

FCC LAUNCHES PROCEEDINGS TO IMPLEMENT NATIONAL BROADBAND PLAN; DEPARTMENT OF COMMERCE OPENS REVIEW OF INTERNET PRIVACY POLICY

On April 21, 2010, the Federal Communications Commission (FCC or Commission) initiated or advanced several proceedings as part of its first major initiative toward implementing the policies and recommendations in the National Broadband Plan published in March 2010. On April 20, 2010, the US Department of Commerce released a notice of its review of Internet privacy policy. This advisory briefly summarizes these actions.

ORDER AND NOTICE ON ROAMING POLICIES

The FCC released an Order on Reconsideration and a Second Further Notice of Proposed Rulemaking addressing the Commission's wireless roaming policies.

In the Order on Reconsideration, the FCC modified the automatic roaming obligations adopted in 2007, which required a commercial mobile radio service (CMRS) provider to provide automatic roaming on a just, reasonable and nondiscriminatory basis to a technologically compatible requesting carrier outside of such carrier's "home market." The so-called "home roaming exception" relieved a host carrier of the automatic roaming obligation in any geographic location where the requesting carrier has a wireless license or spectrum rights that could be used to provide mobile voice services. In the Order on Reconsideration, the FCC eliminated the home roaming exclusion. Thus, home roaming will be subject to the automatic roaming requirement and, as a common carrier service, subject to the just, reasonable and nondiscrimination requirements set forth in Sections 201 and 202 of the Communications Act. The FCC also modified the automatic roaming rule to provide that the FCC "will resolve automatic roaming disputes on a case-by-case basis, taking into account the totality of the circumstances presented in each case."

In the Second Further Notice of Proposed Rulemaking contained in the same document, the FCC asks for comment on whether it should expand roaming obligations to mobile data services, like mobile broadband and Internet access services, and what form those obligations, if any, should take. As recommended by the National Broadband Plan, the Commission seeks a more detailed and updated record to assist in developing policies for data roaming that will increase mobile broadband access throughout the United States. The FCC discussed its jurisdiction to apply automatic roaming obligations on non-interconnected data services pursuant to its authority under Title I and Title III

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of the Communications Act and sought comment on its analysis. The Commission also asked for comment on whether or not automatic roaming for non-interconnected services is a “telecommunications service” subject to Title II. Comments on the Second Further Notice of Proposed Rulemaking are due on or before June 14, 2010, with reply comments due on or before July 12, 2010.

PROCEEDINGS TO PROMOTE COMPETITION IN THE VIDEO DEVICE MARKETPLACE

As recommended by the National Broadband Plan, the FCC released a Notice of Inquiry and a Fourth Further Notice of Proposed Rulemaking intended to improve competition in the retail market for set-top devices that are compatible with multichannel video programming distributor (MVPD) services.

In the Notice of Inquiry, the FCC seeks comment on a proposed “AllVid” adapter that would perform the tuning and security decryption functions specific to a particular MVPD and then allow a retail set-top box, television, or other smart video device to perform navigation functions, including programming guides and search functionality. The adapter is intended to replace the current CableCARD system applicable to cable television systems and be compatible with any MVPD service. The FCC also asks for alternative proposals that would eliminate barriers to entry in the retail market for smart video devices. Comments on the Notice of Inquiry are due on or before July 13, 2010, with reply comments due on or before August 12, 2010.

The companion Fourth Further Notice of Proposed Rulemaking proposes changes to the current CableCARD regime. These changes are intended as interim measures to improve the CableCARD system while the AllVid system contemplated by the Notice of Inquiry is developed. The proposed rule changes include:

- making CableCARD pricing and billing more transparent;
- simplifying the CableCARD installation process;
- requiring cable operators to offer CableCARDS that can tune multiple streams; and
- clarifying the CableCARD device certification process.

Comments on the Fourth Further Notice of Proposed

Rulemaking are due on or before June 14, 2010, with reply comments due on or before June 28, 2010.

PROCEEDINGS TO REFORM THE UNIVERSAL SERVICE FUND

Beginning a long-term effort to transform the focus of the Universal Service Fund (USF) from supporting telephone networks to providing affordable access to broadband service, the FCC released both a Notice of Inquiry and Notice of Proposed Rulemaking on the topic.

The Notice of Inquiry asks for comment on an economic model, developed as part of the National Broadband Plan, that estimates the gap between the cost of deploying broadband to unserved areas and the additional revenue that would be generated from such deployment. The FCC asks for comment on ways that the model could be used to determine efficient levels of universal service support to achieve nationwide broadband access. Additionally, the FCC seeks comment on possible interim measures to provide broadband access to unserved areas while the Commission considers final rules to reshape the USF.

The Notice of Proposed Rulemaking asks for input on a number of proposed rules meant to reduce legacy USF spending in high-cost areas and shift that support to broadband communications. The proposed rules include:

- capping the size of the high-cost program at 2010 levels;
- reexamining current rules for smaller carriers in light of competition and growth in unregulated revenues; and
- phasing out multiple competitors in areas where the market struggles to support a single provider.

Comments on the Notice of Proposed Rulemaking and Notice of Inquiry are due on or before July 12, 2010, with reply comments due on or before August 11, 2010.

INQUIRY INTO PROPOSED CYBER SECURITY CERTIFICATION PROGRAM FOR SERVICE PROVIDERS

The FCC released a Notice of Inquiry seeking comment on the creation of a voluntary cyber security certification program recommended by the National Broadband Plan. In the Notice, the FCC seeks comment on the components

and possible benefits of the proposed program, under which the Commission or a third-party would certify participating communications service providers. The FCC's stated goals in implementing the program are:

- increasing the security of the nation's broadband infrastructure;
- promoting a culture of more vigilant cyber security among participants in the market for communications services; and
- offering end users more complete information about their communication service providers' cyber security practices.

Comments on the Notice of Inquiry are due on or before July 12, 2010, with reply comments due on or before September 8, 2010.

INQUIRY INTO SURVIVABILITY OF AMERICA'S BROADBAND INFRASTRUCTURE

As recommended in the National Broadband Plan, the FCC released a Notice of Inquiry regarding the ability of current broadband networks to survive natural disasters, pandemics, terrorist attacks, or other major emergencies. The inquiry is intended to give the FCC an understanding of current networks' survivability and explore measures to reduce any vulnerabilities. The Commission seeks broad comment on three areas of potential harm:

- physical damage;
- inadequate redundancy; and
- severe network overload.

The FCC views this inquiry as the first step towards ensuring broadband communications will remain available in times of disaster or crisis. Comments on the Notice of Inquiry are due on or before June 25, 2010, with reply comments due on or before July 26, 2010.

US DEPARTMENT OF COMMERCE INQUIRY INTO INTERNET PRIVACY POLICY

Prompted in part by the National Broadband Plan's recommendations on privacy, the US Department of Commerce's Internet Policy Task Force has initiated a comprehensive review of the relationship between privacy policy and innovation in the Internet economy. In

a Notice of Inquiry dated April 20, 2010, the Task Force, led by the National Telecommunications and Information Administration, asks for public comment from all sectors on the effect of current privacy laws on the Internet economy and whether these laws serve consumer interests. The Notice seeks comment on a number of specific areas, including:

- federal, state, and international privacy laws and regulations;
- jurisdictional conflicts and competing legal obligations;
- new privacy-enhancing technologies and information management processes;
- small and medium-sized entities and startup companies; and
- the role for government and the Commerce Department.

Comments on the Notice of Inquiry are due on June 7, 2010.

We will be following these developments in future advisories. If you have any questions, please contact:

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