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No competition? No problem!

FCC Approves Verizon Acquisition of Cable AWS Holdings

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In recent years the FCC could justly be accused of never having met a merger it didn't like. While regularly grousing, huffing, and puffing about consolidation in the wireless industry, the FCC has just as regularly approved all mergers and acquisitions that came before it, with the notable recent exception of the AT&T/T-Mobile merger. This "raise eyebrows but approve" policy is one of the reasons that the wireless industry in the United States is more consolidated than at any time since the break-up of the old AT&T more than 25 years ago.

By mustering up its resolve to derail the AT&T deal, the Commission gave hope to progressives that the FCC and Department of Justice had gotten some trust-busting mojo. But the FCC seems to have now retreated back into its "anything goes" posture. The most recent example is its approval of Verizon's acquisition of large chunks of AWS spectrum across the United States.

In a blockbuster deal, Verizon proposed to acquire a host of AWS licenses from SpectrumCo (composed of several major cable companies) and Cox Cable, who had bought the licenses in a 2006 FCC auction. The cable companies had intended to use the spectrum to launch their own wireless operations in competition with the major cell phone carriers. After years of trying unsuccessfully to develop a workable business model, however, they decided to throw in the towel and sell out to Verizon. In a separate component of the deal, Verizon sought to acquire 30 or 40 PCS and AWS licenses from Leap Wireless in exchange for Verizon's 700 MHz license in Chicago. When it became clear that there was some pushback from the Commission, Verizon quickly entered into a deal with T-Mobile to offload 47 of the AWS licenses

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After settling for $1.25 million . . .

Does Verizon Still Charge for Tethering?

By Mitchell Lazarus
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Remember the debate about "network neutrality": the principle that an Internet service provider should not discriminate among Internet sites or technologies? Verizon Wireless remembers; in August it agreed to pay $1.25 million to settle an alleged violation. But our own very limited testing suggests the alleged violation may persist even now.

Verizon's problems began not with the network neutrality rules governing all Internet providers – those remain to be adjudicated – but with a specific rule that applies only to certain wireless companies.

At around the time the neutrality debate was first heating up, the FCC was busy making plans to auction the 700 MHz band for mobile data applications. At Google's instigation, the FCC imposed a limited neutrality rule on one portion of the 700 MHz spectrum, called the "C Block." Licensees on those frequencies, said the FCC, "shall not deny, limit, or restrict the ability of their customers to use the devices and applications of their choice . . . ." When the C Block spectrum was auctioned off, Google bid up the price to the FCC's minimum and then dropped out, leaving Verizon to take the spectrum in most places.

Skip ahead a few years, while Verizon builds out its C Block facilities. . . .

Sometimes we all need Internet access for a laptop at a place with no Wi-Fi. One solution is to "tether" the laptop to a cell phone via cable or Bluetooth, so the laptop obtains Internet connectivity through the phone. The cell carriers charge extra for this. (We never understood why; since you are paying for the data anyway, we don't see why the carrier

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Inside this issue

Is limited liability really "limited"?

Piercing the Corporate Veil, FCC-Style

By Christine E. Goepp
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(Editor' s Note: The two articles in this issue of FHH Telecom Law by Christine Goepp represent her last contributions to our publication. Christine has accepted a position with the FCC where we hope she will be able to contribute the same intelligence, good humor and literary craftsmanship that she has contributed to these pages. We wish her well in her new endeavors.)

Many, probably most, FCC licenses are not held by individuals. Rather, they're held by organizations – corporations, or their near relations, limited liability companies, and the like. You might assume that corporate law protects individual shareholders in the FCC's regulatory sphere in the same way that it does in the court system.

You would be wrong.

A recent Commission decision (*In the Matter of Telseven, LLC*) indicates that in some circumstances the FCC can – and will – look beyond the corporate form and hold shareholders personally liable for licensee obligations, even in situations where a court wouldn't ordinarily be expected to.

Whether you love them or hate them, corporations are a prominent feature of the American economic landscape. A corporation is a legal "body" – an entity separate and independent from the individual people who own and control it. A corporation's debts and liabilities come out of the company coffers; investors and owners can lose only as much as they put in.

The protected investors are not the only beneficiaries of this system. The broader economy, which affects everybody, wins, too. The centuries-old theory is that "limited liability" stimulates investment and keeps the economy bustling; would-be investors know that no matter how bad things go at the corporate level, their personal bank accounts (and houses, and cars) won't be snatched up to cover the liabilities of the corporation.

But the principle of limited liability doesn't always comport with the FCC's idea of regulatory justice. Take the case of telecom company Telseven, a limited liability company.

Under FCC investigation for various alleged Universal Service Fund (USF) violations, Telseven declared bankruptcy. So the FCC disregarded the Telseven entity and held its sole owner and director, Mr. Patrick Hines, personally liable for a proposed $1.7 million fine. In doing so, the FCC applied a legal standard unlike the strict standard used by the courts in those exceptional circumstances when they opt to "pierce the corporate veil".

While the law varies by state, a court that "pierces the corporate veil" generally tries to determine whether a corporation is anything more than an "alter ego" of its dominant shareholder. The court typically checks to see whether corporate formalities (holding of board meetings, etc.) have been ignored, personal and business funds have been commingled, and/or the company has been unduly under-capitalized. The court also considers whether strict adherence to the concept of "limited liability" would promote fraud or produce an inequitable result. According to the Supreme Court, the corporate veil is to be pierced only in "exceptional circumstances." Under these judicial standards, it is – and should be – difficult to justify "piercing the corporate veil."

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Aliens among us

FCC Complicates, Simplifies Foreign Ownership Rules

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We reported last year that the FCC initiated a rule-making proceeding to consider how it might facilitate foreign ownership of licensed common carriers. And we reported last spring that, in the initial rounds of that proceeding, the FCC received some industry feedback that its foreign ownership rules were limiting or hindering foreign investment unduly. As FCC veterans know, the Communications Act imposes certain restrictions on the ownership of broadcast and common carrier licenses by aliens. Specifically, Section 310(b)(3) of the Act forbids aliens from directly owning more than 20% in such licenses. Section 310(b)(4) precludes aliens from controlling a company that directly or indirectly owns more than 25% of such a license unless the FCC approves the ownership.

