

# BloostonLaw Telecom Update

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

Vol. 11, No. 21

May 28, 2008

## **FCC Sets June 12 For Hearing On Wireless Early Termination Fees**

*Immediately following its June 12 open meeting (see separate story on opposite page), the FCC will hold a hearing on wireless early termination fees. The Commission hopes to establish a record following unsuccessful efforts to reach common ground with the industry on this issue.*

*According to Fox News and other media outlets, Verizon Wireless has proposed giving consumers a break on fees charged when they cancel their service early. But the plan also would let cell phone companies off the hook in state courts where they are being sued for hundreds of millions of dollars by angry customers. Cell phone companies routinely charge customers \$175 or more for early termination of service.*

*Under the Verizon plan, consumers would have the opportunity to cancel service without any penalty for up to 30 days after they sign a cell phone contract or until 10 days after they receive their first bill.*

*The proposal would require companies to reduce fees month by month over the course of a contract based on how long customers have left. It would not abolish cancellation fees entirely and would not refund such fees to anyone who already paid them.*

*For consumer groups, the problem is that the plan would take away whatever state authority exists to regulate the charges. States typically do not regulate end user rates for wireless services. Plus, these consumer groups continue to argue that the fees are unreasonable and discourage consumers from switching service providers.*

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

## INSIDE THIS ISSUE

- Martin schedules AWS-III band service rules item for June 12 open meeting.
- Comment dates set for DTV consumer education initiative.
- FCC proposes FY 2008 NANP fund size estimate, contribution factor.
- FCC announces two Separations Joint Board appointments.
- Congress passes Farm Bill over President's veto.

## **Martin Schedules AWS-III Band Service Rules Item For June 12 Open Meeting**

FCC Chairman Kevin Martin has announced that the Commission's June 12 open meeting will include an item on service rules for Advanced Wireless Services or AWS-III spectrum in the 2155-2180 MHz band. As Martin stated last April, he is now announcing topics for open meetings three weeks in advance, but such announcements do not affect the one-week "Sunshine period" or lobbying prohibition prior to the meeting. **Our rural telco and small business clients will want to consider participating in comments advocating fair auction rules for rural communities, including (1) small licensing areas, and (2) reasonable build-out requirements for sparsely populated areas.**

Specifically, the AWS item will include an Order on Reconsideration that would address Petitions for Reconsideration of a Commission Order that addressed Applications and Forbearance Petitions to One of the AWS Bands, and a Further Notice of Proposed Rulemaking (FNPRM) that would Seek Further Comment Regarding Service Rules for the AWS Spectrum.

Adoption of the item would essentially set the stage for another AWS auction. According to RCR and other press reports, the FCC may require the winning bidder(s)

to offer free broadband service under an aggressive build-out schedule.

During a press briefing, Martin told RCR that a licensee of the 2155-2180 MHz spectrum would have to provide a free service tier, and would have to reach 50% of the population in four years and 95% of the population by the end of the license term (a difficult burden for most rural areas). Martin also said the agency will initiate a separate rulemaking on what to do with other AWS frequencies in the 1.9-2.1 GHz band.

The FCC's September 2007 Notice of Proposed Rule-making sought comments on the 2155-2175 MHz band. In that NPRM, the FCC noted that the 2155-2175 MHz band is currently occupied by over 1,800 active, incumbent Fixed Service (FS) and Broadband Radio Service (BRS) licenses, which are subject to relocation by AWS entrants (BloostonLaw Telecom Update, September 26, 2007). This spectrum consists of a single, unpaired, 20-megahertz block, rather than two, separate paired blocks. Therefore, a symmetrical pairing approach – in which one block is used for base station transmissions and another, equal-sized block is used for mobile handset transmissions – cannot be adopted in the rules for this spectrum. Apparently, though, the Commission has added an extra 5 MHz in the order it plans to consider on June 12. **In any event, this proposal will directly affect our clients holding BRS, formerly MMDS, and microwave spectrum licenses.**

Although the AWS-III item is scheduled for the June 12 meeting, Martin acknowledged that the measure could be approved before that date. As RCR noted, it is unclear whether the FCC would hold the AWS III auction later this year, and if that auction will affect the agency's plans to re-auction the 700 MHz D Block (BloostonLaw Telecom Update, May 21).

