



## TELECOM/IT POLICY HIGHLIGHTS 8.04

April 2008

### Overview

In this month's edition of the *TIPH*, we focus on legislative, regulatory and related developments in telecommunications policy for the month of April. Emergency communications received considerable attention this month. In particular, the Federal Communications Commission (FCC) adopted and released its *First Report and Order* designed to implement the mandates of the 2006 "**Warning, Alert and Response Network Act**" (**WARN Act**), to support the ability of the nation's wireless carriers to transmit timely and accurate alerts, warnings, and critical information to the cell phones during disasters or other emergencies. Of particular note in the FCC's rulemaking regarding the Commercial Mobile Alert System (CMAS) are requirements that participating wireless carriers transmit messages with both vibration cadence and audio attention signals for the benefit of people with disabilities. Regulators will continue to explore issues pertaining to emergency communications when the FCC's Public Safety and Homeland Security Bureau hosts a conference in May on the next generation Emergency Alert System (EAS).

In other developments this month, lawmakers took up a number of issues related to wireless service this month with the introduction or passage of several bills in the House of Representatives. The "**Cell Tax Fairness Act of 2008**" would prevent state and local governments from adding discriminatory taxes to mobile phone service, a move applauded by stakeholders from the wireless industry. Meanwhile, a provision of the "**Taxpayer Assistance and Simplification Act of 2008**" would eliminate rules requiring employees to report cell phones provided by employers to the Internal Revenue Service as income, as well as streamline rules concerning employer cell phone service expenditures. Finally, the "**Wireless Internet Nationwide for Families Act of 2008**" seeks to reallocate a portion of the broadcast spectrum in order to create a free, publicly-available, nationwide wireless Internet service that automatically blocks access to pornographic content and is fully open to third-party device manufacturers.

## Legislative Activities

### Bill to Restrict Local, State Taxes on Wireless Service Introduced in House

04.15.2008 – Reps. Zoe Lofgren (D-CA) and Chris Cannon (R-UT) introduced the “**Cell Tax Fairness Act of 2008**” [H.R. 5793]. The bill is designed “to restrict any State or local jurisdiction from imposing a new discriminatory tax on cell phone services, providers, or property.” The proposed “tax freeze” has received strong support from the Cellular Telecommunications Industry Association (CTIA), the wireless industry’s lobbying organization, who see lower wireless taxes as “critical to growing the economy and making the workforce more productive.” In addition to benefiting the public in general, the measure would benefit people with disabilities, as cost can be a barrier to access. Rep. Lofgren added further that the Act is revenue-neutral for states and localities: “It simply calls for a period of tax stabilization that will help further innovation and access.”

For a copy of the bill: [<http://thomas.loc.gov/cgi-bin/query/z?c110:H.R.5793>:]. Rep. Lofgren’s comments about the proposed legislation may be viewed at [<http://lofgren.house.gov/PRArticle.aspx?NewsID=1902>]. [Sources: Library of Congress and TMCnet]

### Cell Phone Provision in Larger Tax Bill Passed by House

04.15.2008 - The House passed the “**Taxpayer Assistance and Simplification Act of 2008**” [H.R. 5719] by a vote of 238-179. Within the sizable tax bill, **Section 3** addresses federal taxation of cell phones and other communications devices. Currently, the Internal Revenue Service (IRS) can compel taxpayers – according to its *Taxable Fringe Benefit Guide* (2008) – to treat the purchase and use of cell phones and other devices paid for by employers as income. This bill would, among other things, remove the cell phone (or other telecommunications equipment) stipulation from the enumeration of “listed property” in Section 280F of the Internal Revenue Code, the provision relied upon by the IRS.

The majority of **H.R. 5719** does not deal with cell phones. Though Rep. Dave Camp (R-MI) criticized the bill as a whole, he supported the cell phone provision; Rep. Earl Pomeroy (D-ND) claimed the bill will help small businesses who may be subject to IRS audit if they are not keeping detailed employee call records. Rep. Sam Johnson (R-TX) sponsored the “**Modernize Our Bookkeeping In the Law for Employee's Cell Phone Act of 2008**” or “**MOBILE Cell Phone Act of 2008**” [H.R. 5450] which would abolish employers’ and employees’ obligation to maintain detailed logs of cell phone use.” The substantive language of **H.R. 5450** was incorporated into **H.R. 5719** as **Section 3**.

