



THE FCC REPORT

A SUMMARY OF FEDERAL ORDERS, COURT RULINGS AND REPORTING REQUIREMENTS

May 1, 2009

FCC To Consider Wireline Porting As Industry Lobbying Efforts Intensify

Although the FCC is limiting actions and rulings until the new Chairman Genachowski is confirmed by the Senate, that has not stopped telecom officials from making ex parte filings and meeting with Commission Staff and senior officials about how much time the FCC's rules should allow a wireline carrier to port a number. Most regulators and wireless companies agree that the porting interval for wireline should be reduced, but the wireline, wireless, cable and competitive carriers can't come to agreement on what is a reasonable amount of time for a wireline provider to port a number. Under the current rules a wireline carrier has four business days to port a number. Many wireless providers argue that current technology allows a carrier to port numbers in a few hours, and many think that wireline providers should be required to port a number in 24 hours rather than the four business days the Commission's rules now allow. The cable companies, wireless carriers, and even some state regulators have argued that the time period for wireline porting harms efforts to win customers from the large incumbent telephone companies.

The FCC reported that it is considering imposing a 24-hour standard for wireline porting, but would consider waiving the deadline in some cases involving smaller phone companies until the smaller carriers can upgrade their systems to comply. Earlier this month eleven members of Congress sent a letter to Acting Chairman Michael Copps urging the Commission to change the requirement to 48 hours. A Report and Order on the LNP porting interval for wireline-to-wireline and intermodal port requests is on the tentative agenda for adoption at next open Commission meeting scheduled for May 13, 2009.

On April 28, 2009, the DC Court of Appeals of Columbia denied the National Telecommunications Cooperative Association's (NTCA) petition for review of an FCC order requiring Local Number Portability. NTCA had argued that the FCC violated the Regulatory Flexibility Act, which directs agencies to publish an analysis of how a rule will affect small business. The court ruled that the analysis completed by the Commission does comply with the act.

Tentative Agenda Set for May 13, 2009 Open Meeting

The FCC released a tentative agenda for the next open Commission meeting scheduled for Wednesday, May 13, 2009. The Commission Acting Chairman Michael Copps has circulated the following items to the other FCC Commissioners for consideration and adoption at this Commission meeting.

If you have any questions or would like copies of any documents discussed in the FCC Report, please contact Deb Morgan at 512-343-2544 or email deb.morgan@chrsolutions.com.

- IP Enabled Services – A Report and Order on discontinuance requirements for interconnected VoIP providers.
- Local Number Portability – A Report and Order on the local number portability porting interval for wireline-to-wireline and intermodal port requests.
- Fiscal Year 2009 Regulatory Fees – A Notice of Proposed Rulemaking and Order on the assessment and collection of regulatory fees for Fiscal Year 2009.

The FCC staff will also give a status report on the DTV transition 30 days from the June 12 deadline and an action plan for helping consumers that still use full-power analog broadcast service.

Notice of Inquiry For Development Of National Broadband Plan

The FCC issued a notice of inquiry (NOI) to begin a proceeding to create a national broadband plan as its part in the American Recovery and Reinvestment Act (ARRA) of 2009 – known as the stimulus package. The ARRA directed the FCC to create a national broadband plan with clear benchmarks to meet the goal of ensuring that all Americans have access to broadband; the plan is to be delivered to Congress by February 17, 2010. This NOI is seeking input from all stakeholders: consumers, industry, large and small business, non-profits, the disabled community, governments at the federal, state, local and tribal levels, and all other interested parties on how:

- 1) to ensure that all people have access to broadband capability, including how to establish benchmarks to meet that goal;
- 2) to define broadband capability going forward, and what does it mean to have access;
- 3) to develop a strategy for achieving affordability;
- 4) to evaluate the status of broadband deployment, including the progress of projects supported by grants;
- 5) to develop a plan to use broadband to advance various policy goals, including consumer welfare, public safety, community development, health care delivery, energy independence, education and training, entrepreneurial activity, job creation, economic growth, and other national purposes;
- 6) the FCC should work collaboratively with other government agencies, consumers, the private sector and other organizations.

