

Clinton Administration Specifies Timetable for Locating Spectrum for 3G Wireless Uses

The Clinton administration outlined its strategy Oct. 13 for identifying and making available frequencies needed by companies looking to offer advanced wireless telecommunications services.

President Clinton issued a memorandum directing the Department of Commerce to work with the Federal Communications Commission to develop a plan by Oct. 20 for choosing spectrum bands for "third-generation" (3G) wireless services, which are expected to include high-speed Internet access and multimedia applications.

Consistent with previous plans, Clinton asked the department to issue an interim report by Nov. 15 on the current uses of, and potential for reallocating or sharing, frequencies identified by the World Radiocommunication Conference for 3G. Much of that spectrum in the United States is already occupied, including by government users, most notably the Department of Defense. In order to allow for 3G in those frequencies, incumbents would have to be moved out or the spectrum would have to be shared.

The Federal Communications

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U.S., EU LAUNCH 'EARLY WARNING' TALKS TO PREVENT DISPUTES OVER E-COMMERCE

The United States and the European Union launched an "early warning mechanism" Oct. 17 aimed at preventing trade disputes over electronic commerce, saying that future regulatory differences could hamper the trans-Atlantic development of the digital economy.

Officials said that the initiative was launched at a meeting in Brussels between U.S. officials from the White House, the Commerce Department, the Federal Trade Commission, and other agencies, and EU representatives, along with 100 or so business executives.

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INTERNET PHARMACY BILL PROPOSED IN SENATE DIFFERS FROM CLINTON ADMINISTRATION PROPOSAL

A bipartisan trio of senators Oct. 17 introduced a bill (S. 3208) to combat the problem of rogue Internet pharmacies selling prescription drugs online. These sites may be dispensing counterfeit or adulterated drugs, and frequently sell prescription drugs without requiring a prescription.

The bill, the Internet Prescription Drug Consumer Protection Act of 2000, follows up on an administration proposal made at the end of last year and would require online pharmacies to reveal their street address,

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EU'S BOLKESTEIN CALLS ON MEMBERS TO AGREE ON ONLINE SALES TAX PLAN FOR FOREIGN FIRMS

LUXEMBOURG—European Union Taxation Commissioner Frits Bolkestein Oct. 17 made an impassioned plea to EU member states to put concerns about "virtual revenue" aside and adopt a Commission proposal for a sales tax on online products sold by foreign companies to EU citizens.

After the Dutch Commissioner's speech before an EU Council of Economic

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telephone number, and the states in which they are licensed to sell their products.

The legislation, sponsored by Sens. James M. Jeffords (R-Vt.), chairman of the Senate committee on Health, Education, Labor, and Pensions, Edward M. Kennedy (D-Mass.), the committee's ranking member, and Christopher J. Dodd (D-Conn.), would enable state attorneys general to go into federal court to obtain national injunctive relief against rogue operators, rather than having to proceed separately on a state-by-state basis.

Currently, even if one state obtains an injunction against an illegal World Wide Web site operator from selling prescription drugs within that state, the injunction would not block sales in other states.

Freezing Foreign Assets. In addition, the bill would empower the Department of Justice to prevent illegal foreign operators from collecting payments from customers in the United States. Many have said that the bulk of the problem with illegal pharmacy operators lies overseas. Carmen A. Catizone, executive director/secretary of the National Association of Boards of Pharmacy, testified before the Senate in March that the most egregious sites are foreign-based.

An educational component is also part of the bill, requiring the secretary of health and human services to "educate the public about the dangers of buying medications online and about effective public and private sector consumer protections." FDA already has launched a web page warning consumers about online medical fraud.

Bill Lacks Civil Fines, Subpoena Authority. In several ways, the Senate bill departs from the bill the White House sent to Capitol Hill in May. First, unlike the administration's plan, S. 3208 does not give the Food and Drug Administration civil and criminal subpoena authority over the Internet pharmacy sites, something to

which pharmacy trade groups have objected.

Second, the Senate provides for no civil monetary penalties. The White House bill gave FDA the power to levy civil fines of as much as \$500,000 on online pharmacies violating licensure and licensure notification requirements.

Third, the bill contains no certification requirement. The certification requirement in the administration's bill would have put FDA in charge of certifying online pharmacies before they could sell prescription drugs over the Internet.

Historically, pharmacy groups have objected to federal regulation of pharmacies as an intrusion into the practice of pharmacy, which state boards of pharmacy traditionally have regulated.

Regulated Industry OK With Bill. While pharmacy trade associations have voiced concerns about giving FDA more power to regulate online pharmacies, the new Senate bill appears to have allayed their concerns.

"We've talked to the state [attorneys general] and the pharmacy people, and they have no problem with this [bill]," a Senate staff aide told sources.

Another Senate staff aide agreed, telling sources, "We've been working on this with the regulated industry for months."

In a floor statement Oct. 17, Kennedy said the bill is supported by the National Association of Attorneys General, the American Pharmaceutical Association, the American Society of Health-System Pharmacists, drugstore.com, and the National Consumers League.

Opposition Expected. Nonetheless, although the Senate bill appears to have calmed the regulated industry's fears, one congressional source said bill sponsors expect opposition from groups opposed to any regulation of the Internet, especially in the area of taxation. ☞

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U.S., EU LAUNCH 'EARLY WARNING' TALKS TO PREVENT DISPUTES OVER E-COMMERCE ... begins on page one

Robert S. LaRussa, undersecretary of commerce for international trade, told reporters after the meeting that the participants identified ongoing initiatives in the areas of consumer protection, intellectual property protection, infrastructure, security, and e-payments where differences in approach between the United States and the EU could be adverse to the promotion of the digital economy.

"Our governments now have in place early warning of regulatory differences," LaRussa said, "and this should help the growth of the trans-Atlantic economy."

LaRussa, speaking with reporters by telephone from Brussels, said that the two sides would be meeting every six months or so to air differences and propose possible solutions to evolving disputes.

"What the [early warning] program is designed to do," he said, "is to raise some really important trans-Atlantic e-commerce issues at a stage before they get to be more contentious issues—kind of an early warning system on e-commerce."

LaRussa said that the business representatives who attended the meeting in Brussels had called on governments on both sides of the Atlantic to be "slow to regulate" in the area of e-commerce and "be really careful before it does since this [technology] is moving at lightening speed."

He said that one particular focus of the meeting was growing concern over a lack of consumer confidence regarding privacy on the Internet, and that companies believe that they can alleviate the concern by putting in place consumer-business dispute resolution systems.

But he said that companies continued to be concerned that governments may seek to regulate in the area by, for example, establishing approval procedures for so-called alternative dispute resolution systems developed by businesses.

LaRussa said that the U.S. government, however, believes that the matter ought to be handled by the private sector in a "self-regulatory" manner, and that the EU has also promised not to "overregulate." ☐

EU'S BOLKESTEIN CALLS ON MEMBERS TO AGREE ON ONLINE SALES TAX PLAN FOR FOREIGN FIRMS ... begins on page one

and Finance Ministers, France, which holds the rotating EU presidency, said it would push for an agreement on the online sales tax by the end of November.

Bolkestein said the short-sighted approach taken by EU members in opposing a one-stop-shop registration system for foreign companies selling digital goods such as music and software threatened to choke off the development of electronic commerce in the union. He also said the preferred approach by EU member states could face a challenge by the United States in the World Trade Organization.

