INTERNATIONAL REGULATORY ROUND-UP

Communications

Americas

US: FCC Adopts Wireless Backhaul Reform

The Federal Communications Commission (FCC) has released a Report and Order, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order to make available new spectrum, covering almost two-thirds of the US, for wireless backhaul as part of its Broadband Acceleration Initiative and its spectrum and regulatory reform agendas. The reforms remove regulatory barriers to make additional spectrum available for Fixed Service (FS) use and provide additional flexibility to enable FS licensees to reduce operational costs, increase reliability, and facilitate the use of wireless backhaul in rural areas. The FCC is seeking comment on additional ways to increase the flexibility, capacity, and cost-effectiveness of the microwave bands, while protecting incumbent licensees in these bands. The deadline for submissions is 4 October 2011.

US: FCC Seeks Public Input for the Next Broadband Progress Report

The FCC has published a Notice of Inquiry (NOI) seeking public input for its Eighth Broadband Progress Report. The primary aim of the report is to determine whether advanced telecommunications capability is being deployed to all Americans (including, in particular, elementary and secondary schools and classrooms) in a reasonable and timely fashion. The previous edition of the report found that as many as 26 million Americans live in areas unserved by broadband, and that there is generally no business case to offer broadband in these areas. The FCC subsequently took numerous actions to accelerate broadband deployment, such as adopting the Open Internet Order. The deadline for submissions on the NOI was 6 September 2011.

Europe

BEREC Invites Submissions on its Cross-Border Accessibility of Numbers Report

The Body of European Regulators for Electronic Communications (BEREC) has launched a call for contributions for its upcoming report on the cross-border accessibility of numbers. The report aims to provide more insight into the current situation of international accessibility and
the actual application of the exceptions to the Universal Service Directive. It will be based on research carried out by the BEREC Framework Implementation Expert Working Group. The deadline for submissions is 23 September 2011.

UK: Ofcom Fines TalkTalk and Tiscali UK for Breaching Consumer Rules

The Ofcom has fined TalkTalk and Tiscali UK £3 million after they incorrectly billed tens of thousands of consumers for services they had not received. The Ofcom opened an investigation into TalkTalk and Tiscali UK in July 2010 following complaints from over 1,000 consumers. The Ofcom found that both companies had wrongly issued bills to consumers who had closed their accounts. They did so in just over 62,000 cases between 1 January and 1 November 2010. The Ofcom issued both with a legally-binding notification in November 2010 and set them a deadline of 2 December 2010 to take steps to sort out their billing problems. However, while TalkTalk and Tiscali UK did take steps to comply with the rules, they still incorrectly billed almost 3,000 consumers between 2 December 2010 and 4 March 2011.

UK: Ofcom Publishes 2011 Communications Market Reports

The Ofcom has published its annual Communications Market Report into the UK’s TV, radio, broadband, telecommunications and mobile industries. The report shows that there has been rapid growth in the take-up and use of smartphones, and that they are beginning to affect social behaviour, particularly among teenagers. The report also looks at the rise and fall of communications technologies over the past decade, and how age affects take-up and use of communications services. The Ofcom has also published separate Communications Market Reports for Scotland, Northern Ireland and Wales.

UK: CC Publishes Provisional Findings Report on Movies on Pay-TV

The Competition Commission (CC) has published its provisional findings report on its market investigation into movies on pay-TV. The investigation follows a referral from the Ofcom to the CC into the supply and acquisition of subscription pay-TV movie rights and the wholesale supply and acquisition of packages which include core-premium movie channels. The CC’s provisional findings are that Sky has market power in the pay-TV retail market, and that this provides it with advantages when bidding for first subscription pay-TV window (FSPTW) movie rights, creating barriers to others acquiring these rights. The CC also provisionally found that Sky’s control of the acquisition and distribution of FSPTW movie content on pay-TV affects adversely competition between pay-TV retailers.

Oceania

Energy

Americas

US: FERC and NERC Release Task Force Report on Southwest Outages

The Federal Energy Regulatory Commission (FERC) and North American Electric Reliability Corporation (NERC) have released a staff report making recommendations to help prevent a recurrence of rolling blackouts and natural gas curtailments experienced by customers in the Southwest during extreme cold weather in the first week of February 2011. Concluding a six-month inquiry, the task force found a majority of the electric outages and gas shortages were due to weather-related causes. Although generators and gas producers reported having ‘winterisation’ procedures and practices in place, responses were generally reactive in their approach to winterisation and preparedness. Despite the importance of winterising plants, the
task force found that no state, regional or NERC standards required generators to do so. The report recommends that states in the Southwest examine whether to require winterisation plans, and NERC plans to work with industry to develop changes to NERC Reliability Standards to address winterisation needs properly.

