

THE **LOKT** NEWSLETTER

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JANUARY 2006

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The Federal Pages

News and Updates in Federal Telecommunications Law

FCC News

NEWEST FCC COMMISSIONER CONFIRMED; ONE MORE SPOT LEFT TO FILL

Deborah Tate, former Director of the Tennessee Regulatory Authority ("TRA"), was sworn in earlier this month



FCC Chairman Martin swears in Commissioner Deborah Taylor Tate, with son Will Tate

to serve as an FCC Commissioner through 2007. Tate, a Republican, fills the void left by Republican Michael Powell, and joins FCC Chairman Kevin Martin, the only other Republican Commissioner. During her time in Tennessee, Tate also served as chair-

man of NARUC's Washington Action Committee and was a member of NARUC's Consumer Affairs and Gas Committees. Earlier in her career, Tate worked as an attorney and legal mediator in family law. Tate was perhaps most noted in Tennessee for her innovative and

hands-on approach. As one example, she acted as mediator in organizing a meeting on E-911 between VoIP providers and Bell-South to discuss controversial issues where the TRA lacked jurisdiction. The new Commissioner participated in her first FCC meeting on January 20th. Meanwhile, it is rumored that President Bush's choice to fill the remaining vacancy at the FCC will be either Robert McDowell or William Crispin. McDowell is currently senior vice president and assistant general counsel with CompTel, a lobbying firm that represents many Bell competitors, including Internet phone providers. Crispin has been a telecom lawyer for 25 years, and runs Crispin and Associates, whose clients include wireless carriers Qualcomm, NextWave Telecom and Nextel Communications. An interesting note, Kris Twomey and McDowell worked together for three years in the late 90's at a law firm in Washington, D.C. (Read more about McDowell in the FCC Briefs below)



Robert McDowell

FCC BRIEFS

- ◆ With the FCC's "great broadband hope" (aka broadband over powerlines) clearly not a DSL & cable competitor or rural broadband cure-all any time soon, the Bush administration is hoping Wimax will help fulfill their goal of giving everyone "universal, affordable access for broadband by 2007." Uncle Sam plans to start licensing spectrum this year for wireless broadband services based on the recently ratified 802.16e WiMAX standard, aiming to stay "one or two steps ahead of other countries," [Story from Data-monitor: www.cedmagazine.com]
- ◆ The possibility of the White House nominating Republican lobbyist Robert McDowell to fill the remaining vacancy at the five-member FCC is drawing mixed reactions from the former regional Bell operating companies. Bell company executives officially insist they would support McDowell, a lobbyist for Comptel (an association representing competitors to the Bells) if he were appointed. Privately, however, some within the Bell firms are grumbling that his sympathies do not lie with them. "We would expect Mr. McDowell to be sympathetic to CLEC [competitive local exchange carrier] causes as the FCC attempts to address various telecom issues," concluded the investment firm Stifel Nicolaus in an advisory while adding, "That has to be a concern for the Bells, though we suspect Mr. McDowell would come under pressure to demonstrate some degree of even-handedness as a commissioner." [Story from National Journal Telecom Update, a great source for info!, check it out at <http://www.njtelecomupdate.com>]
- ◆ Evoking images of broadband "toll bridges" and "gate keepers", Democratic FCC Commissioner Michael Copps Tuesday praised a study that found a majority of respondents (54%) wanted legislation mandating nondiscriminatory access to Internet service providers (ISPs). The venue was a press conference Wednesday by Consumers Union, Consumer Federation of America and Free Press announcing the study and calling for such a provision in Congress' ongoing rewrite of the 1996 Telecommunications Act. Copps did not expressly back a legislative mandate—referring only to "creative solutions"—or take questions, but he said the data "made clear to me that this is becoming a really important national issue." [Story from freepress.net]

MORE FEDERAL BRIEFS

COMMENTS AVAILABLE ON BROADBAND CONSUMER PROTECTION RULES:

Comments are available in response to the Commission's Notice of Proposed Rulemaking (WC Docket No. 05-271) seeking comment on whether it should impose consumer protection regulations on broadband Internet access service providers. In its comments, OPASTCO stated that it believes that the competition that currently exists in the rural broadband market serves as an incentive for rural ILEC broadband providers to meet the consumer protection goals of the Telecom Act. USTelecom also believes that the Commission should refrain from imposing any consumer protection regulations on broadband providers and pre-empt states from separately regulating broadband Internet access services.