Most member states oppose the Commission proposal because they fear foreign companies would register in Luxembourg, which has the European Union's lowest rate of value-added sales tax at 15 percent, and make sales throughout the EU.

"I find it very difficult to comprehend that member states have tried so hard to insist that suppliers from outside the EU register for VAT in each and every member state," Bolkestein said. "They are apparently afraid of losing revenue that for the moment none of them have. In other words, their concerns seem to be about virtual revenue."

"The simple fact is that if we make the VAT requirements too complicated and too onerous, many suppliers from the rest of the world will not bother to register at all," Bolkestein added.

Bolkestein Calls Proposal's Progress Poor.

Originally EU member states were expecting only a

progress report on the Commission's online VAT proposal. "I decided to make this intervention today because things have progressed so poorly that the proposal has been endangered," Bolkestein said. "Therefore I felt it was essential to try and focus the minds of the ministers."

The United States has been opposed to the Commission plan, saying it breaches an agreement reached in Ottawa in 1998 by the Organization for Economic Cooperation and Development. The Commission claims the proposal is in line with the principles of the OECD agreement, which calls for the country of destination of an online digital product to be responsible for collecting the tax revenue.

Currently EU producers of digital goods must pay VAT, while foreign companies selling in the union do not.

At the same Council of Ministers meeting, an agreement was reached that abolishes as of Jan. 1, 2002, the obligation that companies and traders conducting any taxable transaction have a tax representative in every member state where they do business.

"Under the new law the appointment of a tax representative or agent will be optional for traders," said Bolkestein. "Member states will be able to ensure that VAT is paid by stepping up mutual assistance between VAT authorities on recovery of taxes." ☐

AMERICANS INSECURE ON E-SIGNATURES, SECURITY OF INFO PROVIDED TO GOVERNMENT

A strong majority of Americans would not feel safe using digital signatures and worry that personal information held by the government may one day be used against them, according to a poll released Oct. 16.

The poll, commissioned by the Information Technology Association of America, found that 71 percent of Americans would not feel protected when using digital signatures; 21 percent said they would feel safe. In June, President Clinton signed a law (Pub. Law 106-229) essentially giving digital signatures the same legal status as paper signatures.

The poll of 1,000 adults nationwide found that 81 percent were "concerned" that government-held personal data may be misused against them in the future. Some 46 percent said they were "very concerned." Sixteen percent were "not concerned."

"This survey is a wake-up call for both government and industry," Harris N. Miller, ITAA president, said in a statement. "Though the Internet revolution is only a few years old, the American people expect that when it comes to their information security and privacy, we had better grow up fast."

Los Alamos Mishap Spurs Concern. A slight majority of Americans expressed concern over government computer security. When asked about the recent lapses at the Los Alamos National Laboratory, 51 percent were more concerned about security than before the breaches. Some 38 percent said it made no difference and two percent said they were less concerned.


"The government has been doing a lot of talking

about privacy and security recently," Miller said. "The results suggest that Americans are significantly more concerned about computer security as a result of the security lapses at Los Alamos, and that Americans believe government should get its own house in order. Protecting personal data held by the government must be a higher priority, and threats, whether they come from insiders, international criminals or thrill-seeking hackers, must be stopped."

The public also had little faith in the government's ability to protect personal data on computers. Some 42 percent thought businesses did a better job, while 21 percent picked the government.

"ITAA has advocated that businesses, not the government, are best able to address security and privacy concerns through technology and expertise. It seems the American public agrees," Miller said. "However, business and government must work together to solve the security problems of federal computers, so that the overall environment of e-government and e-commerce is a safe place for consumers."

In response to a recent congressional report that gave the government a grade of "D-" for overall computer security, those surveyed preferred, by 49 to 15 percent, appointing a top computer expert as chief information officer for the government as opposed to spending more tax money to solve the problem.

For more information, visit the ITAA's web site at <<http://www.ita.org>>. 

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Commission, in conjunction with the Commerce Department's National Telecommunications and Information Administration, would then be expected by July 2001 to make a final decision on the frequencies so that they could be auctioned off to industry by Sept. 30, 2002.

Clinton also directed the department and other federal agencies to collaborate with the FCC and industry in developing the U.S. 3G spectrum approach, and he set out various principles that should guide decision making.


"I am confident that federal agencies, working with the private sector, can develop a plan for identifying the spectrum that will meet the needs of the wireless industry and is fully consistent with national security and public safety concerns," Clinton said in a statement. "As made clear in a report released today by my Council of Economic Advisers, time is of the essence. If the United States does not move quickly to allocate this spectrum, there is a danger that the U.S. could lose market share in the industries of the 21st century."

AT&T, the Cellular Telecommunications Industry

Administration, and Telecommunications Industry Association, which represents manufacturers, issued statements lauding the announcement.

The Wireless Communications Association, which represents "MMDS" and "ITFS" users in one of the spectrum bands under consideration, said it believed there was "more than enough spectrum to accommodate 3G needs without displacing existing ITFS and MMDS operators."

On a conference call, Tom Kalil, special assistant to the president for economic policy, said the administration was "committed to seeing through" the FCC's plan to auction off disputed "C-block" spectrum rights on Dec. 12, despite continuing litigation involving NextWave Personal Communications.

President Clinton's memorandum and statement are available online at: <http://www.whitehouse.gov/library/hot_releases/October_13_2000_4.html>. The CEA white paper is available at: <http://www.whitehouse.gov/media/pdf/3G-white-paper.pdf>. The statements of some administration and FCC officials are available at: <http://www.ntia.doc.gov>. 

CONGRESS CLEARS LEGISLATION TO SPEED EXPORTS OF HIGH-PERFORMANCE COMPUTERS

An industry group representing major U.S. computer and semiconductor manufacturers—from Apple Computer Inc. to Sun Microsystems Inc.—praised Congress Oct. 13 for enacting legislation aimed at speeding exports of high-performance computers to Russia, China, and other countries.

President Clinton is expected to sign the bill.

Lou Gerstner, chairman and chief executive officer of IBM Corp., said that Congress, by approving the legislation, had taken an important step toward maintaining U.S. technological leadership in the global computer market.

“Allowing U.S. companies to compete around the world is the best way to strengthen U.S. national security,” said Gerstner, who also co-chairs the industry group, the Computer Coalition for Responsible Exports. “America’s security infrastructure will only benefit from a strong domestic industry.”

The legislation, the National Defense Authorization Act for Fiscal Year 2001 (H.R. 4205), was passed by the Senate Oct. 12 by a 90-3 vote. It would reduce from 180 days to 60 days the congressional review period for administrative changes to U.S. computer controls.

U.S. computer exporters have argued that shortening the review period will better allow U.S. computers to take advantage of overseas opportunities in a fast-developing technological environment.

Clinton, for instance, authorized an easing of

controls on computer exports in August for so-called Tier III countries, including China, India, Pakistan, and Russia. But the decision will not take effect until next February because of the 180-day review rule.

The legislation reducing the waiting period to 60 days was cleared by the House in May, and the Senate approved the provision as an amendment to H.R. 4205 in July.

Lawrence A. Weinbach, chief executive officer of

Unisys Corp. and co-chairman of the computer coalition, said that Clinton’s decision in August and congressional passage of H.R. 4205 suggest that the U.S. government appreciates

the need to keep export control regulations in line with rapid changes in technology.

