

# Communications Daily

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## FCC Diversity Committee Approves Survey Plan, AT&T and Comcast Step Up 2012 Community Programs

An FCC panel approved plans to create an equal employment opportunity compliance survey. Approval came at the Diversity Federal Advisory Committee's meeting Wednesday. The commission would need to give \$50,000 to \$75,000 to the EEO subcommittee, if those funds become available, to do the survey to get information about companies' attitudes towards compliance responsibilities and best practices, said subcommittee Chairman David Honig. The FCC will continue to work with the subcommittee towards starting that project, said Chief of Office of Communications Business Opportunities Thomas Reed. The Diversity Committee also heard reports from the Wi-Fi Technology and Channels 5 & 6 subcommittees and presentations about updates to the AT&T Aspire program to mentor kids and Comcast's Internet Essentials broadband service for the poor.

The Wi-Fi Technology subcommittee will explore ways to educate women, minority and small business entrepreneurs about the benefits of unlicensed spectrum technology and about creating FCC-compliant devices, said subcommittee Chairman Nicol Turner-Lee. When the subcommittee surveyed small sections of those communities, the majority of subjects was not aware of "application, appropriate use and opportunities to leverage the unlicensed device marketplace and to create services and pilot programs to advance public good," she said. The majority said they had never heard of unlicensed spectrum technologies but would like to learn about them, Turner-Lee said. Reed said the internal diversity task force will work with the subcommittee to find ways to educate the community about these opportunities.

The FCC needs to converse with the Channels 5 & 6 Subcommittee about the feasibility of moving AM stations to the lower FM band, said Reed, who spoke in the absence of the sub-

committee chairman. Issues with that idea include costs for AM station owners, multicast costs, transmission and conversion costs, and the fact that many interested individuals don't have the resources to shoulder start-up costs, he said.

The AT&T Aspire Program aims for social innovation, deploying more of the company's employees and labs, engaging customers and focusing on at-risk students and underserved populations over the next four years, said AT&T Executive Government Affairs Director Scott Sapperstein. The program uses things like job shadows to create college and career readiness among students and has reached more than 100,000 students so far, he said: "We want to aspire to an America where every student graduates high school equipped with the knowledge and skills to power the nation's work force."

AT&T will spur this innovation by "investing locally, connecting people and seeking exponential change," Sapperstein said. AT&T will encourage participation of local programs as well as national programs, he said. Aspire will take the job-shadow program to "the next level" by placing a student with an employee and giving them an opportunity to solve a work or life problem together. There will also be online components to the program, called e-mentoring, which will work with national partners, he said. The program will also look into partners which educate students through games and online programs, he said.

Comcast's Internet Essentials program will now include families whose children get reduced-cost school lunches, rather than only free-lunch families, said Vice President Bret Perkins. Other enhancements this year will include doubling broadband connection speeds, allowing organizations to buy Internet Essentials connections in bulk to reach more families, expanding digital literacy training efforts and working with the FCC-private sector Connect2Compete program to reduce hardware costs for participating families. Internet Essentials offers broadband for \$9.95 monthly and computers for \$149.99 to families whose children qualify for free or reduced-price school lunches.

Comcast has created an online portal to allow educators and third parties to print out or order, free of charge, educational materials to spread the word about Internet Essentials, Perkins said. More than 12 million pieces of material have been ordered and shipped so far, he said. Comcast has briefed more than 3,000 government and community leaders, sent kits out to 4,000 school superintendents and sent 30,000 packets to communities to help propagate the program. — *Katie Ardmore*

## Netflix Not Rival

## **Bewkes Predicts TV Will Be OK on Retrans Fees as Long as Shows Not Given Away Online**

Broadcasters will do OK in getting retransmission consent fees for their stations to be carried by multichannel video programming distributors, Time Warner CEO Jeff Bewkes predicted Wednesday night. "I think they will be fine as long as they don't give away their programming on the Internet," he said in a brief interview after speaking to a dinner hosted by the Economic Club of Washington. "Because you can't ask for retrans if you're giving it away at the same time." Time Warner's own initiative for its cable channels to be seen online by video subscribers who buy the company's channels from their MVPD is going well, Bewkes said of TV Everywhere.

The cable industry's business model is "unlikely" to shift to a la carte, with subscribers being able to pick and choose individual channels, Bewkes told us. Prices for popular cable channels may continue to rise, he predicted. Prices will be "going up more for the good ones," he said of cable networks' fees. Bewkes also repeated past statements that Time Warner doesn't see Netflix as a serious competitor to the cable programming TW owns. Bewkes noted that Time Warner has no position on retrans, since it doesn't own broadcast-TV networks.

Bewkes sees a "pretty vibrant piracy market" in developing markets including in China and other countries in east Asia, where residents view U.S.-produced programming whose producers aren't properly compensated, he told the event. "We should support protection of intellectual property and try to do it in a way that it is equal to how we support physical property," Bewkes said. "We should try to do that because intellectual property is increasingly important to maintaining the most important human activities on the planet." Governments should promote "a free trade regime in the world," he said.

TV Everywhere is "doing great," Bewkes told us of the service. All of HBO's subscribers can get the service, with about 20 percent of those subscribers only getting access through their MVPDs recently, Bewkes said: "Eighty percent of Turner subs have it, but only for the Turner networks" like CNN and TNT. "A lot of the other networks haven't yet done those deals, or flipped the switch," Bewkes said of cable channels owned by other companies. "We've encouraged everybody to do it for the sake of the viewers, so the viewers understand, 'Hey, I can get all my favorite shows on demand, whenever I want.' You know, so they all start using it."

