

Patton Boggs TechComm Industry Update
February 1, 2010

Overview of Round Two for Broadband Stimulus Funding - Window Closes March 15

The second broadband stimulus window will open February 16 and close March 15 at 5 p.m. ET. The funding priorities for the National Telecommunications and Information Administration (NTIA) and the Rural Utilities Service (RUS) have changed for this round, and there is much to know in a very short time frame. RUS will principally concentrate on funding Last Mile projects for rural areas, although there is some funding available for Middle Mile projects. NTIA will focus on Middle Mile applications, Public Computer Centers and Sustainable Broadband Adoption. Of the roughly \$4 billion the agencies were to award as a result of applications filed during that first window, just \$570 million has been awarded. NTIA expects that roughly \$700 million to \$1 billion in additional grants will be awarded in the next month. We haven't seen anticipated figures from RUS. It seems fairly certain, though, that there could be \$5 billion to \$6 billion in funds available to applicants in the second funding round, and the agencies seem to have a keener sense of the kinds of projects they will fund.

The actual application forms have not been released as of this writing but the Patton Boggs TechComm group has prepared detailed summaries of the Notices of Funds Availability (NoFA) for the two programs. We also have prepared scoring sheets to help you work through the viability of your project(s). Please contact us if you need materials or a strategy session. Here are some important overview facts about the second funding round:

NTIA

- NTIA will entertain Comprehensive Community Infrastructure Projects (the core of these projects is Middle Mile Access combined with service to critical community facilities – partnerships with municipalities that need broadband will be attractive in this round). NTIA also will consider applications for Public Computer Centers and Sustainable Broadband Adoption.
- For the second round, NTIA has allocated \$2.6 billion for broadband projects. \$2.35 billion will be available for a new category of application -- Comprehensive Communities Infrastructure projects. \$150 million will be available for Public Computer Centers and \$100 million for Sustainable Broadband Adoption.
- NTIA can increase these amounts to include unobligated funds from the first broadband stimulus round. In addition, for categories of funding that do not receive sufficient applications requesting the full amount of funds allocated, excess funds may be directed to another category of funding in NTIA's discretion.
- NTIA also has reserved the right to reopen the application window or release a subsequent NoFA to ensure that all funds are awarded by September 30, 2010. NTIA expects that it will begin announcing awards from round two on a rolling basis, starting June 2010.

This information is not intended to constitute, and is not a substitute for, legal or other advice. You should consult appropriate counsel or other advisers, taking into account your relevant circumstances and issues. While not intended, this update may in part be construed as an advertisement under developing laws and rules.

This industry update can be accessed at:
http://www.pattonboggs.com/newsletters/techcomm/2010_02_01_TechCommUpdates.htm

You may receive this industry update from other people, which often occurs. To SUBSCRIBE or change your address, e-mail techcomm@pattonboggs.com. To UNSUBSCRIBE or OPT-OUT, simply e-mail techcomm@pattonboggs.com with "UNSUBSCRIBE" in the subject line.

RUS

- RUS will entertain Last Mile and Middle Mile Applications for rural areas. The definition of rural has not changed from Round One.
- For Round Two, RUS allocated \$2.2 billion for funding opportunities. RUS can increase this amount to include unobligated funds from the first broadband stimulus round. In addition, for categories of funding that do not receive sufficient applications requesting the full amount of funds allocated, excess funds may be directed to another category of funding in RUS's discretion. This is RUS's final broadband stimulus funding round.
- Some of the definitions have changed for this round, and RUS has made more specific the kinds of broadband projects it will fund. Projects to serve "remote" areas have been eliminated. In this round, RUS will fund applications for proposed service areas that are 75 percent or more rural, within which not more than 50 percent of the premises have high speed access (5 Mbps upstream and downstream combined).
- Responding to the weight of comments filed in response to the last round, and the need for greater funding for rural projects, RUS has increased the amount of grant money available. Instead of 50/50 loan-grant combinations, RUS will grant awards containing 75 percent grants and 25 percent loans. This represents good progress toward making broadband projects more affordable for rural America.
- RUS has streamlined its application process and will no longer process applications in two steps. Instead, applicants will be required to submit all the necessary documentation for an award by the application deadline, March 15th.
- If RUS expects to have excess funding in the second round, it may permit applicants to adjust applications for reconsideration that would not have been funded.
- RUS created three new grant opportunities -- Satellite Projects, Technical Assistance Projects and Rural Library Broadband projects. 100 percent grants are available for these projects, but applications cannot be filed in this round. Some time after February 16, 2010, RUS will publish Requests for Proposals for these kinds of projects, including the funding allocations and filing windows. Please let us know if you require more information about these projects in the near term.