“These decisions benefit U.S. computer manufacturers while preserving vital U.S. national security interests,” Weinbach said.

The House International Relations Committee approved legislation (H.R. 3680) in March that would have shortened the congressional review period to 30 days. But some members of the House Armed Services Committee raised objections, arguing that Congress needs more than 30 days to consider revisions to U.S. computer export controls made by the president.

Similar objections to the one-month period were also raised in the Senate. ☐

“Allowing U.S. companies to compete around the world is the best way to strengthen U.S. national security”

— Lou Gerstner

MCCAIN SAYS INTERNET TAX ACTION UNLIKELY; VOWS TO WORK TOWARD COMPROMISE IN 2001

Senate Commerce Committee Chairman John McCain (R-Ariz.) Oct. 11 told reporters that any action on Internet tax issues is unlikely as the congressional session draws to a close, but vowed to work for a compromise next year.

“There’s no time pressure,” McCain said, reiterating that there is an existing moratorium on Internet access taxes and on new, multiple, and discriminatory taxes on electronic commerce. “That’s why it’s unlikely that we’ll see anything this year.”

McCain, whose efforts to mark up a five-year extension of the moratorium earlier in the session were unsuccessful, predicted that a fresh round of talks on the controversial issue will begin “sometime in the spring” of 2001.

“We’ll start talking to see if we can reach some kind of legitimate agreement, some type of reasonable compromise,” he said. Those talks are likely to center around an approach similar to that proposed by Sen.

Byron Dorgan (D-N.D.) in a bill (S. 2775) that calls for a four-year moratorium extension combined with state tax simplification and authority for states to require sales tax collection on remote sales.

Attachment Unlikely. Although McCain acknowledged that a last-minute attempt to attach a moratorium extension to a larger piece of legislation is not out of the question, he said he has no knowledge of plans for such an effort.

With the 106th Congress days away from ending, and with several major appropriations bills and a possible tax package still remaining to be completed, a spokesman for Senate Majority Leader Trent Lott (R-Miss.) said that if such an attachment strategy surfaces, it will be difficult to get it on board at this time of year.

“There will be a flurry of people trying to attach any and every known tax provision you could imagine,” the spokesman said. “They’ll have to be evaluated case by case.” ☐

'DIGITAL DIVIDE' STILL GROWING DESPITE GAINS AMONG MINORITIES, GOVERNMENT STUDY FINDS

The "digital divide" continues to grow despite a new Commerce Department report released on Oct. 16 finding that household Internet access has risen substantially among low-income and minority groups.

The report, "Falling Through the Net: Toward Digital Inclusion," painted an overall rosier picture of national Internet access among all groups than previous reports and studies have shown. The annual report, issued by Commerce's National Telecommunications and Information Administration (NTIA), shows 41.5 percent of U.S. households having Internet access in August 2000, compared to 26.2 percent in December 1998.

"The Internet is becoming a vital tool in our daily lives, from international business transactions to keeping in touch with family members," Commerce Secretary Norman Mineta said during a conference call to reporters. "Each year, being connected becomes more critical to economic and educational advancement and to community participation."

The report showed an increase in the number of households with access to computers, up from 42.1 percent in December 1998 to 51 percent this year. In the past 20 months, 31.9 million more Americans went online for a total of 116.5 million.

"That's why it is so important to move as quickly as we can toward digital inclusion," Mineta said. "This is a vital national goal. This report shows that our progress is promising, but it also shows that we still have a lot of work to do. More Americans are accessing computers and the Internet, and are doing so at dramatic rates of growth. Although gaps still remain between some segments of our society, computers and the Internet are becoming more the norm than the exception."

Whites More Likely to Have Access. Whites continue to be the most likely to use the Internet, the study said, with 50.3 percentage points followed by Asian Americans/Pacific Islanders at 49.4 percent. Blacks trailed with 29.3 percent and Hispanics with 23.7 percent.

During the 20-month period between the two surveys, whites gained 12.7 percentage points while Asian Americans/Pacific Islanders gained 13.6 percent. Blacks gained 10.3 percent and Hispanics gained 7.1 percent. Blacks were 13.7 percentage points behind the national average in December 1998, and 15.1 percent behind in August 2000.

"The growth rate among minorities is faster than before, but they're starting at a lower base (than whites) so the gap is still growing," a Commerce Department official said.

While Mineta predicted that more than 50 percent of Americans will be online by mid-2001, he said he was "discouraged" that disabled people were less than half as likely to have Internet access than non-disabled people. He said the main reason is substantially higher

costs for specially-built computers.

President Clinton, whose administration has worked to tighten the gap, welcomed the results of the study.

"Although much more remains to be done to bridge the digital divide and create digital opportunity for all Americans, I am especially pleased that many low-income, rural and minority households are beginning to 'get connected' at rates faster than the national average," Clinton said.

Blacks Plugging in More. The study said that during the 20-month period, access among black households doubled from 11.2 percent in 1998 to 23.5 percent in 2000, a gain of 12.3 percentage points. Hispanic access increased 11 percentage points in the same period.

"Americans are using the Internet to vote, look for work, acquire new skills, and communicate with their children's teachers," Clinton said.

Clinton went on to urge Congress to pass proposals in his budget plan to fully fund programs aimed at closing the gap: Community Technology Centers, Preparing Tomorrow's Teachers to Use Technology, assistive technology for people with disabilities, and the Commerce Department's Home Internet Access and Technology Opportunity Program.


Regional Divide Nearly Gone. The report also found a drop in regional disparity of Internet access. The disparity between men and women using the Internet has disappeared.

"I am pleased to report that the geographical aspect of what had been a digital divide has virtually disappeared," said Gregory L. Rhode, assistant secretary of commerce for communications and information and NTIA administrator. "Rural areas, once left behind, are catching up quickly with other parts of the country and have surpassed some of the central cities in their Internet use."

The gap between households in rural areas with access and households nationwide narrowed from a 4 percentage point difference in 1998 to a 2.6 percent difference in 2000.

Overall, this report carried a less dire tone to it than the previous one issued by NTIA in July 1999, which found that 80 percent of blacks and Hispanics did not have Internet access at any part of any day.

"This report shows that, while income and education still explain much of the difference in Internet access and use, the biggest gains recently are among those with average incomes and education levels," said Robert J. Shapiro, undersecretary of commerce and administrator of the Economics and Statistics Administration.

To view the complete report, visit <http://search.ntia.doc.gov/pdf/fttn00.pdf>. To access the full White House statement, visit http://www.whitehouse.gov/library/hot_releases/October_162000.html. 

FEDERAL WEB SITES SHOULD NOT COMPETE WITH PRIVATE COMPANIES, STUDY SUGGESTS

While many U.S. government Web sites provide important informational services, some federal agencies may be wrongly competing with private companies on the Internet, according to a study by leading economists released Oct. 12.

The study, "The Role of Government in a Digital Age," proposes a major review of how government agencies are participating in the Internet economy, and guidelines for what type of activities should and should not be engaged in. The study was commissioned by the Computer and Communications Industry Association (CCIA), and was conducted by Sebago Associates Inc.

"The government was never meant to use information technology (IT) and the Internet to become a publicly funded market competitor," said Ed Black, CCIA president and chief executive officer. "Many government IT projects have resulted in beneficial new services for our citizens. But more and more government IT initiatives today are venturing beyond simply boosting efficiency and improving service quality. Instead, they are engaging in private-sector businesses. Some agencies seem to have discovered a back door to rebuilding big government—and the back door is the government."