Three score and 18 years after the Act came into being, the FCC has now taken a fresh look at those provisions. It had previously decided that Section (b)(3) actually applies to *indirect* ownership interests even though, unlike Section (b)(4), Section (b)(3) doesn't say that. The FCC has interpreted Section (b)(3) to apply when the alien entity does not control the licensee, while (b)(4) applies only when the alien *does* control. Non-controlling alien ownership interests between 20% and 50% were out of luck since an alien with an indirect 30% ownership interest would exceed the permissible level for non-controlling entities banned by (b)(3) but would not have the control necessary to permit the ownership to be approved.

This interpretation presented a strange anomaly: an alien could indirectly own a *controlling* interest in a company so long as the FCC approved it, but an alien couldn't own a *non-controlling* interest between 20 and 50% under any circumstances. And indirect interests between 20% and 25% fell even deeper into the Twilight Zone – such interests in controlling entities seem to be fully permissible under (b)(4) without any FCC approval at all, but the same interests in non-controlling entities are completely

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War of the Words (as H.G. Wells rolls over . . .)

Coalition Urges Greater Alien Welcome

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Hot on the heels of the FCC's recent liberalization of the restrictions on alien ownership of common carrier licensees (*see* the other story on this page), a group dubbed the Coalition for Broadcast Investment (the Coalition) has filed a petition seeking similar leeway for broadcast licensees. The Coalition is an ad hoc group comprised of minority-oriented station owners as well as some of the largest multi-station group owners in the country. The Coalition's petition is styled as a "Request for Clarification" of the Commission's policy with respect to alien ownership of broadcast stations, but it's effectively a petition for a declaratory ruling on the issue presented.

As explained in the companion article, in August the FCC released an order designed to clarify the power of the Commission to authorize significant indirect, non-controlling foreign interests in common carrier licensees. The August order addressed the fact that, as interpreted by the FCC, Section 310(b)(3) of the Communications Act bars aliens from indirectly owning 20% to 50% of a radio licensee but Section (b)(4) permits indirect alien ownership – with prior FCC approval – of *controlling* interests in radio licensees. The FCC dealt with this odd anomaly by "forbearing" from enforcing the Section 310(b)(3) restriction on non-controlling alien interests.

There were two catches to this solution.

First, the FCC's authority (found in Section 10 of the Communications Act) to forbear applies only to *common carrier* licensees – not broadcasters. So even if it had wanted to, the FCC could not have ceased enforcement of the non-controlling interest prohibition as it applies to broadcasters. But there's the rub: as far as we can tell, the FCC didn't *want* to allow greater alien involvement in broadcast licensees. It has traditionally refused to countenance even non-controlling alien ownership interests of greater than 20% in broadcast licensees. This despite the fact that Section 310 (b)(4) of the Act expressly grants the Commission the discretion to make a determination as to whether control of

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Overall Backhaul Overhaul II

Further Fine Tuning For Fixed Microwave Rules

By Christine Goepp
Former FHH associate attorney

August must have been the unofficial "wireless backhaul" month over at the FCC. Following up on last summer's "overall backhaul overhaul," the FCC has now taken further steps to make life easier for Fixed Service wireless operators.

Fixed wireless is a low-profile yet indispensable component of the nation's communications infrastructure, serving a wide variety of entities and industries. It helps to balance the electrical grid, coordinate the movements of railroad trains, and transmit emergency calls to local police and fire personnel. It moves business data for companies with dispersed locations, such as financial companies, chain stores, restaurants, hotels, airlines, and car rental companies.

Increasingly, fixed wireless links are used as "backhaul" for mobile communications, carrying signals between central network facilities and cell towers, particularly where wireline is impractical, as across rough terrain or dense urban buildup. In other words, wireless backhaul helps get that cat video to your smartphone or tablet. Anyone who doubts the ubiquity of fixed microwave need only note the vast numbers of sideways-facing dishes and domes on radio towers, water towers, and buildings.

As important as Fixed Service links are, however, we suspect that the technical minutiae of the FCC's latest action is of interest to relatively few readers. Therefore, we are providing just the highlights. (If you want to know more, you can read the Order or contact us for details.)

Basically, the FCC expands on last summer's rule changes by authorizing smaller antennas and wider channels. It also updates microwave efficiency standards to reflect the current predominance of IP networks.

Smaller antennas. The Order establishes a new antenna category, "Category B2," which allows smaller antennas at 6, 18, and 23 GHz. (The former Category B, now dubbed "Category B1," has a different, alternative set of parameters.) The FCC's rules do not actually dictate antenna size, but set various other technical parameters, like beamwidth and radiation suppression, that directly affect antenna size. Smaller antennas pose a regulatory dilemma: on the one hand, operators like them because they are cheaper to manufacture, install, and maintain; plus, they generate fewer zoning and aesthetic objections. On the other hand, a smaller antenna cannot create as focused a beam as a larger one, resulting in greater potential interference with other antennas and potentially less efficient use of the spectrum. Also, on the receive side, smaller antennas are more sensitive to interference from sources away from the centerline of the antenna.

The FCC has historically struck a compromise: if a smaller antenna causes interference to another operator, it must upgrade to meet a higher set of standards that provide for a tighter beam ("Category A"). The new rules apply the same solution to Category B2. But the FCC does not impose a set time period for interfering antennas to upgrade, an omission that can lead to squabbles among operators. In a Second Further Notice of Proposed Rulemaking (SFNPRM) included as part of its decision, the FCC asks whether it would make sense to require interfering smaller antennas to upgrade just enough to resolve the interference, rather than having to meet full Category A standards. While perhaps a temporary benefit to the interfering operator, this proposal risks making Category A a nullity, and could create multiple rounds of foot-dragging and negotiation in getting an interfering antenna to upgrade.

Wider channels in the 6 and 11 GHz bands. The FCC will now allow Fixed Service operators to "stack" two adjacent channels to create a wider channel in the 6 and 11 GHz bands. One advantage of a wider channel over a channel pair is less hardware: an operator only has to generate one radio signal. It also offers more efficient use of the channel. A radio signal can't occupy the entire channel width, and must leave a space between two channels. A "double-wide" channel eliminates this unused center band.

