

BloostonLaw Telecom Update

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CPNI CERTIFICATION DUE MARCH 1

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 now face monetary fines of up to \$20,000.** Note that the annual certification should include the following three required Exhibits: (a) a detailed 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 file the certification with the FCC in the correct fashion. Our clients can forward the original to BloostonLaw in time for the firm to make the filing with the FCC by March 1, if desired. We ask that any filings be forwarded to us by Friday, February 26.

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: If you file the CPNI certification, you must also file the FCC Form 499-A Telecom Reporting Worksheet by April 1.

FCC DISCUSSES BROADBAND POLICY OPTIONS: At today's open meeting, the FCC staff task force developing the National Broadband Plan said the plan may recommend changes in the law in some cases, but those changes should be limited in number, the task force said. The staff's interim report focused on policy recommendations in ten key areas: Universal Service, infrastructure access, spectrum, Tribal lands, set-top boxes, consumer information, media, adoption of broadband, accessibility for people with disabilities, and public safety. (Continued on Page 5.)

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FCC Proposes Record 14.1% USF Contribution Factor For First Quarter of 2010

The FCC's Office of Managing Director (OMD) has announced that the proposed universal service contribution factor for the first quarter of 2010 will be **0.141** or **14.1%**. This is a new record high, and it is well above the 12.3% for fourth quarter 2009, and the then-record 12.9% for the third quarter. **The increase appears, in part, to result from (1) a decrease in the 1Q 2010 contribution base of \$14.996218 billion from the 4Q 2009 base of \$15.150652 billion; and (2) an increase in 1Q 2010 projected Low Income projected program support of**

\$309.97 million over \$261.74 million in 4Q 2009. (The High Cost Fund projected program support actually decreased from \$1,145.33 million in 4Q 2009 to \$1,106.31 million in the proposed 1Q 2010 Public Notice.

Contributions to the federal universal service support mechanisms are determined using a quarterly contribution factor calculated by the Commission. The Commission calculates the quarterly contribution factor based on the ratio of total projected quarterly costs of the universal service support mechanisms to contributors' total projected collected end-user interstate and international telecommunications revenues, net of projected contributions.

Pursuant to section 54.709(a)(3) of the Commission's rules, the Universal Service Administrative Company (USAC) submitted projections of demand and administrative expenses for the first quarter of 2010. Accordingly, the projected demand and expenses are as follows: Schools & Libraries--\$594.97 million; Rural Health Care--\$57.21 million; High Cost Fund--\$1,098.11 million (or \$1.1 billion); Low Income program--\$356.25 million. The total is \$2,106.54 million (or \$2.1 billion).

As noted above the 14.1% proposed contribution factor for the first quarter of 2010 is a large increase over recent third and fourth quarter 2009 contribution factors (12.3% and 12.9%, respectively). It is also a large increase over the 11.3% figure for the second quarter and the 9.5% first quarter figure of 2009. It is also above the 11.4% figure for both the third and fourth quarters of 2008, as well as the 11.3% figure for the second quarter of 2008. And it is up from the 10.2% figure for the first quarter of 2008.

The proposed 14.1% contribution factor for the first quarter of 2010 will be used to calculate the line item charge on the customer's bill (i.e., to calculate the charges on revenues that a carrier receives). The FCC's *USF Interim Contribution Methodology* order prohibits carriers from marking up the USF line item higher than the contribution factor.

In addition, under the limited international revenues exception (LIRE) in section 54.706(c) of the Commission's rules, a contributor to the universal service fund (USF) whose projected collected interstate end-user telecommunications revenues comprise less than 12% of its combined projected collected interstate and international end-user telecommunications revenues shall contribute based only on projected collected interstate end-user telecommunications revenues, net of projected contributions.

The rule is intended to exclude from the contribution base the international end-user telecommunications revenues of any entity whose annual contribution, based on

the provider's interstate and international end-user telecommunications revenues, would exceed the amount of its interstate end-user revenues.

The proposed contribution factor exceeds 12%, which the FCC recognizes could result in a contributor being required to contribute to the USF an amount that exceeds its interstate end-user telecommunications revenue. Should a contributor face this situation, the contributor may petition the Commission for waiver of the LIRE threshold.

If the FCC takes no action within the 14-day period following the December 11 date announcing the proposed contribution factor, the contribution factor will become effective.

