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June 15, 2012

Welcome to the “ACUTA Legislative/Regulatory Update,” a monthly electronic newsletter summarizing Federal regulatory and legislative developments of interest to information communications technology (ICT) professionals in higher education. This membership benefit is provided monthly to all named representatives of Institutional, Corporate Affiliate, Associate and Emeritus members. This update covers the period from May 7th to June 8th, 2012.

“ACUTA Legislative/Regulatory Update” is based primarily on information provided to the ACUTA Legislative/Regulatory Affairs Committee by attorneys Kenneth D. Salomon and J.G. Harrington of Dow Lohnes Government Strategies LLC, a law firm in Washington, DC with extensive ICT and media expertise. A copy of the full text of this Dow Lohnes update is also available at [http://www.acuta.org/wcm/acuta/pdf/leg_0612d.pdf](http://www.acuta.org/wcm/acuta/pdf/leg_0612d.pdf)

**We encourage you to forward this Update to other interested parties within your institution, such as legal counsel, governmental relations staff, security officers, and Chief Information Officers.**

Are there additional people on your campus who would benefit from regularly receiving the monthly Legislative/Regulatory Update and other ACUTA publications? Member institutions may now name as many individuals to their membership roster as desired. All new representatives will receive the same membership benefits enjoyed by our current members, including access to members-only sections of the ACUTA website; subscriptions to the ACUTA Journal, eNews, and Legislative/Regulatory Update; and access to the new online ACUTA Community.

To add members to your college or university’s ACUTA roster, contact the primary voting member for your institution and ask that they contact Michele West or Amy
CONGRESS

Cybersecurity

Cybersecurity remains one of the principal telecommunications issues in Congress. We previously reported that the House on April 26 passed its version of legislation (H.R. 4257) on a partisan basis. H.R. 4257 updates a 2002 law on the defense of federal government computer networks. It requires federal departments and agencies to perform continuous automated monitoring of government information systems and regular threat assessments to protect those systems from intrusions. It also creates a federal information security incident center to help the government respond to cybersecurity incidents. Each federal department and agency would oversee its security programs through a Chief Information Security Officer.

After passage of the House bill, the focus switched to the Senate, where Republicans and Democrats have yet to resolve their significant differences over how to address the threat. The Obama Administration and Senate Democrats support an expansive approach that would empower the federal government to designate “critical infrastructure,” such as power plants and Internet networks. These would be required to meet specific security standards. Senate Republicans favor a narrower, less regulatory approach. Another sticking point is whether or not the Department of Homeland Security (DHS), the National Security Agency or Department of Defense (DoD) should spearhead the federal effort to combat the cyber threat.

Because there is a broad consensus in Washington that cybersecurity is a significant national risk and broad support for taking action, we continue to believe that Congress will likely pass legislation this year but that it may be limited in scope. There are several recent hopeful signs that Congress may be making progress. On June 5, Senator Lieberman (D-CT), who is leading the issue for Senate Democrats, said that cybersecurity is “rising” on Senate Majority Leader Reid’s (D-NV) to do list and that passage this year was “still a possibility.” The next day it was reported that Senators Whitehouse (D-RI) and Kyl (R-AZ) are developing a compromise proposal to protect critical infrastructure systems from cyberattacks. The cornerstone of the Whitehouse-Kyl proposal is the creation of a voluntary “Cybersecurity Protection Program” for critical infrastructure operators, under which participants would self-certify that they meet a set of baseline performance goals. In return, they would receive a certification that would provide liability protections and other incentives. Some “limited subset” of critical infrastructure operators would be required by DHS to have a third-party audit of whether they meet those performance goals. The draft also would authorize DHS and DoD to certify which operators run critical infrastructure that would “cause a severe degradation of national security” if they were disabled. DHS and DoD could require such an operator to submit a report from a
third-party auditor that details whether its infrastructure meets relevant performance goals, regardless of whether the operator was participating in the voluntary program.

Another hopeful development is the statement by a key House GOP cybersecurity staffer on June 6 that “We are ready to go to conference [with the Senate after it passes its bill] and find the middle ground that both houses can agree to and pass. We are hopeful that the Senate passes something. This is a growing and continued threat.”

Separately, the House passed the DHS appropriation bill on June 7. It provides $564 million for cyberdiagnostics and intrusion detection, $884 million for the National Cyber Security Division, and $45.3 million for the National Protection and Programs Directorate, both are units of DHS. House Homeland Security Appropriations Subcommittee Chairman Aderholt (R-AL) said that the appropriation “strengthens our nation’s homeland security efforts by fully supporting frontline operations, immigration enforcement and disaster relief, and by providing key investments in cybersecurity, preparedness grants and research programs that promote job growth and innovation.”

