SELECTED FCC DOCKET SUMMARIES, 2010

***In re* Wireless E911 Location Accuracy Requirements, *Second Report and Order*, PS Docket No. 07-114; Wireless E911 Location Accuracy Requirements, E911 Requirements for IP-Enabled Service Providers, *Further Notice of Proposed Rulemaking and Notice of Inquiry*, PS Docket No. 07-114, WC Docket No. 05-196 (Sept. 23, 2010).**

In this Second Report and Order ("Second Order"), the Federal Communications Commission ("FCC" or "Commission") revised the benchmarks wireless carriers must meet in order to better assist emergency call centers in determining the location of 911 calls originating from cell phones. Emergency call centers already have the ability to determine the location of 911 calls originating from traditional landlines and Voice over Internet Protocol (VoIP) services.[1] However, determining the location of 911 calls originating from cell phones has proven more difficult, especially in rural and sparsely populated areas. The Second Order, released on September 23, 2010, addresses four issues: (1) whether compliance should be at the county-level or Public Safety Answer Point ("PSAP")[2] level; (2) accuracy standards for handset-based location technologies, (3) accuracy standards for network-based location technologies, and (4) confidence and uncertainty data regarding location information.

In a June 1, 2007 FCC Notice, the Commission stated that wireless carriers should not be allowed to average their accuracy results over large portions of their network to meet accuracy standards. This would allow carriers to use very accurate data from urban areas to compensate for inaccurate data from sparsely populated areas, leaving many areas with location data that fell short of accuracy requirements. The First Report and Order ("First Order") released on November 20, 2007 adopted a PSAP-level compliance requirement along with yearly accuracy benchmarks for carriers to meet with total compliance required by September 11, 2012. Several carriers filed a stay on the First Order which was granted by the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") on March 25, 2008. On July 31, 2008, the FCC ultimately filed a Motion for Voluntary Remand and Vacatur which was granted by the D.C. Circuit on September 17, 2008.

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[1] Voice over Internet Protocol ("VoIP") services are communication services provided by phone companies like Vonage and Net2Phone that use the Internet to transmit phone calls instead of traditional landlines.

[2] A Public Safety Answering Point is simply an emergency call center that directs emergency response teams to the location of an emergency.

Under county-level and PSAP-level measurements, wireless carriers would be required to calculate accuracy of location information in each individual county or the PSAP, respectively. In most cases, PSAPs share the same boundaries as the county, making the distinction meaningless. However, the Commission stated that measuring at the PSAP-level would provide a public safety benefit because, regardless of whether the PSAP area was larger or smaller than the county, the data would be specific to the PSAP area, making it easier to determine where improved accuracy needs to occur, removing the need to extrapolate PSAP compliance from county specific data. Furthermore, smaller carriers in rural areas argue that meeting requirements at the county level would be extremely difficult and cost prohibitive due to the need to construct several new cell sites for the sole reason of meeting the accuracy standards. However, the Commission recognized that counties "are more easily defined than PSAPs and are not prone to administrative boundary changes."[3] The Commission came to the conclusion that there was merit for both PSAP-level and county-level compliance standards and that public safety would be served by either option. Therefore, the Commission ruled that carriers could choose between PSAP-level compliance or county-level compliance based on which better meets their needs.

Handset-based location technology relies on software installed on the phone that continuously sends information to nearby cell sites and determines location based on the strength of the signal sent from the phone. Accuracy of handset-based technology is hampered by terrain obstructions such as heavy forestation or tall buildings because these obstructions can block the signal transmission from the handset to the cell tower. With that in mind, the Commission set out the following rules for handset-based location technology based on a joint proposal from the Association of Public-Safety Communications Officials International, Inc. ("APCO"), the National Emergency Number Association ("NENA"), and Verizon Wireless filed with the FCC on August 20, 2008:

> Two years after the Commission adopts new rules, on a county-by-county basis, 67% of Phase II calls must be accurate to within 50 meters in all counties; 80% of Phase II calls must be accurate to within 150 meters in all counties, provided, however, that a carrier may exclude up to 15% of counties from the 150 meter requirement based upon heavy forestation that limits handset-based technology accuracy in those counties.
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> Eight years after the Commission adopts new rules, on a county-by-county basis, 67% of Phase II calls must be accurate to within 50 meters in all counties; 90% of Phase II calls must be accurate to within 150 meters in all counties, provided, however, that a carrier may exclude up to 15% of counties from the 150 meter requirement based upon heavy forestation that limits handset-based technology accuracy in those coun-

