BloostonLaw Telecom Update

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Small CLEC Seeks Partial Stay Of Recip. Comp. Order

CoreTel Says FCC's 10% Cap on Growth Eligible For Compensation, "New Market Bar" Provision Will Force Company To Go Out of Business

Core Communications (CoreTel), an 11-employee competitive local exchange carrier (CLEC) based in Annapolis, Md., has requested a partial stay of the FCC's reciprocal compensation order on remand, pending judicial review. Specifically, CoreTel requests that the FCC stay implementation of the "growth cap" and "new market bar" on reciprocal compensation for Internet service provider (ISP)-bound minutes that will become effective June 14. Under the FCC's order, a cap will be imposed on total ISP-bound minutes for which a LEC may receive compensation, equal to the number of ISP-bound minutes for which that LEC was previously entitled to compensation, plus a 10% growth factor. Further, the FCC added a flat bar on a carrier receiving any inter-carrier compensation when it enters a new market--e.g., one in which it had not exchanged traffic prior to April 2001, the date the Commission adopted the reciprocal compensation order on remand. CoreTel sees these rules as the imposition of a de facto "bill and keep" system.

CoreTel also asks that the FCC act on its petition by June 7. The company says it is seeking emergency relief because the growth cap and new market bar will likely force CoreTel out of business in at least three of the seven markets it serves or plans to serve. CoreTel is a very small company, with year 2000 gross revenues of $2.82 million. It serves approximately 50 ISPs from four data centers, from where it manages 2,800 modems and 2,000 digital subscriber line (DSL) circuits.

Essentially, CoreTel helps small to medium-sized ISPs provide Internet connectivity without investing in expensive data and telecommunications network equipment. CoreTel argues that its entry into markets has been "substantially slowed by Verizon's delays in supplying the necessary interconnection facilities." These delays are the subject of a complaint before the Maryland Public Service Commission, CoreTel says.

CoreTel argues that the FCC's growth cap and new market bar rules "violate the most fundamental principle of administrative law: Similarly situated parties must be treated similarly." For example, it says, two CLECs that have relied on FCC rules to formulate their business plans will face different transition periods under the Commission's order. A large, slow-growing CLEC will receive reciprocal compensation for all ISP-bound traffic it terminates. But a small, fast-growing CLEC will receive reciprocal compensation for only a fraction of its ISP-bound traffic--or, in the case of a new market entrant, no reciprocal compensation at all. "The FCC's evident desire to avoid opportunities for regulatory arbitrage and to limit distortions in the operation of a competitive market also does not provide a reasoned basis for discriminating against carriers with little or no existing ISP-bound traffic," CoreTel says. It also argues that the "10%" figure for the cap has no reasoned basis. CoreTel says that the FCC simply took the aggregate projections of CLEC trade associations which suggested a 7% to 10% growth for dial-up Internet traffic nationwide, and rejected incumbent LEC projections of 40% growth nationwide. The FCC "failed to provide the required evidence of a connection between industry aggregate estimates of the growth of dial-up Internet access traffic and firm-specific, market-specific projections of the growth of dial-up Internet access traffic for a specific firm in a specific market," CoreTel argues.

Further, it says the FCC's process to arrive at the growth cap and new market bar rules was fatally flawed. CoreTel argues that the Commission never "publicly proposed" these rules in a Notice of Proposed Rulemaking or Public Notice seeking comments after the U.S. Court of Appeals for the District of Columbia Circuit remanded the agency's initial declaratory ruling on reciprocal compensation issues. "The Commission never gave adequate notice that it would consider a discriminatory transition scheme, such as the growth cap and new market bar," CoreTel says.

The company argues that in the absence of a stay it will suffer irreparable harm. Even before judicial review can be completed, it says, it likely will have to abandon its plans to serve three new markets--Philadelphia, Pittsburgh, and New York--because it will not receive any reciprocal compensation revenues in those markets. The company also said that it would be forced to close one of its four data centers.

BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

CoreTel Asks D.C. Circuit To Intervene Before Recip. Comp. Order Takes Effect

At our deadline, Core Communications (CoreTel) followed its request for partial stay of the FCC's reciprocal compensation order (see separate story) with an "Emergency Petition for Enforcement of Mandate" at the U.S. Court of Appeals for the District of Columbia Circuit. Essentially, CoreTel argued that by adopting an alternative rationale in its "Order on Remand," the FCC failed to follow the court's instructions when it remanded *Bell Atlantic v. FCC*. The court had asked the Commission to explain its rationale for concluding that Internet service provider (ISP)-bound traffic was "interstate" rather than "local" (BloostonLaw Telecom Update, April 25). CoreTel argued that the Commission's reciprocal compensation order fails to comply with the D.C. Circuit's mandate in three respects:

(1.) The court directed the FCC to explain why extension of the Commission's so-called "end-to-end" jurisdictional analysis to Section 251 (b) of the Telecommunications Act "made sense in terms of the statute or the Commission's own regulations." But on remand, the FCC's reciprocal compensation order rejects application of Section 251 (b) and attempts to justify the reciprocal compensation rules on entirely new statutory grounds under Section 201.

(2.) The court upheld the FCC's view that reciprocal compensation under Section 251 (b)(5) is available only for "local" telecommunications. But on remand, the FCC reversed this rule, holding that "all" telecommunications were subject to that statute.

(3.) The court instructed the FCC, as an "independent ground requiring remand," to resolve whether calls to ISPs are "telephone exchange service" or "exchange access"--with the former subject to reciprocal compensation, and the latter not subject to it. But on remand, the FCC decided that ISP-bound calls are yet another category of telecommunications--"information access."

As a result, CoreTel argued, the FCC's reciprocal compensation order on remand is "plainly inconsistent" with the court's mandate in the *Bell Atlantic* case. CoreTel asked that the D.C. Circuit, prior to the June 14 effective date of the reciprocal compensation order, (1) enforce the mandate, (2) vacate the reciprocal compensation order, and (3) issue a writ compelling the FCC to hold that ISP-bound traffic is subject to Section 251 (b) reciprocal compensation.

BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

NARUC Consumer Affairs Committee Voices Concern Over New IXC Charges

State Regulators Want Customers To Have Info On How To Avoid Paying New Monthly Fee

The Consumer Affairs Committee of the National Association of Regulatory Utility Commissioners (NARUC) has gone on record opposing new long-distance billing charges and the manner in which they have been imposed on customers. The NARUC panel this week sent letters to the nation's major long-distance providers, expressing its concern over the new charge appearing on many telephone customer bills across the country this year and how some long-distance companies implemented the charge without notifying their customers. NARUC singles out AT&T for praise because the company gave customers advance notice of the new charge and information on how to avoid paying the monthly fee.

Customers of Sprint and AT&T are now being charged $1.50 per month if they receive and pay their long-distance charges with their local telephone bill, NARUC said. MCI WorldCom has not instituted this charge on a nationwide basis but is considering such a move. NARUC said that many customers are uninformed or even unaware of this new charge, making it doubtful they would understand the charge could be avoided by requesting a separate bill or online payment option. The NARUC Consumer Affairs Committee questions the rationale for the need for the separate line item charge and goes on to ask the long-distance companies to do a better job of informing their customers about it. The NARUC panel suggested that the companies send customers follow-up information with ways to avoid the new billing charge.

Long-distance companies cite increased costs for billing services provided by former Bell local telephone companies. However, the committee of state commissioners believes that changing costs of doing business cannot justify a separate line item charge, which it states "amounts to a rate increase." The NARUC committee further states that it "believes that consumer information is vital in a competitive marketplace. Companies should compete on the basis of business practices and customer relations in addition to price." Some states require individual customer notifications before implementing new charges such as this on customer bills. However those state regulations do not necessarily apply to interstate long-distance services, NARUC said.

BloostonLaw contacts: Ben Dickens and Gerry Duffy.

Illinois Legislature Rewrites State Telecom Statutes To Open Local Networks

The Illinois Legislature has rewritten the state's telecommunications laws to open local telephone networks to competition. Dominant carriers, such as SBC/Ameritech and Verizon, must give competitors greater access to their networks, according to the legislation, HB 2900. The measure recently passed the Senate 45-2, and the House 112-5. It is expected to be signed by Gov. George Ryan (R) in the near future.

