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FCC STAFF PAPER URGES AGENCY TO MAKE SPECTRUM AVAILABLE for more unlicensed devices and to retain 'low entry barriers.' (P. 2)

MEDIA DIVERSITY IS JOB OF FCC, Justice Dept. antitrust nominee tells Senate. Pate advocates strict economic evaluation of media mergers. (P. 3)

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Bankruptcy Concerns Continue

SENATE GOVT. AFFAIRS TO INVESTIGATE MCI GOVT. CONTRACTS

MCI/WorldCom continues to come under fire on Capitol Hill as the Senate Govt. Affairs Committee announced Wed. it would investigate whether the company should be awarded govt. contracts (CD May 21 p5). Govt. Affairs Committee Chmn. Collins (R-Me.) also released a May 16 letter sent by the committee to the General Services Administration (GSA) that "questioned the propriety of the extension and award of government contracts to WorldCom" after the company fraudulently bolstered its bottom line by \$9 billion. A committee spokeswoman said a call for information about the GSA's past reviews of MCI/WorldCom was a "starting point" for the committee.

Collins asked the GSA to provide written documentation on the agency's investigation, analysis and oversight of WorldCom by May 30. "Despite evidence that WorldCom committed serious investor fraud, the GSA has allowed WorldCom continued access to lucrative government contracts without providing an explanation of why the government should continue to do business with this corporation," Collins said. "Contractors that do business with the federal government must demonstrate integrity as well as the ability to do the work. The evidence of systematic fraud by WorldCom executives raises serious questions about the eligibility of this company to secure federal contracts."

The announcement comes as WorldCom, which has changed its name to MCI, has been criticized for recently winning govt. contracts. The company said Tues. it won a 7-year contract from NOAA to provide VSAT satellite links to 90 meteorological locations worldwide. Also, MCI was recently awarded a contract to build wireless networks in Iraq. House sources have said a few members are questioning why MCI is receiving these contracts. One House source raised questions about how MCI could be awarded the Iraq contract without going through a bidding process.

WorldCom said past troubles haven't affected the company's ability to effectively provide service to the govt. "The financial issues of the past and the wrongdoing of a few former executives have no bearing on our proven track record

and demonstrated integrity as a government contractor. The real proof is that MCI continues to meet and exceed the requirements of all of our government contracts,” said a WorldCom spokeswoman.

WorldCom has also come under fire recently for its treatment under bankruptcy law. On Tues., Rep. Meeks (D-N.Y.) told the House that MCI shouldn’t be allowed to use bankruptcy laws to shield itself. “Reorganization under the bankruptcy laws should not apply when the assets are the product of criminal activities,” Meeks said. “Bankruptcy should not be a vehicle for laundering stolen goods. As a matter of new public policy, it seems corporate criminals like MCI can cook-the-books, declare bankruptcy, and eliminate much of their obligations.” Last week, Sen. Santorum (R-Pa.) attempted to add an amendment to the economic stimulus package that would reform bankruptcy law. Santorum cited MCI’s treatment under the current bankruptcy code as an example of why it needed to be reformed (CD May 20 p7). Santorum withdrew the amendment. — *Terry Lane*

Market Growth Touted

FCC STAFF URGES AGENCY TO BALANCE UNLICENSED BAND INTERESTS

An FCC staff working paper on unlicensed spectrum concluded relocation of existing users “may be essential” to increasing spectrum for unlicensed use, although wholesale incumbent clearing might not be needed. The paper also cautioned that introduction of “interference temperature” as a concept “must be handled carefully.”

The offices of Engineering & Technology (OET) and Strategic Planning & Policy Analysis (OSP) released the paper Wed. “Without a forward-looking approach to policy reform addressing the fundamental problem of interference and maintaining these low entry barriers to spectrum, much of the benefit and promise of unlicensed devices may be delayed, or unrealized,” it said.

OSP and OET said their paper was designed to “stimulate discussion and critical comment” both within and outside the agency. The FCC said the paper reflected the views of authors Kenneth Carter, Ahmed Lahjouji and Neal McNeil and not necessarily of the Commission. The paper said the market for unlicensed wireless devices was evolving into a “multibillion-dollar industry” that it said was “quite striking in light of the severe downturn in the U.S. telecommunications and technology sectors.” It said sales of cordless phones reached \$1.653 billion in 2002 and more than 348 million unlicensed devices now were in operation. Cordless phones typically have been a bellwether of technology advances and overcrowding issues in unlicensed bands, it said, “but are now giving away that position to wireless computer networking devices — an almost unheard-of technology 3 years ago.” Wireless computer networking devices have seen annual double-digit sales growth since 2000 and are expected to top \$2.3 billion this year, the paper said, excluding

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commercial wireless networks and services. It said the FCC should adopt rules for unlicensed devices that were clear, strictly enforced and “maximize[d] utility to address the fundamental problem of interference.”