The 150-page study proposes 12 principles aimed at helping policymakers decide which online activities the government should partake in. The principles are arranged by "green light," "yellow light," and "red light" activities, according to the degree of public policy concern that the report believes should be generated by them.

Principles Set Direction for Fed Sites. "Green light" principles include: Providing public data and information; improving the efficiency with which governmental services are provided; and supporting basic research.

Major "yellow light" principles include: The government should exercise caution in adding specialized value to public data and information, and it should provide private goods only under limited circumstances. It should provide a service online only if private provision with regulation or appropriate taxation would not be more efficient, and it should ensure that mechanisms exist to protect privacy, security, and consumer protection online.

According to "red light" principles, the government should exercise substantial caution in entering markets in which private-sector firms are active. The government should generally not aim to maximize net revenues or take actions that would reduce competition. And it should be allowed to provide goods or services only where privacy and conflict-of-interest protections have been erected.

"The 12 principles we developed are intended to be consistent with both current and immediately foreseeable forms of information technologies," said Peter Orszag,

the report's co-author. "However, the principles should be applied repeatedly over time, to existing as well as new online activities. Such an approach will help to ensure that an activity that is appropriate initially does not expand into one that is inappropriate."

The authors of the report then used the principles to examine five case studies of government technology initiatives that had an impact on private-sector enterprises.

USPS Site Criticized in Report. The U.S. Postal Service's eBillPay program, which has been the subject of a Senate Governmental Affairs subcommittee hearing, and the Internal Revenue Service's plans to provide direct online tax preparation services were criticized in the report.

The report did applaud the Department of Labor's online job market information system and the government's recent action to stop the National Technical Information Service from providing a fee-based search engine.

"Two of these cases ... are key examples of ways in which government initiatives are entering into inappropriate competition with existing private-sector businesses," Black said. "Furthermore, these ventures are 'going into business' without resolving outstanding privacy and conflict-of-interest concerns."


The Postal Service announced April 5 that it would offer an electronic billing and payment service, called eBillPay, which involves the delivery of bills and the collection of payments via the Internet and other digital means. USPS rolled out a slew of electronic services, the agency has said, to offset losses from an anticipated drop in paper mail delivery.

USPS then partnered with the largest company involved in these services, CheckFree. CheckFree maintains its own user interface, but provides infrastructure to USPS. Other competitors include Transpoint and Spectrum.

The authors found eBillPay to be in direct conflict with a principle contained in Office of Management and Budget Circular A-76, which says, "The government shall not compete with its citizens."

The report made similar arguments against a proposed IRS tax preparation service on the Internet.

"As more agencies move toward an e-government concept, the issues explored in this report become more acute," said Joseph Stiglitz, another author of the report. "Some may disagree with some of the principles and conclusions reached in our analysis. But this report will have served its purpose if it helps to spur debate over these issues, regardless of whether all its conclusions are accepted. The issue of the proper role of government is too important for the topic to be ignored."

View the full text of the report entitled "The Role of Government in a Digital Age" on the CCIA's web site: <<http://www.ccianet.org/>>. 

MOVE BY AUTHORITIES ENDS AUCTION OF VOTES ONLINE IN ILLINOIS, CALIFORNIA

CHICAGO—The Chicago Board of Election Commissioners took steps Oct. 16 to guarantee that Chicago's previous reputation as a city in which votes can be bought does not resurface on election day next month.

Outraged by the emergence of Voteauction.com, an Internet web site that promises to auction off votes during the 2000 presidential election, the board filed a class action suit in Cook County Circuit Court Oct. 16 seeking to shutter the electronic electoral auction and punish its operators (*Board of Election Commissioners of the City of Chicago v. Bernhard*, Ill. Cir. Ct. Cook Cty., No. 00 CE 0031, 10/16/00).

The action in Illinois and a similar action in California appeared to be having an immediate effect, as the Voteauction.com site posted a notice Oct. 17 saying that the auction of votes in the two states has been halted. A similar move by authorities in New York had shut down the auction of votes in that state earlier.

The suit in Chicago alleges the operators of the Voteauction.com site have violated several provisions within the Illinois and federal election codes and seeks a court order closing the operation. The suit also warns Illinois residents about potential criminal sanctions if they participate in Voteauction.com's illegal mixture of commerce and civic duty. The state election code views attempts to sell or buy votes as a Class 4 felony, which carries a prison sentence of between one and three years.

Electoral Integrity Impugned. "No matter what their motivation for creating this site, whether it be as a parody or for financial gain, they have impugned the integrity of our electoral system," said Langdon Neal, chairman of the Chicago Board of Elections Commissioners. "I caution all voters that they will be committing a felony under state and federal law if they participate in this scheme."

Voteauction.com was originally developed by James Baumgartner, an art student in Troy, New York, who has portrayed the endeavor as a satire on the American campaign finance system. New York election board officials shut the operation in August, but Baumgartner sold the web site to Hans Bernhard, an Austrian investor. Since the purchase, Bernhard has moved Voteauction.com's server to Bulgaria and hired a group of lawyers, web architects and marketers to develop the concept and expand it for use in elections around the globe. Baumgartner and Bernhard are both defendants in the litigation.

For the 2000 General Election, Voteauction.com has been soliciting only the presidential ballots of American voters. Voters would participate by delivering absentee ballots to Voteauction.com in return for a portion of the proceeds from the sale of their ballots. According to the web site, such ballots would be bundled into blocks for each state and then auctioned off to the highest individual or corporate bidder, who would then determine whether the votes should be cast in favor of Vice

President Al Gore or Texas Gov. George W. Bush.

"Voteauction.com has created a new paradigm in the election industry," the web site proclaims. "Now the voters can take control of their voting capital and campaign investors will see a greater return on their investment."

Neal said the web site has been attracting not only curiosity seekers, but also bona fide voters anxious to sell their ballots. On Oct. 12, Voteauction.com reported that it had gathered 1,131 ballots in Illinois. The high bid for Illinois votes was \$14,000, bringing the price for each vote to \$12.38.

The suit seeks a judgment declaring Voteauction.com illegal and enjoining the defendants from operating such a venture in Illinois. The suit also requests class certification on behalf of all Illinois citizens, with the exception of those seeking to sell their votes. The class component of the litigation seeks damages alleging that the defendants sought to deprive Illinois citizens of their constitutional rights and conspired to encourage illegal voting.

Officials with Voteauction.com could not be reached for comment on the litigation. Bernhard, however, has asserted that his operation is immune from liability based on its location in Europe. At the same time, Voteauction.com recently posted a message on its site stating, "due to pending litigation in Illinois, Voteauction.com has suspended registration for residents of Illinois. We will keep you updated on the progress of pending legal action."

California Moves Against Site. In Sacramento, Calif., California Secretary of State Bill Jones announced steps to shut down the Voteauction site Oct. 16. Jones obtained an agreement from Domain Bank, Inc., an Internet domain name registry, to "lock down" the site, according to Alfie Charles, a spokesman for Jones.

Locking down the site means the Austrian owner of Voteauction.com cannot alter the site or transfer its operations to a new site, Charles explained. "Thanks to Domain Bank's cooperation, Voteauction.com has been notified that the site will be shut down in 30 days and, in the meantime, the site has been 'locked down' by Domain Bank, which will prevent transfer of the domain during the investigation," Jones said.

