

Patton Boggs TechComm Industry Update – November 13, 2009
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Broadband Stimulus Update: Protests, Awards and Round 2 Begins

Protests filed against proposed funded service areas identified in broadband stimulus applications are now available in the BroadbandUSA [application database](#). We are still waiting for NTIA and RUS to announce the Round 1 applications that will proceed to Phase II due diligence, although we understand this will occur on a “rolling basis.” The Agencies are facing increasing pressure from Congress and the Obama Administration to quickly begin awarding funds while still complying with the terms of the Notice of Funds Availability (NOFA), and are now faced with beginning Round 2 before the awards for Round 1 are announced. Round 1 broadband stimulus announcements are expected to be made starting in December, with additional awards announced on a rolling basis through February.

The remaining broadband stimulus funding will be awarded during a single, final round. In anticipation of releasing the NoFA for Round 2 of broadband stimulus funding early next year, the Agencies released a joint [Request for Information](#) (RFI) seeking comments on how the application and process can be improved. We expect the RFI to be published in the Federal Register on November 16 and comments will be due by November 30.

In the RFI, the agencies seek comment on how to streamline the application process; if funding priorities should be changed; if the definitions for unserved, underserved, broadband and remote area need to be revised; if the public notice process related to proposed funded service areas needs to be changed; and if adjustments are needed to the interconnection and nondiscrimination requirements, or the procedures related to sale of project assets. If you are interested in additional information or submitting comments, please contact us.

GAO Reviews NTIA and RUS Broadband Stimulus Funding Distribution Efforts

The U.S. Government Accountability Office (GAO) recently conducted [review](#) of NTIA and RUS efforts to distribute the \$7.2 billion in broadband stimulus funding. The GAO noted that the Agencies are struggling with scheduling and staffing difficulties, which is slowing down application review and funding. The Agencies are evaluating more applications with a smaller staff than is normally received for such programs, and the GAO is concerned that the application review process may not be thorough. GAO also is concerned that the Agencies will not be able to apply lessons learned from Round 1 to Round 2 because of time pressures. Staffing issues may also hinder the Agencies’ oversight efforts.

FCC Seeks Comment on Broadband in Education, E-rate Program

As part of the FCC’s development of a national broadband plan, the Commission is inviting comments by November 20 and reply comments by December 11 on issues related to broadband access in education. The Commission also is inquiring about modifications to the schools and libraries universal service support mechanism (the E-rate program) to improve broadband deployment and better meet the needs of these institutions. In addition, the FCC seeks comment on whether and how increasing broadband deployment to

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schools can stimulate the adoption of broadband more widely and whether the E-rate program can be structured to more effectively distribute available funding. Among the questions posed in the [Public Notice](#) are:

- *Broadband deployment data.* The FCC seeks information on the current state of broadband connectivity, device availability and adoption in U.S. schools and classrooms, including the state of network connectivity and technology deployment that addresses connectivity, access and adoption.
- *Broadband and digital content.* The FCC seeks comment on school systems' online and digital content needs and uses, including content for student instruction (e.g., textbooks or supplemental resources) as well as professional development content for educators. Of the typical set of online content tools (e.g, content creation, content publishing, content management), what have schools experienced when making purchasing decisions about the quality and availability of tools? Are there areas where needs are unmet or under-served?
- *Communication and video systems.* The FCC seeks comment on implementation of other online applications in schools: (1) how have communication tools like instant messaging and online video conferencing supported instructional program implementation; (2) where have social networking tools been implemented to support instructional goals; (3) how have concerns of content appropriateness/content blocking been addressed in rollout to students (especially in K-12); and (4) what single sign-on and identity management tools and approaches have schools and school systems used to ensure security and seamless user experience across online tools?
- *E-rate modification.* What modifications should be made to maximize broadband connections that are subsidized by the E-rate program? For example, the Commission seeks information on whether and how past interpretations of the "educational purposes" requirement have restricted demand aggregation at the community level to support higher capacity broadband.
- *Eligible users.* The FCC also seeks comment on any legislative changes that would expand the classes of eligible users. For example, the statute currently limits E-rate support to elementary schools and secondary schools, which are defined by states. Also, the FCC wants to know what the projected demand would be if the E-rate program were to fund computers and training and whether there are potential negative consequences if such a change were adopted.
- *E-rate funding.* The FCC wants to know how changes to the E-rate program would improve the ability of the program to meet applicant needs for broadband, including: (1) to what extent does the annual E-rate funding cap of \$2.25 billion limit broadband deployment by eligible schools and libraries; and (2) to the extent the FCC modifies E-rate rules to encourage requests for funding for broadband services under Priority 1, how would that change impact the availability of funding for Priority 2 services?