Time Warner doesn't regard Netflix as serious competition for TW cable networks' programming or subscribers, but does view the company as a customer for TV show reruns the programmer can't sell for more money elsewhere, Bewkes said. "There's a good place for Netflix in subscription VOD," he said. "It's basically taking serialized shows that otherwise don't sell that well in syndication."

Time Warner, for instance, has sold Netflix year-old shows from TW's CW broadcast-TV network "because we got more for them on subscription VOD than selling them in syndication," Bewkes told us. Netflix doesn't offer HBO or other Time Warner-owned cable networks significant competition for subscribers or programming, he said. "They've done a little more competition for ... syndicated network programming." Netflix, which doesn't offer news or live or entertainment sports, continues to see itself as a complement to cable, a spokesman said. "There's plenty of room for both." — *Doug Halonen*

Not 'Going European'

## **Administration Urges Congress to Pass Data Privacy Laws**

The White House plans to "quickly engage" with federal lawmakers to implement baseline, enforceable data privacy laws, said Danny Weitzner, policy director of the White House Office of Science and Technology Policy, at an event Thursday hosted by the Joint Center for Political and Economic Studies Media and Technology Institute. Last month the White House unveiled its proposal for data privacy protections, called the Consumer Privacy Bill of Rights. The voluntary code of conduct aims to protect privacy rights of online consumers while giving them more control over how their information is handled.

Federal privacy legislation must be directly enforceable based on the FTC's Section 5 authority, Weitzner said. He added that any legislation should include an FTC-designed safe harbor process to

shield companies that proactively implement data privacy policies. "It is no secret to anyone that the political challenges of achieving privacy legislation are substantial ... but it is our intention not to wait to implement these principles," Weitzner said. "We think this is an issue that has bipartisan interest. It has interest from consumer advocates and industry groups. The challenge is ... finding a framework that advances all of the legitimate interests that are coming to the table."

Senate Communications Subcommittee Chairman John Kerry, D-Mass., told the event that "businesses should not be collecting information, anybody's information, and then selling it off to the highest bidder for any purpose without your consent. It doesn't mean you can't do it, it means you have to invite people into the process and let them have a choice as to whether they want to have that done."

Kerry is a co-sponsor of the Commercial Privacy Bill of Rights Act (S-799), which he said offers a "good balance" between consumer privacy and companies' data collection practices. Kerry said the bipartisan bill ensures that each business "secures that information, communicates to the individual that they are in fact collecting information about their activity on the Internet, and then tell[s] them what the purpose is that they are doing that for and whether or not they want their information used in that way. And then if the information is transferred to a third party the [individual's] rights ... go with that journey."

Weitzner dismissed accusations that the administration's data privacy proposal reflects the European approach to the issue. "These are American privacy principles," he said. "To say that this is somehow a sharp right or left turn to Europe is to mistake the history of privacy and the United States leadership in that concept." House Commerce Manufacturing Subcommittee Chairman Mary Bono Mack, R-Calif., said last month that she didn't want U.S. privacy policies to "become the EU's and have something rushed out there that we're trying to undo years and years later."

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The U.S. and its international allies have "significant work to do" to bring greater consistency over international data privacy policies, Weitzner said. "The shape of privacy policies around the world have an immediate effect on U.S. industries," he said. "Unless we address this issue in the way that we address privacy policy in the U.S., then we are all at risk of having a very serious trade problem on our hands." — *Bryce Baschuk*

### 'A Coherent Voice'

## Prepaid Call Providers Form Association

Prepaid phone card companies, without an association since the International Prepaid Communications Association folded in late 2005, are forming the American PrePaid Phoncall Association (APPPA) and recruiting members, said Executive Director Gene Retske. The group, which has 12 founding members, claims to already represent the majority of the U.S. prepaid calling market. It has established standards for all U.S. prepaid phone call providers who want to join, the association said Thursday.

"The industry has not had a coherent voice," said Retske, ex-editor of newsletter Prepaid Press. After the IPCA shut down, there was industry infighting, the threat of further government regulation, and a lawsuit by IDT Corp. alleging fraud by several competitors. APPPA aims to present a unified voice, Retske said.

The association intends to create a consumer bill of rights and standards regarding how products are marketed and sold, and work with government agencies to ensure their concerns are addressed. Ultimately, it's about speaking for the consumer, Retske said. "As an association, our job is to ensure that members are operating in a way that assures consumers will have a positive experience."

Consumer groups have in the past criticized some prepaid calling companies for selling cards that provide far fewer minutes than advertised. "There's been a tendency in the past to say '500 minutes on a \$5 card,'" but there might be lots of catches that make it "impossible in some cases" to actually get all the promised minutes, Retske said. APPPA will let prepaid providers "work together as an industry to bring up our own standards" and weed out poor practices, he said. Eventually the group plans to take positions on pending legislation.

To become a member of APPPA, prepaid providers must have all the proper licenses and authorizations required by government. "APPPA membership will be made available to service providers who operate in accordance with the best practices in the industry," said Pete Pattullo, CEO of prepaid calling card provider Network IP, a founding member of the group. Other members include Grupo Marcatel's Vivaro, AmeriMex, Auris Technology and Dollar Phone. IDT has not signed on but has been offered a membership, Retske said.

