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FCC Staff Outlines Possible RTF and MAG Timetables

Commission Seeks to Move on Several Issues Prior to Anticipated Changes by New Administration; Florida PSC Joins Opposition to RTF

Common Carrier Bureau Chief Dorothy Attwood told a group of rural telephone representatives and financiers yesterday that the FCC is presently on a schedule to issue orders on the Rural Task Force (RTF) recommendations and the Multi-Association Group (MAG) plan during the first half of 2001. She indicated that the FCC would consider both proposals together in a "holistic" manner, but noted that one might move to decision before the other. Jane Jackson, chief of the FCC's Competitive Pricing Division, told the group that the FCC was likely to issue a notice this month requesting comments and reply comments on the MAG proposals during January and February 2001, and that an order could be issued during April or May. Deputy Common Carrier Bureau Chief Carol Matthey injected a note of caution into these predictions, indicating that they constitute the present timetable but that FCC priorities could change if (as is almost certain) there is a change in the Chairman and other Commissioners and key personnel.

Attwood, Jackson and Matthey spoke at a day-long Rural LEC Regulatory Reform "preview" for investors hosted yesterday (Dec. 5) in Washington, D.C. by the investment firm of Legg Mason Walker Wood Inc. They also indicated that the Commission hopes to issue orders on reciprocal compensation and local number portability cost recovery in the coming weeks, and to request further data and comments on CLEC access rates.

Several speakers noted that the Joint Board is attempting to issue its Recommended Decision on the RTF recommendation toward the end of this month or early January. Carol Matthey indicated that the universal service proposals in the MAG plan (e.g., the proposals to eliminate the current interim cap on the high cost loop fund and to terminate limits on the universal service support received for exchanges acquired from non-rural LECs) would be considered in the proceeding conducted by the FCC to adopt or modify the Joint Board's Recommended Decision.

The organizations that developed the MAG plan -- USTA, NTCA, OPASTCO and NRTA -- have asked the Commission to implement it by July 1, 2001. Both Matthey and Jackson emphasized that the MAG plan needs to be exposed fully to analysis and comment by interexchange carriers, consumer groups, state commissions and other interested parties before the FCC will act on it. They asserted that the FCC can adopt all, none or some parts of the MAG plan, and stressed that the FCC has the latitude to determine whether and how to modify the initial proposal.

Another speaker, AT&T VP Joel Lubin, gave a preview of potential IXC response to the MAG plan. A member of the RTF, Mr. Lubin contrasted the RTF recommendation, which he described as an industry consensus plan developed under a system of checks and balances, with the MAG plan, which was developed unilaterally by LECs. He stated that that the aspects of the MAG plan most objectionable to AT&T were the proposal that the caps on universal service support be eliminated completely and the proposal that rural LECs retain the option to remain subject to rate-of-return regulation (Path B).

Jackson indicated that it would be difficult for the FCC to implement the present or modified MAG proposals in their entirety on July 1, 2001. She suggested that some proposals might be implemented on July 1 with the major part of the plan deferred until Jan. 1, 2002, or that the entire plan could be implemented on that date.

Joint Board member Bob Rowe, a state commissioner from Montana, declined to comment directly on the RTF recommendation. However, he noted that the differences between the proxy mechanism adopted last year by the FCC for non-rural LECs and the embedded cost model proposed by the RTF create a "boundary problem" that will need to be addressed by the Joint Board and the FCC at an early date if the RTF mechanism is adopted substantially as proposed. For example, how should support be adjusted when a rural carrier acquires an exchange from a non-rural carrier, or when a rural carrier grows into a non-rural carrier?

