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CTIA Seeks to Get Ahead of Location Services Issues

Association Proposes Safe Harbors for Wireless Carriers' For-Profit ALI Ventures

The Cellular Telecommunications and Internet Association (CTIA) has begun pushing for federal standards governing the commercial use of automatic location identification (ALI) systems. Last week, CTIA petitioned the FCC to adopt a notice of proposed rulemaking to set "safe harbor" standards to protect consumer privacy with the introduction of ALI-based services. The association has indicated that it will also participate in Federal Trade Commission (FTC) deliberations over the issue. By proposing standards upfront, the wireless industry seeks to spark more rapid introduction of new location-based services by establishing agreeable liability rules.

The silver lining to the FCC's costly rules requiring cellular, personal communications service (PCS) and covered specialized mobile radio (SMR) carriers to deploy ALI technologies has been that carriers could see a return on those expenditures in the form of for-profit ALI features. The government is mandating the deployment of technologies over the next five years that provide the location of emergency "911" callers to within a few meters out of public safety concerns (BMJ&D Telecom Update, Sept. 13). But even if they had not been required to do so, many carriers might have deployed such systems on their own in coming years. Many of the location-based commercial applications that the wireless industry has been promising for years soon could be commonplace:

- "Telematics" is the term that has been coined to describe the integration of the electronic circuitry in automobiles with wireless communications devices. A version of the long-promised automatic "911" call and location service whenever a car's airbag deploys already exists in the form of satellite-based services, such as General Motors' OnStar service. Terrestrial carriers soon could begin offering similar services, along with the ability to provide driving directions and other vehicle services.
- Cellular and PCS carriers could pick up a larger percentage of the fleet management business. Delivery

services, taxi companies and other businesses that maintain large numbers of vehicles often use wireless systems to track their vehicles, provide driving directions and monitor maintenance systems within the vehicles. New ALI technologies could make such systems easier and less costly to deploy.

- Location technologies could facilitate new advertising revenues for wireless carriers. Depending on where wireless subscribers are, either driving down the road or walking through a downtown business district, retailers could notify them of special promotions at stores they are approaching.

But when does the ability of a wireless carrier, an emergency service or a retailer to track subscribers' movements become an invasion of privacy? CTIA asks the FCC to answer those questions now rather than waiting for future litigation. "Privacy concerns must be addressed if new services and applications are to be accepted by consumers," the association petition says.

The current complications associated with the FCC's consumer proprietary network information (CPNI) rules could present a significant barrier to location privacy rules. Legislation enacted in 1999 specified that location information should be deemed CPNI and subject to privacy protection. The FCC's rules to enforce those protections, however, were vacated a year ago by the U.S. Court of Appeals for the Tenth Circuit on constitutional grounds, and the FCC has not begun proceedings to adopt new rules.

CTIA calls on the FCC to separate commercial ALI issues from the larger constitutional CPNI questions, and formulate separate location privacy rules. "The location privacy question is uniquely a wireless concern. CTIA expects that a broad range of commenters will be interested in this rulemaking that otherwise would have no interest in the general CPNI rulemaking," according to the petition. Wireless carriers must know the rules as soon as possible in order to begin rolling out the new services, CTIA said.

The association recommends some general principles as the basis for the location privacy rules. Consumers should be informed about location information collection procedures, CTIA says. It suggests a number of ways to

do so, such as through monthly bills, service agreements, web sites, e-mail and other tools. Consumers must then provide "express authorization" to the information collection before receiving any location-based services. Location service providers in turn would protect the information from access by third parties. CTIA also urged the FCC to adopt "technology neutral" privacy standards that could be applied equally to all ALI systems, including network-based technologies or handset-based technologies for the various digital airlink standards.

In addition to its petition to the FCC, CTIA says it will promote its ALI position at an upcoming FTC workshop entitled, "The Mobile Wireless Web, Data Services and Beyond: Emerging Technologies and Consumer Issues." The goal of the workshop is "to educate government officials and other interested parties about emerging wireless technologies, and to provide a forum for discussion of the privacy, security and consumer protection issues raised by these new technologies," according to the Federal Register notice of the meeting. The workshop is scheduled for **Dec. 11-12** at the FTC's meeting room in Washington.

