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Legal Updates & News

Bulletins

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Looking at the Year Ahead

This edition of our Bulletin is our first for 2007 and covers legal developments affecting the industry since November of last year.

The New Year begins with a full complement of Commissioners at the Federal Communications Commission ("FCC" or "Commission") and a Democratic majority on Capitol Hill. Although predictions are perilous, some trends in the legal environment already are apparent and should be watched as the year unfolds.

First, we should not expect the FCC's own priorities to change dramatically in the New Year. The November elections had no effect on the make-up of the Commission, which stands at three Republican and two Democratic Commissioners. This Commission proceeded cautiously in 2006, concentrating on less contentious subjects such as public safety, consumer protection, and encouragement of broadband deployment. More controversial issues, including universal service reform, intercarrier compensation, and special access reform, remained largely unresolved.

Although the FCC's own priorities might not change in 2007, there is evidence that congressional oversight and other pressures will force action on some fronts. Notably, the Senate Commerce Committee already has scheduled oversight hearings, where Chairman Martin might expect to be grilled on media concentration, indecency, merger oversight, and other issues. Also, new Net neutrality bills are in preparation on Capitol Hill, and neutrality conditions imposed on the AT&T/BellSouth merger set a precedent for more such initiatives. Finally, and more generally, the Chairmen of both the Senate Commerce Committee and the House Energy and Commerce Committee have warned the Commission to expect increased oversight from the new Congress.

One development that probably should not be expected this year, however, is enactment of a comprehensive telecommunications reform law. Instead, the accession of Senator Inouye to the chairmanship of the Senate Commerce Committee suggests that we should look for targeted legislation that addresses specific issues for which bipartisan support can be generated.

Many of these subjects, and more, are covered in detail in this double issue of our Bulletin. As always, we also provide a list of deadlines for your calendar.

Chairman Martin Announces New Bureau Chief Appointments

FCC Chairman Kevin Martin ended the Old Year with a changing of the guard for a number of the bureau chiefs and other senior positions. On December 29, 2006, Martin named Fred Campbell as Chief of the Wireless Telecommunications Bureau and Catherine Seidel as Chief of the Consumer and Governmental Affairs Bureau. Mr. Campbell most recently had served as Chairman Martin's Legal Advisor for wireless issues and Ms. Seidel had been Acting Chief of the Wireless Telecommunications Bureau since April of 2005.

On January 8, 2007, Chairman Martin announced his intention to appoint Monica Desai as the Media Bureau Chief, Helen Domenici as the International Bureau Chief, and Donna Gregg as the Senior Policy Advisor to Ambassador, United States Representative to the World Radiocommunication Conference. Ms. Desai had been Chief of the Consumer and Governmental Affairs Bureau prior to this appointment. Ms. Domenici had spent the last five years in the Office of Science and Technology Policy in the Executive Office as Assistant Director for Telecommunications and Information Technology. Ms. Gregg had been Chief of the Media Bureau since joining the FCC in 2005.

Finally, on January 12, 2007, Chairman Martin announced that Deputy General Counsel Eric Miller would leave the FCC to join the Office of the Solicitor General and would be replaced by Joseph Palmore. Mr. Palmore has been special counsel in the FCC's Office of General Counsel since October 2005.

FCC Approves AT&T/BellSouth Merger

On December 29, 2006, the Commission approved the merger of AT&T Inc. ("AT&T") and BellSouth Corp. ("BellSouth").

In announcing the approval, the Commission pointed to a number of areas in which the merged entity would be better able to serve the public interest. Some of those findings involved improved service to consumers, including likely broadband deployment throughout the companies' combined regions, greater competition for advanced pay television services, and more efficient provision of wireless products and service. Other findings involved enhanced public safety and security, including an end-to-end Internet Protocol network that could provide secure government communications, and improved disaster response capabilities.

In ascertaining that the transaction would not materially increase market concentration or otherwise harm competition, the Commission identified and examined six markets: (1) special access service; (2) retail enterprise service; (3) mass market voice service; (4) mass market Internet access service; (5) Internet backbone service; and (6) international services provided to mass market, enterprise, and global telecommunications customers.

In the special access market, the Commission noted a commitment by AT&T to divest itself of indefeasible rights of use in buildings in BellSouth territory where the two carriers had the only direct connections.

In the retail enterprise market, the Commission found that a combination of customer sophistication and the presence of competitors would prevent the merged entity from dominating the market, even though some existing competition between the two carriers would end.

In the mass market voice area, the Commission found that neither AT&T nor BellSouth was a significant player in the other's territory, and that growing intermodal entry from cable providers and Internet-based telephony would ensure continued competition. Similarly, the Commission found that neither company offered significant mass market Internet access in the other's territory, and that the merged entity would lack incentives to act anticompetitively in that market.

Finally, the Commission concluded that neither Internet backbone nor international service competition would be adversely affected by the merger.

The Commission also cited a number of voluntary commitments made in an AT&T letter of December 28, 2006. In the order in which they are set out in AT&T's letter, those commitments are as follows (see articles below for discussion of conditions concerning special access and Net neutrality):

1. Repatriation of Jobs

The merged entity will relocate 3,000 outsourced jobs to the United States, including at least 200 jobs in the New Orleans area.

2. Broadband Accessibility

As the Commission noted in approving the merger, AT&T/BellSouth agreed to offer broadband Internet access service to all households in their combined territories by December 31, 2007. Those services, to exceed 200 kbps in at least one direction, would use wireline technologies supplemented by wireless access in some areas.

3. Video Rollout

AT&T committed to extend its advanced video programming services to BellSouth's in-region territory "in a manner reasonably consistent with AT&T's roll-out of such services within the AT&T region territory."

4. Public Safety and Disaster Recovery

AT&T agreed to make its disaster recovery capabilities available in BellSouth's territory by June 1, 2007, and to donate $1 million to public safety foundations or public entities.

5. Customers with Disabilities

The merged entity will report to the Commission, within 12 months of the merger's closing, on its efforts to serve customers with disabilities.

6. Unbundled Network Elements

AT&T and BellSouth made a number of concessions concerning the provisioning and pricing of unbundled network elements ("UNEs"), including a commitment not to seek UNE or collocation rate increases, agreement to provide loop and transport access for business lines and fiber-based collocations that no longer meet non-impairment thresholds, and cessation of audits for compliance with eligibility criteria for enhanced extended loops ("EELs").