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

Rockefeller Introduces Bill To Extend Universal Service For Broadband To Low Income Households

Senator John D. (Jay) Rockefeller IV, Chairman of the U.S. Senate Committee on Commerce, Science, and Transportation, issued the following statement after introducing *The Broadband Opportunity and Affordability Act (BOAA)*, S. 2789, a bipartisan piece of legislation, which would amend the Communications Act to extend the universal service program at the FCC to provide support for broadband in low-income households. There is concern that the passage of this bill could put significant additional pressure on the Universal Service Fund, as foreshadowed by the substantial jump in the contribution factor when the Low Income program costs rose over the last quarter.

"Today, millions of low-income American families are left at a disadvantage because they cannot afford broadband Internet access or the necessary supporting computer equipment," said Chairman Rockefeller. "As more aspects of 21st century life become dependent upon Internet access, it is crucial we help to provide all families with the high-tech resources they need to succeed in the workplace and in school – and for the United States to continue to be a competitive, global economic leader."

The BOAA would be designed to help low income consumers in two ways:

(1) It creates a two-year pilot program to expand the FCC's Lifeline program to support the recurring cost of basic broadband service for eligible low-income households. The FCC's existing Lifeline program subsidizes

the recurring expenses of maintaining basic phone service in low-income households.

(2) It asks the FCC to provide Congress with a report on expanding the related Link-Up program to assist with the costs of securing computer equipment to start up broadband service. The FCC's existing Link-Up program subsidizes the start up costs of beginning basic phone service for low-income consumers. Also backing the bill is Senate Commerce Ranking member Kay Bailey Hutchison (R-Tex.).

Rockefeller's bill is similar to one introduced by Rep. Doris Matsui (D-Calif.) last fall, HR 3646. Her bill also asks the FCC to help low-income families in rural and urban areas get affordable broadband service by providing a subsidizing a discount on their broadband service.

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

FCC Asks for Comment On Interim Changes to USF Non-rural High-Cost Support

The FCC has issued a Further Notice of Proposed Rulemaking (FNPRM), seeking comment only on certain interim changes to the high-cost universal service support mechanism for non-rural carriers, in response to 10th U.S. Court of Appeals in Denver remand in *Qwest Communications International v. FCC*. The Commission said it does not have enough time to implement universal service changes between the deadline for submitting its National Broadband Plan to Congress on Feb. 17 and the deadline for responding to the Court's remand on April 16

In the FNPRM, the FCC responds to the decision of the 10th Circuit, in which the court remanded the Commission's rules for providing high-cost universal service support to non-rural carriers. The FCC said that while it has long recognized the need for comprehensive reform, it is also cognizant that, under the American Recovery and Reinvestment Act of 2009, the Commission must send a National Broadband Plan to Congress by February 17, 2010. The FCC said it anticipates that changes to universal service policies are likely to be recommended as part of that plan, and that the Commission will undertake comprehensive universal service reform when it implements those recommendations.

Thus, the FCC said, it will not be feasible to consider, evaluate, and implement these universal service recommendations between February 17, 2010, and April 16, 2010, the date by which the Commission committed to respond to the 10th Circuit's remand. The FCC tentatively concludes, therefore, that it should not attempt wholesale reform of the non-rural high-cost mechanism at this

time, but it seeks comment on certain interim changes to address the court's concerns and changes in the marketplace.

The interim changes on which the FCC seeks comment are designed to respond to the court's concerns, while also taking into account the considerable changes in technology, the telecommunications marketplace, and consumer buying patterns that have occurred since the FCC last modified its non-rural high-cost universal service support rules. The FCC seeks comment on what changes should be made to the Commission's rules regarding the rate comparability review and certification process. Specifically, it seeks comment on whether the Commission should define "reasonably comparable" rural and urban rates in terms of rates for bundled local and long distance services. In addition, the FCC seeks comment on whether the Commission should require carriers to certify that they offer bundled local and long distance services at reasonably comparable rural and urban rates.

Finally, the FCC tentatively concludes that while the Commission considers comprehensive universal service reform consistent with both the Communications Act, and the Recovery Act, the current non-rural high-cost mechanism is an appropriate interim mechanism for determining high-cost support to non-rural carriers. The FCC tentatively finds that the mechanism as currently structured comports with the requirements of section 254 of the Communications Act, and it is therefore appropriate to maintain this mechanism on an interim basis until the Commission enacts comprehensive reform.

Comments in this WC Docket No. 05-337 proceeding will be due 30 days after publication in the Federal Register, and replies will be due 15 days thereafter.