IDT said it had led the fight against prepaid calling card companies that fraudulently promise more minutes than their cards can deliver. "To the extent that any industry group is willing to join us in the fight for honest advertising in the prepaid calling card industry and vigorous enforcement of consumer protection laws, we welcome their efforts," the company said. — *Matthew S. Schwartz*

## Companion Bill Coming

### **Section 1248 Report Delay Hampers Export Control Reform**

The government's delay in releasing a report on export control reforms continues to prevent movement on legislation that would relax regulation of satellite components, House Foreign Affairs Committee staffer David Fite told the Satellite 2012 conference late Wednesday. HR-3288, introduced last year by House Foreign Affairs Ranking Member Howard Berman, D-Calif. (CD Nov 3 p13), remains in limbo as a result of the slowness, Fite said. The bill would give the Executive Office of the President authority to remove commercial satellites and components from a munitions list closely regulated by the State Department.

The report remains stuck in interagency governmental review and timing remains unclear, said Lou Ann McFadden, chief of the Strategic Issues Division within the Defense Technology Security Administration (DTSA). The 1248 study is required under the 2010 National Defense Authorization Act. The Defense and State departments issued an interim 1248 report on the issue in May 2011. Sales of items on the munitions list require obtaining difficult-to-obtain licenses, a process that some in the satellite industry say has hurt U.S. satellite production.

A companion Senate bill is expected to emerge in coming weeks, which will improve chances for legislative action, said Fite. "What we need to move forward is the release of the 1248 report," he said. "My rule of thumb for predicting the report's release is take today's date, add three weeks to it, and tomorrow, repeat," said Fite. The report, now "two years late," should be released with great fanfare, he said. The delay also means "it's almost too late" for this Congress, considering the process still required for the legislation to progress, said Fite.

There's challenges beyond the 1248 report, said Mike Gold, director of Washington operations at Bigelow Aerospace. "Having the 1248 report come out on time, which it didn't, and if comes out three weeks from now," it wouldn't make a difference, he said. Export control reform doesn't have the momentum to get over the "political hurdles" and as long as Sen. Jon Kyl, R-Ariz., an opponent of reforms, "still draws breath in the Senate," any change is unlikely, said Gold. With Kyl set to retire, there may be a better chance in the next Congress, he said. — *Tim Warren*

## State Wireless Regulation?

### **More Competition, Consolidation, State Deregulation Sought**

Clear federal/state jurisdiction on communications services is key for ensuring service quality and reliability, speakers said during a conference call organized by the National Regulatory Research Institute Thursday. They cited increasing product choice, consolidation and competition as well as reduced traditional state regulation and oversight as four key trends that have reshaped the telecom industry in recent years.

Regardless of technology, telecom services have to be reliable, said Regina Costa, research director of the Utility Reform Network. The jurisdictional issues surrounding VoIP and services provided using Internet Protocol are critical for consumers, she said, noting carriers are pushing to have federal and state regulators deem anything that can be labeled "IP" as not telecom services and therefore not subject to oversight. It's important to distinguish between telecom networks and services vs. applications, she said.

Regulators and policy makers will have to address the need to ensure service continuity during power outages for services that rely on the grid to function, Costa said. The efforts have already begun to some degree, with the FCC and the California Public Utilities Commission looking at backup power in carrier networks and, in California, the backup batteries necessary for voice service provided with Verizon's FiOS network and cable voice, she said.

Absent FCC action, perhaps state commissions can act on their own to clarify jurisdiction on services like VoIP, said Massachusetts Department of Telecom and Cable Commissioner Geoffrey Why. Despite the change of technology and the trend of deregulation in states, state commissions have a definite role of protecting consumers, he said. Regarding wireless substitution, Why said wireless is still somewhat a complementary service to wireline in Massachusetts. He noted the majority of the residents in the state still have wireline phones. Nonetheless, he said, state regulators have recognized the importance of wireless and the need for oversight over those services. Regulators should recognize the different characteristics of different services, said Dave Conn, vice president of state regulatory affairs at T-Mobile USA. Regulators "shouldn't put them in the same box," he said. The first step is to figure out consumer needs and formulate policies that cater to consumer preference, he said.

A roadblock for state commissions for dealing with quality and reliability issues is deregulation, Costa said. Now isn't the time to further deregulate, she said. The lack of data and oversight is particularly problematic given the increasing consolidation, she said. Some 20 state legislatures passed deregulation bills between 2010 and the end of 2011, according to Sherry Lichtenberg, principal for telecom at NRRI. That leaves the states' regulatory oversight limited to basic services and left no oversight of competitive services, she said. Quality of service oversight has been reduced or eliminated while carrier-of-last-resort responsibilities have been reduced or eliminated in competitive areas, Lichtenberg said. State commissioners should track the impacts of new legislation this year and work with state legislators to ensure that new laws expand rather than reduce competition, she said.

Tremendous consolidation has led to high concentration in the wireline and wireless market, said Cathy Sloan, vice president at the Computer and Communications Industry Association. That could lead to forced return to regulation, a long-term concern, she said. Key factors affecting the wireless industry include bandwidth, the need for spectrum, operating system providers and device manufacturers, Conn said. Companies like Google and Apple are working to integrate their operating systems with the ecosystem, making customers "sticky" to the operating system, not necessarily the service provider, he said. Lower-band spectrum is more desirable than high-band spectrum because of better propagation and better building penetration, he said. Eventually, more bandwidth to the end-user requires that more spectrum be made available, he said. — *Yu-Ting Wang*

## Prior Restraint?

### **Draft FDA Guideline Could Curb TV Ad Spending**

Draft guidelines published by the Food and Drug Administration this week could curb TV ad spending by drugmakers, a lawyer who represents some pharmaceutical marketers said. The FDA proposed a set of guidelines drugmakers should follow for submitting their ads to the agency for review before they run on TV, with five categories of direct-to-consumer prescription drug ads subject to review, including new drugs and those with serious risks relative to benefits (<http://xrl.us/bmx227>). Although there appears to be a limited set of circumstances that would trigger FDA review of drug ads, in practice

the guidance would impose a near-blanket requirement on direct-to-consumer TV drug commercials, said John Kamp of Wiley Rein, who represents the Coalition for Healthcare Communication. That may make drugmakers think twice about buying TV spots, he said.

