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HIGHLIGHTS

- **FTC REVIEW COMPLICATES GOOGLE-DOUBLECLICK ON DATA USE/PRIVACY.** The Federal Trade Commission, not the Department of Justice, will conduct the U.S. government's review of the planned Google-DoubleClick deal. We believe the transaction will likely still be approved on antitrust grounds despite the arguments of critics (including Microsoft) concerned about its impact on the Internet advertising market. But we suspect the FTC is more likely to subject the merged entity to conditions on how it uses customer data, which could serve as a baseline for industry. The FTC is already reviewing a petition by privacy advocates concerned about Google's data-use practices.
- **SIRIUS-XM STILL DOABLE, BUT NOT GETTING ANY EASIER.** We believe the Sirius-XM prospects for merger approval at the DOJ and FCC have not been helped by various tactics and developments this spring, including some recent reported comments by Sirius CEO Mel Karmazin. While we believe the government decision remains a close call that will turn on merger-specific facts and analysis that have yet to play out, we acknowledge that the companies have to make a more compelling case for the benefits of the combination and the steps they will take to address various concerns.
- **FCC ADDS TO VOIP DUTIES AND EYES NEW VOIP/WIRELESS E911 STANDARDS.** The regulatory gap between VoIP and traditional telephony continues to close, as the FCC extended disability-access requirements to "interconnected" VoIP companies and proposed that providers of nomadic VoIP service use automatic-location technology that meets the same E911 accuracy standards as those for wireless providers, which the agency also proposed to toughen.
- **SPECIAL-ACCESS PRESSURE.** Rep. Markey pressed the FCC to quickly rein in Bell special-access rates. We suspect the FCC will seek further comment before taking any action, but the Markey call adds to pressures, and Bell risks.
- **ALSO:** Items on [FCC Cable/Telco Inside-Wiring Actions](#), [Dingell-Markey DTV Call](#), [700 MHz Auction Update](#).

INTERNET CONSOLIDATION

Google-DoubleClick Goes to the FTC: Approval Still Looks Likely, But Potential for Privacy Conditions Rises

Various news sources have reported, and Google (GOOG) has confirmed, that the Google-DoubleClick deal will be reviewed by the Federal Trade Commission. This does not change our basic analysis of the deal: that while it is likely to be approved, we believe it will be heavily contested, raise lots of issues about the Internet's future and the use of customer data, and perhaps ultimately provide a new set of ground rules for privacy and the use of customer data throughout the Internet. (See our initial reaction in our note "Google-DoubleClick Merger Review — A Big Battle in a Bigger War," April 23, 2007). Our confidence in the deal being approved was somewhat strengthened by Internet advertising deals that followed the Google-DoubleClick announcement. (See "Microsoft-Aquantive Adds to Internet Ad Deals" in the May 24, 2007, *WTM&T Insider*.)

Just In: Court Partially Upholds FCC Order on VoIP USF Duties

The D.C. Circuit today offered a mixed verdict on the FCC's order for VoIP Universal Service Fund contributions, giving modest relief to Vonage (VG) and others. The FCC won two key battles as the court upheld its authority to impose USF duties on VoIP and its 65% interstate "safe harbor" assessment base. It vacated decisions to require VoIP providers (but not wireless) to submit any traffic studies for pre-approval and to pay directly and indirectly (through other carriers) into the fund for two quarters.

ON DECK

Today: FCC spectrum summit.

June 7: Latest ITC due date for ruling on remedy in Broadcom-Qualcomm patent case.

July 11: Lawmaker deadline for FCC answers on special access, DTV consumer-education plan.

June 25: Federal Circuit to hear oral arguments in Vonage-Verizon patent dispute.

June 28: Next FCC meeting.

Looming:

- Third Circuit rulings on Fox-indecency case.
- FCC decision making on 700 MHz auction/service rules, Bell post-272 long-distance treatment, and cable/telco requests for waivers from July 1 ban on new security-integrated set-top boxes.

All relevant disclosures and certifications appear on p. 8 of this report.

The news that the FTC will review the competitive aspects of the Google-DoubleClick deal strengthens our view that the outcome is likely to involve some new guidelines on how Internet advertising companies can use data. As we noted before, the deal raises two distinct issues for us: does it reduce competition in a relevant product and geographic market; and does it make it likely that the combined company will use customer data in a way that violates existing privacy laws or calls for the creation of new privacy safeguards.

