

THE LOKT NEWSLETTER

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NOVEMBER & DECEMBER 2005

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The Federal Pages

News and Updates in Federal Telecommunications Law

FCC News

FCC CLARIFIES E911 DEADLINE REQUIREMENTS FOR VOIP; CONGRESS MAY STEP IN

Although it is now clear that the FCC was serious about its November 28 deadline for VoIP E911 compliance will be extended, the commission at least allowed VoIP providers to continue serving existing customers. Providers are not allowed to market and accept new customers in areas where they are not connecting 911 calls with the person's location and phone number. Many providers were concerned that the FCC rules adopted in May would require them to suspend service for subscribers who cannot receive enhanced 911 service by the deadline. The FCC adopted several E911 rules for VoIP back in May, including requiring 911 calls be routed to live dispatchers and the caller's



Chris Murray – Vonage's VP for Government Affairs

location and number be identified. The move followed instances in which customers had trouble reaching help when they dialed 911 during an emergency. As the deadline loomed, a group of VoIP providers made one last attempt to have it extended by seeking an injunction at the U.S. Court of Appeals for the D.C. Circuit to stay the November 28 date pending their challenge. The injunction was denied, but the case will be heard in the spring. "Our concern is that this marketing restriction will slow down our deployment of E911 because it gives clear incentives to some of our

competitors, who control access to the 911 systems, to delay every way possible," said Chris Murray, vice president for government affairs for Vonage, the largest U.S. VOIP provider. Meanwhile, the Senate Commerce Committee has approved a bill that would allow VoIP providers to go through a waiver process, however, it has not yet been voted on by the full Senate. There is a companion bill in the House as well, but that has not even been voted on in its Commerce Committee yet. Prior to the holiday recess, members of the House and Senate Commerce Committees separately sent letters to FCC Chairman Martin requesting an extension given the fact that legislation was in process. Thus far, Martin has made no statements indicating any desire to ease the E911 rules for VoIP providers.

FCC INCLUDES DIGITAL MEDIA TECHNOLOGIES TO EMERGENCY ALERT SYSTEM RULES

The FCC released a First Report and Order addressing the issue of users of digital broadcast and subscription television and radio services' access to emergency alert and warning information (FCC 05-191). The Order expands the Commission's current Emergency Alert System ("EAS") rules to include providers of digital broadcast and cable TV, digital audio broadcasting, satellite radio, and direct broadcast satellite services. With the exception of Direct Broadcast Satellite ("DBS") service, all affected entities have been required to comply with these new requirements by December 31, 2006. DBS services must comply no later than May 31, 2007. The Commission also adopted a FNPRM seeking comment on how to best help develop a next-generation alert and warning system that takes full advantage of digital media's potential. Specifically, the Commission seeks comment on the type of system architecture and common protocols that would be required in such a system. The Commission has also sought input on how specific technologies, particularly wireless, could be integrated into a next generation alert and warning system, and whether traditional telephone companies that plan to provide high definition digital content to customers' homes through fiber optic connections should have public alert and warning responsibilities.

TATE NOMINATED TO BE NEXT NEW FCC COMMISSIONER; COPPS RE-NOMINATED

President Bush announced in November his nomination of Deborah Taylor Tate and re-nomination of Michael Copps to serve as FCC Commissioners, and both have been confirmed. Tate will fill the vacancy left by the departure of Chairman Michael Powell. Tate is Director of the Tennessee Regulatory Authority, and will serve only for the remainder of Powell's term. A Republican, she would temporarily balance out the party makeup of the Commissioners, as (Chairman Kevin Martin is a Republican, while Copps and Adelstein are Democrats). With one more spot left to fill, however, Bush will certainly nominate a third Republican to the post. If confirmed, Tate and Copps face a complex set of issues at the FCC. While Congress debates a sweeping overhaul of the nation's Telecommunications laws,



Deborah Taylor Tate
FCC Commissioner Nominee

the FCC must enforce and interpret current law. The Internet issues the FCC must deal with -- until Congress says otherwise -- include emergency calling services and wiretap availability offered by Voice over IP companies and digital TV transition. "The telecommunications landscape is undergoing unprecedented changes. Indeed, we are all witnessing a new world -- a new digital age," Tate said. "Some liken it to the industrial revolution [or] the printing press, major innovations which shaped and changed our world forever." Copps, arguably the most pro-competition commissioner, will serve for another full five-year term.