“If you give drug companies even more disincentive to advertise on TV, the return on investment is different,” Kamp said. “The harder it is to advertise on TV, the more likely it is that an advertiser may look to alternative media.” The draft guidance was a result of a 2007 Food and Drug Administration Amendments Act giving the FDA authority to require drug companies to submit their direct-to-consumer TV ads for review at least 45 days before airing them, the draft guidance said. The draft calls for drug marketers to submit an annotated storyboard of the proposed TV ad, a video of the ad if available and other information. Drugmakers may still run the spot without FDA approval, but would risk an enforcement action if the ad is found to violate federal law, it said.

Another concern is whether the FDA will have the financial resources to review all the spots. If the agency doesn't, it could be overwhelmed with ads to review and lead to a bottleneck that would hinder a spot's path to TV, said Jim Davidson, an attorney with Polsinelli Shughart who works on drug marketing issues. “Without sufficient resources, it could become a prior restraint on advertising for medicines.” The draft guidance should be revised to reflect language in the 2007 law that cautions the FDA against making or directing changes to ads it reviews, Davidson said.

The proposed guidelines aren't all that different from voluntary guidelines adopted by the Pharmaceutical Research and Manufacturers of America (PhRMA), the industry's trade association, Kamp said. “But it's one thing to voluntarily not advertise in certain ways,” he said. “It's another thing for the government to ban it.”

Current law already requires drugmakers to submit direct-to-consumer (DTC) ads for prescription drugs to the government upon its first use, PhRMA Senior Vice President Matthew Bennett said. But PhRMA's 2009 principles (<http://xrl.us/bmx6mn>) stipulate the companies give the FDA ads before airing them, he said. “In other words PhRMA member companies are already providing the FDA with the opportunity to comment on DTC television advertisements prior to airing.” Comments on the draft guidance are due to the FDA by May 12. — *Josh Wein*

## \$5 Billion Purchase

### **Cisco's Purchase of NDS Seen Expanding Videoscape Platform**

Cisco's \$5 billion purchase of software developer NDS will strengthen and speed deployment of Cisco's Videoscape cloud-based video platform as North American cable operators increasingly adopt a hybrid QAM/Internet Protocol approach to deliver services, analysts and executives said.

The NDS acquisition which the companies agreed to Thursday will quicken the pace of developing the Videoscape platform by 2-3 years, enabling Cisco to more rapidly to create an end-to-end solution for cable operators, stretching from the headend to the set-top box, said Marthin De Beer, senior vice president of emerging technologies at Cisco. Cisco has gained Videoscape deployments with Rogers Communications and Telus in Canada and Numericable in France as operators moved to adopt IP to extend the reach of their services beyond the TV.



While Cisco has maintained its commitment to the set-top box business it acquired in buying Scientific-Atlanta six years ago, NDS will give it a range of software options from smartcards and VideoGuard digital rights management to XTV DVR software, MediaHighway middleware and a Snowflake interface. Although Cisco slashed 6,900 jobs last year in selling its STB manufacturing plant in Juarez, Mexico, to Foxconn, STBs will remain central to deliver cloud-based services along a network, Cisco CEO John Chambers said during a news conference webcast from London. NDS is based in the U.K.

NDS also signals Cisco's further tightening of its focus around a narrow core of businesses including video delivery, expected to account for 90 percent of the load on the Internet within a "couple years," Chambers said. Cisco has sought to bolster Videoscape with the acquisitions of BNI Video and Inlet Technologies, the latter providing software that allows users to broadcast their video content and share it over multiple devices and networks.

For NDS, the sale, which includes about \$1 billion in debt, cuts off a proposed \$100 million IPO (CED Jan 4 p3) that the company filed for late last year. The IPO would have marked a return to the public markets by NDS, taken private in a \$3.6 billion deal in 2008 that split ownership of the company between the financial firm Permira Advisers (51 percent) and News Corp. (49 percent). IPOs are frequently viewed as indicators that a company is in play and Cisco began exclusive talks with NDS on a possible acquisition about three weeks ago, analysts said. The sale is expected to be completed in this year's second half.

In buying NDS, Cisco gets a company that swung to a \$4.4 million profit in fiscal Q1 ended Sept. 30 from a \$3.5 million loss a year earlier as revenue rose to \$213.8 million from \$210.3 million. It benefited from an increase in new MediaHighway middleware and DVR deployments to 11.3 million and 4.1 million households, vs. 10.1 million and 3 million a year earlier. Since 2008, NDS has spent \$1 billion on research and development, increasing the number of R&D employees to 4,383 from 3,822. NDS had 475 patents issued and another 500 pending as of June 30, the company said. NDS' VideoGuard smart card deployments stood at 109.7 million households as of September, while middleware deployments were at 54.2 million. DVR and electronic program guide software were in 15 million and 19.9 million households respectively, the company said. In addition to DirecTV, BSkyB and Sky Italia, NDS has software in equipment at Canal Plus, Kabel Deutschland, Sky Deutschland, Liberty Global's UPC and Vodafone, NDS said. BSkyB, DirecTV and Sky Italia are NDS' largest customers, accounting for 17 percent, 22 percent and 17 percent respectively of its \$213.8 million revenue in fiscal Q1, the company said. — *Mark Seavy*

