elimination of a "redundant control channel," and provide "utilization efficiencies." Under questioning by Merson, he said AT&T plans to use its AWS holdings to varying degrees by market, but it will take time for leasing and zoning of towers converted to use that spectrum along with the 700 MHz and for handsets that support both to be developed. When a PUC staffer asked Hogg how second-tier carriers will compete with AT&T to acquire new spectrum, he said, "The market will determine who those winners will be."

A Silicon Valley workshop scheduled for Friday in Santa Clara is to take up innovation issues, including handsets, distributed antenna systems, broadband and data transfer. The last in the series, July 22 in Los Angeles, is to cover customer issues including price, service quality, customer service, coverage and disclosure. The two commissioners at the first workshop told us that the PUC has authority to go beyond stating conclusions of its inquiry, including in comments to the FCC, and take more substantive action concerning the deal if it sees fit. — *Louis Trager*

## Comm Daily® Notebook

FCC Chairman Julius Genachowski said he welcomes a new executive order by President Barack Obama, issued Monday, asking every independent regulatory agency to take a close look at its regulations within 120 days and develop a plan for streamlining its bureaucracy. In a February email to FCC staff, Genachowski said he supported anti-regulation moves by the administration and asked staff to follow an earlier executive order (CD Feb 7 p1). "Since my first day as Chairman, I have made regulatory reform a top prior-

ity, improving FCC processes and decisions to support innovation, economic growth, and America's global competitiveness," Genachowski said Monday in a written statement. "Shortly after the President's initial Executive Order, I directed FCC staff to follow the spirit of the Order. We had already conducted retrospective reviews, and incorporated cost-benefit analysis into our decision-making." Genachowski said that on his watch the commission has already "repealed more than 50 outdated regulations and identified 25 sets of outdated data collections for elimination" and also "removed regulatory restrictions on spectrum use." The agency is in the process of "reforming universal service funding to remove waste and inefficiency and incorporate market-based funding mechanisms," he said. "We'll continue to work with all stakeholders on these important matters, consistent with our obligations as an independent agency."

## Capitol Hill

Rep. Mike Doyle, D-Pa., praised the FCC for taking up low-power FM issues. The agency is expected to propose rules for bringing more LPFM stations to urban areas Tuesday (CD July 6 p6). "I am delighted to see that the FCC is moving forward to carry out legislation I championed for so many years," Doyle said in a written statement distributed by LPFM advocate Prometheus Radio Project. "This is a major victory for community radio and I urge the FCC to license as many LPFM stations as possible."

## Wireline

USTelecom, its member companies, and CenturyLink and Frontier believe they have come up with a "potential" set of intercarrier compensation regime reforms that will achieve "broad consensus" among industry, they said in an ex parte meeting with FCC officials last week (<http://xrl.us/bkzp8c>). "In the intercarrier reform area, we also discussed how shifts in intercarrier access revenues could be measured and potentially recovered in ways other than through per minute charges that may distort incentives to use communications services and whether reciprocal compensations revenues should be included in any circumstances," said USTelecom Vice President Jonathan Banks in an ex parte notice released Monday in docket 10-90. "On reform of universal service, our discussion centered on identifying whether and where it is appropriate to establish a limited right-of-first-refusal for potential recipients of explicit support for the construction and operation of broadband networks," Banks said. "We also discussed the potential role of satellite broadband in providing broadband service to the very highest cost to serve locations and the interplay between reliance on satellite broadband in these locations and the overall size of an explicit support fund for broadband." A day after USTelecom's meeting, Dish Network made its own case for giving satellite a slice of the Universal Service Fund. "Satellite broadband is the most-effective technology for providing true broadband to many currently unserved households," Dish Corporate Counsel Alison Minea said in her ex parte notice (<http://xrl.us/bkzp8n>). "Its direct and full inclusion in Universal Service Fund reform will maximize efficiency, reduce the size of the fund, and ensure that rural America has access to high-quality broadband." Also last week, leaders from NTCA, OPASTCO and the Western Telecommunications Alliance met with FCC officials (<http://xrl.us/bkzp8x>). "The Rural parties discussed the need to ensure sufficient cost recovery to promote and sustain broadband availability and affordability in rural areas in a manner that recognizes the varied characteristics among carrier serving those areas," the groups said in an ex parte notice. "While contemplating reform of existing high cost recovery mechanisms, the Rural parties discussed: the need for adequate transition periods and reasonable transition paths; management of fund growth without impairing reasonable cost recovery; the role of rate benchmarks; and through identification and recognition of consumer impacts."

