



Communications Daily

The Authoritative News Service of Electronic Communications

THURSDAY, JULY 3, 2008

VOL. 28, NO. 129

Today's News

E-RATE PAYMENT ERRORS trigger Hill inquiry, GAO studies. FCC to decide on E-rate contractor. (P. 1)

IN-MARKET EXCEPTION CONCERNS raised over Verizon Wireless' planned buy of Alltel. (P. 4)

TRAFFIC MANAGEMENT VENDORS say sales are strong despite FCC attention. (P. 5)

TRS MARKETING RULES create unfair double standard for TRS providers, phone carriers, say TRS providers. Advocates for deaf support different treatment for marketing. (P. 6)

SPRINT SUES MSS for reimbursement of broadcast auxiliary service. TerreStar, ICO say claims lack merit. (P. 8)

CABLE USES RECESS to fight federal video tax bill. (P. 9)

VIACOM-YOUTUBE DISCOVERY ISSUES largely decided in YouTube's favor. But YouTube must turn over removed videos, viewing logs. (P. 9)

TELECOM NOTES: M2Z says FCC can create free broadband service... Massachusetts House approves broadband development fund... Mobile operators accuse EU of strangling investment in new services by capping roaming fees. (P. 11)

Congress Probing E-Rate Program's Erroneous Payments

The Universal Service Fund for schools and libraries is under the lens of a congressional inquiry into programs prone to payment errors, according to GAO reports and congressional correspondence. The inquiry comes as the FCC must choose a contractor to run the "E-rate" program. The Universal Service Administrative Company, which recently solicited bids for a five-year contract to run the program, sent its recommendation to the FCC last week, a company spokesman told us.

The FCC faces no immediate pressure to decide, since the incumbent contractor can run the program for nearly another year. USAC and the commission said they cannot discuss the contract until an award is made. Sen. Sam Brownback, R-Kan., raised questions about the bidding in April, citing the fund's unacceptably high error payment rate as measured under Office of Management and Budget rules (CD April 30 p1).

The Government Accountability Office flagged the E-rate program in a January report on improper payments by U.S. agencies. The E-rate fund and two other USF funds were among 24 programs whose error rates exceeded OMB's benchmark of 2.5 percent. Programs cracking the threshold are treated as risks, and their administering agencies are expected to solve the problems behind the errors.

In 2007 the high-cost USF's error payment rate was 16.5 percent, nearly seven times the benchmark for a troubled program, with incorrect disbursements of some \$620 million, the GAO said. The E-rate program's error payment rate was 12.9 percent, more than five times the benchmark, with \$210 million of questionable payments, and the low-cost fund had an error payment rate of 9.5 percent, nearly four times too high, at \$75 million, the agency said.

Medicaid's estimated \$12.9 billion in erroneous payments, reflecting an 18.5 percent error rate, was the largest getting GAO scrutiny. The high-cost USF's rate was comparable to that of the 16.3 percent of the Agriculture Department's school lunch program. But the school lunch program involved \$1.4 billion in questionable payments, more than double the high-cost USF's.

USAC and FCC officials partly blame the payment problem on faulty school record-keeping, often on a budget cycle other than the federal government's. Many schools lack expertise with U.S. funding forms, they said. "If one kid doesn't get a milk one day, is that going to be counted as an erroneous payment?" said a Senate aide familiar with the payments probe.

The FCC told GAO that auditors flagged "lack of documentation" as a "significant concern" in erroneous USF payments, said a January report to Congress.

Inadequate documentation was blamed for wrong payments in an Oct. 3, 2007, FCC Inspector General report on the E-rate fund. The IG concluded, based on study of 155 auditees, that the "program is at risk and there are significant administrative problems in the program."

Alaska is deemed a "beneficiary" state -- in 2006 it got an estimated \$209.8 million from the fund, versus the \$22 million that providers serving the state paid into it, the 2007 FCC monitoring report said. Texas providers paid about \$445.5 million while the state got \$516 million, the report said.

Markey, a key player in shaping USF legislation, comes from a donor state. Contributions in Massachusetts were about \$153 million versus \$16.6 million given the state, the FCC said. Dingell's state also is a donor state, though of a narrower sort -- contributions were about \$194 million, with the state getting about \$111 million. But Hawaii, home to Senate Commerce Committee Chairman Daniel Inouye, gets more than it pays, with an estimated \$28 million in contributions and \$44 million in benefits, the FCC report said.

Better Accounting Needed

Despite progress major challenges remain, GAO said. "As the steward of taxpayer dollars, the federal government is accountable for how its agencies and grantees annually spend hundreds of billions of taxpayer dollars," the Jan. 31 report said. Agencies with programs tagged as making more than \$10 million in erroneous payments must write a plan for fixing the problem and identify any statutory or regulatory barriers in the way of their ability to act. The FCC was among five agencies that told GAO that they had no known barriers.

After the GAO report, the Senate Financial Management Subcommittee asked the watchdogs if agencies are "doing enough to hold people accountable for program integrity," according to a March 13 letter by subcommittee Chairman Tom Carper, D-Del. The GAO responded to Carper's inquires June 20, in a letter that said more use of federal standards could help. The office also said it has been trying to flag the improper payments problem through multiple reports and testimony over the past year.

The FCC is among six agencies not required by the "President's Management Agenda" to end improper payments, the GAO said. The six agencies estimated improper payments of about \$1.2 billion total, the bulk credited to the FCC, the GAO said, citing an estimated \$906 million in erroneous USF payments. "We are unable to address your question whether agencies are being aggressive enough," GAO Financial Management Director McCoy Williams told Carper. There's no system for evaluating strategies for solving the payments problem, the letter said.

In 2006 the OMB told agency heads what the government expects in terms of proper handling of federal funds. The memo defined an improper payment as a disbursement of federal money to an ineligible re-

ipient, incorrect payments or money spent for services not rendered. Carper, who has proposed legislation to lower the reporting threshold, told the GAO he thinks the problem is getting out of hand. Williams told Carper he thinks that the OMB should make sure agencies with payment error rates above 2.5 percent “establish time frames and identify resources needed to perform risk assessments and satisfy reporting requirements,” according to the June 20 letter.

E-Rate Scrutiny Began in 2005

In 2005 the House Commerce Committee targeted the E-rate program for scrutiny, holding four subcommittee hearings on waste, fraud and abuse. A November 2005 committee report said “E-rate weaknesses must be addressed legislatively to avoid waste and misuse.” In 2006, the committee focused on a multi-title telecom bill. When Democrats retook the Hill in the 110th Congress, a USF overhaul, and other telecom legislation, took a back seat to committee oversight of the FCC.

