

case alive, if dormant." The "underlying facts" don't change, Schwartzman said. "There is no indication the Department of Justice will want to settle and it is unlikely that AT&T will be able to come up with a new framework which will address the concerns that were expressed by the FCC staff," he said.

The stay is most likely a "cease fire before the formal surrender," said Public Knowledge Legal Director Harold Feld. "It is difficult to see any path forward for AT&T/T-Mobile at this point," Feld said. "If there were a settlement offer of some kind that was even close to feasible, the parties would have trotted it out as reason to go forward. The hearing Friday demonstrated that Judge Huvelle is extremely conscious of AT&T's effort to short circuit the FCC's review and has no sympathy for such a ploy. ... AT&T is more likely to use the time to unwind the deal than to evaluate options for moving forward." Free Press Research Director Derek Turner said: "The court was rightly skeptical about AT&T's procedural games, and now it appears that AT&T is finally beginning to see the obvious — this deal is dead, and nothing can save it."

Meanwhile, filings on the economic model underpinning the deal were due at the California Public Utilities Commission Monday. Replies are due Dec. 20. Sprint said the deal would result in substantial competitive harm, higher prices, the ability for AT&T to raise competitors' costs, harm to innovation, "unprecedented spectrum aggregation" and job losses. The California commission was notified by AT&T regarding the withdrawal of application at the FCC. The comments were originally due in September. A CPUC administrative law judge had suspended the review process (CPUC Investigation Docket 11-06-009) pending a federal lawsuit.

The Communication Workers of America said the merger would create up to 96,000 new jobs based on AT&T's commitment to spend an additional \$8 billion over seven years on wireless infrastructure. T-Mobile employees would be better off working for a "financially healthy, growing AT&T" than a "stand-alone T-Mobile that has no path" to 4G wireless, the union said. With next-generation technology, T-Mobile will be a "weakened competitor," putting pressure on the company to reduce labor costs and capital spending, it said. CWA urged the California commission to propose to the FCC all of AT&T's commitments on jobs and LTE build-out as conditions for approval with associated timetables, speed and quality benchmarks, reporting requirements, and penalties for non-compliance.

Concerns from the California independent telephone association, CALTEL, focused on AT&T's domination of the special access market. A review of the data offered by AT&T and T-Mobile shows that AT&T is leveraging its control over special access in California to gain control over the market for emerging alternatives like Ethernet services. The group also claimed that AT&T violated federal regulations by failing to make certain special access terms it offered T-Mobile available to other carriers. — *Howard Buskirk, Yu-Ting Wang*

### Clyburn, Copps Concerned

## **AT&T Faces 700 MHz Interoperability Mandate as Part of Qualcomm Deal**

AT&T could have to accept a mandate the company has long sought to avoid if it wants to win quick approval from the FCC of its proposed buy of 700 MHz spectrum from Qualcomm. Two members of the FCC, Mignon Clyburn and Michael Copps, are both asking whether the purchase should be conditioned on AT&T's agreement to abide by a 700 MHz interoperability requirement, agency and industry officials said Monday.

FCC Chairman Julius Genachowski voted to approve the sale without the interoperability provision, but it needs the votes of at least two other commissioners for the order to be approved under the current four-member commission (CD Dec 5 p1). The timing of a vote could prove tricky for AT&T, agency officials said. Cops is leaving the commission no later than Jan. 1 and questions remain about when nominees Jessica Rosenworcel and Ajit Pai will join the commission and how they would vote on various pending orders.

Small carriers who purchased 700 MHz A-block licenses have asked the FCC to impose a requirement that handsets operate across the lower 700 MHz band. The carriers have long maintained that without an interoperability requirement they will have difficulty buying handsets at reasonable prices (CD Oct 8/10 p1).

AT&T reported on a meeting between company officials and Clyburn aide Louis Peraertz in an ex parte letter published by the FCC Monday (<http://xrl.us/bmktbm>). The company argued that the mandate would be expensive to abide by and would do no good if the FCC doesn't also address interference issues posed by TV stations on Channel 51 and remaining Lower E-block licensees.

"We explained, as an initial matter, that because we are not purchasing 700 MHz A block licenses in this transaction, such a demand is not specific to this merger and inappropriate," the filing said. "We also explained that interoperability is achievable through the use of multi-mode, multi-band chipsets, like those currently being developed by Qualcomm, that will support many frequency bands to accommodate unique carrier needs." The requirement would also "significantly delay and increase the cost of our LTE deployment and also degrade service quality," AT&T said.

C-Spire CEO Hu Meena, chairman of the Rural Cellular Association, and other advocates of an interoperability requirement, met with Genachowski Friday, said Ben Moncrief, C Spire spokesman. Genachowski was "receptive and is clearly focused on the issue," Moncrief said in an interview. "We are continuing to work with really all the offices on the eighth floor, including the chairman's office, to address ... interference concerns that have previously been raised. We feel like we have addressed those rather conclusively in the record."

Imposing the condition sought by smaller carriers "will reconsolidate the lower 700 MHz band class and that will unleash not just the fallow D- and E-block spectrum, but also the A-block spectrum, which has not had access to equipment and has not been able to deploy because of this band class issue," said Michele Farquhar, attorney for Vulcan Wireless. Farquhar, former chief of the Wireless Bureau, noted that carriers other than Verizon Wireless spent more than \$1 billion on A-block spectrum. "That's been stranded ever since the 2008 700 MHz auction," she said. — *Howard Buskirk*

'An Outrage'

## **LightSquared Asks Government to Set Record Straight on Test Results, Punish Leaker**

LightSquared complained bitterly Monday about what it called a distorted leak from government interference tests of the company's planned wholesale wireless network. "This came from someone inside the government process, and it is an outrage," Martin Harriman, the company's executive vice president