Lifeline and Link-Up customers ought to be able to use their subsidies to pay for broadband, test and measurement provider JDS Uniphase said in an ex parte meeting with FCC staff last week, the company said in a notice filed and released Monday on docket 10-90. The commission should require “carriers receiving federal universal service support to confirm quality of service, including that broadband ... is actually provided to consumers,” the company said. “In the case of Lifeline/Link-up support, broadband providers should be required to pre-qualify connection to confirm their capability to support the full suite of broadband offerings, including VoIP, data and video,” JDS said. Carriers also ought to be required to monitor “proactively ... and routinely test their broadband networks,” JDS said. “JDSU further noted that connection speed should not be the only measurement, but that IP throughput, interference, radiated emissions, jitter, latency and packet loss, among others, were also important to confirm the customer experience,” the company said in its ex parte notice.

## Wireless

Location-based services (LBS) are useful for wireless consumers but continue to pose risks, the ACLU said in a paper it filed at the FCC (<http://xrl.us/bkzqa7>). "Location-based services offer a wide range of services, from navigation aids to local search to mobile social networking," the group said. "But in doing so, they are also capable of compiling a detailed record of the lives of their users: location records that can reveal the user's presence at a church service or political rally and can be combined with other data to expose that user's friendships, activities, habits, and more. And outdated law provides inadequate protection for these valuable records." Verizon Wireless in a filing at the FCC posted Monday (<http://xrl.us/bkzqbm>) praised the FCC for holding a June 28 LBS forum (CD June 29 p5). "The panelists' presentations and discussion aptly describe the wide variety of traditional and non-traditional stakeholders engaged in the LBS marketplace," Verizon said. "Wireless service providers' inability to serve as a gatekeeper for third parties' privacy practices underscores the merits of a uniform policy framework, under a single agency, that encompasses all LBS offerings." But, Verizon said, this framework should not offer "prescriptive regulation." "The June 28 forum amply demonstrated that the LBS market comprises a broad and evolving range of providers, products and technologies," AT&T said in a follow up filing on the LBS forum (<http://xrl.us/bkzqby>). "AT&T strives to be a market leader on consumer privacy, and is committed to advancing best industry practices and working cooperatively with government to protect consumers and promote valuable new products and services. ... AT&T is particularly supportive of the continued development of protective but flexible industry standards" such as the best practices developed by the CTIA. "People can use mobile services to get driving directions from their current location, identify a traffic jam and find an alternate route, or find an open pharmacy at 2 AM for a sick child," Google said (<http://xrl.us/bkzqcc>). "Mobile location data can even save lives." But, Google noted, it recognizes that LBS won't work without the trust of the public. "We understand location information is sensitive, so our approach to location data is simple: Opt-in consent and clear notice are required for collection and use of location information on Android. We don't collect any location information — any at all — through our location services on Android devices unless the user specifically chooses to share this information with Google," the company said.

---

The FCC on Monday announced a new project that will provide up to \$9 million to 20 schools or libraries to provide wireless Internet to local students. The program is dubbed “Learning On-the-Go.” It’s part of the commission’s larger efforts to overhaul the E-rate program. The schools and libraries are: Piedmont City School District in Piedmont, Ala.; Riverside Unified School District in Riverside, Calif.;

San Diego Unified School District of San Diego; Aurora Public Schools in Aurora, Colo.; Clay Hill Elementary School in Jacksonville, Fla.; Haralson County Board of Education in Buchanan, Ga.; Sioux City Community School District in Sioux City, Iowa; Orleans Parish School Board in New Orleans; Westwood Community Schools in Dearborn Heights, Mich.; Michigan Technical Academy in Redford, Mich.; Roy Municipal Schools in Roy, N.M.; the school district of New Rochelle, N.Y.; Southern Tier Library System of Painted Post, N.Y.; the Greater Southern Tier Boards of Cooperative Education Services in Watkins Glen, N.Y.; Onslow County Schools of Jacksonville, N.C.; Mohican School in the Out-of-Doors in Butler, Ohio; Summit Academy Community School for Alternative Learners in Canton, Ohio; the Foxfire Center for Student Success in Zanesville, Ohio; Boys' Latin of Philadelphia Charter School in Philadelphia; and Katy Independent School District in Katy, Texas.

