

BloostonLaw Telecom Update

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HAC Reporting Deadline Is January 15

The next Hearing Aid Compatible (HAC) reporting deadline for digital commercial mobile radio service (CMRS) providers (including carriers that provide CMRS service using AWS-1 spectrum and resellers of cellular, broadband PCS and/or AWS services) falls on **January 15, 2010**. **Previously the FCC has fined carriers for failure to comply with this requirement.** BloostonLaw will once again be available to assist clients in completing and filing the mandatory FCC Form 655 report, and in reviewing company web sites for compliance with required consumer outreach requirements. Service providers will need to report which handset models they offered to the public over the previous year (i.e., both compliant and non-compliant devices offered since January 15, 2009), and to identify the HAC compatibility ratings (if any) of each device.

We have prepared a HAC reporting template to assist our clients in keeping track of their HAC handset offerings, and other regulatory compliance efforts. ALL SERVICE PROVIDERS SUBJECT TO THE COMMISSION'S HAC RULES – INCLUDING COMPANIES THAT HAVE HERETOFORE QUALIFIED FOR THE DE MINIMIS EXCEPTION – MUST PARTICIPATE IN RECORDKEEPING AND ANNUAL HAC REPORTING.

As we advised our clients last Spring, the current HAC handset requirements (which went into effect on **May 15, 2009**) require Tier III CMRS service providers to offer a minimum of fifty percent (50%) or at least nine (9) handset models per air-interface that are rated M3- or better for RF interference reduction, and a minimum of one-third (33%) or at least five (5) handset models per air-interface are rated T3- or better for inductive coupling capability.

BloostonLaw contacts: Hal Mordkofsky, John Prendergast, Cary Mitchell, and Bob Jackson.

BloostonLaw On The Road: Managing Partner **John Prendergast** will be providing an update on wireless regulatory issues at the December 8 **North Dakota Association of Telephone Cooperatives** meeting in Bismarck, North Dakota.

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USF, Intercarrier Comp Under Threat In FCC's National Broadband Plan

In conjunction with developing its National Broadband Plan (NBP), the FCC has asked for more focused comment on its universal service and intercarrier compensation (ICC) policies and to explore various policy options that would further the goal of making broadband universally available to all people of the United States. ***This re-examination of USF and Intercarrier Comp must be viewed in conjunction with the FCC Broadband Task Force indication that the current USF program is an obstacle to broadband deployment (see related story below), signaling an increased threat to the two main sources of support for the rural telecom industry. Our clients should react strongly to this threat, and take the opportunity to shape funding for broadband in rural, unserved areas, by participating in the broadband proceeding. Clients interested in participating in joint comments BloostonLaw is preparing should contact us promptly.***

In particular, the FCC seeks comment in the following areas:

Size of the Universal Service Fund. The universal service fund (USF) consists of high-cost, low-income (including the Lifeline and Link Up programs), schools and libraries (the E-rate program) and rural health care support mechanisms. Is the relative size of funding for each support mechanism appropriate to achieve the objective of universalization of broadband? That is, if funding should be significantly increased or reduced for one or more of the support mechanisms, should it be reduced or increased in other mechanisms, and if so, how would such changes advance the goal of universalization of broadband?

Contribution Methodology. There are recommendations for a numbers or connections-based methodology, an expanded revenue-based methodology, or some combination of the two. Commenters should explain how their preferred solution would impact end users, who ultimately bear the cost of universal service through carrier pass-through charges. Commenters should identify with specificity all assumptions. Commenters should specify how any proposed modifications would alter the relative share of contributions borne by residential consumers as opposed to business consumers. Commenters should address the anticipated impact of universal service pass-through charges under different contribution methodologies on residential households with different consumption characteristics, such as (i) a household with landline voice service, low interstate usage, and no broadband connection, (ii) a household with landline voice service, moderate interstate usage, an average wireless plan, and a broadband connection; and (iii) a household with landline voice service, a wireless family plan with five lines, and a broadband connection. Commenters should specify all assumptions.

Transitioning the Current Universal Service High-Cost Support Mechanism to Support Advanced Broadband Deployment. In the past, the Commission and the Federal-State Joint Board on Universal Service have sought comment on various ideas to reform the high-cost mechanism in a manner that would advance broadband deployment. One potential option would be to supplement the existing high-cost programs with one or more additional programs that would target funding for broadband deployment in unserved areas. *Another option would be to gradually reduce funding under the existing high-cost programs over a period of years and to transition that funding into a redesigned mechanism that explicitly funds broadband.* The FCC encourages both existing eligible telecommunications carriers (ETCs) (both wireline and wireless companies) and other broadband providers to address a number of questions related to these options. Our rural telco clients should emphasize to the Commission that continued funding is needed to

expand and upgrade the valuable services that they provide, and that the existing telephone network is one of the best avenues for introducing broadband to rural areas.

Impact of Changes in Current Revenue Flows. According to the FCC, some commenters assert that any significant reductions in current levels of universal service high-cost support and/or intercarrier compensation would jeopardize their ability to continue to serve customers and advance the deployment of next generation broadband-capable networks. *Others assert that the current systems of support and compensation have led to regulatory arbitrage and inefficient investment and have undermined the deployment of advanced communications.* What factual analyses should the Commission undertake to test the validity of such arguments? What would be the financial impact of reducing or eliminating high-cost support for carriers in geographic areas where there already is at least one competitor offering broadband (using any technology) today that does not receive any high-cost support?

What would be the financial impact of reducing or eliminating high-cost support for carriers in geographic areas where there already are multiple competitors offering broadband (using any technology), with more than one of those providers receiving high-cost service support. To what extent are existing ICC revenues and high-cost support being used to pay debt obligations? To what extent do carriers securitize high-cost support and/or ICC cash flows and, if this is occurring, how often and why? Identify lenders who are willing to securitize ICC and high-cost support cash flows. Individual carriers or groups of carriers should provide revenue, Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA) and capex for study areas that receive high-cost funding. For individual carriers or groups of carriers, what percentage of free cash flow (defined as EBITDA minus capex) do high-cost support and/or ICC represent? Carriers should discuss their capital structure, in particular the amount of debt, weighted average interest rate on debt obligations, length of debt obligations, Net Debt/EBITDA and percentage of revenues devoted to paying interest and principal.