That probably will change next Congress, as momentum for broadband deployment inevitably leads to exploration of using USF money to get high-speed connections into unserved areas. “Congress, not the FCC, is better suited to make the tough political choices on how best to reform the system,” House Commerce Committee Chairman John Dingell, D-Mich., said at a June 24 hearing (CD June 25 p1). Telecom Subcommittee Chairman Ed Markey, D-Mass., also suggested that change is afoot, repeatedly citing the fund’s growing impact on consumers during the same hearing.

Meanwhile, the committee plans fall hearings on the fund, a discussion that could be underpinned by bills to overhaul it. “Oversight of the entire Universal Service Fund program has been and will continue to be a matter of interest to the committee,” a committee spokesman said. “When the Committee looks at the Universal Service Fund program, we will look at it comprehensively, including all four parts of the current program.”

Pressure for fund reform will vary depending on whether members hail from states getting more from the fund than those states’ providers pay into it. For example, ranking Senate Commerce Committee member Ted Stevens of Alaska is a long-time fund stalwart. That pitted him against Barton when the two were committee chairmen and major telecom legislation was on the table. -- *Anne Veigle*

Today in

- **CHILD-SAFETY TASK FORCE** studies protection technologies. Request suggests rigorous technical review.
- **CAPITOL HILL:** ABA creates Copyright Law Reform Task Force.
- **AGENCIES:** BurnLounge promoter settles FTC claims of helping with pyramid scheme.
- **COURTS:** Barracuda countersues Trend Micro for patent infringement.
- **STATES:** Missouri governor signs Internet laws.
- **INTERNATIONAL:** European Commission inquiry to study making Web sites more accessible to the disabled... Bono criticizes ISPs for not stopping piracy.

For a free trial subscription to *Washington Internet Daily*,
go to www.warren-news.com/widtrial.htm or cal us at 800-771-9202.

Merger Issues Raised

Small Wireless Carriers Turn to Hill for Help on Roaming Concerns

Small wireless carriers are lobbying federal lawmakers to pressure the FCC to address petitions for reconsideration filed last October calling for elimination of the in-market exclusion to the agency's new automatic roaming rules. The campaign is bearing fruit, but FCC officials said they've heard nothing from Chairman Kevin Martin's office about any rule change. The issue is gaining significance, sources say, given the Verizon Wireless's proposed purchase of Alltel.

Under the in-market exclusion, a late addition to roaming rules dating to last August (CD Aug 8/07 p1), a carrier need not honor a request by a counterpart with spectrum in a market, even if the spectrum isn't cleared to allow network buildout. Leap Wireless, MetroPCS SpectrumCo, Sprint Nextel and T-Mobile filed petitions for reconsideration at the FCC asking it to revise its rules.

A key issue for the carriers is that they often face long waits for incumbents to leave spectrum before they can build out licenses bought during spectrum auctions. This is especially true for 2006's advanced wireless services 1 auction, since carriers have to wait for Department of Defense and other government users to clear the spectrum. Winning bidders for 700 MHz licenses face similar delays. For PCS licenses, carriers argue they shouldn't have to invest in cellsites in fringe areas outside the core markets they are serving just to maintain roaming rights when they have already met FCC-mandated buildout requirements.

The issue is critical to CDMA carriers concerned about the effect on roaming of the proposed Verizon Wireless-Alltel deal and other industry consolidation, said Laurie Itkin, a lobbyist for Leap Wireless, in an interview. "Alltel is a key roaming partner of ours," Itkin said. "We can only roam with other CDMA carriers. We think this roaming market exception must be addressed before that merger proceeds." The FCC could address the

Communications Daily

(ISSN 0277-0679)

PUBLISHED BY WARREN COMMUNICATIONS NEWS, INC.

Michael Feazel Managing Editor
 Howard Buskirk Associate Managing Editor
 Anne Veigle Associate Managing Editor

Warren Communications News, Inc. is publisher of Communications Daily, Warren's Washington Internet Daily, Consumer Electronics Daily, Green Electronics Daily, Washington Telecom Newswire, Telecom A.M., Television & Cable Factbook, Cable & Station Coverage Atlas, Public Broadcasting Report, Satellite Week and other special publications.

Send news materials to: newsroom@warren-news.com

Copyright © 2008 by Warren Communications News, Inc.
 Reproduction in any form, without written permission, is prohibited.

EDITORIAL & BUSINESS HEADQUARTERS
 2115 Ward Court, N.W., Washington, DC 20037
 Phone: 202-872-9200 Fax: 202-318-8984
www.warren-news.com
 E-mail: info@warren-news.com

WASHINGTON HEADQUARTERS

Albert Warren
Editor & Publisher 1961-2006

Paul Warren Chairman and Publisher
 Daniel Warren President and Editor
 Michael Feazel Executive Editor
 Herb Kirchhoff Senior Editor
 Howard Buskirk Senior Editor
 Anne Veigle Senior Editor
 Dinesh Kumar Associate Editor
 Jonathan Make Associate Editor
 Heather Forsgren Weaver Associate Editor
 Greg Piper Assistant Editor
 Josh Wein Assistant Editor
 Alexis Fabbri Assistant Editor
 Adam Bender Assistant Editor
 Yu-Ting Wang Assistant Editor

Dawson B Nail Exec. Editor *Emeritus*
 Louis Trager Consulting News Editor
 Dugie Standeford European Correspondent
 Scott Billquist Geneva Correspondent

Television and Cable Factbook

Michael Taliaferro Managing Editor
 & Asst. Publisher—Directories
 Gaye Nail Assoc. Managing Editor
 Susan C. Seiler Asst. Managing Editor
 Kari Danner Sr. Editor & Editorial Supervisor
 Bob Dwyer Sr. Research Editor
 Marla Shepard Senior Editor

Business

Brig Easley Exec. VP-Controller
 Deborah Jacobs Information Systems Manager
 Gregory Jones Database/Network Manager
 Gina Storr Director of Sales & Marketing Support
 Katrina McCray Sr. Sales & Mktg. Support Specialist
 Greg Robinson Sales & Marketing Support Assistant
 Loraine Taylor Sales & Marketing Support Assistant