Provisions of HB 2900 include: (1) Local phone companies must restore outages within 24 hours or give customers up to $20 in credits per day, plus the use of a cell phone; (2) Business customers will receive an automatic $90 million refund from SBC/Ameritech; (3) SBC/Ameritech must provide competitors with more access to phone lines; (4) Each violation of competition, service quality or other Illinois Commerce Commission (ICC) rules could result in a maximum $250,000 fine for SBC/Ameritech and a maximum $30,000 fine for other incumbent local exchange carriers (ILECs); and (5) Both SBC/Ameritech and Verizon must offer high-speed Internet access to 80% of their customers by Jan. 1, 2005.

The bill also requires all ILECs to offer residential customers a three-tiered rate package for local service, with rates set by the ICC and capped for five years. Although rates have not been set, Illinois lawmakers envision the following: (1) a basic plan offering dial-tone and unlimited local usage for less than $10 per month; (2) an intermediate plan offering dial-tone, unlimited local usage, choice of two vertical services, and 100 minutes of intraLATA (local access and transport area) toll calls for less than $25 per month; and (3) an advanced plan offering all of the above plus unlimited high-speed Internet access via digital subscriber line (DSL) or an equivalent high-speed service for less than $100 per month. The Legislature has until July 1 to send the bill to the governor.

BloostonLaw contacts: Ben Dickens and Gerry Duffy.

11th Circuit Remands Florida Rights-of-Way Ordinances

The 11th U.S. Circuit Court of Appeals has ruled that some parts of municipal rights-of-way ordinances requiring franchises to provide telecom service are preempted by Florida law, but that the Telecommunications Act of 1996 provides a "safe harbor" from some restrictions on municipal rights-of-way authority. In *BellSouth v. Palm Beach*, the 11th Circuit affirmed, reversed, and remanded parts of a lower court decision that upheld the rights-of-way ordinances of Palm Beach and Coral Springs, Fla. BellSouth had argued that the ordinances should be voided in their entirety because they violated the Telecom Act Section 253 (a) ban on state or local barriers to entering the telecommunications market. While the 11th Circuit acknowledged that Section 253 (a) prohibits barriers to entry, it pointed out that Section 253 (c) offers municipalities an exemption or safe harbor if they managed their rights of way in a neutral manner.

The 11th Circuit remanded the case to the lower court to determine whether sections of the ordinances that are not preempted by Florida state law violate Section 253 (a) because they "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." If the lower court subsequently finds that any of these provisions do violate that section of the Telecom Act, then the cities will have the opportunity to show that the provisions fall within the safe harbor provided in subsection (c), the 11th Circuit said.

In this decision, the 11th Circuit is at odds with a recent 9th Circuit decision which found that several Washington state municipal ordinances have the effect of regulating not only rights of way but telecommunications companies themselves, in violation of Section 253 (c) of the Telecom Act (BloostonLaw Telecom Update, April 25).

BloostonLaw contacts: Ben Dickens and Gerry Duffy.

FCC Clarifies Certain Rules Regarding MAS Service

Responding to four petitions for reconsideration, the FCC last week clarified certain rules regarding the Multiple Address Systems (MAS) service. MAS is used primarily by the power, petroleum, and security industries for various alarm, control, interrogation, and status reporting requirements, as well as the paging industry for control of multiple paging transmitters in the same general geographic area. The service operates on 3.2 megahertz of spectrum in the 900 MHz band. This includes the 928/952/956 MHz bands, and an additional 20 channels in the 932/941 MHz band for public safety, federal government, and "private internal services." The FCC previously decided to auction MAS channels over defined geographic areas, except for certain channels reserved for "private internal" operations.

The FCC defined "private internal" as "a service where entities utilize frequencies purely for internal business purposes or public safety communications and not on a for-hire or for-profit basis." It clarified that a company such as Radscan, which provides alarm monitoring services, meets the eligibility criteria for private internal service because its use of the frequencies are purely for internal business purposes, and that neither its subscrib-

ers nor its central station customers have access to any transmission capacity. Radscan uses the MAS frequencies not as a direct source of revenue, but as a means of internal communications to support its business, the FCC said. Further, the Commission reinstated a provision that allows "non-profit, cost-shared use" of the private frequencies. Thus, the FCC will permit the licensing of non-profit, cost-shared systems in the private MAS bands by parties that otherwise would be eligible for individual licensing in the private bands.