## Comm Daily® Notebook

Commissioner Robert McDowell said the FCC appears to be moving too slowly to wrap up all aspects of Universal Service Fund reform, including the Rural Health Care Program. His remarks came in a speech Thursday at the Mid-Atlantic Telehealth Resource Center Summit in Charlottesville, Va. The FCC approved last year the start of USF distribution reform and an order on the Lifeline program in January. But other work remains to be done, McDowell said. "I understand that some of you have been anxiously waiting for the FCC to move forward on finalizing our efforts to reform the rural healthcare program," he said. "So have I. As part of the implementation of that plan, the commission has already reformed some of the other USF programs on a piecemeal basis." McDowell said that in a "perfect world" the agency would have taken on all USF spending programs at the same time, while also completing contribution re-

form. "Consistent with my long-standing advocacy for truly comprehensive reform, I will continue to press the commission to complete all of its reform efforts, including reform of the rural healthcare program, as quickly as possible," he said. McDowell said he saw the importance of telehealth during a trip to Alaska during his first year as a commissioner. "The most memorable portions of the trip were the health clinics," he said. "There I could see how medical images from the most remote corners of Alaska were transmitted to specialists in Anchorage. I learned how using telehealth technology can actually save money because, in many instances, having that technology close at hand means the patient can avoid flying hundreds of miles to a hospital." McDowell noted that while the FCC created the healthcare program in 2007, it asked for comments on possible changes in 2010. "The commission has not only garnered valuable information from those who commented but also has learned a tremendous amount from participants in the pilot program," he said. "All of this information will be incredibly valuable as the commission moves to the next step in the reform process."

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The 4th U.S. Circuit Court of Appeals handed AT&T and Verizon Wireless a loss in a dispute with incumbent LECs in North Carolina over a ruling on interconnection agreements by the North Carolina Utilities Commission. The wireless carriers challenged the NCUC's ruling that they, the terminating wireless carriers, bear the responsibility of paying transit charges for calls that originate on the wireline company's networks, cross an intermediate network operated by AT&T, and terminate with the wireless carriers. The NCUC also concluded that the wireless carriers could seek reimbursement from the rural LECs for these transit charges through reciprocal compensation arrangements. The NCUC determined that the obligation to pay transit charges depends on the location of the physical point of interconnection between and designated a single point located with the RLECs' networks. The 4th Circuit asked the FCC for guidance. "No prior FCC order has addressed whether the originating carrier or the terminating carrier is responsible for paying transit charges to an intermediate carrier under the facts presented here," the commission said in a brief (<http://xrl.us/bmybsw>). "Nor has the FCC clearly opined on whether the Communications Act authorizes state commissions to suspend or modify the application of federal pricing requirements to small rural telephone companies." A lower court in North Carolina granted summary judgment in favor of the ILECs and the state commission. The Richmond, Va.,-based appeals court agreed, in a decision by Judge Andre Davis. "Because we ultimately agree with the arguments advanced by the RLECs and the NCUC, we affirm the judgment of the district court," Davis wrote (<http://xrl.us/bmybtt>). The NCUC's decision "is worthy of some deference," he said. "Although we review legal issues of a federal nature, the NCUC has 'expertise and experience in applying [tenets of] communications law,'" the court said. "The NCUC proceedings involved evidence and argument, and the parties prefled testimony, participated in an evidentiary hearing, and briefed the arguments." — **HB**

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A group of education and technology experts is "developing a blueprint" to use technology as a "catalyst to transform and improve American education," the newly formed Leading Education by Advancing Digital (LEAD) Commission announced Thursday. LEAD plans to incorporate input from a cross-section of educators, parents, students and government officials and expects to release its findings later this year. "I'm pleased these leaders are rising to the challenge [Education] Secretary [Arne] Duncan and I set out to harness technology to help our students reach their full potential," FCC Chairman Julius Genachowski said. "I'm confident the LEAD Commission's blueprint will chart a course to ensure that education technology will help prepare students to compete in the 21st century global economy." Genachowski and Duncan said they would "provide input" to the LEAD Commission's efforts. The group was founded in response to the National Education Technology Plan released by the Department of Education in November 2010 and the FCC's National Broadband Plan, released two years ago this month. LEAD plans to catalog current efforts, trends, costs and obstacles to technology adoption, and examine the poten-

tial of how technology and digital content could “positively impact teaching and learning over time,” the group said. The blueprint will recommend policies and funding vehicles needed to ensure successful incorporation of technology into school systems. The group is co-chaired by Columbia University President Lee Bollinger, TPG Capital Co-Founder James Coulter, former Secretary of Education Margaret Spellings and Common Sense Media Founder James Steyer. “While the human interaction of student and teacher, critical thinking and classic texts remain essential parts of what we mean by an ‘education,’ we also know that new communications technologies can greatly enhance teaching, learning and research,” Bollinger said. “We hope that our growing body of experience in the use of these transformational tools in higher education can provide useful insights for our nation’s schools.” “Our goal with this commission is to help policy makers to more swiftly and effectively integrate digital learning into our national curriculum,” Coulter said. By synthesizing data about what has worked and hasn’t worked throughout the country, LEAD hopes to provide a “top-down” look at the issue that the Department of Education doesn’t really provide in the high-tech space, he said. With its different personalities, Coulter believes the group is in a great position to study the issue and provide recommendations to policymakers at all levels. “The group is coming together to look at this issue which everybody believes is critical, and if you don’t look at it, you risk falling behind,” he said. — *MSS*

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Representatives of Verizon Wireless and the cable operators that hope to sell it AWS spectrum discussed the carrier’s “need for additional spectrum to meet rapidly growing consumer demand for broadband wireless services,” in a meeting with Angela Giancarlo, chief of staff to FCC Commissioner Robert McDowell. “They also discussed why the spectrum assignments would be at or below the spectrum screen in nearly all markets and why the assignments would cause no competitive harm in any market,” said an ex parte filing (<http://xrl.us/bmyatm>). “Finally they reiterated their position ... that the commercial agreements are not subject to Commission approval.” Various marketing agreements announced at the same time as the spectrum deals have proven equally if not more controversial (CD Feb 23 p1). Verizon is buying licenses from Cox and SpectrumCo, a joint venture of Comcast, Time Warner Cable and Bright House Networks.