Sales

William R. Benton Sales Director
 Agnes Mannarelli National Accounts Manager
 Jim Sharp Account Manager
 Brooke Mowry Account Manager
 Norlie Lin Account Manager

NEW YORK BUREAU

276 Fifth Ave., Suite 1002, N.Y., N.Y. 10001
 Phone: 212-686-5410
 Fax: 212-889-5097

Paul Gluckman Bureau Chief
 Stephen A. Booth Senior Editor
 Mark Seavy Senior Editor
 Jeff Berman Senior Editor
 Razia Mahadeo Editorial Asst.
 Barry Fox Contributing Editor
 Laura Heller Contributing Editor

Dir. of Advertising: Richard Nordin
 Phone: 703-819-7976
 Fax: 202-478-5135

E-mail recipients: By using our e-mail delivery service, you understand and agree that we may use tracking software to ensure accurate electronic delivery and copyright compliance. This software forwards to us certain technical data and newsletter usage information from any computer that opens this e-mail. We do not share this information with anyone outside the company, nor do we use it for any commercial purpose. For more information about our data collection practices, please see our Privacy Policy at www.warren-news.com/privacypolicy.htm.

issue in its order on the merger, “but we think it would be cleaner just for the commission to deal with the roaming docket as it is, before the merger proceeds,” she said.

The roaming issue matters to consumers, Consumers Union Internet & Telecom Legislative Counsel Chris Murray said. “This is a very crisp, market specific harm,” he said. “You’ve got one partner, Alltel, being a relatively good corporate citizen, offering roaming to Leap. On the other hand, Verizon is using this in-market loophole to avoid roaming with Leap. If you combine those two companies without addressing this huge competitive problem you’ve not only combined two of the largest wireless carriers but you’ve hobbled the ability of other companies to compete.”

In a recent letter to Martin, Reps. Charles Gonzalez of Texas and Mike Doyle of Pennsylvania, Democratic members of the House Telecom Subcommittee, asked the FCC to address the roaming issue. Gonzalez and subcommittee Chairman Ed Markey, D-Mass., raised the home-market exception when Martin testified April 15 before the subcommittee on the 700 MHz auction.

“You mentioned in the hearing that you want to encourage buildout through the roaming policy,” the letter said. “However, consideration must be given to carriers that are currently working to build out their licenses in compliance with pre-existing FCC construction requirements. Consideration must also be given to the fact that large licenses were awarded in recent spectrum auctions, and that many licenses cannot be built out quickly due to encumbrances by federal government users.”

At the hearing, Martin defended the in-market exception, saying it “fully recognizes both the importance of roaming but also the counterbalance of making sure that people that purchased spectrum are not letting it sit idle but rather are trying to build it out to the most effective possible use.” Commissioner Michael Copps said at the hearing that the exception has “unforeseen consequences” and he’s “pushing for a reconsideration” of the rule.

“We are actively working and evaluating the petitions for reconsideration,” an FCC spokesman said Wednesday. “We cannot give any indication as to when the Commission may take further action on this issue.” -- *Howard Buskirk*

Deep Packet Inspection

Vendors Still Selling Network Management Gear, as FCC Inquiry Remains Open

Vendors selling deep packet inspection and traffic management tools to Internet service providers still are seeing brisk sales, despite an FCC inquiry into Comcast use of such technology that has run into the third quarter. FCC Chairman Kevin Martin said he wanted to resolve the proceeding before July (CD March 10 p3). The FCC attention initially hurt traffic-shaping gear sales. Vendors Sandvine and Allot Communications told investors in March that some customers were delaying new DPI and traffic management deployments because of the FCC scrutiny. “The carriers... want to know what the playing field looks like,” CIBC analyst Todd Coupland said in an interview last month: “It has had some influence on them.”

In reaction, ISPs have sought other options allowing them to manage network traffic without setting off subscribers and public interest groups, said Arbor Networks Chief Technology Officer Rob Malan. “A lot of the folks who had been looking at those types of solutions [similar to Comcast’s] have been looking at ways to do the same job in a different manner,” he said. “We’re not sitting here waiting for the FCC to make a decision. I’m sure that some of the North American telcos would like to see some resolution.”

Vendors' investors still are waiting for the FCC to act, but are more confident that these new solutions will pass muster with consumers and regulators, Coupland said in an e-mail to us. Sandvine shares, which have lost nearly 70 percent of their value on the Toronto Stock Exchange since the FCC inquiry began, have gained 18 percent the last month. "Its certainly true that investors are waiting for the FCC's ruling," said Coupland. "That said, they are likely responding to the recent protocol agnostic solutions that Comcast and Time Warner have indicated they are testing. And the view is those tests suggest progress towards a solution that allows some level of reasonable network management that can satisfy (to a degree) both sides of this debate." Sandvine declined to comment because the company is in a so-called quiet period preceding a July 8 earnings report.

Some vendors felt no sales pressure as a result of the federal scrutiny. "The carriers still have to run their networks. So they still have to be considering technologies that will help them more efficiently and effectively manage their networks," said Procera CEO James Brear. Procera, far smaller than Sandvine or Allot, has offered products all along that don't provoke customer complaints, he said. "We have the golden tool that keeps everybody happy -- the user and the carrier."

ISPs need to manage their networks and they will, Bivio Networks CEO Elan Amir said. "You have three legs to a stool here that just cannot live together -- flat rate pricing, unlimited usage and fixed capacity. Something has to give," he said. "Either you limit the usage, or you invest in unlimited capacity or you move away from flat rate pricing." DPI tools are necessary to introduce advanced network services such as new billing models, advanced security and network monitoring, he said. "It really is in our view a fundamental building block of next generation services, much like switching and routing were previously."

Any effect of FCC scrutiny is limited to the domestic market, Amir and others said. "This is at least, as far as we see, a U.S.-based issue," Amir said. Bivio deals directly with carriers overseas and sells its hardware to other DPI software vendors in the U.S., he said. "We have not felt the effects of this, but we certainly are watching it very closely." -- *Josh Wein*

Deaf Consumers: Rules OK

Relay Providers Challenging FCC Disparity on Marketing

Rules to protect deaf consumers from unwanted marketing and lobbying have created a double standard for how the FCC regulates telecom relay service providers and dial-tone carriers, said relay providers and others. But advocates for deaf people said marketing is one issue for which the FCC should treat TRS providers differently. "If we get abused, the fundamental principles of relay service will not meet its full potential," said Claude Stout, executive director of Telecommunications for the Deaf and Hard of Hearing (TDI). If TRS users believe their call is being monitored or their data will be used for other purposes, they will be "less confident" to use relay service, he said. "We need to make sure that doesn't happen."

