

# Communications Daily

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## TODAY'S NEWS

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**TEA PARTY ELECTION WINS** would add deregulatory pressure to telecom policy fights next year. (P. 2)

**FCC COMCAST-NBCU REVIEW** intensifying, as timely action would aid Genachowski quest to be known for dealing with more matters head-on. (P. 4)

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## Bill Shock NPRM Discounts Viability of Voluntary Industry Code

An FCC rulemaking notice defines wireless "bill shock" as sudden increases in a subscriber's bill not caused by changes in a monthly service plan, and says bill shock is a "significant burden" for millions of Americans, said industry sources familiar with the NPRM, slated for a vote at the commission's Oct. 14 meeting.

There have been few lobbying meetings at the FCC over the last few weeks on bill shock, but numerous meetings have been scheduled over the next few days, before the release of the sunshine agenda Thursday, FCC officials said Tuesday. The NPRM is relatively short, running to a little more than 20 paragraphs, officials said.

The NPRM also tentatively concludes that voluntary industry efforts, such as the CTIA consumer code, lack full industry participation and are not enforceable, as an FCC order would be, officials said.

Wireless billing issues were raised over the weekend when the FCC Enforcement Bureau confirmed that Verizon Wireless was refunding millions of dollars to consumers who had been over billed for data usage (CD Oct 5 p5). Last week, Sen. Tom Udall, D-N.M., introduced bill shock legislation that would force companies to warn consumers when they're about to exceed their monthly cellphone voice, text or data limits.

Various public interest groups are pushing the FCC to move forward on bill shock rules. "We support the FCC opening a rulemaking on bill shock, but we'll wait to see the language before passing judgment," Free Press spokeswoman Jennifer Ettinger said Tuesday. "We wholeheartedly support Sen. Udall's bill on the matter, and we plan to play an active role in ensuring consumers are protected from erroneous charges and excessive fees."

Public Knowledge Legal Director Harold Feld said his group plans to sign a letter endorsing bill shock rules. Public interest groups are expected to file at the FCC before sunshine restrictions kick in. "We are supportive, we just haven't had a lot of resources to play," he said.

"We're anxious to see the full details of the NPRM," said David Butler, spokesman for Consumers Union. "We hear a lot of complaints about it from consumers, so we plan to be actively engaged in the issue through comment filings, meetings, and other activities.

Carriers are expected to mount a more aggressive campaign when the FCC takes up final rules, but have raised concerns about the notice. "It's just an NPRM, so this is just one step in the process, but we're watching this closely," said an attorney who represents wireless carriers. "The fact is carriers are already taking steps on their own" against bill shock.

Chris Guttman-McCabe, regulatory vice president at CTIA, said CTIA continues to make changes to its consumer code, making it a "living, breathing" document, and the FCC has the code as a requirement in some competitive eligible telecommunications carrier proceedings. Carriers continue to offer new service plans, such as U.S. Cellular's Belief Project, which offers "One and Done" contracts without automatic renewal and incentives for customer loyalty, he said. "You're having carriers beginning to give different types of electronic notification and customers have tools to check all of their usage levels," Guttman-McCabe said. "We want to make sure that you're not establishing rules that make this static and don't allow it to change."

Verizon Wireless representatives met with various FCC officials last week, according to an ex parte filing at the FCC. "We discussed the company's position in the ... proceeding and expressed concern regarding prescriptive rules in this area," Verizon said. "We also described the variety of tools Verizon Wireless currently provides customers that allow them to access detailed information about their wireless usage."

