

FCC Won't Challenge Media Ownership Decision

The Federal Communications Commission and the U.S. solicitor general will not seek Supreme Court review of a 3rd U.S. Circuit Court of Appeals ruling that voided proposed agency rules easing limits on media industry mergers.

The decision, which was confirmed by representatives at the FCC and the Department of Justice, is a major blow for outgoing FCC chairman Michael Powell, who had championed the so-called media ownership rules, as well as for many large media companies hoping to expand through acquisitions.

In dispute was the FCC's June 2003 rewrite of media merger regulations. The commission relaxed restrictions on deals by agreeing to let a company own a maximum of three TV stations in large markets, instead of two, and in some cases to own two TV stations, instead of one, in midsize markets. In addition, a company was freed to own a newspaper and broadcaster in the same market.

Amid mounting cries over the risks of media consolidation, however, consumer activists, backed by smaller and independent media concerns, challenged the rules and won. In June 2004 the 3rd Circuit ruled that the FCC had failed to justify its overhaul of the media regulations. The 3rd Circuit also stayed the regulations and ordered the agency to review them.

Many telecom and Capitol Hill observers had expected acting Solicitor General Paul Clement to appeal the lower-court decision. Clement had twice asked the Supreme Court to give him more time to decide whether to appeal the decision. In addition, industry players Media General Inc., Sinclair Broadcast Group Inc. and Tribune Co. have submitted an appeal to the Supreme Court, but Dana Frix, telecom and media partner at law firm Chadbourne & Parke in Washington, D.C., said the court is unlikely to take the case in the absence of the solicitor general's appeal.

FCC Commissioners Michael Copps and Jonathan Adelstein, who have opposed the agency's effort to clear the way for media consolidation, welcomed the decision. But they expressed concern that large media companies could press the FCC to modify the ownership rules to enable broadcast industry consolidation.

"I think there are companies out there who want to game the process by having the commission write quick rules, one by one and under the radar scope, and accomplish piecemeal what they couldn't get whole," Copps said. "The American people are not served by a stealth airwaves grab."

Counties Can Tax Cell Towers

A county tax assessment board may collect real estate taxes on cellular phone towers, a Commonwealth Court panel has ruled in a case with statewide implications for telecommunications companies.

In *Shenandoah Mobile Co. v. Dauphin County Board of Assessment Appeals*, the unanimous three-judge panel also held that Dauphin County's 2001 decision to tax cell phone towers was not a spot reassessment, even though officials decided during a countywide reassessment the year before that cell towers were not subject to real estate taxes.

While *Shenandoah Mobile* appears to be the first published opinion supporting tax assessments on cell towers, it is not the first time the Commonwealth Court has been faced with the issue. An unpublished decision in 2001 sanctioned the assessment of property taxes on a cell tower, and was relied on by the Dauphin County Board of Assessment Appeals in the *Shenandoah* case.

The court acknowledged this in its opinion, noting that the board's reliance on the memorandum decision was "technically" a violation of court rules but that the trial court did not apply the ruling as precedent.

Instead, both the trial court and the appellate panel relied on *Appeal of Sheetz Inc.*, 657 A.2d 1011 (Pa. Commw. 1995), *petition for allocatur denied*, 666 A.2d 1060 (Pa. 1995), which set forth a three-part test for determining when a fixture on land becomes real property subject to taxation.

This test requires courts to consider: (1) how the structure is physically attached to the property; (2) how essential it is to the permanent use of the overall facility; and (3) the parties' intent in attaching or assembling it.

Just as the *Sheetz* court found that gasoline pump canopies become part of real property once installed at a gas station even though they could be removed and reinstalled in another station so too did the Commonwealth Court panel here find that cell phone towers are "part of the realty and É therefore taxable as real estate."

The *Shenandoah Mobile* case arose from a 2000 countywide reassessment of realty in Dauphin County that excluded cell towers from the tax rolls.

County officials reconsidered that decision the following year, after the Commonwealth Court ruled in an unpublished decision that local authorities could assess property taxes on cell towers.

Chapter 30 Programs Coming On Line

When the General Assembly approved the sweeping telecommunications re-authorization bill (Chapter 30) last November, it added some initiatives to help businesses and communities receive broadband access well before the statewide deadlines for broadband deployment mandated in the new law. The Department of Community and Economic Development, through its Director of Broadband Initiatives, Luc Miron, is now working to get the programs on line.