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

NTIA Responds to FCC's PN On Public Safety, Homeland Security, Cybersecurity

The National Telecommunications and Information Administration (NTIA) has filed comments (via a letter to the Commission) on the public safety, homeland security, and cybersecurity elements of the National Broadband Plan (NBP Public Notice # 8). According to NTIA, the Plan can chart a path that leverages the unique, innovative dynamics of the Internet in order to address important public safety, national security, and homeland defense priorities. "Indeed," NTIA says, "with the advent and adoption of mobile and fixed broadband Internet communications, we can imagine a world where the following is possible:

- Fire officials viewing different angles of a fire simultaneously, from remote cameras deployed around the scene of an incident.
- FEMA accessing detailed infrastructure plans in real-time and sharing them, as authorized, with other responding agencies.
- The FBI sharing data with local law enforcement over secure virtual private networks.
- 911 operators gathering pictures of an accident victim and making them available to arriving emergency medical personnel ambulance, so that they are prepared to provide assistance upon arrival and then forward informative pictures to the hospital in-route.
- Government agencies and private sector network operators sharing data in real time about evolving threats to networks in order to thwart cyber attacks before they can spread.”

NTIA says it is encouraged by early experiments and demonstration projects along these lines and “they are really just a small fraction” of what should be possible nationwide.

A Layered, Open-Platform Design Strategy for Public Safety Communications, NG911, and Cybersecurity.

NTIA believes we are in an era of decentralized communications characterized by innovation at the edges of networks, facilitated by open-standards and lightweight protocols. Successful strategies for managing public safety, cybersecurity, and NG911 resources will begin by recognizing and leveraging the characteristics of the Internet that make cyberspace at once so complex, so incompatible with traditional command-and-control regulation, and so innovative. Internet-driven innovation has fueled advances across the computer, communications and information marketplaces. Innovative information and communication services are enabled by a layered, open platform design strategy that facilitates the development of many diverse applications and services on top of open networks built using common technical standards. Public safety communications can benefit enormously from adoption of this new model, NTIA says.

NTIA adds that to enable public safety, cybersecurity and NG911 innovation, the Plan should be guided by this layering of functions and activities. At the Applications, Services, and Equipment layer, NTIA says, the private sector must lead in developing innovative solutions and implementation strategies. Standards and Protocol development activities guide the operation and evolution of broadband networks and enable the wide range of applications and services for public safety, homeland security, and cybersecurity purposes. The Telecommunications Network Core is comprised of networks operated by the Nation’s communications infrastructure providers. Public policy, investment decisions, and service planning at all levels should be guided by this model, NTIA says.

Public Safety Goals of Interoperability, Robustness, Reliability, and Prioritization Are Key.

NTIA says that Public safety and emergency responders envision near and long-term uses of broadband applications that will improve situational awareness, provide real-time retrieval of critical data, and enhance collaborative decision-making. Guided by the lessons learned from the September 11th attacks, Hurricane Katrina and other natural disasters, the Administration supports actions that can result in interoperable, innovative, effective, reliable, and affordable public safety communications systems. To best achieve this goal, NTIA says, we should look to public-private partnerships, which is how this country has met so many of its great challenges, in order to assist public safety’s shift away from continued reliance on a siloed, switched network services model, wholly-dedicated devices, and proprietary systems, and towards more modern networks and devices that solve problems while maintaining the high standards that public safety demands.

NTIA states that the Commission should explore the extent to which public safety can use commercial telecommunications networks, coupled with customized end user devices, to meet its unique needs. In so doing, the Commission should take into account the analyses of public safety communications’ strengths and weaknesses conducted in the aftermaths of 9-11 and Hurricane Katrina. The 9-11 Commission noted the failure of the New York Fire Department’s in-building radio coverage, as well as the lack of interoperability both within and between the various responding agencies. During Hurricane Katrina, operability was an even more acute problem than interoperability, as the complete devastation of the communications infrastructure left emergency responders without a core network on which to communicate, according to NTIA.

During emergencies, local, state and federal public safety agencies have historically been given highest priority access to wireline and wireless switched networks, NTIA states. The need to assure access will be every bit as great on new IP-based networks, but the technical means of assuring priority on new Internet services will be different. In some cases access guarantees may be best met by using devices that can seek out available capacity on a variety of different networks, according to NTIA.

