

BloostonLaw Telecom Update

Published by the Law Offices of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP
www.bloostonlaw.com

Vol. 12, No. 44

December 9, 2009

IMPORTANT DEADLINES

DECEMBER 30: FCC FORM 507, UNIVERSAL SERVICE QUARTERLY LINE COUNT UPDATE.

DECEMBER 31: FCC FORM 525, COMPETITIVE CARRIER LINE COUNT QUARTERLY REPORT.

JANUARY 1: CARRIERS MUST NOTIFY CUSTOMERS OF "DO NOT CALL" OPTIONS.

JANUARY 15: HAC REPORTING DEADLINE.

JANUARY 18: FCC FORM 497, LOW INCOME QUARTERLY REPORT.

JANUARY 30: REPORT OF EXTENSION OF CREDIT TO FEDERAL CANDIDATES.

FEBRUARY 1: FCC FORM 502, NUMBER UTILIZATION AND FORECAST REPORT.

FEBRUARY 1: FCC FORM 499-Q, TELECOMMUNICATIONS REPORTING WORKSHEET.

MARCH 1: CPNI ANNUAL CERTIFICATION.

(See Page 6 for more information on Deadlines.)

FCC OPEN MEETING
Wednesday, December 16, 2009

Tentative Agenda: Commission staff will report on the status of the National Broadband Plan, which the FCC must deliver to Congress by February 17, 2010.

INSIDE THIS ISSUE

- **Rural High Cost Carriers cite concerns over FCC's Notice about USF, ICC issues.**
- **WTA also is concerned about USF, ICC proposals.**
- **NTCA, OPASTCO offer own universal service proposals.**
- **NCTA wants to reduce high-cost support where there is "extensive, unsubsidized facilities-based voice competition."**
- **Rockefeller launches probe of credit card "data pass" process.**

Rural High Cost Carriers Cite Concerns Over FCC's Notice About USF, ICC Issues

BloostonLaw, on behalf of its clients, the "Rural High Cost Carriers," has filed comments expressing concern about the FCC's proposals in its Public Notice regarding the Universal Service Fund (USF) and Intercarrier Compensation (ICC) in the National Broadband Plan (GN Docket Nos. 09-47, 09-51 and 09-137; NBP #19). The Rural High Cost Carriers represent a cross-section of rural incumbent local exchange carriers (RLECs) who provide a full range of telecommunications services and facilities, including Broadband, in rural, high cost areas of the United States.

Rural carriers are dependent upon intercarrier compensation and federal USF receipts to provide service at affordable prices. For these carriers, it is not unusual for the combination of access charges, intercarrier compensation and federal USF support to amount to over 60% of the company's total revenues, and for some carriers, the amount is even higher. Indeed, it is not uncommon to find relative percentages of between 25%-40% of interstate revenues/federal USF for members of the group.

Against this background, the Rural High Cost Carriers are extremely concerned about the intersection of the Commission's Broadband policy with real revenue re-

quirements including intercarrier compensation and USF, which already have been compromised by the ill-considered policy experiments of prior administrations, such as the shift carrier common line revenue requirements from interstate access charges, into the USF mechanism. The change meant that the reclassified costs became a USF revenue element which is now portable to Competitive Eligible Telecommunications Carriers (CETCs) under the Commission's policies. This, even though most CETCs had no corresponding common line investments to begin with, such as is the case with the proliferation of wireless CETCs.

The Rural High Cost Carriers asserted that the ultimate consequence is that the USF has now become unsustainable in its present form. Payments to CETCs under the "identical support rule", by 2007 had swollen the USF by approximately \$1 billion and were projected by the Federal-State Joint Board to continue growing exponentially. This is despite the fact that payments to ILECs had remained relatively flat or declining during the same period. This history, including the implementation of the identical support rule and efforts to hold accountable the wireless industry for USF abuses, should inform the Commission as it explores its policy options to further the universal availability of broadband within the U.S.

