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RICA Report is published semi-monthly by RICA, exclusively for RICA's CLEC members. With 80+ carrier members, RICA is the premier trade association representing the independent rural competitive local exchange carrier industry. *RICA Report* concisely captures regulatory and legal news, commentary, and insight relevant to rural CLECs.

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VERIZON PETITION FOR FOREBEARANCE FROM COMMON CARRIER AND COMPUTER II RULES FOR BROADBAND SERVICES “DEEMED GRANTED” AFTER FCC TAKES NO ACTION

The FCC announced Monday that a December, 2004 Petition by Verizon asking for forbearance from common carrier regulation of its broadband services was automatically granted as a result of the FCC having taken no action on it during the one year period specified in the law, plus a ninety day extension. Chairman Martin and Commissioner Tate issued a joint statement endorsing the result. Commissioners Copps and Adelstein issued separate statements highly critical of both the result and the process.

At the end of the preceding week, several observers were still expecting the FCC to issue some kind of order granting only partial relief. The lack of action indicates the probability that the four member Commission could not agree upon an order, with the result that the Chairman simply used his authority to control the Commission's agenda to keep the item from being voted on. Earl Comstock, Comptel President, released a statement saying "The Chairman's action yesterday represents the height of irresponsibility by a federal official," and that the Chairman "chose the underhanded tactic of allowing the petition to go into effect by operation of law." Comstock suggested Verizon should have withdrawn and re-filed its petition so that it could have been considered by "a full complement of commissioners" presumably including Robert McDowell, presently a Comptel Vice President.

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As clarified by Verizon supplements to the record this February, Verizon requested relief for two principal categories of services: packet-switched services capable of 200 kbps in each direction (Frame Relay, ATM, IP-VPN and Ethernet) and TDM based optical networking, optical hubbing and optical transmission services. The later category of services are provided over SONET-based networks or Wave Division or Dense Wave Division multiplexing. The services are offered to “enterprise” customers on a retail basis and to other carriers on a wholesale basis. Verizon said it was only requesting the same relief that the Commission already granted in last year’s *Wireline Broadband Order* to mass market broadband transmission services used to provide Internet access. In a second supplement, Verizon stated it did not seek forbearance from federal universal service obligations and that it would “continue to pay federal universal service [sic] on the services that are subject to the petition (to the extent those services are subject to an obligation today).”

An immediate question that left Washington’s communication bar searching for precedents is whether, as Commissioner Copps stated, “There is no appealable Order.” Beyond just getting into court, given that there is no FCC analysis, its not clear what a court would consider beyond the question of whether the regulation from which relief was sought are within the provision of the Act allowing forbearance. Commissioner Copps went on to state that the result of the Commission’s non-action is to put at risk a variety of Congressional policies, including CALEA, Universal Service, privacy (CPNI), disability access, rate increases, interconnection in Rural America and with other technologies, and the right of aggrieved parties to seek enforcement. The Commissioner’s statement reflected a concern expressed by NTCA that where Verizon’s access services to the IP backbone are the only option in remote areas, rural carriers will be subjected to “unchecked market power.” Commissioner Adelstein raised similar questions and asserted that Verizon had not provided the evidence required by the Act and that the record shows that for many buildings there is little potential for competitive entry, leaving CLECs at Verizon’s mercy.

AT&T has since indicated it expects to seek similar relief.

JUDGE UPHOLDS SUBPOENA OF GOOGLE URL RECORDS AFTER DOJ SUBSTANTIALLY REDUCES REQUEST; REFUSES ACCESS TO USER’S SEARCH QUERIES

In a proceeding growing out of the government’s attempts to defend the constitutionality of the Child Online Protection Act (“COPA”), a federal District Court Judge in California has granted the Department of Justice access to a random sample of 50,000 URLs in Google’s search index. This represents a significant reduction from the original request for all URLs available on Google’s search, and a subsequent reduction to one million URLs. The government’s stated purpose in asking for the URLs and sample user queries was to test the efficiency of various software filters in eliminating pornography. The Court agreed with the government that the URLs met the standard that they be “reasonably calculated to lead to admissible evidence.” The Court denied production of queries from Google users, accepting Google’s argument that even without individual identifying data, the effect on Google would be that its users would lose confidence in the privacy of its use of the service. Microsoft, AOL and Yahoo had apparently complied with similar subpoenas, but Google, the market leader, had refused to comply, which lead the government to bring suit against it to compel compliance.

