

BloostonLaw Telecom Update

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IMPORTANT DEADLINES

JUNE 30: ANNUAL ICLS USE CERTIFICATION.

*Rate of return carriers and CETCs must file a self-certification with the FCC and the Universal Service Administrative Company (USAC) stating that all Interstate Common Line Support (ICLS) and Long Term Support (LTS) will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. In other words, carriers are required to certify that their ICLS and LTS support is being used consistent with Section 254(e) of the Communications Act. **Failure to file this self-certification will preclude the carrier from receiving ICLS support. We, therefore, strongly recommend that clients have BloostonLaw submit this filing and obtain an FCC proof-of-filing receipt for client records.** BloostonLaw contacts: Ben Dickens and Gerry Duffy.*

JULY 21: 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.*

OTHER IMPORTANT DEADLINES:

JULY 31: FCC FORM 507, UNIVERSAL SERVICE QUARTERLY LINE COUNT UPDATE.

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

JULY 31: REPORT OF EXTENSION OF CREDIT TO FEDERAL CANDIDATES.

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FCC's Inspector General Releases Semiannual Report

The FCC's Office of Inspector General (OIG) has released its semiannual report on investigations, audits and Universal Service Fund (USF) oversight for the period October 1, 2007, through March 31, 2008. Some of OIG's findings are as follows:

USF Oversight: The bottom line is that OIG stated that a program is at risk if the "erroneous payment is greater than \$10 million. Under these criteria, the High Cost Program, the Schools and Libraries Program, and Low Income Program were found to be at risk." OIG used certain sampling formulas for auditing purposes. To date, OIG staff has visited 16 Schools and Libraries' audit field sites and 19 High Cost audit field sites in an effort to fulfill its oversight responsibilities.

Telecommunications Relay Service (TRS): The TRS Fund compensates communications service providers for the costs of providing interstate telephone transmission services that enable a person with a hearing or speech disability to use such services to communicate with a person without hearing or speech disabilities. Distributions from the TRS Fund have grown substantially in recent years, according to OIG, and there is always a risk of fraud and improper payments in the absence of effective controls and close and continuing oversight. During the recent six-month reporting period, OIG completed

audits of two TRS providers. The audits found several deficiencies in supporting documentation for costs reported and minutes of service provided, as well as in the reporting of inflated costs. The providers did not agree with the results of these audits and audit resolutions in progress. Audits of other TRS providers are in progress.

Wireless Network Security Review: OIG said, as part of its ongoing review and testing of the security of FCC information systems, it has identified several control areas (i.e., management, technical, and operational) that should be strengthened.

Public Comments & Complaints: OIG offered no analysis here; it stated only that it was continuing its work in this area.

BloostonLaw contacts: Hal Mordkofsky, Ben Dickens, Gerry Duffy, and John Prendergast.

WTA Urges FCC To Retain High Cost USF Program Virtually In Present Form

In reply comments in the FCC's Universal Service Fund (USF) Reform proceeding, the Western Telecommunications Alliance (WTA) said it believes that the existing High Cost support programs for rural telephone companies have been the most successful and effective USF programs. Since the mid-1980s, WTA said, they have enabled small rural carriers with minimal financial resources to invest in, construct, operate and maintain the infrastructure necessary to provide quality, affordable and reasonably comparable telecommunications and information services to their rural service areas. They have accomplished these tasks in a highly efficient manner subject to substantial regulatory and private oversight and accountability, as well as with virtually no waste, fraud or abuse.

According to WTA, most rural telephone companies have been transitioning from "plain old telephone service" to the developing broadband network. They need continued specific, predictable and sufficient High Cost support in order to replace their copper lines with fiber optic facilities, and to make other network upgrades, as rural demands for telecommunications and advanced services evolve. WTA said they also need continued High Cost support to satisfy the service demands and bear the economic consequences of their Provider of Last Resort (POLR) status in many of the Nation's most rugged, sparsely populated and high-cost areas.

WTA said it believes that the existing High Cost programs for rural telephone companies should be retained in substantially their present form. It also supports sepa-

rate High Cost support programs under the overall VSF umbrella and contribution mechanism for (1) larger, non-rural POI (2) new broadband construction in unserved areas; and (3) wireless carriers in high-cost wireless service or study areas. WTA said it believes that separate High Cost programs for different industry segments will be much more effective and cost-efficient than "one-size-fits-all" solutions. Such separate programs should not be subject to integrated caps that may automatically divert support from one separate industry segment to others.