Our wireless clients should stay abreast of the developments in commercial ALI systems and be ready to participate in future FCC proceedings to shape ALI rules in a way that will avert possible privacy lawsuits, while maintaining flexibility to establish successful services. We will advise our clients when the FCC seeks public comment on CTIA's proposals.

BMJ&D contacts: Hal Mordkofsky, John Prendergast and Gerry Duffy.

LAW & REGULATION

DoJ/FBI Proposes CALEA Point-of-Contact Rule Changes

CTIA Says Government Seeks to Micromanage Carriers' Policies; Cisco Voices Concerns With Interception of Packet-Based Communications

The Department of Justice (DoJ) and FBI are asking the FCC to make changes in the current rules governing telecommunications carriers' responsibility to provide contact personnel information to allow law enforcement to comply with the Communications Assistance for Law Enforcement Act (CALEA). DoJ/FBI claim to have discovered "unforeseen" problems with the current CALEA contact reporting rules, and are seeking new require-

ments that carriers report contact changes more rapidly and submit information changes using a standard form. At our press time, only one telecommunications entity, the Cellular Telecommunications and Internet Association (CTIA), had responded to the FBI/DoJ petition in an *ex parte* opposition. The FCC so far has not asked for comments on the petition.

Under the FCC's current CALEA rules telecommunications carriers were required to submit compliance manuals to the FCC in May 2000. The manuals were to include the name and contact information of authorized carrier employees that law enforcement officials could reach on an around-the-clock basis should they require access to the carrier's facilities. The FCC requires the carrier to notify the Commission within 90 days after any changes in the policies included in the manual.

DoJ/FBI are asking the FCC "to clarify" that its rules require that "a carrier must update its policies and procedures immediately upon any significant change in its point of contact information." The government asks that the carriers notify the FCC "in writing or (preferably) by electronic message." It also asks the FCC to adopt a requirement that carriers submit their contact changes using a new standardized form. DoJ/FBI proposes a format and attached a prototype of such a form to its petition. The form would require general information about the carrier as well as the name, title, phone number, alternate phone number, e-mail address, fax number and the job description of a primary point of contact. The form also would require the same information for an alternate point of contact.

"The government does not disagree with the assertion that such information is sensitive to both carriers and law enforcement and is appropriate for withholding from inspection by the general public," DoJ/FBI said. It suggests that the FCC adopt "an affirmative statement" that contact information will receive confidential treatment.

CTIA's response was that DoJ/FBI's request would lead to "unreasonable micromanagement." The FCC, when it was considering its CALEA reporting requirements, had proposed and ultimately decided against strict record keeping requirements, CTIA said. Among those proposals were credit and background checks on point-of-contact personnel. The FCC decided upon its current rules in order to ensure that they would not be "unduly burdensome," CTIA said. The association said that there is no evidence that unforeseen problems have occurred that would justify changing the rules.

DoJ/FBI's request for "immediate" notification of contact changes creates a particular burden, CTIA said. "The term 'immediate,' especially given that these rules are subject to enforcement and penalties, creates more uncertainty than it resolves," it said. The government's re-

quest for a standard form would create paperwork burdens for carriers and would burden the FCC by forcing it to conduct lengthy procedures under the Paperwork Reduction Act of 1995 to adopt the form, CTIA said.

In a related story, the FCC recently received comments in its proceeding to reinstate the "punch list" items of its CALEA compatibility rules. The U.S. Court of Appeals for the District Columbia Circuit vacated four of the six call interception features, which the FCC ordered to be added to the industry's original J-STD-025 CALEA standard (BMJ&D Telecom Update, Aug. 23). Under current rules, carriers are required to implement the remaining two punch list items by September 2001. The DoJ/FBI is urging the FCC to address the D.C. Circuit's concerns and reinstate the remanded items so that all six punch list items can be deployed by the current deadline or soon after.