In the pending Joint Board proceeding, objections raised by some state commission could present a barrier to the ultimate approval of the RTF recommendation by the Joint Board and the FCC. A number of state commissions attacked the RTF report in comments to the FCC last month, including the commissions in New York, Cali-

fornia and Illinois (BMJ&D Telecom Update, Nov. 9). The Florida Public Service Commission (FPSC) added itself to that list in reply comments submitted last week. RTF has recommended that support should be determined through a modified embedded cost mechanism rather than a forward cost model, which the FCC has adopted for the distribution of universal service funds to non-rural carriers. The task force also has recommended increasing universal service support to pay for deployments of advanced services. "It is not apparent to this commission that a thorough examination of the synthesis model was completed [by RTF] before it was removed as a viable option for calculating support for rural carriers," FPSC said in reply comments to the FCC on the RTF recommendation. FPSC also said that it was "premature" to recommend increased support for advanced services.

The Public Service Commission of West Virginia also weighed in on the RTF recommendations for the first time in reply comments. It supported "limited continuation" of an embedded cost approach, but said that it should not continue for five years, as RTF recommended.

BMJ&D contacts: Ben Dickens and Gerry Duffy.

Bidders and FCC Make Last-Minute Moves Before C/F-Block Auction

87 Bidders Accepted to Participate; NTT Invests Nearly \$10 Billion in AT&T Wireless; Hollings Seeks to Block VoiceStream From Entering Auction

Protests to the FCC's plan to auction 422 licenses in the personal communications service (PCS) C- and F-blocks linger, but all legal barriers to going forward with the auction appear to have been removed. The Commission is ready to begin Auction 35 as scheduled on **Dec. 12**. The FCC accepted 87 applicants to participate in the auction last week, including carriers that seek to acquire C/F-block spectrum to fill in coverage in their nationwide PCS services. Those carriers have paid hundreds of millions of dollars in upfront payments for an auction that is expected to attract billions of dollars in bids.

A number of participants on the other end of the financial spectrum have applied to bid on "closed" licenses, which are limited to bids from small businesses. Most of these bidders have paid less than \$1 million upfront and 21 have paid less than \$100,000.

An unusually long list of 25 applicants decided not to complete their qualifications Auction 35 for various reasons. Among them were major participants including

Cingular Wireless, the recently formed partnership of the SBC Communications and BellSouth wireless divisions, and Triton PCS, a company that has received investment from AT&T Wireless. However, both of those carriers will be well represented in the auction. Cingular has indicated it did not pursue its application because it is participating through its investment in Salmon PCS, which qualifies as a small business that could bid on both open and closed C/F-block licenses. Salmon has paid \$238.8 million in upfront fees. AT&T Wireless is participating in the auction under its own name and has paid \$150.7 million upfront. AT&T also has invested in Alaska Native Wireless, which made the largest upfront payment of \$238.8 million (in a tie with Cingular/Salmon), and NorthCoast Communications, which paid \$45 million upfront.

Cingular has been reducing the amount it will need to bid in the auction by filling holes in its national coverage through other outside spectrum swap agreements. Most recently, Cingular entered into a swap agreement this week with AT&T Wireless that will give it 100 percent control of a cellular license in the Houston area and 87.35 percent control of a Galveston, Texas license.

Prior to entering into the Cingular partnership, BellSouth co-owned a number of cellular assets with AT&T, including the Texas licenses and licenses in Southern California. The Justice Department is requiring BellSouth to divest its California interests as a condition of approving the Cingular merger. BellSouth is transferring its majority interest in the co-owned Los Angeles cellular license to AT&T in exchange for the Texas assets as well as more than \$1 billion in cash, which could come in handy during the auction.

AT&T also is receiving a large infusion of cash before the auction. Last week, Japanese carrier NTT DoCoMo agreed to invest about \$9.8 billion to purchase 406 million shares of AT&T Wireless tracking stock, which is to be converted to common stock when AT&T completes its planned spin-off of its wireless business next year. The deal will result in NTT acquiring a 16 percent interest in AT&T Wireless and the option to purchase an additional 41.7 million shares at \$35 per share over the next five years. Both AT&T and NTT are planning to deploy third generation (3G) cellular technology using the wideband code division multiple access (WCDMA) format. NTT's WCDMA service is scheduled to begin in mid-2001. The AT&T Wireless/NTT combination is the beginning of what could become a seamless worldwide 3G service.

