

Patton Boggs TechComm Industry Update
February 26, 2010

FTC Investigates Privacy and Internet Security Breaches

The Federal Trade Commission (FTC) recently sent letters to nearly 100 organizations notifying them of security breaches in which sensitive data about customers or employees was compromised and posted on peer-to-peer file sharing networks. The FTC is concerned that the information may be used to commit theft or fraud. In some letters, the FTC states that the organization's failure to prevent the security breach may be a violation of the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act and the FTC Act because [reasonable efforts](#) were not used to prevent the unauthorized sharing of personal information. Many companies are unaware of the obligations imposed on them under these laws, or have not adequately assessed the risk of unauthorized data sharing that is presented by some advanced technologies. For more information, see <http://www.ftc.gov/opa/2010/02/p2palert.shtm>. If you have any questions about these privacy or data security laws, or received a letter from the FTC, please contact us.

In a separate matter, ControlScan and the FTC [settled](#) their pending lawsuit in which the FTC alleged that ControlScan's website security verification services were inadequate because ControlScan misled consumers about how often it monitors websites and the steps it takes to verify website privacy and security practices. The company's founder and former Chief Executive Officer agreed to pay \$102,000 in a separate settlement.

FCC Hopes to Recover 500 MHz of Spectrum for Mobile Broadband over the Next Decade

In a speech at the New American Foundation, Federal Communications Commission (FCC) Chairman Julius Genachowski said that the National Broadband Plan will recommend recovering and reallocating spectrum, updating the FCC's 20th century spectrum policies to reflect 21st century technologies and opportunities, removing barriers to broadband build-out and lowering the cost of deployment. The Chairman said "no area of the broadband ecosystem holds more promise for transformational innovation than mobile." As such, the National Broadband Plan will task the FCC to work with the National Telecommunications and Information Administration (NTIA) to free up 500 megahertz of spectrum over the next 10 years. The Plan will propose a "Mobile Future Auction" that would allow existing spectrum licensees, such as TV broadcasters, to voluntarily relinquish spectrum in exchange for a share of auction proceeds and allow spectrum sharing and other spectrum efficiency measures. The Plan will also encourage innovative ways of using spectrum to encourage the development of new technologies and new spectrum policy models.

NTIA and RUS Release New Round 1 Broadband Stimulus Awards

NTIA and Rural Utilities Services (RUS) continue to announce awards from Round 1 broadband stimulus. To date, RUS has made 33 awards in 23 states, totaling approximately \$630 million in grants and loans. Of these awards, RUS has made 28 last mile awards in Alabama, Alaska, Colorado, Iowa, Kansas, Kentucky, Louisiana,

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Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Mexico, New York, North Dakota, Oklahoma, Oregon, Tennessee, Texas and Virginia; and 5 middle mile awards in Alaska, Florida, Pennsylvania, Ohio and Virginia. NTIA has made 32 awards in 26 states, totaling \$626 million in grants to Round 1 applicants. Of these, NTIA has made 17 middle mile grants in Florida, Georgia, Illinois, Indiana, Maine, Michigan, New Mexico, New York, North Carolina, Pennsylvania, South Dakota, Texas, Utah, Vermont, Virginia, West Virginia, and Wisconsin; 4 sustainable broadband adoption grants in Massachusetts, New Mexico, Washington and West Virginia; and 11 public computer center grants in Arizona, California, Louisiana, Massachusetts, Michigan, Minnesota, New York, Rhode Island, South Carolina and Washington.

The agencies' failure to process all applications from Round 1 before beginning Round 2 is causing problems for applicants since the agencies cannot grant funding for the same project type (ex. middle mile, Last mile) in the same geographic areas. To give applicants sufficient time to consider whether to apply for Round 2, RUS intends to send rejection notices via email this week. These emails will not contain details about why applications were rejected. Rather, RUS will follow up these emails in the coming weeks with a letter to applicants that will "detail" why a project was rejected. NTIA intends to continue making awards for the next month. To provide some guidance to Round 2 applicants about Round 1 awards, NTIA intends to post this week a list of applications that remain pending. Unfortunately, not all applicants will know whether their applications have been granted by the close of the Round 2 window.

The House Energy and Commerce Committee's Subcommittee on Communications, Technology and the Internet has scheduled an oversight hearing on broadband stimulus implementation for March 4th. NTIA and RUS began accepting applications for the second round of broadband stimulus funding on February 16th. Applications for round 2 are due March 15, 2010 at 5 p.m. ET. Please contact us if you'd like a complete list of all broadband stimulus awards made to date.

