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Legal Updates & News

Bulletins

Communications Law Bulletin, January 2009

January 2009

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Communications Law Bulletin, January 2009

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The Month in Brief

The new year brings a new Administration and important changes in the personnel who will regulate the broadcast and telecommunications industries. Chairman Kevin Martin resigned from the Federal Communications Commission ("FCC" or "Commission") on January 20, following Deborah Taylor Tate, who left earlier in the month. With the departure of these two Republican commissioners, Democrats are left with a 2-to-1 majority. In the meantime, the White House announced that Michael Copps, the senior Democrat on the Commission, will serve as acting Chairman. Julius Genachowski, technology advisor to the new President, is expected to be nominated as FCC Chairman.

Meanwhile, on Capitol Hill, Rep. Rick Boucher (D-Va.) will take over from Rep. Ed Markey (D-Mass.) on the House Telecommunications Subcommittee.

Besides personnel changes, the transition to the new Administration brings the prospect of policy changes across a broad range of issues. One such issue – the transition to digital television – was thrown into confusion even before the new President took office, with calls for a delay of the long-awaited February 17, 2009 transition deadline. This and other stories are covered here, along with our usual list of deadlines for

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your calendar.

Wireless Developments

Family-Friendly Content Filter Dropped from AWS-3 Free Broadband Proposal
Shortly before the new year, Chairman Martin circulated a revised proposal for the creation of a free, national wireless broadband service using advanced wireless service – or AWS-3 – spectrum. Martin had previously circulated an options memo offering three proposals in which 20 or 25 MHz of AWS-3 would be licensed to a provider under the condition that it offer free broadband services. The revised proposal, however, excludes a controversial requirement that would have required the licensee to include a "family-friendly" content filter. The item was not voted upon before the end of Chairman Martin's term, and it remains unclear whether the new Administration will move forward with one of Martin's free broadband proposals or put forward new recommendations.

CTIA Proposes to Base Cellular Licensing on Market Areas
The FCC is seeking comments on a petition filed by CTIA – The Wireless Association ("CTIA") that proposes to change the Part 22 cellular licensing rules, which currently are site-based, to a system based upon geographic market areas. According to CTIA, its proposal would create regulatory parity with other commercial mobile radio services that have been licensed using market areas. CTIA also argues that modifying the rules would encourage cellular providers to transition to digital technologies, reduce administrative record-keeping burdens on the FCC and licensees, and help protect incumbents from interference from new market entrants.

Under CTIA's proposal, the FCC would re-issue all cellular licenses to "incumbent" licensees on a Cellular Market Area ("CMA") basis, subject to two exceptions. Cellular licensees that provide service using "unserved area" licenses would confer with the CMA license holder "to determine each license's service area boundaries following the transition to digital service." Incumbent cellular licensees that provide service beyond the boundaries of their CMAs also "would consult with the CMA licensee of the affected market to establish service area boundaries." Failure of the licensees to reach agreement would result in the matter being referred to the FCC for resolution.

Comments and replies on CTIA's petition are due 30 and 45 days, respectively, after publication in the Federal Register.

Officials Grapple with Controversial Cell Phone Jamming Proposal
Local and federal officials continue to wrestle with proposals to jam cell phone transmissions inside prison facilities. Prison administrators support the use of jamming equipment to obstruct efforts of inmates to smuggle illegal cell phones into prisons. The wireless industry, however, has opposed efforts to use jamming technology on the ground that it might interfere with lawful communications outside prison facilities. Section 333 of the Communications Act of 1934, as amended (the "Act"), currently bars the use of any jamming equipment.

South Carolina prison officials hosted a successful demonstration of jamming technology in November. However, Texas officials cancelled similar tests due to concerns that the testing may violate the FCC's prohibition on jamming. The FCC's Wireless Bureau then granted the District of Columbia special temporary authorization ("STA") to conduct a similar demonstration. Upon grant of the STA, CTIA asked the FCC to stay and reconsider the decision and also sought a writ of mandamus from the U.S. Court of Appeals for the District of Columbia to vacate the STA. In light of the litigation, the District of Columbia cancelled the planned demonstration.

