

Patton Boggs TechComm Industry Update  
April 16, 2010

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## Telecom Consolidation Expected Around the World

As large companies seek to acquire new IP technology companies and the ISP market consolidates, telecommunications mergers and acquisitions are expected to dramatically increase in the coming years. Consolidation is expected on a global scale. In a recent New York Times article, Naguib Sawiris, the chief executive of Orascom, the Egyptian group that runs wireless phone networks around the world, predicted that the global industry of mobile operators will undergo major consolidation over the next few years, which could completely reshape the industry.

This increase in merger and acquisition activity is reportedly a result of rebounding global markets and the promise of nationwide mobile broadband services. Consolidation in the industry peaked in 2005 with \$284.7 billion in merger and acquisition transactions. In more recent years, the financial crisis slowed the pace of mergers and acquisitions. However, in 2010 merger and acquisition transactions have increased and, according to Mergermarket, an economic analysis firm, the market is on track to grow by 50 percent.

Through March 18, 2010, there have been \$31.2 billion in M&A telecom transactions. Of that \$31.2 billion, \$23.8 billion is tied to the Mexican billionaire Carlos Slim Helú's consolidation of his holdings in three Latin American carriers, América Móvil, Carso Global and Telmex Internacional. Other large transactions include a \$10.7 billion bid from Bharti Airtel of India for African businesses owned by Zain, a Kuwaiti operator with networks in the Middle East and two expected deals in Europe involving France Télécom, which since November has merged its Orange mobile operations in Britain and Switzerland with T-Mobile of Germany and TDC of Denmark, respectively. Some analysts are predicting that struggling, midsize competitors like Sprint Nextel in the United States, Telecom Italia, KPN of the Netherlands and TDC of Denmark are potential takeover candidates.

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## FCC Invites Comment on Comcast-NBCU Merger

The federal government's review of the proposed merger of Comcast Corporation (Comcast) and the NBC Universal (NBCU) unit currently owned by General Electric Company (GE) is in full swing with regulators weighing the impact of allowing the two media giants to wed. Congress began the examination in February and March with hearings in the House and Senate, and now the investigation shifts to the Department of Justice (DOJ) and the Federal Communications Commission (FCC), where [comment](#) is due May 3, 2010 on the applications to assign and transfer control of FCC licenses from GE to Comcast. (Responses to comments and oppositions to petitions to deny are due June 2, 2010, and the deadline for filing replies to responses or oppositions is June 17, 2010.)

Comcast, with 23.6 million cable homes and nearly 16 million residential broadband customers, is the nation's largest in both categories. The company also owns a half-dozen cable networks, including VERSUS, the Golf Channel and E!, plus 10 regional sports networks. It has a controlling interest in "iN DEMAND," the dominant pay-per-view/video-on-demand distributor for cable. Combining Comcast's assets with those of NBCU would yield a

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venture that has ownership in two national broadcast networks (NBC and Telemundo), some 54 cable networks, Universal Studios, Focus Features Studios and 26 broadcast stations around the country (plus Universal theme parks in Orlando and Hollywood). If regulators allow the merger to close, the new entity would, as one group of Congressmen wrote to the FCC “control content production and content distribution at an unprecedented level.”

As the FCC begins its public comment cycle, the DOJ continues to review the merger and meet with interested stakeholders. Attorneys general in at least 12 states, including New York, Missouri, Arizona, California, Oregon and Washington, have joined phone interviews led by Justice Department officials.

The merger has drawn the interest of federal lawmakers on four House and Senate panels, which have held oversight hearings in recent months. Chairman Sen. Herb Kohl, D-WI, the Senate Subcommittee on Antitrust, Competition Policy and Consumer Rights, sent a letter after the Subcommittee’s hearing to NBC Chief Executive Officer Jeffrey Zucker to inquire about the company’s coverage of the Winter Olympics. Kohl stated that he was “concerned” that NBC appeared to restrict online access to Olympics content to only those viewers who subscribe to cable, satellite or other pay TV services with whom NBC has partnered.

“The fact that a broadcast network such as NBC is requiring consumers to subscribe to a pay TV service in order to access this content raises serious concerns,” wrote Kohl. “We wonder if this policy is a harbinger of things to come should this merger be consummated, and whether requiring a pay TV subscription to access NBC Internet content will be a standard policy in the future after this merger is completed.” NBC responded by detailing all of the on-air and online Winter Olympic programming that it made available free of charge.