As to the first, we think the FTC is likely to conclude the

answer is no and let the parties close the deal. As to the second, we think the FTC will likely believe that it needs to clarify what can and cannot be done with customer data and negotiate an agreement with Google that could create something of a baseline for the entire industry.

The reason we think a negotiated rule is now even more likely is that the FTC is in a stronger position to push for new privacy restrictions now that it has jurisdiction over both sides of the deal. The issues are not unrelated, in that one of the claims of the opponents of the deal is that giving the com-

THE SKINNY

Subject/Issues	Overview/Outlook	Update
Congressional Legislation & Activity	Lawmakers sorting out priorities and politics in Congress, initially focused on hearings/oversight. Net neutrality and USF are big-ticket items, but divisive. DTV, Internet-access tax ban other possible drivers. Targeted bills may have better chance.	<ul style="list-style-type: none"> • Broadband: Open Internet Coalition seeks comprehensive broadband policy, including net neutrality. Sen. Inouye unveils broadband data-collection and R&D bills. • FCC Oversight: Rep. Markey presses for FCC action on special access, while he and Rep. Dingell seek comprehensive FCC plan to educate consumers on DTV transition.
Telecom Regulation: Competition Rules <i>Network Neutrality, Broadband, VoIP/IP, UNE/Wholesale, etc.</i>	Regulators trying to iron out telecom wrinkles caused by competition and convergence. Republican FCC seeks Bell-cable parity and some VoIP rules, not net neutrality (AT&T-BellSouth conditions expected). Forbearance bids fill agenda.	<ul style="list-style-type: none"> • Cox Petition: FCC grants Cox bid for direct access to telco lines (sub-loops) inside multi-tenant buildings. • Post-272 Relief: Verizon withdraws forbearance petition, expects FCC rulemaking order (also applicable to AT&T). • Equal Access: Bells/ILECs seek end to L.D. requirements.
Telecom Regulation: Subsidies, Charges <i>USF & Intercarrier Compensation Reform</i>	FCC looks to reform USF subsidies and intercarrier compensation under stress. USF auctions and “Missoula” intercarrier and phantom-traffic plan among proposals.	<ul style="list-style-type: none"> • Special Access: Rep. Markey seeks FCC commissioner answers by June 11 to his request for action to address rates. • USF: Maine congressman opposes Joint Board proposal for interim FCC cap on CETC/wireless funding support.
Wireless & Satellite Regulation	Wireless industry seeking more spectrum and fewer regulatory burdens/costs. Satellite providers looking to solidify positions.	<ul style="list-style-type: none"> • MSS: TerreStar to seek milestone extension after Loral notifies that satellite delivery will be delayed. • Rebanding: FCC issues new ruling, largely affirms earlier decisions but sends signal for Sprint Nextel to speed progress.
Media Regulation	DTV transition, ownership limits, franchising, indecency, violence, program access/carriage, cable set-top box deadline, à la carte, tiers, retransmission consent, must-carry among the issues in play.	<ul style="list-style-type: none"> • Webcasting Fight: Internet radio parties reportedly prepare to ask court to block, overturn copyright royalty rate hike. • DTV: Rep. Markey and Dingell ask FCC chairman for consumer-education plan by June 11. Court upholds budget act that set DTV transition and 700 MHz auction deadlines.
Social/Safety/Security Regulation	FCC looks to protect CPNI privacy and ensure VoIP enhanced 911 and CALEA-backed broadband/VoIP wiretaps.	<ul style="list-style-type: none"> • Disability Access: FCC extends requirements to VoIP. • E911: FCC proposes new wireless, VoIP tracking standards. • Emergencies: FCC adopts “Katrina” and EAS orders.
State & Local Actions	Telcos have momentum in push for video franchise relief, other deregulation. Muni-broadband efforts move ahead, face tests.	<ul style="list-style-type: none"> • Bell Franchise Drive — 4 Wins and a Loss: State franchise legislation signed into law in Iowa and Georgia, goes to governor in Nevada, passes Illinois House, stalls in Tennessee.
Intellectual Property	Tech players fight over patents; digital content-distribution copyright battles target greater share of value chain. Litigation sorts out rights, serves as a pressure point.	<ul style="list-style-type: none"> • Broadcom-Qualcomm: Broadcom wins \$20M jury verdict against Qualcomm in patent case, with injunction hearing set for June 18. The case is unrelated to the ITC dispute. • Webcasting Fight: See item above in Media Reg Update.
International	Edge players and others target global marketplace, triggering international decision making on competition, content, mergers.	<ul style="list-style-type: none"> • WRC: Head of U.S. delegation to the 2007 World Radio Conference said making 700 MHz available for broadband use would be priority, along with protecting terrestrial use of 2.5 GHz band from interference.

