

FCC Competition Update

THIS WEEK

Wireline Competition:

Commission Seeks Comment on Petitions Requesting Waiver of Certain Filing Deadlines Related to the Universal Service Program.

Consideration of ACS of Anchorage, Inc.'s Petition for Forbearance from Sections 251(C)(3) and 252(D)(1) in the Anchorage LEC Study Area Extended by 90 Days

Wireless:

Commission Seeks Comment on Competition Bidding Procedures for Auction No. 68 for FM Broadcast Construction Permits.

Broadband/Satellite:

Commission Seeks Comment on the Frontier and Citizens Communications Incumbent Local Exchange Telephone Carriers (Frontier) Petition for Forbearance From Title II and the Computer Inquiry Rules with Respect to their Broadband Services.

Homeland Security:

FCC to Host Public Safety And Homeland Security Indian Telecommunications Initiatives Regional Workshop and Roundtable in Polson, Montana on September 26-27, 2006.

Kelley Drye's FCC Update is a summary of FCC actions of importance to competitive telecommunications providers. This summary covers important developments in voice over IP, broadband, local competition, wireless, and international proceedings. For further information on any of these proceedings, please contact a Kelley Drye attorney.

THIS WEEK

WIRELINE COMPETITION

Commission Seeks Comment on Petitions Requesting Waiver of Certain Filing Deadlines Related to the Universal Service Program.

On July 14th and July 20th respectively, the Kansas Corporation Commission and NewComm Wireless Services filed petitions seeking waivers of various filing deadlines associated with the receipt of universal service support pursuant to the Commission's rules.

Comments due September 8, 2006.

Reply comments due September 15,

2006. (DA No. 06-1692, Docket No. 96-45).

Consideration of ACS of Anchorage, Inc.'s Petition for Forbearance from Sections 251(C)(3) and 252(D)(1) in the Anchorage LEC Study Area Extended by 90 Days.

On September 30, 2005, ACS filed a petition requesting that the Commission forbear from applying the unbundling obligations of section 251(c)(3) of the Act as they apply to ACS's Anchorage local exchange carrier (LEC) study area, and the application of the related section

252(d)(1) pricing standards for unbundled network elements. Section 10(c) of the Act states that a petition for forbearance shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance under subsection (a) within one year after the Commission receives it, unless the Commission extends the one-year period. On August 25, 2006, the Commission extended by 90 days the date by which the petition requesting forbearance, filed by ACS of Anchorage, Inc. (ACS), will be considered granted in the absence of a Commission decision to the contrary. (DA No. 06-1719, Docket No. 05-281).

Commission Releases a Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau.

As required of the Commission pursuant to section 11 of the Communications Act of 1934, as amended (Act), the Commission must to review biennially its regulations that apply to the operations and activities of any provider of telecommunications service and determine whether these regulations are still in the public interest. If they are found not to be, the Commission must repeal or modify any such regulation. The Commission began this process most recently by releasing an Notice of Proposed Rulemaking (NPRM) in January of 2004 seeking comment on certain rules reviewed in the 2002 Staff Report prepared by the Wireline Competition Bureau. In most cases, the parties did not comment on the rule revisions proposed in the NPRM. Those comments were considered and in some cases

incorporated into the revisions adopted by the Commission. The Report and Order released on August 21, 2006 provides an in-depth discussion of the comments made by various parties and why proposed changes were or were not adopted. Appendix B sets forth the rule revisions that were made. (FCC No. 06-86, Docket No. 02-313).

Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support.

On August 11, 2006, the Federal-State Joint Board on Universal Service issued a Public Notice seeking comment on the use of reverse auctions (competitive bidding) to determine high cost universal service funding to eligible telecommunications carriers (ETCs) pursuant to section 254 of the 1996 Act. The term “reverse auction” is used generally to emphasize that in this context the bidder is specifying the amount of money it must receive to provide universal service in a given area for a given period of time. The Joint Board seeks comment on the general policy and legal questions, as well as the practical questions about how auctions might work as a part of the universal service program. It encourages parties to submit specific, comprehensive auction proposals, in addition to auction proposals that have been referenced in past Commission universal service proceedings. The Joint Board also asks that interested parties provide comment regarding whether and how competitive bidding could be utilized to further the goals of the Act, the Commission’s universal service goals, and any other criteria or issues described in the August 2004 Public Notice.