Business Attraction and Retention

Under this initiative, the Department can require an incumbent phone carrier to deploy broadband at its cost in an area that is targeted for business growth. Exempt carriers include those that plan to complete their broadband deployment in their service areas before 2008.

Broadband Outreach and Aggregation Fund

Establishes a grant pool to help consumers and businesses establish broadband connections. The aggregate of consumers and businesses needed to trigger the grant money can be made up of as few as 50. Paid into by incumbent carriers (again, only those that will not meet a 2008 deadline for broadband deployment), the Fund is capped at \$5 million each year. DCED expects to begin implementing the program later this calendar year.

Inventory of Services

PA has no central repository of information regarding broadband availability. This initiative requires all broadband providers to submit a description of their service areas to the Department. The information will then be placed on a website. As with the Broadband Outreach program, the Department hopes to have the web site up and running later in the year.

Under Chapter 30, Verizon and other incumbent carriers receive financial incentives to deploy broadband statewide. The new law also contains a number of programs to fund education projects and spur economic development.

Combined Bill for Telecommunications and DIRECTV Service Sweetens Deal for New Bundle Customers

New DIRECTV Customers Who Buy Service From Verizon Now Enjoy Consolidated Bill, Single Payment;
First Phase of Unified Bill Rollout

Besides receiving discounts for bundling DIRECTV digital entertainment service with qualifying Verizon packages and services, new DIRECTV customers who order service through Verizon now will get a single bill that combines their telecommunications and entertainment services. Customers placing new orders with Verizon for DIRECTV service will automatically receive a single bill.

All DIRECTV charges, including pay-per-view, will appear on a separate page in the Verizon bill, and a single check or online payment to Verizon will cover all services.

"For our new DIRECTV customers, this completes the picture for our integrated calling, Internet and entertainment bundle," said Margaret Gardner, executive director for affiliated services.

"Within a few months, we'll be inviting our existing DIRECTV customers to unify their bills as well. Linking our billing systems is almost complete," she said.

Verizon and DIRECTV began offering a combined service bundle a year ago, which includes discounts up to \$6 off the total bill for bundle customers. In addition, a new discount of an additional \$5 off the calling portion of the bill is being introduced in many states for customers who buy a Freedom Unlimited calling package with DIRECTV or DSL, or who request ONE-BILL integrated wireline and Verizon Wireless billing.

"Given that DIRECTV is the largest direct broadcast satellite company and has led customer surveys for digital entertainment quality and satisfaction, we've put together a bundle that we think trumps our cable competitors pretty nicely," Gardner said. "Our bundles really appeal to customers who are looking for true value, where quality is a key component in the value equation."

Verizon first introduced its bundling strategy more than three years ago by offering discounts on its local packages and Verizon Long Distance service. Now, Verizon is able to offer bundle discounts on dial-up and high-speed Internet and TV entertainment services, along with a convenient billing option for Verizon Wireless customers. By year-end 2004, bundled services continued to attract and retain Verizon customers, with more than half of all new customers choosing a bundle.

To qualify for the single bill, the customer's name on both the DIRECTV and Verizon accounts must be the same. Customers who want a separate bill for DIRECTV service will not be able to receive the DIRECTV bundle discount. DIRECTV will continue to handle inquiries about DIRECTV charges via a toll-free number printed on the Verizon bill. Orders in Maine will be subject to third-party verification of the order, a safeguard designed to assure fair competition originally instituted for long-distance services.

Verizon Online Expands Broadband Access in Mifflin County

More consumers and businesses in Mifflin County can enjoy the benefits of high-speed Internet access now that Verizon Online has expanded its availability in several communities. As the result of the company's most recent expansion and upgrade of its local telecommunications network, Verizon Online DSL is now available on about 1,000 additional lines in the Lewistown area.

Verizon has invested \$8.5 billion in its network over the last 10 years and will continue to invest aggressively under recently enacted state telecom legislation. The new law requires companies such as Verizon to deploy broadband service across their service areas - the most comprehensive broadband deployment requirement in the nation. Under this legislation, Verizon also must make broadband available to all students throughout the company's Pennsylvania service area.

Currently, Verizon Online is offering its basic consumer DSL service for \$29.95 per month in an annual service plan or when purchased in combination with Verizon Freedom or another Verizon local or long-distance bundle. This service offers a maximum connection speed of 1.5 Mbps (megabits per second) downstream and 384 Kbps (kilobits per second) upstream.