The TRS marketing rules, adopted in November, ban providers from contacting customers to promote increased minute usage and to encourage participation in lobbying efforts. The rules restrict TRS providers' use of customer IP addresses, which they collect during calls and later submit to the TRS Fund administrator when applying for subsidies. TRS providers Sorenson Communications and GoAmerica challenged part of the order, which banned providers from contacting users to "attempt to influence... [consumer] use of relay service" or "for lobbying or any other purpose." The providers said the vague language violated their First Amendment rights. The FCC admitted the rules were foggy in late May, issuing another order clarifying what activity was restricted (CD May 30 p2). In early June, a still-unhappy Sorenson appealed to the 10th U.S. Circuit Court of Appeals in Denver.

The FCC should apply to TRS providers customer proprietary network information (CPNI) rules it has set for telecom voice carriers, Sorenson said in a written statement. "CPNI rules protect consumers without infringing on the First Amendment rights of providers," it said. Sorenson supports the FCC's ban on using financial incentives to encourage relay users to make more calls but believes it's "unconstitutional" to restrict providers' right to communicate "with the public and customers about Video Relay Service developments and government decisions affecting VRS," it said.

GoAmerica also condemned the May order, but it hasn't appealed. "Ongoing communication into the deaf community about technology is already limited because few companies are immersed in serving this market," said Kelby Brick, GoAmerica vice president of strategic and regulatory policy. "This ongoing dialog between relay providers and users is essential, and ensures users aren't left behind as technology advances. The FCC should adopt a policy that protects users' privacy while not restricting their right to learn about new technology that delivers a calling experience that's more functionally equivalent to their hearing counterparts." GoAmerica is aware of the Sorenson appeal, Brick said: "We're still studying our options."

The Americans with Disabilities Act doesn't block TRS providers from talking to customers for marketing or lobbying purposes, said telecom attorney Barlow Keener. Rather, the ADA requires TRS calls to be "functionally equivalent" to non-TRS calls, he said. But the FCC reads that to mean it should restrict TRS providers from doing "anything beyond" what ordinary, dial-tone providers do, he said. "Dial tone is dial tone. Dial tone doesn't [encourage customers] to increase minutes and dial tone doesn't get [them] to call the FCC."

The FCC says it has authority to impose different rules on TRS providers because the federal interstate TRS fund subsidizes their entire calls, Keener said. However, the FCC hasn't made similar marketing rules for carriers that take from the Universal Service Fund and other subsidy programs, he said. "Is the FCC going to go this far with TRS providers, but not... other similarly situated companies?"

"In most cases, the FCC should treat [TRS providers] as if they are VoIP providers," Stout said, but TRS customers don't pay for service like VoIP customers do. Telecommunications for the Deaf and Hard of Hearing approved of the language of the original order imposing marketing rules, he said.

"There needs to be restrictions in place to protect the consumers," said NorCal Center on Deafness CEO Sheri Mutti. The FCC acted in the "best interest" of customers when it made the marketing rules, she said. TRS providers who oppose the rules want to ensure the marketplace treats all companies on equal footing, she said. But the ADA "principle of functional equivalency applies to the FCC's regulation of the marketplace to ensure consumers aren't being manipulated and their rights violated," she said. That "is ultimately what the needs to be the focus and I expect the providers to adhere accordingly," she said.

An equivalent experience means that TRS providers should serve only as the intermediary, enabling communication between calling parties, Stout said. The consumer is "in charge of the call," he said. "The provider should not use any data from that call for any other purpose." Providers should only be allowed to contact a TRS user about lobbying if the customer opts in, he said.

Not all relay providers dislike the rules. The FCC shouldn't treat TRS providers the same as phone carriers, said Andy May, chief marketing officer for relay provider CSDVRS. The TRS world is different because it's "heavily subsidized, and there is no contractual or fiduciary relationship between the TRS user and the TRS provider," he said. "I'm not one to say that just that issue in itself is what might yield different behavior or different rules, but it is one very different thing."

Calling customers to increase minute usage has been "strictly forbidden" at CSDVRS for "many years," May said. "We have never been in favor of that." Also, providers "don't need to" encourage customers to

lobby, he said, because that's deaf consumer groups' role, he said. Trying to influence customers' positions on regulatory issues "is not a position we want to put ourselves in," though relay providers may try to raise awareness of issues on their Web sites, he said.

Additional customer privacy rules are on the way for relay services. In a recent further notice (CD June 26 p2) tagged to an order establishing a 10-digit numbering plan for IP relay services, the FCC asked how it might apply CPNI and other customer privacy rules to relay providers. "There's going to be lots of debate... because that's a very sensitive issue in the voice world," said May, declining to speculate on what positions will be taken. Telecommunications for the Deaf is studying how CPNI rules have worked for carriers and keeping an "open mind" about how they might apply to TRS providers, Stout said. "We want to make sure of [consumers'] rights not to be harassed unnecessarily."

Phone carriers might face marketing rules like those for TRS in the future, Keener said. Marketing seems to be turning into a hot issue for regulators, he said, citing a recent FCC order scolding Verizon for illegally marketing to departing customers (CD June 27 p9). -- *Adam Bender*

'Without Merit'

Sprint Sues TerreStar, ICO for BAS Relocation Reimbursement

Sprint Nextel sued ICO Global Communications and TerreStar Networks, seeking to recover \$100 million from both mobile satellite services operators for clearing the broadcast auxiliary service from the 2 GHz band. The BAS spectrum was swept up in the 800 MHz band reconfiguration, so Sprint is paying to move BAS off the spectrum that ICO and TerreStar Networks want to use.

If Sprint keeps clearing the band and isn't reimbursed by TerreStar and ICO, "the MSS entrants to the band would simply be free riders, with Sprint having unfairly borne the entire cost of clearing the band for the MSS entrants, contrary to FCC rules and precedent," Sprint told the U.S. District Court in Alexandria, Va.

Sprint's June suit didn't come to light until late Tuesday when TerreStar alerted investors in a filing to the Securities and Exchange Commission. "TerreStar believes the claims against it are without merit and intends to vigorously defend against this suit," it said in the filing. ICO's reaction was similar.