Putting public safety communications at the top of the queue is of little value if the entire network has been disabled, NTIA says. “We must affirm our commitment to network availability for public safety users under adverse situations, but be creative in exploring the best means to satisfy this goal,” NTIA states, “In the same vein, the Plan should recognize that certain physical diversity, redundancy, reliability, and security aspects of public safety services separate them from traditional commercial net-

work service offerings. For example, public safety networks have demanding requirements for hardening cell sites and other facilities to ensure network survivability.”

NTIA notes that “the use of standards-based and vendor-neutral technologies will promote network connectivity and spur the deployment of innovative applications and services on more affordable devices. Open technical standards and protocols will facilitate the delivery of wired and wireless technologies that will promote compatibility and interoperability across agencies, jurisdictions, and communities in a manner that helps them leverage legacy systems as they migrate towards newer technologies. Ultimately, the Plan must identify both what is unique about public safety requirements, along with those needs that can be met through creative configuration of commercial network services.”

Finally, NTIA says, the Plan should note the need for flexible and modular funding models that satisfy public safety broadband needs for interoperable, mobile, wireless services, yet avoid a "one-size-fits-all" approach. Numerous existing models to consider include state-wide systems, fee-for-service systems, and systems-of-systems approaches. The Plan should identify responsibilities for managing the various phases of the build out, including regulatory and contracting oversight, NTIA concludes.

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

FCC Open Meeting

(Continued from Page 1)

Other areas that are to be addressed by the plan, including education, energy, health care, civic participation and others, will be addressed further in January.

With 63 days remaining until the plan must be delivered to Congress (on February 17, 2010), highlights of the framework, principles and preliminary options outlined by the task force report included:

Universal Service Fund Options (USF)

Overview: USF resources are limited and require allocation tradeoffs. Policies should be flexible enough to adjust to changes in technology and demand for broadband service.

Short and medium-term options:

- Cutting inefficient spending in the High-Cost fund to free up funds for broadband.
- Removing barriers to use of E-Rate-funded connections in schools for adoption and community use.
- Extending the Rural Health Care Pilot Program

Long-term options:

- Comprehensive overhaul of USF in conjunction with other proceedings, such as intercarrier compensation and special access.
- Transforming the High-Cost fund to support broadband, with a defined transition path for existing recipients.
- Permitting low-income households to use Lifeline support for broadband.
- Designing a new rural health care program based on lessons learned from the pilot project.

Infrastructure Options

Overview: Broadband infrastructure requires a partnership between the federal government and various state and local entities. Lowering the costs of infrastructure inputs improves the business case for further upgrades and sustainable competition.

- Setting uniform and fair rental rate for pole attachments.
- Adopting rules that reduce costs and increase speed of access to poles, ducts, conduits and rights-of-way.
- Enabling municipalities to create broadband options where circumstances warrant.

Spectrum Options

Overview: Demand for wireless broadband service will exceed the supply of spectrum in the not-too-distant future. A large, new spectrum allocation is essential to improving broadband competition.

- Resolving pending proceedings such as Advanced Wireless Services-3 (AWS-3) and Wireless Communications Services (WCS).
- Exploring various proposals that have been submitted, such as access to TV spectrum while maintaining over-the-air TV and access to federal spectrum, in conjunction with the National Telecommunications and Information Administration (NTIA).
- Applying market forces to all bands while taking into consideration other policy objectives in allocation decisions.
- Preserving spectrum for unlicensed devices.
- Using spectrum more efficiently and conducting periodic reviews of uses.

Options for Tribal Lands

Overview: Broadband deployment and adoption on Tribal lands is dramatically worse than elsewhere in the U.S.

- Tribal-specific data gathering may be required for both deployment and adoption.
- Establishing “anchor institutions” in Tribal lands to reach broader populations.
- Creating a joint federal-tribal broadband working group and an Office of Tribal Affairs at the FCC.

Set-Top Boxes Options

Overview: Set-top box innovation is lacking. Improved boxes could be an important driver of broadband adoption and utilization.

- Addressing current shortfalls in implementation of CableCard to help create an open device market.
- Requiring video services providers to supply a small, low-cost, network-interface device whose only function is to bridge proprietary network elements with retail navigation devices

Transparency Options

Overview: Consumer information about product attributes fosters a more competitive market, but is lacking in broadband.

- Providing consumers with better information about actual performance of broadband services.
- Developing a rating system to allow consumers to see the actual performance of broadband networks.
- Creating a national broadband map in conjunction with the NTIA to provide a clearinghouse of broadband data and provide consumers with information about local broadband options.

Media Options

Overview: The spread of Internet access has undermined established media models but triggered an explosion in media innovation.