Senate Appropriators Examine NTIA's Management of Broadband Stimulus Funds

Calling rural broadband "one of the most crucial" stimulus programs, Sen. Barbara Mikulski (D-MD), chair of the Commerce, Justice and Science Subcommittee on Appropriations, asked the Commerce Department's key administrator of broadband stimulus grants why it is taking the agency so long to award grants. "Our question is, when the hell is this going to create jobs?" Mikulski asked Commerce Secretary Gary Locke during a recent hearing of NTIA's Broadband Technology Opportunities Program (BTOP). Of the \$4.7 billion given to NTIA, \$4.3 billion still remains in agency coffers. Locke said the final grants from the first round of funding should be awarded by the end of February. Applications for the second round of funding are due March 15.

"Our role is not unlike that of a private equity firm or venture capital firm trying to do due diligence ... to make sure we don't fund a bad project," added Assistant Commerce Secretary Larry Strickling. "If these projects aren't running five years from now after the funding is long gone, we haven't done our job." During the first round of the program, NTIA received 1,400 applications requesting \$19 billion in funding from a pot of \$1.5 billion, Locke said. The agency has hired 43 new employees and relies on 1,000 application reviewers who "are practically volunteers."

Meanwhile, Sen. Richard Shelby (R-AL), ranking member of the subcommittee, criticized the Commerce Department's management of the BTOP program. "This program is not stimulating the economy — it is simply more government spending that is forcing our nation much further into debt," he said.

RUS & NTIA Launch Broadband Applicant Search and Match Tool

RUS and NTIA launched [BroadbandMatch](#), an online service to help applicants for broadband stimulus funds find potential application partners. The tool allows any entity interested in applying for, or partnering with an applicant who is applying for, broadband stimulus funds under NTIA's Broadband Technology Opportunities Program or RUS's Broadband Initiatives Program to create a profile, post contact information, include information about their products or services and search for potential partners. Once registered with the Web site, you can fill out an applicant profile, post your profile and other relevant information about broadband stimulus applications and search for partners.

Rockefeller to Move Cybersecurity Bill

Citing the cyber-attacks on Google originating from China, Senate Commerce Committee Chairman John (Jay) Rockefeller, (D-WV), said that he intends to focus more keenly on cybersecurity and that his panel will soon mark up S. 773, the cybersecurity bill he introduced with Sen. Olympia Snowe (R-ME).

Google said last month that hackers tried to access the e-mail accounts of Chinese human rights activists. In response to the attacks, Google has said it will no longer censor its search results for Chinese users and, as a result, may shut down operations in China altogether.

"Cyber-attacks are increasing exponentially and we need to get serious about America's cybersecurity," Rockefeller said in a statement. "Our nation's public and private infrastructure is too critical to remain vulnerable and unprotected."

Rockefeller's measure, among other things, would formally establish the post of a White House Office of National Cybersecurity Advisor, who would coordinate the federal government's cybersecurity activities, including with the intelligence community and civilian agencies. President Obama recently announced that Howard Schmidt would serve as the administration's cybersecurity coordinator, a position similar to the one Rockefeller's bill would formally create. The legislation also would streamline cyber-related government functions.

Lawmakers Tell FCC to Resolve WCS Rulemaking

Reps. Ed Markey (D-MA) and Doris Matsui (D-CA) urged the FCC in a January 25 letter to resolve rules governing the Wireless Communications Service (WCS) spectrum in conjunction with or soon after the release of the Commission's National Broadband Plan to Congress.