Updated efficiency standards. Time was, all of the data transmitted on a radio link was "payload." Communications were synchronized, so the receiver knew what to do with each bit coming from the transmitter. In a packet-switched world, however, each packet carries routing instructions and other network information in addition to its actual content. The link also transmits data used to establish and maintain the connection (such as forward error correction). Accordingly, the FCC has adopted a new definition of "payload capacity" as "the bit rate available for transmission of data over a radiocommunication system, *excluding overhead data* generated by the system" (emphasis

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Now in Effect: CMAS Testing/Record-keeping Requirements

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Back in 2008, the Commission devised the Commercial Mobile Alert System (CMAS) (a/k/a the "Personal Localized Alerting Network" (PLAN), a/k/a "Wireless Emergency Alerts" (WEA)). It's a voluntary service through which wireless providers deliver emergency alerts and warnings from FEMA to their customers. The FCC came up with the CMAS at Congress's direction in the Warning Alert and Response Network (WARN) Act. As we reminded the CMAS universe last March, the Commission's 28-month timetable for roll-out of the CMAS wrapped up on April 7, 2012.

Wrapped up? Well, not entirely, as it turns out . . . at least until now.

CMAS participants (*i.e.*, wireless providers who have chosen to participate in the FEMA-FCC joint effort) are subject to record-keeping and information-sharing requirements, according to related rules adopted in 2008. Under those rules, CMAS participants must receive and distribute monthly test messages sent from Federal Alert Gateway Administrator. In order to ensure that the system is working properly, the wireless provider's own gateway must send an acknowledgement to the Federal Alert Gateway upon receipt of these interface test messages. The provider must also maintain logs of these monthly tests.

As required by our old friend the Paperwork Reduction Act, such administrative burdens must be approved by the OMB, which they were – back in 2009. But, presumably because the FCC's 2008 orders setting up the CMAS provided that the testing and record-keeping requirements weren't set to take effect until the CMAS's full deployment, the effective date of those testing/record-keeping chores was put on ice for nearly three years. By the time the CMAS finally went live in April, 2012, the fact that OMB had signed off on the testing/record-keeping end of things three years earlier appears to have been overlooked. Whatever the reason, the Commission didn't bother to issue a Federal Register notice of OMB's 2009 approval, and as a result, the testing/record-keeping requirements didn't kick in in April, along with the rest of the CMAS.

But they've kicked in now. A notice of OMB's approval of those requirements made it into the Federal Register, and they were effective as of July 13.

***(Backhaul Overhaul** - Continued from page 4)*

added).

Similarly, the FCC has changed the existing minimum efficiency standards, which used to reflect the number of voice circuits a channel of given width must carry. The new rules incorporate efficiency standards based on bits per second per hertz. This approach is not only technology-neutral, but is scalable to any channel width.

Second Further Notice of Proposed Rulemaking. The SFNPRM seeks comment on: (1) allowing smaller antennas in the 13 GHz band as well as at 6, 18, and 23 GHz; (2) clarifying the circumstances under which an 11 GHz licensee can reduce power instead of upgrading the antennas; and (3) allowing licensees to upgrade only to the extent needed to resolve interference, rather than being required to upgrade to full Category A standards as currently required.

Notice of Inquiry In case these updates didn't manage to completely catch the rules up to the technology, the Commission has indicated that it is prepared to step back and rethink its antenna regulations from the ground up. A Notice of Inquiry invites a "broad discussion of our microwave antenna standards" – in part to accommodate non-traditional technology, such as non-parabolic antennas.

If you want to give the FCC the benefit of your thinking on the Commission's proposals, you have until ***October 5, 2012*** to get your comments in. Reply comments are due by ***October 22, 2012***.

FedReg publication of the report and order establishes the effective date of the rule changes adopted in that report and order . . . for the most part. All of the newly-adopted rules will take effect on ***October 5, 2012***. All, that is, except for the "Rural Microwave Flexibility Policy," which provides for waiver of the spectrum efficiency requirements for links in rural areas. Because that policy includes "information collections" that have to be run past the Office of Management and Budget first for its approval (thanks to the Paperwork Reduction Act), the policy won't become effective along with the rest of the rules. Rather, the FCC and OMB will afford the public further opportunities to comment on the flexibility policy. If OMB gives it the thumbs up, the FCC will publish a notice to that effect, specifying a separate effective date for the policy. Check our blog (www.CommLawBlog.com) for updates.

Coming soon to an Internet near you?

New Broadcast-Related Top Level Domains Proposed to ICANN

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(Editor's Note: Kathy Kleiman, who joined FHH earlier this year, makes her first appearance in these pages. Kathy is a recognized expert in Internet domain names, having participated actively in the proceedings that now govern Internet name usage, registration and disputes. In the two articles comprising this spread she keeps us up to date on Internet developments. Look for additional articles in the future as the issuance of new "gTLDs" proceeds.)

The Internet space is a-changin'. Earlier this year ICANN (the Internet Corporation for Assigned Names and Numbers) accepted applications for "new generic top level domains" or "new gTLDs." ICANN received 1,930 applications. The full list of proposed new gTLDs (and their applicants) is available on the ICANN website (http://newgtlds.icann.org/en/program-status/application-results/strings-1200utc-13jun12-en). As the following list of examples demonstrates, applicants include a number of well-known entities, both in the U.S. and overseas:

American Broadcasting Corporation, Inc., applying for .ABC

British Broadcasting Corporation, applying for .BBC

BRS MEDIA, Inc. applying for .RADIO

The Christian Broadcasting Network, Inc., applying for .CBN

Comcast IP Holdings, LLC, applying for .COMCAST

Dish DBS Corporation, applying for .BLOCKBUSTER, .DATA, .DIRECT, .DISH, .DOT, .DTV, .LATINO, .LOCKER, .MOBILE, .MOVIE, .OLLO, .OTT and even .PHONE

European Broadcasting Union, applying for .EUROVISION and .RADIO

Frontier Communications Corporation, applying for .FRONTIER and .FTR

Lifestyle Domain Holdings, Inc., and its application for .FOODNETWORK

HBO Registry Services, Inc., applying for .HBO

Lifestyle Domain Holdings, Inc., applying for .HGTV

Dish DBS Corporation applying for .LATINO

Japan Broadcasting Corporation applying for .NHK

Limited Telefonica applying for .TELEFONICA

QVC Inc. applying for .QVC

Qatar Telecom (QTel) applied for .Qatar in two variations of Arabic, taking advantage of recent Internet changes that allow top level domains to be in a range of languages and scripts.