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[3] *In re* Wireless E911 Location Accuracy Requirements, *Second Order and Report*, FCC-10-176, PS Docket 07-114, ¶ 16, *available at* http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1018/FCC-10-176A1.pdf.

ties.[4]

Several rural and regional wireless carriers voiced concern that the benchmarks as a whole would be too expensive and cumbersome for them to meet. The Rural Cellular Association ("RCA") stated that Tier II and Tier III carriers would likely need at least 6-12 more months to meet these standards. In response, the Commission stated that the public policy goals outweigh the potential cost. Furthermore, the carriers had two years from the time the proposal was made to raise concerns and never did so. However, the Commission will allow smaller carriers to request waiver relief if the individual carriers can show substantial hardship.

In regard to the 15% exception for heavy forestation, Motorola suggested that, in the alternative, carriers need only meet 85% compliance in total. This would allow for more flexibility for obstructions other than forestation, such as urban canyons, that also limit accuracy. On the other hand, RCA argued that the exception should be raised to 25% and 20% respectively for two-year and eight-year requirements. SouthernLINC, a rural provider, suggested that "forestation" be changed to "challenging environment." However, APCO and NENA asserted that this exception could lead to carriers excluding large metropolitan counties posing an unacceptable risk to the public. Ultimately, the Commission agreed with APCO and NENA and kept the 15% forestation exception. The FCC argued that other terrain issues typically overlap with forestation and thus would be addressed by the exclusion. Furthermore, smaller carriers can still apply for waiver relief.

Network-based location technology, often referred to as a 3G network, relies on the network infrastructure of a wireless carrier. Location is determined based on triangulating a phone's signal and accuracy is based on the concentration of cell sites. In urban areas, where there tend to be many cell sites, a high level of accuracy is easily achieved. However, in rural areas, cell sites are fewer and spaced further apart, making accuracy more difficult. The Commission adopted the following rules based on a joint proposal filed August 25, 2008 by NENA, APCO, and AT&T:

> • 67%/100M: 67 percent of all calls, measured at the county level, shall be located within 100 meters in each county by the end of year 5, in accordance with the interim benchmarks below; and
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> • 90%/300M: 90 percent of all calls, measured at the county level, shall be located within 300 meters in 85 percent of all counties by the end of year 8, in accordance with the interim benchmarks below. . . .

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[4] *Id.* ¶ 19.

- The county-level location accuracy standards will be applicable to those counties, on an individual basis, for which a network-based carrier has deployed Phase II in at least one cell site located within a county's boundary. Compliance with the 67 per cent standard and compliance with the 90 percent standard in a given county shall be measured and reported independently (i.e. the list of compliant counties for the 67 percent standard may be different than for the 90 percent standard).[5]

Recognizing the fact that some network-based service carriers would not be able to meet these standards relying only on network-based location technology, the Commission allowed these carriers to use handset-based technology where necessary to meet the standards. In addition, for the 67%/100 meter standard, by the end of years one, three, and five, carriers must comply in 60%, 70%, and 100% of all counties, respectively. For the 90%/300 meter standard, by the end of years three, five, and eight, carriers must comply in 60%, 70%, and 85% of counties, respectively.

T-Mobile and RCA argued that these benchmarks were not technically feasible for companies other than AT&T because their 3G network services are not yet as expansive as AT&T's. Furthermore, the smaller carriers do not have access to many handsets with the requisite technology for network-based location due to exclusivity agreements between carriers and manufacturers (like AT&T and the iPhone). The Commission rejected these arguments stating that the new rules allowed for carriers to use handset-based location technology where necessary to meet the standards. Furthermore, the Commission will grant waiver relief if carriers can show it is necessary.

T-Mobile also requested that counties with fewer than three cell sites be exempt from the benchmarks. The Commission, recognizing that it is technically impossible to triangulate location with only one or two cell sites, granted this exception. Without the exception, carriers might choose to eliminate service altogether in such counties, making it substantially more difficult for people to get help if the emergency did not happen in close proximity to a landline. Though the exception does not take into account the use of cell sites outside a county, allowing exclusion even when triangulation is possible, the Commission reasoned that, over time as more cell sites are built, the need for the exception will diminish.