One of the key controversies is the question of whether a standard for packet-based communications interceptions, one of the remanded requirements, can be limited to "pen register" information. Internet experts have warned that packet header information cannot be separated from content. Perhaps some of the most significant comments were filed by Cisco Systems, a leading company in the development of Internet technologies, which confirmed there is a problem with call interception over packet-switched networks. Cisco urged the FCC to suspend the September 2001 deadline, claiming that the industry would need more time to deal with the problem. "The alternative is a 'gotcha' regime in which carriers and manufacturers can be punished for failing to meet legal obligations that they cannot understand. Surely Congress and the Commission never intended CALEA to yield such results," Cisco said.

BMJ&D contact: Gerry Duffy.

Law & Regulation in Brief

PSC SAYS MYOB: The FCC has no jurisdiction to designate Western Wireless as an eligible telecommunications carrier (ETC) for the Crow Reservation, and Western Wireless has no standing to ask the FCC to act, the Montana Public Service Commission (PSC) said in comments filed with the FCC last week. The PSC was responding to recent supplemental information provided by Western Wireless 15 months after its original petition seeking FCC intervention. "Montana PSC regulation has simply existed and it has worked satisfactorily and has become a cohesive statewide system promoting national, state and local policies. If the Crow Tribe has a concern regarding the Montana PSC's regulation of any entity serving members of the Crow Tribe, that is a matter for discussion between Montana and the Crow Tribe," the PSC said. The PSC agrees that there is

no formal document in which the Crow Tribe consents to Montana PSC jurisdiction, but that "it is impossible to ignore years of implied consent." Furthermore, the PSC claims that Western Wireless is not an authorized agent of the Crow Tribe and that its actions are in its own interests. "That is not a basis for jurisdiction in the FCC," it said. BMJ&D contacts: Ben Dickens and Gerry Duffy.

RURAL E911 RULING: The FCC has denied two petitions for reconsideration of its 1999 ruling that state governments need not establish a cost recovery system for wireless carriers before requiring them to deploy enhanced 911 (E911) systems. The FCC reversed its earlier policy last year and began permitting public service access points (PSAPs) to require wireless carriers to fund their own deployments in order to hasten the pace of Phase I E911 deployments and to avoid delays in Phase II deployments in 2001. Cellular and personal communications service (PCS) carriers do not have to obtain regulatory approval to raise their rates and are at liberty to recover costs on their own, the Commission said. Wireless carriers challenged this finding, claiming that E911 requirements, especially Phase II requirements, carry an "intolerable burden" of cost recovery for small carriers. **They claimed that the costs of deployment are higher for rural carriers and cost recovery is more difficult due to small customer bases.** In response, the Commission said that petitioners had not provided clear evidence that E911 deployments would be higher in rural areas. It acknowledged the petitioners' claims that "Phase II will increase investments by 100 percent with no corresponding increase in productivity or revenue." However, those claims were based only on network-based technology rollouts. Rural carriers have the flexibility to adopt handset-based systems "that may well have the same per-subscriber cost of Phase II compliance as an urban carrier," the FCC said. The Commission also noted that it had retained the requirement that state governments provide PSAPs with cost recovery mechanisms before requesting wireless carriers' E911 deployments. BMJ&D contacts: Hal Mordkofsky and John Prendergast.

END OF RECIP COMP?: A report published by the Reuters wire service yesterday (Nov. 28) predicted that the FCC will adopt an order to replace the current system of reciprocal compensation for competitive local exchange carriers affiliated with Internet service providers (ISPs) with a bill-and-keep system. Reuters' main source for the report is a financial analyst for the firm of Legg Mason, who says the FCC will gradually introduce bill and keep over a two-year period. The article quotes the analyst as saying, "While it is possible the FCC could release the order at its next open meeting on Dec. 7, we believe the order will be released under circulation later in the month." If the Reuters article proves to be true, the FCC order would represent a significant change in position for the current FCC major-

ity, which has consistently supported state commissions' authority to require reciprocal compensation in interconnection agreements between incumbent and competitive LECs. BMJ&D contacts: Ben Dickens and Gerry Duffy.

