

FCC delays spectrum rules; Dish loses discount

Netflix and Life After TV surge, as judges and regulators contemplate video regs

BRET SWANSON > July 17, 2015

The Federal Communications Commission delayed publication of rules for the 600 MHz incentive spectrum auction until August 6. T-Mobile (TMUS) has been seeking a larger set-aside — to 40 MHz from 30 MHz — for carriers not named Verizon (VZ) or AT&T (T). But Commissioner Rosenworcel signaled last month that she didn't favor upping the set-aside, and it's unlikely the full Commission will do so at the meeting early next month.

This is especially true because the Commission, [reportedly](#), is disallowing the discounts that several Dish Network (DISH) affiliates thought they enjoyed in last winter's AWS-3 spectrum auction. According to *The Wall Street Journal*, the two holding companies who bid as favored "designated entities," but who closely coordinated auction strategy with Dish, won't get the \$3.3 billion in discounts they expected.

Questions: If the *Journal* story proves correct, will the Dish pay the extra \$3.3 billion to retain the licenses? Or will they default, in which case the licenses will be re-auctioned? How will a loss of spectrum — or additional payments — affect Dish's dealings with potential suitors or spectrum buyers? Also, how much did the Dish strategy inflate AWS-3 spectrum prices, and what does it mean for 600 MHz auction prices?

We think Dish will pay the \$3.3 billion (or whatever the FCC demands when we see its order) and possibly sue the government to recoup: Dish maintains it followed the auction rules.

The coordinated bidding likely boosted prices, and TV broadcasters may thus have to marginally reduce their expectations for

the incentive auction. We believe, however, that demand for spectrum was and is strong regardless of the bids by team-Dish and that prices won't drop precipitously. Chairman Wheeler said he is targeting the first quarter of 2016 to hold the incentive auction.

At yesterday's meeting, the FCC did announce new rules, ostensibly to discourage similar gaming of the designated entity (DE) program in the future. Commissioners Pai and O'Reilly, however, dissented, saying the reforms, which will allow DEs to lease 100% of their spectrum to large firms, wouldn't reduce bad behavior or fulfill the supposed goal of the program — helping small firms gain access to spectrum.

Netflix Rides Unbundling Wave

Netflix (NFLX) is riding the wave of international expansion to all-time highs and a market cap of around \$47 billion. The firm is also enjoying the fruits of favor in Washington, as the Open Internet Order and merger reviews are helping Netflix negotiate interconnection agreements with broadband firms, most recently Charter (CHTR). The new interconnection agreements will save the Netflix some money (in the tens of millions of dollars), but the larger import is a general wave of policy support, providing a backstop as Netflix negotiates with Hollywood and tries to disrupt the pay-TV world in various ways.

As we anticipated, the Open Internet Order is providing near term support for Netflix (and other Web firms), but we expect the effects to fade over the next few years as the Order is either (a) affirmed by the courts and degrades the overall vibrancy of the ecosystem; or (b) is overturned, returning policy to pre-OIO status.

On Thursday, however, a federal judge surprised the market with a [ruling](#) that may hurt traditional content owners and distributors (and help Web outlets) in another way. As we wrote in the [“Unbundling Triple Threat,”](#) Washington is trying to unbundle pay-TV and broadband providers in at least three ways — by (1) controlling last-mile broadband practices and prices, (2) mandating or supervising interconnection agreements, and (3) possibly re-defining multiple video programming distributors (MVPDs) and changing the rules of compulsory licensing.

The first two threats are broadly in the “net neutrality” bucket. The third “threat” comes in the form of content unbundling. First, through possible new FCC rules concerning MVPDs. And now Ninth Circuit District Judge George Wu says FilmOn, and other over-the-top video providers, should have the same access to programming as cable TV firms through compulsory licensing. The judge acknowledged the case is complicated and close (and in conflict with a similar decision from the Second Circuit) and thus kicked it upstairs for immediate review by the Ninth Circuit Appeals Court.

There is no immediate effect. But for now the unbundling wave is moving forward on all three fronts. [EE](#)