The questions in this NOI are extremely detailed. For example, it has seven paragraphs of questions devoted to defining “broadband capability” and one complete section addressing the impact of broadband on existing universal service programs.

Comments are due by **June 8, 2009**. Reply comments are due by **July 7, 2009**.

New Rules Expand Enhance First Responders' Use Of 4.9 GHz Broadband

The FCC adopted a Report and Order and Further Notice of Proposed Rulemaking (FNPRM) addressing 4.9 GHz band rules, as well as miscellaneous Part 90 public safety rules. The rules will expand and enhance first responders' deployment of broadband communication technologies across the nation in the 4.0 GHz band, which they hope will stimulate the economy. The new rules will enable first responders to more easily share time-sensitive data and streaming video footage in emergencies or life-threatening incidents.

Under the Order, the Commission granted primary status to (1) 4.9 GHz stand-alone, permanent fixed links that are used to deliver broadband service (such as a fixed video surveillance link used to monitor high-risk facilities or environments), and (2) permanent fixed links that connect 4.9 GHz base and mobile stations used to deliver broadband service (for such uses as supporting broadband communications at "hot-spots" and other fixed public safety broadband networks), as well as connect other public safety networks using spectrum designated for broadband use. The Commission actions were established to provide public safety with additional operational flexibility to use the 4.9 GHz band during emergencies and disasters and better enable first responders to share crucial data in their efforts to assist those in need and save lives.

The Order retained the current requirement for individual site-based licensing for all permanent fixed stations. The Commission, however, revised the output power measurement procedures for 4.9 GHz band devices to be the same as those required for devices using digital modulation techniques regulated by Part 15 of the Commission's rules. This rule change is intended to speed deployment of new technologies in the 4.9 GHz band for the benefit of public safety users. To further enhance public safety communications, the Commission preserved paging operations in the VHF public safety band, and clarified that cross-band repeaters are permitted for all public safety systems.

Additionally, the Commission's FNPRM seeks comment on whether to: (1) further amend its rules to reinstate an exemption of 4.9 GHz band applications from certified frequency coordination requirements; (2) impose a more formal "licensee-to-licensee" coordination requirement on primary fixed stations in the 4.9 GHz band; (3) correct and clarify the 4.9 GHz band plan regarding which center frequencies may be licensed when aggregating multiple channels into larger bandwidths; and (4) implement three "clean-up" amendments to Section 90.20 of the Commission's rules relating to the Public Safety Pool Frequency Table and associated limitations.

Comments are due 60 days after publication in the Federal Register. Reply Comments are due 90 days after publication in the Federal Register.

House Committee Members Ask FCC For Data On Top USF Recipients

House Energy and Commerce Committee Chair Henry Waxman, Subcommittee Chair Rick Boucher, Ranking Members Joe Barton and Cliff Stearns sent a letter to Acting FCC Chairman Michael Copps requesting additional information about the top recipients of high-cost subsidy dollars from the federal Universal Service Fund for calendar years 2006, 2007 and 2008. Specifically, this letter requests that the FCC provide the following information to the Committee members: (1) the top ten recipients of high-cost support; (2) a state-by-state list of all disbursements to the top ten recipients; (3) ten largest per-line subsidies by study area; (4) the ten study areas with the most ETCs and CETCs; (5) the geographic scope of each study area in the list of top ten study areas by support and ETCs; (6) if available, the local rate information for the top ten study areas; (7) state-by-state USF high-cost payments; and (8) lists of states that have statewide USF and explanation of basis for contribution and what the funds support. Chairman Waxman had initially requested similar information on behalf of the oversight committee in 2008 from former FCC Chairman Kevin Martin. Chairman Martin provided information on the top ten recipients for calendar years 2006 and 2007.

The *Independent Telecom Report* said that Representative Boucher has been pushing to get the USF reform measure through the full Committee before the end of the year. Reportedly Waxman is holding this in Committee because he wants more information gathered to measure the value of USF before moving forward with legislation. Also Waxman wants USF reform legislation to include new and stronger oversight measures to protect against waste, fraud and abuse. USF legislation cannot get out of the Committee without Waxman's support. As a result, it is likely that Boucher's bill will be delayed in Committee until the Committee Chair gets legislation that includes new reporting requirements and additional audits of USF recipients.

