



# Communications Daily

The Authoritative News Service of Electronic Communications

FRIDAY, JUNE 1, 2007

VOL. 27, NO. 105

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## Backup Power, System Resilience Focuses of FCC Katrina Mandates

The FCC's handed down new mandates for carriers to prepare for emergencies, including requirements that larger carriers install backup power for critical facilities and file reports on the resilience of their 911 systems, in approving an order Thurs. following through on parts of last year's Hurricane Katrina Panel report. The order extends by a year provisions exempting the Bells from a ban on sharing some information with their affiliates, to speed their disaster planning. The order also instructs the Public Safety Bureau to establish a clearinghouse to provide information to industry on best practices for preparing for disaster.

Hurricane Katrina had a devastating effect on communications in the Gulf region, as the panel's report revealed, -- cutting off phone service to an estimated 3 million, knocking out more than 1,000 cell sites and 35 PSAPs. The FCC approved the order on the eve of hurricane season, which officially begins today (Fri.).

The FCC ordered LECS and CMRS providers to have in place backup power for all assets normally powered from local, AC commercial power -- including central offices, cellsites and remote switches. The National Emergency Number Assn. had recommended that requirement in its Katrina report comments. Reliability and resilience reports must be filed by larger LECs, wireless carriers and interconnected VoIP providers.

The order was a surprise: Many industry sources had expected the FCC to make mostly nonbinding recommendations on industry best practices. A source said it was toughened on the 8th floor while it was before the Commission. Members of the Commission said the order deals directly with problems that carriers experienced during Katrina. Comr. Copps said he was pleased that other members of the Commission agreed new mandates were necessary.

"I am pleased that we seem to be on the cusp of realizing that a more proactive approach may be necessary," Capps said. "I also think the record that was developed was too heavily skewed by the belief -- I think the pernicious belief -- that the FCC either will not or should not take a lead role in mandating network resiliency standards. The nation's experience with 9/11 and Hurricane Katrina indicates to me that industry best practices and voluntary best efforts are not by themselves always going to get the job done."

But Comr. Adelstein said much of the order is little more than a "series of inspirational objectives" for the new Public Safety Bureau. For example, he said, the report found that flooding was a major cause of damage to communications systems. "This order does not in itself require any concrete actions to address this very real problem," he said.

Likewise, Adelstein said, the order directs the Bureau to encourage carriers to make use of emergency preparation checklists. "Although outreach and voluntary measures can play a critical role, we must continue to push communications providers to go the extra mile to achieve a true level of preparedness," he said: "Without firm commitments, can we seriously tell the people of the Gulf Coast region that this Commission has taken all of the necessary steps to ensure that such a communications disaster will never happen again?" -- *Howard Buskirk*

### Questions Remain

## FCC Rulemaking Gets Tough on E-911

The FCC Thurs. approved a rulemaking proposing that wireless carriers be required to improve their systems so they can more accurately locate subscribers who make 911 calls. The FCC also began an examination of whether carriers should have to report by PSAP, rather than by statewide averaging, how they perform in reaching emergency callers rather than through statewide averaging. PSAP reporting is more lenient and is favored by carriers. The Commission is also examining requirements for VoIP providers.

When the E-911 item first circulated on the 8th floor, it included a brief declaratory order finding at the request of the Assn. of Public Safety Communications Officials that carrier compliance should be measured by PSAP, not statewide. Instead, the Commission will seek comment on that issue before deciding. The FCC also sought comment on whether to give carriers time to comply. Regulatory sources said that the Commission's decision to seek comment wasn't a loss for APCO. "It's a win for APCO, because otherwise that wouldn't have been legally sustainable," a source said.

The FCC said the rulemaking will also examine ways for carriers to improve in-building location accuracy, and the use of hybrid solutions that may increase location accuracy and deal with shortcomings of current technologies.

Chmn. Martin said he remains committed to tougher accuracy requirements. "Quite simply, providing location accuracy information on a multi-state or state-wide basis is not enough," he said: "It does not provide public safety with the information it needs to do its job effectively."

Comr. Adelstein concurred, questioning how the Commission has proceeded on tougher E-911 standards. "I am concerned that this proceeding, while well-intentioned, rushes to judgment by issuing a series of tentative conclusions without even beginning to conduct the necessary due diligence," he said: "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."

Comr. McDowell also said the FCC should move with caution. "We must walk before we can run," he said: "At the present time, it appears that measuring location accuracy at the PSAP level presents real challenges to

carriers, technology providers, and PSAPs alike." Carriers may need time, he said: "This is not surprising since there are over 6,000 PSAPs in the United States, each with unique deployment, topography, network, and [radiofrequency] propagation issues."

The National Emergency Number Assn. said automatic location of emergency callers should be a priority. "We look forward to participating in a discussion on how best to achieve the goal of providing the most accurate information possible to 911 telecommunicators across the country," NENA said: "The focus on this important topic is long overdue and it is essential that all parties involved from industry and public safety work together to fully understand what is achievable today, where we want to be and how best to get there."

APCO said: "Today's action... should lead to improved location accuracy for wireless 9-1-1 calls, allowing for more efficient and rapid responses to emergencies." -- *Howard Buskirk*

### Choosing Carriers Next

## **Five Carriers Picked for Networx Enterprise Contract**

Sprint was among 5 firms picked for the \$20 billion GSA Networx Enterprise contract, a turnaround for a company shut out of the agency's larger Universal competition in March (CD March 30 p1). AT&T, Level 3, Qwest and Verizon also are in on the 2nd big federal contract program, to provide voice, IP, wireless, satellite and IP services to 135 agencies.