MetroPCS made a similar argument in a meeting with officials from the FCC Consumer and Government Affairs Bureau. "MetroPCS advocated that regulatory intervention should be reserved for situations where competitive market forces are not working to protect and benefit consumers," the carrier said. "Here, the competitive market is working properly and consumers have their choice among a number of exciting wireless options." — *Howard Buskirk*

## Title II 'Alarm Bells'

### **Accelerating Tea Party Express Seeks Telecom Deregulation**

Tea Party gains in the November election would mean more opposition to the FCC from Congress on net neutrality and other regulations for industry, Tea Party supporters said. "Any change in the composition of the House and Senate is only going to exacerbate that friction between [FCC Chairman Julius] Genachowski and Congress," said Wayne Brough, chief economist of FreedomWorks, a Tea-Party organizer in Washington. CompTel CEO Jerry James said competitive local exchange carriers are watching the Tea Party movement, "as well as other changes potentially resulting from the mid-term elections that may impact telecom policy going forwards."

A majority of the Tea Party candidates running for the Senate are likely to win in the November elections, said Larry Sabato, director of the University of Virginia's Center for Politics. That's because they represent heavily Republican territory, including Utah, Alaska and Kentucky, he said. "However, a few will crash and burn, led by Christine O'Donnell in Delaware," he predicted. What happens in the House is less clear, he said.

The Tea Party movement will have an impact on all policy matters before Congress next year, regardless of which party has control of Congress," said Paul Raak, vice president of the Independent Telephone & Telecommunications Alliance. On telecom, "the net neutrality debate resonates the most with anti-regulation/Tea Party-minded individuals who see the Internet as a successful example on how an industry can prosper absent government regulation." Keeping net neutrality rules at bay is thus likely to be the top telecom priority for the group, he said.

“It would be very anti-Tea Party sentiment” to implement net neutrality through reclassification of broadband under Title II of the Communications Act, said Seton Motley, president of Tea Party activist group Less Government and editor-in-chief of StopNetRegulation.org. “The Tea Party movement wants less government,” but net neutrality and especially reclassification would mean a “huge increase” in the government’s size, he said. However, Tea Party groups may support narrow legislation allowing the FCC to enforce open Internet rules, such as the one that flopped last week in the House, Motley said. “If tailored properly, the bill should be fine.” An anticipated “seismic demographic shift” in favor of Tea Party beliefs this November “bodes well” for Congress crafting such narrow legislation, he said.

Tea Party candidates in the election haven’t been vocal on net neutrality, so it’s unclear which ones would be active on the issue once elected, Motley said. But it’s difficult to imagine any Tea Party candidate voting for net neutrality “as defined by Free Press and company,” he said. “It’s not going to take a six-hour seminar ... to reach that ‘no’ vote.”

While the Tea Party is somewhat “amorphous,” there appears to be consensus among supporters that the FCC shouldn’t be given new power to regulate net neutrality, agreed FreedomWorks’ Brough. “That notion of regulating the Internet is something that sounds off some alarm bells.” At a recent event, the issue came up “unprompted,” he said. “That crowd was definitely opposed to expanding the FCC’s authority” by reclassifying broadband, he said. The party members believe the FCC can address net neutrality concerns with existing authority, he said. Waxman’s recent proposal advocating a case-by-case approach is probably “more in line” with the kind of net neutrality legislation that the tea party would support, he said.

The Tea Party believes phone and cable no longer require regulation, according to *The Patriot’s Toolbox*, a Heartland Institute guide for Tea Party activists published Oct. 1. “Continued utility regulation — except as may be necessary for ensuring interconnectivity and number portability — is unnecessary and distorts competition in ways that harm consumers,” said authors Hance Haney and George Gilder of the Discovery Institute. States that have taken a deregulatory approach to telecom have seen the most new broadband investment, they said.

Net neutrality rules should be rejected, Haney and Gilder wrote. The existing four Internet principles “may be sound” but “giving the FCC authority to turn them into a regulatory code and then to enforce it risks a repeat of the disaster that was caused by the Telecom Act of 1996, when thousands of pages of new regulations and years of litigation slowed innovation to a crawl and helped cause the telecom crash of 2000-2003,” they said.