## Capitol Hill

The FCC missed the House Commerce Committee deadline to answer questions related to LightSquared, a GOP committee spokeswoman said. The committee asked the FCC Feb. 28 to respond to several questions by Tuesday. On Thursday the committee was still waiting for a response, the majority spokeswoman said. The committee also has “not received any documents from the FCC yet,” but the March 13 deadline was only for responses to questions, not for documents, the spokeswoman said. “The FCC is continuing to cooperate with the Committee to provide the information we requested and we expect to see their responses and documents very soon,” Rep. Cliff Stearns, R-Fla., said in a written statement. The FCC “will be responding consistent with our discussions with Committee staff,” a commission spokesman said. Sen. Chuck Grassley, R-Iowa, has blocked FCC nominees Ajit Pai and Jessica Rosenworcel until the agency delivers LightSquared documents related to communications among the commission, White House and LightSquared investor Harbinger. In a floor speech Thursday about “Sunshine Week,” Grassley said it’s “idiotic” for the FCC to say it only has to respond to requests from the House and Senate Commerce committee chairmen. The Iowa Republican also criticized FCC Chairman Julius Genachowski for not keeping a promise to let Grassley interview commission staff about the LightSquared matter. “Actions speak louder than words,” Grassley said. “People can get away with lying, and

they are stonewalling, pure and simple." House Commerce members have indicated they will share the documents with Grassley, but observers say Rosenworcel and Pai are likely to face further hurdles to confirmation (CD March 12 p1). — **AB**

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The House Oversight Committee gave the FCC an "A" in the committee's report card on the "Federal Government's Efforts to Track and Manage [Freedom of Information Act] Requests." Oversight Committee Chairman Darrell Issa, R-Calif., asked "180 entities representing 100 government agencies" last year for information on the handling of FOIA requests, the report said. Agencies that responded with "logs that contained all necessary components" received an "A" on the report card (<http://xrl.us/bmybv>). The Executive Office of Science and Technology Policy scored an "A+" for providing "information beyond what was required." The Justice Department received a "D" for not including "three or more necessary components," while the Commerce Department got an "F" for not producing "any logs," the report card said.

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The Justice Department should be "vigilant in monitoring the anticompetitive use of standard essential patents" and consult with the International Trade Commission in investigations of alleged infringement, said top Democrats on the Senate Judiciary Committee. Chairman Patrick Leahy, D-Vt., and Antitrust Subcommittee Chairman Herb Kohl, D-Wis., sent a letter Thursday to Attorney General Eric Holder on the DOJ Antitrust Division's decisions to allow Google's acquisition of Motorola Mobility, and Apple, Microsoft and Research In Motion's acquisitions of Nortel patents. "While we take no position on the merits of the acquisitions, we take seriously the concern raised by the Department about the potential for 'inappropriate use of [standard essential patents] to disrupt competition ... particularly as they relate to smartphones and computer tablets,'" Leahy and Kohl said. "We share the Department's concern that patent holders may choose to seek an exclusionary order from the International Trade Commission (ITC) in a manner that would threaten competition, rather than simply dispute the reasonable terms of the license in court in a way that would allow continued use by competitors. The misuse of ITC exclusion orders to prevent rival technologies poses a significant threat to competition and innovation, especially where competitors have developed products based on a mutual commitment within a standard-setting organization to license standard essential patents on reasonable and nondiscriminatory terms." Leahy and Kohl believe that ITC exclusion orders may have "anticompetitive effects" if "a patent is part of a standard and is encumbered by an agreement to license the patent on reasonable and nondiscriminatory terms," they said.

## Wireline

A federal appeals court reversed a district court's decision upholding an Oregon-approved interconnection agreement between Qwest and Western Radio Services. Western disputed the Oregon Public Utility Commission's approval of the agreement and claimed that Qwest failed to negotiate the agreement in good faith. The U.S. District Court in Portland had supported the Oregon commission and dismissed the good-faith claim. But in a ruling (<http://xrl.us/bmybpi>) released Thursday, the 9th U.S. Circuit Court of Appeals reversed the lower court's decision to uphold the PUC and ordered the PUC to hold further proceedings consistent with the opinion. However, the appeals court affirmed the district court's decision to dismiss the good-faith claim. The interconnection agreement violates the 1996 Telecom Act "insofar as it applies access charges, rather than reciprocal compensation, to calls exchanged between a [commercial mobile radio service] provider and a [local exchange carrier], originating and terminating in the same [local access and transport area], when those calls are carried by an interexchange carrier ('IXC')," wrote Judge David Ebel for the San Francisco-based court. The involvement of an IXC does not alter the parties

obligation to pay reciprocal compensation, he said. The 8th and 10th circuit courts have issued similar rulings and the FCC cited that case law “approvingly” in its Connect America Fund report and order, Ebel said. “While the PUC and the district court obviously did not have this clear guidance available to them at the time they rendered their respective decisions below, the FCC’s newly promulgated interpretation of the statute must yet be given effect.” — **AB**

## Wireless

The FCC Wireless Bureau asked for "updated, year-end 2011 data and information on mobile wireless competition" as it prepares the 2012 version of the wireless competition report (<http://xrl.us/bmyaot>). "While recent Mobile Wireless Competition Reports have included calendar-year data for one year, as well as some partial-year or quarterly metrics for the following year, the Sixteenth Report will include calendar-year data for 2010 and 2011," the bureau said. Comments are due April 13, replies April 30.

