

# BloostonLaw Telecom Update

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## ***DTV Consumer Ed. Rules Effective March 31***

The FCC has received Office of Management and Budget (OMB) approval for its *DTV Consumer Education Order* and published the item in the Federal Register with an effective date of **March 31, 2008**.

Full power television broadcasters must file their first quarterly reports by April 10. The Order also requires DTV.gov Transition Partners to file quarterly reports.

700 MHz auction winners must also file quarterly reports, with the first such report due by the 10th day of the first calendar quarter following the initial grant of the license authorization that the entity holds. The report must detail what, if any, DTV transition consumer education efforts are being conducted.

The requirements for multichannel video programming distributors (MVPDs) and eligible telecommunications carriers (ETCs) takes effect 30 days after the effective date, which will be **April 30, 2008**. ETCs must provide DTV transition information in the monthly bills of their Lifeline/Link-Up customers. The information must be provided as a "bill stuffer" or as part of an information section on the bill itself. It must state that full-power analog broadcasting will end on February 17, 2009, and provide phone numbers and Web site addresses for further information. The same information must be provided with any Lifeline/Link-Up publicity campaigns. MVPDs and cable/video providers must provide similar notices.

**BloostonLaw has prepared suggested language that clients may use in their bill stuffers or information sections on their bills to customers. Please contact the firm. We are also available to assist 700 MHz auction winners with preparing their mandatory quarterly reports on DTV consumer education efforts.**

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

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## **SDTA Seeks Clarification And/Or Reconsideration Of FCC Order Extending LNP To VoIP Providers**

The South Dakota Telecommunications Association (SDTA) has filed a petition for clarification and/or reconsideration of the FCC's recent order extending local number portability (LNP) obligations to interconnected Voice over Internet Protocol (VoIP) providers (BloostonLaw Telecom Update, February 27). The National Telecommunications Cooperative Association (NTCA) initially joined the petition but subsequently withdrew. Specifically, SDTA requests clarification and/or reconsideration with respect to the Commission's statements concerning a VoIP provider's "numbering partner" and the scope of porting obligations.

In the Order, according to SDTA, the Commission states that porting obligations vary depending on whether a service is provided by a wireline carrier or a covered commercial mobile radio service (CMRS) provider. The Commission then states that because interconnected VoIP providers obtain North American Numbering Plan (NANP) telephone numbers through commercial arrangements with traditional telecommunications carriers, "the porting obligations to or from an interconnected VoIP service stem from the status of the interconnected VoIP

provider's numbering partner and the status of the provider to or from which the NANP telephone number is ported." The Commission defines "numbering partner" as the "carrier from which an interconnected VoIP provider obtains numbering resources."

It is not clear from the Commission's Order if numbers can be provided by a carrier to a VoIP provider separate and apart from any telecommunications service, SDTA said. Further, SDTA said, it also is not clear from the Commission's Order if a VoIP provider can obtain numbers from a wireless carrier and thereby obtain a different porting scope than that which would be available to a wireline carrier or a VoIP provider that obtained numbers from a wireline carrier. SDTA requests clarification and, in the alternative, reconsideration on these issues.

Disassociating the provision of telephone numbers from the provision of telecommunications service, according to SDTA, appears to conflict with Section 52.15(g)(2)(i) of the Commission's rules, which requires a carrier to submit evidence that it is authorized to provide service in the area for which the numbering resources are being requested.

The disassociation of telephone numbers from the provision of a telecommunications service also could lead to the sale of telephone numbers. Such a result would be contrary to the Commission's numbering conservation rules.

SDTA also said there is no evidence that a telecommunications carrier that provides telecommunications service or telephone numbers to a VoIP provider is the "partner" of the VoIP provider. The mere fact that a telecommunications carrier provides a wholesale or retail service to its customer which the customer then uses to provide service to its end user customer does not make the carrier a "partner" in the provision of service to the end user customer, SDTA said.

SDTA asked the Commission to clarify this aspect of its Order by removing the confusing "partnering" language and making it clear that an interconnected VoIP provider obtains telephone numbers from a wireline or wireless carrier in association with the telecommunications services purchased from that wireline or wireless carrier, respectively. In the alternative, SDTA asked the Commission to reconsider this aspect of its Order for the reasons discussed herein.