The fourth congressional hearing on the Comcast-NBCU transaction, held before the Senate Commerce Committee on March 11, featured Assistant Attorney General Christine Varney, who heads the DOJ’s antitrust division, and FCC Chairman Julius Genachowski. Although their testimony marked the first time the regulatory officials answered questions publicly about the proposed venture, both were restricted from discussing specifics of the deal while it is still under government review. DOJ and the FCC are expected to issue decisions by the end of the year.

While a merger of the country’s largest cable distributor with one of the nation’s largest suppliers of cable programming should be enough to focus the attention of the DOJ and FCC (and give competitors concern), the biggest issue on the table may not be cable distribution, but rather the nascent, yet rapidly growing, broadband video market. In addition to the broadcast, cable and studio assets, the Comcast-NBCU joint venture would have ownership in 32 online media properties, including NBC.com, msnbc.com, weather.com and the popular video site hulu.com.

Over-the-top-video (OTTV) and other online media aspects of this merger may well be *the* principal area of focus for the federal regulators. Concessions may be demanded and rules may be established that will not only govern the way in which the new venture operates its broadband systems, but also may set the table for broader regulations (such as net neutrality) and affect all broadband content delivery in the future.

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## **M-Health: Convergence of Wireless Services, Medicine Promises to Transform Health Care**

With the FCC’s National Broadband Plan calling for greater synergies between broadband services and health care, it is no surprise that wireless providers are increasingly focused on becoming providers of wireless health care products and services.

Wireless health care protocols, which industry insiders also call mobile health or mHealth, promise to make home-health technology more user-friendly, portable and immediate. The market ranges from text messaging services that tell patients when to take their medication to implants that monitor heart patients. These mHealth products have the potential to improve health results while saving patients and the health system money, and expanding access to health care. Wireless health care also appears to be a major source of new growth for the industry.

By 2014, Americans will use about 5.2 million wireless health-monitoring devices, according to a forecast from ABI Research, which tracks mobile technology trends. The mHealth market is projected to more than triple to \$9.6

billion in 2012 from \$2.7 billion in 2007, according to another study from Kalorama Information Inc. Mobile providers are joining a competitive field with medical equipment companies, such as Siemens, GE Healthcare and chipmakers like Intel that already are developing remote monitoring devices and health applications for mobile phones as patient care shifts from the hospital to the home.

However, some wireless providers believe the way to build business is to partner with medical equipment makers. For example, GE and Sprint have joined forces to offer hospitals such services. GE's Carescape software allows the secure monitoring of patients' health via mobile phones, as does rival software from Airstrip. Meanwhile, Orange struck a deal with Italian medical device company Sorin Group to develop pacemakers and defibrillators that transmit data on a patient's heart rhythms to the doctor without the patient leaving the home. In addition to partnering with equipment makers, some wireless providers are collecting clinical evidence to demonstrate that mHealth can save money so that insurance companies and the government will cover mobile costs. One example is t+Medical, which has conducted 20 clinical trials with health care providers in the United States, the United Kingdom and Dubai, according to Bloomberg Businessweek. Bloomberg reported that a Bluetooth-enabled glucose meter used in one trial helped to improve blood sugar levels of diabetes patients and expanded how many patients could be monitored.

According to a recent article in the Economist, mHealth is changing health care in developing countries as well as developed ones. Paul Meyer of Voxiva, an American technology firm that has started mHealth in Rwanda and Peru among other places, told the Economist that such schemes have been so successful in the developing world that they are now being adopted in the developed world. His firm has helped the federal government with its recent launch of Text4Baby, a public health campaign to educate pregnant mothers who receive free text messages with medical advice that is expected to become the biggest such effort worldwide.

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### **FCC Approves Certain Exclusive Arrangements for MDUs**

In its recently released Second Report & Order, the FCC again addressed questions regarding relationships between multichannel video programming distributors (MVPD) and owners of multiple dwelling unit (MDU) buildings. Building on its most recent decision in 2008, the FCC examined the question of whether two other types of agreements are permissible: bulk billing arrangements and exclusive marketing arrangements. Under bulk billing agreements, an MVPD charges a significantly lower rate if the MDU pays for service on each unit, regardless of actual take rates. The FCC concluded that the benefit to consumers in such arrangements outweighed any anti-competitive impact and ruled such agreements permissible. In the case of exclusive marketing arrangements – such as one where a single MVPD is permitted to distribute fliers in the MDU – the FCC determined that such arrangements did not prevent a competitive MDU from serving the MDU and therefore allowed such arrangements.

