



**August 2008**

## **Report from Planet FCC**

**Next stop: Wonderland.** As we saw in the articles on Verizon’s customer retention plan (page 2, above) and audio bridging (page 4, above), the FCC often has to determine whether the firms involved were providing “information services” or delivering “telecommunications.” In making the Verizon decision, the FCC candidly observed: “our decision holding the Competitive Carriers to be ‘telecommunications carriers’ for purposes of Section 222(b) does not mean that they are necessarily ‘telecommunications carriers’ for purposes of all other provisions of the Act... While the Act does provide a definition of the term ‘telecommunications carrier,’ the presence of a definition does not necessarily make the meaning clear.” Wondering if there was any precedent to support this perplexing proposition, we looked immediately to see if the FCC had cited Lewis Carroll’s treatise on the law, *Through the Looking Glass*, which happens to be directly on point: “When I use a word,” Humpty Dumpty said, in a rather scornful tone, “it means just what I choose it to mean – neither more nor less.” Disappointingly, while the Commission clearly subscribes to the Humpty Dumpty theory of statutory construction, it did not give Mr. Dumpty his due.

The FCC steadfastly avoids defining two of the most basic terms of the industry it regulates – “telecommunications carrier” and “information service provider” – instead careening from case to case assigning whatever meaning to those terms fits the outcome it wants at that moment, but leaving the carriers and providers utterly unable to predict from circumstance to circumstance what they may be deemed to be. If Lewis Carroll were around today, he might well have placed a curiously costumed character in Alice’s Wonderland named Mr. AirQuote, a gentleman who walks around putting air quotes around all the “terms” that he “uses” when he engages in “dialogue.” “A ‘definition,’” he would tell Alice, “does not actually clarify the ‘meaning’ of a word. It simply complicates our ability to give the word a whole new ‘meaning’ whenever it serves our ‘purpose.’” Mr. AirQuote would, of course, work at the FCC.