Other noteworthy participants in the auction include Leap Wireless International (\$85 million in upfront payments); Nextel Communications (\$150.7 million); Sprint Communications (\$69.7 million); Verizon Wireless (\$131.1 million), and VoiceStream (\$150.7 million). Craig McCaw,

the majority owner of Nextel, also has invested in Connectbid LLC, which paid \$88 million upfront. VoiceStream is an investor in 3DL Wireless (\$35 million upfront) and Cook Inlet (\$88 million).

A potential cloud still hangs over VoiceStream's participation. Senator Ernest Hollings (D-S.C.) demanded that the FCC disqualify the carrier due to its affiliation with the German-owned telecommunications company, Deutsche Telekom (DT). Hollings has protested the planned merger of DT and VoiceStream because the German government owns a large percentage of DT. Federal law prohibits the sale of a U.S. telecommunications company to a company that is more than 25 percent owned by a foreign government. (The German government has said it will divest its interest in DT sometime after the VoiceStream merger.)

DT already has invested \$5 billion in VoiceStream stock in order to finance participation in Auction 35. "The cash infusion alone may give Deutsche Telekom an ownership interest greater than now permitted by law," Hollings said in a letter last Friday (Dec. 1) to FCC Chairman William Kennard. So far there has been no reaction to the Hollings letter from the FCC.

The auction is expected to last for several weeks. There will be a two-week break (Dec. 22-Jan. 4) in the middle of the auction during the holidays.

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

LAW & REGULATION

Comments Address Possible Cable USF Contributions

Resulting Decreases in Current Contributors' Payments is in Public Interest, OPASTCO says

Organizations representing small telecommunications carriers supported a proposal that cable TV operators should begin making contributions to the universal service funds, to the extent that those companies currently provide "telecommunications services." Their comments were among a mountain of issues raised in the FCC's Notice of Inquiry (NOI) dealing with possible cable "open access" requirements.

Cable operators in recent years have battled small Internet service providers (ISPs) that have sought to provide their services over cable facilities. Most cable operators have exclusive contracts and/or part ownership in two

ISPs that were established to support cable modem services, Excite@Home and RoadRunner. They claim that as cable TV service providers, they are not bound by "telecommunications" regulations requiring them to provide their competitors with access to their facilities.

The U.S. Court of Appeals for the Ninth Circuit, in the *AT&T v. the City of Portland* decision handed down several months ago, attempted to deal with the ambiguity between the definitions of "telecommunications," "cable," and "information services" (BMJ&D Telecom Update, June 28). The Ninth Circuit found that video programming is a cable service and may be regulated by local franchising authorities. ISPs, such as Excite@Home and RoadRunner, are unregulated information services. Cable operators providing high-speed Internet access are telecommunications services. "The telephone service linking the user and the ISP is classic 'telecommunications.' A provider of telecommunications services is a 'telecommunications carrier,' which [the Communications Act] treats as a common carrier to the extent that it provides telecommunications to the public, 'regardless of the facilities used,'" the court said.

Therefore, local authorities may not require cable operators to offer unaffiliated ISPs access to their cable modem services, but the FCC as the regulator of telecommunications services could. In response, the FCC adopted the current NOI (GEN Docket No. 00-185). The U.S. Telecom Association (USTA) responded with a petition calling for cable operators, as telecom service providers, to be subject to other telecom regulations, including universal service contributions (BMJ&D Telecom Update, Oct. 4). The FCC asked for comments on the USTA petition together with responses to the NOI.

Only a handful out of about 70 companies that responded to the NOI touched on the USTA issues. However, those few commenters endorsed the idea that cable modem service providers should contribute to universal service. "Contributions would be in the public interest, helping to maintain the necessary sufficiency of the universal service fund while decreasing the proportion of current contributors' responsibility," OPASTCO said in its comments. A greater number of contributors in the funds would be in the public interest, it said.