Citing an FCC declaration that the MSS operators had to reimburse Sprint if they entered the band before June 26, TerreStar, beset by problems building its satellite (CD July 1 p3), long has denied any reimbursement obligation. "Under TerreStar's invalid theory, it can avoid paying any reimbursements to Sprint by improperly waiting out the 36-month transition period," Sprint said in its suit.

Sprint says both ICO, whose satellite launched in April, and TerreStar, still preparing for its MSS ancillary terrestrial component service, are in the band, triggering the reimbursement obligation. Entering the band is the standard, not offering service, Trey Hanbury, a Sprint attorney, told us. "The FCC knows how to say 'offering service' and they didn't say that."

"They went to court because they haven't persuaded the FCC to change the rules," said an ICO spokesman, referring to Sprint's campaign (CD May 2 p3) to have the FCC require the MSS operators to pay Sprint. Sprint may have filed in several proceedings involving ICO and TerreStar, but the issues before the federal court in Virginia "are not before the FCC," Hanbury said. ICO and TerreStar are expected to try to get the suit dismissed, sources said. -- *Heather Forsgren Weaver*

Nothing Scheduled

Cable Uses Recess to Press Lawmakers to Stop Video Tax Bill

The cable industry is using the congressional recess to lobby against a video tax bill stuck at the subcommittee level, industry officials said. The cable industry has been “actively working to stop” HR-3679, the State Video Tax Fairness Act, a cable official said.

The bill is a pet of satellite-TV operators, which see some states as unfairly taxing them while giving cable a free ride. Six states tax direct broadcast satellite services: Florida, Utah, Kentucky, North Carolina, Ohio and Tennessee. North Carolina is trying to repeal the law. The federal bill was introduced in September after being pulled from the Internet tax moratorium bill (CD Sept 28 p8).

NCTA sent material to members to help them lean on lawmakers during the Fourth of July recess, said a spokesman for the group. The issue also was highlighted at last month’s key contacts conference, he said.

The bill has backing from the House Judiciary Committee leadership, leading many to believe it would pass if brought up for a vote at both subcommittee and full committee levels. DBS companies have been stymied in their efforts to get a vote in subcommittee, industry sources said. “We’re hoping it doesn’t get out of subcommittee,” a cable official said.

So far, cable seems to be succeeding. No subcommittee consideration of the bill is set. “Oversight hearings are taking up a lot of time,” said a spokesman for Rep. Linda Sanchez, D-Calif., chairman of the House Administrative Law Subcommittee.

State seems to be suspending their tax efforts until the federal tussle plays out, industry sources said. “Stepping up the action” on federal legislation has stopped states from imposing taxes that might be invalidated, an industry official said.

If the bill doesn’t pass this year, it will lose its main GOP sponsor. Rep. Chris Cannon, R-Utah, ranking member of the House Administrative Law Subcommittee, lost in the primary to Jason Chaffetz. Cannon’s sponsorship of the bill was ironic in that Utah is among states whose taxes would be invalidated were HR-3679 to be enacted. Chaffetz didn’t specifically hit Cannon on the video tax bill, but did criticize Cannon’s views on taxes, according to local sources and media accounts. Some suggested that Comcast, Utah’s primary cable operator, campaigned against Cannon because of his views on the video tax bill, but a company spokeswoman showed that Comcast gave Cannon’s campaign \$6,000 and didn’t donate to Chaffetz. -- *Heather Forsgren Weaver*

Loses on Removed Videos, Logs

YouTube Largely Wins Discovery Disputes in Viacom Case

The search code used at YouTube.com and Google.com will remain under wraps in Viacom’s lawsuit against parent Google and its video-sharing site. A ruling by U.S. District Judge Louis Stanton in New York rejected most of Viacom’s discovery requests. But the defendants must turn over information including YouTube’s entire library of removed videos. Stanton cited a post at Google’s public-policy blog as a basis to approve a Viacom request.

Viacom and fellow plaintiffs said the search code was “purposefully designed or modified... to facilitate the location of infringing content,” but Stanton called the statement “speculation.” Google has said its “automated algorithms” return only suggested search terms in the case of a misspelling or search terms with multiple meanings. The search code’s secrecy has “enormous commercial value” that could be lost if the information were released to the plaintiffs, Stanton said, requiring Viacom to make a “plausible showing” that Google’s denials are false. Viacom similarly can show how filtering technology is feasible, but must do better than its “conjecture” that YouTube search could be “adaptable” into a filter. Viacom is using technology from Auditude to identify potentially infringing clips on YouTube against a Viacom database, Stanton said in a footnote.

Disclosure of the “Video ID” source code used by YouTube with “video reference samples” provided by copyright owners to flag infringing content can’t be compelled, either, Stanton said. Google poured “50,000 man hours of engineering time and millions of dollars” into creating Video ID, and if the code leaked YouTube users could “trick” the program into ignoring infringing clips they upload, Stanton said. Viacom can simply view the “operation” of Video ID, its patent applications and other public documents to learn how the program works, and the company is free to “demonstrate” any program that can identify and control copyrighted clips, he said.

The burden on Google to turn over all videos removed from YouTube is “roughly equivalent” to that of providing Viacom a data set and search program to sift through removed videos, Stanton said. It’s up to Viacom to identify videos at issue in the case from the millions of videos pulled from YouTube for various reasons, so Google must turn over all videos, which will take five weeks, Stanton said.

Google’s user-privacy concerns over handing over log data -- every instance of a viewed video, the viewer’s login ID, time and IP address, among others -- run counter to its own contentions elsewhere, Stanton said, approving Viacom’s request. Viacom wants the data to evaluate whether infringing clips are viewed more often than non-infringing clips, which bears on Viacom’s vicarious-liability claim and Google’s substantial-noninfringing-use defense. A Google engineer said on Google’s public-policy blog in February that IP addresses alone can’t identify Internet users, and Google elsewhere has said that login ID on its own is anonymous, Stanton noted.

Viacom lost on its request for the databases that contain metadata on every YouTube video. The data include titles, public comments, administrative actions in response to complaints and termination of user accounts, which Viacom said could help it find new works-in-suit and show that YouTube had control over infringement. There’s no data on YouTube review of flagged videos for the “substantial majority” of them, Google said. Stanton agreed there was no need to review “millions of pieces of information,” at least until other disclosures have been used.