FCC LOOKS AT CLASSIFICATION OF BPL:

In its Petition for Declaratory Ruling (WC Docket No. 06-10) the United Power Line Council has asked the FCC to classify Broadband over Power Line ("BPL") enabled Internet access service as an information service. The United Power Line Council states that BPL-enabled Internet service is an information service because it shares all relevant similarities with other broadband services such as DSL and cable modem which the Commission has classified as information services. The FCC is inviting comments on United Powerline Council's Petition for Declaratory Ruling regarding the classification of broadband over power line Internet access service as an Information Service. Comments are due February 10, 2006. Reply comments are due February 27, 2006.

REPORTS EXPLORE TREATMENT OF RADIO-FREQUENCY SPECTRUM:

National Journal reports that major studies have been released by the FCC and Government Accountability Office ("GAO") about the use of radio-frequency spectrum that would be available with congressional passage of pending digital television legislation. The GAO explored how the FCC allocates spectrum, and it concluded that current procedures stifle the effective use of radio frequencies. The FCC examined whether public-safety officials need access to more spectrum, and concluded that, at least for now, they do not. The House and the Senate recently passed legislation mandating the end of analog broadcasting on February 17, 2009. The move would clear broadcasters off 108 megahertz of spectrum.

PUBLIC SAFETY GROUPS ARGUE OVER VOIP E-911 APPROACH:

National Journal also reports that The Association of Public-Safety Communications Officials International and the National Emergency Number Association (the two public safety groups seeking to ensure that Internet telephone companies provide location-based emergency dispatch to customers dialing 911) are taking different approaches to enforcing the FCC's Nov. 28 compliance deadline. The Association of Public-Safety Communications Officials International opposes all legislative and regulatory attempts to delay the FCC ban on new Internet telephone service if companies cannot provide E-911, or "enhanced," 911 location-based responses. Meanwhile, the National Emergency Number Association has been pressing the FCC to appoint an administrator to help facilitate compliance by VoIP providers offering "nomadic" service. Nomadic service enables a customer to plug a phone adaptor into any broadband connection and obtain telephone service. Earlier this month, more than a dozen VoIP providers, including Vonage, said they wanted the FCC to delay enforcement of its requirement that would keep them from marketing services in areas where they cannot provide E-911 service. Vonage was able to provide 26 percent of its subscribers with E-911 compliance, and several smaller nomadic providers were not able to serve any of its subscribers.

Other National News

MEDIA OWNERSHIP, INTERNET NEUTRALITY AND VIDEO FRANCHISING TOP TELECOM ISSUES TO WATCH IN '06

In an event organized by the Future of American Media Caucus and Representative Bernard Sanders (I-VT), speakers from the "Free Press" outlined what they thought would dominate telecom policy discussions and lawmaking over the new year. Free Press is a group that argues for greater citizen control over the media, limits on the size of media corporations, expanded public broadcasting, and the right of municipalities to provide high-speed Internet access and to control local video franchises. At the conference they expressed displeasure with the FCC, the media and mainstream journalism. One particularly hot issue right now is that of Internet neutrality. Companies like AT&T, BellSouth and Verizon Communications are fiercely lobbying to retain language in a pending House telecommunications bill that would allow them to offer premium tiers of high-speed Internet service favoring their content. Groups like Free Press despise the idea, insisting that any legislation keep cable or telecommunications company from discriminating against content and services of rivals. While Congress will have

the last say in the matter, FCC Chairman Kevin Martin has stated publicly that the Commission will not let high-speed Internet companies block access to content and services, but will let them offer tiered categories of high-speed access. The free market would do us a lot of good; we don't have a free market," Nichols said. "We have lost our free market to corporatists, who have come in to take their money and leave." The media ownership issue is also of concern to groups in line with Free Press. These groups fear that huge media corporations are monopolizing the news business, and that this is bad for our democracy. Finally, whether video franchising ends up being done locally, statewide or nationally, Free Press wants to ensure that there are "baseline protections" for consumers. Referring to Texas legislation last year creating a statewide franchise, Ben Scott, Director of Free Press' Washington office said, "There are a lot of localities that are better off under that statewide bill than they were before."