The Commission also should clarify its language concerning the porting scope provided to VoIP providers. Specifically, SDTA asked the Commission to clarify that a VoIP provider cannot obtain numbers from a wireless carrier and thereby obtain a different porting scope than that which would be available to a wireline carrier or a

VoIP provider that obtained numbers from a wireline carrier.

In the alternative, SDTA asked the Commission to reconsider this aspect of its decision. The Commission provides no explanation as to why a VoIP provider's porting scope should be different than the porting scope of the LEC operating in the same area, SDTA said. Accordingly, the Commission's decision is arbitrary and capricious.

Moreover, conferring a different porting scope on a VoIP provider on the basis of how it obtains telephone numbers would provide an unjustified competitive advantage to the VoIP provider. It also could exacerbate the transport issue and increase the associated burden on LECs if VoIP providers are entitled to the same porting scope as a wireless carrier. In this regard, it appears that the Regulatory Flexibility Analysis is deficient as the Commission does not address the burden of this new rule on rural LECs.

Comments in this **WC Docket No. 07-243** proceeding will be due 15 days after publication of the item in the Federal Register, and replies will be due 10 days thereafter.

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

## FCC Sets Schedule For 2008 Annual Access Tariff Filings

The FCC has established the procedures and deadlines for incumbent local exchange carriers (ILECs) to file their 2008 access tariff revisions. Whereas price cap ILECs must file interstate access tariff revisions every year, rate of return ILECs need file such revisions only every other year. In addition, rate of return ILECs that file their own traffic-sensitive interstate access tariffs under Section 61.38 of the Commission's rules are required to file in even-numbered years. Those filing pursuant to Section 61.39 of the Commission's rules are required to file in odd-numbered years and are not required to submit supporting material with the revised tariff.

Because 2008 is an even-numbered year, only the price cap ILECs and the ILECs filing pursuant to section 61.38 are required to file revised access tariffs this year. Any rate-of-return ILEC subject to section 61.39 may elect to make a voluntary tariff filing at this time. ILECs are permitted to make their tariff filings on either 15 or seven days prior to the effective date of their tariffs, depending on the type of changes the tariffs propose. ILECs proposing to increase any of their rates file their tariff revisions on 15 days' notice, while ILECs proposing to de-

crease all of their rates file their tariff revisions on seven days' notice.

The Commission's rules require that annual access tariff filings must be filed with a scheduled effective date of **July 1, 2008**. (Refer to WCB/Pricing File No. 08-14.)

**ILECs filing tariffs on 15 days' notice must make their annual tariff filings on June 16, 2008, and ILECs filing tariffs on seven days' notice must make their annual tariff filings on June 24, 2008.**

In accordance with the tariff filing schedule, petitions to suspend or reject tariff filings made on 15 days' notice will be due **June 23, 2008** and replies will be due **June 26, 2008**. Petitions to suspend or reject tariff filings made on seven days' notice will be due by 12:00 p.m. (noon) Eastern Time on **June 26, 2008**, and reply comments will be due no later than 12:00 p.m. (noon) Eastern Time on **June 27, 2008**.

Price cap ILECs are required to submit both a short form Tariff Review Plan (TRP) and a long-form TRP. Section 61.49(k) of the Commission's rules requires price cap carriers to file a short form TRP without rate detail information 90 days prior to the usual effective date of July 1. For this year's filing, the FCC waives the 90 day requirement and permit the short form TRP to be filed on **May 1, 2008**. The FCC will issue a separate order that will provide the details of the price cap short form and regular TRPs. **Comments on the short form TRP will be due on May 15, 2008. Reply comments will be due May 22, 2008.**

