On September 29, 2005, the Federal Communications Commission released its Eighth Report and Order and Fifth Notice of Proposed Rulemaking in ET Docket No. 00-258, setting aside additional spectrum for Advanced Wireless Services (AWS), which include voice, data and broadband services.

The new AWS spectrum includes the 2155-2175 MHz band, of which the 2155-2160 MHz sub-band has been designated for Fixed and Mobile services. Service rules for this sub-band will be established at a later date in a separate proceeding. The sub-band is presently used by incumbent Broadband Radio Service (BRS) licensees and in the Fifth Notice of Proposed Rulemaking, the FCC seeks comment on how best to relocate their operations. The FCC proposes to require the AWS entrant to relocate BRS operations on a link-by-link basis, based on interference potential. It further proposes to allow the AWS entrant to determine its own schedule for relocating incumbent BRS operations, so long as it relocates incumbent BRS licensees before beginning operation in a particular geographic area, and subject to any other build-out requirements that may be imposed by the FCC on the AWS entrant.

The FCC proposes to require that the AWS licensees provide BRS operators with "comparable facilities" in terms of throughput, reliability and operating costs. Many BRS licensees currently lease their spectrum capacity to other commercial operators under the FCC’s Secondary Markets policy. Because leasing is so prevalent in the BRS bands, the “comparable facilities” standard needs to address these arrangements. Leasing arrangements vary—some BRS licensees may continue to lease their spectrum to third parties when they relocate to the 2.5 GHz band, but other BRS licensees may continue to lease their spectrum to third parties after 10 years following the start of the negotiation period for relocation. The FCC also seeks comment on licensing eligibility, future licensing periods, as well as various interference and technical issues. The FCC proposes to adopt a “sunset rule,” which provides that new AWS licensees are not required to pay relocation expenses for 10 years following the start of the negotiation period for relocation. Comments will be due 30 days after publication of the Notice of Proposed Rulemaking in the Federal Register, and replies will be due 45 days thereafter. The text of the Order can be found here: AWS/BRS Order and NPRM

FCC ESTABLISHES DSL AND CABLE MODEM SERVICE PARITY

On September 23, 2005, the FCC released the text of its DSL Order and Notice of Proposed Rulemaking in CC Docket No. 02-33, which established regulatory parity between digital subscriber line (“DSL”) and cable modem service. Regulatory parity allows providers of both technologies to offer broadband Internet access without being subject to Communications Act Title II common carrier regulation. The DSL Order establishes regulatory parity between digital subscriber line (“DSL”) and cable modem service. Regulatory parity allows providers of both technologies to offer broadband Internet access without being subject to Communications Act Title II common carrier regulation. The DSL Order...
is a follow up to the U.S. Supreme Court’s recent National Cable Telecommunications Association v. Brand X Internet Services decision, which upheld the FCC’s classification of cable modem offerings as “information services.”

Wireline broadband Internet access services, such as DSL, are seen by the FCC as distinct from other wireline broadband services, such as stand-alone asynchronous transfer mode (ATM) service, frame relay, gigabit Ethernet service, and other high-capacity special access services, that carriers and end users have traditionally used for basic transmission purposes. These services lack the key characteristics of wireline broadband Internet access service in that they do not inextricably intertwine transmission with information-processing capabilities. Because carriers and end users typically use these services for basic transmission purposes, these services are “telecommunications services,” and not “information services,” under the statutory definitions.

Generally, the DSL Order determines that: (1) facilities-based wireline broadband Internet access service is an “information service”; (2) Bell companies no longer have to offer wireline broadband Internet access as separate, stand-alone services, and are relieved of all Computer Inquiry requirements; (3) facilities-based wireline carriers may offer broadband Internet access transmission arrangements on either a common carrier or a non-common carrier basis (see below); and (4) facilities-based Internet access service providers must continue to provide existing wireline broadband Internet access transmission offerings, on a grandfathered basis, to unaffiliated Internet service providers (ISPs) for a one-year transition period.

The FCC affirmed that although neither the statute nor relevant precedent mandates that “broadband transmission” be a “telecommunications service” when provided to an ISP, a provider may choose to offer it as such. The FCC determined that the use of the transmission component as part of a facilities-based provider’s offering of wireline broadband Internet access service to end users using its own facilities is “telecommunications” and not “telecommunications service” under the Act.