Congressional News

CONGRESSIONAL BRIEFS:

◆ State and local governments may be able to tax certain aspects of Internet use under an existing federal law designed to ban such fees. The comments came in a study commissioned by Congress to examine a law known as the Internet Tax Freedom Act. The law prevents state and local governments from taxing "a service that enables users to access content, information, electronic mail or other services offered over the Internet." Services like VoIP, traditional telephone service and video offerings by ISPs remain fair game for taxation under the law, the study said. The scope of the moratorium has nothing to do with sales taxes for Internet purchases. [Story from CNET news]

◆ Senators Conrad Burns (R-MMT) and John (Jay) Rockefeller (D-WV) are in the late stages of drafting legislation overhauling the \$7.1 billion universal service fund. Burns wants to introduce the measure by the end of January but may hold off until February, when the Senate Commerce Committee has two hearings



Senator Rockefeller (in overalls)

scheduled on the issue. The bill seeks to strengthen the federal program (which is designed to lower the cost of phone service in rural and low-income areas) by expanding the program's funding base and permitting the FCC to subsidize broadband. [Story from The National Journal: www.njtelecomupdate.com]

◆ The Washington Internet Daily (which apparently is not on the Internet) has a story predicting the Telecom Bill will pass the House this year. The only sticking point seems to be the "controversial" "net neutrality" proposal. Says Howard Waltzman, the committee's majority chief telecom counsel, and "net neutrality" opponent: "We're going to rely on the market to regulate these services and not have a heavy hand in government regulation." Waltzman thinks net neutrality regulation would turn "broadband pipes into railroads and regulating them under common carriage." [Story from Freepress.net]

◆ When Congress begins work this year, it will restart a heated debate about how much lawmakers should regulate the Internet and emerging communications technologies - with some advocates saying the future of the Internet is at stake.

As Congress looks to update telecom law, at least three factions with differing visions of regulation in the Internet Age are emerging: major telecom carriers, large Internet-based companies and a host of consumer-rights advocates. [Story from NetworkWorld]

◆ Consumer groups urged Congress earlier this month to pass legislation barring broadband providers from engaging in what the groups call potentially discriminatory pricing for high speed Internet service. As Congress prepares for a serious run at telecom reform this year, telephone and cable companies are lobbying lawmakers for the right to charge Internet content and service providers a fee to access their networks in addition to regular charges to consumers. The consumer groups fear the plan, often called a tiered Internet, would ultimately undermine the Internet's founding open platform principles where all users have access to all services and content on the Internet. [Story from internetnews.com]

The State Pages

News and Updates in State Telecommunications Law

STATE BRIEFS:

LISTED BELOW ARE BRIEFS OF THIS MONTH'S IMPORTANT NEWS FROM STATE UTILITY COMMISSIONS, LEGISLATURES, COURTS, AND OTHER NOTEWORTHY STATE NEWS:

AK: The state's Regulatory Commission (Case U-05-46) granted the petition of Matanuska Telephone, an ILEC, releasing it from obligations to offer unbundled loops for the next 3 years. The Petition was granted because Matanuska was able to show the Commission that the unbundling requirement was unduly economically burdensome and against public interest. The Commission will revisit the issue if and when the company seeks an extension in 3 years.

AZ: The Arizona legislature is considering a bill that would require wireless carriers to list a phone number on their bills for customers to call to resolve disputes or complaints about service, as well as the date the customer's service contract expires. Other requirements in the bill (HB-2022) include listing the name of the senior manager on duty daily at each retail outlet. Also in AZ, the Corporation Commission wants Cox Communications to respond to a staff report alleging that the company knowingly made an improper deal with a home developer. The December 2003 deal effectively would have forced residents of a new 17,000 home project to use Cox as their provider. "We need to know whether Cox engaged in anticompetitive behavior," said Comr. Kris Mayes.

CA: The PUC is once again attempting to agree on a telecom consumer "bill of rights". A vote was set for late January on the latest version, this one focusing on only the most essential consumer rights, like protection against fraud. The rules also would establish a more extensive consumer education program and beef up consumer complaint hotlines. In addition, the "bill" would end a 5-year old rule that requires prior customer authorization before any noncommunications charges can be added to wireless phone bills. Finally, the rules would force companies offering DSL and voice services to offer DSL without requiring that the customer choose them for voice as well (naked DSL). In California state legislative news, a previously unsuccessful broadband access and universal service bill has been amended and reintroduced in the state Assembly. The bill (AB-326) brings broadband into the universal service mix, and would authorize the chief information officer to use funds from the Digital Divide Account to move towards universal broadband.