FCC COMMENT DATES SET IN SEVERAL DOCKETS

"IP ACCESS CHARGES": DA 05-2514; WC Docket No. 05-276 -- On September 21, 2005, the SBC incumbent local exchange carriers ("SBC") filed a petition for declaratory ruling that wholesale transmission providers using Internet protocol ("IP") technology to transport long distance calls are liable for access charges. SBC filed its petition after the United States District Court for the Eastern District of Missouri dismissed without prejudice SBC's claims seeking payment of access charges for long distance calls that were transported using IP technology. The court found it appropriate to defer the issues raised by SBC to the primary jurisdiction of the FCC. In its petition, SBC seeks a declaratory ruling that wholesale transmission providers using IP technology to carry long distance calls that originate and terminate on the public switched telephone network ("PSTN") are liable for access charges under section 69.5 of the Commission's rules and applicable tariffs. SBC seeks a ruling that providers meeting these criteria are interexchange carriers. Comments in this matter are due November 10, 2005, and reply Comments are due December 12, 2005.

"BROADBAND CONSUMER PROTECTION": DA 05-2725; WC DOCKET NO. 05-271 -- On September 23, 2005, the FCC released an NPRM seeking comment on the need for any non-economic regulatory requirements necessary to ensure that consumer protection needs are met by all providers of broadband Internet access service, regardless of the underlying technology. A summary of the NPRM was published in the Federal Register on October 17, 2005, triggering the cycle for comments and reply comments. Comments are due on January 17, 2006, Reply Comments are due on March 1, 2006.

CONGRESSIONAL NEWS

Senate Sets Hearings for Telecom Law Overhaul

The Senate Commerce Committee has announced a series of hearings on the following topics as part of its investigation into reforming telecom legislation:

January 26th— Competition and Convergence

January 31— Video Franchising; Video Content at 2:30

February 7th— Net Neutrality

February 14— State and Local Issues and Municipal Networks

February 15— FCC Activities and Policy (that one should be entertaining)

February 28— USF Contributions at 10:00; USF Distributions at 2:30

March 2— Wireless Issues/Spectrum Reform

March 7— Rural Telecommunications

March 14— VoIP; Wall Street Telecom Perspective 2:30

All hearings begin at 10:00EST and will be webcast live. Go to <http://commerce.senate.gov/> for more info.

FBI USE OF “NATIONAL SECURITY LETTERS” UP 10,000% SINCE INCEPTION OF PATRIOT ACT

In the wake of September 11, legislators were scrambling to beef-up national security while many were already concerned about the privacy issues that would arise from any such laws. In the end, the U.S. Patriot Act was passed, and it appears that those worried about the privacy implications may have been warranted. The Act allows, among other things, the FBI to secretly review customer records of suspected foreign

agents. Via the executive branch’s guidelines for the use of these letters demanding review, the FBI now has the authority, or at least has asserted the authority, to issue letters in all sorts of circumstances. In fact, it is estimated that the FBI now issues more than 30,000 national security letters a year; 100 times more than before the Act.

Privacy advocates are par-

ticularly concerned with these letters because they need not be run by a prosecutor, grand jury or judge before being issued. Neither the Department of Justice nor Congress review these letters after they are issued.



House Judiciary chairman James Sensenbrenner (R-Wisconsin); one of the sponsors of the Patriot Act

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:

Alaska: Attorney General David Marquez warned consumers recently of a new identity-theft telephone scam. It appears that these scammers are actually calling individuals, claiming to be court officials, and saying the person failed to report for jury duty and will be arrested. Of course, the caller says the situation can be rectified if the victim provides their Social Security and bank account numbers. When and if the victim resists, the caller warns that failure to cooperate means an immediate arrest warrant.



Alaska Attorney General
David W. Marquez

Also in Alaska, the state Regulatory Commission approved the Verizon/MCI merger with one condition: the companies will be bound by regulatory obligations despite their subsidiary structure. In other words, the merged entity will not be allowed to do such things as set individual rate schedules for their MCI or Verizon long distance units to avoid statewide rate averaging requirements for long distance services, or use subsidiaries to avoid reporting traffic minutes from prepaid calling cards (which are subject to intrastate access charges).