OPASTCO argues that the FCC has the authority to order such a requirement. It reminded the FCC of its own policy of "competitive and technological neutrality" in past determinations of which entities are required to contribute. Exemptions of telecommunications service provided over facilities primarily developed for video distribution would be a reversal of that policy and would violate a technological neutrality requirement contained in Section

254(d) of the Telecommunications Act of 1996, OPASTCO said.

The Texas Office of Public Utility Counsel (OPC), the state's consumer protection agency, made points similar to OPASTCO's. "It is evident that cable networks will be the dominant means of transmitting broadband Internet service and they already have a very substantial market," OPC said. Based on recent Excite@Home announcements, the ISP currently is serving 2.3 million subscribers nationwide, OPC said. Assuming that AT&T (primary owner of Excite@Home) charges about \$10 a month for bundled broadband service, it "is generating more revenue from the telecommunications traffic it carries for Excite@Home than about one-third of the telecommunications common carriers subject to Commission authority," OPC said. Excite@Home and other cable industry participants did not directly reply to the USTA petition issues in their comments.

BMJ&D contact: Gerry Duffy.

TSR Wireless to Declare Chapter 7 Bankruptcy

Paging Carrier's Liquidation Creates Problems and Potential Opportunities for Resellers

TSR Wireless, one of the nation's largest paging carriers, closed its doors on Monday (Dec. 4) after saying that it will file for Chapter 7 bankruptcy. Under Chapter 7, TSR must shut down its operations and liquidate its assets, which could lead to service disruptions to TSR customers. Many BMJ&D clients resell TSR service.

As we reported to our e-mail readers yesterday (Dec. 5), TSR's attorney says the company has not yet filed for bankruptcy, and is in negotiations with its creditors to decide where and when it would file. Paging service will not be interrupted while TSR remains in control, the attorney said. However, counsel indicated that TSR would file for Chapter 7 in a week or less, and that a trustee could authorize shutting down the paging network. Certain TSR resellers have been told that service may end on Friday (Dec. 8).

TSR resellers should notify their customers immediately in order to limit their potential liability. BMJ&D could assist its clients by examining their resale contracts with TSR and determining what rights and obligations remain in the wake of the bankruptcy. BMJ&D also can help to identify other paging carriers with similar coverage areas in order to restore paging service as soon as possible.

The TSR bankruptcy could present an opportunity for carriers that already provide facilities-based paging service or resell service provided by another company. Individual customers and large accounts previously served by TSR will be seeking new service providers. TSR claimed to be the sixth largest U.S. paging carrier with 2.5 million pagers in service. Some TSR's assets could be available for purchase at low prices in a future liquidation sale.

BMJ&D contacts: Hal Mordkofsky, John Prendergast and Cary Mitchell.

Law & Regulation in Brief

'BESIDE THE POINT': The Department of Justice (DoJ) and FBI were unimpressed by the Cellular Telecommunications and Internet Association's (CTIA) comments opposing a DoJ/FBI petition to change the Communications Assistance for Law Enforcement Act (CALEA) rules. Under the current rules, telecommunications carriers have submitted information about representatives that law enforcement can reach on an around-the-clock basis in order to access telco facilities to intercept calls. CTIA attacked the government's petition to require telecommunications carriers to report changes in their contact information "immediately," rather than within 90 days, as the FCC now requires (BMJ&D Telecom Update, Nov. 29). **"These comments are beside the point,"** DoJ/FBI said in response. "This requirement would be frustrated if, due to a significant change in the point of contact information filed with the Commission, law enforcement were unable to reach the designated official." **DoJ/FBI ignored CTIA's claim that the question of immediate contact information updates was an issue the FCC already had considered and decided.** BMJ&D contact: Gerry Duffy.