CO: The Consumer Counsel's Office ("OCC") wants the state's PUC to modify its proposal for rate deregulation of all providers' IXC services. The OCC, commenting on Case 05R-528T, has asked that the PUC make it clear that deregulated toll providers will still be required to contribute to the state universal service fund, and that the PUC still has jurisdiction to deal with all IXC consumer complaints.



Illinois Governor Rod Blagojevich (D)

IL: After his first choice was rejected by the state Senate, Governor Rod Blagojevich (D) has sent another nominee for Chairman of the state's Commerce Commission for confirmation. Blagojevich nominated former Rockford, IL Mayor Charles Box after his first choice, Martin Cohen, was rejected last November due to concerns of bias.

IN: A controversial and sweeping telecom deregulation bill (S.B. 245) has passed in the state Senate. The bill would let telephone companies set their own prices by 2009 and hike their rates by \$1 each month until that date, if they provide high-speed Internet services to more than half of their customers in areas with increased prices.

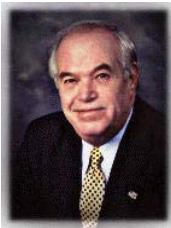
KY: A resolution in the Kentucky House (HCR-26) would ask the PSC to not to increase telephone or other utility service rates during 2006. The basis for this moratorium is the hurricanes of 2005, which lawmakers say significantly raised Kentuckians' cost of living, and created an emergency situation.

LA: A state appeals court has struck down a city bond ordinance that would have raised \$125 million to pay for the controversial Lafayette Utilities System ("LUS") municipal broadband project. The decision by the state's 3rd Court of Appeals overruled a lower court ruling, on the basis that the bond ordinance violated antisubsidy provisions of the state's Local Government Fair Competition Act. The decision is a serious blow to the project, which has been the subject of an ongoing and intense controversy in Lafayette over the last several months; as BellSouth led a strong opposition to it. The city has to decide now if it will appeal to the state Supreme Court, or attempt to have the Act rewritten.

Continued on next page

STATE BRIEFS (CONTINUED)

ME: State legislators are debating a bill (HB-1298) that would require wireless carriers to continue to offer analog service until it is determined that sufficient digital wireless coverage exists. The bill directs the state Office of Public Advocate to file an annual report on the progress of digital coverage, and would present the issue to a House committee each year until the analog requirement is lifted.



Neilsen Cochran

MS: The PSC is waiting to begin an investigation into BellSouth's response to Hurricane Katrina. Chairman Neilsen Cochran said they will wait until the seat left vacant by the departure of former Commissioner Michael Callahan is filled. Callahan had pushed for an investigation, after the PSC received dozens of complaints regarding the way BellSouth handled the disaster.

MO: Time Warner recently lost a federal court challenge agreed to a North Kansas City municipal fiber network plan. The 8th U.S. Appeals Court in St. Louis dismissed the cable company's and upheld a lower court's decision that Time Warner could not intervene because the city had not begun to offer cable service. Also, Missouri is one of 3 states (Indiana and New Jersey are the others) with a video franchising bill pending before the legislature. Under Missouri's bill, new cable entrants could seek a statewide video franchise. The bill (SB-816) would also keep municipalities from imposing fees, taxes, build-out requirements or other franchise requirements beyond those imposed by the state.

NV: In an interesting ruling, the highest state court in Nevada held that state courts have jurisdiction to hear complaints involving violations of the federal Telephone Consumer Protection Act of 1991. The state Supreme Court (Case 42055) reversed lower court rulings that dismissed a lawsuit against a telemarketer for sending unsolicited ads via fax. The court said the federal law gives state courts jurisdiction over claims under the Act, and the legislature never acted to divest state courts of jurisdiction over such claims so they can be prosecuted.