Specifically, the Rural High Cost Carriers submitted that the FCC should incorporate the following policies in its National Broadband Plan:

1. The size of any USF-related broadband fund, or related government directed revenues, should be driven by the Commission's public policy decision as to the desirable broadband speeds, and by eliminating wasteful spending on CETCs under the identical support rule.
2. The deployment of high quality and sustainable IP-related services, such as e-mail, VOIP and video, in rural areas, requires sustainable networks. Ideas such as USF portability and forward-looking pricing are unworkable in the real world.
3. Reductions in current levels of high cost support and/or intercarrier compensation would jeopardize the ability of the Rural High Cost Carriers to continue to serve customers and deploy broadband capable networks.
4. The Commission should follow its precedent on cost-causation in designing a broadband-related contribution mechanism. Even with the changes necessary to rationalize USF spending, particularly with CETCs as discussed, upward pressure on the fund will probably exist by dint of FCC-related determinations as to broadband speed requirements and increases in demand. Accordingly, the Commission also should rationalize the contribution base by following its historic principles of

cost-causation. Those who profit from the network by driving increasing amounts of content and applications should be included in this calculus.

The Rural High Cost Carriers further submitted that the FCC should first size any USF-related broadband fund based on public policy decisions as to the desirable broadband speeds, and the elimination of wasteful spending on CETCs under the identical support rule. The Commission should reject ideas such as USF portability and forward-looking pricing because they are unworkable in the real world and contrary to the deployment of high quality and sustainable networks in rural areas.

With respect to universal service contributions, the Rural High Cost Carriers argued that the Commission should follow its precedent on cost-causation in designing a broadband-related contribution mechanism that includes those who profit from the network by driving increasing amounts of content and applications.

Finally, the Commission should find that current high cost support and intercarrier compensation mechanisms are necessary to ensure the ability of rural incumbent local exchange carriers to continue to serve customers and deploy broadband capable networks.

The Rural High Cost Carriers include the South Dakota Telecommunications Association (SDTA), All West Communications, Inc., BEK Communications, Big Bend Telephone Company, Breda Telephone Corp., Buggs Island Telephone Cooperative, Cameron Telephone Company, The Chillicothe Telephone Company, Clear Lake Telephone Company, Dumont Telephone Company, Hanson Communications, Inc., Horizon Telecom, Penasco Valley Telecommunications Cooperative, The Ponderosa Telephone Company, Prairie Grove Telephone Company, Inc., Public Service Telephone Company, Inc., South Slope Cooperative Telephone Company, Inc., Spring Grove Communications, and Townes Telecommunications, Inc.

BloostonLaw contacts: Ben Dickens and Mary Sisak.

WTA Also Is Concerned About USF, ICC Proposals

In comments on the FCC's Universal Service Fund (USF) and Intercarrier Compensation proposals with respect to the National Broadband Plan (see previous story), the Western Telecommunications Alliance (WTA) expressed its own concerns. WTA prefaced its comments by noting that its rural telephone company members have been leaders in the prudent upgrade of their multiple-use networks to deploy the modern telecommunications plant capable of providing access to broadband services as well as to traditional voice services. In fact, **the** great

success story of the federal USF program is the progress to date by WTA members and other small rural local exchange carriers (RLECs) in deploying broadband-capable facilities and offering broadband services to approximately 90 percent of the households in many of the nation's most costly and most difficult-to-serve rural areas.

However, while RLECs have made substantial progress, their task of meeting the burgeoning demands by rural customers for broadband access at higher and higher speeds is far from over. They need to make major future infrastructure investments and operating expenditures to continue providing their rural customers with access to broadband services reasonably comparable in quality and price to the rapidly evolving and expanding broadband services available in urban areas.

In the future as in the past, RLEC broadband deployment will depend a great deal upon the sufficiency and predictability of the cost recovery that is currently provided in major part by federal High Cost Fund (HCF) support and by access charge revenues (interstate and intrastate). Whereas the mechanisms for distributing these dollars may change, eliminations or substantial reductions of the dollars themselves (which currently comprise over half of the revenue streams of most RLECs) not only will impair the ability of RLECs to keep pace with changing broadband developments and needs, but also will threaten the continuing viability of the network upon which customers are relying for increasing levels of broadband services.

WTA proposes separate broadband high cost support mechanisms for: (1) RLECs and other small wireline Carriers of Last Resort (COLRs); (2) RBOCs and other larger wireline COLRs; and (3) wireless and other carriers providing mobility and other complementary or supplementary broadband services. The small wireline COLR mechanism should be funded initially, at a minimum, at the same \$2.4 billion annual support level that has enabled RLECs to make substantial progress deploying broadband facilities and services during the preceding five years. To the extent that the Commission requires broadband access to be extended to 100 percent of RLEC customers at an early date and/or requires existing RLEC broadband networks to be upgraded to furnish faster minimum broadband speeds, RLEC broadband support needs will increase above the initial \$2.4 billion annual level. Even without express Commission requirements, RLECs will need to make substantial additional broadband investments and expenditures, and to receive substantial broadband high cost support, in order to furnish their rural customers with broadband facilities and services that are reasonably comparable in quality and price to those available in urban areas.