That 30-day period extends beyond the Nov. 7 Election Day, but Jones said several investigations already are under way into vote-buying and vote-selling on Voteauction.com. Before Jones announced the crackdown, bidding for California's votes had reached \$19.61 per vote, the second highest bid in the U.S. after Michigan. However, the site indicated Oct. 17 that bidding on California votes had been canceled.

Jones sent a letter to Voteauction owner Bernhard Oct. 6 to notify him that Voteauction.com "is engaged in criminal activity" in California. "Any person or entity that tries to sell, does sell, or brokers the sale of votes in

California will be pursued with the utmost vigor," Jones warned.

Jones also sent a letter to Attorney General Janet Reno Oct. 10 asking for her help in shutting down the Voteauction.com site.

Charles said buying and selling votes are felony offenses in California, carrying a maximum three-year jail sentence for each violation. Buyers and sellers of votes, as well as intermediaries such as Voteauction.com, could be held liable under California law, he said. [E]

TAUZIN PRODS FTC CHAIRMAN ABOUT POLICY ON INTERNET PRIVACY AT SUBCOMMITTEE HEARING

The Federal Trade Commission should adhere to the same Internet privacy standards that the agency wants commercial Web sites to follow, Rep. Billy Tauzin (R-La.) told FTC Chairman Robert Pitofsky during a House subcommittee hearing Oct. 11.

Tauzin, chairman of the House Commerce Telecommunications subcommittee, told Pitofsky and other witnesses that the FTC Web site, like other government Web sites, failed to provide adequate privacy policies when compared to commercial sites. The lawmaker was citing a General Accounting Office report issued in May that examined fair information practices in the electronic marketplace.

Tauzin, in a hearing to examine recent developments in privacy protections for consumers, asked the commissioner how the agency could recommend legislation aimed at protecting privacy, while falling short of its own standards.

Pitofsky told Tauzin the FTC privacy policy does not include consent language, which gives site users the option of having their information not shared with a third party. The FTC, through inter-governmental agreements, shares complaint information with the Federal Bureau of Investigation and the appropriate state attorney generals.

This lack of consent is what makes the FTC site, as well as many other government Web sites, fall short on its suggested standards for other sites, Pitofsky acknowledged.

FTC Needs Different Standard. Pitofsky said the fair information practices standard was developed for marketing sites, and does not take into account necessary information-sharing at the government level. Since the FTC does not sell any products, he said, the issue of consent is "different" when related to government sites. Pitofsky did not elaborate.

"I can't complain to you without others knowing about it," Tauzin said. "I give assurances on my Web site that I will not share information with anybody."

Tauzin, one of three lawmakers at the hearing, asked Pitofsky to grade Internet companies' efforts and overall performance on the degrees of privacy they offer. Last year, when about 60 percent of the companies had privacy policies in place, the chairman gave the industry a "B+" for effort and a "C" for overall performance.

This year, about 98 percent of commercial Web

sites have a posted privacy policy. Pitofsky upped his grade to an "A-" for effort and a "C+" overall.

"I have to give the private sector some credit," Pitofsky said. "But some of the best self-regulations are ones backed by law."

Private Sector Works on Standards. The commission wants legislation drafted that reflects the self-regulatory initiatives of the Network Advertising Initiative, which is largely based on fair information practices. Those practices include: notice, which is providing clear and conspicuous notice of information practices; choice, which is also called consent; access, which is offering consumers reasonable access to information a site has collected about them; and security, which is taking reasonable steps to protect the security of the information.

"The majority (of the commission) found that there are unavoidable gaps in the network companies' ability to require host Web sites to post notices about profiling, including Web sites that do not directly contract with the network advertisers, and stated that only legislation can guarantee that notice and choice are always provided in the place and at the time consumers need them," Pitofsky said.

Tauzin attempted to downplay the FTC's belief in the need for legislation by stating that the agency has brought privacy-related court cases against three companies in the past year.

"If it's so bad, why have you brought only three cases?" Tauzin asked.

"We want to hit the most egregious ones," said Pitofsky. "We don't want to hit people for technical errors."

Jodie Bernstein, director of the FTC's Bureau of Consumer Protection, said the agency typically sends warnings to Web sites with questionable privacy policies. Then the FTC revisits the sites after 30 days and finds, she said, that "most" sites have repaired their policies.

Throughout the questioning, Tauzin returned periodically to his concern about the FTC site not meeting its own standards.

"Maybe we need to clean up our own house while we're grading other people's houses," Tauzin suggested.

The lawmaker told the panel to expect several more hearings on the Internet privacy issue in the future. [E]

ICANN'S NEWEST DIRECTORS INCLUDE ADVOCATES OF INSTITUTIONAL REFORM

The first-ever popular election of board members to the Internet Corporation for Assigned Names and Numbers yielded victories for two individuals who based their candidacies on calls for reform of the organization.

The North America region winner, a computer programmer at Cisco Systems Inc., campaigned for the board by questioning the need for ICANN, and by criticizing its leading policy initiative, a swift-justice solution to trademark-related disputes over domain names.

In an online voting process that ended late Oct. 10, the following five people won election to ICANN's board of directors:

- *North America:* Karl Auerbach, an Internet researcher and developer at Cisco Systems, San Jose, Calif.
- *Latin America and the Caribbean:* Ivan Moura Campos, Chief Executive Officer, Akwan Information Technologies, Brazil.
- *Africa:* Nii Narku Quaynor, chairman and chief executive officer, Network Computer Systems, Ghana.
- *Asia:* Masanobu Katoh, Fujitsu Ltd.
- *Europe:* Andy Mueller-Maguhn, a self-employed journalist and a student at the Free University of Berlin.

Auerbach, the North American winner, campaigned on a platform of "deep, substantial, and fundamental reform" of ICANN. Experts contacted by sources said that Mueller-Maguhn has also been a vocal critic of ICANN, and that the election of the two of them was a sign of the at-large membership's distrust of the organization.

On the other hand, Katoh, the winner in the Asia region, won election on a platform entirely supportive of ICANN's Internet policymaking activities. By far the largest number of votes were cast from Asia. More than 17,000 at-large ICANN members voted in the Asia region. In North America, just 3,449 votes were cast, and in Europe 11,309 people voted.

With Auerbach's election, ICANN now has a board member who believes that the creation of ICANN was unnecessary and detrimental to the

development of the Internet. Rather than have ICANN parcel out new top-level domains, Auerbach has argued for an unlimited number of top-level domains, which could be available much the way that programming channels are carried by cable television companies—that is, based on the demands of a root server's subscribers.

In the near future, perhaps as early as Nov. 20, the ICANN board will decide whether to create new top-level Internet domains. More than 100 new top-level domain applications have been received by ICANN.

Auerbach has also been critical of ICANN's Uniform Dispute Resolution Policy (UDRP), an agreement that all ICANN-accredited domain name registrars use to quickly dispose of trademark-related disputes to ownership rights of a domain name. "The UDRP is in need of substantial reform, if not downright elimination," Auerbach said.

The resolution policy has been in effect for approximately one year, and ICANN is expected to review its status early in 2001.

Critics Ascendant. "The presence of Karl Auerbach and Andy Mueller-Maguhn means that ICANN now has two directors committed to maximal openness and reforms of the UDRP," A. Michael Froomkin, a professor at the University of Miami School of Law, told sources.