The text of the bill, as passed by the House, may be found at [<http://thomas.loc.gov/cgi-bin/query/z?c110:H.R.5719>:]. For a copy of Rep. Johnson’s bill, which provided the basis for the recently passed bill, please see [<http://thomas.loc.gov/cgi-bin/query/z?c110:H.R.5450>:]. [Sources: Library of Congress and Internal Revenue Service]

### Free, Nationwide Wireless Access Focus of House Bill

04.17.2008 – Reps. Anna Eshoo (D-CA), Chris Cannon (R-UT), and Ed Markey (D-MA)

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introduced the “**Wireless Internet Nationwide for Families Act of 2008**” [H.R. 5846]. The proposed legislation would amend the **Communications Act of 1934** to require the FCC to auction off the 2155-2175 MHz band of spectrum. The winner would be required to use the spectrum to create a free, publicly-available, nationwide wireless Internet service that automatically blocks access to pornographic content and is fully open to third-party device manufacturers. This bill has implications for broad accessibility by underserved groups, with regard especially to location and expense, and it allows for other vendors to have an opportunity to use some of the spectrum.

A copy of the bill may be found at [<http://thomas.loc.gov/cgi-bin/query/z?c110:H.R.5846>:]. [Source: Library of Congress]

**High Cost Support Program of the Universal Service Fund Capped by FCC**

04.29.2008 - The FCC adopted and released a *Report and Order* (FCC 08-122), that creates an interim cap on payments to competitive eligible telecommunications carriers (ETCs) under the Universal Service Fund (USF). The *Order* is intended to curtail the growth of the USF during the program’s reform. Total annual support for competitive ETCs will be capped at March, 2008, levels. Consumers pay approximately 11% in USF fees on interstate phone bills, a number which has grown from approximately \$1.5 million in 2000 to over one billion dollars in 2007. The *Order* contains limited exceptions from the cap: ETCs serving tribal lands or Alaska Native regions and ETCs that file their own cost data.

For a copy of the *Order* capping the USF’s High Cost Support program, please see [[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-08-122A1.txt](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-122A1.txt)] (MS Word and PDF versions also available). [Source: FCC]

**Commercial Mobile Alert System Subject of FCC Rulemaking**

04.09.2008 – The FCC adopted and released its *First Report and Order* (FCC 08-99) regarding the Commercial Mobile Alert System (CMAS). The rulemaking comes as part of the Commission’s efforts to support the ability of the nation’s wireless carriers to transmit timely and accurate alerts, warnings, and critical information to the cell phones and other mobile devices of consumers during disasters or other emergencies. In compliance with the 2006 **Warning, Alert and Response Network Act (WARN Act)**, this first *R&O* adopts relevant technical requirements based on the recommendations of the Commercial Mobile Service Alert Advisory Committee (CMSAAC) for the transmission of such emergency messages to the public.

Once fully implemented, the CMAS will help ensure that Americans who subscribe to participating wireless services receive emergency alerts when there is a disaster or emergency that may impact their lives or well-being. Wireless carriers that choose to participate in the CMAS will transmit text-based alerts to their subscribers. As technology evolves, the CMAS may eventually include audio and video services to transmit emergency alerts to the public. To ensure that people with disabilities who subscribe to wireless services receive these emergency alerts, the FCC adopted rules that will require wireless carriers who participate in the CMAS to transmit messages with both vibration

cadence and audio attention signals.

The Wireless RERC was cited four times in the body of the document: supporting the implementation of a common audio attention signal and common vibrating cadence; suggesting that “commercial mobile service providers should provide clear instructions on the alert capabilities of their devices, including labels identifying mobile devices suitable for persons with audio and visual disabilities;” regarding the adoption of the existing 8-second EAS attention signal, the same technology being employed by the Wireless RERC’s WEC project’s field tests; and referring to non-English speaking users, which the Commission concluded further investigation was necessary to solve this communications technical challenge.