Europe

ACER Adopts Final Framework Guidelines for Gas Capacity Allocation Management and Electricity Capacity Allocation Mechanisms

The Agency for the Cooperation of Energy Regulators (ACER) has adopted the final Framework Guidelines on Electricity Capacity Allocation and Congestion Management (CACM). The CACM Framework Guidelines deal with the integration, coordination and harmonisation of the congestion management regimes. The ACER has also adopted the final Framework Guidelines on Capacity Allocation Mechanisms (CAM) for the European Gas Transmission Network. The objective of the Gas CAM Framework Guidelines is to ensure more efficient allocation of the capacity on the interconnection points between two or more European Union (EU) Member States or within the same Member State, and to support the creation of efficient gas wholesale markets in the EU.

France: CRE Approves Deployment of Smart Meters

The French energy regulator, de régulation de l'énergie (‘Commission for Energy Regulation’) (CRE), has released a deliberation (in French) approving the general deployment of the smart electricity meter, known as ‘Linky’, and a pilot project for smart gas meters. The decision was based on the results of a trial with over 250,000 customers conducted for more than one year by France’s lone distribution utility, Électricité Réseau Distribution France (ERDF). The CRE has suggested that a rapid deployment would encourage the international adoption of French standards and norms.

Northern Ireland and Ireland: Utility Regulator and CER Publish Consultation Paper on Common Arrangements for Gas Code

The Northern Ireland Authority for Utility Regulation (Utility Regulator) and the Commission for Energy Regulation (CER) have published a consultation paper on proposed Business Rules for the Common Arrangements for Gas Code (CAG Code). This follows the Utility Regulator and CER requesting that the Transmission System Operators (TSOs) on the island of Ireland develop a unified all-island network code (the ‘CAG Code’) under the Common Arrangements for Gas (CAG) project. The deadline for submissions on the consultation was 2 September 2011.

Northern Ireland: Utility Regulator Consults on Phoenix Natural Gas Limited Price Control

The Utility Regulator has published a consultation on the draft proposals for the next price-control review for Phoenix Natural Gas Limited (PNGL). PNGL is the owner and operator of the licence for the distribution network in the Greater Belfast Area and Larne, and is the larger of the two gas distribution companies in Northern Ireland (the other business being firmus energy, which owns and operates the network off the North-West and South-North transmission pipelines). PNGL's network extends to around 3,000 kilometres of laid pipeline, and the company has around 140,000 customers. This price-control review will cover the calendar years of 2012 and 2013 only, so that the alignment of both distribution companies’ control periods can occur from 2014. The deadline for submissions on the draft is 21 October 2011.
UK: DECC and Ofgem Publish Smart-Metering Implementation Programme Consultations

The UK Department of Energy and Climate Change (DECC) and the Ofgem have jointly published further responses to the Smart Metering Implementation Programme: Prospectus. The responses include two consultations, two impact assessments and a call for evidence. The first consultation is on draft licence conditions and technical specifications for the deployment of gas and electricity smart-metering equipment. This consultation seeks stakeholder views on the draft licence conditions, and describes proposals to establish the technical specifications for smart-metering equipment and the proposed approach to developing these specifications. The second consultation is on draft licence conditions for a code of practice for the installation of smart electricity and gas meters. The draft licence conditions are set out to gain stakeholder views on the requirements on electricity and gas suppliers to develop and adhere to code(s) of practice governing the installation of smart meters at domestic and micro-business sites. The call for evidence on data access and privacy seeks views and further evidence relating to policies the Government is developing on the privacy framework for smart metering. The impact assessments consider the effect of the deployment on the domestic sector and the small and medium non-domestic sector. This builds on the position set out in the DECC’s initial response to the Prospectus published in March 2011. The deadline for submissions on all consultations is 12 October 2011.

UK: Ofgem Calls for Submissions on Transmission Companies’ Business Plans for Next Transmission Price Control

The Ofgem has announced that four transmission companies have submitted and published their business plans for the next transmission price control (RIIO-T1). This will be the first price control to be conducted under the new RIIO model (Revenue = Incentives + Innovation + Outputs). The Ofgem will publish its initial assessment of these plans in October 2011, following the assessment of stakeholder submissions. The deadline for submissions on the business plans is 9 September 2011.

