

## Legal Updates & News

### Bulletins

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## Communications Law Bulletin, February 2009

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### The Month in Brief

With a new administration in office only a month and a reduced complement of commissioners at the Federal Communications Commission ("FCC" or "Commission"), we might have expected to have little to report in this issue of our Bulletin. However, Congress's stimulus bill, major enforcement proceedings from the Commission, and other events on the regulatory, legislative, and judicial fronts have given us plenty to report. Those developments are covered here, along with our usual list of deadlines for your calendar.

### NY Franchising Bill Introduced

A bill (HB4469) revising New York cable franchising procedures was introduced by Assemblyman Richard Brodsky. The proposed law would authorize the New York Public Service Commission ("PSC") to grant a statewide franchise to any cable company seeking to provide video services within the state. Currently, cable providers must negotiate individual franchise agreements with each municipality. Incumbent operators would be prohibited from applying for a statewide franchise until their existing franchises expire; however, they could

seek a franchise from the PSC for areas where they do not have existing franchises. The bill also includes build-out deadlines and a net neutrality provision. A similar bill introduced by Assemblyman Brodsky two years ago failed.

### **Orbital Collision Raises Space Debris Concerns**

A satellite owned by Iridium Satellite LLC collided with, and was destroyed, by a defunct Russian military satellite. The collision occurred in low-earth orbit. As a result of the collision, two large clouds of debris now float roughly 480 miles above Siberia. Although the U.S. National Aeronautics and Space Administration (NASA) stated that the crash was the first orbital accident involving a full-size satellite to occur, the incident triggered more concerns regarding dangers caused by space debris.

The U.S. government currently tracks more than 10,000 pieces of high-speed space debris. In addition to hundreds of government satellites, more than 220 active commercial satellites currently orbit the planet. The U.S. Department of Defense is considering ways in which it can better track and protect U.S. space technology. The collision also highlights the need for international cooperation to avoid further accidents. Iridium is moving one of its spare in-orbit satellites to replace the satellite that was destroyed.

### **Wireless Developments**

#### ***FCC Reverses Position and Rejects Proposed Cell Phone Jamming Tests***

The FCC recently denied a second request by the District of Columbia for special temporary authorization (“STA”) to conduct a demonstration of cell phone jamming technology, despite the FCC’s approval of the District’s prior STA request. The District had not used the first STA and cancelled the demonstration after CTIA – The Wireless Association attempted to block the tests by filing a writ of mandamus in federal court.

Section 333 of the Communications Act of 1934, as amended (the “Act”), bars the use of jamming equipment, but prison administrators and other government officials want to use such equipment to obstruct inmates’ efforts to smuggle illegal cell phones into prisons. The wireless industry continues to oppose the use of jamming technology on the ground that might interfere with lawful communications outside prisons.

The first STA request was approved at the direction of Kevin Martin, former FCC chairman, but the new FCC, now under the leadership of acting Chairman Michael Copps, denied the second STA request. According to the FCC, “we find that the proposed jamming would violate both the [Act] as well as the Commission’s rules” and that the denial was “consistent with past actions” by the FCC.

CellAntenna, the company that would have carried out the tests for the District, stated that it will continue to demonstrate its cell-phone jamming technology if a state requests it to do so, despite the FCC’s latest decision to deny the District’s STA request. As noted below (“Other Telecom Happenings on the Hill,” this issue), Congress also is considering legislation that would allow law enforcement to operate jamming technology.

#### ***CTIA Adopts Voluntary Industry Guidelines for Mobile Banking Services***

The member companies of CTIA – The Wireless Association unanimously approved a series of best practices intended to help ensure the safety and security of mobile financial services (“MFS”). The voluntary guidelines, titled “Best Practices and Guidelines for Mobile Financial Services,” encompass data security, customer consent, disclosure, and access to account information. Steve Largent, president and chief executive officer of CTIA, stated that the guidelines “will help educate consumers, stakeholders, and policy-makers about the measures MFS application providers will be enabling to protect consumer account information.” According to CTIA, the guidelines have the flexibility to remain effective through future developments in MFS, technology, and security measures.