bined entity access to the data gathered by both companies not only creates a privacy problem, but also creates a barrier to entry to others who want to compete in the Internet advertising business. Critics will suggest that the Google-DoubleClick combination will have access to so much customer data, as well as data from its unequaled experience with online ad auctions, that there will effectively be a tipping point for targeting ads such that the current (and growing) market-share gap between Google and its competitors will be irreversible.

We don't think the FTC will conclude that the deal creates an insurmountable barrier, but we do expect the centrality of information use in both inquiries will provide the FTC with a deeper understanding of the issues — and more arrows in its quiver should it decide some remedies are needed.

This creates something of a two-edged sword for some of the opponents of the deal who, when it comes to privacy issues, are in the same boat as Google. On the one hand, opponents like Microsoft (**MSFT**) want the FTC to limit Google's use of data for competitive reasons, but on the other, they would generally favor a hands-off policy as to privacy issues.

On the more clearly positive side for all Internet advertisers, in our opinion, is that it is probably better to set the rules at the federal level, than face a patchwork of different rules throughout the states. Merger conditions would not preempt the states but could reduce political pressure for the states to act. Further, there might be some advantages for the Internet companies to have the rules set now, rather than in two or three years when a new administration will be in office and may feel that establishing tough privacy rules is the right way to establish itself.

Privacy advocates have already filed a petition at the FTC alleging, among other things, that Google's current practices constitute deceptive and unfair trade practices. They seek a variety of remedies, including removing cookies and other identifiers, and requiring the company to set out a public plan for how it will comply with privacy standards.

In addition, the European Union is already looking into Google's privacy policies — particularly its data-retention policies. Google has said that it will respond to the EU's request by June 19. In March, Google changed its data-retention policies from keeping the information an unlimited amount of time to keeping it between 18 and 24 months, though we understand some in the EU group reviewing the deal reportedly believe even that is too long.

SATELLITE RADIO MERGER

XM-Sirius Still Winnable, But Karmazin “Uphill Battle” Comments Increase Slope

We understand that the Federal Communications Commission is getting closer to putting the XM-Sirius (**XMSR-SIRI**) merger application to transfer licenses out for public notice. We think of this as an important event not because it starts a process of public debate — that is already well underway, with more than 600 comments filed — but rather, because it helps clear the way for a serious public debate about the economics of the deal that we think will be at the heart of the ulti-

mate decision by the Department of Justice and the FCC. While many individuals have filed comments, largely supportive, and the broadcasters have filed many negative comments, these don't really provide the economic data that we think decision makers will find persuasive.

We also think that the parties that will carry the most significant weight have not yet weighed in publicly and won't until the FCC sets up the formal filing schedule. We are particularly interested in how others in the satellite radio value chain will look at the deal. We expect opposition from some content creators, such as the sports leagues, and think such comments will boost the efforts of the opponents. We don't know how or if the retailers, radio manufacturers, and car companies will weigh in, but if they are positive about the deal, it would be very helpful in convincing government officials that there are pro-competitive efficiencies in the deal. If they are negative, it will make an already problematic environment significantly tougher.

The recent letter by Sen. Herb Kohl (D-WI), chairman of the Senate Judiciary Committee's antitrust subcommittee, advising the Department of Justice to block the deal is a negative, but it was neither unexpected (see our report on his comments during a hearing in the March 23, 2007, *WTM&T Insider*) nor the kind of clear bipartisan message that would have caused us to adjust our view on the merger's prospects.

Of greater significance, to us, was Sirius' CEO Mel Karmazin's reported comment at a shareholders' meeting that the deal faces an “uphill battle” to gain approval. We share his assessment in the sense that the companies have to affirmatively win the debate, in contrast to most deals in which the burden falls on the opponents to win the debate. We think the companies have arguments that would be compelling to this Justice Department, but those arguments are not self-executing. We believe the companies have to mount a skilled effort, both in private meetings with government officials and in public forums.