In addition, companies both broadcasting and non-broadcasting, applied for a range of general terms often associated with broadcasting. For example:

Proposed gTLD's	**Applicants**
.AUDIO	Holly Castle Uniregistry
.MEDIA	Grand Glen Tucows TLDs Uniregistry
.MUSIC	Entertainment Names Charleston Road Registry (Google) Victor Cross Amazon EU dot Music Limited DotMusic/CGR E-Commerce Ltd DotMusic Inc. .music LLC
.NEWS	Hidden Bloom Amazon EU dot News Limited DotNews Inc. PRIMER NIVEL Merchant Law Group Uniregistry

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In the works: an alternative to .COM for the radio biz

.RADIO

A look at the four contenders for control of the TLD

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As noted in the companion article in this spread, the Internet Corporation for Assigned Names and Numbers (ICANN) received 1,930 applications for new top level domains (TLDs) – including dozens of applications for broadcast- and media-related applications including .MEDIA, .MUSIC and .VIDEO.

But the four applicants for .RADIO caught our eye. They seek to offer services to radio broadcasters around the world, and may well change the way radio broadcasters operate, both on the Internet and offline. Their applications merited a closer look.

Before diving in, we need to define a number of terms that are central to the TLD system.

First, "Registry". In ICANN parlance, a registry is an entity which, under contract to ICANN, provides the authoritative master database of a single TLD and manages all "second-level" domain names registered within that TLD. Example: ".COM" is a TLD, and "FHHLAW.COM" is a second-level domain name registered with the ".COM" TLD. Verisign is the Registry for .COM. Registries may not generally sell directly to the public. Each of the four .RADIO applicants is seeking to be the registry of .RADIO.

Next, "Registrar". A registrar is an entity accredited by ICANN and under contract to a Registry. The registrar adds, deletes, updates and transfers second-level domain names. Registrars are the "salesmen" of domain names. GoDaddy is the largest registrar in the world.

When it comes to new TLD applications, there are two types:

A "community-based designation" application. The applicant promises to operate its proposed new TLD for the benefit of a "clearly designated community"; and

A standard application. Successful "standard" applicants may use the new TLD in any manner consistent with general requirements and criteria, but are not otherwise constrained in the way that successful "community-based designation" registries will be.

The four applicants seeking to be registries of .RADIO are **BRS Media (BRS), Affilias Limited (Afilias)** and **Tin Dale, LLC (Tin Dale)** – each of which submitted "standard" applications – and **Eurovision Broadcasting Union (EBU)** – which seeks special status as a "community-based designation." Let's take a look at each.

Interestingly, the NAB is not listed as supporting the EBU application.

BRS, a "media e-commerce company" based in San Francisco, is owned and operated by George Bundy. In 1998, when the Internet was young, Bundy and BRS embarked on an innovative plan to affiliate with two country codes, the Federated States of Micronesia (assigned .FM as its country code) and Armenia (assigned .AM). With permission of those countries, BRS began offering .AM and .FM domain names and email addresses to broadcasters. Now BRS wants to add .RADIO to its portfolio. "Inc." magazine lists BRS as one of the "5,000 fastest-growing private companies" in the U.S.

Afilias is a well-known TLD operator and service provider in the Internet Community. Incorporated in Dublin, it runs a large office in Philadelphia and has operations in Toronto and New Delhi. Afilias is the registry of the .INFO and .MOBI top level domains. It also provides "back-end services" to enable the technical operations of other TLDs (.ORG, .ASIA, .AERO (for airline and aviation)) and some country codes (*e.g.*, .MN (Mongolia), .AG (Antigua and Barbuda) and .BZ (Belize)). Directly or through affiliates, Afilias has applied for 31 new top level domains, including .BLOG, .WEB and .POKER, along with .RADIO.

Tin Dale is an affiliate of **Donuts, Inc.**, and named for one of the company's founders, Richard Tindal.

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More tips from the NLRB

Coping with Social Media in the Workplace II

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A couple of years ago we urged readers to consider developing, sooner rather than later, policies relating to their employees' use of social media. That's because, whether employers like it or not, their employees are using social media, and that use can put the employer's business at risk. Better to get ahead of the problem than have to play catch-up ball when an employee's careless or calculated online behavior causes problems.

Then last year the Acting General Counsel of the National Labor Relations Board (NLRB) issued a report that shed considerable light on the types of social media activities that are protected from sanction by employers. This report provided multiple illustrations of the limits on an employer's after-the-fact ability to sanction an employee's online activities.

This summer the NLRB's Acting GC issued yet another report. (And, by the way, just how many helpful memos does Lafe Solomon have to produce before he can get "acting" removed from his title?) This one focuses on social network policies adopted by employers, identifying various limits to which such policies are subject. It provides useful guidance to all employers – those who have already formulated a social media policy and those who haven't but expect to be doing so soon.

The most important take-home message from the NLRB: even the most seemingly benign policies can run afoul of employees' rights. That's the lesson that some Very Familiar Corporations – companies like Target, General Motors, DISH Network, among others – learned the hard way. In fact, of the seven companies whose social media policies the NLRB reviewed, only Wal-Mart passed with flying colors.

As far as the NLRB is concerned, an employer's social media policies must be consistent with Section 8 of the National Labor Relations Act (the Act). Section 8 prohibits imposition of a rule or policy on employees if that rule/policy "would reasonably tend to chill employees in the exercise of their Section 7 rights." In this context, the term "Section 7 rights" refers to the types of "protected activities" or "concerted activities" described in our CommLawBlog post last October. (Feel free to check back there now to refresh your recollection. Don't worry, we'll wait for you.)

The NLRB uses a two-step inquiry to determine whether Section 8 is violated. Most obviously, a social media policy that clearly restricts Section 7 rights is impermissible. But a policy may also be unlawful if: (1) employees would reasonably construe the policy's language to prohibit Section 7 activity; or (2) the policy was promulgated in response to union activity; or (3) the policy has been applied to restrict the exercise of Section 7 rights.

Consistent with the way we treat the right to free speech in this country, the NLRB looks to encourage speech and frowns on corporate policies that punish or discourage speech. So if a company's social media policy is so broad and/or ambiguous that it could be read possibly to penalize lawful speech, the rule violates the National Labor Relations Act.

Here are some examples:

Target's social media policy required employees not to "release confidential guest, team member or company information". It also cautioned employees not to: share confidential information with other employees unless they "need the information to do their job"; or "have discussions regarding confidential information in the breakroom, at home, or in open areas and public places."

All that may sound reasonable – after all, isn't it OK to try to keep "confidential" information "confidential"? – but the NLRB thought otherwise: "Employees would construe these provisions as prohibiting them from discussing information regarding their terms and conditions of employment." Indeed, such discussions would most likely occur in precisely the places (breakroom, home, open areas, public places) specifically singled out in the policy. So the Target policy violated Section 8.