The Commission seeks to understand how intercarrier compensation payment flows may impact broadband deployment incentives and how any intercarrier compensation reform may change such incentives. The FCC is particularly interested in factual information or data that addresses the question of how the current intercarrier compensation system either supports or inhibits broadband deployment, rather than conclusory assertions that intercarrier compensation should be reformed.

Competitive Landscape. In 1997, the Commission adopted a principle of competitive neutrality to guide its

future policymaking, concluding that universal service rules should neither unfairly advantage nor disadvantage one provider over another, and neither unfairly advantage nor disadvantage one technology over another. Today, the high-cost fund provides support to some facilities-based broadband providers, but not others. Moreover, virtually all incumbent local exchange companies operating in rural high-cost areas have carrier of last resort (COLR) obligations for voice service, while other providers that are offering voice, video and/or broadband in such areas do not.

How does this disparity in regulatory obligation impact the economics of deploying broadband in rural areas? Should the national broadband plan evaluate whether COLR obligations should be revisited in light of the changing competitive landscape? If so, how and why? Should the broadband plan recommend that COLR obligations be removed or modified if any entity no longer is receiving universal service support? What would be the impact of requiring all entities that accept universal service support for broadband to assume some form of COLR obligation for broadband? What would be the impact of requiring entities that accept universal service support for broadband to offer the underlying transmission on a common carrier basis?

How do the COLR obligations vary by state? Do any states have “best practices” that promote deployment and use of alternative technologies? Do states permit carriers to satisfy their COLR obligation using wireless or other technologies? If so, which states and should other states be encouraged to do so? Do states permit carriers to satisfy their COLR obligations using VoIP? If not, should states be encouraged to do so? Quantify cost savings, both in capital expenditures and operating expenses that could be achieved if we permitted carriers of last resort to meet this COLR obligation through wireless and/or interconnected VoIP service. Responses should explain any assumptions and how the estimated savings was calculated.

High-Cost Funding Oversight. What appropriate oversight and accountability mechanisms would be needed to minimize waste, fraud and abuse and to ensure that recipients of any broadband high-cost support use the funds as envisioned? Should the states and/or the federal government adopt new mechanisms to oversee the distribution of any new high-cost funding to support broadband and why? How should the Commission track a recipient’s progress in deploying broadband-capable infrastructure in whatever geographic area is targeted for support? In particular, should the Commission mandate annual submission of financial documentation, certifications, audits, or other forms of verification such as field inspections? Identify current “best practices” for state oversight over eligible telecommunications carriers and their use of USF. Explain the benefits of any identified

state’s procedures and identify any modifications that would serve our goal of ensuring that funds are used efficiently and effectively to make broadband available to consumers in the relevant geographic area.

Lifeline/Link Up. The Commission previously has sought comment on extending low-income support to establish a Broadband Lifeline/Link Up program. The Commission seeks additional detailed comments on structuring such a program. How should any devices necessary for a low-income broadband program be supported? Who would own such devices, and what would become of these devices should a consumer exit the program or seek to upgrade his/her device? How would consumers purchase such devices – through vouchers, reimbursement, and/or some other means? Should the Commission limit the types of devices available to consumers participating in the program? Commenters should identify with specificity any implementation issues. Should the Commission determine some sort of minimum specifications for supported devices? If so, how should these specifications be set initially and how should they change over time as technology evolves? Commenters should identify with specificity any implementation issues. Commenters should provide estimates of the anticipated demand for a low-income broadband program. How should the Commission determine the appropriate support amounts for devices and for service? Should funding be initially capped for a trial period, and if so, at what level? How much low-income support would be necessary in the aggregate to enable all eligible consumers to participate in a low-income broadband program? Commenters should identify all assumptions.

Comments in this GN Docket Nos. 09-47, 09-51, and 09-137 (NBP Public Notice #19) proceeding are due December 7. There is no reply comment opportunity.

BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

FCC Identifies USF As “Critical Gap” In Path To Future Of Broadband

The task force gathering data and developing draft proposals for the FCC’s National Broadband Plan says it has identified “critical gaps” in the nation’s policies, programs, and practices that must be filled before America can take advantage of the technological advantages that universal adoption and deployment of affordable, robust broadband can bring. These gaps range across all elements of the broadband ecosystem, including networks, applications, devices, and end-user adoption. Of key importance to rural telecom carriers is the task force’s perception that the current USF program is an impediment to broadband deployment.

The task force developed the list of challenges from data gathered in a series of nearly 40 workshops and field hearings, from over 10,000 comments on the National Broadband Plan Notice of Inquiry and 15 public notices, and in the analysis of existing studies and data. The process of gathering and analyzing information is ongoing, and includes a new survey commissioned by the task force that will, for the first time, provide extensive data about households that don't adopt broadband. Key gaps identified by the task force include:

Federal Universal Service Fund (USF) Structure:

- Doesn't support broadband deployment and adoption despite over \$7 billion spent to subsidize telecommunications annually.
- The majority of USF funding supports affordable phone service, not broadband.
- The four USF programs -- high-cost support for rural phone service, support for advanced services in schools and libraries, support for phone service to low-income families, and rural health care support -- are not coordinated to maximize deployment opportunities to fill broadband gaps.
- High-cost funding mechanism rewards inefficiency and funds is not determined by broadband needs.
- An unsustainable funding mechanism and increased demands for support have doubled the amount paid by consumers since 2000.
- Accountability is limited for use of high-cost fund for broadband support.

Broadband Adoption Gap:

- Increases the cost of digital exclusion to society.
- Broadband adoption levels vary widely across demographic groups.
- Nearly 90 percent of families with incomes of \$100,000 or more subscribe to broadband services, compared to 35 percent with incomes of \$20,000 or less.
- Rural households are less likely to subscribe than urban households.
- Only 40 percent of Hispanic households subscribe, followed by 46 percent of African-American households, while 65 percent of white households subscribe.

Consumer Information Gap:

- Undermines competition, innovation, and choice
- Consumers lack information about actual performance of their broadband service compared to the advertised speeds.
- Consumers can't accurately compare performance of competing service.