In its First Order, which became effective July 14, 2008, the FCC prohibited cable operators from requiring exclusivity as a condition of providing video service to certain residential environments. The FCC banned video exclusivity as applied to cable operators and local exchange carriers who offer video service, but not as applied to private cable operators (PCOs) or direct broadcast satellite (DBS) companies such as DirecTV and EchoStar. The FCC found that cable operators are primarily responsible for newly executed exclusivity clauses for video services and that such exclusivity impedes competition and consumer choice for multi-channel video programming. The FCC also banned video exclusivity as applied to a variety of residential environments including apartment buildings, condominiums, cooperatives, gated communities and mobile home parks. The ban does not apply to time shares, academic campuses and dorms, military bases, hotels, prisons, jails, hospitals, or assisted living facilities. In these environments, cable operators and local exchange carriers who offer video service can, apparently, continue to insist on exclusivity as a condition of providing video service. The FCC banned exclusivity clauses for video service in new contracts, and enforcement of such clauses in existing contracts. The FCC also banned exclusivity as applied to cable services, and any other services (data and voice) that are offered in combination with the cable service. As a consequence, cable operators cannot insist upon exclusivity for "triple-play" contracts but they can, seemingly, enforce exclusivity provisions in contracts for stand-alone voice or data service.

Previously in 2008, the FCC prohibited common carriers, such as local exchange carriers, from entering into or enforcing exclusive “access” clauses in communications contracts to serve residential multi-tenant environments. These exclusive access clauses are an impediment to competition because they seek to prevent other common carriers from accessing and providing service to the same residential environments. This decision expanded on an FCC order from years ago that prohibits the same kind of exclusive access clauses in contracts for communications services to commercial multi-tenant environments.

The Commission acknowledged in the July 2008 Order that there has been a shift from stand-alone services (telephone, cable, Internet) to service bundles and a dramatic growth in the number of triple-play service offerings. Consumers are increasingly using the same facilities to receive video, voice and data services. As a result of the three different exclusivity bans, it is nearly inconceivable that cable operators and common carriers could insist upon exclusivity as a condition of offering triple-play services in most multi-tenant environments (certain residential exceptions are noted above). However, it appears that broadband service providers that are not cable companies or common carriers still have the ability to enter into exclusive triple-play contracts for residential and commercial environments.

With certain limited apparent carve outs for exclusivity and the recent administration’s emphasis on reducing barriers to competition, the FCC will likely continue to examine how far they should impose exclusivity prohibitions.

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### **National Broadband Plan: Connecting America**

The FCC recently released and presented to Congress its [National Broadband Plan](#). There are interesting proposals and potential business opportunities throughout. The Plan sets the agenda for the Commission for the next 10 years on an array of issues, some of which Congress will need to address. Notably, the Plan adopts Congressman Rick Boucher’s recommendation that the FCC set a 2015 milestone for 100 million households to have affordable broadband access to 50 Mbps downstream and 20 Mbps upstream.

There is a heavy emphasis in the Plan on the promise of wireless broadband, particularly mobile wireless broadband, which the Commission believes will drive improved broadband availability and access. There are several new initiatives including the idea of reclaiming broadcast spectrum to be used for wireless broadband, implementing incentive auctions to encourage incumbents to relinquish spectrum for wireless broadband, identifying 500 MHz of new spectrum that can be made available for wireless broadband (300 MHz to be made available in five years), and advancing the ability of viewers to use their set top boxes to access broadband content.

There also are recommendations related to improved access to infrastructure, and recommendations for broadband innovation that will improve healthcare, education, energy efficiency, government performance and cybersecurity. Improving access to broadband for rural areas and on tribal lands was a consistent theme throughout. In addition, the Plan tries to begin addressing long-stalled issues in front of the Commission such as reforming the Universal Service Fund to support universal broadband through the Connect America Fund, which will repurpose funding from the USF High-Cost programs, and the reduction of access charges for intercarrier compensation.