Google’s advertising “schema” -- the index that shows how data are organized -- might show that the company “could have or should have known” how often its ads were paired with infringing content and the pairing could be blocked, Viacom said. But Stanton said Viacom already had information that made receiving the confidential index unnecessary. But he required disclosure of the schema for Google Video. Since searches at Google Video bring up YouTube videos, access to the schema could show whether Google could control infringement in that way at YouTube, Viacom said. The request isn’t for information that’s “confidential or unduly burdensome” to Google, Stanton said.

The Electronic Communications Privacy Act got a thorough treatment from the judge in connection with Viacom’s request for “private videos” from YouTube -- those authorized for viewing only by those an uploader authorizes. There’s no provision for civil discovery requests in the act, and assent to YouTube’s terms of service cannot “fairly be construed as a grant of permission” from uploaders to share the videos with others, he said. But

the law doesn't protect non-content data, such as how many times videos are viewed or embedded at other sites, so Viacom should get access to non-content data to make its case that private videos are infringing and are actually widely shared, Stanton said. -- *Greg Piper*

Communications Daily won't be published Friday, July 4, because of the federal Independence Day holiday. Our next issue will be Monday, July 7.

Comm Daily® Notebook

The FCC will hold a July 29 hearing and conference on how women and minorities fund media and telecom investments at Barnard College in New York, as expected (CD June 16 p2). The 1 to 4 p.m. en banc hearing will be followed by a "breakout session" featuring "representatives of potential funding sources," the FCC said. The event will focus on how women and people of color fare, given "the present state of capital markets," how new ventures get money and their problems doing so and how the commission can help, it said. Commissioners were asked to keep the morning open for a possible agenda meeting before the en banc. But an FCC spokesman said a date has not been set.

Far fewer informal complaints and inquiries were sent to the FCC in 2007, the agency said Wednesday. The FCC fielded nearly 54 percent fewer complaints and almost 27 percent fewer inquiries last year than in 2006. Among complaints, the most "substantial" drop was in the programming indecency/obscenity category, down 71 percent to fewer than 155,000, the FCC said. The FCC also reported statistics for Q4 2007. Complaints rose 37 percent from Q3 to almost 43,000. Wireless complaints grew 59 percent, exceeding 12,400, with TCPA matters such as text message ads and third-party charges accounting for 52 percent. Radio and TV broadcasting complaints rose more than 26 percent to about 1,250. Wireline complaints jumped 31 percent to more than 28,600. Cable and satellite complaints climbed 6 percent to 615. Consumer inquiries spiked 147 percent, approaching 47,000. Inquiries about radio and TV broadcasting grew more than 368 percent, with 75 percent involving DTV. Wireline inquiries rose 155 percent to more than 19,500. Telephone Consumer Protection Act issues, including unsolicited faxes and National Do-Not-Call list violations, triggered 78 percent of wireline inquiries. Wireless inquiries rose 80 percent to more than 7,200, and 44 percent sought general license information. Only cable and satellite services saw a drop in inquiries, 7 percent, to less than 3,500. The FCC released a report on Q3 2007 Tuesday (CD July 2 p6). The close timing is not unusual, an agency spokesman said. Reports are posted online as they are completed, he said. -- *AB*

Wireline

Rural telephone provider CenturyTel raised its quarterly dividend tenfold and said it expects to meet or beat its second-quarter results forecast from June. The company raised its quarterly dividend to 70 cents a share, from 6.75 cents. The action came as a surprise to Bank of America, which believes the carrier was trying "to avoid finding itself at the low end of the valuation scale" in the industry amid "a notable uptick" in merger speculation. The bank said CenturyTel has always expressed the desire to be an industry consolidator but its low stock valuation has gotten in the way of potential deals.

Clarification: An en banc FCC hearing in Pittsburgh on broadband deployment (CD July 1 p5) will take up wireless issues but will mainly focus on wireline, the agency clarified.

Wireless

CTIA wrongly claims the FCC lacks power to require free service in the advanced wireless services 3 band, M2Z said. In its latest filing, M2Z said the FCC has such authority under Title III of the Communications Act. “CTIA’s assertions founder, once again, primarily because of its continued refusal to acknowledge the Commission’s considerable authority to regulate the use of radio spectrum,” the company said. “As CTIA must know, the Commission has ample statutory authority to require the AWS-3 band licensee to provide ‘free, two-way broadband Internet service.’”

The Association for Maximum Service TV proposed two sites for field tests of white spaces devices. Each is a residence in the Washington-Baltimore area with outdoor antennas.

The FCC Wireline Bureau seeks comment on a Virgin Mobile USA petition for limited designation as an eligible telecommunications carrier in Massachusetts, for lifeline support only. Comments are due July 31, replies Aug. 15.

North America generated 81 percent of the world’s location based service (LBS) revenue in 2007, said ABI Research. It forecast that percentage will be just 32 percent in 2013. In the same period, Western and Eastern Europe’s combined LBS revenue will increase from 5 percent to 31 percent, it said. Meanwhile, the Asian-Pacific region will see a rise from 11 percent in 2007 to 27 percent in 2013, it said.

GoAmerica announced a merger with two sign language interpreting services firms: Sign Language Associates (SLA) and Visual Language Interpreting (VLI). GoAmerica is a provider of relay and wireless communications for deaf, hard-of-hearing, and speech-disabled persons. The deal will provide GoAmerica customers with broader access to Video Remote Interpreting services, the company said.

State Telecom Activities

The Florida Public Service Commission agreed to extend Sprint’s relay service contract through May 2010. Included is a 5-cent increase in the rate to the state for voice relay, to 80 cents a minute, and a 3-cent increase, to \$1.40 a minute, for CapTel captioned calls. The higher rates take effect in June 2009. The PSC staff endorsed the higher rate, saying the increase would be well below boosts in other states. The original 3-year pact allows up to four 1-year extensions. This will be the second extension.

California and Washington state laws curbing cellphone use by drivers took effect July 1. California bans the use of handheld cellphones at the wheel, and drivers under 18 from using any type of cellphone. Violators face a minimum \$76 fine. Washington bans handheld cellphone use while driving, on pain of a \$124 fine. The states join Connecticut, New Jersey, New York, Utah and the District of Columbia in banning handheld cellphone use while driving.

