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Bulletins

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Communications Law Bulletin, December 2008

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The Month in Brief

As the New Year approaches, the Federal Communications Commission ("FCC" or "Commission") has received a letter from Capitol Hill asking the agency to defer action on non-urgent matters until the new Administration takes office. The end-of-year lull doubtless will give the Commission time to absorb a highly negative Congressional report on its performance under Chairman Kevin Martin. We cover these and other developments in this issue of our Bulletin, along with our usual list of deadlines for your calendar. We also extend our best wishes to all of our readers for a happy 2009.

Congress Releases Report on FCC Processes

On December 9, Congress released "Deception and Distrust: The Federal Communications Commission Under Chairman Kevin J. Martin" ("Report"), detailing the findings of the Committee on Energy and Commerce's ("Committee") bipartisan investigation relating to FCC processes. The Report was spearheaded by Committee Chairman John D. Dingell (D-Mich.) and Bart Stupak (D-Mich.), Chairman of the Subcommittee on Oversight and Investigations.

The Report, prepared to address "a number of troubling allegations raised by individuals in and outside the FCC," details some of the "most egregious abuses of power, suppression of information and manipulation of data under Chairman Martin's leadership," explained Representative Stupak. The Report results from an investigation launched January 8, 2008, into the FCC's regulatory processes and management practices.

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More than 600 FCC employees spent 11,620 hours responding to the investigation, collecting and submitting to Congress over 9,000 e-mails and 170,000 pages of documents.

The Committee found, among other things:

Mishandling of FCC Regulatory Initiatives

- Chairman Martin manipulated, withheld, or suppressed data, reports, and information, including data from the other Commissioners during their consideration of the *13th Annual Video Competition Report*, in an "apparent attempt to enable the Commission to regulate cable television companies." Specifically, when the Commission majority rejected Chairman Martin's attempt to use controversial data to show that the so-called "70/70 rule" had been met, and adopted the Notice of Inquiry ("NOI") for the 14th Annual Report (covering 2007), the Chairman suppressed the revised report and the NOI (which have yet to be released).
- Chairman Martin manipulated the *Second A La Carte Report* to suppress findings that a la carte programming would raise costs for multichannel video service and reduce the diversity of available channels. This reversal of the *First A La Carte Report*'s conclusions was made without seeking further public comment or conducting further studies.
- The FCC failed to exercise diligent regulatory oversight of the Telecommunications Relay Service ("TRS") Fund. This failure included ignoring evidence that ratepayers have been overcharged and that TRS providers have been overcompensated by possibly $100 million per year.
- High-profile enforcement actions were not handled under the normal procedure and were not subject to an open and transparent process.

Chairman Martin's Leadership of the Agency

- Chairman Martin's leadership hascreated an environment of distrust, suspicion, and frustration among the other five Commissioners. The Report states that, among other things, Commissioners do not enjoy direct and unfettered access to the Commission staff and their expert advice.
- FCC staff resources have been wasted and mismanaged. Upon taking office, Chairman Martin reorganized staff on an agency-wide scale, and in some cases reassigned senior employees to junior-level positions.
- Chairman Martin has micromanaged day-to-day FCC processes, resulting in "decision paralysis at the Commission." The Chairman, among other things, has prohibited career staff from talking directly to the Commissioners without prior clearance or without supervision, has directed all bureaus and offices to obtain clearance from his office regarding virtually all agency matters, and has required prior authorization for all hiring decisions (including job postings and re-postings, outside hires, details, reassignments, student appointments, and paid student volunteers).
- The Chairman has created a "culture of fear" at the Commission, where employees fear retaliation if they express opinions or reveal facts contrary to the Chairman's agenda.

Although allegations were raised, the Committee found no evidence of wrongdoing or mismanagement in the Chairman's leadership of the following regulatory initiatives: an enhanced 911 report produced by Subcommittee 1B of the Network Reliability and Interoperability Council VII; a report on technical feasibility of certain E-911 wireless location detection services prepared by Dale Hatfield, former Chief of the FCC Office of Engineering and Technology; Broadband-Over-Power Line technical and interference issues; and an Enforcement Bureau investigation of Verizon's compliance with Customer Proprietary Network Information ("CPNI") rules.