RUS Sets June 19 Deadline for 2009 Community Connect Grant Applications

In the April 20, 2009 Federal Register the Rural Utilities Services (RUS) announced June 19, 2009 as the deadline for Community Connect Grant Program applications for FY 2009 grant funding. A total of \$13,406,000 is available for grants, with a minimum grant amount of \$50,000 and a maximum grant amount of \$1 million established for FY 2009.

The Community Connect Grant Program provides grants for deployment of broadband transmission service to extremely rural, lower-income communities on a "community-oriented connectivity" basis which is meant to improve economic development and provide enhanced educational and health care opportunities in rural areas.

Basic eligibility requirements include:

- Matching contributions (in cash or in kind new non-depreciated item) by grant applicants of at least fifteen (15) percent of the total amount requested;
- The rural area to be served does not currently have existing Broadband Transmission Service
- The grant project must serve one community recognized in the latest U.S. Census or the latest version of the Rand McNally Atlas;

- Basic Broadband Transmission Service must be deployed free of all charges for at least two years to all Critical Community Facilities located within the proposed Service Area; (“Critical Community Facilities” are defined as every public school or education center, public library, public medical clinic, public hospital, community college, public university, or law enforcement, fire and ambulance stations in the proposed Service Area. Community Center is also included in the requirements for FY 2009.);
- Basic Broadband Transmission Service must be offered to residential and business customers within the proposed Service Area; and
- A Community Center must be provided with at least ten (10) Computer Access Points within the proposed Service Area and Broadband Transmission Service is to be made available therein, free of all charges to the user for at least two years.

Notice of Inquiry To Refresh Record Non-Rural Carriers Support Mechanism High-Cost USF

The Commission released a notice of inquiry (NOI) seeking to refresh the record regarding reform of the non-rural high-cost program. The NOI is in response to the federal appeals court ruling in the *Qwest II* decision that invalidated the Commission’s high-cost universal service support mechanism for non-rural carriers. The non-rural support mechanism determines the amount of support to be provided each state by comparing the statewide average forward-looking cost per line for non-rural carriers to a nationwide cost benchmark.

After issuing a notice of proposed rulemaking (NPRM) In December 2005 seeking comment on the non-rural support mechanism, the Commission also sought comment on various proposals for comprehensive reform of the high-cost support mechanisms, rural as well as non-rural. Several parties filed proposals in response to the High-Cost Support Reform NPRMs and the Comprehensive Reform, as well as, specific proposals to address the issues raised by the appeals court.

The FCC is now asking interested parties to refresh the record and comment on the proposals filed and generally how these issues should relate to more comprehensive high-cost reform and the Commission’s initiatives regarding broadband deployment.

Comments are due by **May 8, 2009**. Reply comments are due by **June 8, 2009**.

OIG Audit Critical of RUS Broadband Program

The United States Department of Agriculture’s Office of Inspector General (OIG) recently issued an audit describing corrective actions taken by the RUS in response to a 2005 report on their Broadband Loan and Loan Guarantee Program. This latest audit was conducted at the request of Congress to determine if RUS had made sufficient corrective actions in response to the 2005 report. The OIG expressed its concern with the program’s current direction and stated that RUS’ Broadband Program as currently structured “may not meet the American Recovery and Reinvestment Act of 2009’s objective of awarding funds to projects that provide service to the most rural residents that do not have access to broadband service.”

Since 2001, RUS awarded approximately \$1.35 billion in loans to deliver broadband service to rural communities. (Although according to the OIG, RUS never spent all of its available funds – \$5.7 billion since 2001 – and carried over hundreds of millions of dollars to subsequent years.) In September 2005, based on a review of 28 of 64 “judgmentally selected loans,” the OIG issued a report that “disclosed irregularities in how RUS approved and serviced these loans.” The OIG was critical of RUS for funding projects in communities near large metropolitan cities instead of focusing on rural areas. They also questioned RUS’ decision to provide loans to communities that already had broadband service, “since this could disadvantage providers operating without Government Assistance.”