What concerns us about Karmazin's reported comment is that it sends all the wrong signals to all the parties involved in the process, including his own team. While it might be true that a team down by a touchdown in the second quarter has an uphill battle, it is not what you would want your quarterback to tell the team in the huddle (or everybody else, for that matter).

In the political realm, the first rule of lobbying is to find a way to make it easy for the decision maker to say yes and hard to say no. By publicly saying the battle is uphill, Karmazin is making it easier to say no and harder to say yes. While we are sympathetic to the problems of any CEO speaking “off the cuff” at a shareholders' meeting, and one should not make too much of such statements, we nonetheless have to have a cold-hearted view of such comments, particularly because our analysis of deal's prospects depends on the companies bringing their “A game” to the debate.

In our view, the companies had already confused the debate by making a variety of statements about their merger case, particularly as they related to a post-deal pricing plan and à la carte options. Further, we don't think the companies have yet painted a compelling vision of how a post-deal com-

pany would improve the choices and value the customer receives. We think the companies will ultimately be clearer in how they intend to offer smaller, focused packages at entry price points below the current \$12.95/month. For example, there could be an all-sports package or a family-oriented package that could be attractive to regulators and potentially expand the base of customers.

We expect opponents will argue that the companies don't need to merge to make such an offer and that consumers need competitive forces to be protected. We expect the companies will counter by saying that only by combining will they have an ability to offer a complete package in a category (as op-

posed to, say, sports packages that only have half the sports offerings) and that the variety of packages will effectively compete with each other and constrain price increases. We think clarity on the offerings can be helpful to the companies, though we acknowledge that it is just one of several arguments they have to win to ultimately close the deal.

The battle is far from over. We think if the companies present a compelling economic argument on the pricing and the market-definition issues, win the support of others in the value chain who benefit from potential efficiencies, and paint a clear picture of how the customer benefits, they still have a fairly good chance for approval. But for that to happen, we think

THE (M&A) MATRIX

Transaction*	FCC Status**	Key Issues, Players	Prospects/Update
Clear Channel Sale <i>Private-equity group led by Thomas H. Lee Equity Fund and Bain Capital would buy most CCU assets.</i>	FCC docket: 06-226 Day one: 12/21/06 On day: 163 Target date: 6/18/07 Clock: Running	<ul style="list-style-type: none"> • Will shareholders approve? • Some questions about private-equity cross-ownership stakes. • Opportunities for minorities and others to buy other CCU stations. 	Likely will win approval in 2H07 if latest offer accepted by shareholders. Board has accepted the offer.
Liberty - DirecTV/News <i>Liberty would take control of DirecTV from News Corp.</i>	FCC docket: 07-18 Day one: 2/21/07 On day: 100 Target date: 8/24/07 Clock: Running	<ul style="list-style-type: none"> • Adherence to applicable News Corp. conditions on regional sports, program access, program carriage. • DirecTV exclusive sports deals. 	Likely to be approved sometime in 2H07, but opponents pushing for various programming conditions.
Verizon - FairPoint Combo <i>Would combine Verizon assets in Maine, New Hampshire, and Vermont with FairPoint.</i>	FCC docket: 07-22 Day one: 3/15/07 On day: 79 Target Date: 9/25/07 Clock: Running	<ul style="list-style-type: none"> • State concerns about entity's ability to ensure quality of service and invest in broadband networks. • Unions concerned about jobs. 	Likely to be approved late in year, with state conditions. <i>Opposition aired. Rep. Kucinich seeks close review.</i>
XM - Sirius Satellite Radio <i>Would combine the two satellite radio companies.</i>	Application filed at the FCC. Clock yet to start.	<ul style="list-style-type: none"> • Will DOJ and FCC find sufficient competition from broadcasters, Internet, iPods, wireless radio, etc. 	Close call, <i>but Karmazin remarks unhelpful, and companies need to make better case for approval, in our view.</i>
Tribune Sale <i>Private-equity group led by Sam Zell would buy out Tribune.</i>	Application filed at the FCC. Clock may have started, but not yet on FCC web site.	<ul style="list-style-type: none"> • Will existing cross-ownership waivers be extended to new holders of licenses. 	Likely to be approved, at least temporarily, pending rulemaking decision.
Alltel - TPG Capital and GS Capital Partners <i>Another private equity buy-out.</i>	Not yet filed at FCC	<ul style="list-style-type: none"> • Shareholder concerns about price. • Whether new bid emerges. • Regulatory issues appear minimal. 	Likely to be approved.
Google - DoubleClick <i>Google would buy DoubleClick.</i>	To be reviewed by FTC; FCC approval not needed.	<ul style="list-style-type: none"> • Market share in Internet advertising market. • Privacy and use of customer data. 	Likely to be cleared, <i>but FTC review complicates data-use/privacy issues.</i>
Thomson - Reuters <i>Thomson would buy Reuters.</i>	To be reviewed by U.S., European anti-trust/competition enforcers, but not FCC.	<ul style="list-style-type: none"> • Whether combining two of the largest financial news and info providers would be anti-competitive. 	No slam dunk, though we suspect it will be approved.
Microsoft - aQuantive <i>Microsoft would buy aQuantive.</i>	To be reviewed by FTC or DOJ, but not the FCC.	<ul style="list-style-type: none"> • Doesn't appear to raise significant antitrust issues. 	Likely to be approved.

