

## Legal Updates & News

### Bulletins

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## Communications Law Bulletin, November 2009

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### The Month in Brief

This November issue of our Bulletin will be the last for 2009. We look forward to bringing you all of the December-January news in a single, combined New Year's edition, and we extend our best wishes of the season to all of our

readers.

### **Commission Seeks Appropriate Analytical Framework for Special Access Review**

In early November, the Federal Communications Commission (“FCC” or “Commission”) released a public notice seeking comment on the appropriate analytic framework for its long-pending analysis of the special access market. In short, the Commission asks how it should use the data submitted in this proceeding in order to assess the effectiveness of the current regulation of special access services.

Using the existing regulatory structure for special access—namely, the pricing flexibility rules and price caps—the notice asks many questions, including:

- Whether the pricing flexibility rules ensure just and reasonable rates;
- Whether the price cap rules ensure just and reasonable rates; and
- Whether these rules ensure that the other terms and conditions for special access (whether contractual or tariffed) are just and reasonable.

The notice describes five potential analytic frameworks for its consideration of special access issues:

- A market power analysis;
- Data on competitive facilities to evaluate the pricing flexibility triggers;
- The probability that potential competition ensures that special access services are provided at just and reasonable rates;
- The effectiveness of the price cap rules to ensure just and reasonable rates; and
- The effectiveness of the pricing flexibility and price cap rules to ensure just and reasonable terms and conditions for special access services.

The Commission also asks if it has sufficient data in the record to answer these questions, and, if not, what additional data should be collected (and from which parties).

The precise pleading cycle has not yet been established, but comments will be due 45 days after the public notice is published in the Federal Register, and replies will be due 75 days after publication in the Federal Register.

### **More Congressional Reaction to Net Neutrality Proposals**

As reported in last month’s edition (see “Commission Starts Promised Net Neutrality Proceeding”) the FCC has adopted a notice of proposed rulemaking (“NPRM”) on net neutrality that is sure to lead to a lively debate throughout the pleading cycle. Following Senator McCain’s bill to prohibit the FCC from adopting such rules, which was introduced right after the FCC adopted the NPRM, Rep. Marsha Blackburn (R-Tenn) also introduced a similar bill (HR-3924) to prohibit the FCC from further regulating the Internet or IP-enabled services. Neither bill would affect pre-existing regulations, and both contain certain exemptions for regulations relating to public safety, law enforcement, and national security (and, in the case of McCain’s bill, the solvency of the Universal Service Fund).

In addition, the House passed a bill (HR-3854) to ease loan terms for small businesses, and this bill included a late amendment requiring a study of the financial impact of net neutrality rules on small businesses. The Senate is now taking up the bill.

### **Significant Enforcement Actions Illustrate the Risk of Disregarding FCC Requirements**

On November 12, the Enforcement Bureau (“Bureau”) released two orders illustrating the risk of significant penalties from regulatory noncompliance and failure to respond to FCC data requests.

#### ***Global NAPs NAL***

The Bureau released a Notice of Apparent Liability for Forfeiture and Order (“NAL”) against Global NAPs California, Inc. (“Global NAPs”) for its apparent violations relating to the FCC’s telephone numbering usage recordkeeping and reporting requirements. According to the NAL, Global NAPs failed to respond over a four-month period in 2008, not

only to the Bureau's letters requesting information regarding Global NAPs' telephone number usage and reporting, but also to the Bureau's notification to Global NAPs that it intended to proceed with an audit of Global NAPs' numbering usage and the Bureau's request for information in connection with the audit.

In late October 2008, the Bureau issued a letter of inquiry ("LOI") to Global NAPs, directing it to provide full responses to its previous data requests. Global NAPs failed to respond to the LOI by the deadline and later provided an incomplete "draft" response at a meeting with the Bureau. Global NAPs never completely answered the data requests or the LOI, largely because it had failed to follow FCC recordkeeping requirements designed to facilitate numbering audits. Global NAPs also failed to file the mandatory semi-annual North American Numbering Plan Numbering Resource Utilization/Forecast ("NRUF") reports for the past few years, including the most recent one, due on August 3, 2009.