PROSPECTS FOR TELCOM LEGISLATION REMAIN IN DOUBT

Despite the flurry of activity including multiple Senate hearings, bill introductions and leadership statements promising action, it remains unclear whether any significant telecommunications legislation will be enacted this year. One problem may be the multiplicity of nominally separate issues. The result is that each interested party believes that somehow action on someone else’s issue will have an unpredictable effect on their issue.

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On the House side, attempts to craft a bi-partisan bill dealing with video franchising have apparently failed, with the result that a bill backed only by the Republican majority in the Energy and Commerce Committee is expected to be introduced, perhaps as early as today. Yesterday, the Committee announced it did have agreement on an Identity Theft bill that it planned to formally approve at a markup next Wednesday, March 29.

Senate Commerce, Science and Transportation Committee Chairman Ted Stevens (R-AK) said Monday that network neutrality “is one of the most difficult issues our Committee faces...because of the extreme views on the Committee that go across the whole spectrum of views that could be held....there are more differences on our Committee on this one issue than on any other issue.” Network Neutrality, in turn, because it involves competition between providers of broadband services, is of concern to parties involved in the effort to obtain or block nationwide video franchises, which in turn may be perceived as having ramifications for Universal Service legislation. Cable operators are concerned that expanding USF to broadband would provide wireline telephone companies a competitive advantage.

One new input into the flourishing network neutrality debate was testimony at a Senate hearing last week by several financial analysts that mandated network neutrality would make investors shy away from providing the funds necessary for broadband infrastructure investment. Craig Moffett of *AllianceBernstein*, for example, told the Committee that despite strong demand for broadband services, Wall Street has “grave doubts about the ability to earn a return on network investment. Excessive competition and an uncertain, and at times hostile, regulatory environment are ... slowing the pace of investment.” Mr. Moffett went on to warn that “mandated ‘Net Neutrality’ would further sour Wall Street’s taste for broadband infrastructure investments, making it increasingly difficult to sustain the necessary capital investments.”

SENATE COMMITTEE APPROVES MCDOWELL FOR FCC COMMISSIONER

Last week Robert McDowell came one step closer to confirmation as the fifth FCC Commissioner when the Senate Commerce, Science and Transportation Committee reported his nomination to the Senate floor. Senator Stevens said he was working with the leadership to get his nomination cleared as quickly as possible.

FCC ANNOUNCES CREATION OF PUBLIC SAFETY AND HOMELAND SECURITY BUREAU

On March 17, the FCC honored St. Patrick’s Day by voting to establish a new bureau intended to provide a better structure to address public safety, homeland security, national security, emergency management and preparedness, and disaster management, by combining functions now dispersed among seven different bureaus and offices. Among the functions to be handled of most direct interest to carriers are 911 requirements, CALEA, communications infrastructure protection, network reliability and network security. The reorganization will not become effective until after Congressional notification.

FCC GRANTS LONG STANDING PETITION OF RURAL CLEC TO ACQUIRE EXCHANGES FROM ILEC WITH WHICH IT COMPETES

This week the Commission finally granted a November 2003 request by Heart of Iowa Communications Cooperative for a waiver which will allow it to acquire the exchanges in which it has been competing, and bring those exchanges, including its CLEC lines, into its ILEC study area. The waiver was conditioned on the application to both the purchased lines and the CLEC lines of the Commission rule limiting universal service support to the per line amount received by the seller. The Commission also denied Heart of Iowa’s request to remain on Average Schedule settlements after it acquires the new lines, but gave it until the beginning of next year to convert to cost study settlements. Although approving the waiver, the Commission stated it was concerned that the result would diminish competition in the purchased exchanges, and advised any applicants for similar relief in the future that they must make a strong showing of the offsetting public interest benefits.