International Regulation of the Internet

On May 31, the House Energy and Commerce Subcommittee on Communications and Technology held a hearing on proposals to expand the authority of the United Nations’ International Telecommunication Union (ITU). Members of the Subcommittee and witnesses, including one of the Internet’s creators, Vinton Cerf, soundly criticized any effort to replace the multi-stakeholder process with a government-enforced system. The ITU is meeting in Dubai in December and many believe there will be an effort by China, Russia, Iran and Saudi Arabia to empower the ITU to set standards. Witnesses stated that China has gone as far as advocating that all IP addresses be registered with governments as a way to fight cybercrime. Witnesses highlighted that such proposals would not only have an enormous economic impact on Internet commerce, but could easily lead to government censorship and control of their populations. There are also proposals to generate revenue for poorer countries to use to build out broadband networks. Dubbed an international Universal Service Fund, the plan would require payment to nations based on clicks on websites by their citizens. Subcommittee members roundly criticized this idea as harmful to U.S. business interests.

A resolution (H. Res. 57) sponsored by House Energy and Commerce Committee member Bono Mack (R-CA) in January of 2011 “expressing the sense of the House of Representatives that the United Nations and other international governmental organizations shall not be allowed to exercise control over the Internet” is gaining momentum. As of June 7, 50 of the 54 members of the Energy and Commerce Committee have signed on as cosponsors, and the resolution may be considered by the Committee later this month. But also on June 7, Congressman Terry (R-NE), Vice Chairman of the Energy and Commerce Subcommittee on Communications and Technology, said at a conference that while he is glad to see U.S. policy makers
joining forces to oppose international efforts to regulate the Internet, the FCC’s network neutrality rules undermine U.S. credibility on the issue. "I think there is certain level of hypocrisy" among those who favor net neutrality rules while opposing efforts to regulate the Internet internationally. The Senate version of H. Res. 57 was introduced in late April by Senator Rubio (R-FL).

**House Passes FCC Reform Bill**

The House on a bipartisan voice vote on May 30 approved the Federal Communications Commission Consolidated Reporting Act of 2012 (H.R. 3310). The broadcast and cable industries supported the bill because it would, among other things, require the FCC to conduct a biennial survey of the state of competition in the marketplace that it would publish online and submit to Congress. The FCC presently conducts a quadrennial regulatory review, but unlike that process, the biennial review provision directs the FCC to take into account competition from the Internet. H.R. 3310 also would consolidate eight separate congressionally mandated reports into that single report. Representative Matsui (D-CA) said she supported the bill's effort to reduce reporting burdens and to have the FCC look more comprehensively at the marketplace, particularly with the addition of an amendment that insures the FCC can look at all forms of competition when assessing the marketplace.

**Re-write of 1996 Telecommunications Act Coming?**

In the face of the wireless and broadband revolutions, there is a growing sense that a re-write of the Telecommunications Act of 1996 is necessary. While it could take years to come to fruition, pressure is mounting for Congress to define the role for the federal government in the Internet age, particularly with pending court cases that question the FCC’s authority in this area.

There is no consensus on the scope of the re-write, with options ranging from tweaking or clarifying amendments to a wholesale replacement. Some wireless carriers argue that Congress should start from scratch to craft new rules that make sense given the mobile broadband boom. Former Congressman Tom Tauke, Verizon’s senior official in Washington, says that “There is a growing recognition that the communications statutes in place are obsolete. There is less agreement on what the new policy should be.” But some see that line of reasoning as simply a way for the wireless industry to escape communication regulations that should apply regardless of technological protocol. Others say that the idea that Congress will throw out the 1996 Act, which built on the Communications Act of 1934, is simply wishful thinking. Harold Feld of Public Knowledge says that “When it’s something this big, you have to count on piecemeal reform.” Others, like AT&T’s top lobbyist Jim Cicconi, AT&T's top lobbyist, would be happy to see any kind of movement: “I’m in favor of change — period. I think the status quo is untenable. I would welcome any congressional activity aimed at reform, whether it is incremental or comprehensive.”
FCC Commissioners

Jessica Rosenworcel and Ajit Pai were sworn in as FCC Commissioners on May 11 and May 14, 2012, respectively. On June 6, President Obama nominated Commissioner Mignon Clyburn for a second term on the Commission. Her current term runs through June 30.