The Iowa Utilities Board allowed statutory deregulation of single-line residential and business basic exchange service effective July 1, after finding enough local competition to restrain rates. A 2005 state law deregulating all other retail rates kept single-line basic service under price caps three years, but empowered regulators to extend the caps two years. The board this year reviewed local competition (Case INU-08-1), concluding most consumers have a meaningful choice of basic service among landline, wireless and cable-based providers. The board

noted that the state's three largest wireline incumbents have lost significant numbers of access lines, "an indicator of competitive forces within the market." The state Consumer Advocate contended intermodal competition from wireless wasn't a substitute for wireline service. But the board said wireless adoption is cutting into wireline service. The board also noted that VoIP and cable telephony are growing in popularity and "are likely to put additional price constraints on incumbents."

The Massachusetts House unanimously passed an administration-backed broadband development bill to create a \$40 million state fund to provide seed money for development of broadband infrastructure in rural and underserved areas. The goal is enticing investment by telecom carriers, ISPs and other provider businesses. The Broadband Incentive Fund set up by HB-4311 and companion measures 4715 and 4864 originally was to be \$25 million. The House amended the bill to add \$15 million for investment in underserved areas. The fund would be run by a new broadband "institute" in the Massachusetts Technology Collaborative. Money for the fund would be raised through a state bond issue. Projects for state support would be selected through competitive bidding. Bill supporters said western Massachusetts is very short on broadband service, with 32 towns lacking any access and 63 having service only in some neighborhoods. The bill goes to the state Senate.

West Virginia's Public Service Commission opened a formal investigation into Verizon service quality, citing increasing complaints and a drop in Verizon investment in basic services. The probe responds to concerns of the PSC staff and Consumer Advocate Division. Complaints about service failures and bad line quality in 2007 were 41 percent over a record number in 2006. The staff said such complaints have risen 900 percent since 2001. The staff and consumer advocate said Verizon's current regulation plan requires it to hire 18 staffers and invest \$5 million yearly in preventive maintenance, but even so Verizon network quality keeps falling. They cited a pattern indicating that Verizon short-changes its network to return maximum dividends to corporate parent Verizon Communications. The Bell disputed the need for a general inquiry. Verizon said it takes service problems seriously, calling good service essential in the state's "highly competitive" telecom market. It said its regulation plan provides for quarterly service-quality reviews with the staff and the consumer advocate, with quality problems addressed via a targeted improvement plan. The PSC said the informal means set up in the plan doesn't preclude a formal investigation into the "alleged deterioration" of Verizon's service quality.

Wisconsin's Public Service Commission granted AT&T a temporary waiver of retail customer credits for service issues, after concluding that massive rainfall inundating the southern half of the state in June was an act of God. AT&T (Case 6720-TI-166) said June rainfall was six times normal, forcing it to redeploy resources to flooded areas. The order waived the \$25 credit for late installations on orders placed before July 7, and capped out-of-service credits at \$10 for residential customers and \$20 for businesses for outages reported June 8 to 30.

Qwest told Minnesota regulators it intends to exercise its option to extend its price cap regulation plan through the end of 2009, but doesn't want the extension to affect Public Service Commission consideration of a successor plan it filed in March. The current plan was to expire Dec. 31 unless Qwest exercised its extension option. During the extension, the carrier can increase basic service rates up to \$1 monthly. Qwest's successor proposal would let it make annual \$1 basic service rate increases while deregulating rates for most other retail services. Qwest said it chose the extension to ensure price stability while its successor proposal is being considered.

International Telecom

EU mobile roaming price caps are strangling operators' investment in new networks and services, the GSM Association said Wednesday. The European Commission (EC) wants feedback on how well caps it set

last year work. The GSMA said the regulation further pressures sector profitability, hampering new spending. The EC justified its roaming rule by citing claims of excess profits, but in 2006 European sector return on capital was only nine percent, and looks to be the same or less for 2007, far lower than the 20 percent in some other industries, the GSMA said. The EC expected lower voice roaming charges to boost use, offsetting any revenue losses, but a report for GSMA found that roaming call volumes rose only 11 percent between July 2007 and July 2008, while operators' revenue fell 26 percent. Data roaming service prices also are falling, negating need for price caps on them, the group said. Europe's mobile sector is in the midst of another major investment cycle to deploy mobile broadband, video downloads, mobile and e-mail and other new services, but they won't happen if "regulators continue to distort the market by setting prices," said Tom Phillips, GSMA chief government and regulatory affairs officer.

Nokia's purchase of navigable digital map database provider Navteq was approved Wednesday by the European Commission. The action followed an extensive inquiry into whether absorption of Navteq into the world's largest mobile phone maker could hurt competition in markets for navigable digital map databases and mobile phones, the EC said. The main question was whether the combined company might raise competitors' costs by charging more for the databases or limiting access to the information, it said. The commission found that the merged company would be unlikely to close off competitors, since it competes with another map database supplier, and selling more mobile phones would not offset the loss of map sales. Nokia welcomed the decision, saying it has received all necessary approvals for the merger and expects to close the deal within five business days.

China Digital TV said it was designated as a mobile TV developer by China's State Administration of Radio Film and Television, the country's regulator on broadcasting. Under the contract, the company will develop Electronic Service Guide (ESG) solutions based on China Mobile Multimedia Broadcasting standards, a broadcasting platform made in China and designed for mobile devices. The company said the potential market for ESG is broad, as more than 300 network operators are expected to install ESG applications and software will be adopted by millions of mobile device users. The number of mobile phone users in China reached 600 million on May 31, China's Ministry of Industry and Information Technology said.

Broadcast

With full-power broadcasters' digital TV switch less than nine months away, FCC Chairman Kevin Martin asked utility commissioners to help educate people about it. In a letter Monday to Chairman Marsha Smith of the National Association of Regulatory Utility Commissioners, Martin said the group's "prominent DTV informational link" on its Web site and its letters to state commissions about the transition "are excellent examples" of FCC-NARUC cooperation. But more is needed, such as "placing posters and materials in public venues, making announcements at public meetings, sponsoring consumer awareness sessions" and other actions, Martin wrote. He cited DTV information events held by the FCC and the California Public Utilities Commission together (CD May 23 p5). "I welcome any suggestions regarding other joint outreach efforts," Martin said.

Commissioners upheld 2001 Media Bureau approval of a request by KFME(FM) Garden City, Mo., to move its transmitter, said an FCC order released Wednesday. It denied a request by CBS and Entercom to reconsider the decision, saying those broadcasters failed to show a supplemental study shouldn't have been used to approve the move. Commissioner Michael Copps concurred, criticizing the agency for being inconsistent in letting the station demonstrate that the transmitter's new site in Independence would have a wider coverage area than an FCC model would predict because the terrain is smooth.