The demonstrations that were called off in Texas and Washington, D.C. do not suggest waning interest in using jamming equipment in prison facilities. In fact, Senator Kay Bailey Hutchison (R-Tex.) and Representative Kevin Brady (R-Tex.) recently introduced legislation that would allow prison officials to use jamming technologies. The Safe Prisons Communications Act of 2009 would amend the Act to allow the director of the Federal Bureau of Prisons and a governor (or governor's designee) to petition the FCC for a waiver of up to ten years of the jamming prohibition in specific correctional facilities. Wireless carriers would have to be notified of the request, and the FCC would be required to decide within 60 days whether the use of jamming technology would interfere with emergency or public safety communications. The FCC, however, would suspend the waiver and investigate whether it should be reinstated if a wireless carrier showed that the jamming equipment interfered with its network.

FCC and Lawmakers Consider DTV Transition Delay; Analog Nightlight Service Program on Track for Implementation

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Despite Efforts of Congressional and FCC Democrats, Delay of Digital Television Transition Deadline Stalled for Now

Republicans in the House of Representatives managed to defeat a bill January 28 that would have delayed the transition to digital television ("DTV transition") until June 12, 2009. Although 258 House members voted to approve the bill and 168 voted against it, House rules required a 2/3 majority due to the expedited nature of the legislation. Congress may try to revive the measure in early February.

Amid concerns that consumers are not adequately prepared for the transition, several lawmakers, FCC officials, and consumer advocates have been calling for a delay of the end of analog broadcasting past the current February 17, 2009 deadline. The delay would purportedly ensure that the reported 2.5 million consumers still waiting for coupons to defray the cost of converter units can obtain DTV receiving equipment before analog broadcasting ceases.

Just two days before the House vote defeating the measure, the Senate unanimously passed S. 328, a bill to delay the DTV transition until June 12 and extend the license terms of AT&T and Verizon by 116 extra days. The two companies were the top winners in the recent 700 MHz auction, which reallocated analog spectrum recaptured from broadcasters. Consumers whose DTV converter box coupons ($40 value) have expired would have been able to request replacements.

The bill's sponsor, Senator Rockefeller (D-W.Va.), and other members of Congress have been working towards a DTV transition delay bill throughout January. Senator Rockefeller had previously introduced a bill in the middle of the month to delay the DTV transition, blaming the Bush Administration for, among other things, poor management of the DTV converter box coupon program. Representative Waxman (D-Cal.), chairman of the House Energy and Commerce Committee, introduced similar legislation in the House that also proposed a new June 12 DTV transition deadline. Representative Markey (D-Mass.) circulated draft legislation on January 12 to exempt the DTV converter box coupon program from the Anti-Deficiency Act, which would allow the federal government to distribute additional coupons before already-issued coupons expire. The Markey bill retains the February 17 transition deadline.

The DTV transition delay enjoyed at least partial support at the FCC. Commissioners Adelstein and Copps sent a letter to several members of Congress on January 16 supporting the delay due to concerns about the American public's readiness for the DTV transition. Commissioner McDowell, in a letter to Chairman Martin, expressed similar concerns about the FCC's public outreach efforts and the capacity of call centers set up to field consumer questions, but stated his belief that the agency could still be ready by February 17 if preparations are better organized.

Views on delaying the DTV transition have fallen along party lines in recent weeks, with President Obama voicing strong support for giving the government and consumers more time. Support for delaying the DTV transition has grown, particularly among Democrats in Congress, fearing that the most vulnerable demographics, including poor, elderly, and rural viewers, are not ready for the switch. Republicans, including Chairman Martin, generally oppose the delay because, they argue, it will only exacerbate consumer confusion and uncertainty.