The NAL concluded that Global NAPs' failure to respond to the Bureau's communications regarding the audit for several months and to produce many records requested by the Bureau prevented the Bureau from proceeding with the audit. Global NAPs therefore apparently violated Section 52.15(k)(1) of the FCC's rules, which provides that all carriers shall be subject to audits to verify compliance with the FCC's numbering requirements. Although the FCC's guidelines establish a base forfeiture of \$4,000 for failure to respond to FCC communications, the Bureau found that Global NAPs' conduct "goes beyond a mere failure to respond." In light of the "egregiousness of the violation," which "exhibits a blatant disregard for the Commission's authority," the Bureau concluded that a proposed forfeiture of \$15,000 is warranted for Global NAPs' failure to cooperate with the audit.

Global NAPs also apparently failed to maintain accurate telephone number use data or to submit accurate NRUF reports from 2004 to 2009. The base forfeiture for failure to file required information is \$3,000, and for failure to maintain required records is \$1,000. Taking into account the "egregious, repeated, and long-standing nature" of the violations, however, the Bureau concluded that Global NAPs "made no efforts at compliance with numbering requirements," justifying an upward adjustment to \$25,000. Although the FCC may propose forfeitures only for apparent violations within the past year, prior violations may be considered in determining the forfeiture amount. The Bureau also noted that Global NAPs' submission of inaccurate reports continued even after the Bureau commenced its investigation.

Similarly, although the base forfeiture for failing to submit NRUF reports is \$3,000, the Bureau found that Global NAPs' failure to file NRUF reports for the previous five years warranted an upward adjustment, to \$25,000, of the proposed forfeiture for its failure to file the NRUF report for August 2009. The Bureau also found that an upward adjustment, from the base amount of \$4,000 to \$15,000, was warranted for Global NAPs' failure to respond in a timely fashion or completely to the LOI and its "apparent pattern of ignoring Commission directives," especially given that Global NAPs was represented by counsel.

The NAL also required Global NAPs to submit a sworn statement detailing its plan to come into compliance with the reporting and recordkeeping rules discussed in the NAL and to respond fully to the LOI within 30 days. The Global NAPs NAL, proposing forfeitures totaling \$80,000, is a stark reminder of the need to respond diligently to FCC recordkeeping and reporting requirements and data requests and the benefit of seeking experienced counsel before cumulative failures to respond generate excessive penalties.

#### ***Next-G Consent Decree***

The Bureau also released an order adopting a consent decree with Next-G Communications, Inc. ("Next-G"), terminating an investigation of possible violations of the FCC's payphone compensation regulations and Section 214 of the Communications Act. Next-G has been a pre-paid calling card and international service carrier since 2002. The investigation started in 2005, when the Bureau sent LOIs to Next-G regarding its compliance with the payphone compensation regulations.

In the consent decree, Next-G agreed to create a three-year compliance plan to ensure its future conformance with the payphone compensation and international authorization rules. Under the plan, Next-G agreed to obtain Section 214 authority to provide international telecommunications service within 60 days. It also agreed to designate a compliance officer responsible for administering the compliance plan and ensuring that any employee engaged in activities relating to the payphone compensation and Section 214 authorization requirements receives compliance training. Next-G agreed to review its training program annually and to file compliance reports with the Bureau 3, 12, 24 and 36 months after the effective date of the order. Next-G also agreed to make a voluntary contribution of \$250,000 to the U.S. Treasury in monthly installments for three years. Although the decree does not provide much detail, the details of the compliance plan and the amount of the contribution suggest that Next-G provided international service for several years without authorization and perhaps failed to pay payphone compensation for

part or all of that period.

## **Recent Traffic Pumping Developments**

### ***Google Response to Wireline Competition Bureau Inquiry***

On October 28, Google Inc. responded to an inquiry from Sharon Gillett, Chief of the FCC's Wireline Competition Bureau, regarding its Google Voice service and call blocking practices. Reacting to complaints from AT&T and others, Ms. Gillett had asked Google to describe how the service works and how it selects which numbers to block and to state its position as to the service's regulatory classification. (The Gillett letter and background are described in last month's Bulletin.) In its October 28 letter, Google described Google Voice as a call management service that enables users to have calls to their wireline and wireless telephone numbers routed to a single number, to send certain calls to voicemail, to send and receive SMS messages and receive automated transcriptions of voicemail into text. Google Voice can also be used to place and route calls carried by a user's existing "traditional telecommunications" service.