### **Congress Passes Stimulus Bill, with Several Billion Dollars Appropriated for Broadband**

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (H.R. 1) (“stimulus bill”). Although the compromise bill eliminated tax credits for broadband, the stimulus bill contains two large appropriations aimed at expanding broadband coverage to all Americans, with the aim of creating jobs in the process. Specifically:

- National Telecommunications and Information Administration (“NTIA”) received \$4.7 billion to fund broadband construction grants and broadband mapping.
- The United States Department of Agriculture Rural Utilities Service (“RUS”) received \$2.5 billion for broadband grants, loans, and loan guarantees.

The FCC also has a number of responsibilities under the stimulus bill, including assisting NTIA with the Broadband Technology Opportunities Program (“BTOP”) implementation and developing a “national broadband plan.” NTIA is authorized to transfer funds to the FCC to carry out these responsibilities, if needed.

#### ***NTIA to Implement Broadband Technology Opportunities Program and National Broadband Map***

The lion’s share of NTIA’s \$4.7 billion must be used to implement the BTOP. Up to \$350 million must be spent to advance the Broadband Data Improvement Act and maintain a nationwide broadband inventory map. The BTOP’s broad goals include bringing broadband to unserved, underserved, and rural areas; expanding broadband access in schools and libraries; job creation; and enhancing public safety broadband services. Broadband construction grants may be made for (among other things) equipment, instrumentation, hardware and software, and infrastructure to further the BTOP’s goals.

Grant recipients must make quarterly reports to NTIA on project progress, and those reports will be released to the public. NTIA must move quickly, because all grant awards must be made by end of Fiscal Year 2010, on September 30, 2010. Entities eligible to apply for BTOP grants include states; the District of Columbia; U.S. territories; Indian tribes; nonprofit entities; and private entities (e.g., broadband service providers) found by rule to be in the public interest. The Federal share of any broadband project may not exceed 80% except by waiver.

NTIA now must design the nuts and bolts of the grant program. To do so, the agency is expected to initiate rulemakings on a number of topics. These could include definitions of terms such as “underserved,” “broadband,” and “access”, identification of priority recipients, benchmark broadband speeds, criteria to define projects likely to promote job creation, and means of compliance with the stimulus bill’s requirement that grant recipients comply with open network and non-discrimination obligations.

NTIA is also tasked with creating and maintaining, by February 17, 2011, a Web-based interactive map, reflecting a comprehensive nationwide inventory of existing broadband service capability and availability in the U.S. Congress has appropriated \$350 million to support this project, and NTIA may also draw on data gathered pursuant to the Broadband Data Improvement Act (P.L. 110-385). A number of details are unresolved, including the granularity of data collections for the NTIA map, how the agency will manage information-gathering burdens on reporting entities, and the confidential treatment to be afforded to carrier data used to create the map.

#### ***FCC to Develop National Broadband Plan***

The stimulus bill directs the FCC to develop a National Broadband Plan (“NBP”) and submit it to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation by February 17, 2010. The NBP’s goal is to ensure that all Americans have access to broadband service, and the FCC must analyze the most effective mechanism to roll out broadband, develop a strategy for achieving affordability of broadband service, and provide for maximum utilization of broadband infrastructure. Given that the FCC has only one year to produce its final NBP, we should expect an FCC rulemaking by sometime in the second quarter of 2009.

#### ***USDA Rural Utilities Service Broadband Grants, Loans, and Loan Guarantees***

The RUS will offer \$2.5 billion for broadband construction projects through a combination of grants, loans, and loan guarantees. The stimulus bill imposes several conditions on RUS in funding projects. Among other things, 75% of the area to be served by each RUS-funded project must be “in a rural area without sufficient access to high speed broadband service to facilitate rural economic development,” and priority will be given to fund projects in areas that contain the highest proportion of unserved rural customers. Also, because of the statute’s instruction that priority be given to entities that borrow or borrowed money under the Title II of the Rural Electrification Act, small and rural local exchange carriers (“RLECs”) are more likely to receive funding. In an effort to avoid “double dipping” in stimulus broadband funds, no part of any RUS-funded project may also be funded by an NTIA-BTOP grant.