Diane Cabell of the Berkman Center for Internet & Society at Harvard Law School said that the at-large membership election could breathe new life into the organization. The election of Karl Auerbach, Cabell said, "is the equivalent of Ralph Nader capturing the U.S. presidency. Karl is the most vocal, most critical and most obstreperous of the member-nominated candidates and has engaged in more than one public confrontation with ICANN's counsel, Joe Sims."

Milton Mueller, a professor at the Center for Science and Technology at Syracuse University, agreed: "It's a one-two-three finish for the ICANN opposition in North America. It shows that ICANN's prior claims that it represents a 'consensus' of Internet community were false."

In the North America region, Auerbach received 1,073 votes, followed by ICANN critics Barbara Simons (712 votes), president of the Association for

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Computing Machinery, and Lawrence Lessig (725 votes), a Stanford University law professor.

While it may be fair to read the election results as a sort of plebiscite on ICANN activities, the impact of the election is not clear. The five board members selected by the at-large membership are a minority on ICANN's 19-member board of directors. ICANN policy is set by 18 board members and its president, Michael Roberts. The board consists of nine initial directors appointed by ICANN in 1998. Nine of the directors were selected by ICANN's three supporting organizations, the Address Supporting Organization, the Domain Name Supporting Organization, and the Protocol Supporting Organization.

ICANN's role as an Internet governance entity began June 5, 1998, with the publication of the so-called "White Paper," a Department of Commerce document that transferred policymaking authority over Internet name and addressing issues from the federal government to ICANN. The White Paper imposed upon ICANN a duty to involve the international Internet community in its decisionmaking activities

and to make such activities as transparent and open as possible.

ICANN has approximately 67,000 at-large members, who were able to join the organization merely by filling out a Web application earlier this summer.

The winners of this year's at-large membership election will replace five of the initial board members chosen by ICANN. Their terms will begin at the conclusion of ICANN's annual meeting, set for Nov. 13-16 in Marina Del Rey, Calif. Four additional board members will be elected by the at-large membership in the future; however, the date of the election has not been announced.

Results of the ICANN election process are available at <http://members.icann.org>.

Subscribers to ILR may view the Department of Commerce's 1998 "White Paper" transferring control of Internet naming and addressing policy administration by searching for 63 FR 31741

Karl Auerbach's views on ICANN and Internet governance issues generally are available at his Web site, <http://www.cavebear.com>. ☞

EICTA PAPER CITES CONCERNS ON EU VAT-REGISTRATION PROPOSAL

A European Commission proposal on value-added tax liability for electronically supplied services carries some risks, according to a paper jointly written by EU and U.S. businesses and submitted to the Commission Oct. 9.

The European Information and Communications Technology Association (EICTA) said the EC's VAT proposal, issued in June, "establishes VAT liability without a supporting low-cost model for compliance and practical enforcement measures."

Among the potential risks it cited were:

- failing to deliver expected revenue;
- discouraging e-commerce within the European Union;
- discouraging tax authorities from efforts to find a global solution to consumption tax issues; and
- distorting competition through nonenforcement.

The EC proposed June 7 that, to head off what it feared would be an inundation of tax-free digital services from countries that do not impose value-added taxes, including the United States, foreign suppliers of digitized goods be required to register in one of the 15 European Union member states and pay VAT based on that country's rate.

European Union Taxation Commissioner Frits Bolkestein Oct. 17 urged EU member states to put concerns aside and adopt a Commission proposal for a sales tax on online products sold by foreign companies to EU citizens.

'Clear Incentives' Needed. The EICTA said that, to prevent risk scenarios from becoming reality, the proposal needs to be "accompanied by clear incentives to comply; there would also then be the opportunity to

push the EU to the front in forging global solutions for consumption taxation."

It said that the current proposal offers no such incentive in allowing non-EU businesses to have a single point of VAT registration in Europe.

Because VAT rates differ across the European Union, companies may be disadvantaged by the prevailing VAT rate in the country in which they are established, compared with prevailing rates in the country from which their competitors trade, the group said, adding that companies might set up separate businesses offshore.

EICTA called on the Commission to introduce a unique tax rate for all online services supplied to nontaxable persons in the European Union. The group said that "this tax rate should be set at zero for a limited time, solely to enable the development of a robust compliance model."

The group acknowledged that setting a zero rate raises a tax neutrality issue with regard to similar products being delivered in tangible rather than electronic form, but said there are costs involved in downloading online products other than the price—such as telephone connection charges and the slow rate of download.

It said that a zero-rated VAT could be phased out after two years, adding that work being done by the Organization for Economic Development and Cooperation's Consumption Tax Technical Advisory Group "could be harnessed to such development to ensure on-time delivery" of a compliance model.

The EICTA comments can be found on the group's web site at <http://www.eicta.org> under "EICTA Positions." ☞

EC APPROVES AOL-TIME WARNER MERGER CONDITIONED ON CUTTING BERTLESMANN TIES

BRUSSELS—America Online and Time Warner cleared one of two antitrust hurdles standing in the way of their proposed \$130 billion merger when the European Commission gave conditional approval Oct. 11 to a deal that would fuse the world's largest online service provider and the world's largest media company.

The second hurdle facing the two U.S. companies is regulatory approval from the Federal Trade Commission.

The primary condition attached to the merger by the European Union's antitrust watchdog was a commitment that America Online break off its links with leading German media and publishing company Bertelsmann AG. With that commitment and the withdrawal of the merger between Time Warner and music recording company EMI a week previous, the Commission's primary concern that an AOL-TW tie up could stifle the development of music distribution over the Internet was eliminated.

"The Commission has a duty to prevent creation of dominant positions in all sectors, be they in the old or new economy," said Competition Commissioner Mario Monti in a statement. "In a music market already characterized by a high degree of consolidation, the danger, which has been averted, was that by allowing AOL to team up effectively with three of the five music majors the resulting integrated company could have dominated the online music distribution market and music players."

Time Warner is one of the world's biggest media and entertainment companies with interests in television networks, magazines and book publishing, music, filmed entertainment, and cable networks. AOL is the leading Internet access provider in the United States, and the only provider with a pan-European presence. In Europe, AOL is active through two joint ventures: AOL Europe, which AOL controls jointly with Bertelsmann; and AOL Compuserve France, a venture among AOL and Bertelsmann and Vivendi subsidiaries Cegetel and Canal Plus.

The commission pointed out that the merger will create the first Internet vertically integrated content provider, distributing Time Warner branded content—music, news, and films—through AOL's Internet distribution network.

Commission Spokeswoman Amelia Torres followed up Monti's statement by explaining that without the Bertelsmann condition and the TW-EMI merger withdrawal, the Commission was prepared to block the deal. "Nothing would have prevented AOL from dominating the emerging market for Internet music delivery online, which includes both digital downloads and streaming," Torres said. "AOL-TW would have become the

gatekeeper to this nascent market, dictating the conditions for the distribution of audio files over the Internet. AOL-TW could also have been tempted to format TW's and Bertelsmann's music in a way compatible only with AOL's music player Winamp, but not with competing music players.

"Winamp would have been able to play the music of competing record companies, which generally use nonproprietary formats," Torres continued. "By contrast, competing players could not read TW and Bertelsmann audio files and consequently play their music. Because of the technical limitations of the other music players, AOL-TW would have been able to impose Winamp as the dominant player."