Google stated that, because Google Voice is a free messaging and call management service that is distinct from the user's existing underlying telephone service, and includes voicemail, forwarding and voice-to-text translation features, it is an information service, rather than a telecommunications service. Google also distinguished Google Voice from interconnected Voice over Internet Protocol ("VoIP") service by pointing out that no broadband connection or Internet protocol-compatible equipment is needed for Google Voice. Google explained its call blocking procedures as a response to traffic pumping activities associated with certain high cost areas. In June 2009, Google began noticing that calls terminated in certain areas accounted for a disproportionate amount of its traffic volume and costs. Some of this traffic was billed to Google Voice at 39 cents per minute by its underlying carriers. As a result, Google began restricting calls to certain high-cost destinations in August. Google has refined its data filters such that it is now able to block calls to individual telephone numbers receiving a disproportionate amount of traffic and is now blocking calls to fewer than 100 numbers.

Industry observers note that Google's response may cause AT&T to step up its campaign to have Google Voice subject to the same nondiscrimination requirements as other service providers. They also speculate that, by narrowing its call blocking to fewer than 100 numbers, Google may lessen the political pressure from rural lawmakers concerned about the blocking of calls to their constituents.

### ***Federal Court Injunction against Implementation of Qwest Decision***

On November 5, a defendant in the Iowa Utilities Board ("IUB") traffic pumping complaint case brought by Qwest (*Qwest Communications Corp. v. Superior Tel. Cooperative, et al.*) ("*Qwest*"), obtained a temporary restraining order ("TRO") against the implementation of the IUB's September 21 *Qwest* decision. In its *Qwest* decision (discussed in September's Bulletin), the IUB ordered Great Lakes Communication Corp. ("Great Lakes") and other defendants to refund intrastate access charges improperly assessed against Qwest and other long distance carriers. The IUB also announced that it would initiate a proceeding requesting Great Lakes to show cause why its certificate of public convenience and necessity should not be revoked and directed the North American Numbering Plan Administrator ("NANPA") and the telephone numbering Pooling Administrator ("PA") to commence proceedings to reclaim all blocks of telephone numbers assigned to Great Lakes.

Great Lakes and another defendant, Superior Telephone Cooperative ("Superior"), have sought rehearing by the IUB and have requested the FCC to preempt the IUB (as discussed in last month's Bulletin). Great Lakes and Superior filed a complaint against the IUB and NeuStar, Inc., which serves as the NANPA and PA, in the U.S. District Court for the Northern District of Iowa on November 3 requesting injunctive relief and review of the *Qwest* decision. Great Lakes also sought a TRO and preliminary injunction against implementation of the decision. In granting the TRO on November 5, the court held that Great Lakes had satisfied the requirements for injunctive relief because it would not be able to provide service to its customers without telephone numbers, and that reclamation of its numbers thus is likely to put it out of business before its appeal of the *Qwest* decision could be heard. The court referred the motion for preliminary injunction to a Magistrate, who, on November 17, found that the IUB had exceeded its authority in ordering the reclamation of Great Lakes' telephone numbers, recommended that a preliminary injunction be issued against such reclamation, and set down a schedule for the filing of objections.

## **AT&T and Centennial Close Their Deal**

AT&T Inc. ("AT&T") announced in late November that it had completed its acquisition of Centennial Communications Corp. ("Centennial"). Centennial is a wireless carrier with about 1.1 million customers in six

states, Puerto Rico, and the Virgin Islands; AT&T serves almost 80 million wireless subscribers nationwide.

The announcement followed an FCC approval granted in early November and a Department of Justice (“DoJ”) approval that was announced in October. The DoJ had conditioned its action on AT&T’s divestiture of Centennial assets in several markets in Louisiana and Mississippi.

The FCC’s approval order addresses a number of competitive concerns, including: (1) possible competitive impact in various mobile service markets; (2) impact on the market for roaming services; and (3) handset availability and exclusive handset agreements.

As to the first question, the FCC’s “initial screen” of post-acquisition market concentration necessitated further competitive review of 25 cellular market areas (“CMAs”) as well as Puerto Rico and the Virgin Islands. After eliminating those markets in which no competitive harm was likely to result from the acquisition, the Commission identified seven CMAs in which competing service providers would not be sufficiently numerous to prevent anti-competitive behavior by the post-transaction entity. Accordingly, the order requires divestiture by AT&T of Centennial assets in: (1) CMA174, Lafayette, LA; (2) CMA205, Alexandria, LA; (3) DMA456, Louisiana 3—DeSoto; (4) CMA458, Louisiana—Beauregard; (5) CMA459, Louisiana 6, Iberville; (6) CMA460, Louisiana 7—West Feliciana; and (7) CMA500, Mississippi 8—Claiborne.