The report explicitly asks Congress for additional financial resources for a number of broadband initiatives, including building a public safety network. While extensive, the precise impact of the Plan on consumers and companies will depend largely on the details that are developed in the numerous proceedings that the FCC will initiate in coming weeks and months. We would be happy to talk with you about the Plan in more detail, and we encourage you to weigh in on any issues of interest to you. We will keep you informed about the comment cycles. Please call us if you have any questions or if you are interested in receiving our summary of the Plan.

## National Broadband Plan Initiatives Front and Center at April Open Meeting

The FCC will hold an open meeting on April 21, 2010 at which the Commissioners will vote on several recommendations from its National Broadband Plan including USF reform, mobile wireless roaming and set-top device/CableCard reform. The following items are on the FCC's open meeting agenda:

- **USF:** A Notice of Proposed Rulemaking that proposes reforms to the existing High-Cost support program to identify funds that can be repurposed for broadband, and a Notice of Inquiry that seeks comment on adopting a model to determine efficient and targeted support levels for broadband deployment in high-cost areas.
- **Set-Top Box/CableCard Reform:** A Notice of Inquiry seeking comment on best approaches to assure the commercial availability of smart video devices and other equipment used to access the services of multichannel video programming distributors (MVPD). This item seeks to standardized interfaces that allow traditional TV and Internet video services to work across MVPD platforms. A Notice of Proposed Rulemaking that proposes changes to the CableCard rules for set-top boxes used with cable services, to improve the operation of that framework pending the development of a successor framework. The Plan recommended new CableCard rules by fall of this year.
- **Roaming:** An Order implementing rules to ensure the availability of reasonable automatic roaming arrangements for voice service, which could eliminate in-market exclusions, and a Further Notice of Proposed Rulemaking seeking comment on roaming arrangements for mobile broadband services.
- **Survivability:** A Notice of Inquiry seeking comment on the present state of survivability in broadband networks and potential measures to reduce vulnerability to network failures.
- **Cybersecurity:** A Notice of Inquiry seeking comment on whether the Commission should establish a voluntary program under which participating communications service providers would be certified by the FCC or a third party for adherence to cybersecurity objectives and/or practices.

In addition to these items, and to implement its recommendations from the National Broadband Plan, the FCC has released a 2010 agenda of key broadband action items. The agenda announces the purpose and timing of 61 rulemakings and proceedings as recommended in the Plan, encompassed in four key goals outlined below.

- **Promote World-Leading Mobile Broadband** by making an additional 500 megahertz of spectrum available for mobile broadband within the next 10 years, increase opportunities for unlicensed devices, expand incentives to repurpose spectrum to higher-valued uses, and improving the transparency of spectrum allocation and utilization.
  - Q2 Action Agenda Items include:
    - Mobile Roaming Order and FNPRM
    - Strategic Spectrum Plan and Triennial Assessment
    - 2.3 GHz WCS/SDARS Order
    - D Block Order and NPRM
  - Q3 Action Agenda Items include:
    - AWS Band Analysis
    - Spectrum Sharing/Wireless Backhaul NPRM/NOI
    - Opportunity Use of Spectrum NPRM
    - TV White Spaces Opinion & Order
    - MSS NPRM
    - Broadcast TV Spectrum Innovation NPRM
  - Q4 Action Agenda Items include:
    - AWS Potential Order
    - Secondary Markets Internal Review
    - Spectrum Dashboard 2.0
    - Recommendation regarding Contiguous Unlicensed Spectrum Proceeding
    - Experimental Licensing NPRM
- **Accelerate Universal Broadband Access and Adoption** by transforming the Universal Service Fund over the next ten years to support broadband service, upgrading the E-rate program to make broadband more accessible, reform and upgrade the Rural Health Care Program to connect more public health

facilities to high-speed Internet facilities and to foster telemedicine applications and services, create a Connect America Fund to extend broadband service to unserved areas, and create a Mobility Fund to bring all states to a baseline level of “3G” wireless coverage.