The FCC approved three permits to deliver programs to Mexican stations, it said Wednesday. Broadcast Co. of the Americas can send programming to XEPE Tijuana and XEPRS(AM) Rosarito, while Bay City TV can send news, public affairs and other shows to XETV Tijuana.

Journal Communications will acquire KNIN-TV Caldwell, Ida., for \$8 million from Banks-Boise, adding to the one TV and six radio stations it owns in nearby Boise, the buyer said late Tuesday.

Univision said newscasts at its New York and Los Angeles stations are the highest rated in the country, in their early evening time slots, among adults 18 to 49 in Nielsen People Meter markets. Among viewers, 77 percent are bilingual but choose to get their news in Spanish, Univision said.

Cable

Two cable companies operating outside the continental U.S. got waivers from CableCARD rules in Media Bureau orders the FCC released Tuesday. Guam Cablevision can use Scientific-Atlanta Explorer 2200 and Explorer 8300 models through 2009, the bureau said, expanding a waiver it gave the cable operator for the 1850. Scientific-Atlanta is stopping production of that box, and Guam Cablevision said it needed to use the successor, the 2200. The bureau accepted the company's contention that it deserved a waiver from the requirement for cable boxes to have separate security and navigation functions, because Guam lacks CableCARD devices. "The market for consumer electronics is small and underdeveloped relative to the market in the continental United States," said the order, signed by Bureau Chief Monica Desai. "The company has established that it faces an idiosyncratic factual situation in its service area," which has been subject to "extraordinary devastation" the past 10 years, she said. Puerto Rico Cable also faces a lack of CableCARDS on the island, where the company said poor customers can't afford high-definition TV sets with CableCARDS. The company had gotten an FCC waiver for some set-tops and now can use digital cable boxes that combine navigation and security features, the order said. "Compliance with the integration ban is unlikely to produce the same benefits in rural Puerto Rico as in the rest of the United States."

The FCC found "acceptable for filing" a Time Warner request to transfer its control of Time Warner Cable to a separate publicly traded company through a spinoff or split-off (CD May 22 p3). Comments on Time Warner's request for the FCC to approve the transfer of control of licenses held by Time Warner to the cable operator are due July 31 in docket 08-120, replies Aug. 15, a public notice said Wednesday. Applications include cable TV relay service and licenses for Ku-band earth stations, land mobile radio and point-to-point microwaves and include HBO, Warner Bros. and other properties.

Cable operators filing FCC form 1240 can adjust the "non-external cost" portion of rates for inflation based on a factor of 2.68 percent for the first quarter, the agency said Wednesday. That compares with 4.17 percent in the year-ago period.

Harris said it sold more billing software to Comcast Spotlight, the cable operator's ad sales unit. The terms weren't disclosed. Comcast Spotlight now uses Harris' Novar traffic and billing system in most of its service area.

Cablevision will add 15 networks to its HD package over five days beginning July 28, it said. Nickelodeon, AMC, the Weather Channel, Hallmark Movie Channel and Fox News are among the networks, but Cablevision didn't identify all the rest.

Time Warner Cable joined the Multimedia over Coax Alliance, the group said.

Mass Media Notes

LIN TV signed a carriage agreement with Charter covering 13 LIN-owned or operated stations in eight markets. The broadcaster threatened to pull its stations' signals in June, but the companies reached a tentative deal that month (CD June 13 p14).

New Technologies

Internet media and mobile entertainment company Atrinsic acquired Ringtone.com, which offers downloadable mobile content and gets more than 1,000 signups daily, the companies said. Atrinsic will shift Ringtone.com's business from subscriptions only to one with "multiple revenue streams, including an ad-supported model." The price is \$6.25 million cash offset by \$1.5 million in working capital, for a net cash outlay of \$4.75 million to be paid to Ringtone.com parent W3i Holdings. W3i also will receive a \$1.75 million convertible note with a 10 percent coupon and a term of one year.

Satellite

Friday's scheduled launch of ProtoStar I and Arabsat's BADR 6 was delayed after Arianespace decided to replace the electrical interface, Arianespace said. Arianespace has now scheduled the launch for Monday, it said. ProtoStar I is designed with Ku- and C-band transponders to provide direct-to-home TV service in Asia, ProtoStar said. The satellite was built by Loral's space systems division. ProtoStar I will orbit at 98.5 degrees east. BADR 6 was built by EADS Astrium and Thales Alenia Space. It will orbit at 26 degrees east.

The Proton Breeze M launch vehicle is ready to return to flight after failing to boost AMC 14 into its proper orbit in March (CD March 19 p12), International Launch Services said. ILS has scheduled the launch of Inmarsat's 4F3 satellite for Aug. 14, ILS said. "I am satisfied that the appropriate actions have been taken to deal with recent failures and to reassess the quality of the Proton vehicle," said Gene Jilg, Inmarsat's chief technology officer. Inmarsat 4F3 was built by EADS Astrium and will complete Inmarsat's next-generation satellite constellation.

Subscribers to WildBlue Communications' satellite broadband service can receive the discount on Dell computers that the PC maker's employees get, WildBlue said. Customers can save as much as 12 percent on Dell Inspiron PCs that way and additional discounts can be applied to those and other gear, WildBlue said.

Moody's again affirmed its Caa1 rating on Intelsat after Intelsat issued new senior notes due with interest rates starting at 9-1/4 percent and due in 2016. Similar refinancing notes were issued last month (CD June 25 p12). Intelsat's recent purchase by its second private-equity ownership made the actions necessary. "With no change to the credit profile of the company expected to occur over the near term, the outlook continues to be stable," Moody's said.

Communications Personals

Telkonet promotes **Jeff Sobieski** to chief operating officer, replacing **Dottie Cleal**, who left in May because of family health matters.... New board members at Belgian wireless company Option: **Olivier Lefebvre**, ex-Euronext, and **Patrick De Smedt**, ex-Microsoft EMEA... ABI Research names **Nick Holland**, ex-Aite Group, as principal analyst, mobile content... National Public Radio names **Joyce Slocum**, ex-HIT Entertainment, vice president of legal affairs and general counsel... Cable and satellite-TV analyst **Jeff Wlodarczak** left Wachovia... **Jana Gavin**, ex-Jacor, becomes senior director-business development for Tribune Interactive.