The FCC’s *First R&O* regarding the CMAS may be found at [[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-08-99A1.txt](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-99A1.txt)] (MS Word and PDF versions also available). The comments of the Wireless RERC are available at [[http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6519839358](http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519839358)] (PDF only). [Sources: FCC and Wireless RERC]

## Judicial Activities

### **Court Sides with Carriers Regarding Credit Checks for Phones**

04.16.2008 - The U.S. Court of Appeals for the Seventh Circuit issued its opinion in *Thomas Murray v. New Cingular Wireless Services, Inc.* [No. 06-2477]. Siding with the defendant, the Court of Appeals held that the offering of a free phone, when one must also enter into a service contract to obtain that phone, is an offer of credit within the meaning of the **Fair Credit Reporting Act (FCRA)**, part of the U.S. Code. It also held that carriers’ disclosures that are in six-point type are not “conspicuous” within the meaning of the **FCRA**. In response to a class action suit which argued that Cingular unlawfully pulled consumers’ credit reports, the Court said, “a ‘free’ phone is anything but free, as it can’t be had apart from the service plan; payments for service include the cost of the phone, which is amortized over the length of the contract. So payment for the phone is deferred no less than payment for the phone service; the entire offer therefore is one of credit.”

The Court of Appeals also addressed the question of whether or not six-point type was “conspicuous” within the meaning of **15 U.S.C. § 1681m(d)**. If an entity accesses credit information in a transaction that was not initiated by the consumer, a written statement must be provided to the consumer that makes certain disclosures “in a clear and conspicuous” manner. The Court held that the type did not demonstrate recklessness, as the plaintiff sought, but it was deemed an insufficient size, and further incidents would be considered reckless.

The Court of Appeals’ opinion in this case may be found at [<http://www.ca7.uscourts.gov/tmp/D419WVNV.pdf>] (PDF only). [Source: 7<sup>th</sup> Circuit Court of Appeals]

### **Handset Insurance Policy Upheld by Court of Appeals**

04.18.2008 - The U.S. Court of Appeals for the Tenth Circuit issued its opinion in *Van Zanen v. Qwest Wireless, LLC, et al.* (No. 07-1219), affirming the judgment of the Colorado District Court, which dismissed the class action complaint for failure to state a claim. Patrick and Vicki Van Zanen, residents of the state of Arizona, purchased a handset insurance policy from Qwest. The policy was administered and underwritten by a third party insurer, lock/line, LLC, while Qwest retained a portion of the fees. Qwest is not licensed to sell insurance, and the plaintiffs alleged that Qwest acted as an unlicensed seller of insurance in violation of the laws of Arizona and 13 other states where it markets and sells handset insurance to its wireless customers. When an unlicensed entity has been paid by the plaintiff, but has not yet performed, the plaintiff can often recover the payment; however, the Van Zanens received the benefit of the insurance policy. The Court of Appeals affirmed the District Court's decision, effectively siding with the defendant.

The Court's opinion is available at [<http://www.ca10.uscourts.gov/opinions/07/07-1219.pdf>] (PDF only). [Source: 10<sup>th</sup> Circuit Court of Appeals]

## **Studies/ Reports**

### **D Block Auction Investigation Report Released by FCC**

04.25.2008 - The FCC's Office of the Inspector General (OIG) released the final report of its investigation into the recent auction of the D Block of the 700 MHz bandwidth. On March 18, 2008, the FCC's 700 MHz Auction closed with \$19.6 billion in bids. The D Block, the commercial spectrum made available for a nation-wide public safety network, received only one bid, from Qualcomm, which was significantly lower than the \$1.33 billion reserve price. The Inspector General opened an investigation regarding an alleged meeting between Frontline, its financial backers, and Cyren Call that may have prevented Frontline from attracting needed capital and discouraging other bidders.

The Inspector General concluded that the lease payment discussed at the meetings was not the only factor in the companies' decision not to bid on the D Block. Potential bidders stated that the uncertainties and risks associated with the D Block - including the potential for default payment if negotiations failed and the costs of the build-out and the operations of the network - deterred each of the companies from bidding on the D Block. The investigation and subsequent report, because of its narrow scope, did not address broader policy and regulatory issues regarding the spectrum auction.