Comcast Brings WiMAX to Philadelphia

Comcast recently [launched](#) its High Speed2go Service in Philadelphia using Clearwire's WiMAX service. Philadelphia is Comcast's third WiMAX market and the company expects to launch WiMAX service later this month in Chicago. Comcast also plans to launch service in Seattle/Tacoma in December, and is advertising a nationwide 3G/4G plan and a WiMAX-only plan that both promise download speeds up to 6 Mbps.

In-Flight Wi-Fi Takes Off

Airline passengers are benefiting from carrier in-flight Wi-Fi competition. American Airlines, AirTran, Delta, Virgin America and United are offering passengers free in-flight Wi-Fi service for a limited period of time. Airlines are betting that once passengers try in-flight Wi-Fi they will be willing to pay to use the service on a future flight. Approximately 31 percent of in-flight Wi-Fi customers used the service on a previous flight. Gogo, the primary in flight Wi-Fi service provider, recently lowered the cost of its 30-day pass from \$49.95 to \$24.95.

Fiber to Cell Tower Backhaul Market Increases

With the popularity of next generation hand-held devices, carriers are racing to add more capacity to their networks and the demand for fiber to cell towers is increasing. Since most towers now host multiple carriers,

carriers are beginning to share infrastructure, including fiber, to cell [towers](#). Qwest, Level 3 and Verizon are the most recent carriers to join the fiber to cell tower wholesale market. With varying timetables, all three carriers have announced plans to pull fiber to their cell towers over the next few years. The carriers state that backhaul providers are limited in some areas and all the companies on a tower benefit from having access to fiber.

FCC Approves AT&T Acquisition of Centennial Communications

Last week the FCC [approved](#), with conditions, AT&T's acquisition of Centennial Communications. To gain FCC and Department of Justice approval for the acquisition, AT&T agreed to divest Centennial's wireless operations in seven markets, including six in Louisiana and one in Mississippi. The markets will be sold in three groups to retain their competitiveness. Verizon Wireless has already agreed to purchase five separate Centennial markets. AT&T also voluntarily agreed to the following conditions:

- AT&T will honor Centennial's existing roaming obligations and allow carriers with fewer than 10 million subscribers to retain a Centennial roaming agreement for four years, or the length of the agreement, whichever is longer; and
- AT&T commits to not provide consulting or other services directly or indirectly to América Móvil in the United States, including Puerto Rico and the U.S. Virgin Islands. AT&T will be permitted to enter into arm's length commercial transactions such as reseller or roaming agreements. AT&T also commits to limit its participation on América Móvil's Board of Directors and not to send employees to América Móvil, except in limited circumstances.

FCC Commissioner Michael Copps concurred in the decision, noting that increased concentration does not always benefit consumers and rural areas may be abandoned.

Reps. Boucher, Terry Introduce USF Reform Bill

House Energy and Commerce Communications Subcommittee Chairman Rick Boucher, D-VA, and ranking member Lee Terry, R-NE, on Nov. 6 released a much-anticipated discussion draft of legislation to revamp the Universal Service Fund (USF).

The draft will be the focus of a November 17 hearing before Boucher's panel. The legislation would broaden the base of contributions, rein in distributions through a new competitive bidding process for wireless providers and cap the high-cost program at the current funding level. There would also be a one-time, permanent increase in the cap if the FCC revises intercarrier compensation rules. The draft calls on the FCC to complete an intercarrier compensation reform proceeding within one year of the bill becoming law.

For contributors, the legislation would require any provider of service that uses telephone numbers or Internet protocol addresses or their functional equivalent to pay into USF, along with any company offering Internet service. The FCC would determine whether to use a contribution methodology based on revenues, numbers or a combination of the two.

On the distribution front, the discussion draft permits USF monies to be spent on buildout of broadband lines offering service at download speeds of 1.5 megabytes or greater, although the FCC would be able to waive the requirement for providers in areas where such service would be technically or economically infeasible.

Senate Seeks Answers from Online Retailers

Senate Commerce Committee Chairman Jay Rockefeller, D-WV, sent letters to 16 online retailers as his panel investigates companies that appear to share customer credit card numbers with other e-commerce companies.

The committee has been investigating three companies — Affinion, Vertrue and Webloyalty — since May. These companies appear to sign agreements with Internet retail sites to receive personal information, such as credit or debit card numbers, after making online purchases.

Rockefeller sent letters to companies including Fandango.com, Orbitz.com, Hotwire.com and Shutterfly.com, asking, among other questions, if the companies have received any complaints from customers and if customers are aware of the business arrangement. Answers are due by November 14.

FCC Broadband Advisor Addresses Concerns about Giving Back Spectrum

FCC broadband advisor Blair Levin recently addressed concerns regarding the potential for broadcasters to give back spectrum as part of the National Broadband Plan. In a November 5 posting on the FCC's broadband blog, Levin said that as a Wall Street analyst for the past eight years, he has had time to think about getting the best return on invested assets. Levin mentioned conversations he's had which "originated with broadcasters," some of whom recognized that they have "more spectrum than they needed to deliver an economically efficient bit stream."