Among other things, the proposed broadband high cost mechanism for small wireline COLRs: (a) should be

based upon actual costs; (b) should support above-average broadband maintenance and operating expenses as well as investment costs; (c) will not be able to rely significantly upon cash flows from non-profitable video, Internet access and toll resale ventures; and (d) should support rural broadband networks and not take away the allocated "per-line" support of customers who change carriers or otherwise terminate service.

BloostonLaw contact: Gerry Duffy.

NTCA, OPASTCO Offer Own Universal Service Proposals

In comments on NBP Public Notice #19, the **National Telecommunications Cooperative Association (NTCA)** noted that its members who receive high cost funds are deploying broadband services, and any reduction or cap of the high cost program will adversely affect traditional and broadband services in rural America. NTCA said USF reform should include identification of Market Failure Areas to target new broadband support. That support should include middle mile and second mile transport services. A revenue-based contribution methodology that includes all broadband internet access providers as contributors is the optimal plan for funding broadband through the USF, NTCA said. The Commission should also explore requiring large bandwidth users to contribute to the new broadband USF funding mechanism, NTCA added.

NTCA said changes to the high cost support mechanism for broadband services will require a transition period for carriers who currently support a legacy voice network through USF funding. That transition period should include USF funding for stand-alone, or "naked" digital subscriber line (DSL) service, and the Commission should stay the current rural incumbent local exchange carrier (ILEC) voice/broadband bundling rules and allow rural ILECs to offer stand-alone/naked DSL broadband service with the same levels of high cost USF support that would be allowed in their bundled voice/broadband service offering, NTCA said. It added that the Commission can monitor the ongoing impacts on revenue flows in the high cost portion by declaring all USF broadband services as supported services subject to a Communications Act Title II earnings review.

NTCA said existing carriers of last resort (COLR) and eligible telecommunications carrier (ETC) requirements should continue for any entity who receives new high cost USF funding for broadband. The Commission's Universal Service Administrative Company (USAC) audit reports demonstrate high compliance and accuracy among the high cost portion of the USF, NTCA said, and the Commission's oversight through audits, USAC guid-

ance letters, and Title II regulation, merit continuance in the broadband world.

The **Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)** outlined the following plan in its comments:

1. Create a new Universal High Speed Broadband Fund, which would support all of the major network components of providing high speed broadband service in rural service areas—last mile loop costs, second mile transport costs, middle mile transport costs, and the cost of access to the internet backbone. Both capital expenditures and ongoing operational expenses would be supported.

2. The plan would support one fixed technology high speed network provider in each rural service area. It also allows for one mobile wireless provider in each area to be supported. Support amounts are based on a demonstration of actual costs that exceed a qualifying threshold.

3. Rural ILECs can “opt in” to the new Fund at any time during a seven-year transition period. Once a rural ILEC opt in, all high cost support is received via the new Fund. At the time of opt in, a rural ILEC would immediately begin receiving the support amount that they were presently receiving from the existing mechanisms, as a starting point. Those ILECs choosing not to opt in immediately would continue to receive support through existing mechanisms.

4. All intercarrier compensation (ICC) rates transition down to zero over seven years, and the ICC revenues that rural ILECs are receiving at the time they opt in would gradually transition into the support received from the new Fund, as the ICC rates are reduced. Rural ILECs may also elect to immediately reduce their ICC rates to zero at the time they opt in.

5. At the end of the seven-year transition period, the existing rural high cost support mechanisms and ICC regime are eliminated, and carriers would recover their broadband network costs through a combination of affordable end user rates and support from the new Fund. At that time, the public switched telephone network (PSTN) is fully converted to a broadband network.

6. All fixed technology providers receiving support through the new Fund must commit to offering broadband throughout the service area at speeds that are at least equal to the national average broadband speed, and end user rates that are reasonably comparable to the national average rate. Support recipients must also submit to quality of service oversight.