RUS will likely use a notice of funds availability (“NOFA”) process to allocate funds, which will get the funds distributed quickly. RUS must submit a report to Congress on planned spending and actual obligations describing the use of the funds by May 17, 2009, and on a quarterly basis after that until all funds have been obligated.

#### ***Congress Delays DTV Transition, But Many Stations Opted to Make Transition on February 17***

##### ***DTV Transition Delay Legislation and Initial FCC Implementation***

On February 4, 2009, the House passed S. 352, the “DTV Delay Act,” a bill to delay the Digital Television (“DTV”) transition until June 12, 2009. President Obama signed the bill into law on February 11.

Because the legislation comes so close to the original February 17 transition date and imposes possible burdens on stations that had made transition preparations, S. 352 required the FCC to provide flexibility for broadcast stations wanting to transition prior to the new date, and to follow the procedures set forth in the *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television* (MB Docket 07-91, released December 31, 2007) ("Third Periodic Review") for stations seeking to transition early.

Before the bill was even signed into law, the FCC released a Public Notice on February 5, 2009 ("February 5 DTV PN") setting forth procedures that full-power television broadcast stations had to follow in order to terminate their analog television broadcast service on or after February 17, 2009.

The FCC implemented several measures to assist consumers in markets where broadcasters would take advantage of the opportunity to switch to all-DTV broadcasts on February 17, the old transition date. On February 13, the FCC released its First Report and Order implementing the DTV Delay Act, in which it extended the analog license terms and adjusted the construction permits for the affected full power television stations affected.

As of February 16, the Commission reported that 421 television stations were still planning to terminate analog broadcasts no later than February 17. The FCC sent staffers to 72 markets across the nation where the impact was expected to be the greatest. They will visit local stores to determine availability of digital converter boxes, and hand out DTV information packets.

Under the DTV Delay Act, consumers now have until July 31, 2009 to request a DTV converter box coupon. NTIA is authorized to issue one replacement coupon per household for each coupon that was issued but expired before being redeemed. The FCC also reviewed those markets where several broadcasters announced plans to switch on February 17, and attempted to ensure that at least one affiliate of each major network (ABC, CBS, Fox, and NBC) would maintain analog signals until the June 12 DTV transition date. In most cases, the Commission arranged for "enhanced analog nightlight" service, where the top-four affiliates must keep at least one analog signal on the air to provide programming that includes at least local news and emergency information.

#### ***FCC's Second Report and Order Implementing the DTV Delay Act***

On February 20, 2009, the FCC released a Second Report and Order and Notice of Proposed Rulemaking ("Second R&O and NPRM") implementing the DTV Delay Act. The Second R&O and NPRM made a number of rule changes and sought public comment on a number of issues.

The rule changes will become effective when the Second R&O and NPRM is published in the Federal Register and will include:

- **Binding Notice of Analog Termination:** All stations that are still broadcasting in analog are required to file a notice by **March 17, 2009** stating the specific date the station plans to switch to digital-only broadcasting. The notice will be binding, and any termination of analog broadcasting before the date stated in the notice is prohibited and will be excused only by "equipment failure, natural disaster or other unforeseeable emergency." Stations that fail to file any notice are expected to maintain analog broadcasting until the new DTV transition date of June 12.
- **FCC Form 387 Updates:** All full-power television stations must update their DTV Transition Status Reports (FCC Form 387) by **April 16, 2009** to reflect their transition plans in light of the delayed transition date.
- **Analog Nightlight Program Applies to New DTV Transition Date:** The Analog Nightlight Program designed by the FCC in January will be in place for the new June 12 transition date.
- **Extension of Consumer Education Obligations:** Most DTV Consumer Education Initiative requirements now expire at the end of 2Q 2009 (during which the new DTV transition date occurs) rather than at the end of 1Q 2009. FCC Form 388 for reporting DTV consumer education efforts was also extended.

Under an expedited five-day comment cycle, the Second R&O and NPRM, seeks comment on, among other proposals:

- **No Early Analog Cutoffs Until April 16:** In order to give the public 30 days notice of early analog terminations, the FCC seeks comment on prohibiting any broadcaster from switching to all-digital before April 16, 2009.