The Spectrum Policy Task Force, convened last June, raised the idea of “interference temperature” under a list of potential policy reforms. It would set a cap on the noise environment in which receivers would be required to operate. To the extent that ceiling wasn’t reached in a certain band, a user below that threshold would gain additional operating flexibility. “With interference temperature as the cap on potential interfering emissions, presumably more devices could share a given band,” the staff said. “In newer receivers we can expect that these thresholds would be raised. By raising the minimum level of tolerance of incumbent receivers, the interference temperature metric actually encourages manufacturers to permit more efficient use of associated bands.” That idea, if the FCC pursues it, also could be complemented by the operation of “smart” radio devices, the paper said. It cited unlicensed devices with intelligent or frequency-agile radios to pinpoint unused or underutilized spectrum, adjust power level or “in real time bid for the exclusive right to broadcast before emitting any RF energy into the band.” Such scenarios could mean the interference temperature in a particular swathe of spectrum could be “dynamically self-regulated by the spectrum users,” it said. It acknowledged criticism of such technology included the extent to which it could increase cost. Another weakness is that in the time a device spends looking for spectrum “white space,” it may have to reduce its power to a level where its signal may not be easily detected by another nearby smart radio.

As for a “spectrum solution” to overcrowded bands for unlicensed devices, the paper said many commenters on last fall’s Spectrum Policy Task Force report cited a need for additional capacity but didn’t generally offer specific recommendations on how the FCC should create new unlicensed bands. “In order for the FCC to make more spectrum available for unlicensed use, it may have to resolve such scarcity by requiring additional relocation of incumbents of currently used bands,” the paper said. The Commission, in turn, would then have to set operating requirements for the newly cleared spectrum, it said, citing examples such as maximum permissible bandwidth or power limits. One possibility other than “wholesale clearing” of a band would be to make additional spectrum available for unlicensed use through an overlay authorization. That could entail the FCC’s adopting technical rules to accommodate sharing between incumbents and unlicensed users. “Alternatively, licensees could be allowed to charge an interested party, including unlicensed operators, an access charge for use of a portion of its allotted spectrum,” the paper said. — *Mary Greczyn*

‘May Preserve Diversity’

DOJ ANTITRUST NOMINEE SAYS MEDIA DIVERSITY IS FCC’S DUTY

The nominee for Justice Dept. Antitrust Div. chief said it was the FCC’s duty to monitor the media marketplace for diversity and said the DoJ evaluates media mergers on solely economic factors. Hewitt Pate, the acting Antitrust Div. dir. who was nominated for the top post, told the Senate Judiciary Committee Wed. that the DoJ has to “proceed under the standards of the Sherman Antitrust Act” and limit the scope of merger reviews to the economic affect it would have on the marketplace. “We make our case specifically on anticompetitive issues,” Pate said. He appeared likely to be confirmed.

Media consolidation was a frequent topic during the hearing and Pate reiterated his position on the DoJ’s authority in response to several questions. Antitrust Subcommittee Chmn. DeWine (R-O.) said media consolidation was a concern for the Judiciary Committee but acknowledged it was an issue “larger” than the DoJ’s mandate. Judiciary Subcommittee ranking Democrat Leahy (Vt.) also emphasized his concerns about media consolidation. But while Pate said the diversity issue wasn’t in the DoJ’s mandate, the DoJ “may” help to preserve diversity of voices just through pursuing the economic antitrust cases. “When we stop anticompetitive transactions, we may preserve diversity of voices,” Pate said.

Pate countered Antitrust Subcommittee ranking Democrat Kohl’s (Wis.) assertion that the FCC’s ruling on June 2 would lead to more consolidation. Where Kohl cited a Merrill Lynch report that predicted a media consolidation “binge,” Pate referenced a Precursor Group report that said the proposed rule changes wouldn’t necessarily lead to more consolidation. “We’re not in the business of predicting what’s going to happen,” Pate said.

Kohl raised concerns about the proposed purchase of DirecTV by News Corp., but Pate wouldn’t comment specifically on News Corp.’s proposal. He did say that generally, vertical integration, like the News Corp. proposal, usually provided fewer antitrust concerns than horizontal integration. Pate said he was pleased that the DoJ rejected the proposed DirecTV-EchoStar merger, a horizontal merger that he said offered more antitrust concerns. DeWine said the Antitrust Subcommittee would hold a hearing in June on the proposed merger, which he said would be “lively and positive.”

The DoJ also isn’t likely to address the growth of Clear Channel, Pate said. When asked by Kohl about the national radio environment, Pate again said it’s the FCC’s mandate to address those ownership issue and noted that the ownership limits are established by the Telecom Act. When the DoJ reviews local radio mergers, Pate said it does so from a