With their 2005 review, the OIG made 14 recommendations for changes relating to the administration of RUS’ broadband program. The OIG’s 2009 report finds that RUS has not fully implemented corrective action in response to eight of the 14 recommendations made in 2005.

The OIG had also recommended RUS define “rural area” so that communities in close proximity to large cities would not be eligible to receive broadband funds intended for truly rural areas. The OIG reports that between the publication of their 2005 report and the 2008 Farm Bill, RUS’ regulation and statute allowed loans for service in suburban communities. During that time loans were provided for service in 148 communities that were within 30 miles of cities with 200,000 inhabitants, including Chicago and Las Vegas, and 89 of the 149 communities were served by a single company.

In response to questions from the Appropriations Committee, the OIG reports that 13 out of 113 applicants who received broadband loan approval since 2001 did not proceed because the project could not be completed as initially conceived. RUS could not provide the number of unserved households included in the approved broadband loans because RUS tracked the number of households served by its programs, but not the number of households that were unserved prior to the broadband loan. In response to Congress’ question about the number and amount of defaulted loans, the OIG determined that 11 broadband loans, totaling \$48 million, were in default as of June, 2008.

***Satellite Company Seeks Waiver To Become Member NECA Pooling
And Receive USF Support***

DTS of CA, Inc. (DTS) filed a petition with the FCC requesting that the FCC waive certain Commission rules to allow DTS to become a member of the National Exchange Carrier Association (NECA) and participate in NECA tariffs and pools, and to begin receiving high-cost universal service funding. The carrier, using satellite communication links, plans to begin providing basic voice services to consumers in portions of 52 California counties in which no service at all is available, and has applied to the California Public Utilities Commission for a certificate of public convenience and necessity.

FCC Form 499-Q Released

On April 10, 2009, the Commission released the FCC form 499-Q and accompanying instructions. The changes made on the FCC Form 499-Q are nonsubstantive to ensure that all contributors are properly reporting revenues. The Office of Budget and Management (OMB) had previously approved the FCC Form 499-A and 499-Q. On October 3, 2008 the OMB established an expiration date of September 30, 2010 for both the FCC Form 499-A and 499-Q.

Rural Healthcare Pilot Program Update

The FCC announced approval of funding under its Rural Health Care Pilot Program for the build-out of five broadband telehealth networks that will link hundreds of hospitals regionally in Iowa, Minnesota, Montana, Nebraska, North Dakota, South Carolina, South Dakota, Wisconsin and Wyoming. In addition, funding has been approved for the design of a telehealth project in Alaska. Collectively, these projects are eligible to receive \$46 million in reimbursement for the engineering and construction of their regional telehealth networks.

NARUC Wants States To Have A Role In Handling Broadband Stimulus Funding

The National Association of Regulatory Utility Commissioners (NARUC) sent a letter to Dept. of Commerce Secretary Gary Locke, Dept. of Agriculture Secretary Tom Vilsack, and Assistant Commerce Secretary for Communications and Information Anna Gomez regarding the \$6.8 billion in broadband infrastructure and program grants included in the American Recovery and Reinvestment Act (ARRA) of 2009. The NARUC letter signed by 90 regulators from 39 States, urged the Obama to work closely with state government agencies given the tight time frame to release the money. NARUC's letter stated, "Rather than contracting with Washington, D.C., consultants that lack both the States' in-depth knowledge about the areas covered and inherent incentive to do the job right, both agencies should structure the program to insure State involvement." The USDA's Rural Utilities Service (RUS) and Dept. of Commerce's National Telecommunications and Information Administration (NTIA) are in charge of disbursement of the \$7.2 broadband funds received from the ARRA.

However, cities, counties and local governments have spoken against giving the states too much control. TR Daily reported that the U.S. Conference of Mayors, the National Association of Counties, and the National Association of Governors have all cautioned the federal agencies that the states would be duplicating the efforts of NTIA and RUS and slow down the process.

FCC Reporting Requirements

May 1: FCC Form 499-Q, Telecommunications Reporting Worksheet. All telecommunications common carriers that expect to contribute more than \$10,000 to federal USF support mechanisms must file this quarterly form. The form contains revenue information from the prior quarter plus projections for the next quarter. Form 499-Q relates only to USF contributions. It does not relate to the cost recovery mechanisms for the TRS Fund, NANPA, and the shared costs of LNP, which are covered in the annual form (Form 499-A) that was due April 1.