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Target's policy also advised employees that it was their "responsibility" to report "unauthorized access" to, or "misuse" of, confidential information. Again, what's not to like about that? But the NLRB decided that that provision seemed to threaten employees for not bringing to the employer's attention violations of the prohibitions discussed above. Since the NLRB had found those prohibitions to be invalid, the NLRB figured that Target's reporting requirement was equally invalid.

GM's policy discouraged "[o]ffensive, demeaning, abusive or inappropriate remarks," and cautioned GM employees that Internet posts about GM must be "completely accurate and not misleading" and must not "reveal non-public company information on any public site." The term "non-public company information" was defined to include such matters as GM's financial performance and personal information about other employees, such as "medical condition[s], performance, compensation or status in the company."

The Act allows employees to say things that are not entirely accurate, as long as they are not "maliciously false."

Again, these might look like reasonable limitations intended to protect GM and its employees. Not so, said the NLRB. The Act allows employees to say things that are not entirely accurate (not to mention "offensive, demeaning, abusive or inappropriate"), as long as they are not "maliciously false." Thus, GM's insistence on "complete accuracy" was not permitted. Similarly, broad categories like employee performance, compensation and corporate status encompass topics related to Section 7 activities, so GM couldn't properly prohibit online discussions of such matters. Nor could it generally bar the posting of photos, music, videos, and the quotes and personal information of others, or use of GM logos or trademarks – since all such postings could reasonably include Section 7 activities.

The NLRB also didn't like GM's admonition that its employees should "[t]hink carefully about 'friending' co-workers", since that could discourage communications among co-workers. Ditto for a provision that urged employees to check with company officials if the employees had any doubt about whether particular information should be posted. It's long been an NLRB no-no to require employees to get company permission before they can engage in Section 7 activities.

The McKesson Corporation's social media policies instructed employees to adopt a "warm", "friendly" and "professional" tone, and not to "pick fights". All nice thoughts, maybe, but all illegal, according to the NLRB. McKesson was concerned that, absent a warm, friendly, professional tone, online discussions "could become heated or controversial." Since discussions of working conditions, unionism and similar matters – all obviously Section 7 activities – could easily become "heated or controversial", the NLRB figured that employees could "reasonably construe this rule to prohibit robust but protected discussions about working conditions or unionism."

The policies adopted by Clearwater Paper Company suffered several of the problems described above. Employees were told not to reveal "confidential", "proprietary" or "material non-public information", terms which the NLRB concluded could include communications permitted by Section 7. The NLRB gave similarly short shrift to a provision forbidding employees from opining about "the workplace, work satisfaction or dissatisfaction, wages hours or work conditions." No surprise there. Likewise to a provision warning employees to "avoid harming the image and integrity of the company" – overbroad, said the NLRB.

The NLRB reviewed social media policies from several more companies, but you should get the point by now: drafting a legal (and enforceable) policy governing your employees' use of social media is a complicated process requiring awareness or and sensitivity to a wide range of factors. Even seemingly innocuous and unobjectionable provisions can turn out to be quite the opposite.

The NLRB was not totally dismissive of all the various policies. Clearwater, for example, prohibited online "harassment, bullying, discrimination, or retaliation" between co-workers online if such conduct would not be permissible in the workplace, even if the online conduct were done "after hours, from home and on home computers." According to the NLRB, this prohibition is OK because it applies only to plainly egregious content.

The NLRB also gave the thumbs up to Target's admo-

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*(**Coping with Social Media** - Continued from page 9)*

nition that employees should "[b]e suspicious if asked to ignore identification procedures." That simply encouraged vigilance without threatening disciplinary action for engaging in Section 7 activities. Similarly, the NLRB approved a provision in McKesson's policy reminding employees that statements made in the online world have consequences and that employees should exercise personal responsibility on social media. The NLRB didn't see such reminders as restricting speech in the least.

And the NLRB seemed OK with policies that are narrowly tailored to protect the company's right to speak for itself. So, for example, an employer *can* require employees to get prior authorization before posting a message *in the employer's name* or if the message can be reasonably attributed to the employer. And an employer can require an employee to expressly state that the employee's messages are the employee's own and do not represent the employer's positions, strategies or opinions.

The NLRB's overall approach is clearly slanted toward protecting the rights of employees.

Still, the NLRB's overall approach is clearly slanted toward protecting the rights of employees. Indeed, in several of the cases described in the NLRB's most recent memo, the agency disapproved of seemingly routine, boilerplate "savings clauses" that simply said the social media policy would be administered in compliance with all laws and regulations. The purpose of such clauses is normally to underscore the company's good faith intent to abide by the law. The idea is that, if any other provision of the policy might be thought improperly ambiguous or overbroad, the "savings clause" will establish conclusively that the policy is to be interpreted as necessary to make it legal.

According to the NLRB, though, such boilerplate provisions will not ordinarily save a company's social media policy where that policy contains the types of overbroad provisions described above, *i.e.*, provisions that might reasonably be seen as chilling employees' exercise of the Section 7 rights.

So here are just a few takeaways drawn from the recurring themes we saw through these cases:

- ✔ Content-based restrictions on employee speech, no matter how well-intentioned, can – and often will – step on protected speech. Such policies need to be crafted with imagination and a clear eye to the unintended consequences of those restrictions. When you think you've crafted the restriction narrowly enough, think again – and then add limiting language and clarifying examples.
- ✔ If a restriction on employee speech fails, a requirement that employees report when others violate that restriction will fail as well.
- ✔ Suggesting that employees aspire to beneficial use of social media may be OK, particularly if that aspiration includes no threat of punishment.
- ✔ You cannot require employees to get pre-approval for social media messages posted in the employee's own name, but you can require them to get such pre-approval for – or refrain entirely from engaging in – speech that purports to be on behalf of the company.
- ✔ A generalized savings clause is nothing more than a lazy shortcut that won't actually help you.

But the main takeaway is this. Drafting a company's social media policy is a surprisingly difficult task, but a necessary one nonetheless. There are pitfalls galore, even for those with the best of intentions. Before wading into the deep weeds of the drafting process, a company wishing to adopt a social media policy – or revise an existing policy – should seriously consider seeking expert assistance. There are myriad subtleties and conflicting considerations that must be weighed and balanced and, as we have seen in the NLRB memo, even the biggest corporations came up short.

***(Alien Ownership Forbearance** - Continued from page 3)*

and irremediably banned under (b)(3). Commissioner Pai recognized this problem in his statement accompanying the Order: the Commission's interpretation of the statute leads to "absurd" results.

