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SHUGHART THOMSON & KILROY'S TELECOMMUNICATIONS AND NEW TECHNOLOGIES PRACTICE GROUP TELECOM REPORT

Shughart Thomson & Kilroy, P.C.'s Telecommunications and New Technologies Practice Group has substantial experience in regulatory and enforcement proceedings before the Federal Communications Commission ("FCC") and state regulatory agencies, and in litigation involving telecommunications matters in the federal and state courts. We present below for your information various recent regulatory and court rulings affecting the telecommunications industry. We are available to assist you in such matters.

FCC Establishes New Rules Applicable to Franchising Process for New Entry into Video Market

On December 20, 2006, the FCC adopted a Report and Order and Further Notice of Proposed Rule Making ("Report and Order and FNPRM") that establishes rules and provides guidance for the application section 621(a)(1) of the Communications Act of 1934, 47 U.S.C. § 541(a)(1) to new entry into the video market. This section of the Communications Act of 1934, as amended (the "Act") prohibits franchising authorities from unreasonably refusing to award competitive franchises for the provision of cable television services.

In the Report and Order and FNPRM, the FCC concluded that the manner in which the franchising process by franchising parties is currently being conducted constitutes an unreasonable barrier to entry that impedes the achievement of the federal goals of enhanced cable competition and accelerated broadband deployment. Accordingly, the Report and Order and FNPRM addresses a number of ways by which local franchising authorities are unreasonably refusing to award competitive franchises. Such activities include 1) drawn-out negotiations with potential cable franchise entrants with no time limits, 2) unreasonable build-out requirements, 3) unreasonable requests for in-kind payments that attempt to subvert the five percent statutory cap on franchise fees, and 4) unreasonable demands with respect to public, educational and government access to cable channels.

To eliminate these unreasonable barriers to entry into the cable television market, and to encourage investment in broadband facilities, the FCC's Report and Order and FNPRM found that:

- franchise negotiations that extend beyond certain time frames amount to an unreasonable refusal to award competitive franchises within the meaning of section 541(a)(1) of the Act;

- requiring an applicant to agree to unreasonable build-out requirements constitutes an unreasonable refusal to award a competitive franchise;

- unless certain specified costs, fees and other compensation required by local franchising authorities are counted toward the five percent statutory cap on franchise fees, demanding such costs, fees and compensation could result in an unreasonable refusal to award a competitive cable franchise;

- it would be an unreasonable refusal to award a competitive franchise if the local franchising authority denied an application for a franchise based upon a new entrant's refusal to undertake certain unreasonable obligations relating to public, educational and governmental and institutional networks; and

- local laws, regulations and requirements, including local flat-level playing field provisions are pre-empted, to the extent they impose greater restrictions on market entries and rules the FCC is adopting in the Report and Order and FNPRM.

The FCC's Report and Order and FNPRM also concludes that, although the records in this rule making proceeding allow the FCC to generally determine what constitutes an unreasonable refusal to award a competitive franchise, at the local level, the FCC does not have sufficient information to make such determinations with respect to franchising decisions made at the state level or in compliance with state statutory directives such as state-wide franchising decisions. As a result, the Report and Order and FNPRM only addresses decisions made by county- or municipal-level franchising authorities. As you may know, a number of states have enacted laws authorizing statewide cable television franchising, including Texas, California, New Jersey and Kansas, to name a few.

We understand the FCC's Report and Order and FNPRM, which has not yet been made public, also addresses the need for a franchise for "multi-purpose" and "multi-use" systems, and determines that a franchise is not required for such systems. The term "multi-purpose" systems would seem to include Internet Protocol Television ("IPTV").

The issue of whether IPTV requires a franchise is currently the subject of two lawsuits filed by franchising authorities against entities that are currently providing IPTV. First, the City of Richmond, Virginia sued Cavalier Telephone, LLC and Cavalier Telephone Mid-Atlantic, LLC and Cavalier IPTV, LLC, for providing IPTV service in Richmond, Virginia without a franchise, in the Circuit Court for the City of Richmond. On December 6, 2006, the City of Richmond's Complaint asserts that IPTV constitutes cable services, subject to the requirements of federal law, and seeks injunctive relief against Cavalier from providing such services. Cavalier has not yet filed an Answer to the suit. We anticipate that Cavalier may remove the suit to federal court, since the Complaint raises a federal question under section 541(a)(1) of the Act.

Second, the City of Milwaukee, Wisconsin filed a Complaint against Wisconsin Bell, Inc., d/b/a AT&T Wisconsin, AT&T Teleholdings, Inc., seeking declaratory and injunctive relief, contending, among other things, that AT&T Wisconsin, using the name Ameritech, is providing IPTV services in the City of Milwaukee without a franchise. The Complaint was filed in the United States District Court for the Eastern District of Wisconsin on December 20, 2006.

These two Complaints present to the courts the issue of whether IPTV constitutes cable service and requires a franchise under section 541(a)(1) of the Communications Act.