U.S. Department of Agriculture

The U. S. Department of Agriculture on June 6 announced $14 million in funding for 52 distance learning and telemedicine projects designed to increase access to health care and enhance educational opportunities in rural counties in 29 states. Nineteen distance learning projects, 32 telemedicine projects and one combined project were funded. Forty five percent of the dollars were awarded to counties where the minority population is greater than 30 percent. Another 18 percent of the funds target areas where the Native American population exceeds 30 percent. Details of the projects are available at http://www.usda.gov/wps/portal/usda/usdahome?contentid=2012/06/0184.xml&contentidonly=true.

Student Loans

The Administration and Congress continue to be at loggerheads over how to pay for a one year extension of the current 3.4% student loan interest rate, but there may be a thaw in the stalemate. Without congressional action, the rate will double to 6.8% on July 1. All the key leaders in Washington, including, most recently, President Obama on June 7, plus former Governor Romney have agreed that the rate hike should be prevented. Nevertheless Republicans and Democrats continue to play partisan politics about where the $6 billion to pay for the extension of the lower rate should come from. The thaw may be the new offer that Senate Majority Leader Reid made to Senate Republicans on June 7 on how to pay for the extension. Senate Minority Leader McConnell’s (R-KY) spokesman responded that Reid’s proposal “might represent a step forward.”

NATIONAL BROADBAND PLAN

The following are the most significant actions to implement the National Broadband Plan since our last report:

- At its May 24 meeting, the FCC adopted new rules to allocate spectrum to be used exclusively for medical body area networks, which will be used to monitor patient health in hospitals. According to the FCC, the United States is the first country to allocation spectrum for this purpose. The spectrum being allocated to this service is 40 MHz in the 2360 to 2400 MHz band. The FCC believes that the implementation of medical body area networks will have a significant impact on the number of patients
monitored and will reduce mortality and other unfavorable patient outcomes. There also are applications for patients who are not in hospitals, but are at home or elsewhere. The FCC also adopted a further notice of proposed rulemaking on issues relating to coordinating use of this spectrum. Comments and reply comments on the further notice are due, respectively, 45 and 65 days after Federal Register publication. A fact sheet on the medical body area networks is available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0529/DOC-314146A1.pdf, the press release announcing the order is available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0524/DOC-314274A1.pdf and the order itself is available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0524/FCC-12-54A1.pdf.

- At its May 24 meeting, the FCC reformed its rules for 800 MHz specialized mobile radio (SMR). Under the new rules, geographically-based SMR licensees will be allowed to operate across contiguous channels without meeting channel spacing requirements or bandwidth limitations. This change is intended to facilitate offering broadband services and, in particular, LTE, over 800 MHz SMR facilities. The FCC press release on this decision is available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0524/DOC-314273A1.pdf and the order is available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0524/FCC-12-55A1.pdf.


- The FCC announced the comment dates for the rulemaking on the universal service contribution methodology. Comments are due on July 9 and reply comments are due on August 6.

FCC

Special Access Heats Up

Trade press reports are indicating that the FCC is considering a new data request as part of an effort to conclude its special access proceeding, which was
started seven years ago. The pressure on the FCC has been increased by interest from Congress, including a May 16 letter from Representative Anna Eshoo (D-CA) and four other senior Democrats in the House. It is expected that any FCC decision would be focused on reducing special access rates charged by incumbent local telephone companies, which also would push down prices for special access services provided by competitors. Congresswoman Eshoo’s statement on the letter and the letter itself are available at http://eshoo.house.gov/index.php?option=com_content&task=view&id=1222&Itemid=100067.

More Turnover at FCC Bureaus

The FCC made several announcements about changes at the top levels of the staff in the last month. As a result, the Homeland Security and Public Safety Bureau, the Wireless Telecommunications Bureau and the Office of General Counsel have new leaders. First, on May 21, David Turetsky was named chief of the Homeland Security and Public Safety Bureaus, replacing Jamie Barrett, who had previously announced his departure. Next, on May 25, Austin Schlick announced that he would be stepping down as General Counsel, and the FCC announced that Sean Lev would replace him. Finally, on May 30, Wireless Telecommunications Bureau Chief Rick Kaplan announced that he would be leaving the FCC, and the FCC announced that Ruth Milkman would be replacing him. Changes like these are fairly common at this point in an administration, as high-level staffers typically make a commitment to stay for some period of time, but it is somewhat unusual to have this many departures in such a short period. The FCC press releases are available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0521/DOC-314196A1.pdf (Turetsky), http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0524/FCC-12-54A1.pdf (Schlick and Lev) and http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0530/DOC-314366A1.pdf (Kaplan and Milkman).