ANOTHER LAST CHANCE: The U.S. Supreme Court on Monday (Nov. 27) **again refused to hear an appeal by NextWave Telecom to prevent the FCC from reclaiming its C-block and F-block personal communications service (PCS) licenses** obtained at auction in 1996. The NextWave licenses had been protected in Chapter 11 reorganization proceedings in a federal bankruptcy court before the Commission won a number of 1999 court battles to reclaim them after NextWave defaulted on auction debt payments. NextWave bid about \$4.8 billion for 90 licenses, which are expected to attract even larger prices when they become available for auction beginning **Dec. 12** (Auction 35). With the Supreme Court's latest action, it appears increasingly likely that the auction will be held as scheduled. Several weeks ago, the Supreme Court refused to hear a similar NextWave appeal (BMJ&D Telecom Update, Oct. 11). NextWave

refiled its request for review after the U.S. Court of Appeals for the Fifth Circuit handed down a decision allowing another bankrupt C-block carrier to retain its licenses (BMJ&D Telecom Update, Oct. 25). The Fifth Circuit decision conflicts with earlier decisions by the Second Circuit Court of Appeals that allowed the FCC to reclaim the NextWave licenses. The Supreme Court's refusal to hear the NextWave appeal leaves the conflict between the circuits unsettled. BMJ&D contacts: Hal Mordkofsky, John Prendergast and Gerry Duffy.

AUCTION FINANCING REVISIONS: The FCC won another C-block PCS-related case in the U.S. Court of Appeals for the District of Columbia Circuit last week and, ironically, NextWave participated in the case on the Commission's behalf. **Losing bidders in the 1996 C-block auction appealed when the FCC retroactively changed the financing terms of auction debt in 1998, after it became clear that many C-block carriers would default on their bid amounts without relief.** Both NextWave and the FCC argued that the original C-block auction rules anticipated the possibility that the

FCC Meetings and Deadlines

Nov. 30 – Deadline for reply comments on Rural Task Force Recommendations for universal service high-cost rural support mechanism (CC Docket No. 96-45).

Dec. 1 – Deadline for comments on Notice of Inquiry into open access to cable modem facilities for ISPs not affiliated with the cable TV industry. Reply comments due Jan. 10, 2001 (GN Docket No. 00-185). In the same docket, the FCC seeks comments on petition for declaratory ruling that cable operators offering telephone service are required to contribute to universal service.

Dec. 1 – FCC to hold public forum to discuss procedures to improve preparation for the World Radiocommunication Conference (WRC), 3-5 p.m. (EST) at the FCC meeting room. The next WRC is scheduled for 2003.

Dec. 4 – Deadline for reply comments on proposed detariffing of international interexchange services (IB Docket No. 00-202).

Dec. 4 – Deadline for reply comments on recommendations for separations reform filed by Federal-State Joint Board on Jurisdictional Separations (CC Docket No. 80-286).

Dec. 6 – Deadline for reply comments on NECA's proposed modifications to average schedule universal service formulas for calendar year 2001 (File No. ASD 00-42).

Dec. 7 – FCC's regular monthly open meeting.

Dec. 8 – Deadline for comments on petition to reopen consideration of lifting hearing aid compatibility exemption for broadband PCS handsets. Reply comments due Jan. 8, 2001 (RM 8658).

Dec. 8 – Deadline for reply comments on possible reinstatement of CALEA "punch list" items remanded by D.C. Circuit (CC Docket No. 97-213). (Extended from Dec. 1.)

Dec. 8 – Mock auction to prepare for C/F-block PCS auction (Auction No. 35).

Dec. 11 – Deadline for reply comments on Western Wireless petition for federal designation as ETC for universal support to provide service to Crow Reservation in Montana (CC Docket No. 96-45).