Markey and Matsui, who serve on the House Energy and Commerce Committee's Communications Technology and Internet Subcommittee, advised the FCC to "move as expeditiously as possible" to adopt final rules for the 2.3 GHz spectrum, which they noted "has been mostly fallow for over a decade in large part because final technical rules have not yet been adopted."

Finalizing WCS rules also is a priority of Sen. Olympia Snowe, (R-ME), who sent a letter to the FCC earlier this month recommending that the Commission complete pending spectrum proceedings, including the WCS rulemaking, before the agency considers other frequencies for broadband use. In her letter, Snowe advised FCC Chairman Julius Genachowski to "clear the table of outstanding spectrum-related items" such as the open rulemaking on the WCS and Satellite Digital Audio Radio System (SDARS) spectrum, noting that the issue has been outstanding for more than a decade. "This lack of resolution has needlessly delayed the deployment of broadband services by the WCS community and therefore should be concluded," Snowe said.

Other members have raised concerns with Chairman Genachowski about the WCS issue, including California Democratic Reps. Jerry McNerney, Lois Capps, Michael Honda, Zoe Lofgren, Linda Sanchez and Pete Stark, who sent a joint letter in December 2009 to the FCC to free up spectrum for deployment of advanced mobile services. "The Commission has the ability to encourage mobile broadband deployments with spectrum that is ready today" McNerney and his colleagues urged in their letter. Rep. Bart Stupak (D-MI) also raised concerns in a separate letter about the impact regulatory uncertainty poses to companies that hold WCS licenses and face

looming buildout requirements even though they cannot utilize spectrum without final rules. Meanwhile, another 16 rural House members wrote to Chairman Genachowski in December 2009, urging the FCC to move swiftly to adopt final WCS rules because rural districts “depend on increased investment in mobile wireless broadband services to close the rural digital divide.” The members called on the Commission to make spectrum available where “the need for these services is particularly acute.”

Google Seeks U.S. Nod To Trade Wholesale Electricity

Google is seeking U.S. approval to trade wholesale electricity to reduce costs associated with buying renewable energy resources such as wind and solar power. Google last month submitted a filing with the Federal Energy Regulatory Commission (FERC) for a license to trade wholesale power.

Utilities, power plant operators and energy brokers must secure federal approval to trade electricity in wholesale markets. There are more than 1,500 wholesale marketers licensed by FERC. Since 1997, 895 licenses have been revoked, including those held by bankrupt energy trader Enron Corp.

Google announced in 2007 plans to reduce emissions of gases that contribute to global warming, such as carbon dioxide, through energy efficiency, and buying renewable energy and permits from projects that reduce pollution. It is unclear how much electricity the company uses for its vast network of data centers.

DOE Approves \$47 Million for Increased Energy Efficiency in IT, Technology

Energy Secretary Steven Chu announced on Jan. 6th that the Department of Energy awarded \$47 million for 14 projects to support the development of new technologies to improve energy efficiency in the information technology (IT) and communication technology sectors. The rapid growth in data processing, data storage and telecommunications industries has led to an increase in electricity use.

“These Recovery Act projects will improve the efficiency of a strong and growing sector of the American economy,” Secretary Chu said in a statement. “By reducing energy use and energy costs for the IT and telecommunications industries, this funding will help create jobs and ensure the sector remains competitive.” Information technology and telecommunications facilities account for approximately 120 billion kilowatt hours of electricity annually – or three percent of all U.S. electricity use. Moreover, rapid growth in the U.S. data center industry is projected to require two new large power plants per year just to keep pace with the expected demand growth. Without gains in efficiency, the industry would face increasing costs and greenhouse gas emissions, along with challenges to the reliability of the electricity service.

The American Recovery and Reinvestment Act is providing funding for research, development and demonstration projects in three subject areas. Projects may include aspects of more than one topic area.

- **Equipment and Software** – These projects will focus on the core components of a data or telecommunications center, such as servers and networking devices as well as software to optimize equipment energy use.
- **Power Supply Chain** – These projects will develop technologies to minimize the power loss and heat generation that occurs as electricity moves through the ever-growing number of server-based IT and communications systems.
- **Cooling** – This effort will seek to demonstrate ways to cool the equipment used in IT and telecommunications work more effectively and with less power than current methods.