Specifically, the Joint Board seeks comment on several issues, including:

- the appropriateness of using auctions to identify the recipients and funding level for recipients of universal service funding.
- the overarching concept of using auctions to determine universal service support as well as the details associated with the accompanying obligations.
- whether there are general lessons that can be learned from academic literature or elsewhere about the overall appropriateness of auctions for determining universal service support.
- how the concept of utilizing competitive bidding to administer certain functions in the universal service program fits into the statutory scheme established by Congress.
- whether and how a competitive bidding proposal would serve to preserve and advance universal service and remain consistent with these important statutory goals, including rate comparability and affordability.
- on what would be the appropriate roles of the Commission, the State commissions, and Universal Service Administrative Company (USAC) relative to: the administration of the auction process, oversight of the winning bidder(s), and the distribution of funds.
- how auctions could be designed to appropriately target support to areas in need of support; the optimal structure for conducting an auction of this type and on what an optimal term would be for the bidders to seek in order to encourage effective bidding, optimal service, and efficient investment.
- a number of issues and questions regarding multiple support winners.
- how winning bids should be selected; including whether winning bidders should be selected based solely on price, or whether other factors should inform the decision.

Comments are due 45 days from publication in the Federal Register and Reply Comments are due 75 days from publication in the Federal Register. (FCC No. 06J-1, Docket Nos. 96-45, 05-337).

Telecommunications Relay Services And Speech-To-Speech Services For Individuals With Hearing And Speech Disabilities.

On August 14, 2006, the FCC issued an Order that clarified the waivers of certain telecommunications relay services (TRS) mandatory minimum standards for captioned telephone relay service, a form of TRS. The Captioned Telephone Declaratory Ruling waived the following mandatory minimum standards for the provision of captioned telephone service: (1) CAs must be competent in interpreting typewritten American Sign Language (ASL); (2) TRS providers must give CAs oral-to-type tests; and (3) CAs may not refuse sequential calls. These waivers expired on August 1, 2006. The FCC's Order clarified that these requirements do not apply to captioned telephone services that use voice recognition technologies (instead of typing) to convey messages, and that do not have the CA play a role in setting up the calls. (DA No. 06-1627, Docket No. 03-123).

WIRELESS:

Commission Seeks Comment on Competition Bidding Procedures for Auction No. 68 for FM Broadcast Construction Permits.

On August 24, 2006, the Commission released a Public Notice announcing the auction of certain FM broadcast construction permits (Auction No. 68). This auction is scheduled to commence on January 10, 2007. The Commission proposes that Auction No. 68 be composed of nine construction permits in the FM broadcast service. The construc-

tion permits to be auctioned are nine unsold FM construction permits from Auctions No. 37 and No. 62, which closed on November 23, 2004, and January 31, 2006, respectively. To ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of the auction, the Commission seeks comment on the auction structure, bidding procedures, the Commission's due diligence standards, and post-action procedures.

Comments due September 6, 2006. Reply comments due September 13, 2006. (DA No. 06-997, AU Docket No. 06-101).

BROADBAND/SATELLITE:

Commission Seeks Comment on the Frontier and Citizens Communications Incumbent Local Exchange Telephone Carriers (Frontier) Petition for Forbearance From Title II and the Computer Inquiry Rules with Respect to their Broadband Services.

On August 4, 2006, the Frontier, filed a petition for forbearance pursuant to section 10(c) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 160(c). In its petition, Frontier asks the Commission to forbear from applying Title II and Computer Inquiry rules to certain broadband services offered by Frontier and similarly situated carriers. For administrative efficiency, the Commission consolidated Frontier's petition into the same docket for the Embarq Local Operating Companies (Embarq) petition seeking similar relief. Therefore, commenters need not duplicate any arguments previously filed in this docket. Comments should focus on issues unique to Frontier's petition. **Comments due September 13, 2006. Reply comments due September 27, 2006.** (DA No. 06-1671, WC Docket No 06-147).