Arizona: The Corporation Commission approved the SBC/AT&T merger, but with significant conditions. Under the conditions, the Commission will maintain authority to arbitrate residential customers' wireless and VoIP billing and service disputes (this does not include SBC's Cingular Wireless affiliate). Other requirements imposed by the Commission include that the merged entity give 60 days' advance notice of any merger-related layoffs or facility closings in Arizona, and a report within 60 days after the layoff or closing that describes why the action was needed and what benefits accrued to the companies. The CC has also just approved the Verizon/MCI Merger, by a 3-2 vote. The Commission placed 4 conditions on the merger, requiring that: 1) wireless, VoIP and wireline consumer complaints involving incorrect billing, unauthorized charges or unauthorized service changes be arbitrated; 2) wireline basic service rates will be capped for 5 years at present levels; 3) 60 days' notice be given to the CC of any merger-related layoffs or facility closings; 4) annual reports be filed for 5 years on cost savings and consumer benefits from the merger.

California: The California Public Utilities Commission has approved the two mega mergers between SBC/AT&T and Verizon/MCI. The most significant condition of the approval is that both companies are required to offer stand-alone or "naked" DSL broadband service, so that customers may purchase DSL without also buying their traditional telephone service.

Also, PUC Commissioner Susan Kennedy has been chosen by Governor Arnold Schwarzenegger to be his next chief of staff. Kennedy, will begin her new job on January 1st. There is no word on who will replace Kennedy at the PUC. Although a Democrat, Kennedy's tenure at the PUC has been marked by pushes toward deregulation and rulings/actions in favor of large corporations.

Florida: Verizon Wireless is suing some Florida private investigators, and has already obtained a temporary restraining order, to stop them from obtaining confidential customer information. The action was filed in Hillsborough County Circuit Court in Florida, against Global Information Group, who Verizon alleges made thousands of attempts to obtain this information without proper authorization.

Illinois: SBC is asking the Illinois Commerce Commission to declare that residential service is now "competitive" in the Chicago area. Under current regulations, SBC is restrained by price caps, based on the Commission's conclusion that these services are not competitive. SBC claims it has lost 1.7 million lines in the state since 2001, partly due to the boom in wireless use, broadband and LEC competition.

Iowa: Residents of 32 Iowa towns recently voted on ballot questions addressing municipal broadband, with 17 approving, and 15 rejecting them. These measures were hotly contested across the state, with major opposition (almost \$1.5 million was spent) by Qwest and other groups. For those states in which the measures were approved, residents must also vote to approve financing. For those where voters rejected the plan, the issue cannot be reintroduced for at least 4 years.

The Iowa Utilities Board (Case INU-05-2) also has deregulated retail rates for single-line residential and business services in 20 exchanges belonging to 3 ILECs, including Frontier and Qwest. The Board determined that sufficient competition existed in these exchanges to cease regulating rates there.

Kansas: The proposed interconnection agreement between Sprint and CLEC "Local Phone Services" was rejected by the Corporation Commission (Case 06-UTDT-142-IAT) due to Local's history of state laws violations. The CLEC had been the subject of numerous complaints for failing to pay USF assessments, billing violations, Lifeline violations, offering untariffed as well as unauthorized services.

Kentucky: An Iowa appeals court said that telcos may condemn private property for expansion of their facilities, without the consent of the owner. Sprint wanted to use the "eminent domain" authority of the Constitution to acquire a building to expand a switching facility. While ruling against Sprint in this case, the court said that such actions would have been Constitutional if Sprint had condemned only the original building and grounds rather than the entire property.

Louisiana: Judge Bradford Ware of the 15th Judicial Dist. Court in Louisiana dismissed a suit filed by Lafayette residents challenging the use of a municipal bond to pay for the city's broadband fiber project. The group alleges that the allocation of this bond for such a project violates a law that prohibits multiple hearings of the same objections to municipal bond ordinances. A judge had already dismissed virtually the same suit by BellSouth.

Maine: Verizon's request for an injunction to keep the PUC from regulating certain TRRO-affected UNEs has been rejected by a federal court in Maine. Verizon argued that, because the FCC deregulated such UNEs, the Maine PUC could not enforce its orders regulating their rates. The judge said there was nothing in the Telecom Act or FCC policies that prohibits states from setting "just and reasonable" UNE rates, even if the FCC deregulated the rates.

STATE BRIEFS (CONTINUED)

Minnesota: Attorneys for the FCC recently appeared before the 8th U.S. Appeals Court, St. Louis to defend the FCC's decision to preempt the Minnesota PUC's regulation of Vonage's VoIP service. The FCC argued that the PUC's regulation of the service as a telephone service conflicts with federal deregulatory policies. The FCC believes that because VoIP is interstate by its nature, state utility commissions do not have the authority to regulate it.