NH: The NH PUC ruled recently that Verizon is no longer required to offer UNE-P to competitive carriers. The PUC also has allowed Verizon to limit offering DS1s, DS3s and dedicated hi-cap transport facilities to New Hampshire CLECs. Verizon, however, must negotiate transition plans for companies who have been relying on UNE-P. In another Verizon/New Hampshire story, the state's Supreme Court unanimously upheld a 2004 PUC ruling that Verizon is required to continue donating \$23.3 million per year in directory advertising income from its Verizon Communications Yellow Pages affiliate. In 2001 Verizon stopped reporting income from Yellow Pages operations after it transferred its directory advertising operations to a separate unregulated business unit. However, in September of 2002, the PUC started an investigation that led to an Order in July of 2004 requiring Verizon to continue to contribute. Verizon's appeal of this Order to the New Hampshire Supreme Court failed.

NY: A new bill would require wireless companies to give residents of apartment buildings 30 days' notice before installing wireless communications antennas or towers. Under the bill (HB-9241), providers must send a letter to occupants of each apartment that includes specific information about the installation, including the amount of radio frequency radiation the facility would emit. The bill is in the Assembly's Standing Committee on Cities.

OH: The Ohio PUC has approved SBC's name change to AT&T. Unlike many states, the Ohio PUC conditioned merger approval on the company receiving approval for any name change before it could be used in the state. With the PUC's blessing now given, the company formerly known as SBC may freely use the AT&T brand name and logo.

RI: The PUC says that the state is now competitive enough that basic residential service rates need not be regulated. Verizon had petitioned the PUC for rate deregulation, and Chairman Elia Germani cited in support of the grant that 35% of R.I. residential lines are now served by competitive carriers. In addition, the Commission granted Verizon's request to decrease its Lifeline subsidy by \$2 per month to mirror that of competitors.

TX: On February 8th the PUC will seek to develop new rules to determine which small local telecom markets in the state are competitive enough to allow rate deregulation. A 2005 state law will deregulate rates in markets with population under 30,000 next year except for markets where the PUC determines local competition is insufficient for deregulation. The PUC is looking at the matter in Case 32169.

VT: The Public Service Board has approved the sale of Adelphia Communications to Comcast and a subsidiary of Time Warner. Adelphia had filed under Chapter 11 over two years ago. As a condition of their approval, the Board required Comcast to build over 1500 miles of line extensions to more rural areas of the state.

WY: A newly introduced House bill (HB-44) would require companies experiencing a computer security breach in which customers' personal data was at issue to immediately notify customers who may have been affected. The bill also would provide for security freezes on consumer credit reports and stronger restrictions on access to credit reports.

GOVERNOR SCHWARZENEGGER SELECTS RACHELLE CHONG AS NEW PUC COMMISSIONER



Rachelle Chong

Governor Arnold Schwarzenegger has selected Rachelle Chong as his choice to be the next Commissioner at the California Public Utilities Commission ("CPUC"). Chong, a Republican, replaces the vacancy left by Susan Kennedy, who will become the Governor's chief of staff.

Chong most notably served as an FCC commissioner from 1994 to 1997. Her vast and varied experience also includes work as a mediator, arbitrator and expert witness, general counsel and vice president of government affairs for BroadBand Office, Inc., a partner at a major D.C. telecommunications law firm, and president of Carina Jewelry, Inc. "I am honored Governor Schwarzenegger has asked me to bring the knowledge and understanding of telecommunications policy I gained as a member of the Federal Communications Commission back to

serve in my home state of California," said Chong. "I look forward to working with my fellow commissioners to continue to build upon their record of moving technology forward to bring down prices and create more jobs in California's high-tech industries." Chong is 46 and is a resident of San Francisco. She is expected to assume this position today, January 11, 2006.

Industry News

Telecommunications Industry News and Notes

QWEST SUES MCI FOR \$10M IN ACCESS CHARGES

Qwest Communications has sued MCI for at least \$10 million in access charges. The company alleges MCI used its local network facilities to complete long-distance phone

calls, and did not pay. The lawsuit filed in federal court in Denver claims that the signaling information on many calls placed by MCI customers was altered by someone to make it appear that the calls

were local rather than long distance. MCI insists the lawsuit is, "completely devoid of specific factual allegations and therefore impossible to formulate a substantive response."