FCC Seeks Comment on Proposal to Revise Rules for Direct Broadcast Satellite Service.

The FCC adopted a Notice of Proposed Rulemaking seeking comment on licensing procedures and service rules for satellites providing Direct Broadcast Satellite (DBS) service. The Notice seeks comment on several issues, including: (1) proposals that will apply to any application for authority to provide DBS service in the United States using the 12.2-12.7 GHz band and associated feeder links in the 17.3-17.8 GHz band; (2) new licensing procedures, including the use of the first-come, first-served process for all DBS applications, regardless of the proposed orbit location. Alternatively, the Notice requests comment on whether DBS should continue to be licensed outside the scope of the FCC's first-come, first-served satellite application processing procedures, and if so, what processing framework should be used to license DBS; (3) what additional issues the FCC should consider in situations involving non-nine-degree spaced DBS applications; (4) whether all the licensing procedures applicable to other satellite services (e.g., performance bonds, milestones, and annual reports) should apply to DBS systems; (5) how to resolve impasses in operator-to-operator coordination negotiations; and (6) whether new license terms should be adopted for all current and future U.S.-licensed DBS systems. (Docket No. 06-160).

HOMELAND SECURITY:

FCC to Host Public Safety And Homeland Security Indian Telecommunications Initiatives Regional Workshop and Roundtable in Polson, Montana on September 26-27, 2006.

On September 26th and 27th, the FCC will host a Public Safety and Homeland Security Regional Workshop and Roundtable in Polson, Montana as part of its Indian Telecommunications Initiatives program. The event is designed as a workshop and intergovernmental consultative meeting between FCC senior staff and the tribal leaders and representatives who have responsibility for homeland security, public safety, and Information Technology security, and will focus on such topics as emergency preparedness and critical infrastructure protection in the communications sector and public safety communications, interoperability and preparedness. The purpose of this event is to give the tribes tools to plan for the protection of critical communications infrastructure on, or serving, tribal lands. The FCC welcomes input from the tribal community on specific discussion topics for the workshop that will assist the tribes in meeting their public safety and homeland security needs.

OPEN PROCEEDINGS

TITLE	SUMMARY	DUE DATES
Commission Seeks Comment on Competition Bidding Procedures for Auction No. 68 for FM Broadcast Construction Permits. (DA No. 06-997, AU Docket No. 06-101).	Comments requested.	Comments due: September 6, 2006 Reply comments due: September 13, 2006
Petitions Requesting Waiver of Certain Filing Deadlines Related to the Universal Service Program. (DA No. 06-1692, Docket No. 96-45).	Comment requested.	Comments due: September 8, 2006 Reply comments due: September 15, 2006
Petition for Interconnection of Neutral Tandem, Inc. (DA No. 06-1603, Docket No. 06-159).	Comment requested.	Comments due: September 8, 2006 Reply comments due: September 25, 2006
Universal Service Contribution Obligations to Interconnected VoIP Providers; Safe Harbor Provisions. (FCC 06-94).	Comments requested on NPRM.	Reply comments due: September 9, 2006
Petition for Forbearance from Certain Dominant Carrier Regulations Filed by ACS of Anchorage, Inc. (ACS). (DA 06-1615, WC Docket No. 06-122).	Comment requested.	Reply comments due: September 11, 2006
CTIA and Cingular Wireless LLC Petitions For Declaratory Ruling Concerning Universal Service Fund Obligations. (DA 06-1615, WC Docket No. 06-122).	Comment requested.	Comments due: September 11, 2006 Reply comments due: September 26, 2006

OPEN PROCEEDINGS (continued)