On the other hand, the Commission declined to allow for-profit carriers to lease excess capacity in the private MAS bands. Although the FCC recognized that leasing excess capacity facilitates spectrum efficiency, it said that in this particular instance, "such benefits can be achieved from non-profit, cost-shared use" of the bands. Additionally, on its own motion, the Commission amended its rules "to emphasize that grandfathered operations cannot be modified in a manner that is inconsistent with our current rules. In this connection, operators in the private internal bands are prohibited from acquiring new frequencies for the purpose of expanding private carrier service in the private internal bands and from changing the use of their frequencies in any manner that violates our rules."

Regarding incumbents, the FCC decided to extend "the privileges of grandfathered incumbents in the 928/952/956 MHz bands to transferees and/or assignees of incumbents and their successors whose MAS operations remain unchanged." In this regard, the FCC said it would not prohibit the transfer and/or assignment of licenses held by incumbents in the private internal MAS bands to entities seeking to employ non-private internal uses. On its own motion, the Commission clarified the rule that reads: "Any station licensed by the Commission prior to July 1, 1999, as well as any assignments or transfers of such station as of Jan. 19, 2000, shall be considered incumbent." The Commission said that "assignments of the subject stations or transfers of control must have been approved by the Commission and consummated as of Jan. 19, 2000, to be eligible for incumbency status. *Pro forma* transactions involving non-substantial changes will not affect the eligibility status of an MAS operator."

Additionally, the FCC decided to add an Economic Area (EA)-like licensing area comprised of the Gulf of Mexico for MAS. Thus, the licensing scheme for MAS includes 172 EAs specified by the Commerce Department, and EA-like areas for Guam, the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands, American Samoa, and the Gulf of Mexico. The Commission noted that the Gulf area has experienced an increased demand for voice, data, and video services. But the FCC warned that Mexico has primary use of the frequencies and the United States has secondary use within a distance of 113 kilometers of its side of the common border.

In light of concerns about interference, the FCC decided to allow mobile master MAS stations in the 956.25-956.45 MHz band on a primary basis. And it will permit them in the 952 MHz and on the site-based channels in the 941 MHz bands on a case-by-case basis, if the 956.25-956.45 MHz frequencies are not available. Further, the Commission reaffirmed its decision to allow mobile operation on frequencies licensed by geographic area "to the extent that such operation does not cause harmful interference to adjacent channel, site-based licensees, and co-channel adjacent EA licensees." But the agency clarified that mobile operation for site-based licensees in the 959.85-960 MHz band will be prohibited.

BloostonLaw contacts: Hal Mordkofsky, John Prendergast, and Richard Rubino.

CTIA Asks FCC To Revise Wireless Regulatory Fees

In a recent ex parte letter, the Cellular Telecommunications & Internet Association (CTIA) asked the FCC to revise the proposed fiscal year (FY) 2001 regulatory fee schedule "to avoid imposing an improper bias against the wireless industry." According to CTIA, the Commission overestimated the wireless industry's proposed regulatory fee liability by underestimating the number of commercial mobile radio service (CMRS) units at year-end. "Since the Commission continues to apply a unit-based annual regulatory fee system to the CMRS industry, a realistic number of year-end CMRS units must be used for the denominator to avoid imposing an erroneously high CMRS unit charge," CTIA said.

Based on the year-end data published in the FCC's Local Telephone Competition Report, CTIA estimated that the Commission's proposed CMRS regulatory fee is nearly 11.1% too high. "Adjusting the proposed $0.30 per unit CMRS regulatory fee to account for the number of year-end subscribers actually reported to the Commission yields an FY 2001 regulatory fee of $0.2708 per unit, a reduction of at least $3 million," CTIA said.