Gov. Jennifer Granholm at the Michigan's annual Tulip Time parade (Sentinel/Brian Forde)

Michigan: A bill has been passed in Michigan's legislature that will deregulate rates for all retail telecommunications services other than residential dial tone (with a 100-call monthly allowance). The bill (HB-5237) also sets a cap on UNE rates and retains PSC jurisdiction over local interconnection through 2008. It has been sent to Gov. Jennifer Granholm (D), and if signed, will go into effect. Also in Michigan, the state Court of Appeals denied SBC's challenge to a last year's PSC ruling restructuring the arbitration and mediation process. The court stated that SBC did not have standing to bring the case, which was without merit anyway, but that SBC could appeal specific arbitration decisions if it can show how applying the revised procedures caused it harm.

Mississippi: An investigation is set to begin by the PSC looking into BellSouth's handling of the devastation of Hurricane Katrina. Approximately 600,000 lines in Mississippi were hit by Katrina, and the Commission is particularly concerned that it took 10 weeks for the company to restore phone service to many areas, while electric and cable companies only took 4 weeks. Commission officials said SBC told the PSC these lines would be up and running by October 31.

New Jersey: The Board of Public Utilities approved the Verizon/MCI merger, with 3 conditions: 1) the merged companies must cap UNE rates at current levels for 2 years; 2) they must cap rates for existing customers of MCI's DS-1 and DS-3 private line services at present levels for 30 months; and 3) they must provide naked retail DSL service for at least 2 years.

Also in New Jersey, a law has been proposed that would phase out municipal franchising. Companies like Verizon are set to fight the legislation, the text of which hasn't been made public yet. They are particularly concerned with their ability to enter the market for selling video and other services that compete with cable operators.

New York: Due to the inability of new telcos to adhere to post-certification requirements, the PSC has changed its application rules (Case 05-C-0730). The amended rules require applicants to file tariffs and infrastructure data with the application, rather than subsequent to approval.

The PSC also wants comments on whether consumers need more education on the national Telecom Service Priority Program ("TSP"). The TSP is an emergency system aimed to make sure that emergency workers and military entities get priority for restoration and installation of communications. Comments are due by December 12.

Ohio: The Ohio PUC (Case 05-1303-TP- ORD) is also seeking comment (by December 2) on its staff's proposals for a generic price-based regulation framework for small ILECs. A new state law requires the Commission to adopt generic price regulation rules for small ILECs by March.

Also, the telco formerly known as SBC (now AT&T) along with CLECs XO and NuVox asked the PUC to reconsider a Nov. 9 order that resolved dozens of disputes over changes to interconnection agreements to conform to the FCC's various Triennial Review Orders. AT&T (Case 05-887-TP-UNC) asked the Commission not to allow CLECs to continue paying discounted rates for embedded high-capacity UNE facilities through the end of the applicable FCC transition periods, even if CLECs agree to alternative arrangements at market-based prices before the transition period is up. FCC rules establish transition periods up to 18 months for embedded high capacity digital loops, transport and dark fiber when cost-based unbundling is no longer required in a wire center due to adequate wholesale competition.

The PUC has also placed its stamp of approval on the SBC/AT&T merger, placing 3 conditions on it. SBC/AT&T must leave intrastate special access rates at their current levels for existing large business customers, offer naked DSL for at least the next 2 years, and cap UNE rates at their current levels for the next 2 years.

Pennsylvania: The PUC has approved the Verizon/MCI merger, adopting FCC and U.S. DOJ's conditions as their own. The approval came as the result of a 4-1 vote.

Texas: Under a new deregulation law in the state, retail rates in markets with 30,000-100,000 lines will be set for deregulation when the ball drops on this New Year's (except in markets where competition is found to be lacking). The PUC has planned a conference this week to set the procedural details in the matter, in which they will have to determine where true competition exists pursuant to the law.

Vermont: The Public Service Board is set to consider rules that would eliminate CLEC tariffs to be approved, and set consumer protection standards for all landline telecom providers. Under the proposed rules, CLECs would still be required to provide adequate and timely notices and information about services, changes, account status and disconnection actions; ensure unbiased and reasonable access to services; refrain from unfair and deceptive trade practices; establish minimum standards for disconnection; ensure bills are accurate and payments properly credited; and resolve disputes and complaints promptly.

West Virginia: The only state this month to unanimously approve the Verizon/MCI merger, West Virginia also did not impose any conditions on the companies. In response to concerns that the new mega-company would hurt competition in the industry, the PSC said if such conduct or effects are found, the Commission will deal with those issues as they arise, on a case by case basis.