The 5 likely were the only contenders for Networx, said sources. Networx replaces the FTS2001 and FTS2001 crossover contracts and federal wireless contracts. GSA earlier chose AT&T, Verizon and Qwest for the broader Networx Universal contract, worth up to \$48 billion. Winners must compete with one another for individual sales to agencies.

"It's good news for Sprint, because it keeps them in the game," said telecom consultant Warren Suss. But it may not be "great news," he said, noting that the company had to make a "serious attitude adjustment" in bidding to succeed. "It's surprising that Sprint did what they had to do in terms of price to get in the game," said John Okay, consultant and former GSA deputy dir. "I think that's certainly good news for the company. It's good news for these agencies who are using Sprint. If they had missed Enterprise that would have changed the future, not only for the company but for the government as well."

Okay said Level 3's selection is also noteworthy, meeting GSA's goal of bringing new players to govt. work. Enterprise aimed to attract niche players, he said. "Agencies still need to make an informed decision but at any time having more choices is better than a narrow field," Okay said.

With contractors named, agencies must pick which program to use and then which carrier, Suss said. Sprint's federal customers may want to stay with the company, which could help it win business after losing out on the Universal work. The Universal contract requirements, far greater in scope, include network security, video, domestic and international Internet conferencing and other services.

Sprint has been preparing for the contract for more than 2 years, hoping to shift from FTS to Networx, it said. It has a Tier-6 IP backbone with IPv6 services, integrated wireline and wireless managed service and other products to meet agency needs, it said. Qwest, a Universal contractor, serves about 50 agencies. AT&T provides telecom services to multiple federal defense and civilian agencies, it said.

Verizon, which calls itself the govt.'s largest provider of communications services, last year opened a Govt. Network Operations & Security Center to support govt. contractors. -- Howard Buskirk, Anne Veigle

Rehab Jokes

FCC Assures Bell, Cable Access to Each Other's Wires

Pay-TV and phone providers will get access to one another's wiring in apartment buildings under an FCC order commissioners said will boost competition in both industries. An order stipulating when Bells must provide access to phone wires in multiple dwelling units (MDUs) to CLECs including cable operators, and when telcos can tap into cable wiring, was approved 5-0 at Thurs.'s agenda meeting. The order, in addressing 2 separate issues, offered cable operators a win, since Cox Communications' complaint was upheld, while Bells get easier access to cable lines under Sheetrock in apartment walls.

The Commission added Sheetrock to the list of barriers between wiring and video competitors, meaning telcos can get access to those lines at a point further from an apartment. Today's FCC rules let cable rivals use wiring less than 1' outside an apartment, unless blocked by metal pipe or cinder blocks, in which case the perimeter is extended (CD May 24 p15). The order means telcos can install lines for video in utility closets, apartment hallways and other areas easier to deal with than digging into a wall, Media Bureau Chief Monica Desai told us. The order may boost video competition, since building owners hesitated to let new video entrants create 1 sq. ft. holes in walls to access wires, Bureau attorney Holly Saurer told the FCC meeting.

The FCC also approved a declaratory ruling sought by Cox guaranteeing competitors access to incumbent LECs' phone wires to provide service in MDUs. The FCC said competitors can have direct access to inside wire at the ILECs' "terminal blocks" -- a point that had been contentious.

Communications Daily

(ISSN 0277-0679)

PUBLISHED BY WARREN COMMUNICATIONS NEWS, INC.

Michael Feazel . . . . . Managing Editor
Edie Herman . . . . . Associate Managing Editor

Warren Communications News, Inc. is publisher of Communications Daily, Warren's Washington Internet Daily, Consumer Electronics Daily, Washington Telecom Newswire, Telecom A.M., Television A.M., Television & Cable Factbook, Cable & Station Coverage Atlas, Public Broadcasting Report, Satellite Week and other special publications.

Send news materials to: newsroom@warren-news.com

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2115 Ward Court, N.W., Washington, DC 20037
Phone: 202-872-9200 Fax: 202-318-8984
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276 Fifth Ave., Suite 1002, N.Y., N.Y. 10001
Phone: 212-686-5410
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Cox sought the change after the Okla. Corporation Commission ruled against direct access by competitive LECs to ILECs' terminal blocks in apartment buildings. The Okla. body had ruled that state law locates the network interface at the customer premises, not the terminal block outside apartments. The FCC stressed that while it overruled the Okla. Commission, it "recognizes that state commissions govern" interconnection practices and "nothing the order does upsets that role." Cox challenged the Okla. ruling in the U.S. Dist. Court, Oklahoma City, which stayed its review pending FCC clarification.

Discussion took on the tone of a home and garden show as most commissioners joked about their remodeling experiences. "I do hope I do a better job on drywall here than I do at home, or we're going to mess everything up," said Comr. Copps. Others joined Copps in the fun. "It's not as easy as it sounds sometimes, getting the paint to match, so that's why we want to make it easy for competitors," said Comr. Adelstein: "Everyone should have a choice... we want competition to reign." Chmn. Martin said the order shows the FCC is serious about promoting video and phone competition and doesn't favor one industry over another.