House Judiciary Committee Examines Comcast-NBC Universal Merger

The House Judiciary Committee held a hearing Feb. 25 to explore the potential anticompetitive impact of Comcast Corp.'s acquisition of NBC Universal. Chairman John Conyers (D-MI) opened the hearing by emphasizing the state of the economy and job losses. Conyers expressed his concern about the number of big media consolidations in recent years and noted that there are cases where vertical mergers are more harmful than horizontal mergers. The Chairman also indicated his interest in examining the role of Internet versus cable video distribution more closely after today's hearing. Finally, Conyers noted that parts of Michigan are experiencing 30 percent unemployment now, and that additional job cuts in the wake of the merger would be felt acutely in his state.

Many committee members focused on labor issues and competition. Some questions focused on the impact the merged entity may have on the emerging online video market. Also, at the urging of several lawmakers, particularly Rep. Sheila Jackson Lee (D-TX), Comcast's Chairman and CEO Brian Roberts and NBC's President and CEO Jeff Zucker agreed to meet with the Communications Workers of America (CWA) regarding concerns about job cuts resulting from the merger and past promises of Comcast that CWA says went unmet. Zucker and Roberts also agreed to meet the Independent Film and Television Alliance to discuss concerns about independent programmers being able to retain ownership over content that the newly merged entity would distribute.

The panel is the third congressional committee to focus on the merger. More oversight hearings are expected in coming months as regulators at the Justice Department and the FCC review its impact on competition and the public interest.

FCC Announces 16 New Rural Health Care Pilot Projects

The FCC's Rural Health Care Pilot Program announced the funding of an additional 16 broadband telehealth networks that will link hundreds of hospitals regionally in Iowa, Louisiana, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New York, Ohio, Oregon, Pennsylvania, South Dakota, Vermont, Virginia, West Virginia and Wisconsin. The 16 projects are eligible to receive up to a combined \$145 million in reimbursement for deployment of regional telehealth networks that will provide critical, high-speed information links that can save lives and reduce the cost of health care in their rural communities:

- **Geisinger Health System (Pennsylvania) (\$902 K)** – Fifteen health care providers will be connected to existing broadband network structures in Pennsylvania to enable providers to access and use high-speed Internet bandwidth connections to transfer radiographs and other medical information and to support electronic record systems.
- **Illinois Rural HealthNet Consortium (\$21.06 M)** – This statewide network will serve 87 health care facilities. More than 95 percent of the connected locations will have connectivity at speeds ranging from 100 Mbps to 1 Gbps.
- **Iowa Rural Health Telecommunications Program (Iowa, Nebraska, South Dakota) (\$9.95 M)** – This project will support creation of a statewide broadband network that will link 100 health care facilities in Iowa, Nebraska and South Dakota at speeds of 1 Gbps.
- **Louisiana Department of Health and Hospitals (\$15.9 million)** – This broadband network will link 100 facilities, about 47 of which are rural, to government research institutions, enable patient access to medical specialists, and provide coordinated crisis response.
- **Michigan Public Health Institute (\$20.91 M)** – New network infrastructure will connect existing state health networks to each other and to Internet2 at speeds ranging from 1.5 to 100 Mbps. The network will link approximately 390 facilities in Michigan primarily in rural, underserved areas of the state.
- **Missouri Telehealth Network (\$2.38 M)** – This initiative will support the creation of a statewide dedicated telehealth broadband network for expanded telemedicine services, including high-definition video streaming capabilities. The network will support telehealth services for approximately 160 health care facilities throughout Missouri.
- **New England Telehealth Consortium (Maine, Vermont, New Hampshire) (\$24.69 M)** – A multi-state telehealth network will deliver remote trauma consultation and expansive telemedicine by linking approximately 500 primarily rural health care facilities – including hospitals, behavioral health sites, correctional facility clinics, and community health care centers – in Vermont, New Hampshire, and Maine to urban hospitals and universities in New England.
- **North Country Telemedicine Project (New York) (\$1.99 M)** – About 30 health care facilities in a low-income, sparsely populated region of northern New York will be connected to an existing regional fiber ring and to Internet2, a dedicated nationwide backbone, at speeds ranging from 10 to 100 Mbps.
- **Northeast HealthNet (Pennsylvania, New York) (\$1.70 M)** – This broadband network will facilitate real-time information sharing among approximately 38 mostly rural health care facilities, and thousands of specialists in Pennsylvania and New York State, to provide remote diagnosis, treatment, and monitoring of patients with chronic and acute medical conditions.
- **Northeast Ohio Regional Health Information Organization (\$11.29 M)** – This project will expand an existing network to connect approximately 19 medical facilities in 22 counties at speeds ranging from 100 Mbps for sites connected via wireless and 1 Gbps for sites connected with fiber.