* The FCC has a fairly open process, but the deals are also subject to DOJ (or FTC) antitrust (and sometimes state) review.

** The FCC's 180-day informal clock and related target dates create an internal timetable, but can be stopped and are not binding.

the companies will have to improve on the message they are sending and shift the context so that decision makers will find it easier to say yes and harder to say no.

Mr. Karmazin's statements make us marginally less confident that will happen, though the key, and in our view where the investor focus should be, is what happens next when the serious economic arguments are set forth at the DOJ and FCC.

VOIP/WIRELESS

FCC Imposes Disability Rules on VoIP, Eyes New Wireless/VoIP Tracking Duties

The regulatory gap between packet-switched Internet voice (VoIP) and traditional circuit-switched telephony continues to close. The FCC yesterday extended disability-access requirements to "interconnected VoIP" providers and proposed that nomadic VoIP service providers use automatic-location technology that meets the same enhanced 911 (E911) accuracy standards as those that apply to mobile phone providers, which the agency also proposed to toughen.

We believe the actions clearly will impose new regulations and costs on VoIP companies that interconnect with the public switched telephone network (PSTN), particularly the portable providers, but the magnitude of the burdens remains to be seen. The FCC has not yet released the text of the disability-access order or the E911 notice of proposed rulemaking (NPRM), which will be subject to further public comments and agency decision making before it can become an order.

At its May 31 meeting, the FCC unanimously approved an order to extend the disability-access requirements of Sec. 255 of the Communications Act to PSTN-interconnected VoIP providers and "manufacturers of specially designed equipment used to provide those services." Sec. 255 requires telecom service providers and manufacturers to ensure that persons with disabilities can use their equipment and services, if readily achievable. The order also subjects interconnected VoIP providers to the requirements of Sec. 225, which includes, among other mandates, duties to contribute to the fund supporting the Telecom Relay Service used by the hearing impaired and to offer "711" dialing that allows users to access the relay service.

Although the FCC hasn't yet classified VoIP, it has taken numerous actions to apply telecom regulation to interconnected VoIP providers. Chairman Kevin Martin noted the Commission's continuing efforts to ensure the "core social goals" of the Act are met as technology evolves: on E911, wiretapping/CALEA assistance, universal service, privacy/CPNI safeguards, and now disability access. He noted the FCC continues to evaluate other potential duties relating to numbering and consumer protection (e.g., on service discontinuance notifications, slamming, and billing issues).

Our impression is the new disability rules could be less burdensome to residential VoIP providers (such as cable and Vonage/VG) than to those focused on serving enterprise customers (large businesses), which tend to have more complex systems and operational wrinkles. Obviously, the order's details will be important.