7. Interconnection Agreements

AT&T and BellSouth agreed to make "entire effective interconnection agreement[s]" available to any requesting carrier where it is lawful and feasible to do so. The companies also made concessions concerning opt-in requests, use of a pre-existing interconnection agreement as the starting point for negotiation of a new agreement, and requests for extensions of current interconnection agreements.

8. Special Access

See article on "AT&T-BellSouth Merger Special Access Conditions" below.

9. Transit Service

AT&T and BellSouth agreed not to increase existing customers' rates for tandem transit service arrangements.

10. Asymmetrical Digital Subscriber Line ("ADSL") Service

The companies committed to deploy and offer ADSL services in the BellSouth territory to "ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service." The companies also made additional commitments concerning ADSL, including an agreement to continue to offer the service for thirty months after implementation in each state, and a commitment to make stand-alone 768 kbps service available for 30 months after implementation at a rate not to exceed $19.95 per month.

11. ADSL Transmission

AT&T and BellSouth committed to offer ADSL transmission services to Internet service providers. The service will be "functionally the same as the service AT&T offered within the AT&T in-region territory as of the Merger Closing Date" and at a price not greater than "the retail price in a state for ADSL service that is separately purchased by customers who also subscribe to AT&T/BellSouth local telephone service."

12. Net Neutrality

See article below, "Net Neutrality Remains in the Spotlight."

13. Internet Backbone

The two companies agreed to substantial concessions concerning settlement-free "peering" arrangements for exchange of Internet backbone traffic with other domestic operating entities in the United States.

14. Forbearance

The companies agreed not to seek or take advantage of the grant of any forbearance petitions for relief from current loop or transport UNE obligations.

15. Wireless

The companies agreed to assign and/or transfer all their 2.5 GHz spectrum to an unaffiliated entity, and agreed to offer service in the 2.3 GHz band to 25% of the population in the companies' wireless communications service ("WCS") license areas or to construct at least five permanent links per one million in those license areas for fixed point-to-point services. The companies committed to meet these goals by July 21, 2010, or to forfeit spectrum for the unreconstructed portion of the licenses for which the goals were not met. Wireless spectrum in Alaska is exempted from these wireless commitments.

16. Divestiture of Facilities

As noted earlier, AT&T and BellSouth agreed to divest indefeasible rights of use in fiber strands in certain buildings in BellSouth's territory.

17. Tunney Act

The voluntary commitments also address the facilities divestiture terms contained in the consent decree and approval Order in the AT&T/SBC merger, which presently is under review pursuant to the Tunney Act. Specifically, the companies agree that if the existing consent decree is modified pursuant to the outcome of the Tunney Act review, the parties will conform their divestiture of BellSouth assets to the modified decree and negotiate with the FCC in good faith concerning the adequacy of the AT&T/BellSouth merger conditions to satisfy "the concerns addressed in the Modified Consent Decree."

18. Certifications

At stated intervals following the merger closing, the merged entity will certify its compliance with these commitments.

Not all Commissioners were equally pleased with the outcome of the AT&T/BellSouth review. Notably, Commissioners Martin and Tate expressed disagreement with the Net neutrality and special access commitments, and emphasized that AT&T/BellSouth's voluntary commitments should not be taken as a guide to future Commission policy. Commissioners Copps and Adelstein emphasized their reluctance to approve the merger and insisted that only the pro-competitive concessions made voluntarily by the two companies permitted them to do so. Commissioner McDowell, who had recused himself from the proceedings, issued a brief statement of congratulations to his colleagues for their hard work on the matter.

Old Congress Adjourns Without Passing Major Telecom Legislation; New Congress Introduces Interoperability Bills

As widely expected, Congress adjourned from its lame-duck session in December without passing the major communications reform bill (HR 5252) that many Republicans had endorsed. Although supporters continued to push for separate legislative measures addressing enhanced 911 Voice Over Internet Protocol service and extending the federal universal service fund's exemption from government accounting requirements under the Anti-Deficiency Act, those fairly non-controversial measures also were not passed by the lame-duck Congress.

Before adjourning in December, however, Congress managed to pass the Telephone Records and Privacy Protection Act of 2006 ("TRPPA"), which the President signed on January 12, 2007. The statute criminalizes pretexting and a broad range of activities involving the false or fraudulent acquisition and use of customer telephone records. Each of the offenses prohibited under the statute carries criminal penalties of monetary fines, imprisonment for a maximum of 10 years, or both. Although the statute provides no specific dollar amount for the fines, the maximum fines allowed under federal law for felony offenses are $250,000 for individual offenders and $500,000 for organizations. Furthermore, the statute imposes enhanced penalties for violations or attempted violations (i) in the course of violating any other U.S. law, or (ii) as part of a pattern of illegal activity involving more than $100,000 or more than 50 customers of a covered entity occurring in a 12-month period. The enhanced penalties consist of double fines or five additional years in prison, or both.

Shortly after the new Democratic-controlled Congress convened in January, Senate Democrats introduced legislation designed to improve communications interoperability among public safety agencies and to implement recommendations of the 9/11 Commission. The Senate bill will serve as a placeholder until a more detailed bill is reported out of committee. Similarly, the House Homeland Security Committee introduced a bill that also is designed to implement the 9/11 Commission's recommendations. The House bill would create a separate interoperability grant program, establish an emergency preparedness program for the private sector, and strengthen federal aid to state and local governments that use unified incident command systems during emergencies. House and Senate leaders could seek to implement one of the 9/11 Commission's recommendations to make available 24 MHz of spectrum in the 700 MHz band for public safety services, but such a proposal could threaten implementation of the 2009 deadline for the end of the digital TV transition.

Additionally, Senate Commerce Committee Chairman Daniel K. Inouye (D-HI) and Sen. Ted Stevens (R-AK) introduced a bill to provide guidance to the National Telecommunications and Information Administration on the distribution of $1 billion in interoperable emergency communications grants to police, firemen, and emergency medical personnel. The grants are required under the Call Home Act, enacted in December 2006, to be distributed by September 30, 2007.

Sen. Stevens also introduced separate bills to reform the federal universal service fund ("USF") mechanism and to distribute enhanced 911 ("E911") grant funds. The E911 bill would expedite the distribution of $43.5 million in E911 grant funds by allowing them to be borrowed from the U.S. Treasury and repaid after the returned analog TV spectrum is auctioned in 2008. The USF reform bill would require telecommunications, broadband, and Internet Protocol-enabled service providers to contribute to USF. The bill also would grant a permanent Anti-Deficiency Act exemption; provide E-rate funding to Native American libraries; and permit Voice Over Internet Protocol ("VOIP") service providers to obtain the same interconnection rights that telecommunications carriers have.