The free broadband service tier in the AWS-III item is not dissimilar to the free wireless broadband access proposal first advocated by M2Z Networks in its application for an exclusive, 15-year, nationwide license for this spectrum (BloostonLaw Telecom Update, March 14, 2007). M2Z had proposed that the spectrum be licensed to it free of charge, with a portion of its receipts from services being paid to the U.S. Treasury. The FCC dismissed M2Z's application on the ground that it was not offering a "new" service or technology, and the company subsequently challenged the FCC's ruling in the U.S. Court of Appeals for the District of Columbia Circuit (BloostonLaw Telecom Update, September 19, 2007). That case is pending.

In a related matter, U.S. Reps. Anna Eshoo (D-Calif.), Christopher Cannon (R-Utah), and Ed Markey (D-Mass.) are sponsoring *Wireless Internet Nationwide for Families Act (H.R. 5846)* to spur deployment of a national, family-friendly wireless broadband network with open access.

Their bill envisions one auction of airwaves in the 2155-2180 MHz band and another auction involving yet-to-be-determined spectrum below 3 GHz.

**Skype petition:** Also scheduled for action at the June 12 meeting is the expected dismissal of Skype Communications S.A.R.L.'s [petition](#) to mandate an open access rule for all mobile-phone and other commercial wireless spectrum. More specifically, the Commission would consider an Order that would address Skype's *Petition to Confirm a Consumer's Right to Use Internet Communications Software and Attach Devices to Wireless Networks* (BloostonLaw Telecom Update, February 28, 2007).

Skype had asked the FCC to create "an industry-led mechanism" to ensure the openness of wireless networks. In a February 2007 petition, Skype asked the Commission to subject the wireless industry to the *Carterfone* rules, which would allow consumers to use devices and software of their choice on mobile phone networks.

The *Carterfone* rules, which were enacted in 1968 during the old Bell System monopoly era, allow consumers to hook any device up to the landline phone network, so long as it does not harm the network. Prior to the *Carterfone* decision, AT&T provided all telephones and devices connected to the public switched telephone network (PSTN), and it routinely sued companies that sold unauthorized products that could be attached to the network. The *Carterfone* itself was an acoustic coupler for land mobile radios. Invented by Tom Carter, it was used to allow radio-equipped oil field drill rigs to patch calls into the telephone network.

Arguably, the *Carterfone* decision helped spur new innovations, such as the fax machine and Internet modem. In more recent times, the *Carterfone* principle has been extended to other communication networks, such as cable modem and digital subscriber line (DSL).

But, as the Skype argument goes, the principle has not been applied to wireless networks. As a result, Skype said, that market has evolved into one that is heavily controlled by wireless carriers. They dictate which phones are used on their networks, what content users can access, and which applications can run on wireless phones. Some carriers have even included specific terms in their service contracts that prevent customers from downloading and using software from Skype on their networks.

Thus, Skype's motivations for filing the petition were clear. The company had created software that allows people to make free phone calls across the Internet. And so it wanted users who access the Internet via a mobile device to be able to use their software and services, too. As a result, Skype requested that the Commission issue

a declaratory ruling that *Carterfone* applies to the wireless industry, launch a rulemaking proceeding, and enforce the *Carterfone* rules as they would apply to wireless.

But during his keynote address at last April's CTIA-The Wireless Association show in Las Vegas, Martin observed that the wireless industry had begun to recognize the benefits of "open access" and more open platforms. Because of this, Martin said he would circulate an order dismissing the Skype petition (BloostonLaw Telecom Update, April 9). This appears to be that order.

### **OTHER AGENDA ITEMS**

Other agenda items that Martin has scheduled for the June 12 open meeting include the following:

**DTV:** An Order on Clarification with respect to Petitions for Reconsideration of Clarification of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television;

**National Do-Not-Call Registry:** A Report and Order Addressing the Commission's Rules under the Telephone Consumer Protection Act Concerning the National Do-Not-Call Registry.