- **Northwestern Pennsylvania Telemedicine Initiative (\$352 K)** – This project will improve access to specialty medical services at five facilities, including two prisons. Its goals include using telemedicine to encourage medical professionals to establish services and remain in rural communities.
- **Oregon Health Network (\$20.18 M)** – This project will support a comprehensive broadband telehealth network that will connect hospitals, clinics, and community colleges throughout Oregon. The network will support highly efficient broadband services for health care facilities and providers to share electronic health records, radiological images, video, and prescriptions, among other data sets.
- **Pennsylvania Mountains Healthcare Alliance (\$4.49 M)** – A broadband network of 12 hospitals in rural western Pennsylvania will provide telehealth services, specialty care, and telepharmacy in 18 counties. The network will provide a minimum of 10 Mbps service and connect with Internet2. The project merged with the Juniata Valley Network project in the Appalachian Mountains that will connect 79 facilities to enable telemedicine and school wellness programs, and will connect to Internet2 at speeds ranging from 7 to 100 Mbps.
- **Sanford Health Collaboration and Communication Channel (South Dakota, Iowa, Minnesota) (\$813 K)** – This project will link seven existing networks at speeds of up to 100 Mbps to access administrative services and connect educational institutions. Facilities served include the Aberdeen, S.D., area Indian Health Services.
- **St. Joseph's Hospital (Wisconsin) (\$655 K)** – This project will link two existing fiber systems in Chippewa Falls, Wisconsin, to St. Joseph's Hospital and two local community health clinics in order to support telehealth services.
- **West Virginia Telehealth Alliance (West Virginia, Virginia, Ohio) (\$8.4 M)** – This statewide network will connect 450 facilities in West Virginia, improving rural health centers' connectivity. The project targets regions with historically high concentrations of poor and elderly individuals with chronic medical conditions.

The FCC established the \$417 million pilot program to increase patient access to health care via telemedicine and support the transfer of electronic medical records, which will improve the quality of health care. Nationwide, 62 projects are eligible to receive pilot program funding for telehealth networks serving 6,000 health care facilities in 42 states and three U.S. territories, using broadband technology to bring state-of-the-art medical practices to isolated rural communities. More than one-third of the networks have received funding commitment letters. Another 21 projects have posted requests for proposals to select vendors to build out their broadband networks, but have not yet selected a vendor.

FCC Extends Rural Health Care Pilot Program by One Year

The FCC on Feb. 18 extended the deadline for participants in the Rural Health Care Pilot Program until June 30, 2011, to select a vendor and request a funding commitment. In its [Order](#), the FCC's Wireline Competition Bureau concluded that participants in the pilot program would not be able to meet the current June 30, 2010 deadline and, as a result, would not provide the full benefits of their projects to health care consumers in their projects' designated areas.

The one-year waiver of the deadline was granted in response to a request by 17 pilot program participants to extend the deadline. Many of the projects have experienced delays due to coordination with potential American Recovery and Reinvestment Act funding, or ongoing negotiations with vendors for network deployment.

Markey Introduces E-Rate 2.0 Pilot Programs; Proposes to Streamline E-Rate Applications

Rep. Edward Markey (D-MA) introduced legislation on Feb. 9 that would update the federal E-rate program to "Version 2.0" by creating three pilot programs to help low-income students use broadband service at home, extend funding to community colleges and Head Start facilities, and allow E-rate applications for discounted services for the use of e-books. The measure also seeks to streamline the E-rate application process.

"This critical bill will help narrow the digital divide by increasing the range of the latest telecommunication services and devices accessible to low-income students, including residential broadband services and e-books incorporated into students' classroom lessons," Markey said. Reps. Doris Matsui (D-CA) and Lois Capps (D-CA) are co-sponsors of the new legislation, H.R. 4619.

In addition to directing the FCC to implement the pilot programs, the legislation directs the FCC to consider the following modifications to the E-rate application process:

- The establishment of a multi-year application for Priority One services to allow applicants to submit funding requests only once every three years for recurring services (such as telephone and Internet access services);
- The use of an interactive Web site for communicating with applicants;
- The deployment of interactive technology tools, such as online application forms, as part of the application process to reduce paper-based communication and to improve the ability of applicants to receive clear and current information about their applications and the E-rate program.