Analog Nightlight Program Going Forward

At the January 30 Open Meeting, the FCC is expected to consider its December 24, 2008 Notice of Proposed Rulemaking ("NPRM") to implement S. 3663, the Short-term Analog Flash and Emergency Readiness Act, nicknamed the "Analog Nightlight Act." The Act required the FCC to implement a program by January 15, 2009, to "encourage and permit" temporary extension of analog TV broadcasting for essential public safety announcements, and DTV transition information for 30 days after the February 17, 2009 transition date. The 30-day period would end at 11:59:59 p.m. on March 19, 2009. Comments and replies on the NPRM, which were submitted on January 5 and 8, respectively, supported the program.

The Analog Nightlight Act provides that the Report and Order to follow the NPRM will grant a blanket extension of license to broadcasters who participate in the Analog Nightlight program to operate until and including March 19, 2009. The Media Bureau will issue a Public Notice just before the DTV transition date, announcing those stations that are participating in the program. According to FCC sources, the Report and Order circulated among the Commissioners in the third week of January contains one substantial change from the NPRM allowing sponsorship messages accompanying Nightlight programs. The Commission is also purportedly considering suggesting Analog Nightlight transmissions for at least two weeks after the DTV transition but with no requirement that the station continue for the full 30 days.

During the 30-day period, Analog Nightlight stations may broadcast only: (1) emergency information; (2) information in both English and Spanish, and accessible to persons with disabilities, concerning the DTV transition and steps consumers must take to receive digital television service, including phone number and

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Internet address for English and Spanish language help with DTV transition questions; and (3) any other information related to consumer education about the DTV transition, public health, or public safety which the FCC finds to be in the public interest.

The NPRM tentatively concludes that only stations operating on channels 2 through 51 are eligible to participate in the Analog Nightlight program, and any Nightlight operations that would interfere with digital broadcasting are not permitted. The NPRM sets forth a preliminary list of eligible stations based on the Commission's assessment that continued analog operation will not cause harmful interference with digital signals.

If the DTV transition is delayed past February 17, 2009, the Analog Nightlight program likely will be extended to cover a 30-day period following the new transition date.

Other Legislative Developments

Renewed Efforts to Reform FCC's Forbearance Authority
On January 8, Representative Dingell (D-Mich.) reintroduced a bill to eliminate the "deemed granted" provision in the FCC forbearance regulations. Pursuant to 47 U.S.C. § 160(c), a petition for forbearance filed by a telecommunications carrier requesting that the Commission forbear from exercising its authority under the Communications Act is deemed granted if the FCC does not deny the petition within one year after receiving it. The FCC may extend the one-year period by an additional 90 days under certain circumstances.

Dingell explained that the current forbearance law frustrates adequate legal review of the FCC's decisions because petitions are granted without a written agency order. Automatic grant of petitions means the FCC can avoid tackling controversial issues simply by running out the statutory clock. The proposed legislation would continue to allow telecommunications carriers to petition the Commission for forbearance, but would eliminate the current "deemed granted" language. By requiring specific action on forbearance petitions, Dingell hopes Congress and reviewing courts will be better able to analyze and assess the FCC's decision-making process.

Legislators Hope to Prevent the Return of the Fairness Doctrine
On January 7, Senators DeMint (R-S.C.) and Thune (R-S.D.) introduced S. 34, the Broadcaster Freedom Act, which would bar the return of the Fairness Doctrine. Representatives Pence (R-Ind.) and Walden (R-Oreg.) introduced companion legislation in the House. The Fairness Doctrine, which was abolished in 1987, required broadcast licensees to present controversial issues of public importance in a fair and balanced manner. The National Association of Broadcasters supports the legislation.

Proposed Legislation to Bar Satellite Radio Offering Local Content
In mid-January, Representative Green (D-Tex.) introduced H.R. 245, a bill to continue a prohibition on satellite radio stations offering local content. The bill would revise the FCC's rules to forbid satellite radio companies from "using any capability either on a satellite or in a radio receiver" to offer "services that are locally differentiated." Confining satellite programming offerings to non-local content will prevent national satellite radio operators from competing with conventional radio broadcasters for offering market-specific content.