As to the second issue, the FCC responded to concerns about reduced post-transaction competition in the market for roaming services by accepting AT&T’s commitment to honor Centennial’s existing roaming agreements with other carriers. The Commission also conditioned its approval on AT&T’s commitment “that any carrier with fewer than 10 million subscribers that has an effective roaming agreement with Centennial on the Merger Closing Date will have the option to continue to obtain roaming services, pursuant to the rates, terms and conditions of that agreement, in those areas where the carrier was obtaining roaming services on the Centennial network on the Merger Closing Date . . .”

As to the third question, some commenters had asked the Commission to condition approval of the acquisition on a prohibition against AT&T’s engaging in exclusive handset arrangements. The FCC declined to impose such a condition, stating that it would defer the issue to a proceeding in which all interested industry parties would have an opportunity to comment.

Finally, the approval was conditioned upon AT&T’s commitment to operate and maintain a CDMA network in Puerto Rico and the Virgin Islands for 18 months after the Merger Closing Date, and to limit its participation on the Board of Directors of, and provision of services to, America Movil, a wireless company serving Puerto Rico and the U.S. Virgin Islands.

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### **New FCC Docket Number for Eligible Telecommunications Carrier Matters**

The FCC has established a new docket number – WC Docket No. 09-197 – for all future filings, communications and proceedings involving eligible telecommunications carriers (“ETCs”). Going forward, all petitions for ETC designation and related petitions for forbearance, requests to redefine ETC service areas, ETC annual reporting requirements, and any additional filings relating to these matters should be submitted under new docket number.

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### **Universal Service Developments**

#### ***Draft of the Universal Service Reform Act of 2009 Is Introduced in the House***

House of Representatives Communications Subcommittee Chairman Rick Boucher (D. Va.) and Representative Lee Terry (R. Neb.) released a draft of their Universal Service Reform Act of 2009, the culmination of months of discussions and negotiations with industry members and regulators to improve the Universal Service Fund (“USF”) mechanism. According to Boucher and Terry, the “Universal Service Fund is broken,” with the USF contribution factor expected to top 14 percent in 2010.

Broadband is a key item in the draft legislation. Recipients of high cost USF support would be required to offer high speed broadband service (i.e., download speeds of 1.5 Mbps) within five years of the bill's enactment. Broadband providers, including DSL, cable modem, WiMax, and broadband-over-powerline providers, also would be required to contribute to the USF.

The legislation also directs the FCC to decide whether the USF contribution methodology should be based upon revenue, numbers or a combination of the two. The legislation would allow the FCC to limit contributions in certain circumstances, such as for prepaid wireless customers or for group or family wireless plans.

The draft legislation attempts to control USF costs in a myriad of ways. Among other things, the FCC would be required under the legislation to adopt a competitive bidding process for allocating high cost USF support to wireless carriers. Specifically, the FCC would seek bids for USF support in areas where at least three wireless carriers are eligible for support. Two winners would be selected, each of which would receive a flat annual subsidy amount for ten years. In addition, all USF programs, with the exclusion of the Schools and Libraries program, would be subject to a funding cap. Furthermore, the methodology for calculating non-rural, high cost support would be based upon wire center averaging rather than larger geographic areas.

Audit and accountability requirements also are addressed in the legislation. The FCC would have to establish and implement performance goals for each USF program and establish appropriate methodologies to audit USF support recipients.

The FCC also would be required to finish its reform of the intercarrier compensation regime within one year of the bill's enactment. The legislation proposes prohibiting access charge recovery when an entity that has an existing relationship with a local exchange carrier offers a free or below-cost service, thus fixing the "traffic pumping" problem. Carriers also would be required to identify all traffic that originates on their networks and require intermediate carriers to pass on that identification. Further, the "parent trap"—i.e., in which carriers that acquire exchanges from unaffiliated carriers get support at the same level the exchanges received prior to the acquisition—would be eliminated.

The draft legislation received bi-partisan praise at a recent House Communications Subcommittee hearing. Although individual lawmakers did not necessarily agree with all of the bill's provisions, there was general consensus that it was "on the right track." Similarly, members of the communications industry have expressed general support for the bill.

#### ***FCC Proposes to Require E-Rate Funded Schools to Educate Minors Regarding Online Social Interactions***

The FCC recently issued an NPRM tentatively concluding that schools receiving universal service support under the Schools and Libraries, or "E-Rate," program must educate students about acceptable online behavior. The NPRM seems to align its E-Rate program rules with new statutory mandates adopted in 2008.