The bill also would provide for inflation increases to the current \$2.25 billion cap on the E-rate program.

USF Contribution Factor Likely to Rise, Again

The Universal Service Administrative Company (USAC) projects that the size of the Universal Service Fund (USF) for the second quarter of 2010 will increase by \$74 million for the first quarter, to \$ 4.374 billion. The contribution factor changes quarterly and is increased or decreased depending on the needs of the Universal Service programs. This projected \$74 million increase will result in a minimum contribution factor of 14.6 percent for the second quarter of 2010, up from 14.1 percent for the first quarter of 2010 and up from 11.3 percent for the fourth quarter of 2009. The contribution factor has been on the rise, with the most growth in the low-income support mechanism which provides discounts on telephone installation and monthly telephone service to qualifying consumers.

FCC Sanctions After-Hours Public Access to School Computers

In an effort to broaden Internet access, the FCC on Feb. 18 unanimously approved public access to federally-funded computer terminals located in schools during after-school hours, weekends, holidays and the summer at each school's discretion. The public access initiative is temporary and would permit schools to be open to the public until June 30, 2011 unless the FCC makes the plan permanent.

The action was approved in conjunction with the FCC's upcoming national broadband plan, which will detail a strategy for achieving universal, affordable Internet access by 2020. FCC officials stressed that this plan would not require additional universal service funding.

Under the approach, schools that receive federal universal service funds that pay for education-related broadband connectivity could use the resources to assist the general population. The money is provided through the fund's so-called E-rate, or educational rate program, which Senate Commerce Chairman John (Jay) Rockefeller (D-WV) and Rep. Ed Markey (D-MA) were instrumental in crafting.

"These connections will be available to adults taking evening digital literacy courses, to unemployed workers looking for jobs posted online, to citizens using e-government services and for other uses that local schools believe will help their communities," FCC Chairman Julius Genachowski said.

Google to Build And Test Ultrafast Fiber Optic Broadband Network

Later this year, [Google](#) plans to construct and test an ultrafast, open, fiber-optic broadband network that will provide 50,000 to 500,000 people with gigabit per second Internet access. Google will build both middle mile and last mile facilities, including fiber to the home. In recent years, Google has fostered next-generation wireless networking by investing in wireless broadband operator Clearwire and pushing the FCC to open television "white spaces" to wireless devices. Google's broadband service will allow customers to choose from a variety of service providers.

Google is seeking community partners for its testbed project and has set a March 26 deadline for states, counties, and cities to contact Google.

NTIA Examines Challenges to Broadband Adoption and Access in "Digital Nation"

The NTIA released a new research report called "[Digital Nation: 21st Century America's Progress Toward Universal Broadband Internet Access](#)". In it, NTIA outlines the rapid growth of the Internet and broadband, discusses the disparate increases in adoption by certain demographic groups and geographic areas, and examines why some Americans do not have broadband Internet access at home.

NTIA found that U.S. broadband Internet connectivity by households has increased dramatically and broadband adoption at home has increased in almost all demographic groups, but demographic disparities among certain groups have persisted. Individuals with low incomes, seniors, minorities, less-educated individuals, non-family households (we assume this means single-person residences), and unemployed individuals tend to lag behind other groups in home broadband use. Not surprisingly, NTIA found that individuals in rural areas are less likely to use the Internet. Further, Blacks and Hispanics in rural areas are generally less likely to use broadband than their urban counterparts. The report demonstrates a substantial difference in home broadband penetration between urban and rural areas and this difference has persisted over time.

According to NTIA's report, 30 percent of all people do not use the Internet at all. Survey respondents cited that they do not need broadband or broadband is too expensive as the main reasons for not having broadband access at home. Regarding broadband adoption, survey respondents cited inadequate or no computer access as major obstacles. In rural areas, lack of availability is a larger contributing factor to lack of adoption than in urban areas.

NTIA based this report on data provided by the U.S. Census Bureau, as part of the Current Population Survey. The Census Bureau conducted this survey in October 2009, surveying approximately 54,000 households and 129,000 individuals. This is the eighth NTIA report of its kind.