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May 1: Rate Integration Certification. Non-dominant IXCs that provide detariffed domestic interstate services must certify that they are providing such services in compliance with their geographic rate averaging and rate integration obligations. An officer of the company must sign this annual certification under oath. The FCC has issued the following guidelines: (1) Any carrier that provides interstate services must charge its subscribers in rural and high-cost areas rates that do not exceed the rates that the carrier charges subscribers in urban areas; (2) to the extent that a carrier offers optional calling plans, contract tariffs, discounts, promotions, and private line services to its interstate subscribers in one state, it must use the same ratemaking methodology and rate structure when offering such services in any other state; (3) an interstate carrier may depart from geographic rate averaging when offering contract tariffs, Tariff 12 offerings, optional calling plans, temporary promotions and private line services; and, (4) carriers may offer optional calling plans on a geographically limited basis as part of a temporary promotion that does not exceed 90 days. But this limited exception does not exempt optional calling plans from geographic rate averaging requirements.

May 1: Enforcement of Red Flag Rules Begins: The Federal Trade Commission (FTC) last year suspended enforcement of the Red Flag Rules until May 1, 2009. Under the new rules, all businesses that maintain a creditor-debtor relationship with customers, including virtually all telecommunications carriers, must have a written program of policies and procedures to identify and respond to Red Flags designed to detect, prevent and mitigate identity theft. This may also affect telecom carriers' non-regulated affiliates and subsidiaries. Violators of the Red Flag Rules could be subject to financial penalties.

June 30: Annual ICLS/LTS Use Certification. Rate of return carriers must file a self-certification with the FCC and the Universal Service Administrative Company (USAC) stating that all Interstate Common Line Support (ICLS) and Long Term Support (LTS) will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. In other words, carriers are required to certify that their ICLS and LTS support is being used consistent with Section 254(e) of the Communications Act. Failure to file this self-certification will preclude the carrier from receiving universal service support.

July 21: FCC Form 497, Low Income Quarterly Report. This form, the Lifeline and Link-Up Worksheet, must be submitted to the Universal Service Administrative Company (USAC) by all eligible telecommunications carriers (ETCs) that request reimbursement for participating in the low-income program. The form must be submitted by the third Monday after the end of each quarter. FCC Form 497 is available at: www.universalservice.org.

July 28: FCC Form 507, Line Count Data Due For Universal Service Support. All eligible telecommunications carriers (ETCs) are required to submit line count data as of December 31 of the previous year for USAC to calculate support amounts for both incumbent carriers and competitive carriers. ILECs file line count data with the National Exchange Carrier Association, Inc. (NECA) with their annual cost data filings. Competitive ETCs file line counts in FCC Form 525.

July 31: USF Data Collection Form. The data required for the USF data collection form are regulated unseparated state and interstate actual or calculated amounts as of December 31 of the previous year and be submitted to the National Exchange Carrier Association (NECA) by July 31 each year. Preliminary or estimated amounts must be revised and reported to NECA when finalized data is available.

July 31: Manual, Section 43.61, International Traffic Data Report. All carriers that provided international telecommunications services in 2008 must file a report of their international traffic data for calendar year 2008 by July 31, 2009. The detail filing requirements are contained in the 1995 revised “Manual for Filing Section 43.61 Data” (Manual). There are also three subsequent Public Notices that carriers should use to assist with their filing. The Manual for Filing and the three Public Notices, DA 99-1332, Further Clarification of Section 43.61 International Traffic Data Reporting Requirements (rel. July 7, 1999), DA 98-1369, Clarification of Section 43.61 International Traffic Data Reporting Requirements (rel. July 9, 1998), and Clarification of Section 43.61 International Traffic Data Reporting Requirements (rel. July 15, 1997), may be obtained at the following FCC Internet sites: <http://www.fcc.gov/ib> (go to “Industry Information” and click on “Section 43.61 International Traffic Data Report”); or <http://www.fcc.gov/ccb/stats> (click on Section “43.61 International Traffic Data Report”).