Lastly, the Commission ruled that after year two, all wireless carriers, regardless of the type of technology used, must provide accuracy data on a per-call basis to PSAPs that request such data. Furthermore, entities that pass this data between carriers and PSAPs must implement any necessary technology in order to facilitate transmission of the data.

Summarized by Wesley Gee

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[5] *Id.* ¶¶ 31-32.

***In re* Unlicensed Operation in the TV Broadcast Bands; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band, *Second Memorandum Opinion and Order*, FCC 10-174, ET Docket No. 04-186, ET Docket No. 02-380 (Sept. 23, 2010).**

Broadcast channels are separated by blocks of unused broadcast spectrum, referred to as "TV white spaces". Historically, the purpose of these vacant swaths of spectrum was to protect broadcast channels from interference from other stations. Due to advancements in technology, the need for this safeguard has diminished.

On November 4, 2008 the Federal Communications Commission ("FCC" or "Commission") approved rules for the unlicensed use of 300MHz to 400MHz of vacant broadcast spectrum. The rules adopted in the Second Report and Order and Memorandum Opinion and Order ("Second Report and Order") was the Commission's first step towards releasing available broadcast spectrum for unlicensed use. This unused spectrum has been described as "prime real estate" due to its propagation characteristics. Its signals have the ability to travel long distances, create "super Wi-Fi hotspots", and provide access to broadband in rural areas.

On September 23, 2010 the FCC adopted the Second Memorandum Opinion and Order ("Second MO&O"). The Second MO&O sought to resolve technical and legal issues arising from the unlicensed use of wireless devices in TV white spaces. Although the general decisions made in the Second Report and Order were upheld, the Commission granted seventeen petitions for reconsideration. The petitions were granted through amendments of the rules set forth in the Second Report and Order. The amendments concerned four areas: Protection Criteria for Incumbent Services, TV Bands Devices, TV Bands Database, and Use of TV Channels.

Relevant protection criteria were modified, including which receive facilities are permitted to be registered in the TV Bands database. TV translator receive sites and the receive sites of all multi-channel programming distributors, which qualify under the Section 602(13) of the Communications Act, may now freely register in the database. TV Bands devices containing geo-location capability and access to databases must no longer include TV signal information. Thus, the aforementioned TV Bands devices are not required to sense television, wireless microphones, and low power auxiliary stations. The Commission reasoned that the mandatory spectrum sensing requirement did not best serve the public interest. Additionally, under the adjacent channel emissions rule, measurements of emissions must be in proportion to the total amount of in-band power in a 6 MHz bandwidth. The Commission reasoned that this requirement will result in a higher reading of in-band power. In an effort to iden-

tify errors, such as interference, the information included in a TV Bands database will now be accessible to the public.

However, Public access is limited to information that is required by the Commission's rules. Two channels, nationwide, will be reserved exclusively for wireless microphones and Low Power Auxiliary Stations ("LPAS"). This action sought to ensure that wireless microphones in all markets will have channels available for their operation. In an effort to protect TV broadcast operations in Canada and Mexico from interference, information on the Canada and Mexico border areas will be included in the TV Bands database.

The Commission's objective is to "make a significant amount of spectrum available for new and innovative products and services." The actions taken by the FCC include safety measures to "prevent harmful interference to incumbent communications services." The 2008 Second Report and Order adopted rules authorizing the use of white spaces by unlicensed devices. The Second Memorandum Opinion and Order, adopted in 2010, finalized the rules and resolved legal and technical issues. The Commission anticipates this action to stimulate investment and innovation in wireless devices operating within the released TV bands.

Summarized by Emma Bramble

In re Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Third Report and Order on Reconsideration, FCC 10-181, CS Docket No. 97-80 (Oct. 14, 2010)

In an effort to increase options for cable customers and promote development of a competitive market for retail navigation devices used with cable services, the Federal Communications Commission ("FCC" or "Commission") issued this Third Report and Order on Reconsideration, which changes previous CableCARD rules. This action followed a Fourth Further Notice of Proposed Rulemaking, 25 F.C.C.R. 4303 (2010) in which the Commission sought comment on several of the provisions regulated in the Third Report and Order.