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

## LAW & REGULATION

**FCC FORMALLY DISMISSES COUNCIL TREE, ET AL. RECON PETITION REGARDING DEs:** The FCC has formally dismissed a 2006 expedited petition for reconsideration filed by Council Tree Communications Inc., Bethel Native Corp., and the Minority Media and Telecommunications Council that challenged the way the Commission tightened its unjust enrichment rules for designated entities (DEs) prior to the Advanced Wireless Service auction (AWS-1 or Auction No. 66) (BloostonLaw Telecom Update, May 10, 2006). Council Tree, et al. subsequently determined that the FCC acted on the merits of their petition in its *Interim Order* in early June, and thus asked the Commission to dispose of the recon petition (BloostonLaw Telecom Update, June 7, 2006). Still pending, however, is a petition for partial reconsideration and/or clarification filed by the Blooston Rural Carriers, and a petition for reconsideration and clarification filed by Cook Inlet. The Blooston Rural Carriers' petition argues

that the 10-year rule for unjust enrichment and the retroactive application of the material relationships rule are both unduly burdensome for small entities. The Cook Inlet petition asks the FCC to clarify that the status of a DE that was qualified under the new rules will not be re-examined to the extent that the licensee is assigning or transferring a license to a third party. BloostonLaw contacts: Hal Mordkofsky, John Prendergast, and Cary Mitchell.

**IMPLEMENTATION OF MODULAR EQUIPMENT AUTHORIZATION RULES SET FOR APRIL 15:** Section 15.212 of FCC rules regarding the authorization of modular and "split" modular transmitters will become effective on April 15, 2008. This section was adopted in the Second Report and Order in ET Docket number 03-201 on April 17, 2007 and provides for more efficient equipment authorization of both existing modular transmitter devices and emerging partitioned (or "split") modular transmitter devices. The rule will benefit manufacturers by allowing greater flexibility in certifying equipment and providing relief from the need to obtain a new equipment authorization each time the same transmitter is installed in a different final product. It will also enable manufacturers to develop more flexible and more advanced unlicensed transmitter technologies. BloostonLaw contacts: Hal Mordkofsky and John Prendergast.

**FCC PROPOSES ELIMINATING "30 MARKET RULE" FOR BAS TRANSITION:** The FCC proposes to eliminate, as of January 1, 2009, the requirement that Broadcast Auxiliary Service (BAS) licensees in the thirty largest markets and fixed BAS links in all markets be transitioned before the 2 GHz Mobile Satellite Service (MSS) operators can begin offering service. The Commission also seeks comment on how to mitigate interference between new MSS entrants and incumbent BAS licensees who have not completed relocation before the MSS entrants begin offering service. In addition, the Commission seeks comment on allowing MSS operators to begin providing service in those markets where BAS incumbents have been transitioned. The 2 GHz BAS licensees are being relocated from 1990-2110 MHz to 2025-2110 MHz so as to provide spectrum for new services such as MSS. MSS operations in the 2 GHz MSS band will consist of both satellite uplink and ancillary terrestrial component (ATC) operations. **Comments on this WT Docket No. 02-55, ET Docket No. 00-258, and ET Docket No. 95-18 Further Notice of Proposed Rulemaking (FNPRM) are due April 30, and replies are due May 30.** BloostonLaw contacts: Hal Mordkofsky and John Prendergast.

## INDUSTRY

**CTIA ANNOUNCES NEW WIRELESS INDUSTRY SURVEY RESULTS:** CTIA-The Wireless Association has announced that as of December 2007, the industry

survey recorded more than 255 million wireless users. This represents a year-over-year increase of more than 22 million subscribers. The industry's 12-month record for subscriber growth was reached in 2005, when 25.7 million new users came online. "Wireless technology has deeply embedded itself into the fabric of our lives; changing the way we interact with the world around us," said Steve Largent, President and CEO of CTIA-The Wireless Association. "Today more than 84% of America has embraced the wireless revolution, and the new industry survey results clearly show that wireless is the communications tool of choice for consumers. Year after year, the wireless industry continues to evolve, innovate, compete and grow at a rapid pace, and it looks like 2008 is right on track with this impressive trend." The survey also recorded record-breaking six-month wireless service revenues of \$71 billion. Wireless data service revenues for the entirety of 2007 rose to more than \$23 billion. This represents a 53% increase over 2006, when data revenue was \$15.2 billion. Wireless data revenues for the year 2007 amounted to about 17% of all wireless service revenues, and represent money that consumers spend on non-voice services. According to the survey, text messaging continues to be enormously popular, with more than 48 billion messages reported for the month of December 2007 alone—1.6 billion messages per day. This represents an increase of 157% over December 2006. Wireless subscribers are also sending more and more pictures and other multi-media messages, with nearly 4 billion MMS messages sent during the second half of 2007 alone, compared with 2.7 billion sent over the course of the entire year in 2006. Other highlights of the survey include: wireless customers using more than 2 trillion minutes in 2007, up nearly 18% over 2006. BloostonLaw contacts: Hal Mordkofsky and John Prendergast.