"New entrants to the video services and telephony markets should not be prevented from competing for consumers in multi-unit buildings based on costly and inefficient industry practices," the FCC said in a release issued after the vote. Martin said: "We're taking an important step to address competition in both the video and phone markets." Said Copps: "I see no reason why Americans who happen to live or work in multi-unit buildings should have a narrower range of choices when it comes to phone, video and broadband services than Americans who live in single-family homes." He said the order isn't about broad policy issues but "narrow implementation questions." — *Jonathan Make, Edie Herman*

### FCC Agenda Meeting Notes

The FCC voted Thurs. to require interconnected VoIP providers to offer telecom relay services and contribute to the TRS Fund. The order approved by the FCC extends Telecom Act accessibility requirements to VoIP service providers and manufacturers. Secs. 225 and 255 set requirements for access to telecom services by persons with disabilities. Gear makers would be expected to design accessible equipment; providers, to ensure service is available. Manufacturers and providers would be expected to offer documentation and information that people with disabilities can use and understand. Providers also would have to offer TRS access via the 711 abbreviated dialing code that other telecom providers use. "VoIP services are increasingly being marketed and used as a substitute for traditional landline phones," said FCC Chmn. Martin. "While technologies will continue to evolve, core social goals in the Act regarding the provision of communications services to all remain unchanged." Said Comr. Copps: "When consumers pick up a phone, they don't worry about whether it is an interconnected VoIP service or a traditional phone service -- nor should there be any concern. Therefore, it makes sense for the Commission to extend the requirements of Sec. 255 to interconnected VoIP service providers and equipment manufacturers." Comr. Adelstein said VoIP providers should have to pay into the TRS Fund: "If an interconnected VoIP service provider shares in the benefits of having the ability to access and use TRS or Video Relay Service, which draws more customers, they should also share in the burdens by contributing to the fund." -- *EH*

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The FCC's unusual delay in seeking comment on the XM-Sirius merger may not mean much, Chmn. Martin said after Thurs.'s agenda meeting. XM and Sirius filed their merger application at the FCC March 20, but the FCC hasn't sought comment, a step that takes a few weeks. "I don't think they should read anything into it beyond what I've already said before," Martin said: "It's an unusual merger in that... there's a high hurdle the parties would have to meet, because the Commission has a previous order that would prohibit... the 2 licenses from being owned by one party... The issues were raised from the beginning and we're working through them all." -- *HB*

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A rulemaking on how the FCC lets TV stations make changes to their market designations was pulled late Wed. from the Commission's meeting agenda. The notice of proposed rulemaking dealt with DBS and cable carriage of broadcasters. The FCC didn't release details of the notice.

State Warning Mandate**Bells Get Emergency Alert Mandate from FCC**

Telcos must provide emergency announcements to pay-TV customers under a broad FCC emergency alert system (EAS) order requiring pay-TV providers to carry state and local warnings. Broadcasters, cable operators, DBS providers and telco TV services must accept alerts in a new format within 6 months of getting FEMA standards, Homeland Security Bureau Deputy Policy Div. Chief Tom Beers told the Thurs. agenda meeting. FEMA is to issue Common Alerting Protocol (CAP) guidelines in early 2008 (CD May 30 p2). As expected, the Commission punted on a controversial request by advocacy groups to require stations to broadcast alerts in multiple languages.

Commissioners said CAP ensures consumers are sent word of storms and other catastrophes in varied ways. CAP lets state and local officials send a single warning deliverable using video, audio and text via multiple platforms, including pay TV and broadcasters. CAP facilitates interoperable networks, said Comr. Adelstein; Comr. Copps said it reduces risk of EAS systems being hacked.

Pay-TV providers must be ready for “next-generation EAS delivery systems” within 180 days of FEMA standards’ arrival, said an FCC press release. Commissioners agreed it’s time to update emergency broadcast systems. “EAS needs to be brought into the digital age,” Copps said: “We need an emergency alert system that is more flexible with the technologies that Americans are adopting in their everyday lives.” Chmn. Martin said: “We need to take advantage of... technological changes to update EAS... Oftentimes, state and local officials are best situated to understand and appreciate the need of the community.”

State and local officials now can trigger mandatory EAS alerts -- a first -- under the Commission order. Previously, only the President could order broadcasters to air EAS announcements, but, as Comr. Copps noted, no federal alert ever was issued. He contrasted that with local authorities’ yearly issuance of hundreds of emergency announcements. Cable operators and broadcasters long have voluntarily carried local messages.

The order provides parity between cable operators and Bells by applying emergency alert rule to all wireline video providers, Homeland Security Bureau Deputy Chief Dana Shaffer told us: “Wireline video providers are subject to the rules in the same manner as cable systems are.” The order seems to cover IPTV video, she added: “It doesn’t distinguish between the technologies used.” Verizon’s FiOS TV already provides state and local EAS warnings, said a company spokesman. AT&T sends “local broadcast” alerts to U-Verse IPTV service subscribers, a company spokesman said: “We are currently working with our vendors to provide all required EAS messages in an IP format, and work is on schedule to achieve deployment consistent with our recent FCC filings.”