The original CableCARD rules went into effect as part of the Implementation of Section 304 of the Telecommunications Act of 1996. The Commission's stated goal in this First Report and Order, 13 F.C.C.R. 14775 (1998), was to provide customers with the option of purchasing a retail set-top box instead of paying to rent one from their Multichannel Video Programming Distributor ("MVPD") providers. The CableCARD is a security device provided by the MVPD that can be installed into a customer's retail device to allow the

customer to watch the MVPD's programming. However, since the First Report and Order, the number of customers who have taken advantage of the opportunity to purchase a set-top box from a retailer and have their service providers install a CableCARD into their personal set-top box has been minimal. According to the Commission, only one percent of navigation devices deployed are purchased from a retailer.

In an effort to change the small percentage and to update the rules for new technology, the Commission stated in this Third Report and Order that the changes should "benefit consumers who wish to buy navigation devices while at the time removing unnecessary regulatory obligations on cable operators."

The Commission notes in each rule that all of the changes made to the CableCARD rules are done within their statutory authority under Section 629 of the Telecommunications Act of 1996, which gives the Commission authority to adopt regulations to assure commercial availability of navigational devices. These changed rules included five main provisions.

I. REQUIRES CABLE OPERATORS TO SUPPORT THE RECEPTION OF SWITCHED DIGITAL VIDEO SERVICES ON RETAIL DEVICES

Switched Digital Video ("SDV") services allow a cable provider to offer service more efficiently because channels occupy capacity on the system only when the subscriber is viewing or recording it. This new rule mandates that any customer who chooses to purchase a retail box still be able to receive SDV channels. Because there is debate within the industry as to the best way to provide SDV to subscribers, the Commission notes that support for retail devices is mandated "without specifying the technology that cable operators must use to ensure such compatibility."

The Third Report and Order on Reconsideration sets a nine month deadline for when cable providers must be technologically equipped to provide SDV to any customer who uses a retail set-top box and CableCARD.

II. PROHIBITS PRICE DISCRIMINATION AGAINST RETAIL DEVICES TO SUPPORT A COMPETITIVE MARKETPLACE FOR RETAIL DEVICES

This rule sets guidelines for CableCARD pricing and billing transparency to MVPD customers. Providers must now notify subscribers of the cost of CableCARDs on their Web sites and yearly rate notices. Historically, the Commission has not mandated that customers see an itemized cost of the leased box as part of their regular bill, so the new rule provides for the first time that customers be notified of the exact amount they pay to lease the set-top box.

The Commission states that the Web site notification must be a line item "readily accessible to all members of the public." Cable operators must also make information available to their subscribers orally or in writing upon request.

Additionally, the rule mandates that if a subscriber chooses to use a retail set-top box instead of a leased box, the cable provider, may not charge a service fee on the retail box that is not imposed on leased devices.

III. REQUIRES CABLE OPERATORS TO ALLOW SELF-INSTALLATION OF CABLECARDS WHERE DEVICE MANUFACTURERS OFFER DEVICE-SPECIFIC INSTALLATION INSTRUCTIONS

When a cable subscriber purchases a set-top box at retail, the service provider has to supply the encrypted CableCARD to the subscriber for the subscriber to receive programming. Currently, most service providers require a technician visit the subscriber and install the new CableCARD into the device. Subscribers have complained about a variety of issues with this process, from inefficiency to technicians coming for the visit without working or correct cards. This new rule would require MVPD providers to allow a self-installation option in which they send CableCARDS to subscribers and then work with them over the phone to install. The Commission notes that this rule only applies if the purchased retail device also comes with specific installation instructions and a toll free help number to facilitate the installation process.

The Commission set a nine-month deadline for implementation of the self-installation ability for any cable provider that already allows self-installation for any other devices such as modems or set-top boxes (which the Commission notes is most providers).

IV. REQUIRES CABLE OPERATORS TO PROVIDE MULTI-STREAM CABLECARDS BY DEFAULT

Multi-stream CableCARDs (M-Cards) allow a subscriber to record one channel while watching another channel at the same time. M-Cards are already standard in most leased cable boxes and many new retail boxes now require them. The new rule mandates that cable companies provide subscribers who use retail set-top boxes with M-Cards on default unless they specifically request a single stream card (which allows a customer to watch or record only one channel at a time). This rule provides a regulation in an area in which one did not exist before, as the Commission has never set a default for the type of CableCARD a provider must distribute to customers using retail boxes.