**Telecommunications Relay Service (TRS):** A Notice of Proposed Rulemaking Concerning the Provision of Speech-to-Speech, a form of TRS. A Report and Order and Further Notice of Proposed Rulemaking Concerning a Ten-Digit Numbering Plan for Internet-Based TRS.

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

## **LAW & REGULATION**

**COMMENT DATES SET FOR FNPRM ON DTV CONSUMER EDUCATION INITIATIVE:** The FCC has established comment dates for its Further Notice of Proposed Rulemaking (FNPRM) concerning the digital television (DTV) consumer education initiative. Released in conjunction with the *DTV Consumer Education Order on Reconsideration*, the FNPRM asks whether the eligible telecommunications carrier (ETC) obligation to provide monthly DTV transition notices to low-income subscribers should be expanded to require the provision of such notices to all subscribers, and whether multichannel video programming distributors (MVPDs) should be required to provide on-air DTV transition education on their systems. **Comments in this MB Docket No. 07-148 proceeding are due June 27, and replies are due July 14.** BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

**FCC PROPOSES FY 2008 NANP FUND SIZE ESTIMATE, CONTRIBUTION FACTOR:** The FCC's Wireline Competition Bureau has announced the proposed North American Numbering Plan (NANP) Administration fund size estimate and contribution factor for Fiscal Year 2008 (July 1, 2008 through June 30, 2009). Under the Commission's rules, the NANP billing and collection agent, Welch LLP, is responsible for calculating, assessing, billing, and collecting payments for numbering administration functions and for distributing funds to the entities that support these functions (e.g., the NANPA and the Pooling Administrator (PA)). All telecommunications carriers in the United States are required to contribute on a competitively neutral basis to meet the costs of numbering administration. On May 1, 2008, Welch filed a fund size estimate and contribution factor for recovering the cost of NANP Administration for Fiscal Year 2008. Welch proposed a funding requirement of \$3,895,083 for Fiscal Year 2008, and a contribution factor of 0.0000165. The funding requirement contemplates a Canadian contribution of \$68,795, a Caribbean contribution of \$13,589, a contribution by U.S. carriers of \$3,895,083, and the application of \$1,531,477 from the accumulated surplus from the prior fiscal year. If the Commission takes no action regarding the Fiscal Year 2008 fund size estimate and contribution factor proposed by June 3, the fund size estimate and the contribution factor shall be deemed approved by the Commission. BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

**FCC ANNOUNCES TWO SEPARATIONS JOINT BOARD APPOINTMENTS:** The FCC has appointed the Honorable Steve Kolbeck, Vice Chairman, South Dakota Public Utilities Commission, and the Honorable Anthony Palermino, Commissioner, Connecticut Department of Public Utility Control, to serve on the Federal-State Joint Board on Jurisdictional Separations. These appointments fill the positions recently vacated by the Honorable Paul Kjellander, Commissioner of the Idaho Public Utilities Commission, and the Honorable Curt Stamp, Commissioner of the Iowa Utilities Board. BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

**CONGRESS PASSES FARM BILL OVER PRESIDENT'S VETO:** Congress last week overrode President Bush's veto and passed the *Food, Conservation and Energy Act of 2008 (H.R. 2419)*, also known as the "Farm Bill," but not without high drama. As reported by The Associated Press, the version of the bill that Bush vetoed was missing 34 pages on international food aid and trade—an error that may require Congress to send the White House yet another bill. House Democratic leaders decided to pass the bill again (with the missing section). The vote was 306-110, more than enough to again override another veto. The Senate, which earlier passed the bill 82-13, will deal with the problem when it returns from vacation June 3. The \$290 billion Farm Bill increases food stamps by \$1 billion a year, increases subsidies for

some crops, and for the first time subsidizes growers of fresh fruits and vegetables. BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