AT&T Agrees to Pay Government $2.38 Million to Settle DOJ and FCC Investigations of Alleged Violations of AT&T/Dobson Merger Conditions

AT&T has agreed to settle coordinated Department of Justice ("DOJ") and FCC investigations of its alleged violations of certain divestiture conditions of its 2007 purchase of Dobson Communications Corp. (The AT&T/Dobson merger was reported in the November 2007 Bulletin.) DOJ raised antitrust concerns regarding the proposed AT&T/Dobson merger in 2007 relating to competition in three rural markets in Kentucky and Oklahoma. These issues were resolved by a stipulation between DOJ and the merger parties, requiring the divestiture of certain wireless operations in the three markets, which was entered in a final judgment in 2008. AT&T and Dobson also agreed to maintain the independence of those operations until they were sold. The FCC incorporated the terms of the DOJ stipulation into its order approving the merger in 2007.

On January 14, 2009, DOJ filed a petition in federal district court in Washington, D.C. for an order to show cause why AT&T should not be found in contempt for violating the divestiture requirements. DOJ alleged that AT&T failed to maintain the confidentiality of the customer accounts in the Kentucky and Oklahoma businesses to be divested and marketed its own services to their customers, thereby violating the requirement that it maintain the independence of those businesses. On the same day, the court approved a settlement of the DOJ allegations, requiring AT&T to make a civil payment of $2,050,000 to cover the cost of the DOJ investigation, without any admission or determination of wrongdoing by AT&T. On January 15, the Enforcement Bureau released an order adopting a consent decree terminating an investigation of the same

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divestiture violations and requiring AT&T to make a voluntary contribution to the U.S. Treasury of $2,380,000. The consent decree states, however, that if AT&T has made the civil payment required by the DOJ settlement, the amount of the contribution required under the Bureau's consent decree will be reduced by the amount of the civil payment.

Wide-Ranging Enforcement Activity Marks Chairman Martin's Final Month

Broadcast EEO Notices of Apparent Liability

On December 30, the FCC released Notices of Apparent Liability ("NALs") against six radio and television broadcast licensees, including Fox Television Stations, Inc. and Cumulus Licensing LLC, and their stations for alleged violations of the FCC's Equal Employment Opportunity ("EEO") requirements. The NALs grew out of audits conducted by the Media Bureau of the licensees' EEO compliance efforts. The FCC tentatively found that the licensees and their stations had failed to comply with the FCC's EEO record-keeping, self-assessment, public file, and related requirements governing recruitment activities. The FCC found the licensees apparently liable for forfeitures ranging from $7,000 to $20,000, predicated on the base forfeiture amounts for analogous violations and prior practices in EEO enforcement orders. The NALs also imposed additional EEO reporting requirements on the licensees for the next three years. In the case of three of the licensees, the FCC also granted license renewal applications, finding that the apparent EEO violations did not constitute "serious violations" of such gravity that would require an evidentiary hearing.

Commissioners Copps and Adelstein released a joint statement approving the NALs but criticizing the FCC's recent overall "lax" EEO enforcement record. They charged that the FCC's "woefully inadequate" efforts to promote employment diversity had led to the failure of minority employment in the broadcasting industry to keep pace with the increase in the minority population of the United States.

AT&T CPNI Consent Decree

On January 13, the Enforcement Bureau ("Bureau") released an order adopting a consent decree with AT&T terminating investigations of possible violations of Section 222(c) of the Communications Act and related FCC rules regarding the confidentiality of customer proprietary network information ("CPNI") as well as Sections 201 (b) and 254 of the Act and related FCC rules concerning recovery of universal service fund ("USF") contributions from end users. Since 2006, the Bureau had been investigating the unauthorized disclosure of CPNI by AT&T and its predecessor firms. Such disclosure resulted from various failures in the "opt-out" mechanisms used to determine whether a customer is deemed to have consented to the use or disclosure of his or her CPNI. The Bureau also initiated an investigation in 2007 of AT&T's possible overrecovery from its end users, including Lifeline customers, of its contributions to the USF between 2002 and 2008.