The \$47 million in federal funds for these projects will be matched by more than \$70 million in private industry funding, for a total project value of more than \$115 million. The following projects received awards:

Equipment and Software Projects

- IBM T.J. Watson Research Center (\$1.6 million)
- SeaMicro Inc. (\$9.3 million)
- Alcatel-Lucent, Bell Labs (\$300,000)
- California Institute of Technology (\$300,000)

Power Supply Chain Projects

- Lineage Power Corporation (\$2.4 million)
- BAE Systems (\$222,000)
- Power Assure, Inc. (\$5 million)
- Hewlett-Packard Company (\$7.4 million)
- Columbia University (\$2.8 million)

FCC Seeks Input on Privacy and Broadband

The FCC is seeking comment on privacy protections to broadband adoption and deployment as part of the National Broadband Plan. Comments were filed on January 22, 2010. In the [Public Notice](#), the FCC sought comment on the below questions.

- What principles and standards should be considered to help articulate existing consumer expectations of privacy?
- What can federal agencies do to help ensure that consumer expectations of privacy are met as new technologies platforms are developed?
- Are there industry best practices or regulatory models that can be adapted across technology platforms to ensure that users are protected while allowing for the proper use of personal information?
- How can information be de-identified, encrypted, pseudonymized or used in the aggregate in ways that are useful to help protect privacy? How can the best of these methods be determined for a particular application?
- What data minimization principles should be used for different types of data? How can these be built into the technology?
- How can identity management systems be developed to help provide more direct user controls over personal information across platforms? How can these systems be designed so that the user is an equal partner to the relying party and the identity provider?
- Are there existing technical standards that can help to promote privacy by design?
- What can the federal government do to help promote privacy by design?
- Are certain types of transactional data (location information, health data, etc) more sensitive than others? Should limits be placed on the retention or use of some of this data in ways that are not required today?
- Are the current rules on government access and use of transactional data held by government agencies sufficient to ensure that this data cannot be abused?
- What responsibilities do companies that create new platforms that vet third party applications create for themselves?
- Would holding the platform provider liable for the actions of third-party applications that violate basic privacy and security standards create incentives to ensure that consumer privacy is protected? Would it stifle innovation? Is there a middle ground that can protect consumers and ensure innovation?

Senate, House Subcommittees to Examine Comcast-NBC Universal Merger

Sen. Herb Kohl (D-WI), chairman of the Senate Antitrust, Competition Policy and Consumer Rights Subcommittee, said his panel will hold a February 4 hearing to examine the Comcast-NBC Universal merger. Comcast CEO Brian Roberts and NBC CEO Jeff Zucker are expected to testify. Other witnesses will be: Mark Cooper, Director of Research of the Consumer Federation of America; Collen Abdoulah, President of the WOW! Internet, Cable and Phone; Michael Fiorile, President and COO of the Dispatch Printing Company and Chair of the NBC Affiliate Board; and Adam Thierer, President of Progress and Freedom Foundation.

The hearing is expected to focus on the proposed merger's impact on cable services, broadcast and Internet programming and consumer options for media content. Another hearing with the same witnesses will take place earlier on February 4 before the House Energy and Commerce Subcommittee on Communications, Technology and the Internet.

FCC Adopts Video Distribution Complaint Mechanism for Terrestrially-Delivered Programming

The FCC adopted an order to close the terrestrially-delivered loophole for vertically integrated programming. The order establishes a case-by-case complaint process for terrestrially-delivered, cable-affiliated programming. The new rules permit satellite providers, telephone companies and other video competitors to obtain more of the most desirable programming regardless of whether it is delivered to video providers terrestrially or by satellite. The rules now provide a mechanism for alternative video providers to file complaints against cable companies if cable-affiliated programming is withheld from competitors. The FCC adopted a rebuttable presumption that it is an unfair act to withhold terrestrially-delivered, cable-affiliated regional sports networks from competitors. The order also invites companies with pending complaints to supplement their complaint to request review under the FCC's new rules for cable-affiliated, terrestrially-delivered video programming. The new rules also contain a mechanism for requesting a stay of the current price, terms and other conditions of an existing programming agreement while a complaint is pending.