Commissioners addressed distribution of storm and other warnings to non-English speakers by issuing a further notice of proposed rulemaking seeking comment on the subject and by pressing broadcasters and advocates to negotiate a compromise over Spanish-language translations. Advocacy group Minority Media & Telecom Council and trade organizations including NAB will have 30 days to update the Homeland Security Bureau on their talks’ progress, once the EAS order is released. The Council and other advocates wanted stations to translate warnings into Spanish and other languages when a foreign-language station in a market is knocked off the air, while broadcasters prefer to get translated announcements from authorities. Within 6 mos. the FCC will issue an order addressing how to deliver EAS alerts to disabled and non-English speakers, it said. — *Jonathan Make*

Debate a 'Useful Exercise'**EC Should Move to Be Telecom Czar, Reding Says**

The EC should be Europe's telecom super-regulator, Information Society & Media Comr. Viviane Reding plans to say today (Fri.) at a broadband conference in Greece. Her proposals for revamping the 2003 e-

communications regulatory framework won't emerge until late Oct., but Reding will say for the first time that she believes the Commission, not the European Regulators Group (ERG), should oversee telecom regulation, with national regulatory authorities (NRAs) as advisors.

The EC has been mulling the idea of a single EU regulator. The option most widely discussed has putting the ERG in the role. But that body has shown reluctance to do so, except in cross-border or pan-EU markets like spectrum licensing (CD Feb 28 p10). The debate is said to have slowed progress on framework-review legislative proposals originally due in the summer (CD May 11 p2).

EC success at cutting international mobile roaming rates "should have shown you that we have a European telecom regulator already: It is the European Commission, which is a truly independent and supranational European institution," Reding planned to say. To have a true internal market for telcos and users, she planned to add, NRF reform must boost EC power over national telecom markets: "Telecommunications is clearly a field where we need more Europe, not less."

Legislative proposals also will address "how to improve the work of national regulators and how to combine their work in a new European logic," Reding will say. An existing ERG framework of "loose cooperation" among NRAs is "clearly insufficient for the challenges of the digital age," and changes must balance the need for federal vs. decentralized solutions.

By the "new European logic," NRAs' expertise on their own national markets will be combined with a stronger EC role, particularly in enforcing competition remedies, said a source close to the matter. The ERG will be upgraded, with a permanent president and staff, with authority to render opinions reached by majority vote and weighed when the EC rules on national remedies, the source said.

The new ERG role would arise such cases as those where the EC tells an NRA to impose broadband access rules on an incumbent but the regulator doesn't do so or takes an unnecessarily long time to act, the source said. The EC then could ask the ERG for an opinion on what to do next; the ERG would adopt a majority position that the Commission likely would follow in issuing an order legally binding on the national regulator, he said.

The NRF proposals have 2 main aims, Reding will say: More competition in telecom markets, especially broadband, where available radio spectrum will be made available for wireless broadband services, and a complete internal European telecom market. Spectrum management will change from "command & control" to more flexibility in using scarce resources. And Reding says she might authorize NRAs to force telcos to split their network access from their service divisions -- an intrusive remedy, "functional separation," ordered only in exceptional circumstances.

Europe's 2 main telecom trade groups aren't taking sides on picking a super-regulator, saying they focus on policy results. The European Competitive Telecom Assn. wants an institution with enough authority and credibility to keep European telecom market harmonious, but officially backs no specific solution, said Chmn. Innocenzo Genna.

The European Telecom Network Operators' Assn. (ETNO) isn't clear on what Reding is proposing, a spokesman said. Her comments could be read to mean that the EC is returning to a proposal to give itself "veto" power over remedies imposed by NRAs, or to beef up the ERG. The question isn't who's in charge of harmonizing telecom markets, but what sort of harmonization at the EU level is envisioned, he said. Any institutional arrangement should be designed to further deregulation, the spokesman said.

ETNO fears functional separation as a regulatory tool. It called the remedy "out of touch with today's increasingly competitive and multi-platform telecom markets." It's also very costly and could affect all operators' access prices, the spokesman said.

The debate over a Euroregulator shows that the EC and ERG see that regulatory fragmentation among member countries jeopardizes market uniformity, Genna said. The discussion has pushed both bodies to address questions they otherwise might have missed, he said, and so is a "useful exercise." -- *Dugie Standeford*

### On Demand Vs. Online

## **Transition to VoD Viewing Inevitable for Broadcast Networks, Bewkes Says**

Broadcast networks will inevitably make all their programming available to cable operators for VoD, Time Warner Pres. Jeff Bewkes said during a Sanford Bernstein investor conference. "It's the future of network television," he said: "I am a little surprised that the broadcast networks haven't moved faster to put their network [programming on-demand,] on a free ad supported branded basis." Retransmission consent agreements have tied up VoD's progress, he said; TV station groups owned by the major networks were using VoD rights as a club in those negotiations. "As negotiations between networks and cable operators get cleared up, there really is no obstacle to putting all the networks on demand."

Moving toward an ad-supported VoD model is the best way to preserve the network system, Bewkes said. His company's studio is among the largest suppliers of broadcast network programming. Time Warner's studio division is increasingly liberal when licensing its programming to networks, he said. "The point is to take the old network model and bring it into the 21st century," he said: "We'll give you the rights to put the show on the website the next day, and you can put it on VoD on cable." Whether viewers watch network shows at their scheduled time or later really shouldn't matter to studios or networks, as long as ad arrangements have been made, he said. Cox and Disney are testing such a system with ABC programming (CD May 9 p14). In that test, Cox will disable the fast-forward button on subscribers remote controls when their viewing ABC programming on demand.

Putting network programming on a VoD system isn't a challenge for cable operators, Bewkes said: "There's no strong reason why ABC and NBC can't have their whole schedule available to you with ad support the next day... It's not at all difficult for the cable system industry to give you that."