7. The Low Income program is expanded to support broadband internet access service for qualifying consumers.

8. Contributions to all USF programs, including the new Fund, would be based on a combination of public network connections and working telephone numbers, including all broadband connections in service, regardless of technology.

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

NCTA Wants To Reduce High Cost Support In Some Areas

The National Cable and Telecommunications Association (NCTA) has asked the FCC to establish procedures to reduce the amount of universal service high-cost support provided to carriers in those areas of the country where there is extensive, unsubsidized facilities-based voice competition and where government subsidies no longer are needed to ensure that service will be made available to consumers. **Comments in this WC Docket No. 05-337, GN Docket No. 09-51, and RM-11584 rulemaking proceeding are due January 7, and reply comments are due January 22.**

According to NCTA, the Commission’s high-cost support mechanisms are premised on the assumption that a particular location would not have affordable service available but for the support provided by the program. But in markets with extensive facilities-based competition, that assumption no longer holds true, NCTA says. It adds that the presence of one or more unsubsidized wireline competitors generally should be sufficient to ensure that consumers will have access to reasonably priced service even if government subsidies are reduced or eliminated.

Under NCTA’s proposal, the Commission would establish a two-step process by which any party may request that the Commission reassess the level of support provided to a particular geographic area. In the first step, the burden would be on the petitioner to demonstrate that the area meets one of two competition-based triggers. Specifically, the petitioner would be required to demonstrate either (1) that unsubsidized wireline competitors offer service to more than 75 percent of the customers in an area without support or (2) that the state has found sufficient competition to substantially deregulate the retail rates charged by an incumbent local exchange carrier (ILEC). If one or both of those triggers is satisfied, the Commission would initiate the second step of the proceeding. In that step, the burden would be on a USF recipient to demonstrate the minimum amount of support necessary to ensure that non-competitive portions of the area will continue to be served.

In this stage of the process, the Commission would identify any ILEC costs, including costs attributable to any provider of last resort obligations imposed under state

law, that cannot be recovered through any of the services (regulated or unregulated) provided over the network in the portion of the study area without competition. **BloostonLaw is preparing comments to respond to NCTA's petition. Clients wishing to participate should contact us ASAP.**

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

LAW & REGULATION

ROCKEFELLER LAUNCHES PROBE OF CREDIT CARD "DATA PASS" PROCESS: Senator John D. (Jay) Rockefeller IV, Chairman of the U.S. Senate Committee on Commerce, Science, and Transportation, sent a letter to three credit card companies—Visa, American Express, and MasterCard—asking them what they know about the aggressive online sales tactics many online companies use to charge consumers' credit cards for unwanted club memberships. Millions of online consumers have been enrolled in these membership clubs and their credit card or debit cards have been charged even though they never provided the companies with their sixteen digit credit card or debit card numbers. Chairman Rockefeller sent these letters after a Commerce Committee staff report and hearing showed that a key component of the aggressive online sales tactics is the use of a so-called "data pass" process, which enables websites to transfer consumers' billing information, including consumers' credit or debit card numbers, to the companies selling the club membership. "Data pass" has allowed these companies to present misleading enrollment offers to consumers, has led to significant consumer confusion, and has caused millions of American consumers to become enrolled and charged for membership clubs they did not want and were unaware they had signed up for. "There are more than 4 million American consumers whose credit cards are being charged by mysterious membership clubs after shopping online and most of these 4 million consumers don't even know it's happening," said Chairman Rockefeller. "Through the Committee's investigation, we learned these online club scams have made more than \$1.4 billion dollars through these tactics and charged more than 30 million Americans. This next step in our investigation will help us better understand how millions of American consumers' credit card accounts can be charged every month for services they don't want. For many Americans, shopping online is a tool to learn about products, to compare prices, and to find a good bargain – and in these tough economic times when Americans are doing all they can to make ends meet and provide for their families, every dollar counts." The letters sent to Visa, American Express, and MasterCard request information related to cardholder inquiries about unauthorized charges stemming from "data pass" and any efforts made by the companies to reduce the

number of "chargeback" requests from cardholders. Visa, American Express, and MasterCard have likely processed millions of charges for membership clubs that were not authorized by cardholders. BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