No Nondiscrimination Condition. The Commission also said that, contrary to prior media speculation, there was no condition that TW agree not to discriminate for five years against non-AOL ISPs and make music compatible with at least three rival software music players. In order to ensure that AOL-TW adhere to the conditions, the Commission said an Independent

Compliance Monitor will be appointed to oversee the merged company's operations.

At the same time, the Commission said it rejected complaints by some European companies opposed to the merger that AOL-TW would dominate

the broadband Internet access market in the European Union. "The Commission concluded that those fears were unfounded since AOL-TW have no broadband infrastructure in Europe," said Torres. However, the two companies still must convince the FTC that they will not dominate broadband Internet access via cable-TV in the United States before the merger can go ahead.

The Commission also said that its four-month probe into the merger rejected concerns by competitors that the marriage of AOL and Time Warner would have dominated the Internet paid-for content market other than music, such as films and TV programs. The EU executive body said it concluded that Time Warner video content cannot be regarded as dominant in Europe. "The severance of links with Bertelsmann also removes any paid-for content market concerns about a dominant position," said Torres.

"With Europe's largest media company (Bertelsmann), particularly its leading music unit BMG, freed to compete alone, the Commission concluded that AOL-TW would not have the critical mass in terms of music publishing rights to dominate the market," Torres said.

AOL and Bertelsmann have established a plan that enables Bertelsmann to exit progressively from AOL Europe and AOL Compuserve. In addition, the parties

"The Commission has a duty to prevent creation of dominant positions in all sectors, be they in the old or new economy"

—Mario Monti

will take interim measures to ensure that the relationships between AOL and Bertelsmann will be kept at arm's length until Bertelsmann's exit has been completed. In particular, AOL/Time Warner will not take any action that would result in Bertelsmann music being available online exclusively through AOL or being formatted in a proprietary format that is playable exclusively on an AOL music player.

Media Reports Erroneous. The Commission also described as inaccurate previous media reports pub-

lished in the days before the Oct. 11 announcement claiming that AOL-Time Warner could not prevent for three years content providers from signing contracts with European ISPs for twelve years.

By severing links with Bertelsmann, it also solved concerns in the UK Internet market, where AOL is one of the leading dial-up access providers and where the bundling of TW's and Bertelsmann's music content with Internet subscriptions could have achieved dominance in the market, the Commission said. [E]

IRS LETTER RULING GIVES GREEN LIGHT TO INTERNET DONOR-ADVISED GIVING PLAN

LOS ANGELES—The Internal Revenue Service, in a still-unreleased private letter ruling, recently gave a green light to an Internet-based donor-advised giving arrangement facilitated by the Philanthropic Research Institute Inc. (PRI), a practitioner said Oct. 13.

The ruling, already available on PRI's World Wide Web site, is significant in the growing world of online charitable contributions, said Celia Roady, an exempt organizations practitioner with Morgan, Lewis & Bockius LLP in Washington, D.C.

The ruling, not yet numbered, addresses an arrangement under which taxpayers can contribute cash electronically to PRI with a recommendation of where they wish the money to be ultimately donated. The contribution is then forwarded to that entity, usually within 24 hours, Roady said.

The IRS ruling held that PRI can claim these contributions as part of its public support test, Roady told the Exempt Organizations Committee at the fall meeting of the American Bar Association Section of Taxation. IRS found PRI could be considered the principal recipient of these donations for that purpose even though they were almost immediately forwarded to another organization, she said.

"This is clearly a ruling that will have more and more significance as these online giving arrangements become more prevalent," Roady said. "These donor-advised giving plans have a lot of possibilities. It will be interesting to see where these kinds of e-commerce transactions are going to go in the future."

The IRS ruling is available online at <<http://www.guidestar.org/plr20005006620.pdf>>. [E]

CHECKS COULD SOON HAVE DIGITAL COPIES, FED'S FERGUSON TELLS ELECTRONIC WORKSHOP

Federal Reserve Board Vice Chairman Roger W. Ferguson Oct. 11 said the Fed is exploring methods to establish a legal equivalency between traditional paper checks and digital checks, thereby spurring the development of more efficient electronic payment systems.

"One means to accomplish this goal, for example, would be to provide a legal foundation that would treat the digital image of a check, or an accurate, machine-readable paper copy of that digital image, as the legal equivalent of the original check. Banking organizations would then have greater flexibility to truncate checks, while allowing banks, other businesses, and individuals to receive legally equivalent paper copies of original checks to satisfy business or personal needs," Ferguson said.

Checks Going Nowhere Quick. Ferguson noted predictions that, by now, society would have chosen electronic currency over paper checks. "Today, as a nation, we write something on the order of 65 billion to 70 billion checks each year, and many 'electronic' bill presentment and payment services continue to receive paper invoices and send paper checks," he said in prepared remarks. "Looking back, banks and policymakers in the 1960s were grappling with significant problems created by the growth of economic activity relative to our ability to process paper payments and other financial instruments."

Ferguson offered the example of digitalizing existing paper checks as a way of forming a bridge between old technologies and new, but cautioned that paper checks would likely remain widely used for years to come, adding calls for "premature regulation" should be resisted.

"True innovations frequently disturb comfortable habits," he said. "Thus we need to approach payments system innovations with an open mind and a willingness to learn. This is particularly true in the world of electronic commerce, where payments are being adapted to new technologies, products, and methods of doing business."

The Banking Industry Technology Secretariat (BITS), a banking industry technology group organized by the Financial Services Roundtable, has adopted the goal of having members present at least 50 percent of their checks electronically by 2001. Ferguson said the Fed now presents about 20 percent of its checks electronically to more than 3,800 banking organizations. More than 30 billion electronic payments are initiated per year via credit and debit card systems and the Automated Clearing House (ACH) transactions. More than half of U.S. workers receive their paychecks by ACH direct deposit.

President Clinton June 30 signed legislation (Pub. Law 106-229) giving electronic signatures the same legal validity as written ones, saying the law will update contract law to keep pace with the information technology revolution. [E]

FCC STOPS AOL-TIME WARNER 'CLOCK'; AGENCY SAID WAITING FOR FTC DECISION

The Federal Communications Commission has halted an internal "clock" one day short of a target date for deciding license transfers in the mega-merger between America Online and Time Warner.

The FCC's Web site Oct. 11 indicated that a "merger timeline" had been suspended on day 179 of a planned 180-day review.

According to a source, the FCC is waiting for the Federal Trade Commission to complete its antitrust review of the merger, which could come in late October.

Both agencies are reportedly weighing whether to attach conditions to the transaction. Critics say government requirements are needed to ensure nondiscriminatory access to Time Warner's high-speed cable plant for unaffiliated Internet service providers and other content providers. AOL is the world's largest ISP and both it and Time Warner also are major content providers.

Critics also say government steps are needed to make AOL's growing instant-messaging service "interoperable" with the services of competitors.

Various Developments. In other recent action, the FCC Cable Services Bureau Oct. 10 issued an order to rectify a "breach" by the Walt Disney Company of confidential material submitted by AOL and Time Warner. Among other steps, the bureau said that Disney and its counsel would be prohibited from viewing further confidential documents until the bureau approves a company plan to fix "the apparent laxity in procedures" that led to the public disclosure.