- Application providers lack knowledge of network performance, dampening innovation.

Spectrum Gap:

- Frustrates mobile broadband growth.
- Smartphone sales are expected to overtake standard mobile phones by 2011.
- Smartphone subscriptions have increased by 690 percent since 1998, while over-the-air TV viewership decreased by 56 percent.
- Identifying available spectrum, reallocating it, and assigning it is often a long, multi-year process.
- Spectrum is also critical for public safety, telemedicine, smart grid, civic engagement applications.

Deployment Gap:

- High costs can limit broadband deployment.
- "Middle Mile" costs for transit and transport of Internet traffic can cost rural providers up to \$150 per subscriber annually, almost three times as much as network operations, and can be a serious barrier to rural broadband.
- The lack of efficient coordination when digging trenches for fiber and other expensive infrastructure costs dramatically increases the cost of deployment.
- Other outside plant costs, including pole attachments, also drive deployment gap.
- Deployment gaps for access to advanced, high-speed broadband occur in the small business market marketplace, in rural areas, and to consumers in many residential neighborhoods across the nation.

Television Set-Top Box Innovation Gap:

- Hinders convergence, utilization, and adoption.
- The convergence of video, TV and Internet Protocol-based technology is creating a new broadband medium that could drive adoption and utilization.
- Lack of devices is a major barrier for adoption -- 99 percent of U.S. households have a TV versus 76 percent with PCs.
- Retail navigation device and set-top-box market competition has not emerged, limiting innovation.

Personal Data Gap:

- Users need to control their own information.
- Personal data is increasingly digitized and moving to the Internet "cloud."

- Users have little control over their personal information.
- Ensuring privacy and security will enable a new generation of applications, and improve top national priorities that would benefit by secure but accessible personnel information.

Harnessing broadband to achieve key national purposes -- better health care, education, government performance and civic engagement, economic opportunity, public safety, improvements in energy conservation and environmental protection -- requires better connectivity, although the level of connectivity necessary depends on the nature of the institutions and applications.

BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

Comments On 2nd Broadband RFI Are Due November 30

The Rural Utilities Service (RUS) and the National Telecommunications and Information Administration (NTIA) have published in the Federal Register the joint Request for Information (RFI) seeking public comment on certain issues relating to the implementation of the Broadband Initiatives Program (BIP) and the Broadband Technology Opportunities Program (BTOP). This is the second joint RFI that the agencies have issued since the enactment of the American Recovery and Reinvestment Act of 2009, which established these broadband initiatives (BloostonLaw Telecom Update, November 11). **Comments in this Docket Number: 0907141137-91375-05 proceeding are due November 30. BloostonLaw has drafted comments addressing some of the shortcomings encountered during the first funding round. Clients interested in reviewing and/or participating in these comments should contact us as soon as possible.**

The input the agencies expect to receive from this process is intended to inform the second round of funding, which will reported be the last round as well. In particular, the agencies seek to gather information that will help them improve the broadband programs by enhancing the applicant experience and making targeted revisions to the first Notice of Funds Availability (NOFA), if necessary. In general, this includes:

Streamlining the Applications. In what ways should RUS and NTIA streamline the applications to reduce the burden on applicants, while still obtaining the requisite information to fulfill the statutory requirements set forth in the Recovery Act?

New Entities. What type of information should RUS and NTIA request from new businesses, particularly those

that have been newly created for the purpose of applying for grants under the BIP and BTOP programs?

Transparency and Confidentiality. Which data should be made publicly available and which data should be considered confidential or proprietary?

Outreach and Support. What method of support and outreach was most effective? What should be done differently in the next round of funding to best assist applicants?

NTIA Expert Review Process. To further the efficient and expeditious disbursement of BTOP funds, should NTIA continue to rely on unpaid experts as reviewers? Or, should NTIA consider using solely Federal or contractor staff?

Policy Issues. RUS and NTIA welcome suggestions for targeted funding proposals and seek comment on how they can better target their remaining funds to achieve the goals of the Recovery Act.

Economic Development. Should RUS and/or NTIA allocate a portion of the remaining funds available under the BIP and BTOP programs to promote a regional economic development approach to broadband deployment?

Definitions: In what ways should the definitions of “unserved,” “underserved,” and “broadband” be revised?

How should NTIA and RUS assess the cost effectiveness or cost reasonableness of a particular project? What other substantive changes to the NOFA should RUS and NTIA consider that would encourage applicant participation, enhance the programs, and satisfy the goals of the Recovery Act?

BloostonLaw contacts: Ben Dickens, Gerry Duffy, John Prendergast, and Mary Sisak.

LAW & REGULATION

FCC SEEKS COMMENTS ON MEASURING BROADBAND ADOPTION: The FCC seeks comment on measuring broadband adoption, quantifying the individual costs to non-adopters, measuring the cost to society of having a large group of non-adopters, and identifying and remedying barriers to adoption. The FCC also seeks data about existing adoption programs and studies, in order to contribute to and facilitate the Commission’s development of the National Broadband Plan (NBP). The FCC notes that adoption statistics often focus on individual or household subscription rates. Is that the best way to measure adoption? If not, what are the alternatives? Is someone who frequently accesses broadband at work or in the library, but not at home, an “adopter?” Is the

use of a web-enabled smart phone sufficient to make someone an “adopter” of broadband? Should adoption be measured more by the manner, type or frequency of use of certain types of applications? If so, will those applications be standard across all groups of people? The Commission would like to understand the costs faced by individual consumers who do not adopt broadband as well as the societal costs of having a large portion of society that remains un-connected to broadband. The Commission wishes to further understand the reasons why some consumers, who have access to broadband, do not adopt. The 2009 Pew Broadband Adoption Study found, generally, that relevance, price, availability, and usability were the main reasons cited for not using broadband at home. Based on this and other research and comments filed in the record, the Commission believes that the primary barriers non-adopters face include: affordability of service, affordability of hardware, insufficient digital and technical literacy levels, unawareness of the personal relevance and utility of broadband technology and online content and an inability to use existing technology and applications due to physical or mental disabilities. Is this an accurate and comprehensive list of barriers faced by non-adopters? As the Commission develops recommendations to maximize broadband adoption and utilization how can it remedy each barrier faced by non-adopters? Many parties have suggested that the Commission utilize the Lifeline and Link Up programs to support broadband connection charges, devices and service costs for low-income consumers. What other specific federal policies or programs to address affordability of service and hardware should the Commission consider recommending? **Comments in this GN Docket Nos. 09-47, 09-51, and 09-137 (NBP Public Notice # 16) proceeding are due December 2. There is no reply date.** BloostonLaw contacts: Ben Dickens, Gerry Duffy, John Prendergast, and Mary Sisak.