---

Verizon Wireless is set to open its LTE Innovation Center in Waltham, Mass., Tuesday, the carrier said. The center was designed to provide a central base for Verizon's advanced technology initiatives. More than LTE 30 products have been developed and will be demonstrated in the new facility.

---

Cincinnati Bell is facing an investigation from Robbins Umeda, a shareholder rights litigation firm, that it gave key executives raises when the company reported weak financial performance. The firm said it's looking at the unanimous decision by the company's board to "dramatically" increase executive compensation between 54.3 percent and 80.3 percent in 2010, despite the company's poor financial performance during the same period. The company had a loss of \$61.8 million in 2010. The board also approved a 71.1 percent increase in compensation for CEO John Cassidy, who received \$8,562,462 from the company in 2010. Chief Financial Officer Gary Wojtaszek received a compensation increase of 80.3 percent and General Counsel Christopher Wilson a 54.3 percent jump in 2010. Robbins Umeda is looking into whether the board decision to approve the raises for these executives violated its own pay-for-performance policies at the expense of Cincinnati Bell's shareholders. Cincinnati Bell did not respond to our request for comments.

---

Gov. Jack Dalrymple of North Dakota, a Republican, became the latest governor to endorse AT&T's buy of T-Mobile. "Completion of this merger will help to eliminate the obstacles we've faced getting wider deployment of high-speed broadband technology across expansive geographic areas in the state," Dalrymple said in a letter to the four FCC commissioners. "This expanded coverage would effectively bridge the digital divide between urban and rural communities and help bring new and innovative materials to the classroom, give consumers greater access to high quality healthcare and allow businesses to run faster and more efficiently."

## State Telecom Activities

Verizon will end automatic delivery of printed residential white pages directories in Virginia in late July, but customers will be able to obtain the directory a free upon request, the company said. The move would keep 1,640 tons of paper out of the state's waste stream annually, it said Monday. The State Corporation Commission granted in May the telco's request to waive the existing requirement to deliver residential white pages. Verizon claimed residential white pages usage has decreased considerably due to the Internet and mobile search. The telco expects to end the automatic production and delivery of printed residential white page directories throughout its service area, which encompasses 12 states and Washington, D.C., by the end of Q3. Doing so would keep 17,000 tons of paper annually out of the country's waste stream, it said.

## International Telecom

By 2012, half of Mexico's households are expected to have access to services provided by cable companies due to the latest initiative to deregulate fiber, according to Mexico's Ministry of the Economy. New fiber offerings, including broadband Internet access, TV, home and wireless phone, are expected to be available in August, the agency said.

## Telecom Notes

Correction: Karen Peltz Strauss is the deputy chief of the FCC's Consumer & Governmental Affairs Bureau (CD July 11 p8).

## Broadcast

The FCC should investigate and shut down a so-called pirate radio station operating in northern New Jersey on 96.7 MHz, a licensed FM station on that same channel said in a Thursday filing. Educational Media Foundation, owner of WKLV Port Chester, N.Y., said the pirate station calling itself Jamminz Radio is "having a significant impact on the reception of WKLV-FM" in part of its service area. Jamminz is "open and notorious" and not a "clandestine operation," with disc jockeys, a Facebook page and website, said the foundation. Our call seeking comment to a phone number listed as a contact on www.jamminzradio.com wasn't returned. FCC records show WKLV is a noncommercial educational station, and the foundation said it paid more than \$15 million for it in May.