Levin's conversations with the Association of Maximum Service Television spurred some media attention. "We started discussing whether there could be a market-clearing solution that allowed them to monetize their extra spectrum," he writes, "while allowing us to maximize the public good. This is the driver behind our discussions: we want the country to use most effectively one of its most valuable resources, while increasing optionality of those broadcasters who recognize that they're not maximizing returns for their shareholders. We recognize that not all broadcasters would make the same choice but our goal is to determine if there is a mechanism that will attract the interest of a critical mass. I don't know if we will succeed in our efforts to allow broadcasters that option," he said, but I do know that if we didn't try, it would be a disservice to citizens and stakeholders on all sides of the equation."

FCC Seeks Comment on Special Access Framework

The FCC is requesting comment on an analytical framework to address special access issues. In a [Public Notice](#), the FCC also invites suggestions about the data it may need to gather to reach conclusions about competitiveness and pricing in the special access market. Comments are due 45 days after publication in the Public Notice in the Federal Register. Reply comments are due 30 days thereafter.

The FCC provides examples of the kinds of data that may be relevant:

- Competitive facilities data to show validity of pricing flexibility triggers;
- Market power analysis;
- Probability that potential competition ensures just and reasonable special access rates; and
- The effectiveness of the FCC's price-cap rules in ensuring just and reasonable special access rates and terms and conditions in special access tariffs and contracts.

Buyers of special access, including some wireless and enterprise customers and small phone companies, have argued that telecommunications companies, particularly the Regional Bells, charge in excess of reasonable rates for special access services, monopolize the market and should be required to lower their rates. In arguing this point, they have relied on rates of return for the special access category from the FCC's ARMIS database. The Regional Bells argue that ARMIS data is invalid because it is based on outdated allocations, most special access is sold under contract and the special access market is competitive.

New Advocacy Group Targets Content Exclusivity

A new advocacy group, the Sports Fans Coalition, has emerged to focus on a contentious issue between cable and satellite providers: exclusive rights to carry regional sports. Verizon is the coalition's lone corporate sponsor. The advisory board includes Public Knowledge, the Media Access Project and the Computer and Communications Industry Association, all of which have opposed a "loophole" that allows cable operators to maintain exclusivity on content in particular cities.

Verizon recently raised concerns about this issue before Congress. Verizon, which offers FiOS video service, has aligned with AT&T, which also provides video service through its U-Verse product, to oppose Cablevision,

the biggest cable provider in New York City. Cablevision owns Madison Square Garden and airs coverage of sports leagues and concerts from the venue. Verizon has been denied high-definition broadcasts from Madison Square Garden, and Cablevision says its rights to the high-def programming are protected under an exemption to 1992 Cable Act rules.

Satellite providers DirecTV and EchoStar have similar problems accessing Phillies games in Philadelphia, where Comcast offers regional sports coverage. AT&T also was denied access to Southern California sports programming and filed a complaint with the Federal Communications Commission (FCC) against Cox Communications, which has its own relationship with the states' professional sports franchises.

Leaders of the House Energy and Commerce Committee did not say last week whether they would seek legislation to address the complaints.

Rural Health Care Pilot Program Proposals Released

To date, 45 of the 68 participants who were approved to participate in the Rural Health Care Pilot Program have published requests for proposals (RFPs) on [USAC's Web site](#), seeking vendors and service providers to assist them in building broadband networks to support rural health care. Of the RFPs, the one below to serve Michigan was recently posted. Participants must wait at least 28 days before entering a contract date with a vendor. Please contact us for more information about this opportunity.

Applicant	Location	Date Posted	Allowable Contract Date
Michigan Public Health Institute	Michigan	11/11/2009	12/09/2009

Smart Grid Funding Awards Open New Markets for Communications Technologies

The U.S. Department of Energy recently awarded \$3.4 billion in stimulus funds for improvement of the electric grid, including \$2 billion to integrate different grid components. [Smart grids](#) rely on communications networks to self-heal, allow consumer participation and resist attack. Standards for smart grid networks are currently being developed and will largely focus on the security, volume and speed with which data can be transported. Since energy companies need to build or improve existing communications networks in order to support smart grids, there are significant new opportunities available to wireless broadband technologies, including WiMAX, which is believed to be uniquely suited to meet the communications needs of smart grids.

Verizon Wireless Doubles Contract Early Termination Fee

Starting November 15, [Verizon Wireless](#) will double its early termination fee (ETF) for advanced devices such as smartphones, from \$175 to \$350. The ETF will decrease by \$10 for each completed month of service over the life of the contract. Two years ago due to lawsuits and regulations, wireless carriers started to pro-rate ETFs and no longer required customers to enter into a new contract whenever they made changes to their calling plan. With the increase in popularity of prepaid wireless plans, consumers and carriers are moving away from contracts and Verizon's ETF may be ill timed. If consumers accept Verizon's increased ETFs, other carriers may soon do the same.

INDUSTRY CALENDAR

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