As the new Chairman of the Senate Commerce Committee, Sen. Inouye is expected to pursue a series of small, targeted telecommunications measures, rather than sweeping, comprehensive legislation that the prior Chairman, Sen. Stevens, sought to enact last year. This approach could allow Sen. Inouye to move quickly on more important issues or issues that have bipartisan support, and to avoid controversial issues that prevented passage of communications reform legislation last year.

State Legislators Back in Session and Tackling Telecom Issues

State legislators reconvening after the New Year are wasting no time addressing a variety of telecommunications-related concerns, including proposals to restrict their own use of the telephone for campaign purposes. Given the number of recently introduced bills aimed at restricting autodialed calls with prerecorded political campaign messages, it would appear that even legislators were offended by the dramatic increase in this practice during the most recent elections. Michigan, Connecticut, Oregon, South Dakota, and Texas have pending bills that would attempt to limit unsolicited prerecorded campaign calls by classifying them as calls subject to the states' do-not-call list regulations. Other states are expected to join in this campaign.

Limitations on the use of handheld phones and other devices while driving also top the early lists of new legislation. A number of states that have not already limited the use of mobile devices while driving are imposing restrictions, and those states that previously have imposed restrictions are considering expanding them. Pending legislation in Connecticut would expand the current ban on the use of handheld cellular phones to include all mobile electronic devices and would increase the fine to $250 from $50 for each violation, plus a $25 local surcharge. A New York bill would expand the current ban on handheld phones to include any handheld device for any wireless telecommunications function. Legislation in Vermont and Arizona would impose various bans on handheld wireless devices while driving. Most of the pending legislation includes exceptions for emergency use. The North Dakota and Minnesota legislation would ban the use of any kind of wireless device while driving. In Mississippi, drivers on learner's permits or provisional licenses and all motorcycle drivers under 18 years old would be prohibited from using any kind of wireless phone. Arkansas would prohibit the use of handheld wireless phones while driving and, in a separate bill, would require users of handsfree phones to keep both hands on the steering wheel while driving.

Finally, regulatory reform remains on the agenda for a number of states. The Virginia House has passed HB-1755, which would end Corporation Commission review of telecommunications mergers and acquisitions, except for those filed before July 1, 2006. A pending bill in Montana would eliminate the requirement that incumbent providers obtain prior approval before offering promotional rates. In South Dakota the legislature is considering whether to eliminate tariffs for competitive telecommunications services in favor of a requirement that providers make rates, terms, and conditions available on their Web sites and at their business offices and notify their customers thirty days in advance of any adverse changes. In Oregon, SB-86 would transfer the Attorney General's responsibility for resolving consumer complaints regarding slamming and cramming to the Public Utilities Commission. The Texas Public Utilities Commission ("PUC") has requested that the legislature adopt the universal service reforms contained in the PUC's report to the legislature. In particular, the PUC has recommended that the legislature "update" the large-company high cost support fund because a disproportionate share of its payments, 96%, went to the state's five largest incumbent carriers.

California PUC Sets Schedule for Phase 2 of Its Uniform Regulatory Framework Proceeding

The California PUC recently announced an aggressive schedule for the second phase of its proceeding to impose uniform regulations across all telecommunications carriers, Rulemaking 05-04-005. In its decision in Phase I of this proceeding, issued in June of 2006, the PUC deregulated most retail telecommunications services. The PUC also included in its Phase I order, at the last minute and without providing parties with an opportunity to comment, a provision purporting to eliminate all "asymmetric requirements concerning marketing, disclosure, or administrative process" except those with respect to basic residential rates. Subsequently, AT&T took the position that this freed it from all consumer disclosure requirements imposed on SBC as a result of earlier PUC investigations into abusive marketing practices.

Phase II will further consider this consumer disclosure issue and the challenges to AT&T's interpretation of the Phase I ruling by various consumer advocates. In addition, the PUC also will consider detariffing most retail services, the appropriate regulation of special access services, and easing of carrier reporting requirements. Initial proposals for amending reporting requirements are due on February 7, workshops will be held in mid-February, opening comments are due on March 2 and reply comments by March 30. The PUC will decide in mid-April if it will hold hearings.

FCC Announces Deadlines and Procedures for Filings Under CALEA

On December 14, 2006, the FCC issued three public notices announcing the deadlines and procedures for certain filings required or permitted under the Communications Assistance for Law Enforcement Act ("CALEA").

In the first public notice, the FCC established February 12, 2007, as the deadline by which every telecommunications carrier with a pending CALEA Section 107(c)(1) compliance extension petition must file with the FCC a letter attesting that its petition exclusively concerns equipment, facilities, or services installed or deployed prior to October 25, 1998. After February 12, the FCC will dismiss all pending petitions for which attesting letters have not been received, as well as all pending petitions involving any equipment, facilities, or services deployed on or after October 25, 1998. Carriers may file a new Section 107(c)(1) petition, but only if the petition exclusively concerns equipment, facilities, or services deployed prior to October 25, 1998.

In the second public notice, the FCC established March 12, 2007, as the deadline by which facilities-based broadband Internet access and interconnected VOIP service providers must file with the FCC their system security and integrity ("SSI") plans, as required under Section 105 of CALEA.

In the third public notice, the FCC set February 12, 2007, as the deadline by which facilities-based broadband Internet access and interconnected VOIP service providers must file their monitoring reports on FCC Form 445, describing the status of compliance with requirements imposed by Section 103 of CALEA.

All three public notices also established filing procedures for submitting CALEA compliance extension petitions, cost recovery petitions, monitoring reports, and SSI plans.

Special Access Developments

December was a busy month for special access issues, as the U.S. Government Accountability Office ("GAO"), the D.C. Circuit, and the FCC's Democratic Commissioners (in the AT&T-BellSouth merger) weighed in on the issue.

GAO Special Access Report

First, the GAO recently released a fairly critical report on the state of special access competition (the GAO uses the term "dedicated access") to the House Committee on Government Reform.

Competitive Alternatives. The GAO study looked at sixteen major metropolitan areas, and concluded that competitive alternatives to incumbent local exchange carrier ("ILEC") special access are "not widely available." For commercial buildings, GAO looked at the level of special access demand and found that (depending on the level of demand) only 6% to 25% of buildings had competitive alternatives.