Commission might find it necessary to change financing provisions after the auction. "The original auction rules provided that 'as a general rule' a defaulting bidder's licenses would be deemed forfeit and re-auctioned," the D.C. Circuit finds. That wording suggests that default would be at the FCC's discretion and not "an inevitable consequence," the court said. BMJ&D contacts: Hal Mordkofsky, John Prendergast and Gerry Duffy.

LIGHT TURNOUT: The FCC's new **liability rules for "slamming" of telecommunications services went into effect yesterday** (Nov. 28). Under the new rules, state commissions that regulate telecommunications have the option to assume primary responsibility for enforcing the slamming rules by simply submitting a letter to the FCC. **As of yesterday, 31 states had "opted in" to this plan, the FCC said.** At the time the rules were adopted earlier this year, the Commission said that 35 states were expected to opt in immediately and that no state had said that it would not take on anti-slamming enforcement (BMJ&D Telecom Update, April 13). The FCC will retain primary responsibility for enforcing the rules in states that do not opt in. The Commission says it expects additional states will opt in before the end of the year. BMJ&D contacts: Ben Dickens and Gerry Duffy.

QoS STREAMLINING: The FCC has adopted a Notice of Proposed Rulemaking (NPRM) calling for **deregulation of the current quality of service (QoS) reporting requirements for price cap local exchange carriers (LECs) from more than 30 categories to six.** The current rules are becoming increasingly obsolete, the NPRM says, especially as competition takes hold in the telecommunications industry. The Commission also suggested that the current information gathering is not useful to consumers seeking to make choices between competing carriers. The streamlined list of reporting categories will include missed installations and repair appointments, the time needed to complete installations and repairs, the number of consumer reports of trouble with their service, and the amount of time that lines are out of service. **The FCC also seeks comment on new categories that might be added to the service reports.** For example, the FCC currently requires carriers that provide broadband services to report the number of broadband lines they service twice a year, but does not track broadband QoS data. "We are not aware of any systematic source of service quality information on [digital subscriber line] or other advanced services," according to the NPRM. Comments are due **Jan. 12, 2001** (CC Docket No. 00-229). Reply comments are due **Feb. 16.** BMJ&D contacts: Ben Dickens and Gerry Duffy.

DEPRECIATION STATUS QUO: The FCC has **declined to make changes in its depreciation rules covering price cap local exchange carriers.** The member companies of the Coalition for Affordable Local and Long

Distance Service (CALLS) had requested waivers of the depreciation rules to be granted concurrent with access charge reforms that went into effect on July 1 (BMJ&D Telecom Update, April 4). **The proposal drew considerable opposition in comments from a number of entities, including rural telcos.** "There was concern that unrestricted depreciation practices could have an adverse impact on smaller and rural ILECs and that discontinuation of Commission oversight of depreciation practices for the large price cap ILECs could affect the amount of federal high-cost support for smaller and rural carriers," the FCC found. The depreciation proposals also drew fire from critics, including Commissioner Harold Furchtgott-Roth, who questioned the manner in which the FCC considered the depreciation rules and other details of the CALLS plan. "There were a number of deficiencies in the process through which the CALLS proposal was adopted, one of which were these undisclosed agreements between the [Common Carrier] Bureau and some of the parties with interests in the proceedings," he said in a statement reacting to the FCC's recent order. BMJ&D contacts: Ben Dickens and Gerry Duffy.

INDUSTRY TRENDS

FCC Proposes Rural C-Band Sat Data Service

Commission Says Onsat Communications' CSATs Fit Section 706 and Tribal Telecom Goals

The FCC is exploring the possibility of providing high-speed Internet access to extremely remote regions through a two-way C-Band satellite system. In a notice of proposed rulemaking (NPRM), the Commission seeks comment on a number of recent petitions dealing with various fixed satellite services. Among them is a petition by Onsat Communications Inc., which proposes the authorization of a very small aperture terminal (VSAT)-based service operating in the satellite C-band. The FCC proposes that such a service would be in the public interest and says that it would be consistent with its goals of providing high-speed Internet services to all Americans, as required by Section 706 the Telecommunications Act of 1996. It also cited its ongoing efforts to improve telecommunications services to tribal areas.