Depending on the actual decision of the FCC's Report and Order and FNPRM, the FCC may have resolved this issue by determining that IPTV constitutes a "multi-use" system, and therefore does not require a franchise. Even if the FCC made such a determination in its Report and Order and FNPRM, the issue would not be finally resolved, since it is likely that various parties will seek reconsideration by the FCC of its Report and Order and FNPRM, and/or appeal the same to a United States court of appeals.

As we informed you in our November newsletter, we have formed the opinion that IPTV does not require a franchise under section 541(a)(1) of the Act. We will be addressing this issue in more detail in our January, 2007 newsletter, after we have had the opportunity to review the FCC's Report and Order and FNPRM, and the subsequent events in the pending litigation to the City of Richmond and Cavalier, and the City of Milwaukee and AT&T Wisconsin.

In addition, we are preparing an article for publication in TECHOME BUILDER magazine this spring, which will address IPTV, and whether IPTV is regulated.

If you have any question concerning this issue, don't hesitate to give us a call.

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FCC Approves Merger of AT&T, Inc. and BellSouth Corporation

On December 29, 2006, the FCC approved the merger of AT&T, Inc. ("AT&T") and BellSouth Corporation ("BellSouth").

In approving the merger, the FCC concluded that the merger would likely produce significant public interest benefits, including the following:

- To __________ broadband throughout the entire AT&T and BellSouth in-region territory in 2007. This territory includes the existing AT&T states of Arkansas, Missouri, Kansas, Oklahoma and Texas, Illinois, Wisconsin, Indiana, Michigan and Ohio, California and Nevada. The BellSouth territories include North Carolina, South Carolina, Georgia, Florida, Louisiana, Tennessee and Kentucky.

- Increased competition in the market for advanced pay television services due to AT&T's ability to employ IPTV more quickly than BellSouth could do so if the merger did not take place.

- Improve wireless products, services and reliability due to efficiencies gained by the unified management of Cingular Wireless, which is currently a joint venture operated by BellSouth and AT&T.

- Enhanced national security, disaster recovery, and government services through the creation of a unified end-to-end internet protocol-based network capable of providing efficient and secure government communications.

- Better disaster response and preparation from AT&T and BellSouth because of unified operations.

The FCC analyzed the competitive effects of the merger, and examined six areas of services to determine whether the merger is in the public interest. These areas of services are:

- Special access competition. The FCC found that, in a small number of buildings in the BellSouth in-region territory where AT&T and BellSouth are the only carriers with direct connections, and where entry is unlikely, the merger is likely to have an anti-competitive effect. The FCC found that a commitment by AT&T to divest itself of Indisputable Rights of Use ("IRU") to those facilities adequately removed the competitive harm.

- Retail enterprise competition. The FCC found that the merger is not likely to have anti-competitive effects for enterprise customers, even though AT&T and BellSouth currently compete against each other with respect to certain types of enterprise services and some classes of enterprise customers. The FCC found that competition for medium and large enterprise customers should remain strong after the merger, because medium- and large-size enterprise customers are sophisticated, high-volume purchasers of communications services, and because there will remain a significant number of competing carriers for __________ service in the market.

- Mass market voice competition. The FCC concluded that the merger would not likely have anti-competitive effects in the mass market for voice services. The FCC determined that neither BellSouth or AT&T is a significant present or potential participant in this market outside of their respective service territories. Accordingly, the FCC found that neither AT&T nor BellSouth was exerting significant competitive pressure on the other in their respective in-region territories. The FCC further determined that the rapid growth of other types of competitors, particularly cable telephony providers, whether they offer circuit-switched or voice over IP ("VOIP") is an increasingly significant competitive force in the mass market for voice competition, and anticipates that such competitors will likely play a more important role with respect to future mass market voice competition.

- Mass market internet competition. The FCC found that the merger is not likely to result in anti-competitive effects for mass market high-speed internet access services. More specifically, the FCC reasoned that the merger caused no horizontal effects for these services, because neither BellSouth nor AT&T provides any significant level of internet access service outside of their respective regions. The FCC also concluded that, while the merger may result in some vertical integration, there was no evidence that the merged entity will have the incentive to act anti-competitively in the mass market for high-speed internet access services.

- Internet backbone competition. The FCC concluded that the merger is not likely to result in anti-competitive effects in the internet backbone market, because the merger is not likely to cause the top-tier backbone market to shift to a monopoly or duopoly, nor is it likely to increase AT&T or BellSouth's incentives or ability to raise the costs of competitors in this market. The internet backbone market includes Level III Communications and Verizon.

- International competition. The FCC found that a merger is not likely to result in anti-competitive effects for international communications services provided to the mass communications market, enterprise or global telecommunications services customers. The

FCC concluded that the merger is not likely to result in anti-competitive effects in the international transport, facilities-based international mobile telephone service, or international private line markets.