Cable offers a bigger VoD opportunity than the Web for broadcast and cable networks alike, though Web video shouldn't be ignored, Bewkes said. Cable VoD is "a much bigger money and audience pool than putting shows on computer screens and iPods," he said. Time Warner's cable networks are running more original programming, so they can offer more VoD through pay-TV and online, he said.

Cable networks don't want to completely bypass cable operators and make their programming available exclusively online, Bewkes said. For instance, Time Warner won't sell HBO online, he said: "There's a real advantage that the cable operators bring to networks. They basically go out and say 'I'll get you into every home.'" More homes means more affiliate fees and more higher ad sales, he said. -- *Josh Wein*

### Late-Aug. Debut Set

## **Comcast to Introduce TiVo-Based PVR Service in New England**

Comcast in late Aug. will introduce a TiVo-based PVR service in metro Boston, southwest Mass. and N.H., capping 2 years of development and field tests, TiVo CEO Tom Rogers said in a quarterly earnings call Wed. Pricing hasn't been set, but the TiVo service likely will be sold separately from Comcast's other offerings, a Comcast spokeswoman said.

TiVo software will be downloaded to a Motorola digital set-top, adding several new features that Comcast's earlier PVR platform lacked, Rogers said, including giving subscribers the ability to search video-on-demand programming. The TiVo platform will "provide a degree of integration" between broadcast cable and Comcast's VoD service, Rogers said. The Comcast spokesman declined to comment on how quickly the MSO will introduce the service in other markets.

Comcast had expected to launch the TiVo service by June 30 in a "sizable" U.S. market before expanding it. The TiVo software was integrated with the GuideWorks interactive program guide that Comcast jointly developed with Gemstar-TV Guide International. Comcast has Motorola digital set-tops in about 75% of its markets, company officials have said. A "limited number" of Comcast subscribers will get the service before the Aug. introduction, Rogers said. While the "translation" of TiVo to the Comcast platform is complete, the MSO is "making sure that all of this can be implemented" before offering the service, Rogers said.

TiVo's PVR platform also is expected to be deployed with Cox Communications later this year and it's in beta testing with Cablevision Mexico. TiVo also announced an agreement earlier this week with Seven Media to introduce the service in Australia in 2008. Seven will fund some of development work needed to bring the TiVo platform to Australia and TiVo will get a share of any ad revenue, Rogers said. During Q1, TiVo's technology revenue declined to \$3.9 million, from \$8.1 million a year ago when it recorded \$4.6 million in deferred revenue from Comcast.

Meanwhile, TiVo dropped plans to file a cross-appeal in the EchoStar case with the U.S. Appeals Court, Federal Circuit, in an effort to "simplify issues" already before the court, Gen. Counsel Matthew Zinn said. TiVo filed its brief in the case Wed. and arguments before the appeals court will occur in late summer or early fall, Zinn said. A decision on EchoStar's appeal could be issued by year-end, he said. EchoStar filed an appeal in the wake of April 2006 jury verdict that awarded TiVo \$74 million. TiVo sued EchoStar in 2004 for infringing its "time-warp" patent, which expires in 2018. EchoStar responded by suing TiVo and hardware supplier Humax for infringing a patent granted in 2001 that described a method for moving a compressed digital multimedia program to a storage device in a set-top box. -- *Mark Seavy*

### **3rd Parties Blamed**

## **ITU Moves Against Room Rate Gouging for Telecom 2009 Event**

GENEVA -- City, hotel and ITU officials preparing for ITU Telecom World's 2009 return to Geneva booked 6,000 hotel rooms at discounted rates for key participants and moved to bar agency price gouging. When Geneva was the permanent host for ITU Telecom World 1971-2000, room rates were exorbitant because exhibitors booked rooms 4 years in advance and some 3rd-party rental agencies got greedy, officials said.

The matter hit critical mass in 2003 when some agencies rented and rerented hotel rooms at 2 or 3 times the going rate, officials said, irking exhibitors and other key players. Exhibitors pressed for a 2006 venue change; Hong Kong beat out Geneva, Istanbul, Milan and Algiers, said ITU Telecom Exec. Mgr. Fernando Lagrana.

Since 2003, Geneva has restructured its tourism bureau to handle bigger events, working with 6 hotel groups on more-transparent pricing, said a city official: "Our fear is that they sell the room to a 3rd party, which is not an exhibitor, without asking what will be the final use and what will be the final price." An independent auditing company will report on pricing policies during the event.

Geneva hired a company to manage booking of 6,000 rooms set aside at a negotiated rate, the official said. The rooms are for exhibitors, sponsors and other key Telecom World participants. Hotels voluntarily committed

4,000 more rooms, not covered by the negotiated rate, he said. Geneva has about 9,000 rooms, all likely to be booked that week, said Paul Muller of the Geneva Society of Hoteliers. Visitors can stay in Lausanne, a 33-48 min. direct train ride away, and other nearby areas. Another 21,000 rooms are within an hour's travel, the city official said. About 70,000 people attended Telecom World 2006 in Hong Kong. For 2009, Geneva beat Birmingham, England, Dubai and Paris. ITU Telecom World 2009 is Oct. 5-9. -- *Scott Billquist*