- Assess the impact of a universal broadband strategy on both commercial media and public media licensees.

Broadband Adoption Options

Overview: Adoption is increasing, but certain segments still lag the national average.

- Establishing a non-profit entity to support adoption efforts.
- Facilitate public-private partnerships to increase adoption of broadband in the home.
- Creating tax benefits for employers who pay for devices and connectivity for low-income non-adapters.
- Developing digital literacy standards and support.

Accessibility Options

Overview: Only 42% of people with disabilities have adopted broadband.

- Promoting the availability of mainstream devices and components with built-in accessibility features.
- Promoting the accessibility of web content.
- Including solutions for people with disabilities in broader programmatic efforts.

Public Safety Options

Overview: Improving first responder access to broadband and ensuring that broadband networks are sound and secure are top priorities.

- Creating a nationwide interoperable broadband wireless communications network.
- Accelerating development of Next Generation 9-1-1 and alert systems.
- Establishing systems to protect critical infrastructure and preserve broadband communications during emergencies.

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

LAW & REGULATION

D.C. CIRCUIT UPHOLDS FCC'S INTERIM USF CAP:

The U.S. Court of Appeals for the District of Columbia Circuit has denied the Rural Cellular Association's (RCA's) petition alleging that the FCC violated the Administrative Procedure Act (APA) and acted arbitrarily and capriciously in imposing an interim cap on the Universal Service Fund (USF). In *RCA v. FCC*, the D.C. Circuit ruled that the Commission did not violate the APA, and did provide for proper notice and comment in reaching its decision on the interim cap. The Court noted that the "arbitrary and capricious" standard is particularly "deferential" in matters implicating predictive judgments and interim regulations, and that "this court has also acknowledged the FCC should be given 'substantial deference' when acting to impose interim regulations." In supporting the FCC's rationale for imposing the interim cap, the Court said: "First, the Commission noted the contribution factor had reached 11.7% in 2007, its highest level since its inception. Second, the Commission noted the fund had grown at an alarming rate over the past seven years, and support for the fund comes from assessments paid by telecommunications providers, who can, and almost always do, pass the cost of those assessments to their customers. The Commission thus logically concluded consumer contribution rates would also increase at an alarming rate to keep up with the growth in the fund. Given the substantial deference we afford agencies' predictive judgments, the dramatic increase in [competitive eligible telecommunications carrier] CETC high-cost support, on its own, was enough to justify the Commission's prediction about the effect on consumers." BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

FCC DENIES TSPA RECON REQUEST REGARDING TOWER SITING AND HISTORIC PRESERVATION:

The FCC has denied the 2005 Petition for Reconsideration of the *NPA Report and Order* filed by the Tower Siting Policy Alliance (TSPA). In the *NPA Report and Or-*

der, the Commission adopted and codified the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (NPA), which governs the review of proposed communications facilities for their effects on historic properties under Section 106 of the National Historic Preservation Act of 1966 (NHPA). The TSPA does not challenge the NPA as a whole, but it seeks reconsideration of six discrete provisions or sets of provisions within the NPA. The FCC declined to adopt on reconsideration any of the proposed changes to the NPA that are put forth in the TSPA petition. The TSPA contends that: (1) the NPA provisions mandating archeological field surveys for most undertakings are burdensome and should be amended; (2) the requirement to invite Tribes and Native Hawaiian Organizations (NHOs) to participate in considering proposed undertakings within certain exclusions is burdensome and unjustified; (3) the requirement to do more than review records maintained by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) to identify historic properties of religious and cultural significance to Tribes and NHOs that may be visually affected by undertakings is burdensome and unjustified; (4) the standard for protecting the confidentiality of information significant to Tribes and NHOs is overly broad and exceeds the requirements of the NHPA and of the Advisory Council on Historic Preservation's (ACHP's) rules; (5) the NPA improperly enables consulting parties to block Memoranda of Agreement (MOAs) regarding mitigation of adverse effects; and (6) the NPA should be amended to add a provision for designating a lead agency where more than one federal agency is involved in an undertaking, consistent with Section 800.2(a)(2) of the ACHP's rules. BloostonLaw contacts: Hal Mordkofsky, John Prendergast, and Richard Rubino.