The Committee reached no conclusion concerning, and recommended further investigation by different government oversight bodies of: (i) allegations that the FCC threatened to withhold ruling on the Liberty Media–DIRECTV acquisition until DIRECTV resolved an issue concerning the White House's satellite service, and (ii) FCC Public Safety and Homeland Security Bureau Chief Derek Poarch's alleged repeated violations of government travel regulations. The Committee recommended suspension of an inquiry into FCC Inspector General Nilsson's impartiality in conducting internal investigations because the President's Council on Integrity and Efficiency is still considering this issue.

The findings above were published as a report rather than during a Congressional hearing because, the Committee explained, the "climate of fear that currently pervades the FCC" caused key witnesses to refuse to testify or even allow their identities to be revealed.

The Report notes that several allegations could not be fully investigated because the Commission had yet to respond to related document requests. It appears, based on trade press accounts, that Chairman Martin continues to resist submitting critical documents, including "numerous e-mails and other electronic records

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covered by [Congress's] records request."

President Signs Digital Television Measure to Allow Emergency Analog Broadcasting

On December 23, 2008, President Bush signed into law the Short-term Analog Flash and Emergency Readiness Act ("SAFER"), a bill to allow broadcasters to continue broadcasting in analog after the February 17, 2009 digital transition under certain circumstances. SAFER lets broadcasters transmit emergency public safety information, consumer information about the digital television ("DTV") transition, and "such other information related to consumer education about the digital television transition or public health and safety or emergencies as the Commission may find to be consistent with the public interest," for 30 days after the February 17, 2009 analog cutoff.

SAFER leaves many of the implementation details to the FCC's discretion, but requires the Commission to take into account market-by-market needs, based upon factors such as channel and transmitter availability. The Commission also must ensure that post-transition analog broadcasting does not cause harmful interference to DTV services. The FCC must prohibit use of public safety spectrum for the emergency analog broadcasts and may not impose retransmission or must-carry rules for the broadcasts.

Wireless Developments

Wireless Issues in Limbo May Not Be Resolved During the Current Administration
The FCC had teed up for its December open meeting separate orders: (1) establishing service rules for the AWS-3 (2155-2180 MHz) spectrum band; (2) addressing enhanced 911 location accuracy requirements; and (3) establishing new rules allowing the 2.3 GHz band to be shared by wireless communication service licensees and satellite digital audio radio service licensee Sirius XM Radio, Inc. Chairman Kevin Martin cancelled the meeting, however, following a letter from Rep. Henry Waxman (D-Calif.), the incoming chairman of the House Energy and Commerce Committee, and Sen. John Rockefeller (D-W.Va.) that requested the FCC to not act on any items not related to the digital television transition until the new Administration was in place.

According to the FCC, the three wireless orders that were on the open meeting agenda remain on circulation and subject to vote by the Commissioners. However, it is unclear whether any of the items will be voted on before the end of the current Administration. Reps. Bobby Rush (D-Ill.) and Edolphus Towns (D-N.Y.) also sent a letter to the FCC urging the Commission to act on the AWS-3 item on circulation, but Chairman Martin may not have enough votes from the other Commissioners to do so.

In addition, the FCC failed to circulate before the December open meeting an item addressing the re-auction of the 700 MHz D Block license as expected. The FCC proposes to establish a unique private-public partnership in which the D Block licensee would be responsible for building out a broadband network that would be shared by public safety users as well as the D Block licensee's commercial users. The item, however, continues to be heavily debated, and the issue may not be resolved before the end of the current Administration.

Comments Regarding Handset Exclusivity Extended to Pursue Industry Negotiations
The Wireless Telecommunications Bureau granted the request of the Rural Cellular Association ("RCA") and CTIA – The Wireless Association to extend the pleading cycle for comments on RCA's petition for rulemaking regarding the "widespread use and anticompetitive effects" of exclusive wireless handset arrangements. RCA and CTIA requested the extension to allow the continuation of "industry discussions regarding the issues raised in the RCA Petition with the goal of reaching an agreement among interested parties on the issues raised… or, at the very least, narrowing the issues for Commission consideration." Comments and replies are now due February 2 and 20, 2009, respectively.