FCC SEEKS COMMENT ON HEALTH CARE DELIVERY ELEMENTS OF NATIONAL BROADBAND PLAN: The FCC seeks tailored comment on how advanced infrastructure and services could help achieve efficient implementation of health information technology (IT) applications. The FCC wishes to further understand gaps between current connectivity infrastructure and the connectivity requirements for various health IT applications across the healthcare ecosystem. Congress has also mandated that health care providers have access to advanced services through the federal universal service fund (USF)—e.g., the rural health care support mechanism and the rural health care Pilot Program. The Commission seeks the current state of Internet connectivity in hospitals, community health clinics, outpatient centers, physician offices, long-term care facilities, homes, emergency medical responders, Indian Health Service, Department of Health and Human Services, and other health service providers on tribal lands. What type of connection? What speeds? What issues? Multiple health

IT applications are being deployed using public and private communications networks. The FCC seeks to better understand the underlying IT infrastructure necessary to support successful implementation of current and emerging health IT applications, including: electronic health records, real time video for Telehealth consultations and diagnoses, remote patient monitoring systems, mobile and other portable remote monitoring systems, and other applications that enable or cause advanced healthcare delivery. What are the specific network requirements (e.g., transmission speeds, minimum guaranteed bandwidths, latency, jitter, reliability, coverage, others)? How might these differ based upon the content (e.g., text, image, or video) of the application? What are the primary drivers and barriers to taking advantage of available internet connectivity across delivery settings? What in the healthcare sector may be a disincentive to invest in broadband services (particularly for telemedicine)? How does the existing rural health care support mechanism affect nationwide connectivity? Are there instances where the discount structure of the existing rural health care support mechanism provides incentives for rural health care providers to maintain slower, more expensive connections, rather than purchasing faster connections that may be less expensive? Provide specific examples of ways in which the mechanism may impact how health care providers choose broadband service offerings. What role should federal universal service support have in the funding of broadband health care networks? For example, the rural health care support mechanism currently provides, to public and non-profit health care providers in rural areas, discounts on the installation and monthly charges for telecommunications and Internet access service used for the provision of health care. What would be the impact on the delivery of health care if the rural health care mechanism supported network backbone only (i.e., infrastructure), or supported the use of telehealth applications? **Comments in this GN Docket Nos. 09-47, 09-51, and 09-137; and WC Docket No. 02-60 (NBP Public Notice # 17) proceeding are due December 4. There is no reply date.** BloostonLaw contacts: Ben Dickens, Gerry Duffy, John Prendergast, and Mary Sisak.

FCC SEEKS COMMENT ON RELATIONSHIP BETWEEN BROADBAND AND ECONOMIC OPPORTUNITY: The FCC seeks comment on a series of questions related to small businesses (defined as businesses with 500 or fewer employees), medium and large businesses (defined as businesses with more than 500 employees), non-profit organizations, economic opportunity and workforce development. **Community Hubs.** In areas of sub-optimal deployment and adoption, local community hubs (defined as places such as libraries, community colleges, job training centers, unemployment offices, etc.) and organizations often present themselves as stop-gaps for individuals to obtain access to broadband. The FCC is looking for information about how these hubs are used in

ways that create economic opportunities. What are the key community hubs that often act as access points for individuals to gain broadband access? What is the current broadband availability rate at libraries? Community colleges? Job training centers? Unemployment offices? Computing centers and tribal "chapter houses" on tribal lands? **Business Adoption and Usage.** In cultivating the economic benefits of broadband, adequate availability, adoption and usage of broadband by business is a central component. The FCC seeks to better understand what level of connectivity is required for businesses of varying sizes and in different business verticals, and how those capabilities are best utilized by businesses. To what extent is broadband available to businesses across the country today? What applications are necessary to enable telework and/or telecommuting (both fixed and mobile)? How does telework and/or telecommuting by employees impact business productivity?

Broadband's Role in Regional Economic Development. In areas where broadband deployment is new, what new business and jobs have come that were not previously possible? Did these businesses move from somewhere else, or did they not exist at all previously? What is the minimum connection availability that attracts new businesses and jobs? **Comments in this GN Docket Nos. 09-47, 09-51, and 09-137 (NBP Public Notice # 18) proceeding are due December 4. There is no reply date.** BloostonLaw contacts: Ben Dickens, Gerry Duffy, John Prendergast, and Mary Sisak.

NANC WORKING GROUP RECOMMENDS PORTING INTERVAL COMPLIANCE DEADLINES: Last May, the FCC reduced the porting interval for simple wireline and simple intermodal port requests from four business days to one business day (BloostonLaw Telecom Update, May 20). Also in its *Local Number Portability Porting Order*, the FCC directed the North American Numbering Council (NANC) to develop new LNP provisioning process flows that take into account the shortened porting interval. On November 2, NANC Chairman Betty Kane submitted the recommendation of the Local Number Portability Working Group, which, she said, was "supported by the majority of NANC members but which due to time constraints was not able to be adopted at a publicly noticed meeting of the full NANC." Pursuant to the process flows, NANC's interpretation of the FCC's one business day porting interval reduces the time a porting-out carrier has to verify a port request to only four business hours. NANC recommended **July 31, 2010**, as the implementation deadline for affected entities (i.e., large carriers), and **January 31, 2011**, as the implementation deadline for small providers. **The FCC considers providers with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide and Tier III wireless carriers, as defined in the E911 Stay Order, to be small providers.** What constitutes a 2 percent provider will be calculated based on an aggregate of in-

cumbent LEC and competitive local exchange carrier (LEC) lines, based on the Commission's most recent industry statistics available as of August 3, the effective date of *LNP Order*. In the *E911 Stay Order*, the Commission classified Commercial Mobile Radio Service (CMRS) carriers with 500,000 subscribers or fewer as of the end of 2001 as Tier III wireless carriers. BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