An FCC fine to a News. Corp station for not disclosing the source of a video news release that aired on a newscast "reinforces the need" for TV stations to be aware of when they get video from other commercial interests, a broadcast lawyer wrote. KMSP Minneapolis, recipient of a \$4,000 Enforcement Bureau fine (CD July 11 p6), could have complied with the commission's rule of identifying video containing more than "transient or fleeting" images of products with a visual credit, David Silverman wrote. Such a disclosure could have said: "Video provided by General Motors," he wrote on the blog of the Davis Wright law firm.

## Cable

Time Warner Cable said it will add another 225 workers to its Charlotte, N.C. corporate campus over the next three years and spend more than \$100 million on two new buildings there. One of the buildings will be a two-story data center it will use a "virtual cloud environment" that will speed deployment of its service by having shared storage and network elements, it said.

## Satellite

The FCC should maintain its current out-of-band emission (OOBE) limit for mobile digital devices in the 2.5 GHz band, said Globalstar in docket 03-66 (<http://xrl.us/bkzpqj>). The comments were in oppo-

sition to proposed changes to OOB limits in that spectrum. Globalstar, which uses 2483.5-2500 MHz for downlink transmissions, said the proposed changes in the 2.5 GHz band would "greatly increase the probability of harmful interference to Big [Low Earth Orbit] MSS operations below 2495." Globalstar customers would need at least 6.5 miles of separation in some cases to avoid such interference, the company said. It said that interference "could trigger particularly severe consequences during natural or man-made disasters and other emergencies, when terrestrial networks may be damaged and unavailable and an MSS handset's ability to receive a signal might have life-or-death implications."

John Deere CEO Samuel Allen wrote LightSquared CEO Sanjiv Ahuja a letter that "made it clear that he saw no value in engaging in direct discussions toward a solution to address the potential overload of precision GPS receivers and that Deere & Co. would continue to oppose LightSquared's" terrestrial deployment in the L-band. That's according to an ex parte filing (<http://xrl.us/bkzpr6>) by the satellite company. It met with Office of Engineering and Technology Chief Julius Knapp and other FCC staff on Wednesday. LightSquared stressed the need for precision GPS manufacturers to work with the company in finding solutions that would allow the services to coexist, the filing said. LightSquared also said it discussed its revised plans for rollout of service beginning in the lower part of the L-band and the testing from the technical working group that looked at LightSquared interference with GPS.

The Monday launch of six Globalstar satellites by Arianespace was postponed due to equipment malfunction on the launch pad in Kazakhstan, the companies said. The satellites were placed in stand-by mode and are in "fully safe conditions," said Arianespace. The issue has been resolved and the launch was rescheduled for Tuesday.

News Corp.'s proposed takeover of British Sky Broadcasting will be referred to the Competition Commission, said Secretary of State for Culture, Olympics, Media and Sport Jeremy Hunt. The referral will likely mean a several-month delay on a decision from regulators, media reports said. The announcement follows the shuttering of News Corp.'s *News of the World* newspaper, which was caught up in a phone hacking scandal. Meanwhile, News Corp. said it withdrew plans to spin-off Sky News, rather than refer the move to the Competition Commission. "BSkyB will continue to engage with the regulatory process," the company said. BSkyB previously turned down News Corp.'s \$12.1 billion offer for the 60.9 percent that News Corp. doesn't own, though the companies agreed to move forward on gaining regulatory approval.

Hughes Network Systems' managed network service customers will be able to track network health and devices on free smartphone and iPad apps, said Hughes. The mobility "helps Hughes customers and resellers reduce the time and effort in monitoring multiple systems" and improves application performance and device problem resolutions, the company said.

## Communications Personals

**Michael Schwartz**, ex-*Communications Daily*, steps down from CableLabs senior vice president-communications, to become consultant ... **Brent Rosenthal**, W.R. Huff Asset Management, becomes Ren-track non-executive chairman, succeeding **Paul Rosenbaum**, retiring; CEO **Bill Livek** becomes vice chairman ... **Owen DeLong**, Hurricane Electric, joins advisory board for Infoblox IPv6 Center of Excellence ... Informa Telecoms & Media hires **Nick Thomas**, ex-Forrester Research, as principal analyst, covering TV and digital media ... **Amy Storey** promoted to assistant vice-president, public affairs, CTIA.