- **Additional Requirements for “Big 4” Networks:** Broadcasters that are affiliates of ABC, CBS, NBC, or Fox would be required to provide additional DTV information, including displaying on-air crawls and participating in certain market outreach activities.
- **Extension of 30-Minute DTV Information Broadcasts:** Should stations that already broadcast the 30-minute DTV information feature required under existing DTV education rules have to update the program with the new transition date and air it again?

#### ***Effect of DTV Transition Delay on New Licensees of Spectrum Recovered from Broadcasters***

New licensees for spectrum recovered from broadcasters switching to digital (which is more spectrum-efficient) will now have to wait nearly four more months before their systems can be operational. Pursuant to the DTV Delay Act, public safety users may take over spectrum as it becomes available. S. 352 provides that nothing in the legislation shall prevent a public safety service licensee from commencing operations on spectrum recovered as a result of the voluntary early cessation of broadcasting (i.e., before the new June 12 DTV transition date) in the analog or digital television service.

The rights of commercial 700 MHz licensees in light of S. 352 are less clear than for public safety licensees. Pursuant to Section 2(c) of the DTV Delay, the Second R&O and NPRM officially extends the terms of the licenses for recovered analog spectrum, including the applicable construction benchmark deadlines, for a period of 116 days. Other than these rule changes, however, the DTV Delay Act does not provide an explicit early use “carve-out” similar to that given to public safety for access to recovered broadcast spectrum before the new June 12, 2009 DTV transition date, even where the spectrum is no longer being used by any broadcaster. Pursuant to Section 27.60 of the FCC’s rules and the Commission’s 700 MHz Auction releases, commercial licensees must protect analog and digital TV incumbents from harmful interference through the end of the DTV transition period. This means, as a practical matter, that 700 MHz licensees will not be able to commence service on the spectrum until June 12, 2009 when all broadcasters finally vacate. Any 700 MHz licensees who may have planned to begin operating wireless services before the DTV transition based on their understanding that a particular broadcaster would be vacating the spectrum should be cautioned that the FCC allowed broadcasters that have previously terminated analog service to request permission to resume analog broadcasting.

#### **D.C. Circuit Upholds Two FCC Orders Enforcing Proprietary Information Safeguards Against First Amendment Challenges**

##### ***Court Upholds FCC’s Retention Marketing Order in Verizon California v. FCC***

On February 10, the U.S. Court of Appeals for the D.C. Circuit rejected Verizon California’s challenge to a 2008 FCC order that it cease and desist from using carrier proprietary information to market its services to customers that have chosen a competitor’s services. When a competing service provider wins a customer from a telephone company, the competitor submits a request to the telephone company to “port” the customer’s telephone number to the competitor so that the competitor may begin to provide service. Three cable companies filed a complaint at the FCC alleging that Verizon used their porting requests to try to retain the departing customers. In granting the complaint, the FCC found that Section 222(b) of the Communications Act protects carrier proprietary information from such “retention marketing” use.

Section 222(b) requires a carrier receiving another carrier’s proprietary information “for purposes of providing any telecommunications service” to use it “only for such purpose” and not for marketing efforts. Verizon argued that this provision protects only carrier information that the *receiving carrier* is going to use to provide telecommunications service, and that the cable companies’ porting requests, which they submit to Verizon in order that they, rather than Verizon, may provide service, therefore are not protected by Section 222(b). The court held that under the *Chevron* deference standard, the statutory language is not “unambiguously contrary to the FCC’s interpretation” that Section 222(b) protects carrier information used by either the receiving carrier or the submitting carrier to provide service. In rejecting Verizon’s First Amendment claim, the court also held that the FCC’s concern—ensuring the receiving carrier’s neutrality in effecting a number port—qualifies as a substantial interest that meets the *Central Hudson* test for commercial speech. The court also rejected Verizon’s argument that the cable companies do not qualify as common carriers protected by Section 222(b), noting that Verizon itself had entered into interconnection agreements with them, an action required only in dealing with a common carrier.