CLUB TEXTING ASKS FCC TO DECLARE THAT TEXT BROADCASTERS ARE NOT SENDERS OF TEXT MESSAGES UNDER TCPA: Club Texting, Inc. has filed a petition requesting a declaratory ruling regarding the FCC's rules under the Telephone Consumer Protection Act (TCPA). Specifically, Club Texting has asked the Commission to clarify that, consistent with the treatment of fax broadcasters, text broadcasters are not senders of text messages under the TCPA. Notably, the Commission's rules prohibit the initiation of "any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice, to any telephone number assigned to . . . cellular telephone service . . ." The Commission concluded that this prohibition applies to both voice calls and text calls to wireless numbers, provided the call is made to a telephone number assigned to such wireless service. In addition, the rules prohibit the use of any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine. The rules further provide that a facsimile broadcaster will be liable for violations of the rules if it demonstrates a high degree of involvement in, or actual notice of, the unlawful activity and fails to take steps to prevent such facsimile transmissions. Section 64.1200(f)(6) states that a facsimile broadcaster is a person or entity that transmits messages to telephone facsimile machines on behalf of another person or entity for a fee. **Comments in this CG Docket No. 02-278 proceeding are due November 30, and replies are due December 7.** BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

COMMENT SOUGHT ON MOVING TOWARD A DIGITAL DEMOCRACY: The FCC notes that the American Recovery and Reinvestment Act of 2009 directs it, in its development of a National Broadband Plan, to include "a plan for the use of broadband infrastructure and services in advancing ...civic participation." Accordingly, the Commission seeks tailored comment on how broadband can help to bring democratic processes—including elections, public hearings and town hall meetings—into the digital age, thereby encouraging and facilitating citizen opportunities to engage and participate in their democracy. **Comments in this GN Docket Nos. 09-47, 09-51, and 09-137 (NBP Public Notice #20) proceeding are due December 10. There is no reply date.** Blooston-

Law contacts: Ben Dickens, Gerry Duffy, and Mary Sisk.

FCC SETS TIME FRAMES FOR STATE AND LOCALITY PROCESSING OF APPLICATIONS FOR WIRELESS TOWERS:

At today's open meeting, the FCC adopted a Declaratory Ruling, clearing the way for broadband deployment by establishing time frames of 90 days for collocations and 150 days for all other tower siting applications reviewed by state and local governments. The FCC said this action will assist in speeding the deployment of next generation wireless networks while respecting the legitimate concerns of local authorities and preserving local control over zoning and land use policies. Congress specifically requires that state and local authorities act "within a reasonable period of time" on requests for tower siting. The deployment of next generation mobile broadband networks promises tremendous benefits for American businesses and consumers and realizing these benefits will require new physical networks, including many new towers. While most state and local jurisdictions currently process tower siting applications in a timely fashion, the FCC found that there are many instances of unnecessary delays. In order to ensure a timely review of these applications and to prevent unnecessary delay, the FCC interprets a "reasonable period of time" under Section 332(c)(7) of the Communications Act as 90 days for collocations and 150 days for all other towers. If a jurisdiction "fails to act" on the application within this reasonable time period, applicants may file a claim for relief in court within 30 days of the failure to act. The court will then decide what action to take based on all the facts of the case. The FCC said its decision achieves a balance by defining reasonable and achievable time frames for State and local governments to act on zoning applications while not dictating any substantive outcome on any particular case or otherwise limiting State and local governments' fundamental authority over local land use. The FCC stated that the time frames adopted, and the requirement that parties seek injunctive relief from a court, are consistent with preserving State and local sovereignty and the intent of Congress. The ruling also finds that it is a violation of the Communications Act for a State or local government to deny a wireless service facility siting application because service is available from another provider. Finally, the ruling denies CTIA's request to find that it is a violation of the Communications Act for a State or local regulation to require a variance or waiver for every wireless facility siting. BloostonLaw contacts: Hal Mordkofsky, John Prendergast, and Richard Rubino.

Tower Compliance Manual

BloostonLaw has assembled a compliance manual for all tower/antenna structure owners, as well as any licensee mounting antennas on structures. The manual helps structure owners and licensees avoid FCC fines, minimize

Federal and state approval delays, and minimize or avoid the potential for civil and/or criminal liability that could be associated with tower operations/accidents. The manual includes a detailed explanation of FCC, FAA and other Federal regulatory requirements so that your staff can understand the legal do's and don'ts associated with tower construction and antenna mounting. We have also developed checklists that can be used by your employees and contractors to (1) make sure that necessary compliance steps are taken and (2) create a paper trail documenting such compliance. There are separate checklists for antenna structure owners and radio licensees that will use such structures. These checklists cover such issues as environmental protection, historic preservation, harmful RF radiation limits, interference protection, aviation safety, and Federal reporting requirements. A sample tower log is included.

In recent years, tower owners have faced million dollar fines and even higher civil liabilities due to rule violations that may contribute to an aviation accident. Similar liability can arise from environmental or harmful radiation violations. Also, many licensees do not realize that, for every antenna mounted in the United States, the licensee must either obtain the prior approval of the applicable State Historic Preservation Officer (SHPO), or establish that the antenna qualifies for an exemption from this requirement. BloostonLaw is offering its antenna structure compliance manual in binder format, with the checklists provided on CD-ROM as well, so that you can print off the appropriate checklist for each new structure or antenna. Please contact us if you wish to purchase the manual.

BloostonLaw contacts: Hal Mordkofsky, 202-828-5520; John Prendergast, 202-828-5540; and Richard Rubino, 202-828-5519.