UK: Ofgem Consults on Initial Proposals to Roll-over the Current Transmission Price Control

The Ofgem has published a consultation on initial proposals for the roll-over of the current transmission price control. The current gas and electricity transmission price controls (TPCR4) expire on 31 March 2012, however, the Ofgem previously announced that it will delay implementation of the new price controls until 1 April 2013 to enable the next price controls to fully reflect the new RIIO model for regulation. Consequently there will be a one-year rollover of the existing price controls to operate in the period 1 April 2012 to 31 March 2013. This document sets out the Ofgem’s initial proposals for the year 2012-13 on all elements of the price control for the three electricity transmission owners and the one gas transmission owner. The deadline for submissions on the consultation is 12 September 2011.

UK: Ofgem Publishes Impact Assessment on Minimum Transmission Capacity Requirements in the Security and Quality of Supply Standard

The Ofgem has published an Impact Assessment (IA) for GSR009, a proposal to modify the National Electricity Transmission System Security and Quality of Supply Standard (NETS SQSS) by amending the criteria for assessing the minimum transmission boundary transfer capability requirements. The proposal, developed by the SQSS Review Group, is intended to ensure that the SQSS sets out appropriate requirements for the treatment of intermittent generation (such as wind) in...
assessing transmission-capacity requirements. The IA considers the potential impacts of the proposal and seeks views on the proposal and the impacts identified. The deadline for submissions is 23 September 2011.

UK: Ofgem Publishes Minded-to Position for the Western High Voltage Direct Current Link

The Ofgem has published a letter which sets out the Ofgem’s minded-to position for the Western High Voltage Direct Current (HVDC) link for consultation. The document identifies issues relevant to the ongoing project assessment and provides an update on the Ofgem’s process towards a final decision. The Ofgem’s minded-to position is to allow efficient cost recovery under Transmission Investment Incentives for construction works on the Western HVDC link from 2011-12, subject to a number of factors. The deadline for submissions was 6 September 2011.

UK: Ofgem Publishes Proposal to Facilitate Domestic Customer Switching

The Ofgem has published a letter containing proposed modifications to gas and electricity supply licences to ensure that domestic customers are able to switch supplier effectively if they have a meter with advanced functionality installed. This follows the Spring Package consultation, published in February 2011, which set out a range of proposals designed to facilitate switching where a domestic customer has a meter with advanced functionality. The deadline for submissions is 14 October 2011.

UK: Ofgem Reviews Third Year of the Carbon Emissions Reduction Target

The Ofgem has published a report reviewing the third year of the Carbon Emissions Reduction Target (CERT). This report contains information on supplier progress towards the CERT 2008-12, and fulfils the Ofgem’s reporting duties to the Secretary of State for Energy and Climate Change. Six suppliers were set an obligation under the CERT 2008-12: British Gas, EDFEnergy, E.ON, npower, Scottish Power and Scottish and Southern Energy. Suppliers meet their obligations by setting up schemes to promote and deliver energy-efficiency measures to domestic customers.

Oceania

NZ: NZCC Releases Approach for Setting Starting Prices for Gas Pipeline Businesses

The New Zealand Commerce Commission (NZCC) has released a discussion paper outlining a proposed approach to the setting of starting prices for gas-pipeline businesses subject to default price-quality paths (DPPs). This follows the release of a discussion paper on the initial DPP for Gas Pipeline in April 2011, which did not cover the setting of starting prices. The starting price is a fundamental component of a DPP, since it sets a limit on a supplier’s prices or revenues. The NZCC is proposing to establish starting prices that are based on the current and future profitability of each supplier. The deadline for submissions on the proposed approach is 28 September 2011.

Post

Europe

Ireland: ComReg Publishes Notice on the Implications of the Postal Services Act

The Commission for Communications Regulation (ComReg) has published an Information Notice on the implications of the Communications Regulation (Postal Services) Act 2011 for the ComReg’s 2011 work programme and beyond. The Act has recently been published and the ComReg will now prepare and publish a draft of its Postal Strategy Statement for the current period to 30 June 2014. The draft statement will seek the views of
stakeholders regarding the measures which the ComReg shall take in order to carry out the tasks assigned to it under the new Act, how the ComReg will ensure compliance with the obligations imposed on postal service providers by the Act, and how the ComReg will achieve the statutory objectives set out in the Act.

