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**DEBATE OVER NET NEUTRALITY AND UNIVERSAL SERVICE FUND REFORM LINGERS IN THE SENATE**

By Joy Ragsdale

Net neutrality, universal service fund (“USF”) reform and a national video franchise are three key issues shaping the fate of technological innovation and corporate investment in telecommunications. While these issues have taken center-stage in the debate on Capitol Hill between owners of the network infrastructure and Web-content providers, wireless preemption has crept into the fold pitting state regulators against wireless service providers.

There is less than one month on the congressional calendar to learn whether Senate Commerce Committee chairman Ted Stevens (R-Alaska) and House Energy and Commerce Committee chairman Joe Barton (R-Texas) can agree on federal USF reform. If a compromise can be reached between the two, time may permit Stevens’ bill, Communications, Consumer’s Choice and Broadband Deployment Act, (S. 2686) to reach the floor for vote by the full Senate. However according to recent news reports, Tad Furtado, a telecommunications adviser to Rep. Charles Bass (R-NH) said at a conference panel that a wide policy gulf existed between the two chairman on USF, and the two lawmakers were unlikely to reach a compromise.

Stevens wants to expand the contribution base of USF by assessing cable-modem revenue, as well as including $500 million in additional annual
funding for broadband facilities in unserved areas. In contrast, Barton has expressed concern about the administration of the fund. The Barton-sponsored telecom bill, the Communications Opportunity, Promotion and Enhancement Act (H.R. 5252), which the full House passed June 8, 2006, requires facilities-based voice-over-Internet-protocol service providers to contribute to the fund.

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**WIRELESS COMPANIES WIN THE FOURTH TIME AROUND**

*By Joy Ragsdale*

While the debate continues about net neutrality and universal service fund reform, wireless carriers unaffiliated with a Bell company scored a win via an amendment in the fourth of four managers’ packages to S. 2686. The omnibus bill sponsored by Chairman Ted Stevens, R-Alaska cleared the Commerce panel by July 4, 2006, as reported by the National Journal.

Sen. John Sununu, R-N.H. supported an amendment that could curb rates they pay for wholesale access. The amendment was added by ranking member Daniel Inouye, D-Hawaii. The Sununu-Inouye amendment supported by cellular carriers Sprint Nextel, T-Mobile and other Bell competitors and cable trade associations, instructs the Federal Communications Commission to take action in revisiting the issue of “special access” to wholesale telecommunications wires within nine months of the bills enactment.

Wireless companies are particularly dependent upon this form of communications to get their traffic from cellular towers to central switches. State regulators issued a press release on July 3, 2006, opposing the proposed amendment.

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**UPDATE: A LEGAL CLOUD ON THE FCC’S SPECTRUM AUCTION FOR ADVANCED WIRELESS SERVICES**

*By Ray Kowalski*

The Federal Communications Commission’s auction of radio spectrum to support the third generation of wireless services is now less than one month away – August 9, 2006. The FCC received 252 applications to participate in the auction, 81 of which it accepted. The other 171 applications are incomplete in one respect or another and must be amended by July 18 in order to be accepted by the FCC. (For more details on this auction, see *Socket To Me* Bulletin #103, June 1, 2006.)

As expected, the bidders will include the biggest companies in the wireless
industry, including Verizon Wireless and T-Mobile. Cingular has also applied, but its application is among those requiring amendment. The bidders also include 166 applicants who claimed status as “Designated Entities.” This status entitles them to a discount of 15 or 25 percent, depending on their size.

The FCC has gone to great lengths to prevent abuse of Designated Entity status, a status that is intended to encourage participation in spectrum auctions by small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies. Late in the rulemaking process leading up to announcement of the auction, the FCC took steps to limit the award of Designated Entity benefits to applicants who had an impermissible or attributable “material relationship” with large wireless providers. These steps included limitations on the right of the Designated Entity to lease out the spectrum it wins in the auction and increasing the time that licenses won in the auction must be held before they can be sold.

Three Designated Entities filed suit in the U.S. Court of Appeals for the Third Circuit, attacking the FCC’s last-minute rules and seeking a stay of the auction. The stay was denied on June 29 on the ground that the petitioners had not shown “irreparable harm.” The petitioners had argued that the FCC’s new rules would effectively bar them from participation in the auction because they would be unable to attract financing. The court noted, however, that 166 other similarly-situated entities seem not to have been hindered. The petitioners do not appear to be among the entities that filed applications to participate in the auction.

Nonetheless, the court noted that the FCC may not have given sufficient notice of the rules it eventually adopted. It left resolution of this question, however, to the panel that will hear the arguments on the merits of the petitioners’ appeal. This raises the possibility that the court could invalidate the FCC’s auction rules after the auction has been concluded, perhaps invalidating the results of the auction.

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**AT&T PAYS $550,000 TO SETTLE FCC MATTERS**

*By William R. Still, Jr.*

Earlier this month, the FCC announced that AT&T had agreed to pay $550,000 to resolve two separate regulatory matters pending before the Commission. According to published reports, the deal allowed for the “‘voluntary payment’ [which] doesn’t constitute a fine or penalty, according to the consent decree” without requiring AT&T to admit that they violated the law. (“Company settles FCC actions on privacy,” *Bloomberg News*, July 11, 2006).
The settlement resolved separate issues related to AT&T privacy practices and safeguards. In the first issue, the FCC proposed a $100,000 fine because, it claimed, AT&T “fail[ed] to prepare and maintain annual certifications of procedures for protecting the privacy of consumer records.” (“AT&T to Pay $550,000 to End 2 Regulatory Matters With FCC,” Associated Press, July 11, 2006). In the second issue, the FCC began an investigation into SBC Communications Inc., AT&T’s predecessor entity, in July 2005. According to the company’s spokesman, the company discovered that it had failed to send privacy notices to new customers that provided the customer with the opportunity to opt-out of future marketing campaigns. The spokesman went on to say that the company discovered the error, reported it to the Commission, and took steps to fix it. (“AT&T to Pay $550,000 to End 2 FCC Issues,” Associated Press, July 11, 2006).

As part of its agreement with the FCC, the company agreed to strengthen its privacy practices.