V. CABLECARD DEVICE CERTIFICATION RULES ARE LIMITED TO CERTAIN TECHNICAL FEATURES

New technology has created a need to modify the Commission's rules regarding testing procedures of CableCARD devices. When a CableCARD device is created, it goes through a testing process at a qualified testing facility. The Commission has received complaints from stakeholders in the industry that the testing process is more rigorous than necessary and more rigorous than mandated by the Commission.

The new rule prohibits CableLabs or other qualified testing facilities from refusing to certify devices for any reason other than a failure to comply with the FCC's conformance checklist of certain technical features. The purpose is to make it easier for navigational device manufacturers to build competitive devices while at the same time protecting cable networks and service.

In addition to the five main rule changes addressed in the Third Report and Order, the Commission also set standards for high-definition set-top box interfaces and allowed an exemption from the integration ban for all one-way navigation devices. Both of these standards addressed by the Commission were, like the main rules addressed in the order, said to be in an effort to comply with Section 629 of the Telecommunications Act.

Summarized by Ellen Biltz

***In re* Proposing the Open Internet Broadband Industry Practices, *Notice of Proposed Rulemaking*, 24 F.C.C.R. 13064 (Oct. 22, 2009). *In re* Preserving the Open Internet Broadband Industry Practices, *Report and Order*, GN Docket No. 09-191, WC Docket No. 07-52 (Dec. 21, 2010).**

On October 22, 2009, the Federal Communications Commission ("FCC" or Commission") adopted a Notice of Proposed Rulemaking ("Net Neutrality NPRM") that seeks public comment on a regulatory framework to preserve the open Internet. With this NPRM, the Commission's goal was to promote investment and innovation with respect to the Internet. On December 21, 2010, the FCC commissioners voted to adopt a Report and Order ("Net Neutrality R&O") that will impose net neutrality rules on fixed and mobile broadband providers.

The Net Neutrality NPRM seeks comment on whether the FCC should adopt six net neutrality rules. All six proposed rules are phrased as limitations on broadband Internet access providers and state that these entities (1) may not prevent their users from accessing the lawful Internet content of their choice; (2) may not prevent their users from running or using the lawful applications

and services of their choice; (3) may not prevent their users from connecting lawful devices that do not harm the network; (4) may not deprive their users of competition among network, application, service, and content providers; (5) must treat lawful content, applications, and services in a nondiscriminatory manner; and (6) must be transparent about their network management practices. The first four proposed rules are similar to the four principles in the Commission's 2005 *Internet Policy Statement.*[6]

The FCC's Net Neutrality NPRM also proposed that broadband providers should be allowed to engage in "reasonable network management" practices. While the FCC did not provide an exhaustive list of what practices would be considered reasonable network management, the Net Neutrality NPRM identifies (a) reasonable efforts to reduce or mitigate the effects of network congestion, and (b) steps to address quality-of-service concerns, as examples that may be considered reasonable network management practices under the Commission's proposed rules.

In April 2010, the D.C. Circuit issued its opinion in *Comcast Corp. v. FCC.* 600 F.3d 642 (D.C. Cir. 2010). In *Comcast*, the D.C. Circuit addressed whether the FCC had legal authority to regulate a broadband provider's network management practices. The challenged FCC order sanctioned Comcast because the broadband provider throttled traffic to the BitTorrent peer-to-peer network. Because broadband providers are classified as information services under Title I of the Telecommunications Act of 1996, the D.C. Circuit held that the FCC could only regulate broadband providers' network management practices if the order satisfied the ancillary authority test outlined in *United States v. Southwestern Cable Co.*, 392 U.S.157 (1968). After determining that the FCC forfeited its ability to rely on certain statutory provisions to sanction Comcast, the D.C. Circuit held that the Commission failed to establish requisite ancillary authority to adopt its underlying order and vacated the FCC's decision.

In response to the *Comcast* decision, the FCC granted a petition to extend the deadline for parties to file reply comments for the Net Neutrality NPRM.[7]

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[6] *In re* Appropriate Framework for Broadband Access to the Internet over Wireline Facilities Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services Computer III Further Remand Proceedings Bell Operating Company Provision of Enhanced Services 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities Internet Over Cable Declaratory Ruling Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities, *Policy Statement*, 20 F.C.C.R. 14986 (Aug. 5, 2005).