For a copy of the OIG report on the D Block investigation, please see [[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-281791A1.txt](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-281791A1.txt)] (MS Word and PDF versions also available). [Source: FCC]

### **Federal E-Mail Recordkeeping Evaluated in GAO Report**

04.23.2008 - Federal agencies are increasingly using e-mail for essential communication, and many of these messages have the status of federal records, which must be managed and preserved in accordance with the Federal Records Act. In view of the importance

that e-mail plays in documenting government activities, the Government Accountability Office (GAO) recently published a report, entitled *Agencies Face Challenges with E-Mail*, dealing with the preservation of electronic records by federal agencies. The report, based on preliminary results of ongoing work, examines e-mail policies at four agencies – the Department of Homeland Security (DHS), the Environmental Protection Agency (EPA), the Federal Trade Commission (FTC), and the Department of Housing and Urban Development (HUD). In several instances, agencies were using a print and file system or other cumbersome processes. The need for a cross-agency management and preservation electronic process was highlighted by the report.

See [<http://www.gao.gov/new.items/d08699t.pdf>] for more information on this report.  
[Source: GAO]

### **Net Neutrality the Focus of U.S. and EU Consumer Organizations**

04.08.2008 - The Trans-Atlantic Consumer Dialogue (TACD), a forum of United States and European Union consumer lobbying and advocacy organizations, released a report entitled *Resolution on Net Neutrality*. The report defines net neutrality by contending that "in a neutral Internet, [Internet Service Providers] ISPs and communications networks: do not unfairly block content, applications or devices; do not deliberately degrade access for content, applications, or devices; do not prioritize data according to its source or destination; do not discriminate against particular providers of content, applications, services, or devices."

The report urges the FCC to establish a stronger set of network neutrality rules, and recommends that regulators require ISPs to provide fair and accurate information regarding Internet service plans; ensure that consumers have recourse if providers fail to provide service plan information or discriminate unfairly against content, services, applications, or devices; and periodically assess the fairness of discrimination against content, services, applications, or devices on networks. Some of the TACD's American members include Public Knowledge, Consumers Union, Consumer Federation of America, Electronic Frontier Foundation, Electronic Privacy Information Center, Center for Digital Democracy, and the American Civil Liberties Union.

A copy of *Resolution on Net Neutrality* may be found at [<http://www.publicknowledge.org/pdf/tacd-nn-resolution-200803.pdf>] (PDF only).  
[Source: TACD]

### **Spectrum Relocation Progress Report Released by NTIA**

04.01.2008 – The National Telecommunications and Information Administration (NTIA), on behalf of the Department of Commerce, has released its First Annual Progress Report on the relocation of Federal users from the 1710-1755 MHz Spectrum Band – covering from the commencement of relocation activity in March through December, 2007. This band is the first federal spectrum band selected for relocation pursuant to the **Commercial Spectrum Enhancement Act**. Attachment A provides an overall summary, by department as well as estimated relocation timelines and progress made in adhering to these timelines, relocation costs, and amounts paid from the Spectrum Relocation Fund (SRF). Attachment B details the same information on a system-by-

system basis for each department.

For a copy of *1710-1755 MHz Spectrum Band Relocation: First Annual Progress Report*, please see [<http://www.ntia.doc.gov/reports/2008/SpectrumRelocation2008.pdf>] (PDF only). [Source: NTIA]

### **Wireless User Data the Focus of CTIA Report**

04.03.2008 – At the recent annual conference of CTIA-The Wireless Association, a semi-annual industry survey was released with data about wireless technologies in 2007. The survey recorded more than 255 million wireless users, an increase of more than 22 million subscribers from the preceding year. The industry's 12-month record for subscriber growth was reached in 2005, when 25.7 million new users came online.

The survey also recorded wireless data service revenues for the entirety of 2007 at approximately \$23 billion. This figure represents a 53% increase over 2006, when data revenue was \$15.2 billion. Wireless data revenues for the year 2007 amounted to approximately 17% of all wireless service revenues and represent money that consumers spend on non-voice services.

According to the survey, approximately 1.6 billion text messages are sent per day, an increase of 157% over 2006 data. Wireless subscribers are also sending more pictures and other multi-media messages, according to the survey, with nearly 4 billion Multi-media Message Service (MMS) messages sent during the second half of 2007, compared with 2.7 billion sent over the entire course of 2006. Wireless customers used more than 2 trillion minutes in 2007.

