



November 2008

Short Subjects

Screen out, Cap in? FCC considers spectrum ownership limits below 2.3 GHz – The FCC put out a public notice seeking comment on a Petition for Rulemaking to establish a cap on spectrum below 2.3 GHz. The petition was filed by the Rural Telecommunications Group, Inc. seeking to create a rule that would limit ownership of commercial spectrum under 2.3 GHz.

The proposed rule would prevent a licensee of any commercial terrestrial wireless spectrum under 2.3 GHz from having an attributable interest in more than 110 MHz that has any significant overlap in any county. The Commission currently applies a spectrum “screen” in assessing proposed mergers and acquisitions for anti-competitiveness. Adoption of the proposed rule would make the screen a mandatory barrier. It would also fix the cap in regulatory cement since it would require a rulemaking to change it. (The “screen,” as we see in the Verizon/ALLTEL and Clearwire/Nextel mergers discussed elsewhere in this issue, can be easily adjusted as different quanta of spectrum come into usage.)

The petition was filed with the Commission back on July 16 and was published in the Federal Register on October 22. Initial comments are due December 1 and reply comments are due December 22.

Handset devices for one; Handset devices for all – The Rural Cellular Association (RCA) has petitioned the FCC to prohibit manufacturers of mobile handset devices from entering into exclusive distribution or sales agreements with mobile radio licensees. Public awareness of these exclusive arrangements came to the fore when AT&T Wireless introduced the much ballyhooed iPhone. There was strong interest in this handset from the public, but Apple had an exclusive deal with AT&T, so you had to be an AT&T subscriber to get access to the handset. Other popular handset models have come out with similar strings attached. RCA argues that such arrangements are anti-competitive since they prevent smaller carriers who lack the market power of the giants from getting access to the handsets that their customers want. The exclusive deals also have the effect of limiting the variety of handsets that carriers can get access to – an important consideration since the hearing aid compliance rules require regular “freshening” of the carriers’ product lines.

Comments on this petition are due no later than December 2, 2008.

It's November. Do you know where your CPNI certification is? – A few months ago many common carriers across the land were surprised to receive nasty little missives from the FCC demanding to know why they had not filed CPNI certifications last February. The protection of Customer Proprietary Network Information was all the rage at the FCC a few years ago when the news media and Congress discovered that unscrupulous persons had been getting access to private customer telephone call information by “pretexting” and other means. As part of its blitzkrieg to stamp out that practice, the FCC required common carriers to file an annual certification that they were in compliance with the CPNI protection rules and that no breaches had occurred. They then laid heavy \$100,000 fines on the backs of a few hapless carriers who inadvertently (or not) had failed to file the certification.

Many people had thought that this CPNI obligation applied only to providers of voice services like POTS or cellular. So it was a surprise when microwave carriers, satellite operators, international resellers and others received ominous letters of inquiry regarding their failure to comply. The FCC is still sifting through the responses and to our knowledge no fines have yet resulted from the last round of threatening letters. However, it's worth reminding all common carriers that the FCC expects them to submit the CPNI certification no later than March 1st of next year. This means that they must already have a CPNI policy in place and an officer designated to oversee the policy, since these are elements of the certification. A word to the wise....