The Onsat proposal would most directly affect future broadband service subscribers in rural areas. Satellite-based Internet services could be significant competitors to digital subscriber line services provided by our clients. However, many of our clients may at the same time benefit from satellite resale opportunities.

VSAT systems were originally developed as private satellite data transmission systems, often used to relay in-

stant point-of-sale credit card authorizations and inventory information for national retail chains or gas stations. In recent years, developers have begun to explore Internet access systems that could support broadband speeds beyond 200 kbps. VSAT systems currently operate in the Ku-band (18 GHz and 29 GHz). Onsat proposes deploying them in the C-band (3700-4200 MHz and 5925-6425 MHz) where rural residents have long received satellite-based analog television service. The FCC refers to this new class of birds as C-band small aperture terminals (CSATs).

The two key issues raised in the NPRM are the FCC's proposal to license CSAT networks under a single authorization and the frequency coordination methods that would be needed for CSAT systems to share spectrum with existing C-band services. The licensing approach would be consistent with the FCC's current C-band licensing rules adopted in 1992. "Most notably, these procedures will require CSAT applicants to complete frequency coordination for each individual earth station antenna, but will allow licensing for a system of technically identical earth stations so coordinated, with simplified reporting to the FCC," the NPRM says. Such a streamlined approach would reduce the amount of processing time for CSAT providers, the FCC said.

Frequency coordination concerns could "as a practical matter, effectively limit CSAT networks to rural areas where those (C-band) frequencies are relatively under-used," the FCC said. The Commission directly asks commenters to analyze whether CSAT services would be limited to rural areas only and if so, "how to define rural for this purpose and how we can administer such a rural limitation." Comments on the Onsat proposal are due **Jan. 8, 2001** (IB Docket No. 00-203). Reply comments are due **Feb. 9**.

BMJ&D contacts: Hal Mordkofsky and John Prendergast.

Industry Trends in Brief

TWO-WAY SAT SERVICE: The era of two-way broadband satellite service to rural America appears to be approaching rapidly. **Pegasus Communications said last week that it will begin offering such services at speeds exceeding typical cable modem and digital subscriber line services by the first quarter of 2001.** Pegasus will use existing direct broadcast satellite (DBS) birds already used to provide DirecTV video service and one-way DirecPC one-way Internet service. The service, to be branded "Pegasus Express," will have a footprint covering the entire continental United States. The service package will include satellite dish, specialized modem, software and other accessories. Subscribers will be able to receive standard DirecTV service using the same dish. Pegasus has not yet announced pricing.

HF SOLUTION: Terion Inc., a Melbourne, Fla.-based, company has petitioned the FCC to change the conditions of its national high-frequency (HF) licenses to expand upon the capabilities of its current two-way messaging service. Under the name Flash Comm, Terion won FCC approval in 1997 to operate a nationwide data service on various HF frequencies, which range from 3 MHz to 30 MHz, on a secondary basis. Terion customers, mainly trucking firms operating nationwide dispatch services, receive short messages via FM sub-carriers transmitted by local broadcasters. The return HF signal is transmitted via 3 kHz HF channels, which are carried hundreds of miles by bouncing off of the ionosphere. The system is capable of providing messaging and other data services into extremely remote areas. **Earlier this month, Terion announced plans to upgrade the service to support additional features, including voice dispatch and on-touch "911" emergency dialing. It also plans to offer Internet access, although it has not announced the data rates that its FM/HF service could support.** In its petition, Terion seeks authorization to increase its total of authorized channels from 954 to 3,816 and to allow it to increase maximum allowable transmission power from 2-megawatt seconds per day to 8-megawatt seconds. It also seeks to increase its aggregate transmission time per hour from 36 seconds to 144 seconds. Comments are due **Dec. 18** (DA 00-2600). Reply comments are due **Jan. 2, 2001**. BMJ&D contacts: Hal Mordkofsky and John Prendergast.

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