INDUSTRY

SPRINT SUED OVER INTERCONNECTION AGREEMENT ISSUES:

According to the Blog of the Legal Times, a group of telecommunications providers has filed a \$20 million lawsuit against Sprint Communications in Virginia federal court, claiming the company owes them money for the use of their networks. The 19 companies, which are subsidiaries of Monroe, La.-based Century-Link, contend that Sprint is underpaying for the use of their local network facilities, the Legal Times reports. According to the complaint, the companies were formerly a part of Sprint Nextel, but were spun off in 2006. At the time, Sprint had signed interconnection agreements, governing how much it would pay the companies to route long-distance calls through their local networks. The complaint filed in the U.S. District Court for the Eastern District of Virginia states that in June 2009, Sprint began refusing to pay the amount it had agreed to and instead

substituted its own lower rate, the Legal Times says. "In effect, the Sprint Defendants have purported to rewrite the Sprint [interconnection agreements] unilaterally," the complaint states.

DEADLINES

DECEMBER 30: FCC FORM 507, UNIVERSAL SERVICE QUARTERLY LINE COUNT UPDATE. Line count updates are required to recalculate a carrier's per line universal service support, and is filed with the Universal Service Administrative Company (USAC). This information must be submitted on July 31 each year by all rate-of-return incumbent carriers, **and on a quarterly basis if a competitive eligible telecommunications carrier (CETC) has initiated service in the rate-of-return incumbent carrier's service area** and reported line count data to USAC in the rate-of-return incumbent carrier's service area, in order for the incumbent carrier to be eligible to receive Interstate Common Line Support (ICLS). This quarterly filing is due **December 30** (for lines served as of June 30, 2008; and **March 31, 2009**, for lines served as of September 30, 2008)), and **July 31, 2009**, for lines served as of December 31, 2008. BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

DECEMBER 31: FCC FORM 525, COMPETITIVE CARRIER LINE COUNT QUARTERLY REPORT. Competitive eligible telecommunications carriers (CETCs) are eligible to receive high cost support if they serve lines in an incumbent carrier's service area, and that incumbent carrier receives high cost support. CETCs are eligible to receive the same per-line support amount received by the incumbent carrier in whose study area the CETC serves lines. Unlike the incumbent carriers, CETCs will use FCC Form 525 to submit their line count data to the Universal Service Administrative Company (USAC). **This quarterly report must be filed by the last business day of March (for lines served as of September 30 of the previous year); the last business day of July (for lines served as of December 31 of the previous year); the last business day of September (for lines served as of March 31 of the current year); and the last business day of December (for lines served as of June 30 of the current year).** CETCs must file the number of working loops served in the service area of an incumbent carrier, disaggregated by the incumbent carrier's cost zones, if applicable, for High Cost Loop (HCL), Local Switching Support (LSS), Long Term Support (LTS), and Interstate Common Line Support (ICLS). ICLS will also require the loops to be reported by customer class as further described below. For Interstate Access Support (IAS), CETCs must file the number of working loops served in the service area of an incumbent carrier by Unbundled Network Element (UNE) zone and customer class. Working loops provided by CETCs in service areas of non-rural incumbents receiving High Cost

Model (HCM) support must be filed by wire center or other methodology as determined by the state regulatory authority. CETCs may choose to complete FCC Form 525 and submit it to USAC, or designate an agent to file the form on its behalf. BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

JANUARY 1: CARRIERS MUST NOTIFY CUSTOMERS OF "DO NOT CALL" OPTIONS: The FCC requires each wireline and wireless common carrier (including resellers) offering local exchange service to inform subscribers of the opportunity to provide notification to the Federal Trade Commission (FTC) that the subscriber objects to receiving telephone solicitations. The carrier must inform subscribers of (1) their right to give or revoke a notification of their objection to receiving telephone solicitations pursuant to the national "Do Not Call" database; and (2) the methods by which such rights may be exercised. Beginning on January 1, 2004, and annually thereafter, such common carriers shall provide an annual notice, via an insert in the customer's bill, to inform their subscribers of the opportunity to register or revoke registrations on the national Do Not Call database. **BloostonLaw will provide clients with the wording for an appropriate notice upon request.** BloostonLaw contacts: Hal Mordkofsky, Ben Dickens, Gerry Duffy, and John Prendergast.

JANUARY 18: FCC FORM 497, LOW INCOME QUARTERLY REPORT. This form, the Lifeline and Link-Up Worksheet, must be submitted to the Universal Service Administrative Company (USAC) by all eligible telecommunications carriers (ETCs) that request reimbursement for participating in the low-income program. **The form must be submitted by the third Monday after the end of each quarter.** It is available at: www.universalservice.org. BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

JANUARY 30: REPORT OF EXTENSION OF CREDIT TO FEDERAL CANDIDATES. This report (in letter format) must be filed by January 30 and July 31 of each year, but ONLY if the carrier extended unsecured credit to a candidate for a Federal elected office during the reporting period. BloostonLaw contacts: Hal Mordkofsky, John Prendergast, and Richard Rubino.

FEBRUARY 1: FCC FORM 502, NUMBER UTILIZATION AND FORECAST REPORT: Any wireless or wireline carrier (including paging companies) that have received number blocks--including 100, 1,000, or 10,000 number blocks--from the North American Numbering Plan Administrator (NANPA), a Pooling Administrator, or from another carrier, must file Form 502 by **February 1**. Carriers porting numbers for the purpose of transferring an established customer's service to another service provider must also report, but the carrier receiving numbers through porting does not. Resold services should also be treated like ported numbers, meaning the carrier

transferring the resold service to another carrier is required to report those numbers but the carrier receiving such numbers should not report them. Reporting carriers are required to include their FCC Registration Number (FRN). Reporting carriers file utilization and forecast reports semiannually on or before February 1 for the preceding six-month reporting period ending December 31, and on or before August 1 for the preceding six-month reporting period ending June 30. BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

FEBRUARY 1: FCC FORM 499-Q, TELECOMMUNICATIONS REPORTING WORKSHEET. All telecommunications common carriers that expect to contribute more than \$10,000 to federal Universal Service Fund (USF) support mechanisms must file this quarterly form. The FCC has modified this form in light of its decision to establish interim measures for USF contribution assessments. The form contains revenue information from the prior quarter plus projections for the next quarter. Form 499-Q relates only to USF contributions. It does not relate to the cost recovery mechanisms for the Telecommunications Relay Service (TRS) Fund, the North American Numbering Plan Administration (NANPA), and the shared costs of local number portability (LNP), which are covered in the annual Form 499-A that is due April 1.