Coalition for 4G in America Urges Swift Auction of Upper 700 MHz D Block for Commercial Use

The Coalition for 4G in America (MetroPCS Communications, Inc., Sprint Nextel Corporation, T-Mobile USA, Inc., Clearwire Corporation, Rural Telecommunications Group, Inc. and Access Spectrum, LLC) filed a [letter](#) with the FCC urging the Commission to incorporate the below principles into the National Broadband Plan to expeditiously auction the Upper 700 MHz D Block for commercial use to promote widespread availability of competitive broadband services.

The Coalition for 4G in America suggests the Commission should:

- Auction the Upper 700 MHz D Block for commercial use as soon as possible and structure the auction to promote a fair distribution of 700 MHz band licenses while ensuring that such policy does not inhibit public safety's ability to enter into public/private partnerships;
- Promote public-private partnerships by establishing incentives for commercial operators to enter into public-private partnerships to meet public safety broadband needs. This incentive-based approach should be technology, spectrum band and provider neutral, and promote the FCC's goal of nationwide interoperability;
- Add 2 MHz to the already allocated 10 MHz D Block to increase the amount of spectrum the auction winner would receive. Adding 2 MHz of spectrum to the block will help attract greater interest in the auction and in a public-private partnership and will harmonize the Public Safety blocks with other 700 MHz spectrum blocks helping create economies of scale; and

- Protect the public safety 700 MHz narrowband operations from harmful interference.
-

FCC Invites Comment on New Internet Certification Rules for E-rate Program

The FCC on January 20 released a [public notice](#) setting dates for filing comments to a November 5, 2009 notice of proposed rulemaking that recommends revising rules regarding the E-rate program and new compliance requirements in the Protecting Children in the 21st Century Act. To be eligible for E-rate discounts for Internet access and internal connection services under the Children's Internet Protection Act (CIPA), schools and libraries that have computers with Internet access must certify that they have in place certain Internet safety policies and technology protection measures. The Internet safety policy must include a technology measure that protects against Internet access by adults and minors of visual depictions that are obscene, child pornography or harmful to minors. Applicants make their CIPA certifications annually on FCC Form 486.

In addition to existing CIPA certifications that are required of schools, the Protecting Children in the 21st Century Act requires the school, school board, local educational agency or other authority with responsibility for administration of the school to certify that it "as part of its Internet safety policy is educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response." The Commission is seeking comment on whether to revise its rules to include the new certification requirement. The Commission also seeks comment on its tentative conclusion that a recipient of E-rate funding for Internet access and internal connections should be required to certify, on its FCC Form 486 for funding year 2010, that it has updated its Internet safety policy to include the new requirements.

Comments on the proposed rules are due by **February 18, 2010**. Reply comments are due by **March 5, 2010**.

All Sides File Comments in the FCC's Net Neutrality Proceeding

In response to the FCC's net neutrality rulemaking, thousands of comments were filed representing all sides of the issues surrounding net neutrality. Unions and content providers support the FCC and argue that the FCC needs to protect legal content in order to preserve the openness of the Internet. Supporters of the copyright fair use doctrine do not support copyright protection for Internet content, and urge that such protections should not be included in the FCC's new rules. Many commenters support a narrow definition of reasonable network management practices but Comcast, as part of its ongoing dispute with the FCC, again challenges the FCC's statutory authority to be able to adopt net neutrality rules. Comcast also stated that plenty of evidence has already been filed with the FCC in its various broadband proceedings that shows net neutrality rules would do more harm than good by stifling innovation. The National Cable & Telecommunications Association also filed comments asking the FCC to exercise restraint and not codify net neutrality because the rules are unnecessary and counterproductive.

Broadband network operators suggest that the new rules include a presumption that network management practices are reasonable. Some commenters stated that the broadband market is competitive and net neutrality rules are not needed but, if adopted, should be extended to all broadband providers. Wireless providers do not support extending net neutrality rules to wireless networks because, in part, there is no evidence of market failure in wireless broadband services. If net neutrality rules are extended to wireless networks, wireless providers argue the FCC's proposed rules need to take into consideration the differences between wireless and wireline networks.