WTA said it opposes reverse auctions as a means of calculating and distributing support for any of the proposed separate High Cost programs. It said it believes that their investment disincentives, gaming opportunities and design complexities will harm rural telecommunications service and competition.

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

LAW & REGULATION

FCC APPROVES NECA's PROPOSED FY 2008 AVERAGE SCHEDULE FORMULAS: The FCC has approved the National Exchange Carrier Association's (NECA's) proposed modifications to the current average schedule formulas that were filed to become effective July 1, 2008. NECA's filing was submitted in accordance with Commission rules that require NECA to submit proposed modifications to the average schedule formulas annually or to certify that no modifications are warranted. NECA proposes to revise the formulas for average schedule interstate settlement disbursements in connection with the provision of interstate access services. NECA indicates that a major factor in its proposed modifications to the average schedule formula is "significant reductions in some access demand elements." Recognizing that statistical results are valid only for the studied range, NECA proposes to limit access minute volumes and line haul circuit counts that would be eligible for average schedule settlements to levels analyzed in its study. NECA estimates that under the proposed formula changes, the majority of carriers would receive a small increase in settlements, averaging 2.7 percent, given constant demand. The effects of these formula changes on individual average schedule companies will vary depending on each company's size and demand characteristics. NECA also adjusted the formulas to reflect the allocation rules mandated by the *MAG Order*. NECA requests that these modifications take effect on July 1, 2008, and remain in effect through June 30, 2009. The FCC said it has reviewed NECA's filing and finds that its proposed formulas are reasonable. NECA revised the average schedule formulas using procedures consistent with those used in previous filings. The Commission re-

jected Verizon's argument that NECA should be required to reduce both the proposed minutes of use (MOU) per line per month volume cap and the proposed line haul circuit per exchange cap. The Commission found that NECA's explanation of its derivation of the MOU and circuit cap levels is reasonable. NECA explained that Verizon's proposal to lower the MOU cap was based on an analysis that failed to include data from high volume periods. With respect to the line haul circuit cap of 3000 circuits, NECA pointed out that while this year's sample did not include carriers with between 2000 and 3000 circuits, past years' studies have included such carriers. Moreover, NECA asserted that there is no significant per-unit cost difference between study areas with between 2000 and 3000 circuits per exchange, and those near, but slightly below, 2000 based on the data for companies serving such areas. The FCC also found that NECA adequately addressed Verizon's request for clarification regarding how the caps would work. NECA clarified that the caps would impose a ceiling on the amount an average schedule carrier could recover from the pool. Specifically, if "an average schedule company reported MOUs or circuit counts exceeding specified thresholds, its settlements would be capped at the threshold level -- it would not receive any additional payments for MOUs or circuits beyond those points." Thus, the FCC agreed with NECA that the average schedule formulas will not create an incentive for any average schedule company to stimulate access traffic because the formulas will operate to cap that carrier's settlements as traffic volumes increase. BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

HIGH COURT REJECTS T-MOBILE'S CONTRACTS APPEAL:

The U.S. Supreme Court has rejected T-Mobile USA's appeal in three cases involving the legal remedies available in millions of cell phone contracts. According to The Associated Press, the issue in the three cases is the same: whether state laws that limit the ability of companies to prohibit consumers from banding together to pursue class action lawsuits are preempted by federal law. T-Mobile had included a prohibition on class actions in a part of its contracts that also required consumers to resolve any complaints through arbitration. The AP reported that the company's lawyers argued that federal law, which generally requires that arbitration clauses be enforced, overrules those state laws that limit the ability of companies to ban class actions. Under contract laws in many states, class-action bans are considered inherently unfair and courts, including those in California, where the dispute originated, can choose to not enforce them. Companies generally support arbitration because they consider it a faster and cheaper way to resolve disputes than litigation, according to AP. Clauses requiring arbitration are included in millions of consumer contracts issued by credit card, cell phone and cable companies, among others. A federal appeals court ruled in one of the cases, *T-Mobile v. Laster*, last October that