The association argued that the FCC's methodology is flawed because it places a disproportionate burden on the fastest growing segment of the communications industry, regardless of cost. CTIA said the Commission should modify its regulatory fees and adopt a "zero-based" approach. "Furthermore, the Commission should avoid penalizing carriers by increasing annual regulatory fees for anticipated shortages caused by the Commission's failure to enforce its fee schedule," CTIA said.

BloostonLaw contact: Richard Rubino.

Pennsylvania PUC Approves Verizon's Request To Sell Long-Distance Service

The Pennsylvania Public Utility Commission (PUC) today said it would recommend to the FCC that Verizon be allowed to sell long-distance service in the state, so long as the company agreed to several conditions to "fully prove its market is open to competition." The conditions include Verizon agreeing to a "permanent performance assurance plan with self-executing remedies," and "increased penalties when its service fails to meet established performance standards." The PUC vote was 3-2.

Under the increased penalties provision, Verizon would pay $25,000 every time it missed a standard beyond 90 days. And it must agree to apply performance standards to its electronic billing system, which is used to bill competitors using its network. It would pay $50,000 every time it violated a standard up to 30 days; $75,000 for violations extending to 60 days; $100,000 for violations extending to 90 days; and $100,000 for each month beyond 90 days. Depending on the violation, Verizon would pay its penalties to its competitors affected by the violation, or a portion to the competitors and a portion to an escrow account for the independent verification of its future performance. The permanent performance assurance plan would be based on the New York model, which has been approved by the FCC. And Verizon would have to drop its appeal before the Pennsylvania Commonwealth Court, which essentially argues that the PUC lacks legal authority to impose performance standards. Verizon has 10 business days from today, June 6, to either accept or reject these conditions.

The PUC's approval does not give Verizon the authority to enter the long-distance market; the FCC will make the final decision. So far, the FCC has granted such authority in New York, Texas, Oklahoma, and Kansas.

BloostonLaw contacts: Ben Dickens and Gerry Duffy.

LAW & REGULATION

RTF ORDER EFFECTIVE DATE: The text of the FCC's "Rural Task Force" or "Rural High-Cost Reform Order" was published in the June 5 Federal Register. The effective date of the order is June 5, except for several sections that contain information collection requirements and are, therefore, subject to Office of Management and Budget Approval. Those sections are 36.605(c)(2); 36.611; 54.305(f); the amendments to 54.307(b), 54.313(b) and (c), 54.314, and 54.315. The FCC subsequently will publish a document in the Federal Register to announce the effective date of those sections. Petitions for reconsideration may be filed 30 days from the June 5 effective date. BloostonLaw contacts: Ben Dickens, Gerry Duffy, and Mary Sisak.

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NARROWBAND PCS RULES: The FCC's notice of final rules for narrowband personal communications services (PCS) has been published in the Federal Register, with an effective date of Aug. 3. As reported previously, the FCC decided to channelize and license the 1 megahertz of narrowband PCS spectrum held in reserve; rechannelize 712.5 kHz of previously channelized spectrum for which licenses have not been auctioned; and adopt a band plan that includes both nationwide and Major Trading Area (MTA) licenses (BloostonLaw Telecom Update, May 9). Petitions for reconsideration may be filed 30 days from the Aug. 3 effective date. BloostonLaw contacts: Hal Mordkofsky, John Prendergast, and Richard Rubino.

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VERIZON REQUEST FOR RELIEF: The FCC has asked for comments on Verizon's May 1 letter to the Commission requesting relief from one of the conditions in the "Bell Atlantic-GTE Merger Order." At issue is the condition that Verizon is to maintain its separate advanced services affiliate for nine months after a "final and non-appealable judicial decision…determines that the separate advanced services affiliate must be deemed a successor or assign of the incumbent local exchange carrier." Verizon argues that it is in the public interest to lift this restriction because it will enable the company to deploy advanced services more quickly and economically. **Comments are due June 14, with oppositions or responses due June 21.** BloostonLaw contacts: Ben Dickens and Gerry Duffy.