FCC to Revise Backup Power Rules Following OMB Disapproval
The FCC announced that it intends to revise its rules regarding maintaining backup power for cell sites after the Office of Management and Budget ("OMB") rejected the information collection requirements in those rules. The rules would have required wireless carriers and tower companies to install backup power sources at 220,000 sites.

OMB concluded that the FCC's adoption of the backup power rules violated the Paperwork Reduction Act. According to OMB, the FCC did not demonstrate: (1) "the practical utility" of the information to be collected under the backup power rules; (2) that "a reasonable effort has been made to reduce to the extent practical the burden placed on respondents due to a lack of sufficient clarity on how respondents are to satisfy compliance with this collection;" and (3) that "the collection has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information collected."

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The Paperwork Reduction Act allows the FCC to override OMB's disapproval. However, the FCC stated that it will instead issue a Notice of Proposed Rulemaking "with the goal of adopting revised backup power rules that will ensure that reliable communications are available to public safety during, and in the aftermath, of natural disasters and other catastrophic events while at the same time attempting to address concerns that were raised regarding the prior rules." The FCC also asked the U.S. Court of Appeals for the District of Columbia to dismiss the pending appeal that challenges the backup rules, given the FCC's decision to revise the rules.

Parties Seek Reconsideration of Verizon Wireless–Alltel Merger

The Public Interest Spectrum Coalition ("Coalition") and several regional wireless carriers petitioned the FCC to reconsider and/or clarify the agency's order that approved Verizon Wireless's acquisition of Alltel. Several parties asked the FCC to clarify that Verizon Wireless should be required to reduce its universal service support in equal amounts annually over five years. Some petitioners asked that the FCC reconsider its decision to include broadband radio service spectrum in its spectrum screen, as well as its decision not to impose an open network condition that would allow customers to access content, use devices, and run applications of their choice. In addition, there were requests that the FCC temporarily ban Verizon Wireless from engaging in handset exclusivity arrangements and require Verizon Wireless to make additional divestitures.

Roaming received significant attention by petitioners. Several requested that the FCC require Verizon Wireless to honor Alltel's existing roaming agreements and to provide automatic data roaming for seven years, rather than the four-year requirement in the merger order. According to the petitioners, the extension would provide carriers more time to implement Long Term Evolution ("LTE") technology, which would allow CDMA carriers to roam on other networks with which they are not compatible currently. Leap Wireless asked that the FCC clarify that roaming partners have a choice of applying their existing roaming agreements with Alltel or Verizon in full (rather than just the rates) and that the roaming agreements will apply to future service areas and spectrum bands of each carrier.

According to Verizon Wireless, it has received commitments from various financial institutions to provide $17 billion in funding for the Alltel acquisition (valued at $28.1 billion). The company expects to complete the merger in early to mid-January.

More Criticisms Leveled Against the Administration of the Universal Service Fund While Contribution Factor Sinks Below 10 Percent

Several recent reports by the FCC's Office of Inspector General ("OIG") concluded that most of the universal service fund ("USF") support mechanisms made a significant number of erroneous payments and are "at risk" under the Improper Payments Information Act of 2002. OIG also found that the USF support programs continue to face administrative and oversight problems by the Universal Service Administrative Company ("USAC"), which administers the USF program.

One study estimated that approximately $970.3 million, or 23.3 percent, in erroneous high-cost payments were distributed in fiscal year 2006, most of which were overpayments. Another study estimated that approximately $232.7 million, or 13.8 percent, in erroneous E-Rate program payments were distributed in fiscal year 2007. With regard to the low-income USF program, OIG determined that carriers were paid in the 2007 fiscal year based upon USAC projections rather than actual expenses incurred. USAC was not able to provide documentation to verify the accuracy of the calculations for each payment.