## Comm Daily® Notebook

Johanna Shelton, telecom counsel to House Commerce Committee Chmn. Dingell (D-Mich.), is leaving to join Google, sources told us. Shelton couldn't be reached for comment; the committee didn't return a call. Before joining Dingell's staff, Shelton was aide to FCC Comr. Adelstein; she also worked for Rep. Boucher (D-Va.). -- *AV*

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Sen. Clinton (D-N.Y.) Thurs. endorsed federal financial incentives for broadband development and praised municipal network projects. She planned to take her presidential campaign to the Silicon Valley Leadership Group's CEO Business Climate Summit at Applied Materials in Santa Clara after our deadline and discuss a 9-point innovation agenda. To "accelerate the deployment of sophisticated networks, Hillary Clinton proposes that the federal government provide tax incentives to encourage broadband deployment in underserved areas," a campaign paper said: "She also proposes financial support for state and local broadband initiatives." The paper called municipal broadband projects "useful for education, commerce, technology development, and the efficient provision of municipal services." The agenda's other points relate to education, R&D and energy. -- *LT*

## Wireless

Democratic presidential candidate John Edwards urged the FCC Wed. to set aside 1/2 the commercial spectrum in the 700 MHz block for wholesalers to lease to smaller start-ups -- a larger version of the Frontline proposal. Replies are due Mon. on the FCC's proposed auction and service rules. Those rules should require nondiscrimination and open access, said Edwards, former senator from N.C. Edwards told Google employees about the letter during a Wed. appearance at its Mountain View, Cal. hq. "What we don't want to happen is what happened" historically, when the big telecom companies gobbled up all the spectrum, Edwards told the Google employees, according to the *Mercury News*. Frontline, which has asked the FCC to create a 10-MHz E-block for a public-private partnership to benefit public safety, also received qualified support from the Mich. Professional Fire Fighters Union (MPFFU). "We do not have sufficient spectrum and we do not have operable communications, let alone interoperable communications," said MPFFU Pres. Paul Hufnagel. All is not rosy for Frontline, however. Randolph May, pres.-Fress State Foundation think tank, wrote a scathing piece saying Frontline's proposal is a continuation of former FCC Chmn. Reed Hundt's managed competition principles. Hundt is vice chmn. of Frontline. "It should not be surprising that Reed Hundt's Frontline proposal embraces the managed competition vision... Mr. Hundt led the agency to adopt network 'unbundling' rules for the local telephone companies that 3 times were held unlawful by courts," May wrote. Frontline said it understood May's opposition. "Consumer choice is not the friend of entrenched incumbents," it said.

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Clearwire finished acquiring all the 2.5 GHz wireless broadband spectrum previously owned or controlled by AT&T, sold as a condition of AT&T's merger with BellSouth. With the acquisition and other pending spectrum purchases, Clearwire's U.S. spectrum holdings will be 14 billion MHz- POPs, covering 223 million people in the U.S. Clearwire also has 8.7 billion MHz-POPs of spectrum in Europe.

## State Telecom Activities

A federal judge in Ill. declined to dismiss AT&T lawsuits alleging that 7 cities near Chicago blocked its IP-network buildouts. A U.S. district judge in Chicago said AT&T's case merits trial. AT&T said the cities violated Ill. law and its right to equal protection by adopting moratoriums on putting ground-mounted, IP-related utility equipment in public rights of way, or by requiring AT&T to get a local video franchise before construction would be approved. Carpentersville, N. Aurora, Geneva, Itasca, Roselle, Wheaton and Wood Dale sought dismissal, claiming AT&T didn't allege specific violations of Ill. Telecom Act provisions on local control over rights of way, calling their demand for video franchises legal under the federal Cable Act. But the court (Case 06-C-2439) concluded AT&T might have a case that localities exceeded their right-of-way management authority under the Ill. Telecom Act. The court also said the federal Cable Act doesn't apply yet to AT&T because it's not providing cable service. The court said AT&T simply wants construction permits to install a telecom network that could provide video services. The court said that since the network gear also can provide phone service, the applicable law is Ill. Telecom Act provisions on telecom network construction. The court declined to dismiss AT&T's constitutional claim because the municipal moratoriums didn't clearly spell out why AT&T gear got exceptional treatment.

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The Me. PUC consumer advocate unit said telecom consumer complaints in 2006 dropped more than 1/3 from 2005. The 252 formal complaints against incumbent telcos marked a 37% drop, and 179 complaints against CLECs a 55% drop. The report tied the pattern to more carrier willingness to resolve disputes, and consolidation reducing competitive carriers' ranks. The report said Verizon's 168 complaints in 2006 were a 41% drop from 2005. FairPoint Communications, Verizon's would-be merger partner, is under a special monitoring program whose results will determine whether the PUC needs to open a formal investigation into its service quality, the report said. The report said a record \$3.2 million in refunds was returned to complaining telecom customers in 2006.

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AT&T and Cox Telecom asked the Cal. PUC for oral hearings on a newly revised proposed decision to fine them for unlawful ex parte communications in a 911 "warm line" complaint case. The carriers said the hearings are needed because the changes to the proposed decision (Case 05-11-011) effectively would widen the scope of PUC ex parte limits. The complaint case, filed last year by consumer group UCAN, alleges the companies violated a mandate that they provide 911 access on installed phone lines even when service otherwise is disconnected. UCAN last June complained that the companies discussed substantive matters relating to the complaint in ex parte contacts with key advisers to PUC members. The PUC in Jan. proposed to fine each firm \$40,000 for ex parte contact rule violations. But the PUC last week revised the proposal, reinterpreting its ex parte limits; the change substantially expands ex parte curbs without formal hearings or rulemaking, the carriers said. The expanded rule would put parties and their counsel at ex parte violation risk if they discussed with PUC advisors any generic subjects or issues that happened to be at issue in a complaint case, they said.

