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TELECOMMUNICATIONS LAW UPDATE

NTIA and FCC Assess Spectrum for “3-G” Wireless Services

Since the 2000 World Radio Conference (WRC-2000) earlier this year, which identified a number of spectrum bands for worldwide “third generation” (3-G) wireless services, the wireless industry has been anxiously awaiting government action to allocate spectrum for such services in the United States. The U.S. wireless industry has watched as this country lagged behind others in embracing 3-G: many countries, especially in Europe, already have identified their spectrum bands for 3-G systems, and some have begun to issue 3-G licenses. Member countries of the European Union are obligated to issue their 3-G licenses by January 2001, and the United Kingdom and Germany already have completed their auctions for such licenses. Thus, anxiety about U.S. competitiveness in 3-G services has been growing.

3-G, also known as International Mobile Telecommunications-2000 (“IMT-2000”), is the next generation of advanced wireless telecommunications systems. These systems will offer higher data speeds and increased capacity to support fixed and mobile services on wireless devices, including small pocket terminals, handheld telephones and laptop computers. While first and second-generation wireless systems are not uniformly deployed across the globe and operate on different bands of spectrum worldwide, 3-G services are intended to be uniformly available throughout developed and remote areas, to offer seamless global roaming. Thus, it is important that U.S. 3-G spectrum be compatible with worldwide 3-G spectrum allocations.

On October 13, 2000, President Clinton issued an Executive Memorandum instructing the Secretary of Commerce, in cooperation with the FCC, to identify and analyze possible spectrum bands for the provision of generation 3-G wireless systems. Among other actions, the Executive Memorandum directs both the NTIA and the FCC

to study the current uses and potential for reallocation for 3-G services of the spectrum bands identified at WRC-2000. On November 15, 2000, NTIA and the FCC issued interim reports that identified the current uses in two of these potential bands — 1755-1850 MHz and 2500-2690 MHz. These reports also assessed the costs associated with reallocating these bands for 3-G services and considered whether these bands instead could be segmented or otherwise shared by newly licensed 3-G service providers and incumbent users.

The 1755-1850 MHz band is allocated solely for U.S. government operations and is heavily used by the Department of Defense and other federal agencies for satellite control systems, fixed microwave systems and tactical radio relay communications for command and control of U.S. forces. NTIA’s interim report suggests that reallocating this band to 3-G services could harm important national defense and other governmental wireless operations. Suitable replacement spectrum would need to be found for these operations, which would trigger the need for further spectrum reallocations.

The 1500-1690 MHz band is allocated primarily to the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In 1998, the FCC revised its rules to allow these services to include two-way fixed data services. Both Sprint and WorldCom have made significant investments in MDS systems as a result of these changes. In addition, many of the non-profit educational institutions that hold ITFS licenses have entered into long-term excess channel capacity lease agreements with MDS licensees, and joint plans for the introduction of new two way services are underway in many communities. The FCC’s interim report suggests that if the 2500-2690 MHz band is chosen for reallocation, these commercial carriers and educational institutions will require

replacement spectrum or otherwise will have to be compensated.

In addition, although NTIA and the FCC also are examining whether 3-G licensees could share either the 1755-1850 or 2500-2690 MHz bands with incumbents, both interim reports suggest that sharing presents significant technical and other difficulties that could have a substantial negative affect on existing users.

In short, these reports make clear that *neither* band is an ideal candidate for reallocation to 3-G. Nor are the incumbents in either band likely to facilitate a reallocation process; both bands are being used extensively by incumbents with considerable political clout, which no doubt will be exercised to oppose such efforts. Moreover, it is unclear how incumbents' relocation costs in either band could be covered, but new licensees most likely would have to assume the costs of relocating private and government incumbents. The relocation costs for either band are likely to be substantial, and a source of much contention. A more pressing issue, though, may be identifying suitable alternative spectrum for relocation to take place at all.

The dilemmas posed by the two proposed bands no doubt will increase U.S. carriers' interest in exploring other spectrum opportunities, notwithstanding the spectrum identified at WRC-2000. One band that has attracted particular interest is the 700 MHz band, currently

used by analog TV broadcasters, but slated for auction early next year. Broadcasters are required to exit this band following their transition to new digital spectrum, but the process has been protracted. The search for 3-G spectrum is likely to increase pressure on broadcasters currently in the band to relocate earlier rather than later, thus opening the band for more rapid deployment by wireless carriers. FCC Chairman Kennard has already expressed concerns about delays in the broadcasters' transition to digital operations, which stands in the way of wireless progress. But the 700 MHz band, even when cleared for wireless operations, is not likely to be compatible with European and other international 3-G allocations. This, too, is not an optimal answer for U.S. carriers' 3-G needs.

The President's Executive Memorandum directs NTIA and the FCC to work with government and industry representatives as they continue their analysis of possible spectrum for 3-G services. The Memorandum contemplates that these two agencies will issue their final reports by March 1, 2001, and that the FCC will complete its rulemaking to reallocate the targeted spectrum by July 2001. The auction for 3G licenses in the chosen band would be completed no later than September 30, 2002. Thus, NTIA and the FCC face some complex and politically difficult decisions on a very aggressive timetable, as they attempt to identify and make available suitable spectrum for 3-G services.

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