Technical Advisory Board for First Responder Interoperability Issues Report

On May 23, the FCC’s Technical Advisory Board for First Responder Interoperability issued a report on the minimum technical requirements for interoperability among first responders. This report was submitted to the FCC, and will be passed along to the First Responder Network Authority (also known as FirstNet) responsible for developing the 700 MHz public safety network by June 22. The long term intent is to ensure that these standards are incorporated in equipment produced for use in that spectrum to ensure that public safety officials can communicate across services and political entities. In a separate public notice, the FCC asked for comments on the report by May 31. (The short deadline was necessary because of the deadline for passing the report along to FirstNet.) The press release on the report is available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0523/DOC-314246A1.pdf, the report itself is available at
FCC Explores Use of Aerial Communications in Disasters

At its May 24 meeting, the FCC adopted a notice of inquiry on the use of emergency aerial communications by first responders following natural or other disasters that disrupt communications services. The inquiry asks several questions about these facilities, known as deployable aerial communications architecture, including how they would be deployed and operated, what they would cost, what benefits they would provide and how spectrum could be authorized for operation of these facilities. Comments and reply comments are due 40 and 60 days after publication of notice in the Federal Register. The press release on the notice is available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0523/DOC-314272A1.pdf and the notice is available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0523/FCC-12-811A1.pdf.

FCC Releases Working Paper on Allocation of Interference Rights

On June 5, the FCC released a staff working paper describing and evaluating a model for allocating interference rights in spectrum auctions. The paper concludes that it is possible to obtain the most efficient outcome through this kind of mechanism, but that there are significant barriers (notably a lack of transparent information) to doing so. While FCC working papers do not represent FCC policy, they often reflect thinking within the agency and can influence later policy decisions, and this paper suggests that the FCC has been considering whether there is some way to use auctions to permit multiple uses of individual spectrum blocks. The press release on the paper is available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0605/DOC-314438A1.pdf, and the paper itself is available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0605/DOC-314439A1.pdf.

Other Regulatory Issues

Wireless Bureau Releases Guidance on New Environmental Compliance Requirements

On May 9, the Wireless Bureau released a public notice providing guidance on the new environmental notification process that has been adopted for antenna structures. This process is intended to address concerns raised about whether the FCC properly considered the impact of antenna structures on migratory birds. Under the new process, applicants will partially complete the antenna structure reservation
form online and then provide public notice of their plans. Depending on whether there are comments on environmental issues and on the FCC’s evaluation of those comments, applicants either will be permitted to finish the online form or will be required to prepare environmental assessments. The public notice is available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0509/DA-12-731A1.pdf. The FCC also has launched a page that provides more information on the new process, at http://www.fcc.gov/help/antenna-structure-registration-asr-help.

**FCC Releases Plan for Review of Its Rules**

On May 18, the FCC released a plan for the review of all of its rules. This plan was prepared in response to an Executive Order issued by President Obama in 2011. Under the plan, the FCC will review its rules to determine whether any of them should be repealed, narrowed or expanded. The plan details actions the FCC has taken and is considering. There is no time frame for completion of the review. The plan is available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0521/DOC-314166A1.pdf.

**FCC Announces Additional Savings from Lifeline Program Audits**

On May 16, the FCC issued a press release announcing that its efforts to eliminate duplicative Lifeline payments have saved another $15 million. These savings came from reviews of Lifeline accounts in three states - Missouri, New York and Washington. The FCC intends to repurpose the funds saved through these reviews to support broadband. The press release is available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0524/DOC-314114A1.pdf.

**FCC Proposes Rules for Public Safety Answering Point Do Not Call List**

May 22, the FCC released a notice of proposed rulemaking proposing new rules to facilitate placing the underlying telephone numbers used by public safety answering points on the do not call list. This rulemaking was required by the Middle Class Tax Relief and Job Creation Act of 2012. The FCC has proposed creating a separate registry for PSAP telephone numbers and, consistent with the statute, prohibiting automatic dialing equipment from dialing any number on the PSAP registry. The notice also proposes to adopt specific fines for violation of these new rules. Comments and reply comments on the proposed rules are due 30 and 45 days, respectively, after notice of the rulemaking is published in the *Federal Register*. The notice of proposed rulemaking is available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0522/FCC-12-56A1.pdf.
FCC Reminds Service Providers of E-911 Best Practices

On June 6, the FCC released a public notice to remind service providers of the 911/E-911 best practices prepared by the Network Reliability and Interoperability Council and the Communications Security, Reliability and Interoperability Council. This public notice was released because the FCC concluded from review of outage reports that many providers were not following the best practices. The public notice is available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0606/DA-12-891A1.pdf and all of the FCC’s best practices documents are available in a searchable database at https://www.fcc.gov/nors/outage/bestpractice/BestPractice.cfm.

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