PHASE II SPECIAL CASES: Nextel Communications had a fairly easy decision when searching for a manufacturer to supply its automatic location identification (ALI) system to comply with the FCC's Phase II Enhanced "911" (E911) rules. Nextel's mobile phone service operating on specialized mobile radio (SMR) spectrum is based on Motorola's iDEN airlink technology, meaning that Motorola's Assisted-GPS is the logical GPS system. However, as Nextel indicated in its recent ALI implementation report to the Commission, **Motorola will not be able to provide ALI compatible handsets until October 2002, a year behind the timetable the FCC has adopted** (BMJ&D Telecom Update, Nov. 15). Nextel has petitioned the FCC to grant a one-year waiver of the implementation deadline. In return, Nextel offered to contribute \$25 million in assistance to local communities to defray the costs of upgrading public safety facilities. Comments on the petition are due **Jan. 5, 2001** (CC Docket No. 94-102). Reply comments are due **Jan. 22.**

In the same proceeding and under the same comment deadlines, **the FCC also is considering a petition for waiver submitted by Hawaiian Wireless Inc. (HWI), which operates a "down banded cellular" service on spectrum below the normal 800 MHz cellular services.** Ericsson, HWI's handset supplier, has indicated that it will not provide down banded ALI-compatible handsets. HWI requests a two-year waiver of the implementation deadline in order to study possible alternative technologies. BMJ&D contacts: Hal Mordkofsky and John Prendergast.

'MAXIMUM SANCTIONS' REQUEST WITHDRAWN: The Texas Commission on State Emergency Communications (CSEC) has **withdrawn a petition to the FCC seeking "the maximum sanctions permitted by the FCC's authority" on 30 wireless carriers for failing to**

deploy Phase I Enhanced "911" (E911) capability. All carriers were required to implement Phase I by Aug. 31, 2000, a deadline set in 1999 by the Texas legislature. Phase I technology allows local public safety officials to identify the cell that relays an emergency wireless call. Carriers are required to have Phase I systems operating within six months of a request by state or local authorities. However, CSEC claimed that only one Texas wireless carrier out of 31 had complied with the request as of late July, when it submitted its original petition (BMJ&D Telecom Update, Aug 9). CSEC's motion to withdraw its request indicates that FCC involvement hastened Phase I implementation by many carriers, although "the industry as a whole mostly failed to adhere to the FCC rules." The Texas commission asked to drop the blanket request for sanctions, but said it "may pursue individual complaints or petitions against wireless licensees that have

FCC Meetings and Deadlines

Dec. 7 – The agenda for the FCC's monthly open meeting includes 2nd R&O, Order on Reconsideration and 2nd FNPRM on implementation of 1000-block numbering rules and NPRM to consider authorization of software defined radios.

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).

Dec. 11 – Deadline for reply comments on whether information services should be considered "interLATA services" for Section 271 reviews (CC Docket No. 96-149).

Dec. 11 – Deadline for reply comments on SBC Section 271 petitions to provide in-region long distance service in the states of Kansas and Oklahoma (CC Docket No. 00-217).

***Dec. 12* – Opening of C/F-block PCS auction (Auction No. 35).**

Dec. 13 – Deadline for comments and petitions to deny the proposed merger of Deutsche Telekom, VoiceStream Wireless and Powertel Inc. Oppositions and responses due Jan. 8, 2001 (IB Docket No. 00-187). (Extended from Nov. 13.)

Dec. 14 – Deadline for comments on Nextel Communications petition to clarify rules requiring incumbent up 200 channel SMR licensees to participate in "good faith" relocation negotiations. Reply comments due Dec. 21 (PR Docket No. 93-144).

Dec. 18 – Deadline for comments on proposal to establish fixed high-speed wireless data service on 3650-3700 MHz and 4940-4990 MHz bands. Reply comments due Jan. 16, 2001 (ET Docket No. 98-237 and WT Docket No. 00-32).

Dec. 21 – Deadline for comments on proposed Phase 2 reforms of FCC accounting reporting rules as part of the Commission's 2000 Biennial Review. Reply comments due Jan. 30, 2001 (CC Docket No. 00-199). Initial comments on proposed Phase 3 reforms are also due Jan. 30, and reply comments on Feb. 28.

violated or continue to violate FCC rules." BMJ&D contacts: Hal Mordkofsky and John Prendergast.