The Commission could have easily dealt with this situation by simply declaring that: (a) Section (b)(3) is limited to direct ownership interests, as it appears to be by its terms; and (b) Section (b)(4) applies only when the indirect alien ownership is a controlling one, again, as the actual language of the statute indicates. This would have: (i) left (b)(3) to bar direct alien ownership interests above 20% entirely, as Congress seems to have intended; (ii) permitted indirect but non-controlling alien interests of any level without the need for FCC approval at all; and (iii) allowed the FCC to approve indirect controlling alien ownership interests where more than 25% of the stock is owned by aliens upon a proper showing. That would have been a simple and straightforward construction of the statute, reducing the need for FCC alien ownership rulings – and alien angst – significantly; it would also have applied both to broadcast and common carrier licensees. (*See* the second article on this page reporting on a petition to expand reach of Section (b)(4) to embrace broadcast licenses.)

The Commission did not, however, take that approach.

Instead, apparently unwilling to abandon its historical interpretation, the FCC had to devise a complicated fix. Its solution was to "forbear" from enforcement of the statute as it had interpreted it. The Act permits the FCC to forbear upon certain findings from enforcing statutory mandates with respect to common carriers but not with respect to broadcasters. The FCC made the necessary findings and concluded that it would forbear from enforcing the ban on indirect non-controlling alien ownership between 20% and 50% upon a showing by the alien similar to the public interest showing required under current procedures when an alien seeks approval under Section (b)(4). This approach does have the salutary effect of treating all indirect ownership interests above 20% in a consistent way. It also eliminates the confusing doughnut hole between 20% and 25% that had existed before. The only problem is that aliens now have to seek prior FCC approval before acquiring non-controlling indirect interests that the Act on its face seemed not to care about at all.

Wasting no time, the Commission published its report and order in the Federal Register less than a week after that report and order was adopted – meaning that the new approach became effective as of August 22, 2012.

The FCC declared that its newly-adopted approach "will clarify and simplify Commission regulation of foreign ownership of common carrier licensees, thereby facilitating investment from new sources of equity financing and enhancing opportunities for technological innovation, economic growth, and job creation." What do you think?

***(War of the Words** - Continued from page 3)*

broadcast licensees by aliens is in the public interest or not. This broadcast-specific xenophobia seems to have been rooted in the classic sci-fi conceit that aliens, through their insidious control of broadcast stations, could take over American brains – much like advertising, but for purposes of evil rather than profit .

But now the Coalition, representing a broad sample of American broadcast entities, has decided that the time has come to revisit this policy.

The Coalition's petition requests that the Commission declare that, rather than simply closing its ears to any petitions for alien control of broadcast licensees, it should now conduct a case by case review of whether such ownership is in the public interest – as the statute has always contemplated and allowed. In support of this change in policy, the Coalition points to a number of persuasive factors: the diversified and fragmented media market that now diminishes the potential dominance of broadcast stations; the significant benefits to the industry which would accrue from foreign investment in broadcast stations; and the current U.S. policy which in all other spheres of the economy *encourages* offshore investment in U.S. assets.

Of course, even if the FCC were to agree with the Coalition here, aliens would still be left without the right or opportunity under any circumstances to own greater than 20% non-controlling interests in broadcast licensees, since, as noted above, the forbearance action taken by the Commission for such interests does not cover broadcast licensees. Still, the relief sought by the Coalition would be a solid step in the direction of rationalizing and regularizing the treatment of aliens under our communications laws.

The Coalition petition was filed on August 31. To date, the Commission has not yet requested public comment on it.

(*.RADIO Applicants - Continued from page 7*)

Donuts, a 2010 Delaware corporation, lists its offices as Bellevue, Washington, and was founded by leaders of the Registrar community (entities, such as eNom, which sell domain names). Donuts raised $100 million in venture capital and applied for a whopping 307 TLDs, including .SHOP, .COMPUTER AND .FILM, in addition to .RADIO.

European Broadcasting Union (EBU) describes itself as a "well-known professional association of national broadcasters that negotiates and advocates for interests of public broadcasters in Europe." Created in 1950 and based in Switzerland, it is chartered as a not-for-profit association and an international non-governmental organization. It is also one of 700+ "sector members" of the International Telecommunications Union, which advise the ITU on technical standards.

In its application, each applicant is required to describe the mission and purpose of the proposed TLD as envisioned by the applicant. On that point the various applicants' respective proposed uses of .RADIO have a similar ring:

In most TLD contests, ICANN's policies provide for an auction. However, the .RADIO situation is different.

BRS would "provide all those interested, worldwide, in disseminating or seeking information, whether non-commercial or commercial, issues, news, culture, lifestyle, entertainment, sports or any other topic with a convenient & recognizable domain name that associate them and/or their information with On Air & Online (net) Radio."

Afilias proposes "an Internet space which will become the easily recognizable gathering place for existing and planned radio stations and podcasters to create trusted and easily accessible online content, and ease of access for people searching for specific topics or radio formats."

According to Tin Dale, the .RADIO TLD would be "attractive and useful to end-users as it better facilitates search, self-expression, information sharing and the provision of legitimate goods and services. . . . This TLD is a generic term and its second level names will be attractive to a variety of Internet users."

EBU would operate .RADIO "on behalf of the global Radio community, in order to provide it with a trusted and secure name space to facilitate its transformation into the next generation radio industry."

Despite any similarities, though, the offering of the domain names – a process ICANN calls the "roll-out" – would be quite different, depending on which of the four applicants prevails. Afilias, Tin Dale, and BRS all propose "open registrations" which would allow *any* company, organization or individual to register its second-level domains within .RADIO, for a fee. The EBU application, by contrast, promises a much more restrictive registration policy. Its initial registration period would be limited to existing broadcasters, trademark owners and others already engaged in "radio"-related activities. Specifically, EBU will consider the "radio community" to be:

1. Broadcasters' Unions

2. Licensed Radio Broadcasters

 2.1 International Broadcasters

 2.2 National Broadcasters

 2.3 Regional Broadcasters

 2.4 Local Broadcasters

 2.5 Community Broadcasters

3. Trademarks

 3.1 Trademarks used for radio related activities for example companies providing specific services, equipment, radio programmes, etc.

 3.2 Defensive registrations by non-eligible applicants

4. Internet radio

5. Licensed amateur radios and clubs

6. Radio professionals

7. Above categories for expanded name selection when not protected by trademarks.

Who will ICANN award the .RADIO TLD to?