In addition, GAO noted that the theoretically more competitive "Phase II" pricing flexibility areas generally had a lower percentage of "lit" or competitive buildings than the supposedly less competitive areas subject to "Phase I" pricing flexibility. GAO believes this indicates that the FCC's competitive triggers (which are wire center-based) are not accurate predictors of competition at the building level throughout an MSA.

Pricing. In examining pricing, GAO found that ILEC list prices and average revenues for special access have decreased since 2001. Although this might at first glance appear to be consistent with the competition that the FCC expected, when GAO looked separately at just Phase II areas that have received full pricing flexibility, it found that list prices and average revenues are generally higher than or equal to those in Phase I areas still subject to some regulation.

GAO further observed that sometimes onerous contractual terms (such as revenue guarantees and high termination penalties) can further decrease competition by preventing special access customers from switching to a lower-priced competitor or even switching part of their demand to a lower-priced competitor.

Need for Additional Data. Finally, the GAO looked at the data the FCC uses to assess special access competition. It found that this data is out-of-date, limited, and static. Accordingly, the data does not reflect market changes impacting competition, and the FCC has no mechanism in place to review competition after initial price flexibility rulings. Further, GAO notes that the FCC has a limited ability to verify the reliability of any data it does receive. Without more complete and reliable data, GAO concludes that the FCC cannot accurately determine if its pricing flexibility policies are achieving its goals or fulfilling its responsibility to ensure competition.

Conclusions. Accordingly, GAO recommends that the FCC revisit the issues raised in the special access rulemaking and that it develop more accurate measures for monitoring competition. Specifically, GAO recommends that the FCC:

- Develop a more meaningful definition of "effective competition,"
- Consider collecting additional data,
- Monitor competition on an on-going basis, and
- If and where competition is not developing as expected, determine what further actions are necessary to increase special access competition.

This report lends support to those who have argued that more stringent special access regulation should be reimposed in the FCC's pending rulemaking proceeding (as well as those who argued for more stringent special access conditions on the now-approved AT&T/BellSouth merger).

Please let us know if you are interested in a copy of the GAO report.

D.C. Circuit Upholds BellSouth Special Access Discount Plan

Second, in a more positive vein for ILEC special access pricing, the D.C. Circuit vacated and remanded an FCC decision that had found BellSouth's special access discounts to be discriminatory. BellSouth's discount plan was non-linear and gave the biggest discounts to companies continuing to lease most of the services they had leased in previous periods. Because BellSouth's own long distance affiliate was new, it had purchased lower volumes of services in previous periods and therefore, according to the FCC, more easily achieved the discounts than larger rivals. The D.C. Circuit ruled that the FCC's explanation was inadequate, and that the FCC had failed to show that the plan's harm exceeded its benefits or that larger rivals were actually harmed by the discount plan.

AT&T-BellSouth Merger Special Access Conditions

In approving the AT&T-BellSouth merger at the end of December (see separate article on merger), the Democratic Commissioners were able to impose a more expansive set of special access conditions than had been imposed in the earlier AT&T/SBC merger (although observers question the real impact of many of the conditions). The conditions generally include:

- a special access performance measurement plan with quarterly reports,
- prohibitions on rate increases for certain tariffed offerings,
- a prohibition on discrimination in favor of wireline affiliates,
- a commitment not to oppose mediation requests or Rocket Docket requests by special access customers,
- a commitment to offer special access tariffs without minimum annual revenue commitments ("MARCs") or growth discounts,
- a commitment to offer fixed as well as variable MARCs,
- a commitment to offer volume and term discounts without a MARC, and
- guarantees that rates in areas that have obtained Phase II pricing flexibility will not exceed rates in other areas (although this commitment applies to other price cap ILECs only if they reciprocate with similar price decreases).

As to this last commitment, Chairman Martin and Commissioner Tate blasted the condition as unlawful and an improper application of a condition to entities not party to the merger proceeding. Both Verizon and Qwest have objected strongly to this last condition as well, stating that it is illegal and discriminatory, and Verizon filed an appeal with the D.C. Circuit on this issue in mid-January. Stay tuned for further legal action on this issue in 2007 as AT&T files tariffs attempting to implement this condition.

Wireless Developments

Long-Awaited Wireless E911 Waiver Orders Released

The FCC released multiple long-awaited decisions denying the requests by nine "Tier I" and "Tier II" wireless carriers for waivers of the deadline to comply with the FCC's enhanced 911 ("E911") handset penetration rules. Although the FCC had adopted most of the orders in May 2006, the text of the orders was only recently released. The FCC said it also would refer several carriers to the Enforcement Bureau for failure to meet the deadline. In addition, the FCC denied the requests from two industry trade groups for blanket relief from the E911 handset rules. The FCC's orders demonstrate that it is taking a hard stance on compliance with its E911 requirements.

Carriers employing a handset E911 solution were required to ensure that 95% of their handsets were location-enabled by December 31, 2005. Although the FCC previously granted many waiver requests by smaller "Tier III" wireless carriers, the FCC refused the waiver requests of the larger carriers, rejecting their claims that the failure to reach the penetration rate was due to customer reluctance to upgrade their handsets, low customer turnover, and many public safety answering points not upgrading their facilities. The FCC was very critical of carriers' efforts, claiming that they could have taken further steps to increase the penetration rate of location-capable handsets. The FCC stated that carriers should have known that their compliance efforts were not effective and taken other measures to satisfy the required handset penetration rate.

The FCC also rejected a petition filed by CTIA – The Wireless Association ("CTIA") and the Rural Cellular Association that sought a blanket suspension of the 95% handset penetration requirement, or in the alternative, a unified framework for considering waiver requests of that requirement. According to the FCC, "continuing to follow [an] individualized approach to addressing requests for waiver of the E911 requirements will best serve the public interest and promote public safety." Instead, the FCC imposed new reporting requirements on most of the Tier I and Tier II carriers that had sought waivers regarding their continuing efforts to meet the handset penetration rate.

FCC Proposes 700 MHz National Public Safety Broadband Network
The FCC is seeking comment on a new proposal to allocate 12 MHz of the current 24 MHz public safety allocation in the 700 MHz band for one nationwide interoperable, broadband public safety network. (The FCC previously decided to allocate this 12 MHz of spectrum on a local and regional basis for wideband operations.) The FCC's proposal is similar to one proposed by Cyren Call, although unlike the Cyren Call proposal, its implementation would not require Congressional action.