In the consent decree, AT&T agreed to develop and implement a compliance plan to ensure its adherence to the CPNI confidentiality requirements and USF contribution recovery rules. The decree requires AT&T to develop corrective CPNI policies tailored to the specific failures of the opt-out mechanisms of each of its local exchange operations. These CPNI opt-out compliance plans are to remain in effect for two years and require AT&T to report any non-compliance to the Bureau and to certify its compliance at the end of the two-year term. AT&T also agrees to establish a USF compliance training program and internal control processes to ensure that end users are billed correctly for charges intended to recover AT&T's contributions to the USF. Its USF contribution compliance plan is to remain in effect for two years and requires reporting of any non-compliance and a certification of compliance at the end of the two-year term. The decree recites that AT&T has refunded USF overcharges to existing customers, but agrees to make a voluntary contribution to the U.S. Treasury of $10,080,600 to cover, among other factors, USF contribution overcharges to former customers that AT&T was unable to refund to those customers.

ADMA NAL

On January 14, the FCC released an NAL against ADMA Telecom, Inc., an international prepaid calling card service provider, for apparently failing to register as a carrier with the FCC and to make required regulatory filings; failing to contribute to the USF, Telecommunications Relay Service ("TRS"), and North American Numbering Plan ("NANP") administration; and failing to obtain an international Section 214 authorization. In response to a June 2006 letter of inquiry ("LOI"), ADMA admitted that it did not register with the FCC or obtain Section 214 authorization before it began providing international telecommunications services in 2001. ADMA also admitted that it failed to file Form 499 Telecommunications Reporting Worksheets, which are used to calculate a service provider's USF, TRS, and other contribution obligations, for 2006 and failed to pay required USF contributions for 2006, TRS contributions for 2005 and 2006, and NANP administration contributions.

After receiving the LOI, ADMA began complying with its regulatory and contribution requirements and eventually paid its USF, TRS, and NANP debts and obtained a Section 214 authorization in 2007. The Bureau attempted to negotiate a settlement with ADMA, but ADMA insisted that its violations were small infractions warranting only a small voluntary contribution. Stressing that "post-investigative corrective measures . . . do not eliminate a licensee's responsibility," the FCC found, however, that ADMA's apparent violations are

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"serious, egregious, and warrant a significant forfeiture." Based on its prior penalty practices, the FCC proposed forfeitures of: $100,000 for ADMA's failure to register; $150,000 for its failure to file three Forms 499 in 2006; $200,000 for its failure to pay its USF contributions on 10 occasions in 2006, with an upward adjustment of $11,835, based on the highest unpaid monthly contribution obligation; $20,000 for its failure to pay TRS contributions in 2005 and 2006, with an upward adjustment of $60,706, based on the highest unpaid contribution obligation; $30,000 for its failure to pay NANP administration contributions for 2005-07; and $100,000 for its failure to obtain a Section 214 authorization prior to initiating service. These recommended penalties, totaling $672,541, underscore the need to make a serious effort to negotiate voluntary contributions as part of a consent decree to avoid the burden of an NAL.

Cable Channel Migration Practices

On January 19, one day before Chairman Martin's departure from the FCC, the Bureau issued 27 NALs and four forfeiture orders against cable television providers, arising from the providers' migration of cable programming to digital channel tiers or to a switched digital video ("SDV") platform, thereby making the migrated channels inaccessible to subscribers or accessible only at a higher rate. Most of the NALs alleged a failure to provide the requisite 30 days' written notice of a change in rates, services, or channel positions before a migration from analog to digital channels and required refunds of $0.10 per moved channel per month until proper notice is provided. Several of the NALs alleged a failure to respond to LOIs seeking information about the channel migration. A few NALs alleged that the providers had failed to comply with previous directives to describe the refund methodology they proposed for making channels inaccessible.