In its Notice of Proposed Rulemaking accompanying the DSL Order, the FCC seeks comment on several consumer protection issues including: (1) whether it should extend privacy requirements similar to providers of broadband Internet access services; (2) whether it should impose certain slamming requirements on providers of broadband Internet access service; (3) whether it should impose requirements on broadband Internet access service providers that are similar to its truth-in-billing requirements or are otherwise geared toward reducing telecommunications-related fraud; (4) whether to require service outage reporting for outages of 30 minutes or more; and (5) whether it should impose discontinuance-type requirements on providers of broadband Internet access service.

Comments will be due 90 days after publication of the Notice of Proposed Rulemaking in the Federal Register, and replies will be due 45 days thereafter. The text of the Order can be found here: [DSL Order and NPRM](#).

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**CANADA POISED TO SET BPL TECHNICAL STANDARDS**

Industry Canada, the Canadian counterpart to the FCC, has initiated Broadband over Power Line (BPL) proceedings to set technical standards for BPL service providers operating in Canada. Canada currently does not have BPL-specific standards, but its Radiocommunications Act provides steps to resolve interference complaints. Industry Canada is also developing a new Interference Causing Equipment Standard for access BPL equipment. To ensure compliance with interference standards, Industry Canada proposed an equipment certification process that includes submission of a test report.

**TEXAS AUTHORIZES FIRST STATEWIDE CABLE & VIDEO FRANCHISE**

Guadalupe Valley Communications Systems, the cable subsidiary of Guadalupe Valley Telephone Cooperative, was granted the first statewide cable and video franchise in Texas. The franchise authorizes Guadalupe to provide television services in several cities simultaneously, without having to seek permission from each local municipality. To date, Texas is the only state that offers such state-issued, statewide franchises. The Texas bill authorizing the franchises was signed into law by Governor Rick Perry on September 7, 2005. Guadalupe applied for its franchise on September 12. Grande Communications Networks, Inc. and GTE Southwest Inc., dba Verizon Southwest, have also applied for the statewide franchises.
On September 23, 2005, the FCC released its Policy Statement with respect to broadband access to the Internet. According to the FCC, the Communications Act charges the FCC with “regulating interstate and foreign commerce in communication by wire and radio.” The Communications Act regulates telecommunications carriers as common carriers under Title II. Information service providers, “by contrast, are not subject to mandatory common-carrier regulation under Title II.” The FCC, however, “has jurisdiction to impose additional regulatory obligations under its Title I ancillary jurisdiction to regulate interstate and foreign communications.” As a result, the FCC has jurisdiction necessary to ensure that providers of telecommunications for Internet access or Internet Protocol-enabled (IP-enabled) services are operated in a neutral manner.

To help ensure that broadband networks are widely deployed and open, affordable, and accessible to all consumers, the FCC adopted the following principles:

- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to access the lawful Internet content of their choice.
- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to run applications and use services of their choice, subject to the needs of law enforcement.
- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to connect their choice of legal devices that do not harm the network.
- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to competition among network providers, application and service providers, and content providers.

The text of the FCC’s policy statement can be found here: [FCC Broadband Internet Policy Statement](#)

**PHILADELPHIA TO BUILD MUNICIPAL WI-FI SYSTEM**

The City of Philadelphia has announced a plan to build what it calls the biggest municipal wireless Internet system in the nation. This is another in a growing number of cities who treat high-speed Web access as a basic municipal service like water, electricity and trash collection. EarthLink will fund, build, and manage the 135-square-mile Wi-Fi (Wireless Fidelity) network, which will offer a speed of 1 megabit per second for $20 per month to regular customers and $10 per month to low-income residents. EarthLink hopes to make money by renting access to other Internet service providers and by charging tourists and business travelers for use. Philadelphia’s decision to move forward with the system will add fuel to the argument that public money should not be used to support competition with private firms.

**FOR MORE INFORMATION**

For more information on these topics, please contact any of the attorneys found at the link below:

Troutman Sanders LLP Telecommunications & Technology Practice Group

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