In accordance with the Children's Internet Protection Act ("CIPA"), schools and libraries with computers and Internet access already must certify they have implemented certain Internet safety policies and technology protection measures before they can receive discounts for Internet access and internal connection services under the E-Rate program. The Protecting Children in the 21st Century Act, enacted in 2008, imposes a new requirement in which elementary and secondary schools also must certify that they are "educating minors about appropriate online behavior, including interacting with other individuals on social network websites and in chat rooms and cyberbullying awareness and response."

The NPRM also seeks comment on various modifications to its E-Rate rules so that its requirements more accurately reflect the statutory language in CIPA. Among other things, the proposed modifications would provide local communities with the authority to decide what constitutes inappropriate material that minors can view online at a school or library.

Comments and replies on the NPRM are due 30 and 45 days, respectively, after the NPRM is published in the Federal Register.

## **Wireless Developments**

### ***“Shot Clock” Established for State and Local Tower Siting Review***

The FCC at its November open meeting unanimously adopted a declaratory ruling establishing a “shot clock” under which state and local governments must review and act upon tower siting requests. The ruling responded to a July 2008 petition filed by CTIA and supported by the many wireless carriers. The ruling was a partial win for the wireless industry in that the FCC also denied various other requests in CTIA’s petition. The Commissioners all agreed that the ruling will help facilitate wireless broadband service deployment while preserving state and local authority.

The declaratory ruling provides that states and localities have 90 days to review collocation applications and 150 days to review other types of siting applications. The FCC rejected CTIA’s request that an application be deemed granted after those deadlines have passed. Rather, under the FCC’s ruling if the state or locality has not acted by the deadline, an applicant can seek court relief within 30 days. It would then be up to the court to determine the best course of action based upon the circumstances of the individual case.

The FCC agreed with CTIA that a state or local denial of a wireless facility because service is available from another wireless carrier violates Section 332(c)(7) of the Communications Act, which provides that state or local governments must act on tower-siting requests “within a reasonable period of time.” The FCC, however, rejected CTIA’s arguments that state or local regulations that require a variance or waiver for every tower siting is unlawful, noting that no evidence of a specific controversy was presented in the proceeding.

Although state and local officials had argued that a shot clock would unlawfully preempt state and local authority under the Communications Act, the FCC disagreed, concluding that the FCC has authority to interpret the language of Section 332(c)(7). According to the FCC, the shot clock “is not the imposition of new limitations” but merely an interpretation of “the limits Congress already imposed on state and local governments.”

### ***GAO Asked To Study Spectrum Issues***

Representatives Henry Waxman (D. Cal.), chairman of the House Energy and Commerce Committee, and Rick Boucher (D. Va.), chairman of the House Communications, Technology and the Internet Subcommittee, sent a letter to the Government Accountability Office (“GAO”) asking it to study spectrum use, reallocation, and sharing possibilities. The request comes on the heels of legislation introduced this summer that mandates an inventory of commercial and government spectrum.

With regard to commercial spectrum, the letter specifically asks the GAO to assess “commercial use of assigned spectrum and unlicensed spectrum; the methodology used by NTIA and the FCC to calculate the need for commercial spectrum; current technological trends and projected spectrum needs; commercial spectrum that may be underutilized and could potentially be reassigned or reallocated; and the continued use of auctions to assign spectrum.” Similarly, with regard to government spectrum, Waxman and Boucher ask the GAO to study “federal agency use of assigned spectrum and unlicensed spectrum; the National Telecommunications and Information Administration’s (NTIA) measurement and understanding of agency spectrum holding and use; future spectrum needs for agency use; and issues related to reassigning spectrum currently used by agencies to other uses, including reallocation to other federal agencies or for commercial purposes.” The GAO also was directed to review “possible applications of secondary markets to use commercial and/or federal spectrum more efficiently; potential use of smart radios or spectrum-sensing technologies to use commercial and/or federal spectrum more efficiently.”

### ***BRS Auction Concludes***

The FCC’s Auction No. 6, in which 78 Broadband Radio Service (“BRS”) licenses were available to bidders, concluded on October 30. Ten winning bidders won 61 licenses for approximately \$20 million. BRS, designated a flexible use service by the FCC, can accommodate a variety of fixed, portable, and mobile services, including broadband services. A subsidiary of Clearwire Corporation was the top bidder, with total net winning bids of almost \$11.2 million for 42 licenses. Vermont Telephone Company (\$2.8 million for three licenses) and Stratos Offshore Services (\$2 million for two licenses) were the next top bidders. Down payments were due November 23; final payments are due December 8.