FCC ADDRESSES SERVICES ELIGIBLE FOR FY 2010 E-RATE PROGRAM: The FCC has adopted a report and order and Further Notice of Proposed Rulemaking (FNPRM) to address and seek comment on issues regarding the services eligible for funding under the schools and libraries universal service support mechanism, also known as the E-rate program. First, the FCC modified its rules to expressly include interconnected voice over Internet protocol (VoIP) and text messaging as eligible services under the E-rate program. Second, the FCC released the list of services that will be eligible for discounts for E-rate funding year 2010. Finally, the FCC seeks further comment on the eligibility of certain services in future funding years, as well as on proposed changes to the process for determining the services that will be eligible for support under the E-rate program. In the report and order, the FCC concluded that interconnected VoIP service is eligible for E-rate support and should continue to be an eligible service under the E-rate program. The FCC also concluded that text messaging is eligible for E-rate support. The FCC clarified the E-rate program eligibility of video on-demand servers, ethernet, web hosting, wireless local area network (LAN) controllers, and virtualization software. It found that telephone broadcast messaging, unbundled warranties, power distribution units, softphones, interactive white boards, and e-mail archiving are ineligible for E-rate program funding. In the FNPRM, the FCC seeks comment on whether particular services should be designated as eligible for E-rate support in funding year 2011 and beyond. Specifically, the FCC tentatively concludes that the eligible services list (ESL) should not include separately-priced firewall services, anti-virus/anti-spam software, scheduling services, and wireless Internet access applications. Also, it tentatively concludes that web hosting should not be eligible for funding under the E-rate program, or, alternatively, should only be eligible for E-rate program funds as a Priority 2 service. In the Further Notice the FCC also tentatively concludes that it should change its rules to establish that specific eligible products and services should be listed in the ESL as opposed to being listed individually in the rules. Finally, the FCC tentatively concludes to revise its rules to eliminate the requirement that the ESL be released by public notice, which would provide the Commission the flexibility to release the ESL by order. BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

STUPAK INTRODUCES COMMISSION COLLABORATION BILL: Rep. Bart Stupak (D-Mich.) has introduced HR 4167, *The Federal Communications Commission Collaboration Act*, to authorize 3 or more FCC Commis-

sioners to hold nonpublic collaborative discussions, and for other purposes. Commissioners currently must communicate one-on-one or via written correspondence. According to the bill language, FCC Commissioners have stated that their ability to have a substantive exchange of ideas and hold collective deliberations on issues pending before the Commission has been hindered. Congress's principal purpose in creating a multimember agency is to obtain the benefits of collegial decision-making by the agency's members, who bring to the decision-making process different philosophical perspectives, experiences, and areas of expertise. According to the bill, Commissioners have relied primarily on an inefficient combination of written messages, communications among staff, and a series of meetings restricted to 2 Commissioners at each such meeting to discuss complex telecommunications matters pending before the Commission, the bill states. Extensive use of such methods of communication has harmed collegiality and cooperation at the Commission, the bill says. Numerous regulatory matters have been pending before the Commission for years, and continued inaction on these issues has the potential to hinder innovation and private investment in the domestic communications industry. In general, HR 4167 would allow 3 or more Commissioners to hold a meeting that is closed to the public to discuss official business if--(A) a vote or any other agency action, as such term is defined in section 551(13) of title 5, United States Code, is not taken at such meeting; (B) each person present at such meeting is a Commissioner or an employee of the Commission; (C) for each political party of which any Commissioner is a member, at least 1 Commissioner who is a member of such respective political party is present at such meeting, and, if any Commissioner has no political party affiliation, at least one unaffiliated Commissioner is present at such meeting; and (D) an attorney from the Office of General Counsel of the Commission is present at such meeting. Additionally, the Commission shall publish disclosure of such a meeting on its Web site. Many in the industry, however, believe the bill, despite its provision for the presence of both political parties, would result in closed door meetings and not allow full input. BloostonLaw contacts: Hal Mordkofsky, Ben Dickens, Gerry Duffy, and John Prendergast.