Reply comments are due **March 5, 2010**.

Public Safety Officials Seek More Spectrum

Seeking more spectrum to strengthen emergency communications, public safety officials recently met with House Energy and Commerce Chairman Henry Waxman (D-CA), aides to Senate Commerce Communications Subcommittee Chairman John Kerry, (D-MA), FCC Chairman Julius Genachowski and NTIA Administrator Larry

Strickling. "It's been over eight years" since the terrorist attacks of September 11, 2001, said Robert Davis, president of the Major City Chiefs Association, which represents U.S. and Canadian law enforcement agencies, during a press briefing. "We still do not have the ability to communicate with each other. This is unacceptable."

Although Chairman Waxman expressed support for the groups' position, aides said he fell short of endorsing legislation to allocate 10 MHz of D-block spectrum to the public safety community. The FCC, meanwhile, is expected to address emergency communications in its national broadband plan to Congress. Some sources said that an office of interoperability is being contemplated to address emergency communications. Genachowski, described as sympathetic to the needs of first responders, noted during his Tuesday meeting that assigning the D-block to public safety groups without an auction would require congressional action, according to those attending the meeting.

Perhaps the greatest challenge of the legislation is funding. Estimates range from \$6 billion to \$20 billion to construct a nationwide broadband network that would improve interoperable communications across agencies and jurisdictions.

FCC Clears 700 MHz Spectrum for Public Safety, Commercial Use

The FCC on January 15 adopted an order to ease deployment of the next generation of wireless devices and public safety communication services. The FCC's order bans the further distribution and sale of wireless microphones and other devices that operate in the 700 MHz band, concluding that these devices may interfere with the other services that will be operating in the spectrum. At the same time, entities currently operating wireless microphones in the band will have an opportunity to relocate to other bands, but must clear the 700MHz band by June 12, 2010, one year after the DTV transition ended.

In its order, the FCC also authorized by waiver the use of wireless microphones on an unlicensed basis by entities that are not eligible for licenses. Finally, in a Further Notice the FCC seeks to update its rules to provide that low power audio devices, including wireless microphones, may be operated as unlicensed devices under Part 15 of the Commission's rules. The FCC also seeks comment on the following issues:

- Whether the FCC should expand eligibility for obtaining licenses to operate low power auxiliary stations, including wireless microphones, under Part 74 and whether the agency should revise Part 90 to facilitate wireless microphone use.
- The FCC invites comment on possible long-term reform, based in part on technological innovation such as digital technology that would enable wireless microphones to operate more efficiently with improved immunity to harmful interference, spectrum availability for wireless microphone and other uses.

Comments to the Further Notice are due 30 days after publication in the *Federal Register*, while reply comments are due 51 days after publication.

FCC Proposed Robocall Rule Changes

The FCC's proposed amendments to its robocall rules under the Telephone Consumer Protection Act (TCPA) will help residential telephone customers avoid unwanted telephone calls. The proposed rules would require sellers and telemarketers to obtain written consent from recipients before making prerecorded telemarketing calls (robocalls) even if the customer has an established business relationship with the company. They would also provide an opt out mechanism in robocalls, and exempt health care-related calls from the FCC's residential telemarketing rules. The new rules will also make it easier for consumers to opt out of receiving robocalls. The proposed rules will mirror rule changes recently adopted by the Federal Trade Commission (FTC). The FCC's new rules will impact calls made by tax-exempt organizations, calls from politicians or political campaigns, calls for other non-commercial purposes and commercial calls that do not contain advertisements, such as flight cancellation information. The FCC's telemarketing rules and proposed rules do not apply to emergency robocalls message because they are exempt from the TCPA.

Verizon – Frontier Transaction Moving Forward Despite Opposition

Frontier Communications continues to pursue its acquisition of 4.8 million rural phone lines in 14 states from Verizon Communications, even though the deal continues to attract opposition. The operations Frontier will acquire include all of Verizon's local wireline operating territories in Arizona, Idaho, Illinois, Indiana, Michigan, Nevada, North Carolina, Ohio, Oregon, South Carolina, Washington, West Virginia and Wisconsin. In addition, the transaction will include a small number of Verizon's exchanges in California.