### **Other Legislative Developments: Satellite Authorization, Prepaid Calling Cards, and Wireless ETFs**

In addition to the legislative developments discussed separately in the net neutrality and USF articles in this month’s edition, Congress has addressed several other telecom legislative items:

**Satellite Reauthorization Bill Continues toward Passage:** As reported in last month's Bulletin, both houses of Congress are making progress on passage of satellite reauthorization legislation. On November 23, the Senate Commerce, Science and Transportation Committee approved S. 2764, the Satellite Television Extension and Localism Act. In addition to reauthorizing satellite TV companies' licenses to import distant signals into local markets, the bill provides for a study of satellite providers' financial and satellite capacity limitations. S. 2764 now must be reconciled with similar legislation introduced in the Senate Judiciary Committee bill (S. 1670) and the forthcoming merged version of satellite reauthorization bills in the House (H.R. 2994 and H.R. 3570).

**House Introduces New Prepaid Calling Legislation Aimed at Greater Disclosures of Terms and Fees:** In early November, Representative Engel (D.-N.Y.) introduced H.R. 3993, a bill to require prepaid calling card providers to more explicitly disclose terms and fees to consumers. The bill will first be considered by the House Commerce Consumer Protection Subcommittee, in early December.

**Senator Introduces ETF Fee Bill:** Senator Klobuchar (D.-Minn.) sent letters to at least one wireless carrier and the FCC in the wake of increases to early termination fees ("ETFs") imposed on carriers' mobile smart-phone customers. The Senator introduced legislation in the 110<sup>th</sup> Congress requiring all carriers to pro-rate ETFs imposed on customers breaking 2-year service contracts, and appears poised to reintroduce the bill in the hopes that carriers will voluntarily retract the new fees.

### **Broadband Developments: FCC Continues Massive Data Gathering as National Broadband Plan Deadline Looms; Administrative Delays Affect Release of Broadband Stimulus Funds**

#### *Commission Update on National Broadband Plan Development*

On the day of the November 18, 2009 FCC Open Meeting, the Commission was 91 days from its statutory deadline to deliver its National Broadband Plan ("NBP") to Congress. The Broadband Task Force delivered a status update on the NBP and reiterated the over-arching goals framing the Commission's agenda—universal access, affordability and adoption, maximum utilization, and utilization of broadband to advance national purposes. The Task Force has identified a series of critical "gaps" to be remedied before the NBP's goals can be realized, including those related to middle mile facilities, USF support, rights-of-way and pole attachments, spectrum, adoption, and adoption, among others. As discussed below, the Commission has a number of forthcoming comment cycles aimed at addressing these gaps.

#### *Fresh Round of FCC Public Notices Seeking Input on National Broadband Plan*

As noted in several previous Bulletins, while the National Broadband Plan NOI comments in June and July sought public input on a wide variety of broadband issues, the Commission has more recently changed its approach and sought comment on targeted issues through individual public notices. Input on these targeted issues supplements the record received in response to the National Broadband Plan NOI and the discussions at the National Broadband Plan staff workshops that have been held to date:

- Public Safety Issues Related to Broadband Deployment in Rural and Tribal Areas and Broadband Communications to and from Persons with Disabilities: November 2, 2009 FCC Public Notice (DA 09-2369) seeks comment on challenges of deploying broadband to public safety entities that serve rural and tribal areas and on broadband public safety communications to persons with disabilities. **All comments should be filed in GN Docket Nos. 09-47, 09-51, and 09-137 and be titled "Comments—NBP Public Notice # 14." Comments are due December 1, 2009.**
- Broadband Needs in Education, Including Changes to E-Rate Program to Improve Broadband Deployment: November 3, 2009 FCC Public Notice (DA 09-2376) seeks comment on the need for modifications to the schools and libraries universal service support mechanism (E-Rate program) to improve broadband deployment to schools and libraries, whether and how increasing broadband deployment to schools can affect or stimulate the adoption of broadband more widely in communities, and whether and how the E-Rate program can be structured to more effectively distribute available funding. **All comments should be filed in GN Docket Nos. 09-47, 09-51, and 09-137; CC Docket No. 02-6; and WC Docket No. 05-195 and be titled "Comments—NPB Public Notice # 15." Comments were due November 20, 2009 and replies are due December 11, 2009.**