FCC Previews the National Broadband Plan

The FCC released a [report](#) on key proposals which will be included in the National Broadband Plan. The FCC's report made recommendations on 7 national purpose objectives including health care, education, energy and the environment, government, public safety and homeland security, job training and small business. Some of the recommendations include:

- launching public-private partnerships to expand efforts to provide technology training for small and disadvantaged businesses;

- creating conditions for broader adoption and innovation in e-care technologies;
 - ensuring all health care providers have access to affordable broadband by transforming the Rural Health Care Program to subsidize both ongoing costs and network deployment, while expanding the definition of eligible providers;
 - upgrading the E-rate program to provide additional connectivity, flexibility and efficiency;
 - ensuring that broadband is integrated into the smart grid by promoting and improving commercial broadband networks, better coordinating and standardizing private utility networks and enabling partnerships with public safety networks;
 - enabling the construction and operation of an interoperable nationwide broadband wireless public safety network with appropriate capacity and resiliency; leveraging commercial technology; creating an Emergency Response Interoperability Center to ensure nationwide interoperability; and appropriating grant funding for network construction, operation and evolution; and
 - promoting innovation in the development and deployment of the next generation of 9-1-1 networks and emergency alerting systems by fully embracing broadband technologies and ensuring that coordination, jurisdictional, legal and funding impediments are avoided.
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FCC Seeks \$16 Billion for Interoperable Public Safety Network

FCC Chairman Julius Genachowski said he will ask Congress to spend up to \$16 billion in 10 years to build a nationwide, interoperable communications network for emergency responders. The wireless network would enable fire, rescue and police departments to share information, such as video from disaster scenes, and would eventually include voice communications. The proposal is part of the FCC's National Broadband Plan, to be issued at the FCC's March 16 meeting, the day before it is due to Congress.

The FCC estimates that \$16 billion in federal dollars would be needed for the network's construction and operation, with a greater federal commitment at the 10-year mark. Additional funding could come from local and state governments. James Barnett, Public Safety and Homeland Security Bureau Chief, said efforts are under way to communicate to lawmakers the importance of funding this project.

The network will be built using the existing 10 MHz of spectrum in the D-block already licensed for public safety broadband use in the 700 MHz band. "The plan envisions that public safety will be able to access not just the D block spectrum, but the entire 700 MHz band through roaming and priority access," Genachowski said.

The public safety community also had sought to acquire another 10 MHz of spectrum in the D block adjacent to the spectrum already licensed to public safety community. However, that spectrum would be slated for auction, Genachowski said. The public safety plan also includes creating an Emergency Response Interoperability Center at the FCC to establish better communications among the array of emergency workers, including hospitals.

Motorola to Spinoff Mobile Handset And Set Top Box Businesses

To focus on its profitable enterprise radio systems business, [Motorola](#) plans to spinoff its mobile handset and set top box businesses into a new, publicly-traded company by the first quarter of 2011 and to sell its wireless networking business for more than \$1 billion. According to Motorola, the new company will be well positioned to benefit from the convergence of mobility, media, and the Internet. Motorola's enterprise radio systems business generated \$7 billion of Motorola's \$22 billion in sales in 2009.

FCC Proposes Changes to its Communication Disclosure and Practice and Procedures Rules

In an effort to improve transparency and communications, the FCC initiated two rulemaking proceedings about the Commission's *ex parte* rules and practices and procedures. In the first, the Commission proposes changes to its *ex parte* rules which govern disclosure of communications with Commission staff and decision makers, when all parties to a proceeding are not present. Comment deadlines have not yet been established. The important proposals from the "Ex Parte Notice of Proposed Rulemaking (NPRM)" include:

- requiring the public filing of a summary of every oral *ex parte* presentation;
- requiring the filing of a notice that summarizes all data and arguments presented;
- requiring faster electronic filing, within four hours, of notices of permitted *ex parte* presentations made during the "Sunshine Period";
- requiring disclosure of ownership or other information in filings at the Commission, including adopting various disclosure requirements currently used by federal courts, and the extent to which ownership information already available to the FCC may suffice; and
- determining how the *ex parte* rules should apply in the context of new media, such as Internet blog postings.

In the second proceeding, the Commission proposed changes to its procedural and organization rules concerning reconsideration of agency proceedings and case management. The "Procedures NPRM" seeks comment on whether to:

- delegate authority to the staff to terminate inactive dockets and to serve parties to FCC proceedings electronically;
- delegate authority to bureau and office chiefs to dismiss or deny defective or repetitious reconsideration petitions that do not warrant consideration by the full Commission;
- amend the rule which permits the Commission, on its own motion, to reconsider any FCC action within 30 days of public notice of that decision to make clear that the Commission may modify its decision, not merely set it aside or vacate it; and
- adopt a default effective date for new rules when the FCC does not specify an effective date in the relevant rulemaking orders.

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

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