The forfeiture orders grew out of prior NALs raising similar issues. Three of them found that cable operators had moved certain channels to an SDV platform, thereby requiring subscribers to obtain set-top boxes from the operators to continue viewing those channels. Those orders imposed penalties of $20,000 each and required refunds of the additional cost of the set-top boxes or the diminished value of service resulting from inaccessible channels. Another forfeiture order found that the operator had failed to provide 30 days' notice before a similar SDV migration. A National Cable & Telecommunications Association spokesman complained that the NALs and forfeiture orders "could have been issued over the past several weeks during regular business hours with the knowledge of the regular commission," rather than "over a holiday weekend and on Martin Luther King Day, which is a federal government holiday." He characterized the timing as "petty and childish behavior."

On the same day as the NALs and forfeiture orders, Chairman Martin wrote to Senators Rockefeller (D-W.Va.) and Hutchison (R-Tex.), Chairman and Ranking Member of the Senate Commerce Committee, notifying them of the FCC's investigation of cable operator channel migration practices and the resulting NALs. The letter stated that the FCC had received nearly 600 consumer complaints from cable subscribers who were unable to access certain channels on account of migration practices and had to choose between "'less service or paying substantially more for the same service.'" He complained that the FCC's efforts to investigate these practices were "thwarted" by the failure of "the vast majority of cable operators" to respond fully to the FCC's LOIs and asserted that "[m]isconduct of this type exhibits contempt for the Commission's authority." He pointed out that while the costs of all other communications services has declined in recent years, cable prices "have skyrocketed," and concluded that "[t]his is not the type of consumer choice that the Communications Act envisions." He expressed the hope that Congress would take "this issue" as "seriously" as the FCC has.

Chairman Martin Departs from FCC with No Action on Intercarrier Compensation/Universal Service Reform

The FCC did not act on the pending proposals to reform the current intercarrier compensation ("ICC") regime and USF mechanisms in December or at the January 15 open meeting, which was Chairman Martin's last meeting. He left the FCC on Inauguration Day, January 20. With Commissioner Tate also gone as of January 5, it is extremely unlikely that any action will be taken on ICC/USF reform until a new Chairman takes office and the FCC has a full complement of five commissioners. Martin commented in an interview just prior to his departure that the failure to arrive at a consensus on overhauling the ICC/USF regime was one of his biggest regrets.

One factor that may increase the pressure on the FCC to take quicker action is a petition for mandamus filed on January 14 with the U.S. Court of Appeals for the 10th Circuit by Qwest Corp. and three rural state regulatory agencies. The petition requests the court to direct the FCC to resolve the USF issues remanded to it in prior 10th Circuit *Qwest* decisions within 90 days. The petitioners note that in 2001 and again in 2005, the court found that the FCC had failed to explain how its high-cost USF distribution mechanism for non-rural carriers, which actually serve more rural customers than rural carriers, satisfied the statutory goals for the USF program set forth in Section 254 of the Communications Act, and remanded the issues back to the FCC. Petitioners emphasize the FCC's repeated failure to justify the disparity between average urban rates and much higher average rural service rates in light of Section 254's requirement that they be "reasonably comparable."

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Petitioners complain that, not only has the FCC not responded to the 2005 remand order, but also it released ICC/USF reform proposals for further comment in November 2008 (discussed in the November Bulletin) that would lock in the deficiencies that the court ordered to be remedied. Petitioners conclude that, given the 13 years that have passed since Section 254 imposed a 15-month deadline to craft USF mechanisms, the four years since the 2005 remand order admonished the FCC to act "in an expeditious manner," and the growing disparity between average urban and rural service rates, the court should give the FCC no more than 90 days to finally comply with the court's prior decisions ordering the FCC to fashion a reasonable non-rural high-cost USF mechanism that complies with Section 254. If the court does issue the requested mandamus before the FCC acts on the pending reform proposals, the FCC would likely have to seek comment regarding the impact of the remanded issues on the proposals.

Inaction on ICC/USF reform leaves a wide variety of issues up in the air, including the appropriate ICC for Voice over Internet Protocol ("VoIP") traffic and other calls exchanged between IP platforms and the public switched telephone network ("PSTN"). This issue was raised in the dueling Embarq and Feature Group IP ("FGIP") forbearance petitions regarding the application of access charges to VoIP and other IP-PSTN traffic. Most commenters have opposed both petitions on procedural grounds. They argue that Embarq's request that the FCC forbear from "enforcing" the access charge exemption for information service providers does not seek forbearance from an FCC regulation or a provision of the Communications Act on behalf of a carrier or carriers, as required by Section 10 of the Communications Act, and that FGIP's request that the FCC forbear from enforcing the access charge rules for those entities would result in chaos, rather than the relief from access charges sought by FGIP.