To promote broadband investment, elected officials should “repeal discriminatory taxes and fees on telecom services,” Haney and Gilder said. “Direct government subsidies or investment in broadband is unnecessary.” And regulators should end or revamp carrier-of-last resort and buildout obligations, they said. Policymakers should revamp intercarrier compensation to make call termination rates technologically neutral, and implicit intrastate access charges should be replaced with explicit high-cost funding, they said. Also, incumbent telcos shouldn’t have to file tariff notices telling their competition about plans to alter rates, terms and conditions, Haney and Gilder said. Competition, not regulation, should dictate prices, they said. The *Toolbox* authors also urged local governments to reduce cable franchise fees, and said states should lower communications taxes and preempt local franchise laws that impose large fees or restrict new entrants.

CompTel believes it’s “premature to consider further deregulation in the telecommunications marketplace,” James said. “The type of robust competition that is required to support a deregulated environment does not currently exist in the wholesale market which is essential to the existence of retail competition. Therefore government oversight continues to be necessary to ensure that large incumbent companies do not abuse their market power and adversely impact innovation, job creation and availability of choice for U.S consumers and businesses alike.” It’s surprising that the Tea Party would support deregulation, considering they also claim to be on the side of small businesses, added a competitive industry official. — *Adam Bender*

**DOJ Eyeing 2010 Finish?****Quicker, Thorough Comcast-NBCU Review May Help Genachowski Image**

Intensifying FCC review of Comcast-NBC Universal shows which issues the agency is focusing on that likely will be addressed in the final merger order, while holding import for how industry, legislators and others perceive Chairman Julius Genachowski and the agency itself, said former commissioners, communications lawyers and antitrust specialists. That more career staffers are spending additional time on Comcast's multibillion dollar plan to buy control of NBC Universal and late Monday made another request for information from the companies (CD Oct 5 p8) shows an FCC intent on a thorough review. Should that be done with dispatch, Genachowski's quest to get a reputation as able to timely decide on complex issues may be helped, said lawyers not part of the deal.

The data requests show a focus on how much smaller subscription-video providers pay for content versus larger rivals and on how consumers and Comcast competitors are affected when linear programming goes online and is seen on TVs connected to the Web, said antitrust and other lawyers who reviewed the documents. The accessibility of Comcast-NBC Universal's channels on pay-TV, over-the-top and online still are thought to be areas where the commission will devote considerable time in the merger order (CED July 12 p4). While approval by both the FCC and Justice Department is expected by many observers, there may be numerous FCC conditions in those areas, they said.

The FCC could be speeding up review of Comcast-NBC Universal amid indications DOJ may hope to act this year on the deal, cable lawyers said. That could mean commission review ends in December or January instead of later in the first quarter or even the second quarter as some commission officials had indicated earlier (CD Aug 12 p5), the lawyers and others said. "I think this is moving quicker" than a Q1 or Q2 finish, a cable lawyer said. "I think more people in the industry are coming to realize that as well." A December end to DOJ review, accompanied by the commission finishing its evaluation shortly afterward makes sense, another cable lawyer said.

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The Media Bureau seems to be devoting enormous resources to the deal, agency and industry officials said. That may be coming at the expense of quick action in other areas such as completing the broadcast media ownership review in 2010 as mandated by Congress or wrapping up the Future of Media inquiry this year, as had been a goal of some at the agency, a commission official said. FCC and DOJ spokespeople had no comment on the time frame for their reviews.

"If the commission can finish its review close to the time that DOJ finishes its review, that would be a positive in terms of showing that the commission is dealing with high-profile issues at least as fast as other federal agencies charged with reviewing the proposed transaction," said communications lawyer Henry Rivera. The former Democratic FCC member is now with Wiley Rein and not working on Comcast-NBC Universal. "Finishing the Comcast-NBCU review at the same time as or close to when the DOJ finishes its review would demonstrate that, notwithstanding the Commission's work load, it is trying to deal with major transactions in a reasonable amount of time," Rivera said.

"It is an opportunity for Chairman Genachowski to address a major issue and try to get it done in a timely manner," said Harold Furchtgott-Roth, a former Republican commissioner. "Unfortunately, the precedents are quite varied" in how long it takes to get major deals reviewed by the agency, ranging from six to nine months to two years, he said: "It's a very broad window" and "different people have different views of what's reasonably timely."