A Sept. 26 letter from Senate Judiciary Committee Chairman Orrin Hatch (R-Utah) to the FTC surfaced Oct. 10, expressing concerns about the merger of AOL and

Time Warner due to the latter's "mutual interests" with AT&T. Noting AT&T's 25 percent stake in Time Warner Entertainment (TWE), Hatch said the alliance "might have anticompetitive effects to the detriment of consumers." AT&T and Time Warner are the two largest cable companies in the country.

"Indeed, it would be unfortunate if AOL, Time Warner and AT&T, as the leading content, Internet, and broadband distribution companies in the United States, coordinated their activities because of the economic activities created by the TWE partnership," Hatch wrote. "I respectfully ask that the Commission

"Indeed, it would be unfortunate if AOL, Time Warner and AT&T ... coordinated their activities because of the economic activities created by the TWE partnership"

— Sen. Orrin Hatch (R-Utah)

carefully consider whether a fair and expeditious resolution of the TWE partnership between AT&T and Time Warner would be in the best interest of competition and consumers in light of the proposed

AOL/Time Warner merger," he added.

But AT&T suggested in an Oct. 4 letter to the FCC that that agency may have to take new action in order for AT&T to withdraw from the TWE partnership before May 19, 2001. That withdrawal is one of AT&T's options for addressing FCC concerns about the company's merger with MediaOne Group, another major cable operator. Absent a negotiated settlement with Time Warner, "which appears unlikely, the only alternative ... would be an obligation on both parties to ensure the fair and timely termination of the partnership," wrote AT&T General Counsel James Cicconi.

An AT&T spokesman told sources, "We recognize that the addition of AOL to the cable partnership raises regulatory concerns. The FCC discussions and the Hatch letter are by-products of that concern." ☐

STREAMLINED SALES TAX PROJECT WILL DISCUSS FOOD, CLOTHING DEFINITIONS AT OCT. 26 MEETING

Officials from the multistate Streamlined Sales Tax Project said Oct. 13 they have been revising definitions of food and clothing as they move closer to developing model tax legislation for states for 2001, and will have the issue high on the agenda at SSTP's public meeting Oct. 26 in Chicago.

In a conference call with state officials and private-sector participants, the group's Tax Base Working Group reported it was incorporating the latest public comments into its definitions of retail sales, including "primarily food and clothing," according to Charlotte Quarles of the Kentucky Revenue Cabinet, one of the working group's co-chairs.

The comments will define some areas that should, and should not, be considered taxable in the area of food and clothing, she said.

SSTP Co-Chair Diane Hardt of the Wisconsin Department of Revenue added that "there will be some broad definitions, but also exemptions"—for example, she said, in the area of tangible personal property.

Project officials told the National Confectioners Association in response to a question that SSTP legislation would take precedence over state laws in the 14 states that tax candy differently from food. Steve Lodge, vice president of legislative affairs for the association, said he plans to testify at the Chicago meeting.

The proposals for consideration at the Oct. 26 public hearing are posted on the SSTS's web site at <http://www.geocities.com/streamlined2000/publichrsg1026.html>. ☐

NEW DIGITAL DIVIDE REPORT SHOWS GAP CONTINUES; CONSUMERS AT A DISADVANTAGE

The gap between those who use the Internet and those who are not wired for cyber-transactions amounts to a “persistent digital divide” that “puts millions of Americans at an economic, social, and political disadvantage,” two major consumer advocacy groups said Oct. 11.

The Consumer Federation of America and the Consumers Union found that 47 percent of 1,900 respondents to a June survey do not have access to the Internet at home, but 93 percent believe that computer skills are vital.

The figures were part of a follow-up to an 18-month old study that galvanized interest in the gap between those who are active Internet users and those who are not, the groups said, adding that the trend will become more persistent as the importance of online activity increases.

“The important point about the digital divide is not simply that some people have the technology and others do not, but that not having it puts people at a disadvantage and cuts them off from participation in important economic, social, cultural, and political activities,” the report states.

Divide Is Widening. The divide is widening, according to Gene Kimmelman, co-director of the Consumer’s Union, and Mark Cooper, research director of the Consumer Federation of America. They said the gap will continue to grow as technology and the Internet expand.

The study also shows that 66 percent of those surveyed who believe they will not be connected in the next four years believe that the Internet is too expensive. Cooper fears that “people will get left behind... and the divide will only grow larger.”

Eager to become part of the online world, 86 percent of those who currently do not have a computer say they intend to get one and go online within the next four years. Even so, they said, being left behind by the “information revolution” is a concern felt by 57 percent surveyed.

Demographic differences in the study show how

participation in cyberspace is related to income and race. “Income is lowest in the disconnected group (\$25,000), highest in the fully connected group (\$45,200),” the report shows. Those who are connected to the wired world are “much more likely to have at least a college degree and be employed in managerial or professional occupations.” Those connected are also less likely to be African American. Those not connected tend to come from older and smaller households and do not own cell phones, according to the study.


A Web Address More Prevalent Than 800 Number. Kimmelman says those who are disconnected from the Internet suffer from the inability to participate in political and economic realms in cyberspace. The disconnected are “falling behind in an important civic medium,” and are therefore not being heard in this “online discourse.”

Cooper agrees. He states that the disconnected are hindered by lack of access to online information on business information, job opportunities, and personal productivity.

“In ads you don’t see a 1-800 number anymore, you see a web address,” he says. “Every day they are disconnected, they are disadvantaged.”

According to Cooper and Kimmelman, solutions to the digital divide lie in public policy towards “people based programs” for those who cannot afford computers and Internet access.

“Bills currently before Congress, like S. 2698-IS (the Broadband Internet Access Act of 2000), which aim to bridge the digital divide by giving tax breaks to corporations for building infrastructures are misguided,” says Kimmelman. “We should direct tax dollars or subsidies to the people who cannot afford technology, not to corporations.”

View the full text of the report, entitled “Disconnected, Disadvantaged, and Disenfranchised: Explorations in the Digital Divide,” at <<http://www.consumersunion.org/pdf/disconnect.pdf>>. 

SALE OF URL ADDRESS NOT SUBJECT TO SALES TAX, COMPTROLLER RULES

AUSTIN, Texas—A separately stated charge for the sale of a uniform resource locator (URL) address is not subject to the state sales tax, the comptroller said in a Sept. 27 letter to a taxpayer (No. 200009755L). **In re Sale of URL Addresses, 6 ILR (P&F) 3040 [Tex Comp. Pub. Accts, No. 200009755L, 2000].**

A URL is a string of characters that precisely identifies an Internet resource’s type and location.

Although the sale of URL addresses is not subject to the sales tax, many Internet-related services are taxable, the comptroller’s letter noted.


Services that are taxable include creating graphics using a drawing program, transmitting information between automated clearing houses, and selling software downloaded in Texas, the letter said.

Tax Break for Some Internet Services. Other services are taxable, but qualify for a 20 percent sales

tax exemption for information and data processing services purchased on or after Oct. 1, 1999, the comptroller said.

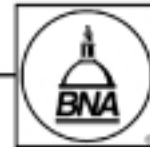
The services qualifying for the tax break include scanning information or data into the Internet, creating Hypertext Markup Language (HTML) documents, posting or hosting World Wide Web pages on a server, providing access to information on the Internet, and selling maps over the Internet.

Charges for providing access to the Internet are taxable, but the first \$25 of a monthly charge is exempt, the comptroller said.

The comptroller said that some services are not taxable, including charges for submitting Web site information to search engines, charges for continuing education classes on the Internet, and separate fees for licensing and completing applications for domain names. 

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