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NON-PUBLISHED NUMBER LAWSUIT: The Philadelphia, Pa., Common Pleas Court has dismissed a class action suit alleging that Bell Atlantic (now Verizon) misrepresented the meaning of the phrase "non-published telephone number" on its Web site. In *Knipmeyer v. Bell Atlantic*, plaintiffs argued that "non-published" falsely implies that Verizon does not disclose such numbers to anyone, including owners of toll-free numbers. Kevin and Joanne Knipmeyer had paid Verizon for a non-published number that was not listed in either the phone book or in directory assistance. But when Verizon bills the owner of a toll-free number, it lists all phone numbers—including non-published ones—that made calls to the toll-free number. Plaintiffs argued that they paid for a service they did not receive. The court ruled that Verizon's tariff specifically defines the rights of customers who subscribe to the non-published service: Omission of the customer's telephone number from the directory and the inability of outside callers to connect without knowing the customer's phone number. "Omission of the customer's telephone number from bills to toll-free number owners is not one of those rights," the court said. "The Knipmeyers essentially ask the court to expand their rights under non-published telephone service beyond the rights specifi-

cally set forth in the tariff. The filed-rate doctrine prohibits this court from expanding those rights and bars the Knipmeyers' claims," the court concluded. BloostonLaw contacts: Ben Dickens and Gerry Duffy.

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FCC GRANTS NDNC PETITION: The FCC has granted North Dakota Network Company's (NDNC's) petition for determination of effective competition for the various North Dakota communities. NDNC had filed a Petition for Special Relief requesting a finding of effective competition in various North Dakota communities in conjunction with its showing of compliance with Section 21.912 of the Commission's rules. NDNC's petition was unopposed. The Communications Act and the Commission's rules provide that only the rates of cable TV systems that are not subject to effective competition may be regulated. One of the bases by which a cable system will be deemed subject to effective competition is where a franchise area is: (1) served by two or more unaffiliated multichannel video programming distributors, each of which offers comparable programming to at least 50% of the households in the franchise area; and (2) the number of households subscribing to multichannel video programming, other than the largest multichannel video programming distributor, exceeds 15% of the households in the franchise area. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition. BloostonLaw contact: Gerry Duffy.

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CALEA EXTENSION PETITIONS: In a May 31 Public Notice, the FCC requested comments on an additional list of some 120 wireline carriers that qualify for a preliminary extension of time to comply with Communications Assistance for Law Enforcement Act (CALEA) capability requirements. Unless revoked by the Commission or superseded by a final determination on the underlying extension request, the additional wireline carriers on the list are deemed to have a preliminary extension of the June 30 deadline for complying with CALEA Section 103. **Comments are due June 11, and replies are due June 18.** BloostonLaw contact: Gerry Duffy.

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VIRGINIA APPEAL: The Virginia Telecommunications Industry Association has appealed a federal district judge's decision that Virginia law prohibiting the commonwealth from barring municipalities from providing telecommunications service was "unenforceable under the Supremacy Clause of the Constitution" (BloostonLaw Telecom Update, May 30). In *Bristol v. Earley*, the city of Bristol, Va., had argued that the Telecommunications Act of 1996 preempts the Virginia statute. The judge had ruled that state law was in conflict with federal law and, therefore, void under the Supremacy Clause. The FCC, in 1997 and 1999, declined to preempt state laws barring municipalities from entering telecommunications in Texas and Missouri, respectively. The Texas case was upheld by the U.S. Court of Appeals for the District of Columbia Circuit, and the Missouri case is pending before the 8th U.S. Circuit Court of Appeals. BloostonLaw contacts: Ben Dickens and John Prendergast.

INDUSTRY TRENDS

Research Firm Has Rosy Projection for Cell Phones

Despite the recent economic downturn, mobile phone manufacturers are expected to sell 500 million handsets this year, according to Gartner Dataquest. The research firm says that wireless carriers, especially those in Europe, are gambling that new handset sales will help them recover the billions of dollars they spent on building high-speed networks. Further, Gartner noted that Nokia of Finland extended its lead over other manufacturers in the first quarter of this year. Nokia's world market share increased to 35.3% from 33.9% in fourth quarter 2000. This is approximately three times the market share captured by second-place Motorola (13.2%). Gartner also said that Germany's Siemens AG (6.9%) edged out Ericsson of Sweden (6.8%) for third place. Earlier this year, Ericsson announced that it was getting out of the mobile phone business (BloostonLaw Telecom Update, Jan. 31).

