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FCC On The Hunt For Spectrum Sources **On the table: Re-purposing of spectrum**

Peter Tannenwald
tannenwald@fhhlaw.com
703-812-0404

On September 23, 2009, the FCC invited comments on the adequacy of available spectrum for broadband deployment. The invitation came in the sixth in what is probably already a record-setting number of invitations to comment in one proceeding (we reached #20 on November 17), looking toward the development of a National Broadband Plan. NBP Public Notice #6 asked for comments on the adequacy of spectrum for broadband deployment.

What an invitation to sound off! The wireless industry had already been agitating for more spectrum, because they were on the street in a flash. CTIA – The Wireless Association®, backed by the large wireless carriers, launched a campaign bemoaning how the future development of our society will be stifled, and our intellectual growth stunted, if not everyone can carry a mobile device which allows everything from banking to ordering a pizza to watching TV programs any time and anywhere they like. Citing the enormous growth of traffic on mobile networks after introduction of the iPhone and other smartphones, they declared that the public demand is clear, and it is time to find spectrum to accommodate anticipated future explosions in demand. Every MHz is fair game, especially anything used by the government, which allegedly specializes in last-century technology.

But what about that juicy block of spectrum still used by the boob tube, even after the TV spectrum was cut down as part of the digital transition? You bet, they said – go after it. After all, some 90% of the public watches TV on a wire or satellite connection. Why do we need to transmit any programming on the airwaves?

It took only an instant for the campaign to catch the FCC's attention. Chairman Julius Genachowski, speaking to a sympathetic audience at an international CTIA meeting on October 7, 2009, declared: "In fact, I believe that that the biggest threat to the future of mobile in America is the looming spectrum crisis." And senior FCC staff members have cited the mounds of money paid at spectrum auctions as evidence of the value of spectrum for wireless.

The Consumer Electronics Association, having just enjoyed a resurgence in TV sales due to the digital transition, has nevertheless taken sides with CTIA. They wrote a letter to the FCC on November 17, urging the FCC to get cracking to comply with its obligation under Section 336(g) of the Communications Act to conduct a study to determine whether TV really needs all of its spectrum. That statute specifies the following:

(g) Evaluation

Within 10 years after the date the Commission first issues additional licenses for advanced television services, the Commission shall conduct an evaluation of the advanced television services program.

Such evaluation shall include –

- 1) an assessment of the willingness of consumers to purchase the television receivers necessary to receive broadcasts of advanced television services;
- 2) an assessment of alternative uses, including public safety use, of the frequencies used for such broadcasts; and
- 3) the extent to which the Commission has been or will be able to reduce the amount of spectrum assigned to licensees.

The broadcasting industry wasted no time responding, emerging from their huddle with a strong campaign, teaming with Maximum Service Television, large group station owners, public broadcasters, minorities, and anyone else interested in helping. Holy smoke, the broadcasters said, we just spent billions transitioning to high quality digital television. The public has spent and is continuing to spend mega-bucks on new TV sets. What are you going to do – throw all that stuff on the recycling pile just a few years after everyone bought it? And don't forget how valuable broadcasting is, in terms of both entertainment and information. Without national television, our society would lose its thread of common daily experience, fractionalizing our nation as everyone ends up watching channels matching only their niche interests. Our democracy will perish from the earth as critical sources of news and information are extinguished, and our nation will be left to founder in emergencies when all the wired systems collapse from flood, fire, and earthquakes.

Public broadcasters noted multi-channel digital TV broadcasting is providing much more bang for the buck, allowing their stations to double and re-double the educational offerings delivered to the public. Hispanic broadcasters noted the growth of their service, including new networks. Low power stations, which no longer have their own organization to petition the FCC, cannot believe that their local and niche services might be silenced.

In other words, lobbyists are having an absolute feeding frenzy.

FH&H filed comments for one client noting that the entrenched interests might be framing the discussion in 20th century instead of 21st century terms, because each side is promoting its own interests, leaving the argument to be framed as “either/or.” Someone has to win, and someone has to lose. The FCC ends up as a referee, a role it should be reluctant to assume, given its past speckled track record. Its decisions usually end up in a judicial quagmire, with rules tailored better to the prior decade, when the rulemaking started, than to the current decade, when the rules must be applied.

In a digital world, all signals are made up of bits and bytes, so why can't we do almost anything we want with any spectrum? Perhaps a better approach would be to see how much spectrum can be used for “everything,” not “something.” If the FCC is guided by the public interest, it should strive to maximize the benefit obtained from every bit of spectrum capacity rather than making judgments based on who will pay the most for the opportunity, not only to provide service but also to block out competing service providers.

Increased access to broadband will undoubtedly spread education and access to information, with great value to our society, even though accompanied by scams and porn on the side. But broadcasting also plays a critical and highly valuable role in our society and is a more efficient way to deliver common content to a large number of people than transmitting the same content to multiple users each of whom uses spectrum to access a server. Why can't we do it all at the same time?

Will the FCC be able to envision the potential of developing technologies rather than the limitations of existing technologies, so that it can truly realize maximum efficiency by letting spectrum multi-task instead of single-task? The lobbying crowd is not likely to help the FCC along that path, and, unfortunately, those with the most money can afford to pay people to visit the FCC day after day after day, pounding home the message that what they want is surely most beneficial and important. If the FCC hears a half-way decent argument often enough, it is difficult for them to avoid starting to believe it. But in a digital world, the entire framework is different, because it is so much easier to mix and match. Can and will the FCC step up to the 21st century plate? Stay tuned.