The FCC raised even more questions with its further NPRM on E911 automatic-location technology, which seeks to improve the tracking capabilities of wireless carriers and ensure that providers of nomadic VoIP services can also locate callers making emergency calls. While it remains to be seen what the Commission will ultimately do, the NPRM contained various tentative conclusions, including that it adopt an APCO (a public-safety group) proposal that wireless carriers be expressly required to meet certain "Phase II location accuracy and reliability standards" at the more-granular "service level of PSAPs" (public safety answering points). The FCC asked whether it should defer enforcement, but Chairman Martin said statewide or multi-state averaging can mask E911

INSIDE WIRING

FCC Backs Cox Bid on Telco Sub-Loops, Affirms Decision on Cable-Wire Remand

As expected, the FCC at its meeting yesterday also approved an inside-wire order intended to boost both phone and video competition in multi-tenant dwelling units (see "FCC Looks to Act on Cox Phone Bid, Address Separate Cable Wiring Issue," in the May 24, 2007, *WTM&T Insider*.)

The FCC granted the petition of privately held Cox that the agency declare that telco competitors have the right to directly connect to the unbundled sub-loops of incumbent carriers in multi-unit buildings at the "terminal block," which is generally a box where individual lines feed into the network. The order gives Cox and other circuit-switched voice providers new ammo in their battles with telcos such as AT&T (T) and Verizon (VZ), though an FCC official said the order recognized the continuing state role in arbitrating interconnection disputes.

In the same item, the FCC once again ruled that video competitors cannot be forced to cut through "sheet rock," or dry wall, to connect to the cable wiring of individual units in multi-tenant buildings, moving the so-called "demarcation point" further away from the units to the first "accessible" point. The action appears helpful to cable landline competitors, including the telcos and RCN (RCNI), which hailed the decision.

The Commission was responding to a D.C. Circuit ruling that remanded the FCC's previous requirement as inadequately justified. The Commission yesterday said that wiring behind sheet rock was "physically inaccessible" like wiring behind brick, cinder block, and similar materials. Agency officials noted that competitors not only had to cut through the sheet rock but return it to its original state, imposing substantial costs that impeded competition.

The FCC action was separate from another proceeding, in which the FCC is looking at trying to help Bell/telco video initiatives gain access to multi-tenant buildings, and not just their individual units.

reliability outside of urban areas and wasn't good enough for public safety.

The FCC also tentatively concluded that it should adopt a single, technology-neutral location-accuracy requirement for wireless E911 instead of the current separate duties for network-based and handset-based systems. FCC officials expressed interest in facilitating "hybrid" approaches that use both network and handset solutions and they noted that they would study ways to improve in-building accuracy.

Finally, the Commission tentatively concluded that interconnected VoIP providers offering services that can be used at various locations employ an automatic-location technology that meets the same accuracy standards that apply to "CMRS" (mobile phone) carriers. That would mean that cable providers (e.g., CMCSA, TWX, CHTR, CVC) of fixed VoIP services would not be affected.

The FCC approved the NPRM unanimously, though Commissioner Jonathan Adelstein voiced concern that the agency was "rushing to judgment by issuing a series of tentative conclusions" before it had adequately studied the issues. "I am troubled that we are considering imposing a new compliance requirement that we know some carriers will be unable to meet in certain circumstances," he said. We believe wireless and VoIP providers have similar concerns, raising the profile of the coming proceeding, but Chairman Martin said "the bar must be raised for E911."

VoIP providers note that they have made considerable E911 progress over the last couple of years but say they need better access to the selective routers of the Bells and other incumbent local telcos -- something the FCC has not provided but that a Senate bill would.

At its meeting, the FCC also took the following actions related to emergency communications.

- **Katrina Order.** It approved an order adopting various recommendations of an advisory panel that looked at the im-

act of Hurricane Katrina on communications. Among the new steps, the order requires local exchange carriers and CMRS/wireless providers to have an emergency back-up source for all facilities using commercial power sources (small companies would be exempted).

- **EAS Order.** It approved an order intended to strengthen the Emergency Alert System by, among other things, requiring EAS participants (whether broadcast, cable, satellite, telcos, or other) to be able to accept emergency messages using a next-generation protocol once it is adopted by FEMA.

SPECIAL ACCESS

Chairman Markey Pushes FCC to Revise Deregulatory Approach, Rein in Bell Rates

A key lawmaker this week pressed the FCC to revisit its deregulatory policies to telco special-access services, the high-capacity wholesale and business-oriented offerings that have been highly lucrative for the Bells (**T, VZ, Q**). While it's not yet clear what the FCC will do, the call adds to the mounting external and internal pressures for regulatory scrutiny and possible actions that we think could at some point create some potential downside for the Bells.