The FCC also noted that AT&T had made a number of voluntary commitments that were enforceable by the FCC, and which includes the following: AT&T/BellSouth will repatriate 3,000 jobs that are currently outsourced by BellSouth to outside the United States. The repatriation will be completed by December 31, 2008, and at least 200 of the repatriated jobs will be physically located within Louisiana. 2) By December 31, 2007, AT&T and BellSouth will offer broadband internet access services to 100 percent of the residential living units in the AT&T/BellSouth in-region territory. To meet this commitment, AT&T/BellSouth will offer broadband internet access services to at least 85 percent of such living units using wire line technologies. AT&T/BellSouth will also make available broadband internet access services to the remaining living units using alternative technologies and operating arrangements, including but not limited to satellite and Y-max fixed wireless technologies. AT&T/BellSouth also committed to achieving this commitment to at least 30 percent of the incremental deployment after the merger to rural areas or low-income living units.

In addition, AT&T/BellSouth will provide, free-of-charge, an advanced digital subscriber line ("ASDL") modem set for shipping an handling, to residential subscribers where AT&T/Bell South will offer broadband internet wireless services, who, between July 1, 2007 and June 30, 2008, replace their AT&T/BellSouth dial-up internet access service with AT&T/BellSouth ASDL service, and agree to a term plan for their ASDL service of 12 months or greater.

Additionally, AT&T/BellSouth will offer to retail customers in the build-out area who have not previously subscribed to AT&T's or BellSouth's ASDL service a broadband internet access service at a speed of up to 768 kbps at a monthly rate exclusive of any applicable taxes and regulatory fees of $10 per month. This offer will begin within six months of the merger closing date, and will continue for at least 30 months from the date of the offer.

AT&T and BellSouth have also committed to providing a broad array of advanced video programming services in the AT&T in-region territory. These advances include video services called "Uverse," which uses an integrated IP platform, and "Home Zone," which integrates advanced broadband and satellite services. Furthermore, AT&T/BellSouth intend to bring these services to the BellSouth in-region territory in a manner reasonably consistent with AT&T's current roll out of services in its in-region territory. In order to facilitate the offering of such advanced video services in the BellSouth territory, AT&T/BellSouth will continue to deploy fiber-based facilities, and intends to have a capability to reach at least 1.5 million homes in the BellSouth in-region territory by the end of 2007. AT&T/BellSouth will provide the FCC with a written report describing the progress made in obtaining the necessary authorizations to roll out these services and the actual roll-out of these advanced video services in the BellSouth region.

Finally, AT&T/BellSouth has made a number of commitments with respect to public safety and disaster recovery, service to customers with disabilities, and to the reduction of costs associated with interconnection agreements.

One of the biggest commitments AT&T/BellSouth has made concerns net neutrality. Thus, AT&T/BellSouth has committed that it will maintain a neutral network and neutral routing in its wire line broadband internet access. AT&T/BellSouth will satisfy this commitment by agreeing not to provide or sell internet content, application or service providers, including those affiliated with AT&T/BellSouth, and service that privileges, degrades or prioritizes any packet transmitted over AT&T/BellSouth's wire line broadband internet access service based on its source, ownership or destination. This commitment applies to AT&T/BellSouth's wire line broadband internet access service from the network side of the customer premise equipment up to the internet exchange point closest to the customer's premises, defined as the point of interconnection that is logically, temporally or physically closest to the customer's premises where public or private internet backbone networks freely exchange internet packets. This commitment, however, does not apply to the AT&T/BellSouth enterprise managed IT services, which are only available to the enterprise customers that are separate services from, and can be purchased without, AT&T/BellSouth's wire line broadband internet access service, including, but not limited to, virtual private network services provided to enterprise customers. This commitment also does not apply to AT&T/BellSouth's IPTV service. The commitment expires on the earlier of two years from the merger date or the effective date of any legislation enacted by Congress subsequent to a merger closing date that substantially addresses network neutrality. AT&T/BellSouth has made a number of other commitments concerning internet backbone, ASDL services, transit services, unbundled and un__________ network elements.

If any of you want more details on these commitments, please let us know and we will supply you with them.

For your information, AT&T has made these commitments to the FCC on December 28, 2006 in a letter transmitted by its Senior Vice President for Regulatory Matters, which is enclosed in the FCC's public record. You should be able to obtain a copy of AT&T's letter from the FCC's public internet website.

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For more information about Shughart, Thomson & Kilroy, P.C. and its Telecommunications Practice and New Technologies Practice, please consult our websites at www.stklaw.com and www.telecomattorneys.com.

For your convenience, we also have placed our newsletters from 2004 to the present under the tab "Newsletters" on our www.telecomattorneys.com website.

If you have any questions about this Report or prior Reports, or other recent FCC or state regulatory rulings, or federal or state court decisions affecting telecommunications, or any of our services, please don't hesitate to contact us.

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