##### ***Court Upholds “Opt-In” Approval for CPNI in NCTA v. FCC***

On February 13, the D.C. Circuit upheld the FCC’s 2007 order requiring carriers to obtain a customer’s affirmative, explicit “opt-in” consent before sharing his or her customer proprietary network information (“CPNI”) with a third party for the purposes of marketing communications-related services to the customer. Applying Section 222 of the Act, the FCC originally required opt-in consent before a carrier could share CPNI, which was struck down by the 10th Circuit’s *US West* decision on First Amendment grounds. On remand, the FCC interpreted Section 222 to require only that the customer not explicitly refuse consent, or “opt-out,” before a

carrier could share CPNI for marketing purposes. In response to growing concerns regarding data brokers gaining unauthorized access to CPNI through “pretexting” schemes (*i.e.*, pretending to be the customer) and the passage of the Telephone Records and Privacy Protection Act of 2006, however, the FCC reversed course again in 2007 and required opt-in approval before a carrier may share CPNI, with a joint venture partner or independent contractor, for marketing purposes.

The National Cable & Telecommunications Association (“NCTA”) challenged the 2007 order on the grounds that the opt-in approval requirement infringes carriers’ ability to communicate with marketing partners and with their customers in violation of the First Amendment. The court noted that NCTA did not claim that the opt-in approval requirement misinterprets Section 222 or that Section 222 is unconstitutional, but only that there was insufficient evidence in the record to support the requirement under the First Amendment. The court responded that “[t]here is nothing to this.” Particularly in light of NCTA’s concession that Section 222 is constitutional, the court held that NCTA necessarily conceded that “requiring customer approval advances” the government’s “substantial interest in protecting the privacy of customer information” and thus that the opt-in approval requirement meets the *Central Hudson* test for restraints on commercial speech. The court noted the importance of the customer’s right to determine “when, how and to whom personal information will be disclosed” and that a carrier’s sharing of CPNI with a third party is “the very harm the regulation targets.” The court stated that the FCC reasonably concluded that CPNI “would be at greater risk of disclosure once out of the control of the carriers and in the hands of” non-carriers, which are not subject to Section 222. The court also rejected NCTA’s Administrative Procedure Act argument, explaining that the FCC “gave sufficient reasons for singling out the relationships between carriers and third-party marketing partners” for a stricter approval process. FCC Acting Chairman Copps hailed the ruling as a “welcome development for all consumers.”

## **Spectrum Issues Dominate Enforcement Bureau Agenda in February**

### ***Non-Compliant Device NALs***

In February, the Enforcement Bureau (“Bureau”) addressed a variety of spectrum-related issues. On February 2, the Bureau’s Spectrum Enforcement Division (“Division”) released two Notices of Apparent Liability for Forfeiture (“NALs”) for apparent violations of Section 302(b) of the Communications Act (“the Act”), prohibiting the marketing of radio frequency devices (“RFDs”) that do not comply with regulations regarding the interference potential of such devices. An NAL against Proxim Wireless Corp. alleged the marketing of a non-compliant RFD and the mislabeling of another RFD model and proposed a forfeiture of \$11,000. The Division noted that, although the base forfeiture for marketing unauthorized equipment is \$7,000, marketing an improperly labeled device is not as significant a violation, and found that a downward adjustment to \$4,000 was warranted for the mislabeled model.

An NAL against Inter Tech FM alleged the marketing of an unauthorized FM broadcast transmitter and the submission of incorrect material information in response to an investigation without a reasonable belief in the truth of the information. The NAL proposed a forfeiture of \$7,000 for the non-compliant device and \$11,000, the base amount, for the submission of incorrect information. The Division noted that Inter Tech provided information that it should have known was incorrect because the information conflicted with marketing information on its own website and stressed that Inter Tech’s failure to exercise “even minimal diligence” hampered the Division’s ability to carry out its responsibilities.

### ***Cascade Anti-Collusion NAL***

On February 10, the Bureau released an NAL against Cascade Access, L.L.C., for its apparent violation of the anti-collusion rules during the FCC’s 700 MHz spectrum auction. Cascade applied to bid on a license covering White Pine, Nevada. Although neither Cascade nor Verizon Wireless, which applied to bid for all of the licenses available in the auction, indicated that they had entered into a bidding agreement in connection with the auction, Verizon reported that it received an “unsolicited” email from an employee of Cascade’s parent company during the auction. In response to a Bureau inquiry, Cascade admitted the communication, in which the employee announced that Cascade was dropping out of the auction and wanted to meet with Verizon, thereby revealing its bidding strategy in violation of the anti-collusion rule. The NAL proposed a forfeiture of \$75,000, explaining that this amount was consistent with a precedent that reduced anti-collusion-related forfeitures from \$100,000 to \$75,000 in light of the parties’ past history of compliance.