In most TLD contests, ICANN's policies provide for an auction. However, the .RADIO situation is different. As noted, EBU opted for a "community-based designation" to represent and serve the worldwide community of radio broadcasters. This choice exposes EBU's application to close scrutiny by ICANN's special evaluation panel, but offers potentially high rewards. If EBU's application survives that scrutiny, its community application will take priority over other competing applications. No auction –

(Continued on page 13)

***(Verizon AWS Acquisition** - Continued from page 1)*

it would otherwise be getting from the cable companies. This lessened Verizon's spectrum agglomeration considerably in key markets.

In its73-page (not including appendices) Order, the FCC candidly assessed and acknowledged the problems posed by Verizon's acquisition. The Commission noted that other carriers already have problems negotiating roaming deals with Verizon and that the originally proposed acquisition "would constitute a concrete potential harm to future competition." It found that the acquisition of AWS spectrum "causes significant competitive concerns." It found that the operating agreement between Verizon and the cablecos "had the potential to reduce competition and harm consumers." All these considerations seemed to call for denial of the proposal.

But the Commission backed away from denial by determining that palliative measures proposed by Verizon mitigated the various competitive concerns. Those measures included:

First, Verizon's proposal (noted above) to get rid of some of the AWS spectrum it was acquiring.

Second, Verizon's commitment (made to counter charges that it already had plenty of spectrum that it is warehousing) to an accelerated build out schedule for that block.

Third, a further Verizon commitment to make data roaming available on reasonable terms for five years, subject to lots of technical qualifications.

And fourth, a DOJ-imposed requirement that Verizon modify its operating arrangements with the cablecos to ensure that it and they would still have incentives to compete against each other.

To this observer, none of these sops thrown to the regulators really neutralized the significant competitive harms the Commission itself had identified. The voluntary roaming commitment, for example, is not only limited to a five-year term but simply replicates the current scenario where competing carriers are unable to agree with Verizon on what constitute "commercially reasonable" terms. (Full disclosure: FHH represents an opponent to the applications.) Interestingly, although Verizon announced in the course of the proceeding that it planned to sell off its 700 MHz A and B block holdings, the Commission did not insist on a commitment in that regard.

Also of interest is the Commission's treatment of Verizon's foreign ownership. Vodafone, a British company, owns 45% of Verizon Wireless. Under the analysis adopted by the Commission in its newly adopted Forbearance Order (*see* the related article on page 3), it is unlawful for alien entities to directly or indirectly own non-controlling interests greater than 20% of a common carrier licensee. To avoid that restriction, the FCC decided that it would in the future forbear from enforcing that portion of the Act as long as the Commission reviewed and approved the alien ownership, which the Commission promptly did here for Vodafone. (Prompt is right – it approved Verizon's foreign ownership within six days of the new policy being adopted. Now that's service!)

***(.RADIO Applicants** - Continued from page 12)*

.RADIO will be awarded to EBU.

But while EBU will allow US broadcasters to register in the .RADIO top level domain, would EBU – and the governance it would bring to .RADIO domain names and policies – truly serve, and be representative of, the worldwide broadcasting community? According to ICANN's Applicant Guidebook, a community-based applicant must "substantiate its status as representative of the community it names in the application by submission of written endorsements in support of the application." All of EBU's members submitted letters of support, as did the Association for International Broadcasting and other international groups. But interestingly, the National Association of Broadcasters did *not* send a letter of endorsement and is *not* listed as supporting the application.

This absence raises questions. Is EBU the best representative of the U.S. broadcasting community? Will EBU serve U.S. and world broadcasters fairly and equally? These are key questions for U.S. broadcasters to be asking as soon as possible – and sharing their answers promptly with ICANN.

*(**Piercing the Corporate Veil** - Continued from page 2)*

Historically, the FCC has not engaged in corporate veil piercing in the sense utilized by the courts, *i.e.*, to impose personal liability on an individual shareholder for a business organization's obligations. While the Commission has occasionally used the term "piercing the corporate veil," it has done so in various regulatory contexts (*e.g.*, attribution analysis) separate from the way the courts have traditionally used that term.

Indeed, when the FCC discussed imposing liability on a licensee shareholder in a 2010 decision, it expressly distanced itself from that traditional usage. In that case, Sprint and ICO were involved in a long-running dispute over whether ICO would help pay to relocate various broadcast incumbents from the 2000-2020 MHz band (a story for another day). Woops-a-daisy, said ICO, the subsidiary that holds our FCC licenses has gone bankrupt. Even if it does owe the money, it can't pay. Not so fast, said the FCC. The Commission was prepared to hold the subsidiary's owner (*i.e.*, ICO) liable for the sub's obligations, but *not* because the corporate veil could or should be pierced. Rather, the FCC coined a new phrase – "enterprise liability" – to describe its regulatory approach. According to the Commission:

> [Enterprise liability] is distinct from the standards for "piercing the corporate veil" or finding an "alter ego" under common law . . . [E]nterprise liability does not seek to make a parent corporation liable for the actions of its subsidiary, but rather recognizes in appropriate cases that the parent is liable for its own actions as part of the overall enterprise that it has created and operated.

In reaching that decision, the FCC relied on a 40+ year old case (*Federated Publications, Inc.*) in which it had declared that a parent corporation was responsible for fines against the subsidiary licensee. There the FCC found that a parent entity should be deemed a statutory "holder of the radio station license" – in other words, a "licensee" in and of itself, simply because the parent was the sole stockholder of the licensee. Powerful stuff, but it gets worse. The Commission went on to say that

> [w]here absolute control over a subsidiary licensee corporation resides in a parent, the parent must be prepared to assume full responsibility for the operation of the station in accordance with the Communications Act. Power and responsibility cannot be separated for our purposes, whatever the particular rule may be in different fields of law.

So much for limited liability in the world of communications.

But the *Federated Publications* case went largely ignored, even by the Commission, for more than 40 years. And even when the FCC cited it in the 2010 Sprint/ICO "enterprise liability" decision, neither case became a standard part of the FCC's enforcement repertoire. During this time, "piercing the corporate veil" as used by the FCC meant "taking cognizance of the existence of a shareholder," not "holding the shareholder liable."

But now we have the *Telseven* case.