ILLINOIS COMMERCE COMMISSION RAISES INTEREST RATE ON DEPOSITS

On December 13, the Illinois Commerce Commission adopted rules setting the interest rate that telcos must pay on customer deposits at 4.5%. This rate is based on the average one-year yield on U.S. Treasury securities for the last full week in November (4.3%), rounded to the nearest 0.5%.

The rules provide that the Commission will calculate the rate of interest to be paid on customer deposits from January 1, 2006 through and including December 31, 2006. The Commission takes administrative notice that the Federal Reserve Board has announced that the average one-year yield on U.S. Treasury securities for the last full week of Novem-

ber was 4.30 percent. Rounded to the nearest one-half percent the rate would be 4.5 percent. This rate must be paid from January 1, 2006 through and including December 31, 2006.

Industry News

Telecommunications Industry News and Notes

KATRINA 911 BREAKDOWN COMES TO LIGHT

Among the many tragedies and lessons that came out of Hurricane Katrina, it seems that the 911 emergency system's utter failure was one of the largest. Now, in the wake of the hurricane, many are trying to figure out a way to maintain the integrity of the 911 systems across the country so that they work when most needed. In Louisiana, the 911 system didn't really "work" because, like the rest of the people in the

affected area, 911 dispatchers were forced to evacuate their posts as floods were poised to wash them out. This problem compounded in proportion to the phone calls. While 467 emergency calls were received by the Louisiana Police on the first day of the hurricane, the number rose to 1,875 and then 3,108 on the next two days. Calls from New Orleans were being routed 70 miles north to Baton Rouge, where emergency personnel could not handle the volume. Perhaps bracing for such a

disaster, or still reacting to concerns of terrorism, Congress passed the Enhance 911 Act last year, which allocated \$1.2 billion over five years to upgrade emergency systems and create a federal agency to coordinate 911. Unfortunately for the residence of the Gulf coast, the money had still not been appropriated by the time Katrina hit. There is still no indication that these funds have been put to use.

EXPECTATIONS FOR TELECOM INDUSTRY IN 2006 SKY HIGH

According to a recent report by Insight Research, telecom industry revenue worldwide will reach \$1.2 trillion by the end of 2006. The report predicts the most important factor in this growth will be the continued explosion of wireless, which is expected to almost have of the industry's revenue by the end of next year. Right now, close to 2 billion subscribers worldwide will be depending on mobile

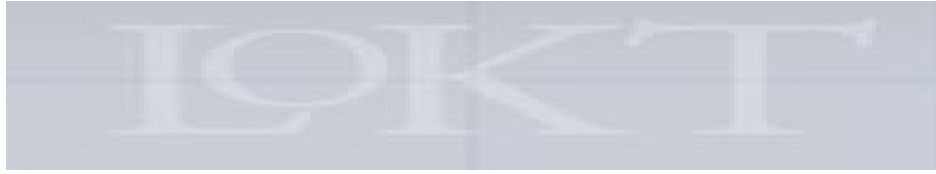
wireless telephones. The firm's report, "The 2006 Telecom Industry Review: An Anthology of Market Facts and Forecasts," also predicts that worldwide telecom revenue will grow from \$1.2 trillion in 2006 to almost \$1.6 trillion in 2010. The report also cites VoIP, WiFi and other fast-growing technologies as factors in this growth. An excerpt from the report are at available at: www.insight-corp.com/reports/review06.asp.

"BIG" DEAL: BROADBAND IN GAS IS THIS MONTH'S WAVE OF THE FUTURE

In the quest for new and increasingly odd ways to transport broadband service, the latest hype surrounds Broadband-in-Gas ("BiG"). West Technology Solutions ("WTS") recently issued a report singing the praises of this delivery tool, pronouncing that by 2010, 18 million households will receive all their communications needs over natural gas pipelines. According to the report, these pipes are capable of delivering twice the bandwidth of DSL for the same cost. Critics say the hype is undue, especially because gas lines are much more spread out than even power lines, which, despite similar initial hype, have been slow to be deployed with broadband. Proponents argue that the relatively low cost of BiG compared to broadband over power lines ("BPL") will be the difference that will lead to such fast and widespread use.



If WTS is right, natural gas pipes like these will carry broadband technology to millions of Americans in the not-too distant future.



Thanks for a great 2005 and all
the best wishes for a healthy and
prosperous 2006.

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