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An N.C. court told an Ill. telemarketer to stop placing sales calls to N.C. residents because it breaks state laws. Wake County Superior Court's preliminary injunction against Possibilities Unlimited of Arlington Heights, Ill., marks this year's biggest victory against telemarketing violators, said state Attorney Gen. Roy Cooper (D). Cooper said his office got hundreds of complaints that the company violated state no-call laws and laws requiring live introductions to prerecorded pitches, disclosing its identity on request and not calling if requested. The AG said the telemarketer was selling credit cards and debt consolidation loans for United Savings of Tacoma, Wash. Cooper wants a permanent ban on the company calling into his state, plus civil damages.

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The Ill. House Telecom Committee advanced a Senate-passed broadband bill that would give the state Transportation Dept. until Dec. 31 to develop a plan to provide wireless broadband service to rail passengers on Amtrak or Ill. Commuter Rail Board trains. SB-678 would require the plan to address rights of way acquisition, infrastructure construction, system operation and funding.

## International Telecom

ITU-R gave preliminary approval to a version of WiMAX as a terrestrial radio interface for IMT-2000, the ITU standard for 3G wireless communications, ITU said in a press release. The ITU group, which met this week in Japan, also updated IMT-2000 radio interfaces, established the foundation for IMT-Advanced, and called for additional spectrum for IMT, ITU said: "During 2008 and 2009, there will be an open call for candidates for IMT-Advanced to be submitted to ITU, as well as the start of assessment activities of candidate technologies and systems. Services provided using IMT-Advanced could be commercially available as early as 2011 subject to market demand."

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Trying to boost consumer confidence, the U.K. Office of Communications (Ofcom) Thurs. told originating communications providers to comply with pricing requirements for calls to 03 and 070 personal numbers. Consumers are wary of some phone numbering ranges due to confusion about prices and services and some communications providers' misuse of number, Ofcom said. As of now, charges for 03 calls must be the same as for those to geographic numbers, with revenue-sharing between the provider and the entity called prohibited. For 070 personal numbers, calls costing more than 20 pence per minute or per call will require a free-to-caller pre-call announcement about the charge, effective Sept. 1.

## Telecom Notes

Turmoil within CompTel's executive board prompted a small committee to seek Earl Comstock's abrupt dismissal as the group's president Wed. (CD May 31 p16), several industry sources told us. The move came as a surprise to Comstock, but was based on members' dissatisfaction with Comstock's focus on net neutrality -- an issue that clashed with the interests of some of CompTel's members, sources said. CompTel was among the 54 organizations included in the Open Internet Coalition that launched last week. Some of CompTel's members were upset that Comstock spent so much energy advocating for net neutrality and felt he was out of touch with the business plans of the core membership, sources said. Comstock declined to comment. -- AV

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Vonage made another pitch Wed. to overturn a federal jury decision that it infringed Verizon patents and, in arguing to dissolve a related injunction, revealed it hasn't devised a "work-around" to avoid violating Verizon patents. In a reply brief filed with the U.S. Appeals Court, Federal Circuit, Vonage said the jury was instructed improperly on the so-called "obviousness standard," recently changed in a U.S. Supreme Court decision, *KSR v. Teleflex*. Vonage also said U.S. Dist. Court Judge Claude Hilton "erred in construing the disputed claim terms." The case was heard in Hilton's court in Alexandria, Va. Vonage also argued for dissolving Hilton's injunction barring Vonage from signing new customers. The injunction, temporarily stayed by the appeals court, was "overbroad" and based on "hearsay," Vonage told the appeals court: "The district court provided no basis for its finding of irreparable harm other than reference to potential lost sales." Verizon has argued since that it also was harmed by loss of customers, market share and goodwill plus factors such as "price erosion," Vonage said. "But there is no adequate record evidence" of that, Vonage said. If any party is harmed it would be Vonage, the company said: "The practical effect of the injunction would be to put Vonage, a non-willful infringer, at risk of extinction before it can disentangle the infringing technology from its system... Vonage is not yet able to implement design-arounds."

## Broadcast

Tribune shareholders who tendered stock in the first round of the company's buyout got to unload only about 57% of their shares because the buyback was oversubscribed, said Tribune. Shareholders offered nearly 90% of outstanding shares; Tribune bought back 52%. CEO Denis FitzSimons termed the first round of the company's leveraged buyout complete.

Standard & Poor's lowered its bank loan rating on Spanish Bestg. System's \$350 million credit facility to B- from B. "The company has seen a significant decline in EBITDA over the past two years," credit analyst Michael Altberg said in a news release. He expects those declines to continue.

## Cable

Rogers will spend \$100 million more to upgrade cable systems and wireless networks in New Brunswick. The cable operator has spent about \$140 million on upgrades there. Rogers will expand the wireless network by more than 1/2 to cover all major cities and several remote areas, it said.

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Viacom's \$4 billion stock buyback plans (CD May 31 p15) won't affect its credit rating, Standard & Poor's said: "We expect the company will continue to manage the pace of share repurchases so as to keep its leverage at a moderate level."