courts can refuse to enforce arbitration clauses if they include bans on class actions. AP said the Supreme Court's decision, without comment, lets that decision stand and allows the case to proceed to further litigation. Consumer groups argue that class action bans are unfair, because in legal disputes over small amounts of money, individuals may not have the incentive to file suits. Banning class actions, as a result, could essentially allow companies to avoid liability for practices that cost large numbers of people small amounts of money, according to AP. The *T-Mobile v. Laster* case began when a woman named Jennifer Laster sued the company after buying a phone and signing up for wireless service in San Diego in 2005. She alleged that T-Mobile engaged in unfair and deceptive business practices by promising free and significantly discounted phones, while charging sales taxes based on the full price of the phone. The company responded that they were required to charge sales taxes on the full retail price under California law. Two companion cases, *T-Mobile v. Ford*, and *T-Mobile v. Gatton*, were also turned down by the court, AP said. BloostonLaw contacts: Hal Mordkofsky, Ben Dickens, Gerry Duffy, and John Prendergast.

SENATE PASSES CHILDREN INTERNET PROTECTION BILL:

The U.S. Senate recently approved the *Protecting Children in the 21st Century Act* (S. 1965), sponsored by Senate Commerce Committee Vice Chairman Ted Stevens (R-Alaska), Chairman Daniel Inouye (D-Hawaii), and 19 other cosponsors. The bill would bring parents, industry, and educators together to address comprehensive online protections for children. "Keeping children safe on the Internet must be a multi-layered approach, both on and offline," said Senator Stevens. "Parents play a vital role in supervising their children's use of the Internet, but this bill will help keep America's children safe and allow them to learn and grow in an ever changing online world." According to the National Center for Missing and Exploited Children, one in seven children online (10 to 17-years-old) have received a sexual solicitation or approach over the Internet. S. 1965 includes the following provisions: (1) requires schools receiving E-Rate funds to offer education regarding online behavior, including social networking, chat rooms and "cyberbullying" awareness and response; (2) creates an interagency working group to identify and encourage technologies and initiatives to help parents protect their children from unwanted content; and (3) requires a national public awareness campaign to be conducted by the Federal Trade Commission (FTC). **The Senate also approved a resolution sponsored by Vice Chairman Stevens and Senator Lisa Murkowski (R-Alaska) to declare June 2008 as "National Internet Safety Month."** The resolution, which passed the Senate by unanimous consent, calls on Internet safety organizations, law enforcement officials, educators, community leaders and parents to increase Internet education and safety efforts. The measure notes that more

than 35 million children in kindergarten through grade 12 have Internet access, and 80 percent of those children are online for at least one hour per week. BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

FCC SEEKS COMMENTS ON KENTUCKY HOMEOWNER ASSOCIATION ANTENNA RESTRICTIONS:

The FCC has set comment dates for a Petition for Declaratory Ruling filed by William H. Culver, asking the Commission to determine whether antenna restrictions of the Northridge Farms Homeowners Association restricting installation and placement of television antennas and satellite dishes is preempted by Section 1.4000 of the Commission's rules (Over-the-Air Reception Devices Rule). The Petition alleges that the Association's covenants, rules and regulations violate the Commission's rule by establishing placement preferences and height restrictions that prevent the Petitioner from obtaining a signal. Northridge Farms is located in Crestwood, Kentucky. Parties may file responses to the Petition on or before **July 2**, and replies on or before **July 17**. Please place the case identifier, **CSR-7925-O**, on all filings. BloostonLaw contacts: Hal Mordkofsky, John Prendergast, and Gerry Duffy.

DEADLINES

JULY 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 **July 31** and covers lines served as of December 31, 2007. Incumbent carriers filing on a quarterly basis must also file on **September 30** (for lines served as of March 31, 2008); **December 30** (for lines served as of June 30, 2008), and **March 31, 2009**, for lines served as of September 30, 2008).. BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.*

JULY 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 in-*

*cumbent 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.*

JULY 31: 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, if the carrier extended unsecured credit to a candidate for a Federal elected office during the reporting period. This includes candidates who have not paid their communications bills. BloostonLaw contacts: Hal Mordkofsky and John Prendergast.