"I don't see any particular pressure on the chairman to act on this particularly quickly" nor a particular constituency other than Comcast seeking that, said antitrust law expert Michael Hazzard of Arent Fox: "I don't see him acting particularly quickly on this just to say he acted particularly quickly." Hazzard still expects conditional FCC approval of Comcast-NBC Universal in the first quarter, he said. The latest information request shows the bureau is concerned about how the deal may impact prices rural companies pay for content, he said.

Each of the several dozen questions the bureau asked Monday are "very specific," said antitrust lawyer Christopher Kelly of Mayer Brown. Much of what's sought "ought to be reasonably producible, it is hard data" or "it could be a lot of this already has been produced to DOJ, so it's just a matter of handing over a disk that already exists," he said. "It's interesting though that it reaches so far and so broadly at this stage." — *Jonathan Make*

## Smart Grid Proceedings

### **Utilities Must be Able to Decide on Communications Networks for Smart Grid, Says DOE Official**

The Department of Energy hasn't drawn any "hard conclusions" on whether utilities should build their own communications networks or rely on commercial networks for smart grid applications, following two smart grid proceedings, DOE General Counsel Scott Harris said Tuesday. The department is leaning toward the position that the utilities should be able to decide on what type of networks they need for smart grid, he told the Joint Center for Political and Economic Studies in Washington. Harris briefed the center on the department's conclusions in proceedings on smart grid communications needs of utilities and data access and privacy issues related to smart meters.

There was agreement in stakeholder comments that the smart grid will create new demand for a wide array of communications services, that wasn't the case on the question of whether utilities should build their own networks or use public networks, Harris said. Utilities' need to build their own networks instead of using commercial ones depends on the smart grid applications they are to be used for and where the technology is being deployed, he said.

Latency in smart meter reading may not be a big issue but latency in grid applications could be, Harris said. Some smart grid deployments are near the "footprints" of commercial networks, while others are in remote areas

where public networks are "less available," he said. Two major issues raised by utilities were reliability and the availability of spectrum for wireless networks, he said. Utilities contend that commercial networks don't have backup power for emergency situations and can't prioritize spectrum for utility services on networks, he said. The DOE will review national telecom service priority and wireless priority access programs in light of priority of service issues raised in the proceedings, he said.

The department also intends to work with other federal agencies on spectrum issues related to the smart grid, Harris said. The DOE wants utilities to be better represented on federal agencies and committees dealing with spectrum issues, he said. To enable utilities to easily access "communications opportunities," the DOE will start a Web portal that will serve as a clearinghouse on communications, he said.

On privacy and data access issues, Harris said he was surprised to see the "broad agreement" on a wide range of them. They included: (1) Consumer education and flexibility in smart grid technology and the pace of deployment is critical to long-term success of smart meters. (2) Utilities must have access to consumer energy use data and consumers must have access to their own data. (3) Utilities should not provide consumer data to third-party service providers without consumer agreement via an opt-in process and such service providers must be required to protect such data themselves. Contentious issues included whether electronic or written authorization is needed for third-party access to data and what consumer data should be provided to third-party service providers, he said.

Harris said he's convinced that smart grid technology will help families to cut energy use and bills but the challenge for proponents is to communicate effectively the benefits to the "public at large." — *Dinesh Kumar*

### Convincing Utilities

## **Smart Grid Adoption Will Go Through States, CTIA Told**

SAN FRANCISCO — State public utility commissions will be the bottleneck through which most smart grid technology investment will pass, industry executives and a California state commissioner said Tuesday. "When we talk about implementation of the grid, what we're really talking about are state policies, state roadmaps and state decisions," said Mary Brown, Cisco director of technology and spectrum. "There is an awful lot of work to be done where the rubber meets the road at the state commissions," she told a Federal Communications Bar Association seminar on emerging wireless issues at the CTIA show.