The FCC Wireless Bureau wrapped up a final programmatic environmental assessment (PEA) of the commission’s antenna structure registration (ASR) program, the bureau said. The bureau "intends in the near future to recommend to the Commission a further notice of proposed rulemaking in WT Docket Numbers 08-61 and 03-187 that will invite public comment on what actions the Commission should take to comply with [the National Environmental Policy Act] in light of the analysis in the final PEA," the bureau said (<http://xrl.us/bmyaqe>). The FCC is examining its tower siting rules in response to a February 2008 remand from the U.S. Court of Appeals for the District of Columbia Circuit (CD Feb 20/08 p2) in *American Bird Conservancy v. FCC*.

## Internet

An Internet governance strategy to protect human rights, democracy and the rule of law online won approval Thursday from the 47 members of the Council of Europe, the organization said. The strategy is a key priority of the U.K., which holds the current CoE chairmanship, it said. It calls for 40 different actions centered around Internet openness, user rights, data protection, cybercrime, democracy and culture, and children and young people. The plan's aims include: (1) Develop a "framework of understanding and/or commitments" to protect Internet universality and openness as a way of safeguarding free speech. (2) Craft human rights-based standards to protect the cross-border flow of legal online content. (3) Develop human rights policy principles on network neutrality. (4) Update CoE data protection conventions. (5) Boost international cooperation against cybercrime and terrorist use of the Net. (6) Strengthen global coordination to protect children against child pornography and sex abuse materials. The actions will be put in place between now and 2015 in close cooperation with partners such as the EU and U.N., ISPs and other private sector players, and civil society, the CoE said.

## State Telecom Activities

The New Jersey Board of Public Utilities ordered Verizon New Jersey to make improvements to its services in western Cumberland County and to explain why its statewide customer complaints are increasing, a BPU order said. The telco has until April 12 to respond. An investigation to determine whether the

telco is meeting performance standards is necessary due to the number of complaints and the severity and frequency of service outages and the duration of the service-related issues, the order said. Verizon was ordered to provide plans for any network upgrades and a timeline for making those upgrades in some municipalities. Verizon has taken significant steps to improve its wireline network in Greenwich Township in Cumberland County since the fall, a spokeswoman said. He said the number of service complaints has dropped by half since October. Verizon is working to ensure the trend continues and is considering technical options to expand broadband services in the area, he said.

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The Pennsylvania Public Utilities Commission unanimously approved the motion of Commissioner James Cawley Thursday to reopen the record of its rural ILEC access charge investigation order (docket No. C-2009-2098380) to examine the "cross-effects" from the FCC's Universal Service Fund/intercarrier compensation order, the PUC said. The PUC will initiate a new proceeding no later than April 20 to examine the implementation of the FCC order, it said. The implementation of the FCC's USF order triggers a series of compliance obligations, Cawley said. The FCC's order also has material effects on major adjudication decisions by the PUC, and the PUC's access charge order needs to be updated accordingly, he said. The PUC's rural ILEC access charge investigation order had ruled that the intrastate switched access rates for rural incumbent LECs had to gradually move to their interstate equivalents. The rural ILECs would have been afforded "revenue neutral" recovery of "lost" intrastate carrier access charge revenues from retail local service rates through the use of a \$23 monthly basic local residential service "benchmark." That's the residential local rate per month, and would not include various taxes.

## Telecom Notes

Avaya will acquire visual communications software provider Radvision for \$230 million. "We will seek to extend videoconferencing to any device, anytime, anywhere, making it as easy as a phone call, seizing the opportunity to deliver a fully-integrated solution and architecture that we believe sets us apart from the competition," said Avaya President Kevin Kennedy.

## Broadcast

Games that don't sell out won't necessarily be televised if the sports blackout rule ends, said a group with pay-TV ties that's petitioned the FCC to end the regulation (CD March 1 p3). Compulsory copyright statutes "curtail pay TV providers from carrying games" if the FCC junks the blackout rule, the Sports Fan Coalition said in a handout given to Commissioner Robert McDowell. DBS companies are "prohibited from importing" a blacked-out game from a distant market, and "cable providers would have to pay six months of copyright fees for one game," said the document, a copy of which the coalition filed in docket 12-3 (<http://xrl.us/bmybkg>). "Broadcasters would likely invoke retransmission consent to limit out-of-market use of their signals." NFL Commissioner Roger Goodell was to have visited the FCC Wednesday to meet with McDowell to defend the blackout rule, which the league has supported, the coalition said. An NFL spokesman declined to comment.

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The FCC found 109 applicants qualified to bid in an auction starting March 27 for 119 FM construction permits (CD Feb 13 p13), said a public notice released Thursday by the Media and Wireless bureaus (<http://xrl.us/bmya3s>). Qualified applicants for Auction 93 include Educational Media Foundation,

which made an upfront payment of \$151,500, Kacey Investments with \$240,000 and Eastern Oklahoma State College with \$20,000, an FCC list said (<http://xrl.us/bmya34>).