So far, the Department of Justice and the states of California, Nevada and South Carolina have approved the acquisition. Several state approvals and approval from the FCC remain pending. Washington, Ohio, Oregon and Arizona appear close to approving the deal, agreeing to impose certain requirements on Frontier. The Communications Workers of America (CWA) rallied last week in opposition to the deal, stating that Frontier is "biting off more than it can chew" and that Frontier will not have the financial strength to follow the deal through. The \$8.6 billion deal, announced last May, will leave Frontier with a huge amount of debt while allowing Verizon to avoid paying about \$600 million in taxes. Congressman Paul Hodes (D-NH) announced that he plans to introduce legislation to close this tax "loophole" under a so-called Reverse Morris Trust transaction, in which a larger company sells off assets to a smaller company. The bill appears to have the support of the CWA, who is trying to recruit letters to Congress supporting the bill. It's not yet clear if the bill will pass before the Verizon – Frontier deal closes or how the legislation will impact the deal, if at all.

FCC Spectrum Reclamation Plan

In response to a Public Notice seeking comments on a CTIA request to the [FCC](#) to consider reclaiming underused broadcast spectrum for wireless services, the National Association of Broadcasters has been lobbying the FCC to reject such a proposal. Phil Bellaria, who is working with the FCC's broadband team, stated that the broadcasters are lobbying against a proposal that is no longer being considered, if it ever was. He said that any initial broadcast spectrum reclamation plan would be voluntary and broadcasters would not be required to sell their spectrum back to the government or lose the ability to transmit in HD, multicast or offer wireless mobile services. According to Bellaria, the FCC's goals are to free up spectrum, give broadcasters flexibility and preserve free, over-the-air television. A voluntary marketplace will be established so broadcasters are able to market some or all of their spectrum to other users.

T-Mobile and Orange Seek EU Approval to Create Largest Wireless Carrier in the United Kingdom

Deutsche Telekom AG and France Telecom SA [submitted](#) their proposed merger of T-Mobile UK and Orange UK to European Union antitrust regulators for review. If approved, the merger will create the U.K.'s largest cellular telephone provider. The combined entity will have approximately 28.4 million customers, roughly one third of the U.K.'s current total cellular market. Britain is also considering reviewing the merger. Both cellular networks employ GSM technology and the companies expect to reduce costs by cutting 20 percent of their combined transmitting stations on 35 percent fewer sites. The merger is also expected to reduce operating and marketing expenses.

FCC Makes Procedural Changes to its Competitive Bidding Rules

The FCC made two procedural [modifications](#) to its competitive bidding rules. First, the Commission changed where auction violation reports are to be sent. The FCC's rules allow parties to file reports about possible violations of the FCC's anti-collusion rules with both the Spectrum Access Division of the Wireless Telecommunications Bureau and with the FCC's Office of the Secretary. The FCC now requires these reports to be filed with the Spectrum Access Division only or as directed by the auction Public Notice. Second, the FCC changed the time in which applicants must modify pending auction applications and disclose possible auction violations. Applicants must now file modifications with the FCC within five business days after the reportable event occurs, or no more than five business days after the applicant becomes aware of the need to make an amendment or modification, whichever is later.

FCC Begins to Reboot

Last week, the FCC launched Reboot.FCC.gov, the Commission's website for discussion on transforming the agency into a "model of excellence in government" and improving citizen interaction with the Commission. The FCC outlined five important ways to reform the Commission, including: (1) redesigning the [Commission website](#) to streamline and improve the experience for all site visitors; (2) launching FCC.gov/data, an online clearinghouse for the Commission's public data, to increase openness, transparency, efficiency and public oversight; (3) exploring new ways to increase public participation through the use of new media tools and e-rulemaking; (4) reforming the electronic databases available at FCC.gov, including the [Electronic Comment Filing System](#) and creating a Consolidated Licensing System; and (5) modernizing agency proceedings to improve the quality of agency decision-making, reduce backlogs, and enhance public participation in Commission proceedings.