In justifying its decision to tap Telseven's individual owner for the obligations of the organization, the FCC – apparently abandoning its "enterprise liability" approach – described its action as "piercing the corporate veil." But the difference between the administrative and judicial approach to "piercing the corporate veil" is not just semantic.

The FCC standard is dramatically lower than the judicial standard. For the FCC's purposes, in order to "pierce the corporate veil," all the Commission had to consider was whether: (1) there was a common identity of officers, directors, or shareholders; (2) there was common control between the entities; and (3) piercing the veil was necessary to preserve the integrity of the Communications Act and prevent the entities from defeating the purpose of statutory provisions.

The FCC standard is dramatically lower than the judicial standard.

Mr. Hines satisfied the first two elements of the test simply by owning and controlling the company. The third element was satisfied, said the FCC, because the USF rules would be "circumvented" by Mr. Hines unless the Commission "looked through Telseven's corporate structure." But under this standard, pretty much *any* sole owner of a licensee entity, whether that owner is an individual or organization, would be vulnerable to "piercing the corporate veil" so long as the FCC can claim some regulatory interest in doing so. The FCC might not *choose* to do so, but after *Telseven* there does not appear to be much of a legal brake on its *ability* to do so.

To be sure, the FCC's patience may have been sorely tested by the facts of *Telseven*. Not only did Telseven dive down the bankruptcy hole shortly before the FCC could snag it, but Telseven's numerous violations appeared to be the result of bad faith rather than inadvertence. Furthermore, Telseven's business model had more than a whiff of the forbidden practice of "cramming" – placing unauthorized,

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(**Verizon Tethering** - *Continued from page 1)*

should care what kind of device you use.) But those having a modicum of technical knowledge can download software that sets up tethering in a way the carrier cannot easily detect. Without detection, the tethering incurs no extra charge.

Verizon's alleged violation, and the basis of the consent decree that cost it $1.25 million, was twofold: Verizon assessed the extra charge for tethering in the C Block, and it required an app store to block access by Verizon Wireless customers to the software that evades this charge. Those actions, said the FCC, violated the C Block neutrality rules, presumably by limiting the devices customers can use. Verizon did not admit fault, but it did agree to train its personnel on the C Block rules and to write that $1.25 million check. (According to the consent decree, Verizon's payment was "a voluntary contribution" – we leave it to the reader to parse that particular terminology.)

Run your own experiment, if you have a C Block phone.

In principle, then, if you have a 4G phone that uses C Block, tethering should be free. (Caution: data caps still apply; and a laptop can burn through data a lot faster than a phone.)

Curious, we performed a very limited spot check to see whether Verizon had stopped charging its problematic $20 fee for tethering. What we found: in mid-September, several weeks after release of the consent decree – and possibly months after first hearing from the FCC – Verizon was still demanding $20 extra per month to tether a C Block phone. Eventually, we hope, they will push out updates to the phones that eliminate the charge.

If you live in the lower 48 or Hawaii and are ***not*** a Verizon Wireless customer, or don't have 4G service, you are out of luck. Tethering charges remain legal. If you ***are*** a Verizon Wireless customer, and want to check if your phone uses C Block, do the following:

1. Find the phone's FCC ID number – for a non-iPhone, usually under the battery. (Until the iPhone 5 actually appears, Verizon does not offer a 4G iPhone.)

2. Go to the FCC ID search page on the FCC website (http://transition.fcc.gov/oet/ea/fccid/). Enter the FCC ID number: the first three characters go in the first field, and all other characters in the second field. Scroll down and click on "Start Search."

3. On the next screen, inspect the right-hand column, which lists the frequencies on which the phone is authorized to transmit. Look for a number in the 776–787 range. If you find one, congratulations! You've got a C Block phone, and are probably entitled to free tethering (and maybe to free hot spot use as well). We say "probably" because your particular Verizon plan or location may not activate the C Block frequencies.

But even if you qualify, can you actually get free tethering and hot spot service? And refunds for past charges? Neither the FCC nor Verizon is saying.

Run your own experiment, if you have a C Block phone. Using the micro-USB to USB cable that came with the phone, connect the phone to a laptop, and turn both on. On the phone, go into Settings, and possibly More Settings or Advanced, looking for "USB Tethering." Tap it and see what happens. What happened to us was a "Sign up" screen inviting us to incur that $20 per month. (You can back away without starting the charge.) Let us know your own results by posting a comment on our blog (www.CommLawBlog.com).

On at least some app stores, software to bypass the tethering charges remains freely available, even for a Verizon phone. And besides pocketing the $20 per month, you will have the satisfaction of knowing that use of the software is probably legal, at least for you.

(**Piercing the Corporate Veil** - *Continued from page 14)*

misleading, or deceptive charges on a consumer's telephone bill. (The company offered "directory assistance" to consumers that called out-of-service numbers and then charged the call, at long distance rates, separately from the consumer's regular carrier charges—adding on, ironically, an additional charge for Universal Service Fund compliance costs.)

Perhaps, therefore, the *Telseven* case can be viewed as just a particularly strong reaction to a single apparently bad actor, and not the start of a trend. Nonetheless, the case raises questions that go to the very heart of corporate law and the legal meaning of what it means to be an FCC "licensee." It also raises policy concerns: if limited liability is meant to encourage investment, couldn't poking holes in that limited liability discourage investment in FCC-regulated companies, particularly if the hole-poking is performed pursuant to a less-than-crystalline standard? As the law of unintended consequences so frequently teaches us, an action that produces expedient results in one case may have more far-reaching deleterious effects than intended.

***(Broadcast-related dTLD's proposed** - Continued from page 6)*

.RADIO	Tin Dale, LLC European Broadcasting Union BRS MEDIA Afilias Limited
.VIDEO	Lone Tigers Amazon EU Top Level Domain Holdings Limited Uniregistry.

ICANN has numerous Evaluation Panels reviewing applications now. The review process is complex. It includes a wide range of technical and other factors, such as whether an applicant can handle the technical and financial requirements of running an Internet registry. (An Internet registry is the database for a gTLD, a critical part of the Internet infrastructure.) How complex is the review process? Very. By way of illustration, we're including a page from ICANN's 338-page gTLD Applicant Guidebook below.

Applicants who survive that initial review process may also face objections filed by governments and third parties. Such objections can be based (among other grounds) on the assertion of "legal rights" claimed by companies holding trademark interests in certain terms. One proposed gTLD to watch on that score is ".BET". Four companies have applied for .BET to run registries serving the gambling industry. Whether Black Entertainment Television will file a "legal rights objection" is anyone's guess.