- Q2 Action Agenda Items include:
  - USF Reform NPRM and NOI
  - Lifeline and Low-Income Joint Board Referral Order
  - E-Rate FY2011 NPRM
  - USF Merger Commitments
  - Lifeline Pilot Roundtable
  - FCC/FDA Workshop and Public Notice on Converged Devices
  - Launch of FCC Office of Native American Affairs
  - FCC-Native Nations Broadband Task Force
- Q3 Action Agenda Items include:
  - Mobility Fund NPRM
  - HAC Second Report and Order/FNPRM
  - Rural Health Care Reform NPRM
  - Lifeline Flexibility NPRM
  - Establish Accessibility and Innovation Forum
  - Real-Time Text NOI
  - E-Rate FY2011 Order
- Q4 Action Agenda Items include:
  - Spectrum on Tribal Lands NPRM
  - USF Transformation NPRM
  - Intercarrier Compensation NPRM
  - USF Contributions NPRM
  - Real-Time Text NPRM
  - Internet Video and Device Accessibility NOI
- **Foster Competition and Maximize Consumer Benefits** by enhancing broadband and marketplace choices for small businesses and mobile providers, improving consumer disclosures and FCC data collection, and fulfill a Congressional mandate to ensure that video navigation devices, such as smart video devices, are available to consumers in the marketplace.
  - Q2 Action Agenda Items include:
    - Mobile Wireless Competition Report
    - Pole Attachments Order and FNPRM
    - Small Business Broadband & Wholesale Competition Public Notice
    - CableCARD NPRM
    - Smart Video Devices NOI
    - Launch of Technical Advisory Group on Speed and Performance
    - Launch of Speed and Performance Measurement Program
    - Special Access Workshop
  - Q3 Action Agenda Items include:
    - Interconnection Clarification Order
    - Rights-of-Way Task Force
    - Special Access NPRM
    - Transparency & Disclosure NPRM
  - Q4 Action Agenda Items include:
    - Small Business Broadband & Wholesale Competition NOI
    - Smart Video Devices NPRM
    - Broadband Data NPRM
- **Advance Robust and Secure Public Safety Communications Networks** by facilitating the creation of a nationwide interoperable public safety wireless broadband network and assisting a transition to next-generation 911 and alerting systems.
  - Q2 Action Agenda Items include:
    - Public Safety Roaming and Priority Access NPRM
    - D Block Order and NPRM (same proceeding as above)
    - 700 MHz Waiver Petitions
    - ERIC Public Safety Interoperability Order

- Cybersecurity Certification NOI
- Survivability NOI
- Service Outage and Homeland Security Workshop
- Q3 Action Agenda Items include:
  - 700 MHz Public Safety Order/FNPRM
  - Location Accuracy FNPRM
- Q4 Action Agenda Items include:
  - NG 911 NOI
  - Back-Up Power NOI
  - Service Outage and Homeland Security NPRM

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## **Net Neutrality Eclipses Senate Hearing on National Broadband Plan**

An April 14 Senate Commerce Committee hearing to examine the National Broadband Plan turned into a debate on net neutrality.

Senate Commerce Committee Chairman Jay Rockefeller, D-WV, told FCC Chairman Julius Genachowski to do whatever it takes to enact net neutrality rules. Rockefeller said he would revamp the communications laws if necessary. "If there is a need to rewrite the law to provide consumers, the FCC and industry with a new framework, I will take that task on," Rockefeller said during the hearing.

Senator Byron Dorgan, D-ND, also called on Genachowski to classify Internet access under Title II common carrier regulations, while Senators Mike Johanns, R-NE, and Kay Bailey Hutchison, R-TX, the committee's ranking member, said that the FCC does not have the authority from Congress to regulate the Internet.

Throughout the questioning, Genachowski did not reveal whether he plans to apply Title II to the Internet, but said that reviews are underway at the FCC, and that Title II regulation is being considered, although nothing has been decided.

Genachowski also told committee members that the FCC still has the authority to implement most of the National Broadband Plan. Genachowski said that the agency is moving as fast as it can, recently releasing a timeline for more than 60 rulemaking procedures and comment periods.

Rockefeller responded that collecting comments is not enough. "When are we going to see things happening?" he asked. The plan's recommendations include the phrase "Congress should..." more than 139 times, Rockefeller points out. "That begs the question, what are the priorities for the FCC coming out of this plan?"

Genachowski repeated the themes he has discussed in recent months. "I believe that the Communications Act—as amended in 1996—enables the Commission to, for example, reform universal service to connect everyone to broadband communications, including in rural areas and Native American communities; help connect schools and rural health clinics to broadband; take steps to ensure that we lead the world in mobile; promote competition; support robust use of broadband by small businesses to drive productivity, growth, job creation and ongoing innovation; protect and empower all consumers of broadband communications, including thorough transparency and disclosure to help make the market work; safeguard consumer privacy; work to increase broadband adoption in all communities and ensure fair access for people with disabilities; help protect broadband communications networks against cyber attack and other disasters; and ensure that all broadband users can reach 911 in an emergency."