UK: Postcomm Removes Bulk Mail Products from the Universal Postal Service

The Postcomm has published a final decision document confirming its proposal to remove bulk mail from the universal service. The decision to remove Mailsort 1400 First and Second class and Cleanmail from the universal service follows a three-month consultation. It is one of the main changes to the universal service being consulted upon prior to transfer of regulatory responsibility from the Postcomm to the Ofcom. This decision follows the findings of the Postcomm's recent market study that the bulk-mail market is increasingly competitive. Consequently bulk-mail consumers have greater choice than in 2005, when the Postcomm took the decision to retain a bulk-mail product in the universal service.

Other

Europe

UK: Competition Commission Appoints New Acting Chief Economist

The Competition Commission (CC) has appointed a new acting Chief Economist, and announced that two of its Deputy Chairmen will stand down. The European Commission has agreed to second Miguel de la Mano, Deputy Chief Economist at DG Competition, to the CC to become the acting Chief Economist from 1 October 2011. Miguel will be covering for Chief Economist Alison Oldale, who recently joined the US Federal Trade Commission on a year's secondment. Dr Peter Davis is resigning from his post as a Deputy Chairman and member of the CC with effect from 31 August 2011 to join economic consultancy, Compass Lexecon, as Senior Vice President. Laura Carstensen is standing down as Deputy Chairman with effect from 31 December 2011, but will remain a member and continue to chair inquiry groups as needed.

AUSTRALIAN REGULATORY ROUND-UP

Airports

PC Releases Draft Report for Economic Regulation of Airport Services

The Productivity Commission (PC) has released its draft report into the Economic Regulation of Airport Services. The report concludes that aeronautical charges do not indicate misuse of market power, quality outcomes are generally satisfactory and airport charges and profits look reasonable compared with outcomes at airports overseas. However, relationships between some airports and their customers have been strained. The PC considers the light-handed approach to airport regulation has been effective, and it attributes this to the presence of a credible threat of sanction for any airport that abuses its market power. The PC has also proposed that the Australian Competition and Consumer Commission (ACCC) be afforded the power to direct an airport to 'show cause' why its conduct should not be subject to a 'forensic' price investigation and, if it is dissatisfied with the response, to recommend that the Government activate such an investigation. This follows reports by the ACCC that suggest some Airports may be misusing their market power. The deadline for submissions on the draft report is 23 September 2011.
Communications

ACCC Issues Discussion Paper on Non-NBN Local Bitstream Access Service Description

The ACCC has issued a discussion paper seeking submissions on the service description for a Layer 2 bitstream service. The consultation is the first step in issuing a declaration that creates the ACCC’s role in regulating this service. Layer 2 bitstream services (also known as the local bitstream access services) are used to carry digital data on telecommunications networks. This declaration is intended to cover the ‘last mile’ fibre to residences and small businesses on networks that are not owned by NBN Co. In order to declare this service under new provisions of the Competition and Consumer Act 2010, the ACCC must develop a service description specifying which services are to be covered by the declaration. This declaration will oblige service providers to adhere to the Standard Access Obligations, and it will only apply to services supplied using a designated superfast telecommunications network, which is a network used to supply a Layer 2 bitstream service. The deadline for submissions on the discussion paper is 16 September 2011.

ACCC Publishes Discussion Paper on Telstra’s Structural Separation Undertaking and Draft Migration Plan

The ACCC has published a discussion paper on Telstra’s structural separation undertaking and a draft migration plan. The objective of the undertaking and plan is to progressively implement structural reform of telecommunications through Telstra ceasing to supply fixed-line voice and broadband services over its copper and HFC networks, and instead supplying those services using the NBN. The ACCC’s preliminary view is that Telstra’s undertaking can not be accepted in its current form and that important changes are required. The ACCC’s main area of concern relates to the adequacy of Telstra’s proposed interim equivalence and transparency measures. The deadline for submissions on the discussion paper is 27 September 2011.

ACCC Releases Issues Paper on Exemptions for Fixed-Line Services

The ACCC has released an issues paper on varying the final access determinations (FADs) in respect of the exemption provisions for the following declared fixed-line services: Wholesale Line Rental (WLR), Local Carriage Service (LCS), and Public Switched Telephone Network Originating Access (PSTN OA). This follows the ACCC’s final report into FADs, published in July 2011, where it stated that the issue of the future operation of the exemptions relating to the WLR, LCS and PSTN OA services required further investigation and consideration. The issues paper considers whether the exemption provisions in the FADs should be varied, revoked or maintained. The ACCC will not consider varying or revoking any other provisions in the FADs that do not relate to exemptions. The deadline for submissions on the issues paper is 30 September 2011.