AUGUST 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 recent 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 (Form 499-A) that was due April 1. BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.*

AUGUST 1: FCC FORM 502, NUMBER UTILIZATION REPORT. Any wireless or wireline carrier that has been assigned an NXX code (10,000 numbers) or one or more 1,000 number blocks; and any wireless or wireline carrier that has received from the North American Numbering Plan Administrator (NANPA) or from another carrier one or more 1,000 number blocks must file Form 502. Such carriers should apply for an Operating Company Number (OCN) from NANPA if they do not already have one. Make sure you send your data to **Gerry Duffy** at BloostonLaw.

SEPTEMBER 1: COPYRIGHT STATEMENT OF ACCOUNTS. The Copyright Statement of Accounts form plus royalty payment for the first half of calendar year 2003 is due to be filed September 1 at the Library of Congress' Copyright Office by cable TV service providers. BloostonLaw contact: Gerry Duffy.

SEPTEMBER 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 **July 31** and covers lines served as of December 31, 2007. Incumbent carriers filing on a quarterly basis must also file on **September 30** (for lines served as of March 31, 2008); **December 30** (for lines served as of June 30, 2008), and **March 31, 2009**, for lines served as of September 30, 2008). BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

SEPTEMBER 30: 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.

OCTOBER 1: STATE CERTIFICATION OF UNIVERSAL SERVICE SUPPORT. State regulatory commissions must certify by **October 1** that eligible rural carriers are using universal service support for the intended purposes. State commissions must file this annual certification with the FCC and the Universal Service Administrative Company (USAC) stating that all federal high-cost support provided to rural incumbent local exchange carriers (ILECs) and competitive eligible telecommunications carriers (CETCs) serving lines in rural ILEC service areas "will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." **Failure of a state commission to provide certification will mean that non-certified carriers in that state will not receive high-cost support for the first quarter of 2008. If you have any doubts about your state's status, contact your state commission immediately.** Carriers not subject to state jurisdiction must certify directly to the FCC and USAC. BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

FCC Meetings and Deadlines

June 6 – Deadline for reply comments on EEOC forms (FCC Forms 395-A and B) (MM Docket No. 98-204).

June 6 – Deadline for reply comments on assessment and collection of FY 2008 regulatory fees (MD Docket No. 08-65).

June 9 – Deadline for reply comments on VTel petition for declaratory ruling regarding interconnection rights for LECs, VoIP providers (WC Docket No. 08-56).

June 10 – Auction Seminar, Auction 78 (unsold AWS-1, broadband PCS licenses).

June 10 – Short-form application filing window opens for Auction 78 (unsold AWS-1, broadband PCS licenses).

June 11 – Deadline for reply comments on broadcast localism NPRM (MB Docket No. 04-2333).

June 12 – FCC open meeting.

June 16 – Deadline for ILECs filing annual access tariffs on 15 days' notice (carriers proposing to increase any of their rates).

June 17 – Auction No. 77, closed auction of licenses to provide cellular service in two different unserved areas, is scheduled to begin.

June 19 – Deadline for reply comments on Progeny's request for waiver of M-LMS construction rule (WT Docket No. 08-60).

June 19 – Short-form application filing deadline for Auction 78 (unsold AWS-1, broadband PCS licenses).

June 20 – Deadline for comments on 700 MHz D Block Second NPRM (WT Docket No. 06-150).

June 23 – Deadline for petitions to suspend or reject annual access tariffs filed on 15 days' notice (carriers proposing to increase any of their rates).

June 24 – Deadline for ILECs filing annual access tariffs on seven days' notice (carriers proposing to decrease all of their rates).

June 26 – Deadline for replies to petitions to suspend or reject annual access tariffs filed on 15 days' notice (carriers proposing to increase any of their rates).

June 26 – Deadline for petitions to suspend or reject annual access tariffs filed on seven days' notice (carriers proposing to decrease all of their rates).

June 27 – Deadline for replies to petitions to suspend or reject annual access tariffs filed on seven days' notice (carriers proposing to decrease all of their rates).

June 27 – Deadline for comments on FNPRM concerning DTV consumer education initiative (MB Docket No. 07-148).

June 30 – Annual ICLS Use Certification is due.

June 30 – Deadline for comments on NOI on fraudulent 911 calls made from wireless NSI phones (PS Docket No. 08-51).

July 1 – Effective date of annual access tariffs.

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*Limited to Matters and Proceedings before Federal Courts and Agencies

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