[7] *In re* Preserving the Open Internet Broadband Industry Practices, *Order*, 25 F.C.C.R. 3582 ¶¶ 3-5 (Apr. 7, 2010).

Some commenters suggested that *Comcast* undermines the FCC's statutory authority to adopt its proposed net neutrality rules.

The FCC also responded to the *Comcast* decision by adopting a Notice of Inquiry ("Framework NOI") to determine whether the Commission has adequate legal authority to achieve its broadband goals, including its proposed net neutrality rules.[8]

In particular, the Framework NOI seeks comment whether the Commission should classify broadband Internet access as a Title I information service or reclassify broadband Internet access as a Title II telecommunications service. Within the reclassification option, the FCC seeks comment whether broadband Internet access providers should be subject to the full panoply of Title II regulations or if the FCC should forbear from applying large portions of Title II. The latter approach is referred to as "the third way."[9]

At this point, the Commission has not acted on the Framework NOI. In his concurring opinion regarding the Net Neutrality R&O, Commissioner Copps expressed interest that the reclassification docket remains open.

On September 1, 2010, the FCC released a Public Notice ("PN") seeking additional public comment on the Net Neutrality NPRM.[10] In the PN, the Commission noted that the discussion in the net neutrality proceeding appeared to narrow disagreement on five key elements of the net neutrality rules proposed in the NPRM. In addition, the PN seeks comment on the application of the proposed net neutrality rules to specialized services and mobile broadband offerings.

On December 21, 2010, the FCC commissioners voted 3-2 in favor of adopting a Net Neutrality R&O to impose net neutrality rules on fixed and mobile broadband internet access. The Net Neutrality R&O sets out three basic rules on fixed broadband, in which providers are (1) subject to transparency regulations wherein they must disclose network management practices, performance characteristics, and commercial terms; (2) prohibited from blocking lawful content, applications, services, and non-harmful devices on their networks; and (3) prohibited from unreasonably discriminating lawful network traffic. In addition, mobile broadband networks are regulated under the same transparency rules as fixed broadband, and mobile broadband providers may

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[8] *In re* Framework for Broadband Internet Service, *Notice of Inquiry*, 25 F.C.C.R. 7866 (June 17, 2010).

[9] *See The Third Way: A Narrowly Tailored Broadband Framework*, BROADBAND.GOV, http://www.broadband.gov/the-third-way-narrowly-tailored-broadband-framework-chairman-julius-genachowski.html (last visited Nov. 17, 2010).

[10] *In re* Further Inquiry Into Two Under-Developed Issues in the Open Internet Proceeding, *Public Notice*, 25 F.C.C.R. 12637 (Sept. 1, 2010).

not block access to lawful websites or block applications that compete with voice and video telephony services. All the fixed and mobile broadband net neutrality rules are subject to reasonable network management, which must be appropriate and tailored to a specific purpose. The net neutrality rules can be enforced in one of three ways. A consumer can electronically submit an informal complaint on the FCC's website, submit a formal complaint to be heard in a "rocket docket", or the Commission can initiate an investigation.

The legal authority upon which the FCC relied on to pass the Net Neutrality R&O include § 706 of the Telecommunications Act, as well as its statutory authority over voice over IP technologies ("VoIP"), broadcast and advanced video competition, and spectrum. One reason that Republican Commissioners Robert McDowell and Meredith A. Baker dissented from the R&O is because they contend the FCC has no legal authority to impose net neutrality rules on Title I broadband Internet access services over which the D.C. Circuit denied FCC ancillary authority to impose such rules in *Comcast*. Similarly, Commissioners Michael Copps and Mignon Clyburn indicated that the R&O was passed on a weak legal framework that may not be upheld in court.

From its inception, the FCC's net neutrality docket has been controversial. Opponents of net neutrality rules argue that the Internet has flourished without federal rules, and that the proposed rules threaten to do more harm than good. Advocates of net neutrality rules argue the proposed rules are necessary to ensure the Internet remains free and open. The Commission is also divided on these issues. Democrat FCC Chairman Genachowski has been committed to imposing net neutrality rules. The Chairman's fellow Democrat Commissioners Copps and Clyburn expressed that the Net Neutrality R&O does not include strong enough rules, and particularly mentioned that paid prioritization is not prohibited which they contend would effectively protect broadband consumers. Republican FCC Commissioners Robert McDowell and Meredith A. Baker concurred in part and dissented in part with the Net Neutrality NPRM, and both dissented from the Framework NOI and Net Neutrality R&O. In addition to their legal arguments in dissent, the Republicans contended that the procedure to pass the Net Neutrality R&O failed in its openness, that the policy is unnecessary and places the FCC in an unworkable role, and that there were nonexistent facts to support the R&O.