MARCH 1: CPNI ANNUAL CERTIFICATION. Carriers should modify (as necessary) and complete their "Annual Certification of CPNI Compliance" for 2008. The certification must be filed with the FCC by **March 1**. **For 2007, the FCC Enforcement Bureau conducted a computerized audit to identify any non-filers, who may face sanctions.** Note that the annual certification should include the following three required Exhibits: (a) a Statement Explaining How The Company's Operating Procedures Ensure Compliance With The FCC'S CPNI Rules to reflect the Company's policies and information; (b) a Statement of Actions Taken Against Data Brokers; and (c) a Summary of Customer Complaints Regarding Unauthorized Release of CPNI. A company officer with personal knowledge that the company has established operating procedures adequate to ensure compliance with the rules must execute the Certification, place a copy of the Certification and accompanying Exhibits in the Company's CPNI Compliance Records, and forward the original to BloostonLaw for filing with the FCC by March 1. **BloostonLaw is prepared to help our clients meet this requirement, which we expect will be strictly enforced, by assisting with preparation of their certification filing; reviewing the filing to make sure that the required showings are made; filing the certification with the FCC, and obtaining a proof-of-filing copy for your records.** Clients interested in obtaining BloostonLaw's CPNI compliance manual should contact Gerry Duffy (202-828-5528) or Mary Sisak (202-828-5554). Note that if you file the annual CPNI certification,

you are also required to file the FCC Form 499-A, Telecommunications Reporting Worksheet, due April 1.

MARCH 1: COPYRIGHT STATEMENT OF ACCOUNT FORM FOR CABLE COMPANIES. This form, plus royalty payment for the second half of calendar year 2009, is due March 1. The form covers the period July 1 to December 31, 2009, and is due to be mailed directly to cable TV operators by the Library of Congress' Copyright Office. If you do not receive the form, please contact Gerry Duffy.

MARCH 31: FCC FORM 507, UNIVERSAL SERVICE QUARTERLY LINE COUNT UPDATE. Line count updates are required to recalculate a carrier's per line universal service support, and is filed with the Universal Service Administrative Company (USAC). This information must be submitted on July 31 each year by all rate-of-return incumbent carriers, **and on a quarterly basis if a competitive eligible telecommunications carrier (CETC) has initiated service in the rate-of-return incumbent carrier's service area** and reported line count data to USAC in the rate-of-return incumbent carrier's service area, in order for the incumbent carrier to be eligible to receive Interstate Common Line Support (ICLS). This quarterly filing is due **March 31** and covers lines served as of September 30, 2007. (Normally this filing is due March 30, but this year, March 30 falls on a Sunday.) Incumbent carriers filing on a quarterly basis must also file on **July 31** (for lines served as of December 31, 2007); **September 30** (for lines served as of March 31, 2008); and **December 30** (for lines served as of June 30, 2008). BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

MARCH 31: FCC FORM 525, COMPETITIVE CARRIER LINE COUNT QUARTERLY REPORT. Competitive eligible telecommunications carriers (CETCs) are eligible to receive high cost support if they serve lines in an incumbent carrier's service area, and that incumbent carrier receives high cost support. CETCs are eligible to receive the same per-line support amount received by the incumbent carrier in whose study area the CETC serves lines. Unlike the incumbent carriers, CETCs will use FCC Form 525 to submit their line count data to Universal Service Administrative Company (USAC). **This quarterly report must be filed by the last business day of March (for lines served as of September 30 of the previous year); the last business day of July (for lines served as of December 31 of the current year); the last business day of September (for lines served as of March 31 of the current year); and the last business day of December (for lines served as of June 30 of the current year).** CETCs must file the number of working loops served in the service area of an incumbent carrier, disaggregated by the incumbent carrier's cost zones, if applicable, for High Cost Loop (HCL), Local Switching Support (LSS), Long Term Support

(LTS), and Interstate Common Line Support (ICLS). ICLS will also require the loops to be reported by customer class as further described below. For Interstate Access Support (IAS), CETCs must file the number of working loops served in the service area of an incumbent carrier by Unbundled Network Element (UNE) zone and customer class. Working loops provided by CETCs in service areas of non-rural incumbents receiving High Cost Model (HCM) support must be filed by wire center or other methodology as determined by the state regulatory authority. CETCs may choose to complete FCC Form 525 and submit it to USAC, or designate an agent to file the form on its behalf. BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

MARCH 31: FCC FORM 508, PROJECTED ANNUAL COMMON LINE REVENUE REQUIREMENT FORM:

Section 54.903(a)(1) of the FCC's rules requires each rate-of-return incumbent telecommunications carrier to provide information needed to calculate the Projected Annual Common Line Revenue Requirement for each of its study areas in the upcoming funding year to the Universal Service Administrative Company (USAC). This information must be submitted on March 31 each year, in order for the carrier to be eligible to receive Interstate Common Line Support. This collection of information stems from the Commission's authority under Section 254 of the Communications Act. The data in the form will be used to calculate the amount of support, if any, that each reporting carrier is eligible to receive from the Interstate Common Line Support Mechanism. Carriers are permitted to submit a correction to their March 31 projected carrier common line revenue requirements and supporting data from **April 1** until **June 30** for the upcoming funding year (July 31, 2009, through June 30, 2010). Additionally, on June 30, carriers are permitted to submit an update to the projected data for the ICLS funding year ending on that date. Permitting these revisions to projected data for current and upcoming ICLS funding years will mitigate the lag between projected and actual data filings and give carriers more meaningful opportunities to revise projections to adjust ICLS where necessary. After the June 30 correction deadline each year, any corrections to projected common line revenue requirement and supporting data shall be made in the form of true-ups, using actual cost and revenue data that a carrier must report in **FCC Form 509, Annual Common Line Actual Cost Data Collection Form**. (This form is due December 31.) BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