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## **Spectrum Inventory, Caller ID Bills Clear House**

The House cleared a bill on April 14 that would require federal regulators to inventory the nation's radio spectrum.

H.R. 3125, sponsored by Rep. Henry Waxman, D-CA, passed the House by a 394-18 vote. A similar measure proposed by Sens. Olympia Snowe, R-ME, and John Kerry, D-MA, is pending in the Senate.

The House bill, which unanimously passed the House Energy and Commerce Committee that Waxman chairs last month, would require the FCC and NTIA to inventory spectrum use between 225 MHz and 3.7 GHz at a minimum, and to extend the inventory to 10 GHz unless doing so becomes too burdensome.

“With the benefit of this inventory, we can make informed, rational and deliberate decisions about how our spectrum is used in future decades to benefit the American people, American businesses and American innovation,” Waxman said on the House floor.

The House bill requires the FCC and NTIA to report to Congress on which spectrum, if any, should be reallocated or otherwise made available for shared access and why.

In addition to the spectrum inventory bill, House lawmakers also passed the Truth in Caller ID Act. H.R. 1258, sponsored by Eliot Engel, D-NY, blocks caller-ID spoofing that transmits misleading or inaccurate caller ID information with the intent to defraud or deceive. The bill would not prohibit caller ID blocking.

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### **Court Vacates FCC’s Net Neutrality Decision**

Last week, the U.S. Court of Appeals for the District of Columbia [vacated](#) the FCC’s Comcast Corporation/BitTorrent decision. The Court concluded that the FCC did not have “any express statutory delegation of authority” to stop Comcast’s network management practices. One possible result of the decision may be that the FCC will reclassify Internet access services as Title II, Common Carrier services, over which the FCC has jurisdiction, providing them with grounds to more actively regulate Internet-based business activities.

Chairman Genachowski noted in the FCC’s Broadband Plan Agenda that the Comcast/BitTorrent decision does not change the FCC’s broadband policy goals, or the ultimate authority of the FCC to act to achieve those goals. FCC Spokesperson Jen Howard noted the following in the wake of the decision: “The FCC is firmly committed to promoting an open Internet and to policies that will bring the enormous benefits of broadband to all Americans. It will rest these policies – all of which will be designed to foster innovation and investment while protecting and empowering consumers – on a solid legal foundation. Today’s court decision invalidated the prior Commission’s approach to preserving an open Internet. But the Court in no way disagreed with the importance of preserving a free and open Internet; nor did it close the door to other methods for achieving this important end.”

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### **FCC Seeks Comment on Its Proposed New WCS Build-out Requirements and Technical Rules**

The FCC seeks [comment](#) on whether it should revise its build-out requirements for Wireless Communications Service (WCS) licensees in the 2.3 GHz band amid technical rule changes the agency is expected to adopt soon. Comments are due April 21, 2010 and reply comments are due May 3, 2010. The FCC’s current buildout deadline for WCS spectrum, using long-established safe harbors for the band, is July 21, 2010.

In a separate public notice released on April 2, the FCC sought comment on the draft interference rules for WCS and Satellite Digital Audio Radio Service (SDARS) licensees that both use the 2.3 GHz spectrum. Comments are due by April 23. The Commission has been trying to reach resolution on these rules for 13 years. The draft rules include provisions to minimize the risk of harmful interference between SDARS and WCS operations. The draft rules would, among other proposals:

- Create a guard band of 2.5 megahertz on each side of the SDARS spectrum in which mobile operations would not be permitted to buffer the two services;
- Reduce WCS out-of-band emissions in steps to a level less than that of nearly any other mobile devices;
- Place caps on the peak-to-average power ratio and duty cycle of the WCS transmitters;
- Require WCS licensees to correct harmful interference to SDARS if it occurs;
- Codify technical and licensing provisions for SDARS terrestrial repeaters now operating under grants of special temporary authority. Blanket licensing is allowed for SDARS terrestrial repeaters that

comply with the draft rules under a single earth station license similar to the licensing regime in place for Very Small Aperture Terminal (VSAT) satellite earth station networks. Terrestrial repeaters that do not comply with the draft rules would be subject to site-by-site licensing; and

- Require coordination in areas near to aeronautical telemetry receiver sites.