COMMENT SOUGHT ON EXPEDITED RULEMAKING REQUEST REGARDING SECTION 271 UNBUNDLING REQUIREMENTS: On November 9, 2009, 360networks (USA) inc., Broadview Networks, Inc., Cbeyond, Inc., COMPTTEL, Covad Communications Company, NuVox, PAETEC Holding Corp., Sprint Nextel Corporation, and tw telecom inc. (collectively, the Section 271 Coalition) filed a petition with the FCC for expedited rulemaking seeking adoption of rules to govern the provision of certain network elements by Bell Operating Companies (BOCs) pursuant to section 271(c)(2)(B) of the Communications Act. The Section 271 Coalition asserts that facilities-based competitors continue to rely, in many locations, on BOC loops and transport facilities to reach end users and aggregation locations. The Section 271 Coalition states that access to these facilities, pursuant to the section 271(c)(2)(B) competitive checklist, is therefore "essential to enable narrowband and broadband competition." Accordingly, the Section 271 Coalition proposes specific rules to govern the provision of elements by the BOCs, as required by the section 271 checklist, that it claims "would establish clear requirements describing

what constitutes each individual Checklist item, as well as to give effect to the just and reasonable rate standard that the Commission has previously determined applies to the Checklist Elements." The Coalition requests that the Commission adopt its proposed rules on an expedited basis. **Comments in this WC Docket No. 09-222 proceeding are due January 12, and replies are due February 10.** BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

INDUSTRY

RUMORS OF GOOGLE SMARTPHONE SET INDUSTRY BUZZING: Google plans to begin selling its own smartphone early next year, company employees say, a move that could challenge Apple's leadership in one of the fastest-growing and most important technologies in decades, according to the New York Times and other media sources. Google's new touch-screen Android phone, which it began giving to many employees to test last week, could also shake up the fundamentals of the cellphone market in the United States, where most phones work only on the networks of the wireless carriers that sold them. Similarly, the Wall Street Journal reported that Google will begin selling its own "unlocked" smartphone running its Android platform sometime next year. The device, which is being called Nexus One, will be made by HTC and will be sold online without wireless service. Customers will have to buy service separately, according to the report that cited unnamed sources familiar with the matter. The report did not specify any pricing or launch details, or whether the device would be subsidized in some form. The report said Google has kept Verizon Wireless and T-Mobile USA in the loop about the phone, and has not ruled out the possibility of selling the phone through a carrier's store at some point. If Google decides to release its own phone, it could have significant ramifications for the Open Handset Alliance, the consortium of wireless carriers and handset makers that support the Android platform. If Google decides to subsidize the device, it could potentially have a very disruptive effect, analysts said. "While carriers express mixed feelings about subsidies, phones are their primary tool for attracting and retaining subscribers, and service contracts are how they initially secure customer loyalty (or, at least, commitment)," Forrester Research analyst Charles Golvin wrote in a blog post. "If subscribers can get a cutting-edge handset from Google, shop for the best plan, and take that handset to another provider as soon as a better service offer comes out, carriers will have to rethink what loyalty means." Others said Google might be willing to ignore the potential antagonism such a move could create. "We don't have the answers other than Google is very serious about the wireless opportunity," industry analyst Jeff Kagan wrote in a note about the news. "Their first generation of the Android operating system has not been anywhere near as robust as Apple

with the iPhone. Google has blood in their eyes. They see a huge opportunity and they won't rest until they have a sizable piece of it." On the other hand (as posted by Andrew Berg), Ken Hyers, senior analyst for Technology Business Research, questions the logic of a solely Google-branded device. "What I find fascinating is the idea that they are just on the cusp of some really good success and now they're going to go and compete with their own partners. I don't think it's wise," Hyers said. Hyers said that Google may see an opportunity to develop a device that connects to all of Google's applications and services. However, he still finds the idea full of holes. "The great thing about an unlocked GSM phone is that you can take it anywhere. However, Nokia's tried that in the United States and failed miserably," he said. "Nokia has had great success with the unlocked model in Europe. So maybe we shouldn't look at this strictly from a U.S. viewpoint," he said, noting that if the device is being developed for an international market, it would not be in direct U.S. competition with Google partners such as Motorola and HTC.

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 Ju-***

ly (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 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: 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 pro-

jected 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

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.**

***Feb. 17* – Deadline for FCC to submit National Broadband Plan to Congress.**

Feb. 22 – Deadline for reply comments on NOI on protecting children in new digital media age (MB Docket No. 09-194).

***Mar. 1* – CPNI Annual Certification is due.**

***Mar. 1* – Copyright Statement of Account form for cable companies is due.**

Mar. 5 – Deadline for reply comments on “net neutrality” NPRM (GN Docket No. 09-191 and WC Docket No. 07-52).