CLEC DATA: Competitive local exchange carriers (CLECs) reported 12.7 million lines in service to end users as of June 30, 2000, according to data gathered through the FCC's new local competition reporting requirement (FCC Form 477). CLECs' share of the local telephony market grew from 4.4 percent to 6.7 percent over the first six months of 2000 for a net increase of about 4.4 million lines. **A 60 percent majority of those CLEC lines served large and medium businesses and other large customers, while 80 percent of incumbent LEC lines serve residential and small business customers.** Facilities-based carriers provided less than a third of the CLEC lines. About 5.7 million CLEC lines were resold ILEC services and another 4.6 were unbundled local loops. BMJ&D contacts: Ben Dickens and Gerry Duffy.

ANOTHER TRY AT CORES: The FCC has adopted a notice of proposed rulemaking (NPRM) with the goal of reviving the Commission Registration System (CORES). The system is meant to provide a method of keeping track of various payments to the Commission. **CORES was proposed, in part, out of concern about the current FCC procedures for collecting fees, fines and other revenues, which were criticized in an August 1999 report published by the General Accounting Office of the federal government.** The plan to require all entities that do business with the Commission to obtain a 10-digit FCC Registration Number (FRN) and include that number on documents submitted to the Commission was originally to have gone into effect on March 27, 2000. However, the Commission postponed start-up of the system without explanation a few days before that date and did not indicate when a new start date might be set. The newly adopted NPRM reintroduces the requirement that entities use the FRN on their submissions, as earlier proposed. The FCC estimates that it already has assigned hundreds of thousands of FRNs to carriers that have been using the Commission's Universal Licensing System TIN Registration database, but use of the number has been voluntary. The NPRM, which has not yet appeared in the Federal Register, again proposes mandatory FRN use. Comment dates on the CORES proposals will be due 30 days after publication and reply comments 45 days after publication. BMJ&D contacts: Hal Mordkofsky and Richard Rubino.

SMR RELOCATION: The FCC has granted a petition to **extend the mandatory negotiation period for relocation of incumbent licensees in the upper 200 channels of the 800 MHz specialized mobile radio (SMR) service from Dec. 4 to March 5, 2001.** Nextel Communications, which acquired the largest number of upper 200-channel 800 MHz licenses in a 1997 auction, asked for the FCC for the extension due to complications con-

nected to the most recent SMR auctions. Many incumbent licensees have participated in the General Category 800 MHz SMR auction (Auction No. 34), which ended Sept. 1, and the lower 80 channel 800 MHz SMR auction (Auction No. 36), which ended yesterday (Dec. 5). Nextel feared that participating in relocation negotiations could be construed as a violation of the FCC's auction anti-collusion rules. Nextel was also the leader in Auction 34, with about \$241 million in high bids on 800 licenses (BMJ&D Telecom Update, Sept. 6). Nextel also dominated Auction 36 with 2,579 high bids totaling \$27 million. The next highest bidder, Southern Communications, acquired only 90 licenses and bid a total of \$817,500. **In another proceeding, the FCC is seeking comment on Nextel complaints that some upper 200-channel 800 MHz licensees are not dealing in good faith during the mandatory negotiation period.** Nextel is asking the FCC to clarify incumbents' good-faith obligations, especially the obligation to provide "basic, non-proprietary technical information" needed to conduct the negotiations. It also asked the FCC to begin proceedings to revoke licenses held by incumbents that do not provide such information. SMR incumbents have said that Nextel often asks for far-reaching details that appear to go beyond what is needed for relocation discussions, and may give Nextel an undue advantage. Comments on the Nextel request are due **Dec. 14** (PR Docket No. 93-114). Reply comments are due **Dec. 21**. BMJ&D contacts: Hal Mordkofsky and John Prendergast.

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