Many state commissioners are skeptical that smart grid technology is a wise investment, said Commissioner Dian Grueneich of the California PUC, herself a supporter of the technology. If more commissioners get engaged in the technology work that's being done at a federal level, it could help speed adoption at the states, she said. Of the approximately 200 state commissioners, only a handful are involved in the work the National Institute of Standards and Technology is doing around smart grid standards, she said. "If commissioners have no understanding of what the process is and why the standards matter, you can end up with cases in dockets that take two years to get through a commission."

State commissioners are wary of consumer backlash, Grueneich said. Members of the public attend every California PUC to voice their concerns about how data about their gas and electricity use will be shared with third parties, she said. To avoid backlash, the industry needs to better explain the benefits to consumers, she said.

Wireless communications will be a big part of smart grids as they develop, but some utilities are reluctant to contract all their information needs to wireless carriers, said Solomon Tessema, director of IT technology at Southern California Edison. "Utilities have unique requirements that don't exist in the healthcare industry or financial industry." Geographical coverage to remote areas where utilities operate transmission equipment, emergency availability and low-latency communications will all be critical components of the smart grid's communication network

infrastructure, he said. Utilities won't rule out working with carriers, but they won't rely entirely on their networks either, he said. "As always, we've used a hybrid approach." Ultimately, building out the smart grid will be a multi-decade task, Tessema said.

Verizon Wireless is strengthening its network to accommodate some of the needs of utilities, said Brian Dostal, manager of vertical data sales. "A lot of what we see as far as the needs of the smart grid are not that different from what we need today as consumers or businesses from the public cellular networks." Certain applications may need lower latency, or greater emergency reliability, and that can be built into the network, he said. — *Josh Wein*

### CTIA Notebook

The FCC should clarify whether and how it will resolve Channel 51 interference issues to the 700 MHz A-block spectrum, said Greg Widroe, managing director of Media Venture Partners. "It needs to be fixed or it needs to be declared, 'We're not going to fix it,'" he said. If the government steps aside, A-block spectrum holders could reach private deals with TV broadcasters on Channel 51 to find another frequency, he said.

## Capitol Hill

The FCC should "maintain robust oversight of billing practices in the wireless industry," said Senate Communications Subcommittee Chairman John Kerry, D-Mass., and subcommittee Democrats Amy Klobuchar of Minnesota and Mark Begich of Alaska. In a letter Tuesday to Chairman Julius Genachowski, they said the FCC has a responsibility to monitor wireless charges and require clearly written bills. Verizon Wireless's decision to reimburse customers for unwarranted data fees (CD Oct 5 p3) "is a positive step forward" for its customers who have complained for months, they said.

## Wireline

The FCC should adopt either its own or the NCTA's proposals for low-end service rates, adopt "comprehensive" rules to keep utilities from slow-rolling or over-pricing third-party attachments and to keep utilities from ignoring pole attachment rules, and should reject utilities' proposals for new pole attachment rules, Comp-Tel and TW Telecom said in reply comments published Tuesday. The joint filing comes about a week after the FCC convened a workshop on pole attachment reform.

More than 327,000 jobs per year could be shed indirectly or directly by a 10 percent cutback in telco investment, researchers at the Phoenix Center said in a report released Tuesday. It said a 10 percent "negative shock to expenditures" causes the information sector to lose about 130,000 jobs directly per year for five years, on average. Researchers said the telecom sector's "employment multiplier" was about 10 jobs for \$1 million invested.

## Wireless

Qualcomm will continue operating its FLO TV direct-to-consumer mobile video service to existing subscribers at least through spring 2011, but it's suspending sales of new devices, the company said Tuesday. "We have been engaging in conversations with a wide range of partners for both the network and the spectrum," the company said. For now, the mobile video service it provides through carriers to their cellphone subscribers remains unaffected, it said. "In the event of a discontinuance of service, FLO TV will make appropriate refunds," it said. Some layoffs will probably result, but the company is working to move employees to other divisions, it said.