COMCAST SEES 2006 AS "ITS YEAR" FOR DIGITAL VOICE SERVICES

According to Comcast CEO Brian Roberts, the company expects to add over 1 million new voice customers over the next year. According to Roberts, who spoke at a Citigroup investor conference in early January, Comcast is currently able to market its digital voice service to over 16 million

homes. Comcast plans to make a huge marketing push to reach their goal, but plans to focus mainly on residential, rather than business customers. Comcast says it currently has a little over 1 million voice customers, but most of these are not yet receiving digital service.

CINGULAR GOES AFTER "DATA BROKERS"

Cingular Wireless is confronting companies who have been selling private customer phone records. The "Data Brokers" who offer this service, provide data regarding actual numbers dialed, to anyone who asks (and pays). Cingular obtained a temporary restraining order against Locatecell.com and other brokers that offer private cellphone records for a flat fee. Cingular believes these companies approach or call Cingular customer service reps. and pose as cellphone customers, or even Cingular employees, to obtain the confidential information. The federal court in Atlanta's restraining order makes it a violation to possess any confidential customer information obtained from Cingular, regardless of the form or manner of storage. The order also bars companies from "disposing" of such customer information to any other outlet than Cingular. Back in November, Verizon Wireless filed a lawsuit against a Florida company for the same type of activity.

LATE BREAKING:

FCC REQUIRES ALL CARRIERS TO FILE CPNI REPORTS BY NOVEMBER 6

The FCC's Enforcement Bureau issued a public notice on January 30th requiring all carriers to file compliance reports regarding the acquisition and safekeeping of customer proprietary information. For further information, please review the public notice at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-223A1.pdf. If you need assistance in filing, please contact Andrew.

INDUSTRY BRIEFS:

Ray Beckerman, a lawyer that's been involved in several cases with the Recording Industry Association of America ("RIAA") is reporting that the group has argued in one of his cases that simply "making files available for distribution" violates copyright laws. This means that regardless of the legality of a file somebody has on their computer, just putting it in a shared files folder than can be accessed by other people is illegal. [Story from Techdirt.com]



Ray Beckerman — An attorney fighting against the RIAA

Nevada Court Rules Google Cache is Fair Use — A federal district court in Nevada has ruled that Google does not violate copyright law when it copies websites, stores the copies, and transmits them to Internet users as part of its Google Cache feature. The ruling clarifies the legal status of several common search engine practices and could influence future court cases, including the lawsuits brought by book publishers against the Google Library Project. The Electronic Frontier Foundation ("EFF") was not involved in the case but applauds last week's ruling for clarifying that fair use covers new digital uses of copyrighted materials. [Story from Electronic Frontier Foundation: www.eff.org]

February 2005

THIS MONTH'S FILING DEADLINES AND OTHER DATES TO REMEMBER:

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	Jan. 30: Fla. Annual Regulatory Assessment Fee Due		1 FCC Forms 499- Q and 502 Due	2	3	4
5	6 FCC CPNI filing due	7	8	9	10	11
12	13	14	15	16	17	18
19 FCC deadline to act on Veri- zon Forbear- ance Pet.	20	21	22	23	24	25
26	27	28 FCC SA Form Due (SA-1-2 or SA-3)				

- **1/30: Florida providers** must pay a **minimum annual Regulatory Assessment Fee** of \$50 if their Cert. was active during any portion of the previous calendar year.
- **2/1: FCC Form 499-Q:** Telecommunications Reporting Worksheet must be provided by all telecommunications providers whose annual contribution to the federal universal service support mechanism is expected to exceed \$10,000 for the year. www.universalservice.org/forms
- **2/1: FCC Form 502:** Numbering Resource Utilization/Forecast must be filed by carriers that receive numbering resources both from the numbering or pooling administrator and from another carrier, or that are rural carriers in some but not all areas. For more info. see www.nanpa.com, for forms and instructions see www.fcc.gov/formpage.html
- **2/6: FCC CPNI filing due**
- **2/19:** FCC deadline to act on Verizon Petition for Forbearance on Title II and Computer Inquiry requirements on broadband.
- **2/28: FCC Statement of Account Form, SA 1-2:** Required to be submitted to the U.S. Copyright Office semiannually by operators of cable systems and wireless cable systems (those with semiannual gross revenues under \$379,600 are required to file the SA 1-2 – Short Form, and operators with revenues equal to or above this amount are required to file the SA 3 – Long Form). For forms and instructions see www.loc.gov/copyright/forms

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