



January 13, 2010

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FCC Seeks Extension of National Broadband Plan Deadline

The FCC has spent the past 11 months focused primarily on developing a National Broadband Plan (“Plan”) as required by the American Recovery and Reinvestment Act of 2009 (“Act”). Under the Act, the Commission is required to deliver the Plan to Congress by February 17, 2010. On January 7, 2010, however, FCC Chairman Julius Genachowski asked Congress for a one-month extension of time, until March 17, 2010, to deliver the final Plan. In his letter to Congress, Chairman Genachowski noted the request for additional time was made because of the “extraordinary purpose of the task” and to provide adequate time for the FCC staff to respond “to the unprecedented record developed during the comment and workshop period.”

More than 50 public workshops and field hearings have been held to assist the FCC in gathering information for the Plan. In addition, the Commission has issued 28 Public Notices soliciting comments on various aspects of the Plan.

Last month the FCC released a Public Notice highlighting concerns that there will not be sufficient spectrum to meet future demand for wireless broadband services (“Spectrum Public Notice”). The Spectrum Public Notice indicated that the FCC is examining various bands to determine whether additional spectrum may be reallocated for wireless broadband use and sought data and information on the use of spectrum currently licensed to broadcast television stations.

Keller and Heckman LLP, on behalf of its client the American Petroleum Institute (“API”), filed comments in response to the Spectrum Public Notice. These comments reiterated previous requests made on behalf of the petroleum industry for additional spectrum for private wireless broadband use. API’s comments focused on the barriers faced by the critical infrastructure industry in implementing IP-enabled broadband communications as a result of several unfortunate realities, the largest of which is the lack of a private, exclusive, point-to-multipoint broadband spectrum allocation under the Commission’s rules. This problem has been compounded by the Commission’s repeated reallocation of private spectrum for other purposes and the failure of commercial providers to build systems adequate for mission-critical communications in rural and remote markets.

API’s comments focused on the TV bands, suggesting areas the FCC might explore to maximize use of broadcast spectrum while providing relief to private licensees. For example, API recommended the Commission establish eligibility requirements for a portion of the TV White Space spectrum, thereby dedicating a fraction of this spectrum to private use. In rural and remote areas, TV White Space spectrum is abundant so reserving a portion for private wireless use will promote more intensive use of readily available frequencies.

The Act also allocated \$7.2 billion to the National Telecommunications and Information Administration (“NTIA”) and the USDA’s Rural Utility Service (“RUS”) to fund broadband deployment. The agencies announced initial recipients of these broadband funds last month by awarding a total of \$182 million in funding to 18 projects in 17 states. These initial recipients will invest more than \$46 million in matching funds. NTIA and RUS expect to award approximately \$2 billion by the end of February and begin accepting applications for the remaining \$5 billion in funds during the first half of 2010.

For updates on the Plan and current FCC actions, follow us on Twitter at <http://twitter.com/KHTelecom>.

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