- Broadband Adoption: November 10, 2009 FCC Public Notice (DA 09-2403) seeks comment on measuring broadband adoption, quantifying the individual costs to non-adopters, measuring the cost to society of having a large group of non-adopters, and identifying and remedying barriers to adoption. Commenters can also offer data about existing adoption programs and studies. **All comments should be filed in GN Docket Nos. 09-47, 09-51, and 09-137 and be titled “Comments—NBP Public Notice # 16.”** Comments are due December 2, 2009.
- Health Care Delivery Elements of National Broadband Plan: November 12, 2009 FCC Public Notice (DA 09-2413) seeks comment on the extent to which advanced infrastructure and services could help achieve efficient implementation of health IT applications. **All comments should be filed in GN Docket Nos. 09-47, 09-51, and 09-137; and WC Docket No. 02-60 and be titled as “Comments—NBP Public Notice # 17.”** Comments are due December 4, 2009.
- Relationship Between Broadband and Economic Opportunity: November 12, 2009 FCC Public Notice (DA 09-2414) seeks comment on broadband issues specific to small businesses (businesses with 500 or fewer employees), medium and large businesses (businesses with more than 500 employees), and non-profit organizations. **All comments should be filed in GN Docket Nos. 09-47, 09-51, and 09-137 and be titled “Comments—NBP Public Notice # 18.”** Comments are due December 4, 2009.
- Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan: November 13, 2009 FCC Public Notice (DA-2419) seeks comment on the extent to which reform of the Commission’s universal service and intercarrier compensation policies could further the goal of making broadband universally available to all people of the United States. **All comments should be filed in GN Docket Nos. 09-47, 09-51, and 09-137 and be titled “Comments—NBP Public Notice #19.”** Comments are due December 7, 2009.
- Moving Toward a Digital Democracy: November 17, 2009 FCC Public Notice (DA 09-2431) seeks comment on how broadband can help to bring democratic processes (e.g., elections, public hearings and town, hall meetings) into the digital age in order to encourage and facilitate citizen opportunities to engage and participate in their democracy. **All comments should be filed in GN Docket Nos. 09-47, 09-51, and 09-137 and be titled “Comments—NBP Public Notice #20.”** Comments are due December 10, 2009.
- Data Portability and its Relationship to Broadband: November 18, 2009 FCC Public Notice (DA 09-2433) seeks comment on broadband and portability of data and their relation to cloud computing, transparency, identity, and privacy. **All comments should be filed in GN Docket Nos. 09-47, 09-51, and 09-137 and be titled “Comments—NBP Public Notice #21.”** Comments are due December 9, 2009.
- Research Necessary for Broadband Leadership: November 18, 2009 FCC Public Notice (DA 09-2434) seeks suggestions and ideas to support a new Broadband Task Force proceeding to develop research recommendations for Congress to enable the U.S. to advance broadband deployment in the U.S. over the next decade and to be a global leader in broadband networking in the years 2020 and beyond. **All comments should be filed in GN Docket Nos. 09-47, 09-51, and 09-137 and be titled “Comments—NBP Public Notice # 22.”** Comments are due December 8, 2009.
- Network Deployment Study Conducted by the Columbia Institute for Tele-Information: November 20, 2009 FCC Public Notice (DA-2458) seeks comment on the study released by the Columbia Institute for Tele-Information (part of Columbia Business School in New York) reviewing projected deployment of new and upgraded broadband networks. Commenters are invited to discuss, among other things, whether the study accomplishes its intended purposes, provides a complete and objective survey and review of the subject matter, how accurately and comprehensively the study examines the projected deployment of new and upgraded broadband networks, and how accurately and comprehensively the study examines the nature and future of broadband adoption. **All comments should be filed in GN Docket Nos. 09-47, 09-51 and 09-13 and be titled “Comments—NBP Public Notice # 23.”** Comments are due December 4, 2009.
- Broadband Measurement and Consumer Transparency of Fixed Residential and Small Business Services in the U.S.: November 24, 2009 FCC Public Notice (DA-2474) seeks comment on how to ensure sufficient access to relevant information about communications services, specifically fixed residential and small

business Internet broadband services. Input from this Public Notice builds on the record developed earlier in the year from the *2009 Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, CG Docket No. 09-158; CC Docket No. 98-870; WC Docket No. 04-36, Notice of Inquiry, (rel. Aug. 28, 2009). **All comments should be filed in GN Docket Nos. 09-47, 09-51, and 09-137 and be titled “Comments—NBP Public Notice # 24.” Comments are due December 14, 2009.**