According to the OIG, the audit results indicate that "closer scrutiny of USAC's management, processes, controls and self-improvement efforts is needed. Closer coordination by USAC with the FCC's managing director and the chief of the FCC's Wireline Competition Bureau should improve remediation and transparency and facilitate further improvements in the administration of USAC's programs." OIG also noted that it has taken steps to further address waste, fraud, and abuse issues by hiring additional internal auditors and outside auditing firms to study USAC's management.

The USF contribution factor for the first quarter of 2009 will decrease by almost two percent, from 11.4 percent to 9.5 percent. The decrease is due in part to a drop of approximately $120 million in high-cost support for eligible telecommunications carriers ("ETCs"). The interim cap that the FCC imposed earlier this year on high-cost support for competitive ETCs is estimated to be responsible for a little more than half of that $120 million.

The FCC also announced that the amount of high-cost support each competitive ETC would receive under the interim cap, which is based upon March 2008 support levels, is available for review. The FCC urged carriers to examine the information and file any corrections with the USF administrator by December 31.

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In addition, as further discussed in the following article, Chairman Kevin Martin has expressed support for a specific universal service reform proposal which would include using reverse auctions to distribute high-cost USF support.

FCC Action on Intercarrier Compensation/Universal Service Reform Further Notice Viewed as Unlikely Following Rockefeller-Waxman Letter and Cancellation of December 18 Open Meeting

Any comprehensive resolution of the FCC's pending further notice addressing three intercarrier compensation and universal service reform proposals (summarized in last month's *Bulletin*) appears to be on hold for the foreseeable future. On December 2, 2008, the FCC's Wireline Competition Bureau granted motions to extend the filing deadline for reply comments on the further notice until December 22. On December 3, 2008, Chairman Martin acknowledged that this extension effectively precluded any action on the further notice at the FCC's December 18 open meeting, but stated that there had not been enough time to consider a comprehensive reform package by then in any event. He blamed the other Commissioners for the FCC's inability to act at the December meeting, stating that the original comment cycle, which "they picked," closed on December 3, "which . . . precluded . . . getting an item in front of the Commissioners three weeks before" the December open meeting. Martin challenged the other Commissioners to "tell me" if they are "now ready to act on what I put out for public comment," adding that "they have not done so."

The other Commissioners were unaware of the extension until it was released. Speaking at an industry conference on December 4, Commissioner McDowell expressed surprise at the extension and said that "it would have been nice to have a heads up, at least." Commissioner Copps was also reportedly disappointed that no action would be taken at the December meeting.

Chairman Martin has expressed the hope that the FCC would take action on the further notice at its January open meeting, and sources indicate that the other Commissioners are working toward a consensus. Any realistic hope of comprehensive action in the near future, however, has diminished considerably. On December 11, rather than waiting for the next open meeting or the submission of reply comments, the Chairman voted in favor of the narrowest of the three proposals attached to the further notice, addressing only universal service fund (USF) reform issues. The USF reform proposal is based on recommendations by Rep. Joe Barton (R-Tex.), and would cap the USF and distribute support by means of "reverse auctions." An FCC spokesman said that "we have been informed that all three of the Republican Commissioners support the universal service fund reform proposal," but the Commissioners have not made any public statements to that effect.

Another obstacle to comprehensive reform is a letter sent on December 12 by the incoming Chairmen of the Senate and House Commerce Committees, Sen. John D. Rockefeller (D-W.Va.) and Rep. Henry A. Waxman (D-Cal.), advising the FCC to focus "only on matters that require action under the law and efforts to smooth the transition to digital television" and not to "consider . . . complex and controversial items that the new Congress and new Administration will have an interest in reviewing." Commissioner Copps stated the same day that he "couldn't agree more" that the FCC should focus only on the digital television transition for the next two months. In response to the letter, Chairman Martin cancelled the December 18 meeting, also without notifying the other Commissioners, and industry sources say that, given the December 12 letter and meeting cancellation, the FCC is unlikely to act on anything but DTV issues in the near future.