The FCC proposes to allocate the 12 MHz of spectrum to a single national public safety broadband licensee who would be responsible for developing a nationwide interoperable broadband network. The public safety licensee would provide broadband services to public safety entities for a fee on a usage basis. The public safety licensee also would be allowed to operate on a secondary basis on the other 12 MHz of 700 MHz spectrum that has been allocated to public safety. In addition, the public safety licensee would be allowed to lease its spectrum to commercial wireless carriers on a secondary basis, but their access would be unconditionally preemptable at any time with no notice.

The FCC's proposal may present some unique opportunities to those in the wireless industry through leasing options and joint buildout/coverage efforts with the public safety licensee. Comments and replies on the FCC's proposal are due February 26 and March 12, respectively.

Secondary Markets May Be Applied to Government Spectrum
Commercial wireless carriers might be able to lease government-allocated spectrum in the future as the federal government considers whether it can and should apply more market-based structures to government spectrum. Carrying out a Presidential initiative on federal spectrum use, the National Telecommunications and Information Administration ("NTIA") is studying whether government spectrum users can lease their unused spectrum for commercial purposes. NTIA's study also investigates whether government agencies should justify their spectrum use and be held financially accountable for it, such as through the imposition of user fees.

Wireless Truth-in-Billing Debate May Go to the Supreme Court
The debate over state authority to regulate the phone bills of wireless carriers appears to be destined for the U.S. Supreme Court. In August, the U.S. Court of Appeals for the Eleventh Circuit concluded that the FCC exceeded its statutory authority in its truth-in-billing proceeding by preempting state regulation of line items on the phone bills of wireless carriers. In December, the Eleventh Circuit subsequently denied wireless carriers' requests to stay its decision while the carriers file a petition for a writ of certiorari with the U.S. Supreme Court. Although the Eleventh Circuit refused to stay its mandate, carriers have indicated their intention to file an appeal with the Supreme Court, which must be filed by February 27, 2007.

Net Neutrality Remains in the Spotlight

As one condition of the AT&T/BellSouth merger approval (see separate article), the merged entity will comply with the four principles set forth in the FCC's 2005 net neutrality policy statement. This is similar to the conditions placed upon the AT&T/SBC and MCI/Verizon mergers last year.

In addition, however, AT&T/BellSouth agreed that for two years after the merger closes (or until net neutrality legislation is enacted, whichever comes first) it will maintain a neutral network and neutral routing for its wireline broadband Internet access service by agreeing not to provide or sell to Internet content, application, or service providers "any service that privileges, degrades or prioritizes any packet" based on its "source, ownership or destination." Effectively, this is a "fifth principle," and may be a starting point for those seeking to draft net neutrality legislation. Chairman Martin and Commissioner Tate strongly disagreed that this condition was necessary, and noted that AT&T's voluntary business commitment in the merger context could not bind future FCC policy, particularly as the condition was supported only by two Commissioners – a minority of the Commission.

Also at the FCC, Chairman Martin has confirmed that the Net Neutrality Notice of Inquiry (which was originally linked to the AT&T/BellSouth merger approval back in October) is still on circulation. Martin also stated that the delay is the result of the press of other business, not a disagreement among the Commissioners on substantive issues.

Against this backdrop, Congress has already waded back into the net neutrality debate. Senators Dorgan and Snowe have reintroduced their Internet Freedom Preservation Act. This bill would require broadband service providers to operate their networks in a nondiscriminatory manner, but it would still permit them to offer different connection levels to customers. The bill would also prohibit mandatory broadband bundling. The bill would also require the FCC to establish rules governing net neutrality complaint proceedings and would set a 90-day limit for FCC action on such complaints.

Congressman Markey is also allegedly working on a net neutrality bill, as is Senator Wyden. In addition, net neutrality hearings are a possibility in the coming months.

FCC Holds Media Ownership Hearings, Issues Report on Radio Licensing Issues

Chairman Martin has been urged to conclude the Commission's broadcast localism proceeding before wrapping up its media ownership review. In early December, eight members of Congress, including six Democrats and two Republicans, argued that the localism issue deserves its own distinct proceeding. They also called for Martin to report to Congress on a yet-unpublished $350,000 radio localism study to ensure transparent and independent review of the study's findings.

The FCC on December 11 held its Nashville, Tennessee field hearing regarding media ownership. The hearing's initial agenda included two panels, each to close with a public comment session, one on the music recording industry and the other to address the Nashville market and issues affecting broadcasters and independent programmers. Commissioner McDowell released a statement December 11 expressing regret that he could not participate in the Nashville meeting. Chairman Martin and Commissioners Copps and Adelstein all released statements expressing interests in the public's input on the Commission's ongoing review of its media ownership rules. Martin's shorter statement pledged the FCC's ongoing goals to promote competition, diversity, and localism, while Adelstein called for measures to prevent payola practices, and Copps called for remedying "shockingly and embarrassingly low" minority ownership rates.

In early January, the FCC, responding to a Freedom of Information Act ("FOIA") request from the Georgetown University Institute for Public Representation, published several draft media ownership studies and staff reports. The Media Bureau provided copies of several studies and reports, draft or final, regarding media ownership, minority ownership, and localism and related issues from the past several years. The accompanying Public Notice explained that though the Commission is legally entitled to withhold these reports and studies under a FOIA exemption, it was at its discretion releasing the reports and studies due to the high level of public interest in the proceeding.

Finally, the FCC in late November released a report and order streamlining certain procedures for FM/AM radio licensees. Among other things, the new rules specify that changes of community of license for commercial full-power AM standard band and commercial and non-commercial educational FM stations will be handled through the first-come, first-served "minor modification" application. The report and order also revises the FM Table of Allotments to display only vacant allotments; all other authorized full-power non-reserved band FM facilities already occupying allotments will henceforth be listed only in the Media Bureau's Consolidated Data Base System ("CDBS").

Form 499Q Tips

The Form 499Q Telecommunications Reporting Worksheet for universal service is due on February 1, 2007. Note that the Form 499Q and its instructions have been revised, and we recommend that clients review the new instructions to determine possible impact on their reporting. The revisions include additional instructions regarding the reporting of prepaid calling card revenue, the treatment of wireline broadband Internet access revenues, the filing of revenues by VOIP providers, filing requirements following the merger of two entities, retention requirements for data underlying traffic studies used by wireless and interconnected VOIP providers, and other changes and clarifications. The form and attached instructions went into effect on January 31 and thus are the versions that should be used for the February 1, 2007 filing.