Ports

ACCC Issues Draft Decision on CBH’s Proposed Bulk Grain Port Terminal Services Access Undertaking

The ACCC has issued a draft decision on access arrangements for wheat exporters at Cooperative Bulk Handling’s (CBH’s) ports at Kwinana, Geraldton, Albany and Esperance in Western Australia. This follows CBH submitting an undertaking in March 2011 that proposed to replace the auction system currently used to allocate access at its port terminal services with a ‘two tiered system’ with up to 60 per cent of port capacity offered to large-volume shippers prior to holding open auctions for the remaining
capacity. The ACCC's preliminary view is that the existing arrangements should be retained. The ACCC is concerned that the two-tiered system in the form proposed may disadvantage mid-sized and smaller exporters without necessarily benefiting wheat growers or the Australian economy. In response to suggestions from the ACCC, CBH has provided a revised draft of the undertaking retaining the existing auction system and suggesting amendments to address the other issues identified. It is the ACCC's preliminary view that, if the revised draft is submitted, the ACCC would accept the undertaking. The deadline for submissions on the draft decision is 13 September 2011.

**ACCC Publishes Draft Decision on ABA’s Proposed Bulk Grain Port Terminal Services Access Undertaking**

The ACCC has issued a draft decision on the access undertaking proposed by Australian Bulk Alliance (ABA). ABA’s proposed undertaking relates to the provision of access to services at the Melbourne Port Terminal for use by wheat exporters, where no existing undertaking applies. The ACCC’s preliminary view is that the overall approach of ABA’s proposed undertaking is likely to be appropriate. However, the ACCC has identified a number of improvements which should be made to ensure ABA’s undertaking is consistent with industry-wide standards. The deadline for submissions on the draft decision was 31 August 2011.

**ACCC Releases Draft Decision on Viterra’s Proposed Bulk Grain Port Terminal Services Access Undertaking**

The ACCC has released a draft decision on arrangements for wheat exporters at Viterra’s six wheat export ports in South Australia. The ACCC’s preliminary view is that the introduction of an auction system would address its main areas of concern. Viterra initially submitted an undertaking that proposed to continue current arrangements. The ACCC, however, considered that the continuation of the existing first come, first served system for allocating shipping slots was not appropriate. In response to suggestions from the ACCC, Viterra has submitted a revised draft of the undertaking introducing an auction system from mid-May 2012. To increase competition before then, Viterra will also make slots available for other exporters for January to April 2012 at the deep-sea terminals at Port Lincoln and Port Adelaide Outer Harbour. The deadline for submissions on the draft decision was 31 August 2011.

**Rail**

**Minister Certifies Dalrymple Bay Coal Terminal Access Regime**

The Parliamentary Secretary to the Treasurer, the Hon David Bradbury MP, has released a decision to certify the Dalrymple Bay Coal Terminal (DBCT) Access Regime as an effective access regime under s 44N of the Competition and Consumer Act 2010 (Cth) (CCA) for a period of ten years. The DBCT is one of two coal terminals at the Port of Hay Point near Mackay servicing around 18 mines in the Bowen Basin coal fields of Central Queensland. The Minister’s decision is consistent with the final recommendation of the National Competition Council (NCC). The DBCT Access Regime principally comprises the Queensland Competition Authority Act 1997 (Qld) which is also the principal legislation in the Queensland Rail Access Regime. Accordingly, the NCC’s assessment of the DBCT Access Regime drew significantly on its assessment of the Queensland Rail Access Regime. However, a significant difference between the two regimes is that the DBCT service provider, DBCT Management Pty Ltd, is not a vertically integrated business and does not compete with access seekers. In its draft and final recommendation, the NCC considered that the Queensland Rail Access Regime imposes adequate information protections. The NCC...
also considered that the DBCT Access Regime prevents the vertically integrated service provider from treating its related businesses more favourably than those of its competitors.

**Minister Certifies South Australian Rail Access Regime**

The Hon David Bradbury MP has released a decision to certify the South Australian Rail Access Regime as an effective access regime under s 44N of the CCA for a period of ten years. The Minister’s decision is consistent with the final recommendation of the NCC. It provides a framework for access seekers to negotiate access arrangements with railway owners and operators, and dispute-resolution mechanisms to address situations where terms and conditions of access are not agreed upon. The NCC’s draft recommendation was that it should only be certified for five years, since it does not provide for access rights to lapse after a defined period unless periodically reviewed and subsequently extended. Following the draft recommendation, the South Australian Government committed to seek amendments to the Railways Act to introduce a review arrangement. The NCC considered that the South Australian Government’s commitment was sufficient to allow it to propose a longer certification period of ten years in its final recommendation.