The contentiousness of the industry debate over the proposals would have made achieving consensus extremely difficult in any event. The Regional Bell companies and other large incumbent local exchange carriers ("ILECs"), as well as the smallest rural ILECs, generally supported the comprehensive reform proposals in their initial comments filed on November 26, but mid-sized ILECs vehemently opposed comprehensive action that they argued would reduce their access charges without a commensurate increase in their high-cost universal service support. Wireless providers were somewhat supportive of the proposals, with revisions, but competitive local exchange carriers ("CLECs"), especially rural CLECs, rural wireless providers, and state commissions were generally opposed.

On December 19, 2008, Sprint Nextel filed a petition for partial reconsideration of the FCC's November 5 Order on Remand addressing intercarrier termination rates applicable to non-access calls to Internet service providers (summarized in last month's *Bulletin*). Sprint states that while it agrees with the FCC's decision in the Order on Remand to retain the $0.0007-per-minute cap on terminating rates for calls bound to Internet service providers ("ISPs"), the FCC should rely on an additional legal basis for its treatment of such traffic. The FCC concluded in the Order on Remand that ISP-bound traffic constitutes interstate traffic and that the $0.0007 cap could be justified under the FCC's Section 201 authority. Sprint states that, because ISP-bound traffic also falls within the scope of Section 251(b)(5), governing reciprocal compensation arrangements, the FCC should also find that the $0.0007 cap is alternatively justified under Section 252(d)(2), which sets forth pricing standards applicable to reciprocal compensation arrangements. Sprint points out that the Order on Remand found that ISP-bound traffic falls within Section 251(b)(5) and that the U.S. Court of Appeals for the

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D.C. Circuit, in remanding the FCC's rules governing such traffic, stated that those rules are likely permissible under Section 251(b)(5). Sprint concludes that reliance on this additional legal basis would "bolster" the Order on Remand before it is reviewed in Core Communications' pending appeal (also referenced in last month's *Bulletin*).

Ninth Circuit Rejects Fones4All Appeal of Forbearance Denial on Exhaustion Grounds

On December 16, 2008, the U.S. Court of Appeals for the Ninth Circuit rejected an appeal by Fones4All Corporation ("Fones") of the FCC's denial of Fones's forbearance request on procedural and substantive grounds. In 2005, Fones petitioned the FCC to forbear from applying its regulation eliminating the previous requirement that incumbent local exchange carriers (ILECs) make "unbundled" local switching services available to enable competitive local exchange carriers (CLECs) to serve mass market customers. In 2006, the FCC issued a press release denying Fones's forbearance request on the statutory one-year-plus-90-day deadline for denial and, on the next day, released a Memorandum Opinion and Order ("Order"), dated as of the deadline, denying the petition. Fones appealed the denial, arguing that the Order had been improperly backdated and released one day after the statutory clock ran out, thereby causing the petition to be "deemed granted" as a matter of law, and that the denial could not be justified on the merits under the statutory standards for forbearance relief.

Turning to Fones's procedural argument, the court, in an opinion by Judge Schroeder, agreed with the D.C. Circuit's holding in parallel circumstances in *In re Core Communications* that, where a party denied forbearance relief does not raise timeliness and backdating issues before the FCC in a meaningful manner, its appeal should be denied for failure to exhaust remedies. The court also rejected Fones's argument that it would have been futile to raise this procedural claim, noting that the Communications Act's express exhaustion requirement precludes judicial creation of a futility exception to that requirement. The court also agreed with the FCC's Order on the merits, holding that forbearance from a regulation terminating a previous unbundling requirement "would not reinstate the [unbundling] requirement." The court quoted the FCC's ruling that forbearance from the challenged regulation "'results in a void rather than an unbundling . . . requirement.'" The court also rejected the FCC's suggestion that Fones's bankruptcy mooted its appeal because the litigation could affect the value of Fones's assets in bankruptcy.

This case is notable for practitioners because it reinforces both the exhaustion requirement and the unavailability of a futility argument in a telecommunications-related case and confirms the FCC's position that a party may not obtain forbearance from the elimination of a regulatory requirement. This case especially underscores the need to stay current, since Fones should have been on notice of the D.C. Circuit's decision in *Core*, finding a failure to exhaust in parallel circumstances arising from the denial of a forbearance request, almost four months before Fones would have had to file a petition for reconsideration of the denial of its own forbearance request.