Enforcement Bureau Issues Several Consent Decrees

Boston Scientific CRM: On December 7, 2006, the FCC's Enforcement Bureau released a Consent Decree entered into with the Cardiac Rhythm Management ("CRM") business unit of Boston Scientific Corporation terminating an investigation into CRM's compliance with the FCC's equipment authorization requirements. The CRM unit manufactures and markets implantable cardiac devices designed to manage heart rhythms and to provide information through inductive telemetry to external monitoring devices. Because radiofrequency ("RF") emissions in the 90-110 kHz restricted frequency band are produced as a by-product of the inductive telemetry function, CRM sought the advice of the staff of the FCC's Office of Engineering and Technology in 2004. CRM subsequently met with the FCC's Enforcement Bureau staff in March 2006. As a result of that meeting, CRM submitted a petition for waiver on June 6, 2006, to allow use of the 90-110 kHz band for inductive telemetry in its products until engineering changes could be made.

The result of this consultation was the issuance of a Letter of Inquiry ("LOI") to Boston Scientific CRM initiating an investigation into whether its devices produced RF emissions in the 90-110 kHz band and the extent to which CRM had obtained FCC authorization for its devices. The investigation was settled with the December 7 Consent Decree, under which Boston Scientific agreed to make a voluntary contribution of $25,000 to the U.S. Treasury, with no admission or finding of liability or noncompliance. Boston Scientific CRM also agreed to implement an FCC Regulatory Compliance Plan, to be reviewed annually, including the appointment of an Engineering Compliance Manager with oversight of compliance for CRM devices. Boston Scientific also has a Chief Compliance Officer ("CCO") for the CRM and Cardiac Surgery businesses with the ability to effectuate change within the organization. The CCO, who coordinates with the Engineering Compliance Manager, is charged with the overall responsibility for the CRM compliance program. CRM also established a process for any RF interference complaints to ensure their proper handling by appropriate engineering personnel. These requirements will be in force for two years.

Talk America: The FCC released an order on December 29, 2006, adopting a Consent Decree with Talk America Inc. that terminated a Truth-in-Billing investigation initiated by the Enforcement Bureau with an LOI issued in February 2005. The LOI stated that Talk America may have failed to describe clearly and plainly certain charges appearing on customers' bills in violation of the FCC's Truth-in-Billing rules. Settlement discussions initiated in September 2005 resulted in the Consent Decree, under which Talk America agreed to make a voluntary contribution of $470,000 to the U.S. Treasury, with no admission or finding of liability or noncompliance.

Talk America also agreed to implement a compliance plan, under which its bills to consumers would be modified to include only government-mandated taxes in any bill section labeled "Taxes." Accordingly, universal service fees and interstate network charges would be moved from the "Taxes" section of the bills and appear under "Fees and Charges." Talk America also agreed to describe all of these charges clearly and plainly, whether in the glossary on the reverse side of bills or on its Web site. Talk America also agreed to submit sample copies of its residential bills and Web site disclosures to the FCC on a quarterly basis for one year and to ensure that any new items in bills be reviewed by regulatory or legal staff. The compliance plan includes periodic compliance reporting for the life of the Consent Decree, which will be in force for two years.

Newcomm Wireless Services: On January 3, 2007, the FCC released an order adopting a Consent Decree that settled an investigation of possible unauthorized transfers of control by Newcomm Wireless Services, Inc. of C-block personal communications service ("PCS") and fixed microwave service licenses and violations of the FCC's installment payment rules. Newcomm disclosed to the FCC in late 2005 that it had transferred control of its licenses, which are used to provide service in Puerto Rico, to TEM Puerto Rico, Inc., a subsidiary of Telefonica Larga Distancia de Puerto Rico, Inc., and disclosed in May 2006 that the licenses had been transferred back to Newcomm earlier in 2006, all without FCC approval. The Bureau found other instances of unauthorized license transfers involving Newcomm. Although the Consent Decree does not constitute an adjudication on the merits, Newcomm agreed that it had engaged in multiple transfers of control of its licenses without approval, in violation of Section 310(d) of the Communications Act.

These transactions also violated the FCC's rule that companies making installment payments pay the balance of their outstanding loans before the transfer of any licenses bought with the loans. Newcomm had been granted Designated Entity ("DE") status, under which it was permitted to make installment payments for its PCS licenses. In the Consent Decree, Newcomm agreed that it would no longer be eligible for DE status and that it would be required to pay its outstanding loan balance in full. Because Newcomm filed for Chapter 11 bankruptcy protection in November 2006, it sought and received permission from the bankruptcy court to use debtor-in-possession financing to pay the outstanding balance on its installment debt, as well as a payment to the U.S. Treasury of $200,000 to settle its liability for the regulatory violations described in the Consent Decree.

Newcomm also agreed to establish and implement an FCC-approved compliance plan, which continues for five years. Under the plan, the Board of Directors will create a Compliance Committee including three directors to ensure that Newcomm monitors FCC requirements for license transfers of control and to review any proposed financing transactions. Newcomm also agreed to file, on a biannual basis for five years, status reports containing a certification that Newcomm did not engage in any transactions requiring FCC approval.

Analysis: It is difficult to draw any definitive conclusions from three Consent Decrees arising in such different circumstances. However, they tend to support the Enforcement Bureau's repeated advice that parties are usually better off going to the FCC to disclose their violations before the Enforcement Bureau initiates an investigation. In the two cases where parties disclosed their violations to the FCC, the settlements included a $25,000 "contribution" and a $200,000 fine. In the Talk America case, on the other hand, settling an investigation initiated by an LOI required a "contribution" of $470,000. The different payment amounts also might partially reflect the consumer protection aspect of the Talk America case. Consumer protection violations typically incur greater penalties or more onerous settlements than more technical violations related to a party's regulatory status. In either situation, an ounce of prospective regulatory counseling is much cheaper than a pound of reactive defense to an investigation.

Copyright Office "Unlocks" Mobile Phones

On November 27, 2006, the Copyright Office identified six classes of persons who are deemed to be exempt from the prohibition against circumvention of technological measures that effectively control access to copyrighted works. Among these exemptions is one that allows owners of mobile phones to circumvent the software that prevents their handsets from working on the networks of competing wireless providers. Circumventing the program, or "unlocking" it, allows the mobile customer to switch networks without purchasing a handset from the new wireless provider.