**LMCC PROPOSES USING TEMPORARY TOWER REGISTRATION NUMBERS:** The Land Mobile Communications Council (LMCC) has proposed a solution to the tower registration problem created by the court remand in *American Bird Conservancy v. FCC* (BloostonLaw Telecom Update, May 7). In that case, the petitioners had asked the U.S. Court of Appeals for the District of Columbia Circuit to review the Commission's 2006 *Memorandum Opinion and Order* denying in part and dismissing in part their petition seeking protection of migratory birds from collisions with communications towers in the Gulf Coast region. Their petition claimed that Commission rules and procedures for approving new towers failed to comport with the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the Migratory Bird Treaty Act (MBTA). The court vacated the *Order* because the Commission failed to apply the proper NEPA standard, to provide a reasoned explanation on consultation under the ESA, and to provide meaningful notice of pending tower applications. This creates a delay in the registration process. In **WT Docket No. 08-61**, LMCC proposed issuing a temporary registration number at the beginning of the Antenna Structure Registration (ASR) process. This registration number would allow the frequency coordinators to begin processing the application and to place a temporary "hold" on a frequency until the ASR is completed, placing others on notice that there is a proposed use for this frequency. In order to accomplish this, the Commission can institute the simple process of placing an alphanumeric code in front of the registration number that indicates its status as a pending application. LMCC said its members agree that if the addition of the code did not change the length of the registration number, frequency coordinators could begin use of the code almost immediately with little-to-no software revisions necessary. LMCC said that providing a registration number for pending applications would serve as a placeholder for frequency licensees on a first-come, first-served basis as exists today, regardless of the length of the ASR process. If for some reason the registration was denied, the "hold" on the frequency could then be removed, making it available to other applicants. As the FCC would be charged in such a case with disassociating a temporary registration number from an application, the LMCC requests that the FCC would implement a procedure to do so in 60 days or whatever the FCC determines is a reasonably efficient timeframe after the registration has been denied. The LMCC believes that these simple steps will allow LMCC members and the Commission to process applications in the most rapid and efficient manner possible. BloostonLaw contacts: Hal Mordkofsky, John Prendergast, and Richard Rubino.

## DEADLINES

**MAY 31: FCC FORM 395, EMPLOYMENT REPORT.** *Common carriers, including wireless carriers, with 16 or more full-time employees must file their annual Common Carrier Employment Reports (FCC Form 395) by May 31. This report tracks carrier compliance with rules requiring recruitment of minority employees. Further, the FCC requires all common carriers to report any employment discrimination complaints they received during the past year. That information is also due on May 31. (The Form 395 is newly revised this year—prior versions are obsolete.) The FCC encourages carriers to complete the discrimination report requirement by filling out Section IV of Form 395, rather than submitting a separate report. Clients who would like assistance in filing Form 395 should contact Richard Rubino and Bob Jackson.*

**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](http://www.universalservice.org). BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.*

**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 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.

**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.

**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.

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\*Limited to Matters and Proceedings before Federal Courts and Agencies

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

## FCC Meetings and Deadlines

*May 29* – Deadline for reply comments on AT&T's request to review USAC audit finding regarding Form 497 (WC Docket No. 03-109).

*May 30* – Deadline for reply comments on FNPRM proposing to eliminate "30 Market Rule" for BAS transition before 2 GHz MSS operations can begin (WT Docket No. 02-55).

**May 30 – Effective date of revised DTV consumer education rules.**

*May 30* – Deadline for comments on homeowner association antenna restrictions (CSR-7861-O, CSR-7862-O).

*May 30* – Deadline for comments on assessment and collection of FY 2008 regulatory fees (MD Docket No. 08-65).

**May 31 – FCC Form 395, Employment Report, is due.**

*June 2* – Deadline for reply comments on petitions for reconsideration of order denying HAC waiver requests (WT Docket No. 01-139).

*June 2* – Deadline for upfront payments for closed Auction No. 77 (cellular service to two unserved areas).

**June 2 – Deadline for reply comments on USF reform NPRMs—Joint Board, Identical Support Rule, and Reverse Auctions NPRMs (WC Docket No. 05-337).** Extended from May 19.

*June 4* – Deadline for comments on Progeny's request for waiver of M-LMS construction rule (WT Docket No. 08-60).

*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).**