

Patton Boggs TechComm Industry Update - Week of October 9, 2009  
October 9, 2009

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## Net Neutrality NPRM to be Addressed at FCC Open Meeting

The [FCC](#) released a tentative [agenda](#) for its October Open Meeting. The Commission will consider only one item, a notice of proposed rulemaking on policies “to preserve the free and open Internet.” In September, Chairman Genachowski outlined six Internet principles to ensure the openness of the Internet. The NPRM will seek comment on how to determine whether network management practices are reasonable, what information broadband providers should disclose about their network management practices and in what form and how Internet openness principles should apply to mobile broadband. Chairman Genachowski has already encountered opposition to his proposed rules. Republicans on the [House Energy and Commerce Committee](#) sent a letter to the Chairman urging him to delay the vote on his net neutrality plan. [CTIA](#) also released a statement that it is “concerned about the unintended consequences Internet regulation would have on consumers considering that competition within the industry has spurred innovation, investment, and growth for the U.S. economy.” The Open Meeting is scheduled for October 22.

## Genachowski Commits to Spectrum for 4G Wireless Technology

Calling spectrum the “oxygen of our mobile network,” FCC Chairman Julius Genachowski told the wireless industry that he is committed to improving wireless broadband service through a four-part plan. Speaking at CTIA’s annual conference in San Diego on Oct. 7, Genachowski said the nation is facing a “looming spectrum crisis” as consumers rely on wireless communications, such as smartphones and netbooks that provide mobile Internet access.

“One of the FCC’s highest priorities is to close the spectrum gap,” he said. To address ongoing spectrum concerns, Genachowski committed to the following:

- “unleash” wireless spectrum for faster 4G networks;
- reallocate spectrum that is used for purposes other than wireless broadband;
- develop rules that ensure wireless traffic is treated fairly; and
- empower consumers so that they may assess broadband in a transparent, competitive market.

## FCC Seeks Comment on a Broadband Clearinghouse

In its development of a National Broadband Plan, the FCC is seeking comment on whether to create a broadband clearinghouse for easy access to useful broadband information. Comments are due Nov. 16, 2009. The FCC seeks comment on the following issues:

- the concept of a broadband clearinghouse for best practices and whether the FCC or another federal agency should create a clearinghouse;
- what the primary purposes of a broadband clearinghouse are;
- type of content that a broadband clearinghouse would contain;
- whether there are current clearinghouses that would serve as a good model;
- the features that a clearinghouse should have;

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- what types of entities (local governments, broadband providers, broadband-adoption-focused organizations, scholars) would most benefit from a broadband clearinghouse and how;
- what audiences would benefit most from a clearinghouse;
- whether the clearinghouse entity should engage in outreach or information sharing beyond those in a Web-based, electronic format;
- how could the clearinghouse be publicized;
- how a clearinghouse can be most useful;
- how can a clearinghouse identify or feature truly-effective broadband practices and avoid “bad” practices and data that may end up in the clearinghouse;
- how should information in the clearinghouse be structured and categorized to maximize the extent to which it is comparable and searchable;
- what editorial or other resources are necessary to ensure that a clearinghouse contains accurate and updated information;
- whether the manager should actively control or filter what data and best practices are allowed into the clearinghouse;
- how can the clearinghouse leverage public participation to obtain best managerial outcomes;
- whether the clearinghouse should have a retention schedule for contributed data; and
- who should update and maintain a broadband clearinghouse.

### **House Panel Passes Bills to Extend Public Safety Grants, Block Caller ID Spoofing, Other Measures**

On Oct. 8, the House Energy and Commerce Committee Subcommittee on Communications, Technology, and the Internet approved four legislative measures that head next to the full committee for action. They are:

- H.R. 3633, a bill sponsored by Rep. Jane Harman (D-CA) and co-sponsored by Rep. Anh “Joseph” Cao, (R-LA), would extend the availability of funding for NTIA’s interoperable emergency communications grant program until fiscal year 2012. The Public Safety Interoperable Communications (PSIC) grant program was established under the Digital Television Transition and Public Safety Act of 2005 to dedicate up to \$1 billion to public safety agencies to fund acquisition, deployment and training of interoperable communications networks;
- H.R. 1147, the Local Community Radio Act of 2009, introduced by Rep. Mike Doyle (D-PA), along with companion legislation sponsored by Sen. Maria Cantwell, (D-WA), would remove “third-adjacent channel” restrictions, allowing more low-power stations to be licensed;
- H.R. 1084, the Commercial Advertisement Loudness Mitigation Act (CALM Act), sponsored by Rep. Anna Eshoo (D-CA), would prevent commercials from being broadcast at volumes louder than the programs that they accompany; and
- H.R. 1258, the Truth in Caller ID Act of 2009, sponsored by Rep. Eliot Engel (D-NY), would amend the Communications Act of 1934 to prohibit the deceptive manipulation of caller identification information, a practice known as caller ID spoofing. Subcommittee Chairman Boucher offered a manager’s amendment to make an exception for law enforcement activities. The [Judiciary Committee](#) passed a similar bill, H.R. 1110, on Oct. 7, which also would make it a federal crime to transmit phony caller ID numbers with the intent to defraud, gain access to something of value or otherwise do harm.