FCC, FEMA ANNOUNCE STANDARDS, TIMETABLE FOR EMERGENCY ALERTS: As part of the Integrated Public Alert and Warning System (IPAWS), the nation's next generation of emergency alert and warning networks, the Department of Homeland Security's Federal Emergency Management Agency (FEMA) and the FCC has announced the adoption of the design specifications for the development of a gateway interface that will enable wireless carriers to provide their customers with timely and accurate emergency alerts and warnings via their cell phones and other mobile devices. The Commercial Mobile Alert System (CMAS) is one of many projects

within IPAWS intended to provide emergency managers and the President a means to send alerts and warnings to the public. Specifically, CMAS provides Federal, state, territorial, tribal and local government officials the ability to send 90 character geographically targeted text messages to the public regarding emergency alert and warning of imminent threats to life and property, Amber alerts, and Presidential emergency messages. The CMAS is a combined effort of the federal government and cellular providers to define a common standard for cellular alerts. This announcement marks the beginning of the 28-month period, mandated by the FCC in August 2008, for commercial mobile service providers who have elected to participate in the design specifications known as CMAS to develop, test and deploy the system and deliver mobile alerts to the public by 2012. Wireless carriers who choose to participate in the CMAS will relay authorized text-based alerts to their subscribers. To ensure that persons with disabilities who subscribe to wireless services receive these emergency alerts, the FCC adopted rules in 2008 that will require participating wireless carriers to transmit messages with both vibration cadence and audio attention signals. The FCC also initiated the 28-month period during which participating Commercial Mobile Service (CMS) providers must develop, test and deploy the CMAS. This period was established by the Commission in 2008 and developed pursuant to the WARN Act. CMS providers must begin to develop and test the CMAS no later than 10 months from the date that the FEMA makes available design specifications for the Government Interface that will allow FEMA to deliver alerts to participating CMS providers. The end of that development and testing period will trigger an implementation and deployment period, not exceeding 18 months, culminating in the availability of the CMAS to the public. BloostonLaw contacts: Hal Mordkofsky, John Prendergast, and Richard Rubino.

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 common carrier 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. Wireless carriers are not required to make the annual notification. **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 15: HAC REPORTING DEADLINE. 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.

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 wire-line 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 2009. 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) sup-

port 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

Dec. 10 – Deadline for comments on moving toward a digital democracy (GN Docket Nos. 09-47, 09-51, and 09-137; NBP Public Notice No. 20).

Dec. 11 – Deadline for reply 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).

***Dec. 15* – FCC Form 655, electronic HAC report form, becomes available.**

***Dec. 16* – FCC open meeting.**

Dec. 21 – Deadline for comments on competitive bidding procedures for Auction No. 87 (unsold paging licenses in upper and lower paging bands) (AU Docket No. 09-205).

Dec. 21 – Deadline for comments on transition from circuit switched to IP world (GN Docket Nos. 09-47, 09-51, and 09-137; NBP Public Notice No. 25).

Dec. 21 – Deadline for comments on Public Notice seeking more data on uses of spectrum (GN Docket Nos. 09-47, 09-51, and 09-137; NBP Public Notice No. 26).

***Dec. 30* – FCC Form 507, Universal Service Quarterly Line Count Update, is due.**

***Dec. 31* – FCC Form 525, Competitive Carrier Line Count Quarterly Report, is due.**

***Jan. 1* – Carriers must notify customers of “Do Not Call” options.**

Jan. 7 – Deadline for reply comments on competitive bidding procedures for Auction No. 87 (unsold paging licenses in upper and lower paging bands) (AU Docket No. 09-205).

Jan. 7 – Deadline for comments on NCTA’s petition to reduce high-cost support “where there is extensive, unsubsidized facilities-based voice competition” (WC Docket No. 05-337, GN Docket No. 09-51, and RM-11584).

Jan. 14 – Deadline for comments on “net neutrality” NPRM (GN Docket No. 09-191 and WC Docket No. 07-52).

***Jan. 15* – HAC reporting deadline.**

***Jan. 18* – FCC Form 497, Low Income Quarterly Report, is due.**

Jan. 22 – Deadline for reply comments on NCTA’s petition to reduce high-cost support “where there is extensive, unsubsidized facilities-based voice competition” (WC Docket No. 05-337, GN Docket No. 09-51, and RM-11584).

Jan. 25 – Deadline for comments on NOI on protecting children in new digital media age (MB Docket No. 09-194).

***Jan. 30* – Report of Extension of Credit to Federal Candidates is due.**

***Feb. 1* – FCC Form 502, Number Utilization and Forecast Report, is due.**

***Feb. 1* – FCC Form 499-Q, Telecommunications Reporting Worksheet, is due.**