N.E. Colorado Cellular representatives met with various FCC officials to detail how money from the Universal Service Fund has helped the economy in parts of Colorado and Nebraska. “Federal support has helped the company build hundreds of cell sites, increase its employee count fourfold, and deliver high-quality services to many rural areas that have been unserved or underserved since the inception of cellular service twenty years ago,” said an ex parte filing by the company. Universal service support also let the company construct a microwave backhaul network that carries nearly 100 percent of its customer traffic “bypassing the wireline network,” and “laid the groundwork” for an upcoming 4G rollout.

Sprint Nextel officials pressed the FCC to seek data on “ILEC dominance of special access markets” in a meeting with FCC Chief Economist Jonathan Baker and other commission officials, said an ex parte filing.

## Internet

The Department of Commerce's Internet Policy Task Force asked for public comment on copyright and its link to innovation in the Internet economy. The task force will identify policies to generate benefits for rights holders of creative works accessible online and recommend action toward copyright infringement, the task force said. It also will identify policies enabling the free flow of information to facilitate innovation and ensure transparency and due process in confidence-building efforts to distribute copy-written works on the Internet, it said. The task force will use comments to prepare a report on the Obama administration's domestic policy and international engagement in online copyright policy. Comments are due Nov. 19 — <http://edocket.access.gpo.gov/2010/pdf/2010-24863.pdf>.

The Council of Europe is committed to the principle of net neutrality, the Committee of Ministers of the 47 member countries said in a declaration adopted last week and made public Tuesday. Any exceptions to the principle must meet several requirements, it said. Users and content, application and service providers should be able to gauge the impact of network management measures on the enjoyment of fundamental rights, it said. Traffic management regimes should be proportionate and appropriate, avoid undue discrimination and be maintained no longer than strictly necessary, it said. Users and service providers should be informed about any network management that significantly affects access to content, apps or services, and there must be lawful avenues for challenging traffic management decisions and seeking redress, it said. Officials also said the CoE should prepare guidance to help member governments and the private sector better define acceptable management measures and minimum quality-of-service requirements. The committee in a separate resolution urged governments to treat Internet Protocol addresses as shared public resources to be managed in the public interest. The public sector should deploy IPv6 quickly and encourage businesses to do likewise, it said. Identification features incorporated into IP addresses assigned to Internet users or devices connected to the Internet should be regarded and treated as personal data, as appropriate, the CoE said. Ministers also welcomed the EU digital agenda, but stressed that CoE values of human rights, democracy and the rule of law must be part of building an inclusive and open pan-European digital society.

## International Telecom

Much larger carrier bandwidths will be needed for the next generation of International Mobile Telecommunications, Canada said in a submission to an ITU-R working party that's developing a recommendation on IMT-Advanced radio interface technologies. The wider bandwidths will be needed even as spectral efficiency increases to support the very high data rates required by new services, the draft text of the recommendation said. IMT-Advanced mobile systems include a new generation of capabilities that provide access to advanced mobile services through mobile and fixed networks, it said. The systems support low to high mobility and a wide range of data rates, the draft said. The key features for the next generation will be service compatibility with fixed networks, other radio access systems, high-quality, worldwide use of gear and roaming, and peak target data rates of 100 Mbps for high mobility and 1 Gbps for low mobility, it said.



## Broadcast

CBS wants an ITU-R working party to begin describing the performance requirements for a 3D TV broadcasting service, it said in a submission to a working party that meets later this month. Participants have already made several suggestions, CBS said. It was referring to suggestions that the quality of the viewing experience should principally be determined by the sensation of reality and comfortableness or ease of viewing during an indefinite period. Suggestions have been made to ensure 3D TV emissions and reception should be backward compatible with no perceptible degradation in quality, and be a major improvement over the best HDTV, it said. Participants have also suggested coming up with a single set of image and sound specifications unless there's a compelling reason for more, it said. Some taking part have said image and sound system parameters should be optimized for 3D TV even if it means departing from technical solutions adopted for other applications, the proposal said. Others have said specifications should be recommended after the technology shows some promise in the market. Some have suggested possible health hazards or visual fatigue from extended view should first be clarified before specs are developed.