In granting the exemption, the Copyright Office reasoned that consumers were not able to enjoy full legal use of their handsets because the software locked their handsets to a particular service provider's network, when in fact their handsets were designed to connect to multiple networks. Prior to the exemption, if a consumer wanted to switch service carriers, the consumer ordinarily would have to purchase a new phone from a competing wireless service provider, leaving the old phone useless on the new mobile network.

In its recommendation supporting the exemption, the Copyright Office stated that "[t]he purpose of the software lock appears to be limited to restricting the owner's use of the mobile handset to support a business model, rather than to protect access to a copyrighted work itself." The Copyright Office did not express either approval or disapproval of any particular business model; however, it noted that its recommendations were "based on law and policy considerations relating to 17 U.S.C. § 1201(a)(1)" and that "the record relating to this proposed class of works does not demonstrate any copyright-based rationale for enforcing the prohibition…." The Copyright Office concluded that because "unlocking" handsets does not adversely affect the interests of the copyright owners, an exemption was necessary.

Wireless providers, who often enter into deals with mobile phone manufacturers for the exclusive right to carry a particular model phone, offer their phones at a discount with the hopes of recouping that discount over the life of the customer's service contract. However, it seems that wireless providers that offer "pay-as-you-go" with no term contracts and no monthly bills may be most affected by the rulemaking. Pay-as-you-go providers offer their phones below cost and hope to recoup their loss through the purchase of additional airtime. Tracfone Wireless, Inc., a pay-as-you-go provider, is challenging the exemption for, among other reasons, being too vague and overly broad.

The exemption will be in effect for a period of three years through October 27, 2009. Prior to the ruling, only one carrier, T-Mobile, allowed its customers to unlock their phones if the customer was in good standing and after a designated waiting period. After the ruling, the Internet has been flooded with consumers looking to "unlock" their phones, and there are several Web sites that are more than happy to provide them with the means of doing so without contacting their current service provider. While the rulemaking gives consumers more flexibility in selecting service providers, consumers should be cautioned that they are still bound to the terms of their service contracts, many of which include terms that impose significant fees for early termination.

For the complete text of the Copyright Office's recommendation please visit: http://www.copyright.gov/1201/docs/1201_recommendation.pdf.

CPNI Compliance Certification Reminder

Telecommunications carriers are reminded that Section 64.2009 of the FCC's rules requires that each carrier execute annually a certificate certifying to the company's compliance with Section 222 of the Communications Act and the FCC's rules regarding the protection of customer proprietary network information ("CPNI"). The CPNI certification requirement applies to both wireline and wireless carriers. Last year the FCC directed carriers to submit their most recent CPNI certificates by February 6, 2006, although the FCC's current rules do not require carriers to submit them. Accordingly, for those carriers that executed a CPNI certificate on or around February 6, 2006, they should re-execute another CPNI certificate for the most recent period on or around February 6, 2007. Carriers should maintain their CPNI certificates in an easily accessible location in the event that the FCC requests copies or filing of the certifications.

Universal Service Developments

Form 499 Reporting Altered for Calls Made by Overseas Military

In response to the recently enacted Call Home Act of 2006, the FCC has decided to forbear from applying certain USF and telecommunications relay service ("TRS") contribution requirements to calls placed by military personnel stationed or deployed outside the United States. Such calls include, but are not limited to, calls made using prepaid and post-paid calling cards and collect calls. The Call Home Act directs the FCC to "take such action as may be necessary to reduce the cost of calling home for Armed Forces personnel." The FCC concluded that excusing calls from overseas military personnel from USF and TRS contribution requirements may be of significant benefit to military personnel and their families, and that "the financial impact on other consumers should be minimal and limited to negligible increases in the USF or TRS contributions associated with other services."

The FCC's decision affects how carriers report their revenue from such calls on their Form 499-Q and Form 499-A reporting worksheets. On the Form 499-Q, carriers should modify their projected revenues to exclude from their contribution bases revenues that are associated with calls falling under the Call Home Act. Specifically, such revenue would be included on Line 119 of the Form 499-Q (projected gross-billed interstate and international end user revenues), but excluded on Line 120 (projected collected interstate and international end user revenues). On the Form 499-A, carriers should continue to report billed revenues in the appropriate lines of Block 4. However, according to the FCC, carriers should note on Line 603 of the Form 499-A that:

> [Enter dollar amount] of my gross billed end user telecommunications revenues were the result of providing telecommunications to Armed Forces personnel stationed abroad for calls placed from foreign points to the United States, and are covered by the Call Home Act of 2006, which Congress passed to reduce the costs of calling home for Armed Forces personnel who are stationed abroad.

USF Auditing to Increase

The FCC's Inspector General, in a semiannual report, stated that audits of the USF programs have been expanded to apply to all such programs. In the past, auditing was generally limited to the Schools and Libraries, or "E-rate," program because of lack of resources. However, the Office of the Inspector General has made additional hires, allowing it to increase its auditing. Accordingly, the high-cost, rural health care, and low-income USF programs will be subject to regular audits, as will those contributing to the USF. The Inspector General's report also noted that additional funding and personnel would facilitate even better audit oversight of the USF, and indicated that the FCC will ask Congress for more funds for the 2008 funding year.

USF ADA Exemption Expires; New Legislation Pending

Before its adjournment at the end of 2006, Congress failed to pass a bill extending the USF's exemption from certain accounting requirements in the Anti-Deficiency Act ("ADA"). Concerned that the expiration of the exemption could again result in the loss of significant USF monies, as it did several years ago before the exemption was adopted, 31 Congressional Representatives sent a letter to FCC Chairman Kevin Martin requesting that the FCC direct the USF administrator to apply any unused USF monies to 2007 commitments while remaining ADA-compliant. In the meantime in the new Congressional session, bills permanently exempting the USF from the ADA accounting requirements have been introduced by Senators Ted Stevens (R., Alaska) and Barbara Cubin (R., Wyo.).

1Q 2007 Contribution Factor Hovers Below 10%

The first quarter 2007 contribution factor for the USF has increased slightly from 9.1% to 9.7%. This marks the second quarter in a row that the contribution factor has been less than 10%. The contribution factor started topping 10% in early 2005 after the FCC concluded that administration of the USF was subject to certain government accounting standards set forth in the ADA. Changing the USF's accounting standards at that time resulted in the loss of millions of dollars and required an increase of the contribution factor to make up for lost monies.