Commissioner Copps May Not Be Nominated for a New Term

Commissioner Michael J. Copps' current term expires June 2010 but it is likely the Obama administration will not renominate him. Copps was originally nominated by President George W. Bush. Copps could stay at the FCC without being nominated to a new term until January 2013. Democrats will probably push for action on a new nomination before the November 2010 elections. Possible Democratic nominees include, but are not limited to, Jessica Rosenworcel, aide to Senate Commerce Committee Chairman Jay Rockefeller (D-WV), and former Copps advisor; Bruce Gottleib, senior aide to Chairman Genachowski and former Copps advisor; Paul Margie, partner at Wiltshire Grannis and former Rockefeller and Copps aide; Blair Levin, currently at the FCC coordinating the Commission's efforts to develop a National Broadband Plan; and Scott Harris, the Department of Energy's General Counsel and a former communications attorney and FCC official.

FCC Releases Second Further Notice of Proposed Rulemaking Seeking Comment on a Revised National EAS Test Alert Rule

The FCC recently [released](#) a Second Further Notice of Proposed Rulemaking (FNPRM) in its Emergency Alert System (EAS) rulemaking. The FNPRM proposes to revise Section 11.61(a)(3) of the FCC's rules to add an annual test of the national EAS. To date, there have been no national EAS alerts or tests and the FCC, FEMA and the National Weather Service are concerned that the EAS may not function properly if a national EAS alert is issued.

The FNPRM also discusses the transition to the next-generation EAS that is being developed by FEMA. The next-generation EAS will rely on Common Alerting Protocol (CAP). Once FEMA publicly adopts a CAP standard, stations are required to be able to accept CAP-formatted alerts within 180 days. Stations may need to purchase new EAS equipment or software in order to be able to accept CAP-formatted alerts. The FNPRM states FEMA may adopt a CAP standard as early as the third quarter of 2010. Comments are due **March 1, 2010**. Reply comments are due **March 30, 2010**.

Portable People Meter (PPM) Recent Developments

Since the abrupt resignation of Arbitron's President and CEO Michael Skarzynski, after giving false testimony before the House Committee on Oversight and Government Reform in December, Senator Robert Menendez (D-NJ) has [renewed](#) his requests for an investigation into the PPM methodology. Menendez is concerned that the PPM methodology misrepresents the listenership of minority-owned and minority-focused stations. The FCC released a notice of inquiry last year asking questions about the PPM but, so far, has not taken any additional action. The Media Ratings Council (MRC) recently denied accreditation to the PPM in 18 markets, the second time for New York and Philadelphia. Audits were closed in San Francisco and San Jose without MRC taking any accreditation action. New audits for those markets will be conducted in 2010.

INDUSTRY CALENDAR - <http://www.pattonboggstechcomm.com/industrycalendar/>

If you have any questions about the foregoing or if you require additional information, please contact:

Jennifer L. Richter
202-457-5666
jrichter@pattonboggs.com

Nicholas W. Allard
202-457-6465
nallard@pattonboggs.com

Paul C. Besozzi
202-457-5292
pbsozzi@pattonboggs.com

Stephen Diaz Gavin
202-457-6340
sgavin@pattonboggs.com

Deborah M. Lodge
202-457-6030
dlodge@pattonboggs.com

Janet Fitzpatrick Moran
202-457-5668
jmoran@pattonboggs.com

Jeffrey L. Turner
202-457-6434
jturner@pattonboggs.com

Jonathan R. Yarowsky
202-457-6160
jyarowsky@pattonboggs.com

Susan E. Billheimer
202-457-5316
sbillheimer@pattonboggs.com

Lesley Bowling Sachs
202-457-5628
lsachs@pattonboggs.com

Jennifer A. Cetta
202-457-6546
jcetta@pattonboggs.com

Carly T. Didden
202-457-6323
cdidden@pattonboggs.com

Laurence E. Harris
202-457-6428
lharris@pattonboggs.com

Kathleen Ireland
202-457-6555
kireland@pattonboggs.com

Rebecca Murphy Thompson
202-457-5312
rthompson@pattonboggs.com