An FCC cap of 10 FM translator applications that it will process from anyone in a 2003 filing window would mean as many as 97 percent of available frequencies in the 150 largest radio markets would be assigned, said two groups that have proposed a different arrangement. The groups party to a new deal on translators and low-power FM (LPFM) stations (CD Oct 4 p8), Educational Media Foundation and Prometheus Radio Project, cited research by Common Frequency in meetings with aides to Commissioners Meredith Baker and Robert McDowell. "Even allowing FM translator applicants to protect a lower number of applications across all markets, such as three applications total per applicant, also could eliminate LPFM opportunities without providing significant safeguards against potential speculation in translator licenses," said a filing posted Tuesday in docket 99-25. "The preclusionary effects of translators that might be granted to any individual party," were discussed by an Educational Media executive with the Media Bureau's top audio official at the NAB radio show, another filing said.

Grupo Televisa agreed to buy 5 percent of Univision plus debt that is convertible into another 30 percent of the company for \$1.2 billion, the companies said. Televisa will also contribute its 50 percent stake in TuTV, they said. After the investment Televisa will appoint three members to Univision's board, which will increase to 20 members. The deal gets Univision the broadcast and online rights to Televisa-produced programming in the U.S. "The agreement ... underscores that Univision's broadcast and interactive platforms will remain the U.S. destination for the world's best Spanish-language programming for the foreseeable future," said Univision CEO Joe Uva. Televisa shares gained more than 13 percent Tuesday.

Adelante Media Group, former Bustos Media, will use ratings data from Arbitron's Portable People Meter and diaries in all its markets, the companies said. Terms weren't disclosed.

## Cable

A program carriage complaint from the Tennis Channel against Comcast will be eligible for review by an FCC administrative law judge, the Media Bureau said Tuesday. The Tennis Channel showed "sufficient evidence" that Comcast may have unlawfully discriminated against the programming, an order said. The channel complained to the FCC after its programming wasn't moved to higher tier of Comcast's service, which the Tennis Channel said featured similar programming, including the Comcast-affiliated Golf Channel and Versus. The plaintiff provided enough evidence to show a possibility of Comcast restraining the Tennis Channel's ability to compete, said the order. The FCC didn't say if the accusations had merit, only that the complaint deserved further review. The two parties will have 10 days to resolve the dispute privately. If they don't agree on a resolution, a proceeding in front of an ALJ will be scheduled. "Comcast currently makes the Tennis Channel available to nearly every home we serve," said Sena Fitzmaurice, Comcast vice president of government communications. "Our contract with Tennis

Channel, which the network freely negotiated and signed in 2005, specifically permits us to carry Tennis Channel as part of our Sports Entertainment Package, where we — like many other distributors — currently offer it to our customers. Far from discriminating against Tennis Channel, we are fully honoring the terms of our agreement with Tennis Channel and plan to continue carrying the network for our customers and tennis fans.” The Tennis Channel said it was "gratified that the Bureau has found that, on every substantive allegation" there is a possible factual basis for concluding that Comcast "has violated the Communications Act and FCC Rules and caused significant harm to Tennis Channel." The channel is confident that when the "matter is finally resolved, Comcast will have been found definitively to have illegally discriminated against Tennis Channel and in favor of its owned sports services."