## DEADLINES

**APRIL 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.*

**MAY 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 and Gerry Duffy.*

**MAY 1: RATE INTEGRATION CERTIFICATION.** *Non-dominant interexchange carriers (IXCs) that provide detariffed domestic interstate services must certify that they are providing such services in compliance with their geographic rate averaging and rate integration obligations. An officer of the company must sign this annual certification under oath. The FCC has issued the following guidelines: (1) Any carrier that provides interstate services must charge its subscribers in rural and high-cost areas rates that do not exceed the rates that the carrier charges subscribers in urban areas; (2) to the extent that a carrier offers optional calling plans, contract tariffs, discounts, promotions, and private line services to its interstate subscribers in one state, it must use the same ratemaking methodology and rate structure when offering such services in any other state; (3) an interstate carrier may depart from geographic rate averaging when offering contract tariffs, Tariff 12 offerings, optional calling plans, temporary promotions, and private line services; and (4) carriers may offer optional calling plans on a geographically limited basis as part of a temporary promotion that does not exceed 90 days. But this limited exception does not exempt optional calling plans from geographic rate averaging requirements. Clients with questions about the FCC's detariffing or rate integration requirements should contact us. We have a model rate integration certification letter that may be printed on your letterhead. BloostonLaw contacts: Ben Dickens and Gerry Duffy.*

**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 FCC encourages carriers to complete the discrimination report requirement by filling out Section V of Form 395, rather than submitting a separate report. Clients who would like assistance in filing Form 395 should contact Richard Rubino.*

**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 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, but **ONLY** if the carrier extended unsecured credit to a candidate for a Federal elected office during the reporting period. BloostonLaw contacts: Hal Mordkofsky and John Prendergast.

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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

**Apr. 3 – Deadline for down payments on winning bids, and filing of FCC Forms 601 and 602 for Auction No. 73.**

**Apr. 3 – Auction No. 73 anti-collusion rule restriction expires at 6 p.m. ET.**

Apr. 7 – Deadline for comments on broadcast localism NPRM (MB Docket No. 04-2333).

Apr. 7 – Deadline for comments on Second FNPRM on low power FM stations (MM Docket No. 99-25).

**Apr. 10 – FCC open meeting.**

Apr. 10 – Deadline for reply comments, data for annual CMRS report (WT Docket No. 08-27).

Apr. 14 – Deadline for reply comments on public interest groups' request for "anti-discrimination" classification for text messaging (WT Docket No. 08-7). Extended from March 14.

Apr. 14 – Deadline for reply comments on cable and broadcast attribution rule (MB Docket No. 92-264).

Apr. 15 – Date for implementation of modular equipment authorization rules.

**Apr. 17 – Deadline for Auction No. 73 winners to submit balance of winning bids.**

**Apr. 17 – Deadline for comments on USF reform NPRMs—Joint Board, Identical Support Rule, and Reverse Auctions NPRMs (WC Docket No. 05-337).** Extended from April 3.

**Apr. 21 – FCC Form 497, Low Income Quarterly Report, is due.**

Apr. 21 – Deadline for reply comments on NPRM regarding additional VoIP numbering issues (WC Docket No. 07-243 and 244).

Apr. 21 – Deadline for reply comments on Second FNPRM on low power FM stations (MM Docket No. 99-25).

Apr. 22 – Deadline for reply comments on pole attachment NPRM (WC Docket No. 07-245). Extended from April 7.

Apr. 30 – ETCs and MVPDs must begin providing DTV transition consumer education information.

Apr. 30 – Deadline for 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 1 – FCC Form 499-Q, Telecommunications Reporting Worksheet, is due.**

**May 1 – Rate Integration Certification is due.**

**May 1 – Deadline for Auction No. 73 winners to submit full amount of winning bids (plus 5% late fee).**

May 1 – Deadline for price cap ILECs to submit short form TRP with respect to annual access charge filing (WCB/Pricing File No. 08-14).