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## FCC Seeks Comment on the E-Rate Program's Lowest Corresponding Price Rule

The United States Telecom Association and CTIA – The Wireless Association (Petitioners) filed a [petition](#) for declaratory ruling with the FCC seeking clarification on the E-rate Program's lowest corresponding price rule, which requires service providers to not charge schools, school districts, libraries, library consortia or consortia containing any of these entities a price greater than the lowest price the service provider charges other customers without a finding from the FCC that the lowest corresponding price is not compensatory. The Petitioners request the following clarifications:

1. the lowest corresponding price rule only applies to competitive bids submitted by a provider in response to a Form 470;
2. the lowest corresponding price obligation is not a continuing obligation during the term of the contract;
3. there are no FCC rules detailing how a service provider is to comply with the lowest corresponding price rule;
4. individual services within a bundle do not need to be individually compared and priced; and
5. in a price challenge, the challenger (i.e., the school or library) is required to demonstrate a prima facie case that the bid is not the lowest corresponding price.

The FCC is seeking comment on the Petitioners' request. Comments are due May 14, 2010 and reply comments are due June 1, 2010.

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## Exploring Privacy FTC Roundtable Discussion

On March 17, the Federal Trade Commission (FTC) held a public roundtable on the impact of information and technological innovation on consumer privacy. The discussion brought multiple stakeholders – industry, academics, government and consumers – to the table to assess frameworks and methods for safeguarding consumer privacy in the digital age. This third roundtable focused on protecting sensitive consumer data, particularly health information. Separate sessions were held on Internet architecture and privacy; safeguarding health and other sensitive data; and reconciling the benefits and risks posed by new technologies.

Transparency and accountability were the key themes of the roundtable. Participants addressed the need for clearer policies, and rules governing data collection so that consumers can better understand the nature of information that is gathered about them and how it is used. Some commentators called for baseline standards for protecting consumer data, rather than allowing corporate privacy policies to dictate how information is used and disseminated. Panelists repeatedly stated that individuals are in the best place to judge the risks and benefits of sharing personal information – consumers simply need robust tools to make educated decisions about their choices.

Many third-party companies that manage or obtain consumer health data are not subject to HIPAA regulations. Some panelists expressed concern about extending HIPAA to apply to these companies. However, nearly all agreed that there is a need for more regulations governing how these entities handle personal health information. The FTC currently regulates non-HIPAA privacy practices under its general authority over unfair and deceptive acts and practices, which panelists argued are insufficient. Deborah Peel from Patient Privacy Rights, the only health care professional on any of the panels, observed that some people decline medical treatment because they do not want their health information “out there.” Panelists indicated dissatisfaction with the notice and choice mechanisms for privacy protection.

The FTC will release a summary of issues based on the comments filed in this proceeding.

**Rural Health Care Pilot Program Proposals Released**

To date, 50 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 ones below were most recently posted to USAC’s Web site. Participants must wait at least 28 days before entering a contract date with a vendor. Please contact us for more information about these opportunities.

<b>Applicant</b>	<b>Location</b>	<b>Date Posted</b>	<b>Allowable Contract Date</b>
Pacific Broadband Telehealth Demonstration Project	Hawaii American Samoa Guam	11/18/2009	12/16/2009
Illinois Rural HealthNet Consortium	Illinois	12/10/2009	1/7/2010
Missouri Telehealth Network	Missouri	12/11/2009	1/8/2010
Health Care Research & Education Network	North Dakota	3/22/2010	4/19/2010
Southwest Telehealth Access Grid (RFP 1)	New Mexico Colorado Texas Arizona California Nevada Utah	1/21/2010	2/18/2010
Southwest Telehealth Access Grid (RFP 2)	New Mexico Colorado Texas Arizona California Nevada Utah	3/9/2010	4/6/2010
Southwest Telehealth Access Grid (RFP 3)	New Mexico Colorado Texas Arizona California Nevada Utah	3/22/2010	4/19/2010
Oregon Health Network (RFP 3)	Oregon	11/20/2009	12/18/2009
Oregon Health Network (RFP 4)	Oregon	2/24/2010	3/24/2010
Oregon Health Network (RFP 5)	Oregon	3/29/2010	4/26/2010
Oregon Health Network (RFP 6)	Oregon	2/23/2010	3/23/2010
West Virginia Telehealth Alliance (RFP 2)	Ohio Virginia West Virginia	1/20/2010	2/17/2010
West Virginia Telehealth Alliance (RFP 3)	Ohio Virginia West Virginia	3/25/2010	4/22/2010