TITLE	SUMMARY	DUE DATES
<p>Commission Seeks Comment on the Frontier and Citizens Communications Incumbent Local Exchange Telephone Carriers (Frontier) Petition for Forbearance From Title II and the Computer Inquiry Rules with Respect to their Broadband Services. (DA No. 06-1671, WC Docket No. 06-147).</p>	Comment requested.	<p>Comments due: September 13, 2006</p> <p>Reply comments due: September 27, 2006</p>
<p>Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures. (DA 06-1617, WT Docket No. 05-211).</p>	Comment requested.	<p>Comments due: September 20, 2006</p> <p>Reply comments due: October 20, 2006</p>
<p>Missoula Intercarrier Compensation Reform Plan. (CC Docket No. 01-92, DA 06-1510).</p>	Comment requested.	<p>Comments due: September 25, 2006</p> <p>Reply comments due: November 9, 2006</p>
<p>Rulemaking to Establish a New "Medradio" Service for Medical Radio Communication Devices. (FCC 06-103, ET Docket Nos. 06-135, 05-213, 03-92, and RM-11271).</p>	Comment requested.	Comment due dates have not yet been announced

OPEN PROCEEDINGS (continued)

TITLE	SUMMARY	DUE DATES
Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support. (FCC No. 06J-1, Docket Nos. 96-45, 05-337).	Comment requested.	Comments are due 45 days from publication in the Federal Register and Reply Comments are due 75 days from publication in the Federal Register
Commission Seeks Comment on Broad Range of Issues Concerning TRS Compensation. (FCC 06-106, Docket No. 03-123).	Comment requested.	Comments will be due 45 days after publication in the Federal Register and replies 15 days thereafter
Commission Modifies its “Designated Entity” Eligibility Rules in Preparation for the Upcoming AWS Auction and seeks comment on whether additional restrictions necessary. (FCC 06-52, WT Docket No. 05-211).	Comment requested.	Comments due 60 days after publication in the Federal Register Reply Comments due 90 days after publication in the Federal Register
Petition For An Expedited Clarification And Declaratory Ruling Concerning The Telephone Consumer Protection Act (TCPA) Rules. (DA No. 06-808, Docket No. 02-278).	Consumer & Governmental Affairs Bureau Seeks Comment on ACA International's Petition.	Comments Due: 15 Days After Publication in the Federal Register Reply Comments Due: 25 Days After Publication in the Federal Register
Proposals for Modifying 700 MHz Public Safety Spectrum to Accommodate Broadband Communications. (FCC 06-34).	Comment requested.	Comments and Reply Comment due dates have not been announced

OPEN PROCEEDINGS (continued)

TITLE	SUMMARY	DUE DATES
Rural LECs Application for Review. (CC Docket 94-129, DA 05-1618).	Comment requested.	Comments: 10 days after publication in the Federal Register Reply Comments: 15 days after publication in the Federal Register
Emergency Services of Internet-based Forms of TRS. (FCC 05-196, CG Docket No. 03-123).	Comment requested on NPRM related to access to emergency services for video relay service and internet protocol relay.	Comments: 21 days after publication in the Federal Register Reply Comments: 35 days after publication in the Federal Register
Junk Fax Prevention Act. (FCC 05-206, CG Docket No. 05-338).	Commission initiates proceedings to issue regulations to implement the Act.	Comments: 30 days after publication in the Federal Register Reply Comments: 45 days after publication in the Federal Register
Comments Sought on Recommendations Submitted by the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks. (Docket No. 06-119).	Comments Requested on Independent Panel's Report.	Comments: 30 days after publication in the Federal Register Reply Comments: 45 days after publication in the Federal Register

UPCOMING DEADLINES

August/September 2006				
28	29	30	31	1
4	5	6	7	8
		<p>Comments due on Competition Bidding Procedures for Auction No. 68 for FM Broadcast Construction Permits. (DA No. 06-997, AU Docket No. 06-101)</p>		<p>Comment due on Petitions Requesting Waiver of Certain Filing Deadlines Related to the Universal Service Program. (DA No. 06-1692, Docket No. 96-45).</p> <p>Comments due on Petition for Interconnection of Neutral Tandem, Inc. (DA No. 06-1603, Docket No. 06-159).</p>

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