MARCH 31: ANNUAL INTERNATIONAL CIRCUIT STATUS REPORTS. Carriers are reminded that Section 43.82 of the Commission's rules requires each facilities-based carrier that provides international telecommunications services to file a Circuit Status Report by March 31, 2009. The report should contain data as of December 31, 2008. The information that must be filed and filing

format for the Circuit Status Report is described in detail in the Circuit Status Filing Manual. All facilities-based carriers must file a Circuit Status Report if they had any activated or idle circuits as of December 31, 2008. If carriers did not have any activated or idle circuits as of December 31, 2008, they are not required to file this report or file any letter stating that they have no circuits to report. The Filing Manual requires carriers to report the total number of activated and the total number of idle circuits using the following categories: submarine cable, satellite, and landline (cable or microwave). The Filing Manual defines international facilities-based circuits as "international circuits in which a carrier has an ownership interest. For this purpose, the term ownership interest includes outright ownership, indefeasible right of use (IRU) interests, or leasehold interests in bare capacity in an international facility, regardless of whether the underlying facility is a common or non-common carrier submarine cable or ... satellite system." The Filing Manual further explains that leasehold interests in bare capacity "are distinct from private lines leased from another reporting international carrier." Thus, any telecommunications carrier that has leased an international circuit from another common carrier, a non-common carrier, or a foreign carrier, other than a lease of private line "service" or "capacity" from a common carrier, must file a Circuit Status Report and include that circuit in its report. Such a circuit should be reported as a facilities-based circuit, and not as a facilities-based resold circuit. Private line resellers should report their resold circuits using the Facility Codes 11, 12 and 13 as specified in the Filing Manual. Facilities-based carriers that are regulated as dominant on particular U.S. international routes under Section 63.10 must provide their circuit status information on a facility-specific basis for the dominant route only. Carriers should provide the information in a separate appendix using the same table format in the Filing Manual, but they should add a column labeled "Facility Name" after "Data field #2". Carriers are reminded to file their reports on compact disc (CD) media. The FCC will not accept reports filed on diskettes. But it will accept Excel files. BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

APRIL 1: FCC FORM 499-A, TELECOMMUNICATIONS REPORTING WORKSHEET.

This form must be filed by all contributors to the Universal Service Fund (USF) support mechanisms, the Telecommunications Relay Service (TRS) Fund, the cost recovery mechanism for the North American Numbering Plan Administration (NANPA), and the shared costs of local number portability (LNP). Contributors include every telecommunications carrier that provides interstate, intrastate, and international telecommunications, and certain other entities that provide interstate telecommunications for a fee. **Even common carriers that qualify for the de minimis exemption must file Form 499-A. Entities whose universal service contributions will be less than \$10,000**

qualify for the de minimis exemption. De minimis entities do not have to file the quarterly report (FCC Form 499-Q), which was due February 1, and will again be due May 1. Form 499-Q relates to universal service contributions, but not to the TRS, NANPA, and LNP mechanisms. Form 499-A relates to all of these mechanisms and, hence, applies to all providers of interstate, intrastate, and international telecommunications services. Form 499-A contains revenue information for January 1 through December 31 of the prior calendar year. And Form 499-Q contains revenue information from the prior quarter plus projections for the next quarter. **Block 2-B of the Form 499-A requires each carrier to designate an agent in the District of Columbia upon whom all notices, process, orders, and decisions by the FCC may be served on behalf of that carrier in proceedings before the Commission. Carriers receiving this newsletter may specify our law firm as their D.C. agent for service of process using the information in our masthead. There is no charge for this service. BloostonLaw contacts: Hal Mordkofsky, Ben Dickens, Gerry Duffy, and John Prendergast.**

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This newsletter is not intended to provide legal advice. Those interested in more information should contact the firm.

VITAL MEETINGS & DEADLINES

Nov. 18 – FCC open meeting.

Nov. 20 – Deadline for comments on 2010 modification of average schedule universal service high cost loop support formula and average schedule company local switching support formula (WC Docket No. 05-337).

Nov. 20 – Deadline for comments on changing E-rate program to improve broadband (GN Docket Nos. 09-47, 09-51, and 09-137; CC Docket No. 02-6; and WC Docket No. 05-195; NBP Public Notice No. 15).

Nov. 20 – Deadline for comments to refresh record on wireless E911 location accuracy standards (PS Docket No. 07-114).

Nov. 23 – Deadline for down payments and FCC Forms 601 and 602 for unassigned BRS Auction 86 winners.

Nov. 24 – Deadline for comments on NPRM on allowing LECs that lose line to increase LSS (WC Docket No. 05-337).

Nov. 30 – Deadline for comments on second RUS/NTIA Request for Information (Docket Number 0907141137-91375-05).

Nov. 30 – Deadline for comments on Club Texting's petition to declare that text broadcasters are not senders of text messages under TCPA (CG Docket No. 02-278).

Dec. 1 – Deadline for comments on public safety issues in rural and tribal areas, and from people with disabilities (GN Docket Nos. 09-47, 09-51, and 09-137; NBP Public Notice No. 14).

Dec. 1 – Deadline for reply comments on NPRM on allowing LECs that lose line to increase LSS (WC Docket No. 05-337).

Dec. 2 – Deadline for comments on 2008 Farm Bill definition of "rural area" (Docket No. RUS-09-Electric-0002).

Dec. 2 – Deadline for comments on measuring broadband adoption (GN Docket Nos. 09-47, 09-51, and 09-137; NBP Public Notice No. 16).

Dec. 4 – Deadline for reply comments to refresh record on wireless E911 location accuracy standards (PS Docket No. 07-114).

Dec. 4 – Deadline for comments on health care delivery elements of National Broadband Plan (GN Docket Nos. 09-47, 09-51, and 09-137; NBP Public Notice No. 17).

Dec. 4 – Deadline for comments on relationship between broadband and economic opportunity (GN Docket Nos. 09-47, 09-51, and 09-137; NBP Public Notice No. 18).

Dec. 7 – Deadline for reply comments on 2010 modification of average schedule universal service high cost loop support formula and average schedule company local switching support formula (WC Docket No. 05-337).

Dec. 7 – Deadline for comments on USF, intercarrier comp. policies in relation to broadband (GN Docket Nos. 09-47, 09-51, and 09-137; NBP Public Notice No. 19).