## Many Stimulus Applications Filed; Not Many Applicants Receiving Awards

NTIA announced last week that it received 867 applications requesting \$11 billion in funding for proposed broadband projects nationwide from the second round of broadband stimulus funding. After the first round of funding, NTIA and RUS reportedly received nearly 2,200 applications requesting \$28 billion in funding for all 50 states, territories and the District of Columbia from BIP and BTOP. The Recovery Act only provided \$7.2 billion in funding for BIP and BTOP. RUS has not yet announced the number of applications it received in the second funding round. But, based on NTIA's applications, it appears there was less interest in the second round of broadband stimulus funding than the first round. Nevertheless, the chart below reveals there is a significant amount of uncommitted funds from Round 1.

Round 1	Number of Awards	Allocated Funds	Awarded Funds	Remaining Funds
<b>NTIA</b>	73	\$1.6 billion	\$1.25 billion	\$350 million
<b>RUS</b>	65	\$2.4 billion	\$1 billion	\$1.4 billion
<b>Total</b>	138	\$4 billion	\$2.25 billion	\$1.75 billion

From the first round of broadband stimulus funding, NTIA still has \$276 million remaining for infrastructure projects and almost \$69 million remaining for sustainable broadband projects, but awarded more than its allocated \$50 million for public computer center awards. NTIA said some Round 1 applications still remain in consideration for funding. RUS still has \$900 million remaining for last mile infrastructure projects and \$720 million for middle mile infrastructure projects. RUS made its last Round 1 award at the end of March. Any uncommitted funds from Round 1 will be added to the funds allocated for Round 2.

NTIA allocated \$2.6 billion for Round 2 projects including \$2.35 billion for infrastructure projects, \$150 million for public computer center projects, and \$100 million for sustainable broadband projects. RUS allocated \$2.2 billion for Round 2 projects including \$1.7 billion for last mile projects, \$300 million for middle mile projects, and \$100 million for satellite, rural library broadband and technical assistance projects. The Recovery Act requires that all broadband stimulus funds be committed by September 30, 2010.

## Lawmakers to Tackle Satellite Bill

Congress is expected to soon address the latest concerns about renewing the nation's satellite television law governing retransmission of broadcast signals. The key debate now before Congress is how long to extend the law and what impact the extension will have on the budget deficit.

The law, which was set to expire on December 31, 2009, governs the retransmission of broadcast signals by DirecTV and Dish networks. The bill reauthorizes the license that allows satellite subscribers who cannot get a viewable signal from their in-market broadcast affiliate to get an out-of-market version. Congress has extended the law three times in recent months with the latest extension granted through April 30.

In early March, the Senate passed a measure attached to a jobs bill that renews the law for another five years, but the Congressional Budget Office (CBO) indicated that a five-year renewal would pose a problem by increasing the deficit, thereby triggering pay-as-you-go (pay/go) rules that require legislation to be deficit neutral. To deal with the budgetary problem, the Senate passed nearly identical legislation that extends the law by 10 years in order to make the legislation deficit neutral.

Under the five-year proposal, CBO said there would be a budgetary problem due to the way copyright fees required under the law are collected and held in escrow by the government for two to three years before being dispersed to license holders with interest. Apparently, due to an accounting issue, the bill at five years has the government paying out more than it would be taking in, which would need to be offset somewhere else in the

budget under the pay/go rule. A separate scoring by CBO of the 10-year extension finds that there would be no budgetary impact because the copyright disbursements over five years would wash out over a decade.

Some key members of the satellite reauthorization process, including Senate Judiciary Committee Chairman Patrick Leahy, D-VT, have indicated that the 10-year reauthorization is not their preferred choice. "Since the inception of the distant signal license, the license has been reauthorized for five-year periods, giving all stakeholders an opportunity to revisit it and Congress the opportunity to improve it," Leahy said recently. Leahy urged the House to enact a five-year extension, despite CBO's analysis.

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