## Mass Media Notes

It's "disgraceful" that the NAB "is paying people" like former Attorney Gen. John Ashcroft to write letters to regulatory agencies urging that the XM-Sirius merger be rejected, Sirius CEO Mel Karmazin told the Lehman Bros. Worldwide Wireless Conference in N.Y. Thurs. "It's what goes on and there's nothing you can do about it," Karmazin said. If it were up to him, "there shouldn't be anybody speaking out about the merger because I think the regulatory agencies are the ones who should be dealing with it," Karmazin said: "That's what the FCC is for. That's what the DoJ is for." Satellite radio's 14 million subscribers are "the biggest supporters" of the merger, he said. But in the face of the NAB's aggressive opposition, "you've not heard us" take to the air urging subscribers to write their congressmen to say the merger's a good idea, Karmazin said: "You could fault us for not doing that, for not marshaling our subscribers, and you should assume that something like that is something that could happen in the future." NAB couldn't be reached for comment at our deadline Thurs. -- **PG**

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Nielsen began Thurs. reporting audience levels for ads that run during TV programs. It didn't provide data on how many viewers skip ads when they watch live or on PVRs. Less than 1/2 of PVR viewers seem to watch ads during shows they record, the data indicate. But enough PVR viewers don't skip ads to give a significant lift to some shows' commercial ratings, the data showed. For NBC's *The Office*, viewers watching on PVRs within 3 days of broadcast pushed the commercial minute ratings higher than the show's initial broadcast program ratings. In other words, after 3 days, more people saw the ads aired with *The Office* on PVRs than watched the show when broadcast. Other broadcast and cable shows saw similar ratings bumps over 3 days. Nielsen will provide commercial ratings data to clients in 3 streams -- live, live plus same day viewing and live plus one-, 2-, 3- and 7-day viewing. About 10% of broadcast prime time viewing is by PVR, Nielsen said. Within 3 days of a program's airing 99% of those who recorded the show have watched it.

## Satellite

DirecTV and EchoStar lost their effort to keep cable companies paying franchise fees in Ky. The 6th U.S. Appeals Court, Cincinnati, agreed with Dist. Judge Karen Caldwell, Frankfort, who had dismissed a DBS lawsuit claiming discrimination. The DBS operators sued after Ky. replaced its cable franchise fee with a sales tax covering all pay-TV providers. DBS operators were excluded from franchise fees in the Telecom Act of 1996, but Congress left the door open to other levies. DirecTV and EchoStar claimed Ky. discriminated against them because cable companies were relieved of paying franchise fees but they got no relief. "While a purpose of the [tax law] might have

been to aid the cable industry rather than the satellite industry... there are clearly many other purposes... The satellite companies' opinion of [the tax law] might be very different had they been subjected to the tangled regime of local taxation and franchise fees, as they certainly could have been absent the special exemption granted to them by the Telecom Act," wrote Chief Judge Danny Boggs of the appeals court. Ky. is pleased with the ruling, said Doug Dowell, attorney-mgr.-Office of Legal Services in the Dept. of Revenue. Dowell said confidentiality laws prevent him from disclosing whether the DBS carriers have been paying the tax, imposed in 2006. DirecTV and EchoStar weren't immediately available for comment. Under the new system, all pay-TV providers pay a gross revenue and excise tax. The money is distributed to all localities that give up their franchising systems. -- *HFW*

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DirecTV and Liberty Media filed with the FCC more than 100 pages in the record of their proposed merger -- and only 4 pages aren't redacted. The FCC's Media Bureau informally asked for employee information. DirecTV filed 96 organizational charts but redacted all of them under a protective order adopted last week (CD May 23 p16). The documents contain "proprietary and confidential information, given the detailed nature of the employee and organizational information," said William Wiltshire, DirecTV outside counsel. Liberty Media doesn't "maintain functional organizational charts of its personnel," said Robert Hoegle, Liberty Media outside counsel. Liberty Media supplied a list of its officers.

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The FCC should approve the XM-Sirius merger, the League of Rural Voters said. "In many rural areas throughout America, commercial radio reception can be extremely limited," the group said: "Satellite radio has offered listeners in rural areas a robust alternative with hundreds of specialized channels that meet the programming needs of rural America." Women Involved in Farm Economics added its support: "Rural communities have benefited greatly from the weather, emergency and other informational services provided by satellite radio."

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Space Systems Loral got a contract for NASA's Landsat Data Continuity Mission (LDCM) Spacecraft Accommodation Study, it said. Loral will have 4 months to propose a design based on its 1300 bus platform and study how to integrate the LDCM Operational Land Imager instrument, it said. LDCMs make Earth-observing satellite missions managed by NASA and the U.S. Geological Survey. After the study, NASA is expected to begin procurement, requesting proposals in the fall and awarding a contract in Dec., said Loral.

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Thomson delivered its millionth HD set-top to DirecTV, the supplier said Thurs.

## Communications Personals

**Katie Yocum**, ex-Media & Democracy Coalition, becomes confidential asst. to FCC Comr. Adelstein, and dir. of outreach... Time Warner Cable promotes **Gerald Campbell** to exec. vp-technical operations... Virgin Mobile USA names **Dave Parkhill**, ex-Network Effects, chief information & technology officer... New members of Media Institute's First Amendment Advisory Council: **Henry Hoberman**, ABC; **Stephen Weiswasser**, Covington & Burling.

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