A copy of the CTIA Semi-Annual Industry Survey can be found at [<http://www.ctia.org/advocacy/research/index.cfm/AID/10316>]. [Source: CTIA]

### **Other Activities and Items of Interest**

Verizon Wireless's statement on the use of the 700 MHz band may be found at [<http://news.vzw.com/news/2008/04/pr2008-04-04.html>]. AT&T's statement is available at [<http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=25428>]. [Sources: AT&T and Verizon]

### **Clearwire/Sprint Nextel Deal Goes Through**

05.07.2008 - Clearwire and Sprint Nextel are planning to combine their wireless broadband units to create a new, \$14.5 billion communications company. The new company, named Clearwire, will receive a \$3.2 billion investment from Intel, Google, Comcast, Time Warner Cable, and Bright House Networks; it will deploy the first nationwide mobile WiMAX network, considered a fourth-generation (4G) wireless technology. Sprint also made Google its preferred mobile search provider. Comcast, Time Warner Cable, and Bright House Networks will become bundled providers of Sprint's

wireless voice and data service. Sprint Nextel will own 51% of the new company. [Sources: Reuters and Sprint Nextel]

## **Upcoming Events**

### **FCC Summit on the Future of the EAS**

05.19.2008 - An upcoming conference entitled "Emergency Alert System (EAS): Promoting an Effective Emergency Alert System on the Road to a Next Generation EAS" will be hosted by the Federal Communications Commission's Public Safety and Homeland Security Bureau on Monday, May 19, 2008, in Washington, D.C. The panel discussions will focus on the current state of the nation's EAS and what is needed to transition to a more robust, Next Generation alert and warning system to help ensure that all citizens receive accurate and timely information during emergencies. Speakers include: Malena Barzilai, Senior Counsel, Association of Public Television Stations; Derek Poarch, Chief, FCC's Public Safety and Homeland Security Bureau (PSHSB); Ann Arnold, Chair, Texas State Emergency Communications Committee (SECC); Dale Gehman, President, Gehman Compliance & Consulting; Steve Johnson, Consultant, National Cable & Telecommunications Association; Mark Manuelian, Director, Primary Entry Point Advisory Committee, and Chair, Massachusetts SECC; C. Patrick Roberts, President, Florida Broadcasters Association; Art Botterell, Manager, Community Warning System, Contra Costa County Sheriff's Office, California; Lance Craver, Program Manager, Integrated Public Alerting and Warning System, Federal Emergency Management Agency (FEMA); Clay Freinwald, Chair, Society of Broadcast Engineers' EAS Committee; Chair, Washington State SECC; Suzanne D. Goucher, Chair, Maine SECC, President of the Maine Association of Broadcasters; and Mark Paese, Director of Operations Division, National Weather Service (NWS).

For additional information please see the meeting agenda at [[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-281683A1.txt](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-281683A1.txt)] (MS Word and PDF versions also available). Free audio/video coverage of the meeting will be broadcast live (9:00 a.m. – 12:45 EST) with open captioning over the Internet from the FCC's web page. The FCC's web cast is free to the public and does not require pre-registration. [Source: FCC]

### **World Wireless Congress Ninth 4G and WiMAX Summit**

05.14-16.2008 - The World Wireless Congress (WWC) will hold its Ninth 4G and WiMax Summit, on May 14-16, 2008, at the Fairmont Hotel in San Jose, California. The conference is expected to attract a diverse group of attendees, with about half from industries, 30% from academia, and 20% from government. Senior executives from a host of wireless companies – Oracle, Intel, NVidia, Google, IBM, China Mobile, AT&T, etc. – will be included as keynote speakers and break-out session leaders. This conference's theme is "Wireless Innovative Solutions for Next Decade."

For more information, including registration information, please see the conference website at [<http://wirelesscongress.com/>]. [Source: WWC]

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## **Center for Advanced Communications Policy**

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***Telecom/IT Policy Highlights*** presents legislative, regulatory, legal, and other items of interest pertinent to information, telecommunications, and related technology policy and research. For additional information regarding the information provided in this report, or if there are newsworthy items that should be included in future editions, please contact Austin Dickson, Graduate Research Assistant [austin.dickson@cacp.gatech.edu], or Paul M.A. Baker, Ph.D., Director of Research [paul.baker@cacp.gatech.edu].

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