Video Franchise Developments

A number of states have made legislative moves to ease competitive entry into the cable television market. Such measures make it easier for telecommunications providers like AT&T to enter the video market and compete with incumbent cable providers. The Michigan State legislature in December passed a bill to create a uniform statewide franchise for cable television to replace the legacy of cable franchises issued from local municipalities. The Michigan PSC has called for comments by February 8 and replies by March 1 regarding how it should handle complaints and disputes relating to video services. Missouri lawmakers in early January introduced a similar measure to shift franchising authority from localities to the Missouri PSC. The Missouri PSC would have 30 days to review video franchise applications, and would be obligated to grant applications so long as all the required information was provided. Other states have followed Michigan and Missouri's lead in pursuing similar legislation, including California, Colorado, Massachusetts, and New York. These developments come against the backdrop of local authorities attempting to shore up their franchising authority, for example the City of Milwaukee's federal lawsuit against AT&T Wisconsin, seeking to require the company to pay franchise fees for offering its new Internet television service.

On December 21, the FCC voted 3-2 to bar local franchise authorities from impeding competitive entry into cable markets by attempting to unreasonably deter large telecommunications providers from acquiring franchises. The Commission explained that local franchising authorities often act "unreasonably" by encouraging drawn-out negotiations with potential franchisees, imposing substantial build-out requirements, and seeking "in-kind payments." The Order will, among other things, define how long local authorities have to act on franchise requests, ease build-out requirements, and cap franchisee fees. These new rules will apply to local franchise authorities, but not to state-wide franchises. The FCC also sought comments on how the new rules should apply to existing franchisees, as well as the FCC's statutory authority regarding such franchising matters generally. In late January, a consortium of municipal authorities hired outside counsel to challenge the Order.

VOIP Providers Lose Court Challenges Regarding the FCC's VOIP/E911 Rules and the Missouri PSC's Investigation into Fixed VOIP Service

VOIP service providers were dealt two legal blows in court challenges regarding the regulatory oversight of their services. First, the U.S. Court of Appeals for the D.C. Circuit upheld the FCC's 2005 order mandating that interconnected VOIP service providers comply with the FCC's enhanced 911 ("E911") rules. The appeal, filed by several nomadic VOIP service providers, challenged several aspects of the order, including a 120-day compliance deadline and a requirement that VOIP service providers connect to wireline E911 without a corresponding obligation on incumbent wireline carriers to provide such interconnection.

The court rejected arguments that the 120-day period to implement the FCC's E911 was unjustified, even though the FCC had provided wireless and satellite service providers more time to implement 911 capabilities. According to the court, the FCC reasonably determined that nomadic, non-native VOIP E911 access is technologically feasible, noting that the record supported the conclusion that commercial E911 solutions were available to interconnected VOIP providers. Therefore, "any argument about the time period required for implementation is nothing more than a quarrel over relative costs and benefits…. The [FCC] has weighed the cost of an 'aggressive' implementation scheme… against human lives, and found in favor of public safety." The court also concluded that the FCC was under no obligation to require incumbent local exchange carriers ("ILECs") to provide VOIP service providers with connectivity to the wireline 911 network in light of evidence that some ILECs were allowing such connectivity.

In addition, the U.S. District Court for the Western District of Missouri denied a request by Comcast IP Phone, LLC ("Comcast") for an injunction to prevent the Missouri Public Service Commission ("MPSC") from regulating Comcast's VOIP service. The request for injunction was triggered by an MPSC staff complaint asserting that the MPSC has jurisdiction over Comcast's "fixed" VOIP service and that Comcast violated MPSC rules by refusing to apply for state authorization to provide such services. The court concluded that the FCC's prior decision preempting state regulation of VOIP services applied to nomadic services, and did not indicate that the FCC intended to preempt all state regulation of VOIP. The court's decision allows the MPSC's investigation into whether its regulations apply to Comcast's VOIP service to continue.

The D.C. Circuit in 2006 also had previously upheld the FCC's imposition of CALEA obligations on interconnected VOIP providers. These decisions collectively demonstrate that VOIP service providers continue to face regulatory oversight on the federal and state levels and courts continue to provide regulators some measure of latitude regarding the regulation of VOIP services.

Heightened National Security Conditions Continue to Be Imposed on Foreign Investment

Recent transactions in the telecommunications industry have underscored the continued and intensive national security scrutiny of transactions involving any foreign investment. This intensive scrutiny, which began following September 11, 2001, has further increased recently following the unsuccessful attempt last year by Dubai Ports to acquire operations in several U.S. ports. In the wake of the political furor surrounding that transaction, the Committee on Foreign Investment in the United States ("CFIUS"), which comprises representatives of the U.S. Treasury Department, the Department of Homeland Security, the Department of Defense, and the State Department, has come under increased political scrutiny and has imposed significant conditions on some recent transactions before approving them.

In particular, when Alcatel (a French company) obtained approval recently to acquire Lucent (whose Bell Labs unit conducts classified government research), there were some extremely tough conditions imposed. The companies had to agree to create an independent U.S. subsidiary that would handle all U.S. government projects (whether classified or unclassified, military or civilian). When the board of this subsidiary was announced, it included a former Secretary of Defense, a former Central Intelligence Agency director, and a former director of the National Security Agency. Despite this commitment, CFIUS also imposed a condition giving the U.S. government the ability to completely unwind the acquisition if the new company breaches any of its security commitments to the U.S. government in the future. Conditions of this type reportedly have been imposed only very rarely in the past, and several business trade organizations have written a letter to the Treasury Secretary raising concern that such a condition (and the resulting uncertainty it creates) could hinder open trade and investment.

Even more recently, the pending Siemens (German)-Nokia (Finnish) merger of their telecommunications network equipment businesses also reportedly includes CFIUS-imposed conditions governing whether foreign nationals can work on U.S. equipment and/or software.

Accordingly, foreign investors in the U.S. in sensitive industries such as telecommunications should continue to expect very rigorous reviews of transactions. It is important to have experienced counsel to navigate the CFIUS process when a foreign investment transaction arises.

Treasury Department Adopts FCC Credit Card Payment Requirements
Effective December 1, 2006, the U.S. Treasury required persons making online payments to the FCC to use Web browser software which supports the 128-bit encryption standard to ensure the security of payment transactions.

The following specific minimum Web browser versions are compliant:

- Microsoft Internet Explorer version 6.0 or higher
- Netscape 7.x
- Safari 1.2 (for Apple Macintosh users)
- Mozilla Firefox 1.5 or greater

Upcoming Deadlines for Your Calendar

Note: Although we try to ensure that the dates listed in the attached document 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 does not contain all proceedings in which you may be interested.