Lobbying by the cable and consumer electronics industries on CableCARD rules continued as the FCC is expected by industry and agency officials to stop commission visits on that and other subjects to be voted on Oct. 14 by issuing a Sunshine Notice Thursday night. Rules need to make it easy for cable subscribers to install the cards on their own and have "strong enforcement for non-compliance by service providers," a lawyer for the CEA and Consumer Electronics Retailers Coalition told an aide to Chairman Julius Genachowski, said a Monday filing in docket 97-80. The FCC should require cable operators "as the default" to let customers self-install Cable-CARDS, Consumers Union and Public Knowledge said in recounting meetings with Media Bureau Chief Bill Lake and aides to Genachowski and Commissioners Michael Copps and Robert McDowell. "Without self-installation, customers of competitive devices have to wait for a technician visit (and might have to take time off from work) simply to use the device they have purchased at retail." The groups said making permanent a waiver for some CE makers to build one-way HD set-top boxes that don't need cards and for cable operators of all sizes to use them, as the draft CableCARD order envisions (CD Sept 28 p5), is a "bad idea." For HD boxes, CableLabs said it wants the agency to "refrain from establishing the physical layer of outputs and should refrain from codifying higher layer functional aspects (such as remote control signaling) that are being developed in various multi-industry forums such as DLNA." CableLabs CEO Paul Liao and other executives had meetings with Chief FCC Technologist Douglas Sicker, Lake and other bureau officials and Chief Paul de Sa of the Office of Strategic Planning. Comcast backed giving credit to subscribers who buy a bundle of services from the cable operator and use their own Cable-CARD device rather than using one provided by the company. "That credit should be equivalent to the amount that an operator charges for, or allocates to, equipment in the service bundle," Comcast said, recounting meetings with de Sa and aides to Commissioners Meredith Baker, Mignon Clyburn and Copps.

Comcast and Time Warner Cable seek FCC deregulation so their basic-cable rates can't be set by more than a dozen communities total, the latest batch of requests for findings of effective competition shows. Comcast seeks deregulation in Avondale, London Grove, Wallace and West Sadsbury, Pa. Time Warner Cable made four requests to escape local rate regulation in New York state, in municipalities including Interlaken, Jerusalem and Wayne.

Cable operators filing FCC Form 1210 can raise the non-external portion of their rates by a factor of 1.91 percent for the second quarter to account for inflation, a Media Bureau public notice said. In the year-ago quarter, the factor was zero.

## Mass Media Notes

Comcast's contention that cable channel placement in the operator's line-up is decreasing in importance and that it's hard for the company to change the slots where it puts networks is belied by its actions, Bloomberg told the FCC. It wants the commission to require that Comcast not put networks like Bloomberg in different channel neighborhoods than where financial news competitors like CNBC, owned by NBC Universal, appear as part of the cable operator's plan to buy control of that broadcast and cable programmer. "The importance of channel position, and the potential to use it for anticompetitive purposes, has been recognized not only by industry, but by Congress," Bloomberg said in a filing posted Monday to docket 10-56. Comcast's New York market systems changed channel slots 2,000 times since 2001, and 584 in Philadelphia since 2000, Bloomberg said.

## Satellite

Iridium signed a previously announced Coface agreement to finance the company's next generation satellite constellation, Iridium said. Nine banks will provide up to \$1.8 billion in financing in two tranches for the constellation. The first tranche of \$1.5 billion will have a fixed 4.96 percent interest rate and the second tranche of \$263 million will have a moving interest rate based on the London Interbank Offered Rate, said Iridium. The 7-year repayment period will begin after the constellation's launch, expected in 2017.

Integral Systems will provide satellite control systems for Vietnam's VINASAT-2 satellite, the company said. Lockheed Martin, which is building the satellite, chose Integral Systems. It will upgrade Lockheed Martin's current satellite controls to support the VINASAT-1 and VINASAT-2 satellites, Integral Systems said.

## Communications Personals

**James Crowe**, Level 3, to be appointed chairman of National Security Telecommunications Advisory Committee ... **Roger Neal**, ex-BusinessWeek Digital and AOL Time Warner, named founding executive director of NYC Media Lab, new joint venture of New York City, NYU-Poly and Columbia University ... National Association for Multi-ethnicity in Communications board elections: **Raymond Gutierrez**, CBS Television Networks, chairman; **Lucinda Martinez-Desir**, HBO, vice chairman; **Marsha Conaway**, Time Warner Cable, secretary; **Danielle Wade**, Bright House Networks, treasurer ... **Heath Freeman** resigns from Emmis board as part of deal to leave if Alden Media didn't participate in taking company private ... **Ben Hill** named senior vice president and market manager of CBS Radio for West Palm Beach, Fla.

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