Seventh Circuit Court of Appeals Holds that State Commission Cannot Require More Unbundling than FCC Requires Under Sections 251 and 252

On November 26, the U.S. Court of Appeals for the Seventh Circuit rejected an attempt by the Illinois Commerce Commission ("ICC") to require that Illinois Bell Telephone Company provide competitors access to unbundled network elements ("UNEs") that the FCC has held need not be unbundled under Sections 251 and 252 of the Communications Act. The court, in an opinion by Judge Posner, held that the ICC's stricter unbundling requirements were preempted by Sections 251 and 252 because the ICC rules would undermine the FCC's judgment regarding the optimal degree of unbundling required to foster facilities-based competition. The court also rejected the ICC's claim that Section 271 of the Act authorizes it to require the provision of the same network elements at cost. Section 271 requires the former Bell companies to provide unbundled access to certain network elements as a condition of entry into the long distance service market, but requires only that these elements be provided at market price, not at cost. The court accordingly affirmed the district court's grant of summary judgment in favor of Illinois Bell.

BCE Leveraged Buyout Collapses

The credit crunch and economic downturn have killed another private equity deal. The leveraged buyout of BCE Inc. ("BCE"), Canada's largest telecommunications company, collapsed earlier this month when the buyers, the Ontario Teachers' Pension Plan and several U.S. private equity firms, terminated the acquisition agreement. The deal, valued at $48 billion when it was announced last year, would have been the largest leveraged buyout ever.

As a condition to closing the transaction, the buyers required that the accounting firm KPMG deliver a solvency opinion stating that after the closing, BCE would meet various solvency tests. When KPMG concluded that

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BCE would fail a solvency test because of the massive amounts of debt it would incur in the transaction, the buyers walked.

As a result of the failed deal, BCE claims that the buyers owe it a contractual breakup fee of just under $1 billion. The buyers disagree. Now the controversy moves to Quebec Superior Court, where BCE has sued the buyers for the fee. Also in the wake of the busted deal, BCE has reinstated its dividend and announced a share repurchase program to boost its stock price.

FCC Maintains Busy Enforcement Schedule

The FCC's enforcement activities covered a wide range of issues during the past month. On November 25, 2008, the Enforcement Bureau ("Bureau") released an order adopting a consent decree with Honeywell International, Inc., terminating an investigation into Honeywell's alleged unauthorized assignment of an earth station license. During the investigation, Honeywell applied for approval of a pro formaassignment of an earth station license that had occurred six years previously. Under the consent decree, Honeywell agreed to make a voluntary contribution of $40,000 to the U.S. Treasury and implement a one-year compliance plan.

On December 2, 2008, the Bureau released an NAL against Fox Television Holdings, Inc. for its unauthorized pro formatransfer of control of 35 satellite earth stations used to support the operation of its TV stations. Fox did obtain approval in 2006 for the transfer of 37 TV broadcast stations and its recapitalization but neglected to include the corresponding earth stations. Several months later, Fox noticed its lapse and filed an application for *nunc pro tunc* approval, which the FCC granted in 2007 without prejudice to any subsequent enforcement action. In response to a letter of inquiry issued by the Bureau, Fox argued that, because the FCC approved the larger transaction and because Fox voluntarily disclosed its failure, it should not be fined, at least not based on 35 separate violations. The Bureau noted, however, that it viewed the failure as a "serious breach of a licensee's responsibility." Although the prescribed base forfeiture for the unauthorized pro formatransfer of control of a license is $1,000, the Bureau nevertheless determined that a total forfeiture of $35,000 would be excessive because the transfer resulted from a single transaction and Fox voluntarily disclosed its oversight. Accordingly, the Bureau found that a reduction from $35,000 was appropriate and proposed a forfeiture of $17,500. Although the Bureau reduced the applicable base forfeiture, this NAL also underscores the importance of including all of the affected licenses in a transfer of control or assignment application.