Radio One Q4 sales increased 38 percent from a year earlier to \$98.1 million due to the fact that the company now consolidates the results for its TV One division. The company wrote down about \$22.3 million, leading to a net operating loss of about \$19.1 million. The net loss was 29 percent smaller than a year earlier. "Our fourth quarter radio revenue was impacted by a combination of tough political comps, non-recurring national accounts and certain format changes," at stations during the quarter, CEO Alfred Liggins said.

The FCC fined Gabriel Garcia \$25,000 for not allowing inspections of unlicensed stations operating in various parts of the FM band in San Jose, Calif. (CD March 14/10 p11), said an Enforcement Bureau forfeiture order Thursday (<http://xrl.us/bmya2p>).

## Cable

The cable industry should adopt a "strategic approach" to energy management and power availability to support anticipated growth in new services, said Mark Coblitz, Comcast senior vice president of strategic planning. Speaking at the Society of Cable Telecom Engineers's Smart Energy Management Initiative forum in Philadelphia, he said comprehensive energy management strategies are needed to "ensure that the energy requirements of our broadband cable networks will be met in the face of rapidly growing demand." He cited increased demands for Internet services and higher broadband speeds, as well as increased use of Internet Protocol unicast, HD, 3D and multiplatform video services, business service and such new offerings as security and home monitoring, as factors driving new powering needs for cable operators. Broadcast and cable networks face similar challenges as they seek to deliver new video products, he said. "Given the current course and speed, we are concerned that someday — certainly not immediately, but foreseeably within the next five to ten years from now — we will be faced with the reality that our ability to grow will be constrained by the quantity and timing of obtaining electrical power," Coblitz said. "We cannot let that dependency occur." Coblitz said cable increasingly is taking advantage of the efficiencies of network-based processing, which can enable reduced power use for consumers while increasing service flexibility for operators. He said power requirements should be a primary consideration in the design, purchase and configuration of equipment, and cited a need for a "fresh look at our power architecture" to ensure service availability. "We simply do not have control over the availability of the energy we will need to sustain our rapid future growth, but what we can control, working together, is how much power we require, and how we can require less than we otherwise would," Coblitz said.

The FCC's proposed consumer protection measures for cable customers affected by operators' encryption of the basic-programming tier aren't enough, a maker of consumer electronics that use unencrypted clear QAM signals said. "Giving a free set top box to my mother, as an example, who is retired and uses clear QAM with her TV set in her kitchen, would be a workable solution assuming it had the correct connections to her TV set (an RF connection with HD pass through would most likely be acceptable to her)," Hauppauge Computer Works said. "A good number of consumers including many Hauppauge customers might not be covered if they do not fall under the income test as described in the proposed rules." CEO Ken Plotkin reported in a filing posted Wednesday to docket 11-169 (<http://xrl.us/bmybm6>) that he told commission aides about the company's proposed transition plan for cable operators to give clear QAM-users free digital-to-digital converter boxes (CD March 7 p13).

As the big phone companies' begin adding new video subscribers more slowly, they will also probably sign up fewer new broadband subscribers, factors that bode well for cable operators, UBS analyst John Hodulik wrote investors. "We believe the cable industry's competitive position will continue to improve as video consumption habits change." With market share losses to the telcos having reached their apparent peak, cable is increasingly well positioned to compete in the residential services market, he said. "Hegemony in the market for residential broadband will eventually lead to pricing power," he said. "We believe this is already becoming evident given the strength we have seen in cable" average revenue per unit, he said. "Over time, both direct price increase and indirect price hikes through implementation of usage-based pricing will likely lead to revenue growth in this high-margin category."

Q4 sales at ValueVision Media, which runs ShopNBC, fell 17.5 percent from a year earlier to \$147.5 million. Its net loss ballooned to \$8.3 million from \$1.4 million a year earlier. Lower sales of consumer electronics devices hurt the company's results, CEO Keith Stewart said. "We expect our Consumer Electronics business to remain challenging during the first half of the year," he said. "However, we have developed and are executing plans to help restore growth in this business segment."

AMC Networks Q4 sales increased 14 percent from a year earlier to \$339 million, the company said. Sales at its domestic networks gained 12 percent while its international networks added 15 percent. Profit increased about 50 percent to \$29.5 million, a result of a one-time \$10 million loss on discontinued operations the company recorded in the year earlier period. AMC shares fell 4.4 percent Thursday.

## Mass Media Notes

A group seeking changes to retransmission consent rules wants new rules from the FCC now because "broadcasters pulled the plug on viewers in nearly forty markets in 2011 and 14 more already this year." The commission should "do the right thing" by changing retrans rules, the American TV Alliance said Thursday of comments a day earlier by FCC Chairman Julius Genachowski that the number of black-outs had dwindled (CD March 15 p6).

## Satellite

LightSquared's main satellite experienced a disruption March 7, forcing the company to move its customers to its old MSAT satellites, said a spokesman. The company has started an investigation into the problems for the satellite, Skyterra-1, but the cause hasn't yet been determined, though the solar flare last week may be involved, he said. LightSquared has reconfigured services on Skyterra-1 and command and control are working, though the company won't move the customers back onto Skyterra-1 until an investigation is completed, said the spokesman. There are about 300,000 LightSquared satellite devices operational in North America, he said.

## Communications Personals

Lobbyist Registrations: Airvana, **Downey McGrath Group**, effective Jan. 30 ... Time Warner Cable, **Stuart Murray Group**, effective Jan. 1 ... Univision promotes **Jeff Browning** to senior vice president for network sales.