#### *Broadband Stimulus Funds Slowed by Short Staffing*

A late November GAO report found that stimulus grants allocated by the National Telecommunications and Information Administration (“NTIA”) and the Rural Utilities Service (“RUS”) could be delayed as the result of inadequate staffing and scheduling problems. Although broadband grants are being issued over the course of more than one application round, the GAO report raised concerns that the short timetable leaves the two agencies with too little time to apply lessons learned from the first round, earlier in 2009. The GAO further noted that NTIA still needs to create audit requirements for private entities receiving grants under its grant program, the Broadband Technology Opportunities Program. The grant application window in late 2009 is planned as the last round of award for funds allocated under the Recovery Act.

#### *NTIA and RUS Urged to Overhaul Grant Programs to Assist Small Businesses*

NTIA and RUS are also receiving input how to help small, disadvantaged and minority businesses compete for broadband grants. Comments are due November 30 on a Minority Media and Telecommunications Council (MMTC) proposal of a “carve out” of broadband stimulus funds targeted for small disadvantaged businesses in the second round of applications for Broadband Initiatives Program (RUS) and BTOP funds. In particular, MMTC argues that funding should be targeted at either small disadvantaged businesses or companies with significant ties to such businesses. Similar input came from the House Small Business Committee in a letter to NTIA and RUS. The Committee suggested that several facets of the broadband grant process impose burdens on small businesses, including a complex and expensive application process, the 10-year limitation on the sale of award-funded facilities, and the requirement to obtain matching private funds. Possible fixes could include changes to the current application process and availability of a waiver to the matching funds rule for small businesses.

#### **Upcoming Deadlines for Your Calendar**

Note: Although we try to ensure that the dates listed below are accurate as of the day this edition goes to press, please be aware that these deadlines are subject to frequent change. If there is a proceeding in which you are particularly interested, we suggest that you confirm the applicable deadline. In addition, although we try to list deadlines and proceedings of general interest, the list below does not contain all proceedings in which you may be interested.

|                         |   |
|-------------------------|---|
| <b>December 1, 2009</b> | Reply comments due on NPRM regarding <b>effect of line loss on local switching support</b> .  |
| <b>December 1, 2009</b> | Comments due on <b>public safety issues related to broadband deployment in rural and tribal areas and broadband communications to and from persons with disabilities</b> (NBP Public Notice #14). |
| <b>December 2, 2009</b> | Comments due on <b>broadband adoption</b> (NBP Public Notice #16).  |
| <b>December 4, 2009</b> | Comments due on <b>relationship between broadband and economic opportunity</b> (NBP Public Notice #18).   |
| <b>December 4, 2009</b> | Comments due on <b>health care delivery elements of National Broadband Plan</b> (NBP Public Notice #17).  |
| <b>December 7, 2009</b> | Comments due on <b>role of USF and intercarrier compensation in National Broadband Plan</b> (NBP Public Notice #19).  |
| <b>December 8, 2009</b> | Comments due on <b>research necessary for broadband leadership</b> (NBP Public Notice #22).   |

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|--------------------------|--|
| <b>December 9, 2009</b>  | Comments due on <b>data portability and relationship to broadband</b> (NBP Public Notice #21).   |
| <b>December 10, 2009</b> | Comments due on <b>moving toward digital democracy</b> (NBP Public Notice #20).  |
| <b>December 11, 2009</b> | Reply comments due on <b>broadband needs in education, including changes to E-Rate program</b> (NBP Public Notice #15).                                    |
| <b>December 14, 2009</b> | Comments due on <b>broadband measurement and consumer transparency of fixed residential and small business broadband services</b> (NBP Public Notice #24). |
| <b>January 10, 2010</b>  | Deadline for electronic filing of <b>Children's TV Reports</b> for preceding four quarters.  |
| <b>January 11, 2010</b>  | Biennial filing deadline for new <b>commercial broadcast ownership report</b> (Form 323).  |
| <b>January 14, 2010</b>  | Comments due on <b>net neutrality NPRM</b> .   |
| <b>January 15, 2010</b>  | Deadline for CMRS providers to file <b>hearing aid compatibility compliance report</b> (Form 655).   |