On December 3, 2008, the Bureau released an order adopting a consent decree with Cincinnati Bell, Inc., terminating an investigation of possible violations of its obligations to contribute to the Universal Service Fund, the Telecommunications Relay Service Fund, and numbering administration funds and to pay regulatory fees. The investigation arose from Cincinnati Bell's disclosure that it had underreported its interstate telecommunications revenues on its FCC Form 499s, resulting in possible underpayment of its USF, TRS, and other contribution obligations. Under the consent decree, Cincinnati Bell agreed to implement a two-year compliance program, including the creation of a compliance manual covering its USF, TRS, and other regulatory requirements and the filing of periodic compliance reports. Although Cincinnati Bell voluntarily disclosed its underreporting of revenue and shortly thereafter submitted corrected Form 499s and paid all subsequent invoices from the Universal Service Administrative Company, it also agreed to make a voluntary contribution of $450,000 to the U.S. Treasury. This substantial payment underscores the importance of accurate Form 499s and the FCC's strict enforcement of these contribution obligations.

Chairman Martin reportedly circulated in early December to the other commissioners, a series of NALs totaling about $11 million against seven cable operators asserting that they failed to educate their customers about the DTV transition that will occur on February 17, 2009. The other commissioners have yet to vote on the items. The NALs allege that the companies violated an FCC order released in March requiring pay-TV providers and eligible telecommunications carriers receiving Lifeline/Link Up low-income universal service support to include information about the DTV transition in their monthly bills.

On December 15, 2008, the FCC released an order adopting a consent decree with BCE Nexxia Corp. ("BCE"), terminating an investigation and NAL for apparent violations of its obligations to submit Form 499s, to contribute to the USF, and to file other reports. The NAL, released in 2005, proposed a penalty of $282,000 for alleged USF contribution and Form 499 violations. During settlement discussions, BCE disclosed potential violations of FCC rules regarding Submarine Cable Landing License Reports, International Bearer Circuit Fees, International Carrier Traffic and Revenue Reports, International Circuit Status Reports, and Foreign Carrier Affiliation Notification. Under the consent decree, BCE agreed to implement a two-year compliance program, including the creation of a compliance manual covering its USF, TRS, and other regulatory reporting requirements and the filing of periodic compliance reports. BCE also agreed to make a voluntary contribution of $325,000 to the U.S. Treasury.

Finally, on December 22, 2008, the Bureau released an order adopting a consent decree with AT&T Inc.,

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cancelling an NAL and terminating an investigation for possible violations of the FCC's informal complaint rules. In February, the Bureau issued an NAL against AT&T, proposing a penalty of $96,000 for its apparent failure to respond in a timely manner to informal consumer complaints forwarded by the FCC. In the consent decree, AT&T agreed to implement a two-year compliance plan to ensure timely responses to all informal complaints served by the FCC, including a bi-annual review of sample complaints and a requirement that AT&T report to the Bureau any failure to respond to an informal complaint in a timely manner. AT&T also agreed to make a voluntary contribution of $6,000 to the U.S. Treasury.

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.

January 10, 2009	Deadline for electronic filing of **children's TV reports for preceding four quarters**.
January 12, 2009	Deadline for **700 MHz licensees to file DTV Consumer Education Report** for 4Q08.
January 15, 2009	Deadline for manufacturers and CMRS providers to file Form 655 **(compliance with hearing aid compatibility requirements)**.
February 1, 2009	Deadline for filing **FCC Form 502 (Numbering Resource Utilization/Forecast Report)**.
February 1, 2009	Deadline for filing **FCC Form 499Q Telecom Reporting Worksheet.**
February 2, 2009	Comments due on **petition for rulemaking on handset exclusivity arrangements.**
February 6, 2009	Deadline for filing **911/E911 network reports.**
February 17, 2009	**DTV TRANSITION** – date by which full-power TV stations must transmit only digital signals.
February 20, 2009	Reply comments due on **petition for rulemaking on handset exclusivity arrangements.**

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