### ***Satellite Radio Equipment NALs***

On February 13, the Bureau released orders adopting consent decrees with three foreign manufacturers and one importer of satellite radio receivers, resolving investigations of their manufacturing and/or marketing of receivers under Section 302(b) of the Act and implementing regulations regarding requirements for RFDs. In each of their consent decrees, Humax Co., Ltd., Wistron NeWeb Corp., Audiovox Corp., and Ki Ryung Electronics Co., Ltd., agree to maintain a compliance plan in effect for two years to ensure that they adhere to the FCC’s authorization requirements governing consumer electronics equipment sold in the United States. The plans require the periodic filing of compliance reports with the Division. Under the consent decrees, the manufacturers will make voluntary contributions of \$15,000 to \$30,000 to the U.S. Treasury, and the importer

will make a voluntary contribution of \$5,000.

### ***Retreat on Cable Channel Migration NALs***

On February 17, the Bureau released two orders on its own motion backing off from some of the provisions of the 27 NALs issued in January against cable television providers arising from their cable channel migration practices. The January NALs (discussed in the [January 2009 Bulletin](#)) concerned the migration of cable programming to digital channel tiers or to a switched digital video (“SDV”) platform, thereby making the migrated channels inaccessible to subscribers or accessible only at a higher rate. The two February orders extended the providers’ deadlines to respond to the January NALs, and cancelled NAL requirements that providers pay refunds to customers whose rates increased due to the migration, and respond to letters of inquiry seeking information about the channel migration within 10 days. Industry officials had previously complained that 10 days was not enough time to respond to such wide-ranging inquiries. The Bureau did not modify the four Forfeiture Orders released in January regarding cable channel migration practices.

### ***CPNI NALs***

The one significant non-spectrum-related enforcement development this month was the Bureau’s release of an “Omnibus” NAL against more than 600 telecommunications carriers and 30 individual carriers NALs on February 24, and additional waves of individual carrier NALs later in the same week, for apparent violations of the FCC’s CPNI certification rules. The FCC requires that all carriers file annual certifications affirming their compliance with the FCC’s rules implementing Section 222’s CPNI safeguards. The certifications must be signed by an officer of the carrier and must state that the officer has personal knowledge that the carrier has established operating procedures that are adequate to ensure compliance with the CPNI rules, and the carrier must include a statement explaining how its procedures ensure compliance. The filing must also include an explanation of any actions taken against data brokers gaining unauthorized access to CPNI through “pretexting” and a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI.

The Omnibus NAL alleged that more than 600 carriers apparently failed to file the CPNI compliance certification required as of March 1, 2008. The Bureau recommended a forfeiture of \$20,000 against each of the carriers. Although there is no base amount specified in the forfeiture guidelines for the violations at issue, the FCC has proposed forfeitures of \$100,000 for violations of the prior rule requiring that carriers maintain annual CPNI compliance certifications and produce them on request. The Bureau explained that the recommended forfeiture of \$20,000 was based on the recency of the annual filing requirement and the small size of most of the carriers involved. The Bureau also warned, however, that if this recommended forfeiture did not have “the intended deterrent effect,” future noncompliance would be met with “more severe penalties.”

The more than 70 individual NALs alleged that carriers filed inadequate certifications lacking one or more of the required elements: an explanation of how the carrier’s procedures ensure compliance; a summary of customer complaints; or a summary of actions taken against data brokers. Based on its review of all of the CPNI compliance certifications and many carriers’ failure to file any certification at all, as well as the factors considered in assessing a \$20,000 forfeiture for the failure to file, the Bureau announced that it was adopting a maximum forfeiture of \$10,000 for the filing of an inadequate certification. In most of the NALs, however, the Bureau recommended forfeitures ranging from \$1,000 to only \$6,000, based on the number of required elements that were lacking in each carrier’s certification and the significance or technical nature of the noncompliance involved. Acting Chairman Copps characterized consumer privacy protection as “a top priority,” noting “the importance of protecting the sensitive information that telecommunications carriers collect about their customers,” and stressed that the compliance certifications are “essential to ensuring . . . compliance . . . as well as our ability to monitor . . . compliance.”