In other legislative news, the House Commerce Committee approved two bills on Oct. 1. H.R. 1319, the “Informed P2P User Act,” and H.R. 2221, the “Data Accountability and Trust Act.”

- H.R. 1319, would require “clear and conspicuous notice” of risks in installing peer-to-peer applications and require informed consent.
- H.R. 2221, introduced by Rep. Bobby Rush, (D-IL), Chairman of the Consumer Protection Subcommittee, would require data holders to issue nationwide notices in the event of a security breach and would preempt similar state laws or regulations.

The committee approved both bills favorably.

### **State and Federal Organization Launches New Broadband Web Site**

State members of the Federal-State Joint Conference on Advanced Services (Members) launched a new [Web site](#) providing what the members call a national inventory of federal and state broadband projects and programs. The members are hoping that users will add new projects to the site, including broadband stimulus projects, allowing for a comprehensive resource for federal and state broadband projects. As of now, there are seven projects posted to the site, two projects in California, one in Minnesota, one in Vermont, one in DC and one in Maine.

### **FCC Begins Series of Broadband Capital Formation Hearings**

As part of its National Broadband Plan, the FCC will hold a series of hearings over the next several months about investment and capital formation in the broadband sector. The FCC plans to address the following issues in the hearings:

- what steps will help make the telecom, media and broadband sectors attractive for capital investment;
- what are the appropriate levels of return on capital investment in broadband ventures;
- how to balance consumer-oriented goals for broadband deployment with investment-oriented goals;
- how to best leverage private capital with public capital for broadband projects; and
- what steps to take to unleash market forces or fix market failures to encourage capital investment in broadband.

At the first hearing held on Oct. 1, all the panelists urged the FCC to create regulatory certainty in order for the capital markets to respond with investment. Most of the panelists agreed that regulatory certainty is also needed with respect to net neutrality and a quick resolution is appropriate. The panelists agreed that regulatory certainty and consistent policy is good for capital markets, with a preference for a light regulatory touch. General Partner of Novak Biddle Venture Partners, Phil Bronner, said broadband could have a dramatic impact on the economy and, at Novak Biddle, they “bet on innovation” including WiMAX. Bronner seemed concerned, however, that national ubiquitous broadband will not be achieved in the near future because “the cost of capital is quite frankly too high to roll a lot of these things out.” Dean Manson, Senior Vice President, General Counsel and Secretary of Hughes Communications, Inc., stated that “truly national broadband coverage cannot exist without satellite systems.” Monish Kundra, a Venture Partner at Columbia Capital, echoed Chairman Genachowski belief that broadband creates a large multiplier for the rest of the economy. He also noted that investors are concerned about continuing operation of broadband and broadband infrastructure, and that broadband stimulus funds do not really alleviate investors concerns. Kundra said investors have their eye on 4G technology and future-proofing broadband networks.

### **Verizon Wireless, Google Team Up to Provide Android Open Platform**

Verizon Wireless and Google™ announced a strategic partnership on Oct. 6 that will leverage the Verizon Wireless network and the Android™ open platform to deliver leading-edge mobile applications, services and devices. The companies will create, market and distribute products and services, with Verizon Wireless also contributing the breadth of its nationwide distribution channels.

Consumers will be able to purchase products resulting from the collaboration in Verizon Wireless retail and online stores. Verizon Wireless and Google also plan to co-develop several Android-based devices that will be preloaded with applications from both parties and third-party developers. In coming weeks, Verizon Wireless plans to introduce Android-based handsets.

### **Commerce Department Awards Four States Broadband Mapping Grants**

California, North Carolina, Indiana and Vermont were among the first recipients of more than \$6.8 million in grants from [NTIA](#) to map broadband use in U.S. homes.

NTIA said the current and future recipients will collect and verify the availability, speed and location of broadband in their states. The broadband map is aimed at helping policymakers determine where services are needed the most and how to increase usage where it is already available.

According to the NTIA, the [California Public Utilities Commission](#) received \$2.3 million in grants, [North Carolina's Rural Economic Development Center](#) received \$2 million, the [Indiana Office of Technology](#) was awarded \$1.3 million and the [Vermont Center for Geographic Information](#) received \$1.2 million, NTIA said.

### Rural Health Care Update

To date, 43 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 following three were recently posted. Participants must wait at least 28 days before entering a contract date with a vendor. Please contact us for more information about these opportunities.

Applicant	Location	Date Posted	Allowable Contract Date
<a href="#">Arizona Rural Community Health Information Exchange</a>	Arizona	10/6/2009	11/3/2009
<a href="#">Missouri Telehealth Network</a>	Missouri	10/1/2009	10/29/2009
<a href="#">North Carolina Telehealth Network</a>	North Carolina	9/11/2009	10/9/2009

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### [INDUSTRY CALENDAR](#)

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