Rep. Ed Markey (D-MA), chairman of the House Energy and Commerce Committee's telecom subcommittee, wrote FCC commissioners on May 23 to express concerns about the "apparent failure" in the special-access market, which he said could hinder the development of new wireless broadband services in the 700-MHz-band frequencies that are to be auctioned off by early next year. He noted that the dedicated special-access circuits of incumbent telcos often provide key connections for wireless carriers within their networks and when exchanging traffic with other carriers. Telco special-access revenues are said to be somewhere in the neighborhood of \$15

DIGITAL TV

Dingell, Markey Push FCC to Step Up Efforts to Inform Public About Transition

In addition to his special-access letter, Rep. Markey joined Energy and Commerce Committee Chairman John Dingell (D-MI) in prodding the FCC to do more to prepare consumers for the upcoming broadcast industry shift from analog to digital television transmission. The two lawmakers wrote commissioners on May 24 to voice concerns about the digital transition and the agency's role. They noted the FCC had only asked for \$1.5 million to inform 300 million Americans about the transition compared to the almost \$1 million Berlin, Germany, had spent on educating its 3.4 million residents about its transition.

"We are concerned that the apparent lack of direction and focus will lead to needless confusion, leaving millions of Americans overly reliant on the good graces of industry to inform them ...," they wrote.

Reps. Dingell and Markey urged the FCC to develop,

implement, and oversee a digital TV public-outreach and consumer-education campaign, and they said there were a number of steps the Commission could take "post-haste" using its existing authority. For instance, they said the FCC could require all multichannel video providers to insert periodic notices into their bills about the transition and consumer options.

The lawmakers also said the FCC could require broadcasters to report every 90 days on their consumer-education efforts, and they suggested the agency could even consider requiring the licensees periodically to air public service announcements and scroll information about the transition. They also suggested the FCC consider adopting new consumer notification and education requirements for retailers and taking various other measures to improve public and private efforts to inform the public.

In closing, they asked Chairman Martin by June 11 to spell out the FCC's public-outreach program and when it would begin to implement it, as well as provide a "detailed description" of its efforts to oversee industry consumer-education initiatives.

billion a year.

Special-access services are too costly and not competitive enough, according to Rep. Markey, who blamed Bell takeovers, competitor bankruptcies, and the agency's deregulatory pricing regime. He took note of the GAO's 2006 report that raised new questions about the FCC's approach to special access, which has allowed the Bells to gain considerable pricing freedom if they meet certain competitive triggers that critics say are flawed but the Bells defend.

Rep. Markey urged the FCC to act quickly to modify its special-access policies, and asked commissioners whether they agreed with his assessment that action was needed to safeguard wireless broadband competition and reduce costs generally. He specifically asked commissioners to inform him by June 11 whether they supported or opposed completing a special-access review in time to adopt an order by Sept. 15, 2007.

Commissioners Robert McDowell, Jonathan Adelstein, and Michael Copps appear to share some sense of urgency on the need to scrutinize special-access issues, raising the prospect that there could be a majority for instituting some sort of changes, but Chairman Kevin Martin seems to be more skeptical and he has the FCC helm (see our item, "McDowell, FCC Democrats Eye Actions on Bell Services; Martin Controls Agenda," in the Feb. 16, 2007, *WT&M Insider*). Mr. Martin has said he would support refreshing the record in the wake of the Bell mergers that included FCC special-access conditions (see our item, "Panel Grills FCC; Martin Defends Actions, Offers Some Timing Concessions/Updates," in the March 16, 2007, *WTM&T Insider*).

We understand that Chairman Martin has proposed follow-

ing through on that suggestion and inviting public comment, but that would create a two-step process that could delay action into 2008 or beyond. The two Democrats appear to want a more aggressive approach, according to *Communications Daily*, with Commissioner McDowell's stance less clear. We suspect that Mr. McDowell, a former lobbyist for CompTel, a CLEC/ILEC trade group, is at least open to the possibility of taking some sort of remedial actions, but even if he supports the two Democrats, they would still basically need to convince Chairman Martin to move ahead on any action.