On January 9, as expected, the FCC extended until April 11 the date by which the Embarq petition must be deemed granted under Section 10 if the FCC does not take action to deny it. Also as expected, by a 3-0 vote, the FCC denied the FGIP forbearance request on January 21 on the ground that forbearance from the access charge rules would result in a regulatory void, rather than the absence of access charges, as FGIP requests. By deciding the FGIP petition on procedural grounds, the FCC has left itself maximum flexibility to decide the issue in the pending ICC reform rulemaking, as most commenters have advocated.

FCC and Congress Keep Net Neutrality Issues in the News

In early January, Comcast filed a letter with the FCC stating that it had stopped its controversial network management practices as of December 31, and that it had implemented a protocol-agnostic network management approach (as outlined in Comcast's September 2008 filing) in order to address network congestion.

In a surprise move, the Wireline and Enforcement Bureaus issued a letter to Comcast on the Sunday evening of the Martin Luther King holiday weekend, in Chairman Martin's final days. In this letter, the Bureaus ask Comcast to explain by January 30 how its treatment of its own VoIP voice service under these new network management practices is not discriminatory vis-à-vis the treatment of third-party VoIP services that might be carried on Comcast's broadband network. Comcast's September 2008 filing stated that VoIP calls placed on a congested route would sound "choppy," but the Bureaus note that Comcast's website states that Comcast's VoIP service is separate and unaffected by the new practices – which leads to the implication that there is disparate treatment between its service and those of its competitors.

This probe has raised the hopes of those pushing for more stringent net neutrality requirements. Although Comcast's response will be reviewed by Chairman Martin's successor, observers expect that the new administration will support more explicit net neutrality requirements.

In Congress, the House Democratic draft of the stimulus bill has also injected net neutrality back into the Congressional debate. The stimulus bill contains billions of dollars for grants for broadband and wireless service in unserved (or underserved) areas. The bill, however, requires that grant recipients adhere to the FCC's net neutrality guidelines set forth in its 2005 broadband policy statement. In addition, the bill requires broadband and wireless recipients to operate their network on an "open access" basis – which the FCC will be tasked with defining. The House Energy and Commerce Committee approved the broadband and wireless provisions contained in the stimulus bill on January 22.

Upcoming Deadlines for Your Calendar

Note: Although we try to ensure that the dates listed below are accurate as of the day this edition goes to press, please be aware that these deadlines are subject to frequent change. If there is a proceeding in which you are particularly interested, we suggest that you confirm the applicable deadline. In addition, although we try to list deadlines and proceedings of general interest, the list below does not contain all proceedings in which you may be interested.

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February 1, 2009	Deadline for filing **FCC Form 502 (Numbering Resource Utilization/Forecast Report).**
February 1, 2009	Deadline for filing **FCC Form 499Q Telecom Reporting Worksheet.**
February 2, 2009	Comments due on **petition for rulemaking on handset exclusivity arrangements.**
February 6, 2009	Deadline for filing **911/E911 network reports.**
February 17, 2009	**DTV TRANSITION** – date by which full-power TV stations must transmit only digital signals.
February 20, 2009	Reply comments due on **petition for rulemaking on handset exclusivity arrangements.**
February 23, 2009	Comments due on **petition for rulemaking to transition certain cellular licenses to geographic market area-based system.**
March 1, 2009	Deadline for filing **CPNI compliance certification.**
March 1, 2009	Deadline for filing **FCC Form 477 (Local Competition and Broadband Reporting).**
March 9, 2009	Reply comments due on **petition for rulemaking to transition certain cellular licenses to geographic market area-based system.**
March 31, 2009	**Circuit status and circuit addition reports** due for international carriers.

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