The rosy projections by Gartner and other analysts suggest that mobile phone production will not stifle deployment of third-generation (3G) wireless services. In fact, some analysts predict that Asia will overtake Europe as the top wireless market some time this year, allowing manufacturers such as Samsung and Sony to challenge the current market leaders. On the other hand, Cahners In-Stat Group has a less optimistic forecast for 3G. Citing delays in handset production, high costs to buy spectrum, and slow consumer acceptance, Cahners In-Stat Group says that although the Japanese market will be the first to widely deploy 3G, there will be no nationwide coverage until late 2002. And despite European commitments for early 3G deployment, it will be mid-2003 before even moderate subscriber uptake occurs, according to In-Stat. It also says that 3G service providers will not see profitability until well after 2005.

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BROADBAND DEPLOYMENT: U.S. households with broadband Internet access nearly doubled in the last six months, while homes with dial-up access fell, according to Statistical Research. U.S. homes with digital subscriber line (DSL), cable modem and DirecTV satellite connections rose to 9.4 million this month from 5.2 million last November. Cable modems were 70 percent of the total, up from two-thirds in November. But Statistical Research says that this growth is not significant, given that broadband penetration had barely reached 2 million homes, or 2 percent of all U.S. homes.

The total number of homes with Internet service is 55.1 million.

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McCORMICK TO HEAD USTA: Effective July 1, Walter McCormick will become President of the United States Telecom Association (USTA). He will succeed Gary Lytle, who was named Interim President following Roy Neel's departure earlier this year. McCormick was President of the American Trucking Association, and he previously served as Republican Chief Counsel for the Senate Commerce Committee.

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CTIA CONTRACTS FOR HEALTH RESEARCH: The Cellular Telecommunications & Internet Association (CTIA) has announced three contracts to study the health effects of mobile phones. The value of the contracts--with laboratories in the United States, Germany, and Italy--is estimated at $1.5 million. The purpose of the studies is to repeat previous research into the effects of RF radiation emitted from cell phones, according to CTIA.

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This newsletter is not intended to provide legal advice. Those interested in more information should contact the firm.

FCC Meetings and Deadlines

June 7 -- Deadline for reply comments on Verizon's request to provide long-distance service in Connecticut (CC Dockent No. 01-100).

June 7 -- Deadline for reply comments on Carolina PCS I's E911 Phase II waiver request to deploy NSS/E-OTD technology (WTB Docket No. 94-102).

June 7 -- Deadline for reply comments on NECA's interstate TRS formula (CC Docket No. 90-571).

June 7 -- Deadline for reply comments on NANP's contribution factor (CC Docket No. 92-237).

June 11 -- Deadline for comments on cable carriage of DTV signals (CS Docket No. 98-120, CS Docket No. 00-96, CS Docket No. 00-2). Note: deadline was extended from May 10.

June 11 -- Deadline for comments on additional petitions filed by wireline carriers for preliminary extensions for compliance with Section 103 of CALEA until June 30 (CC Docket No. 97-213).

June 14 – FCC's regular monthly open meeting.

June 14 -- Deadline for comments on Verizon's request for relief from GTE Merger Order regarding advanced services affiliate (CC Docket No. 98-184).

June 18 -- Deadline for mandatory filing of FCC annual access tariff revisions (containing rate increases) for subset III carriers.

June 18 -- Deadline for voluntary filing of FCC annual access tariff revisions (containing one or more rate increases) for non-subset III carriers.

June 18 -- Deadline for comments on CompTel's request that the FCC revise fees ILECs charge for changing presubscribed IXC for end users (CCB/CPD 01-12).

June 18 -- Deadline for reply comments on additional petitions filed by wireline carriers for preliminary extensions for compliance with Section 103 of CALEA until June 30 (CC Docket No. 97-213).

June 20 -- FCC's CLEC Access Charge rules take effect.

June 20 -- Deadline for comments on FNPRM regarding toll-free "8YY" traffic in CLEC access charge proceeding (CC Docket No. 96-262).

June 21 -- Deadline for oppositions or responses to Verizon's request for relief from GTE Merger Order regarding advanced services affiliate (CC Docket No. 98-184).