It remains to be seen if and how Congress will respond to the Net Neutrality R&O. Several Capitol Hill Republicans have expressed that they will halt the FCC from implementing its net neutrality regime, while Capitol Hill Democrats commented that the net neutrality rules were too weak to protect consumers, but that imperfect net neutrality rules are better than nothing.

Summarized by Jessica Elder

Summary of The 21st Century Communications & Video Accessibility Act

On October 8, 2010, President Barack Obama signed the Twenty-First Century Communications and Video Accessibility Act, into law (Pub. L. No. 111-260). Introduced by Senator Mark L. Pryor (D-AR) and Representative Ed Markey (D-MA), the Twenty-First Century Communications and Video Accessibility Act ("Accessibility Act") modernizes the Communications Act of 1934 by providing greater accessibility to Americans with hearing, vision, and other disabilities to vital means of modern communication—smart phones, Internet, television, and other technologies. Since the 1996 Amendments to the Communications Act, the telecommunications industry has rapidly evolved, driven in part by broadband Internet.

TITLE I OF THE ACCESSIBILITY ACT: COMMUNICATIONS

Generally, Title I of the Accessibility Act ensures that deaf and hearing-impaired individuals have greater access to varying mediums of communication, including Voice over Internet Protocol ("VoIP"), video-conferencing, and electronic messaging services. Specifically, section 102 expands upon the Communications Act of 1934, requiring newly developed technology be hearing aid compatible, as well as all "customer premises equipment," including emergency, pay, and Internet-based telephones. Section 103 defines "telecommunications relay services" to include wire or radio relay services, enabling the hearing-impaired to communicate in a comparable way to those individuals without a disability.

Additionally, Section 104 amends Section 225 of the Communications Act of 1934 by mandating that the Federal Communications Commission ("FCC') ensure that all cellular phone companies make their telephone software and services fully accessible to disabled individuals, if possible. If service providers cannot comply through reasonable means, they must ensure access by aligning their products with specialized devices commonly used amongst disabled individuals. Originally, Section 225 of the Communications Act required telecommunications service providers to ensure that their products and services, such as text messaging, e-mail services, and Internet browsers, were accessible to those individuals with disabilities.

The Act also increases the number of online television programs that include captions to permit the hearing-impaired to enjoy and engage in a greater variety of television and Internet-based programming.

TITLE II OF THE ACCESSIBILITY ACT: VIDEO

Through improved software interfaces, user-friendly programming guides and menus, and video descriptions, Title II of the Accessibility Act further expands the spectrum of video programming available to blind or visually-impaired individuals. Section 201 of the Act requires that the FCC establish the Video Programming and Emergency Access Advisory Committee ("Committee") for the purposes of developing a series of recommendations for increasing the ease and access of closed captioning Internet programming to blind or vision-impaired Americans. The Committee is composed of video programming developers, providers and manufacturers, and communications and Internet experts. Section 202 of the Accessibility Act requires the FCC to generate potential methods and solutions for conveying emergency broadcast information to visually impaired Americans and to ensure the implementation and conveyance of those recommendations.

In addition to generating recommendations, Section 204 of the Accessibility Act provides for the development of technology that audibly describes and narrates television programming, allowing the visually-impaired to more fully engage in and, in essence, view video programming. The Act also expands the definition of "video programming" as originally defined in the Communications Act to include digital and Internet-based programming. An expansive definition of video programming ensures that existing closed caption regulations apply to these new means of video programming. Additionally, Section 205 of the Act increases the ease by which individuals with vision loss can access on-screen television programs guides and cable menus, and requires that all remote controls be equipped with an easy means of accessing closed captioning on both broadcast and pay-for-view television. Finally, Section 206 allocates $10 million annually to eligible low-income Americans, who possess both hearing and vision loss, to purchase necessary Internet and telecommunications services.

Summarized by Corey Malmgren