Rep. Markey's request could help bring the procedural issue to a head by forcing commissioners to clarify their approaches in less than two weeks. That raises some new risks for the Bells, which want to maintain the special-access pricing deregulation they have gained over the last several years in most of the major markets. New FCC regulation could squeeze Bell margins, though booming traffic growth could continue to boost gross revenues. We suspect the FCC is more likely to seek further comment, but even if they do, Mr. Markey's letter puts pressure on commissioners to act with greater dispatch.

700 MHZ AUCTION

Comment Period Extended; Parties Argue; Deadline Upheld; Edwards, Public Weigh In

The FCC extended the deadline for filing comments in the proceeding setting the auction and spectrum rules to next week, and scheduled the June meeting for June 28. We suspect Chairman Martin would like to issue an order by that

Recent Stifel Nicolaus Telecom, Media & Tech Publications

5/31	EBAY eBay (B, \$33.22) Industry Telecom, Media & Tech Regulation	<u>With An Eye For Community, eBay Buys StumbleUpon (Devitt/Block)</u> <u>GSA Reportedly Picks AT&T, Verizon, Qwest, Sprint, Level 3 for New Contract (Levin/Arbogast/Kaut)</u>
5/30	LQDT Liquidity (B, \$19.26) LINTA Liberty (B, \$23.80) NIHD NII Holdings (B, \$78.83)	<u>LQDT Deepens Government Relationship; Buy (Devitt/Block)</u> <u>Updating Model (Devitt/Block)</u> <u>Announces \$500 million share repurchase program; \$1 billion convert (King/Warrick)</u>
5/29	Industry Wireless Services Industry Telecom Services CTCI CT Communications (H, \$31.40) Industry Telecom, Media & Tech Regulation	<u>Stifel Nicolaus Weekly Latin American Telecom Update: Week of May 29th (King/Warrick)</u> <u>Telecom Services Weekly Valuation Update (King/Warrick)</u> <u>CT Agrees to be Acquired by Windstream for \$31.50 Cash (King/Warrick)</u> <u>Verizon Pulls Petition for Post-272 Relief, Expects FCC to Act in Rulemaking (Levin/Arbogast/Kaut)</u>
5/25	Industry Telecom, Media & Tech Regulation Industry Telecom, Media & Tech Regulation	<u>ITC Postpones Decision on Remedy in Qualcomm-Broadcom Patent Case (Levin/Arbogast/Kaut)</u> <u>ITC Decision In Broadcom-Qualcomm Expected After Market Close Today (Levin/Arbogast/Kaut)</u>
5/24	Industry Telecom, Media & Tech Regulation	<u>Update on Broadcom-Qualcomm Patent Dispute at ITC (Levin/Arbogast/Kaut)</u>

Investment Rating: B-Buy, H-Hold, S-Sell, N/R-Not Rated. Prices as of wire date.

Please contact us if you would like a copy of any of these publications and any other publication referred to in this report.

date, but it's not yet clear if the Commission will be able to do so.

The following is a round-up of the other developments in the proceeding or on related matters.

- Industry participants filed largely predictable comments, with large and midsize carriers opposing geographic build-out requirements, eligibility restrictions and open access; large carriers and high-tech companies urging larger licenses and rural carriers taking the opposite stance; and everyone except Skype (**EBAY**) and Google (**GOOG**) lambasting the Front-line proposal. Verizon (**VZ**) supported the bandplan proposed by Access Spectrum, while AT&T (**T**) supported a different plan that would create three separate licenses in the upper band.

- The FCC put out separately for public comment Google's recent proposal for "dynamic auction techniques."

- The D.C. Circuit removed one remaining overhang to the auction by rejecting a constitutional challenge to the legisla-

tion that set the February 2009 deadline for the broadcasters vacating the 700 MHz spectrum and directing the FCC to commence the auction by January 2008.

- Reps. John Dingell and Ed Markey turned up the heat on the FCC to develop a comprehensive digital TV consumer-education plan by June 11 (see separate item on p. 6.)

- An e-mail campaign by individuals lobbying the FCC to protect airwaves from alleged corporate Internet gatekeepers by setting aside half of the spectrum for open and non-discriminatory Internet access has pushed the number of public comments in the proceeding to over 15,000.

- Democratic presidential candidate John Edwards was one of the 15,000 public commentators, sending a letter to the FCC urging the agency to set aside half of the spectrum for wholesalers who can lease spectrum to small startups, to prohibit licensees from discriminating among "data and services," and to require anonymous bidding.

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