### **Other Telecom Happenings on the Hill**

- **Senate Bill Seeks to Permanently Exempt USF from Anti-Deficiency Act Rules:** S. 348, introduced by Senators Rockefeller (D.-Va.) and Snowe (R.-Maine), would grant the FCC’s Universal Service Fund (“USF”) a permanent exemption from Anti-Deficiency Act (“ADA”) rules. The ADA rules prohibit authorizing spending programs where the government has no funds to support them. Previous attempts to enact a permanent exemption have failed, but if passed, S. 348 will save Congress the trouble of approving the exemption on an annual basis.
- **Cell Phone Jamming Bills Progressing:** Senator Lieberman (I.-Conn.) plans to introduce legislation to permit local law enforcement to operate cell phone jamming equipment (which is statutorily prohibited and banned by the FCC). New York Police Commissioner Raymond Kelly has testified before Congress that such equipment would help fight crime. Senators Hutchison (R.-Tex.) and Representative Brady (R.-Tex.) have introduced similar legislation to allow use of jamming equipment in state prisons.

- **FCC Oversight Legislation:** House Energy and Commerce Committee Chairman Waxman (D.-Calif.) is considering FCC oversight legislation that would authorize the Committee to assess the FCC's processes, management, USF administration, and other regulatory priorities. In particular, the Committee would analyze the effect of the FCC's regulatory processes on competition, availability of technologies and services, deployment and reasonable rates for telecommunication and broadband services, consumer protection, and emergency communications capability.
- **Proposed Bill Mandating Satellite Carriage of Local Channels:** Representative Stupak (D.-Mich.) introduced H.R. 927, the Satellite Consumers' Right to Local Channels. The bill would require satellite TV providers to carry local broadcasters' television signals in all markets within one year of the bill's enactment, upon the broadcaster's request. This legislation would particularly benefit 31 local markets where neither of the national satellite providers offers local broadcast channels.
- **Senator Kerry Tapped to Lead Communications and Technology Subcommittee:** As head of the recently reorganized Communications and Technology Subcommittee of the Senate Commerce, Science, and Transportation Committee, Senator Kerry (D.-Mass.) promises broadband, the DTV transition, media ownership, and public safety communications will all be priorities. In a statement, Kerry cited the especially important goal of a national broadband strategy, echoing the National Broadband Plan incorporated into the stimulus bill.
- **House Telecom Announces Its Key Agenda Items:** Similar to Senator Kerry's strategic priorities, Representative Boucher (D.-Va.), new chair of the House Communications, Technology, and the Internet Subcommittee announced broadband, the DTV transition, and sale of the 700 MHz D-Block public safety spectrum as key telecom goals for the year. The subcommittee will oversee National Telecommunications and Information Administration and the Rural Utilities Service spending of billions of dollars of stimulus funds set aside for broadband projects.

### 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>March 1, 2009</b>	Deadline for filing <b>CPNI compliance certification</b> .
<b>March 9, 2009</b>	Reply comments due on petition for rulemaking seeking to <b>transition certain cellular licensing to a geographic market area-based license system</b> .
<b>March 13, 2009</b>	Deadline for FCC and NTIA to adopt <b>rules implementing DTV Delay Act</b> .
<b>March 16, 2009</b>	Extended deadline for filing <b>FCC Form 477 (Local Competition and Broadband Reporting)</b> .
<b>March 31, 2009</b>	<b>Circuit status and circuit addition reports</b> due for international carriers.
<b>April 1, 2009</b>	<b>Form 499A due</b> (Telecom Reporting Worksheet).
<b>April 10, 2009</b>	Deadline for <b>700 MHz licensees to file DTV Consumer Education Report</b> for 1Q09.
<b>April 28, 2009</b>	Comments due on <b>video competition NOI</b> (with data for 2007 and 2008).