June 25 -- Deadline for comments on reforming USF contribution system (CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, and 95-116).

June 26 -- Deadline for mandatory filing of FCC annual access tariff revisions (containing rate decreases only) for subset III carriers.

June 26 -- Deadline for voluntary filing of FCC annual access tariff revisions (containing rate decreases only) for non-subset III carriers.

***July 1* -- Effective date of Rural High-Cost Reform Order (CC Docket No. 96-45, CC Docket No. 00-256).**

July 2 -- Deadline for comments on whether to modify or eliminate outdated cellular rules (WT Docket No. 01-108).

CALL FOR ACTION:

Deadline for Reconsideration of ISP-Bound Traffic Order Is June 14

FCC Requirement for "Mirroring" of Compensation for ISP-bound Traffic and Section 251(b)(5) Traffic Can Adversely Impact Rural LECs

We have previously reported that the FCC has adopted an order to reduce reciprocal compensation payments for Internet-bound calls. On remand from the U.S. Court of Appeals for the D.C. Circuit, the FCC concluded that Internet-bound traffic is "information access" traffic that is not subject to the reciprocal compensation provisions of Section 251(b)(5) of the Communications Act. However, pursuant to its jurisdiction to regulate interstate access charges, the FCC adopted an "interim" recovery scheme for ISP-bound traffic as it considers ultimate adoption of a "bill and keep" regime. The transition plan provides as follows:

- For the first six months after the June 14, 2001 effective date of the order, inter-carrier compensation of ISP-bound traffic will be capped at a rate of $0.0015/minute of use (MOU).
- For the 18 months thereafter, the rate will be capped at $0.0010/MOU. Thereafter it will be capped at $0.0007/MOU.
- A cap will be imposed on total ISP-bound minutes for which a LEC may receive this compensation, equal to the number of ISP-bound minutes for which that LEC was previously entitled to compensation, plus a 10% growth factor.
- To identify ISP-bound traffic, there will be a rebuttable presumption that traffic exceeding a 3:1 ratio of terminating to originating traffic is ISP-bound traffic, subject to the interim compensation mechanism.

Whereas initial industry reaction to the FCC order was largely positive, the order contains a "mirroring" provision that may create serious problems for our rural telephone company clients. Specifically, the FCC required that the foregoing rate caps for ISP-bound traffic apply only if an incumbent local exchange carrier (ILEC) offers to exchange all local traffic at the same rate. This means that ILECs must reduce their terminating charges for CMRS and CLEC traffic to the foregoing ISP-bound rates, or must pay carriers terminating ISP-bound traffic the higher rates set in its reciprocal compensation agreements. In addition, if an ILEC exchanges substantial ISP-bound traffic on a "bill and keep" basis, it must offer to exchange all CMRS and CLEC traffic on a "bill and keep" basis. This "mirroring" requirement goes way beyond the scope of the ISP-bound traffic issues addressed in the order, and requires many rural telcos to reduce significantly their existing reciprocal compensation rates. It also appears to push significant portions of the industry toward "bill and keep" for reciprocal compensation at this time, thereby creating conditions that may "influence" the FCC's pending rulemaking (CC Docket No.01-92) looking toward the mandating of "bill and keep" mechanisms for access and other intercarrier compensation.

The manner in which the FCC order defines "Section 251(b)(5) traffic" subject to reciprocal compensation has also raised questions whether Extended Area Service (EAS) may be included therein. We believe that the FCC has no jurisdiction over EAS agreements and compensation, and that nothing in the 1996 Act has changed this. However, it appears that clarification of the FCC definition should be requested during the reconsideration period.

Petitions for Reconsideration of the Commission's order are due by **Thursday, June 14, 2001**.

Clients who wish to participate in a joint Petition For Reconsideration should let us know immediately.

____My company wishes to participate in the filing of a Joint Petition for Reconsideration of the FCC's ISP-Bound Traffic Order.

Company: ____

Your Name: ____

Phone: ________________________________ Fax:___________________________________

E-Mail Address: ________________________________Date:___________________________________

PLEASE FAX TO (202) 828-5568