

RICA REPORT

News and Views for the Rural CLEC Community

No. 64 – May 1, 2006

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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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NARUC Intercarrier Task Force Determines It Has Sufficient Support to Proceed with “Missoula Plan;” RICA, Others Decline to Support

Oregon Public Utility Commissioner Ray Baum, Chairman of the NARUC Intercarrier Compensation Task Force announced on April 21st that “enough stakeholders supported the “Missoula Plan” for the Task Force to proceed with a review of the Plan after which it will be filed with the FCC. The Missoula Plan, named after the location of the meeting where it was developed by a group of eleven industry participants, would continue to subject to negotiation and modification while the Task Force is conducting its review. RICA, and several other entities, declined to support the Plan, although an exact vote was not published.

RICA filed a letter with Commissioner Baum stating it could not endorse the plan as currently configured because the Plan assigns rural CLECs to Track 1 of the three track Plan, which means that they would be subject to the rate rules and interconnection obligations of BOCs and other large entities.** Noting, however, that circumstances of individual members may vary significantly, RICA said a future plan should provide that rural CLECs retain the option to elect rules applicable to larger urban carriers and that individual carriers may establish rates below the established maximums. RICA's statement did support some portions of the Plan, such as its approach to “Phantom Traffic” and establishing obligations for wireless carriers to negotiate interconnection agreements with CLECs. RICA also praised the efforts of the NARUC Task Force to search for common ground in the industry.

**To view a copy of the letter to Commissioner Baum, Please click on the following link:

www.ricalliance.org/BaumFinal042106.pdf

NARUC Intercarrier Task Force Determines It Has Sufficient Support to Proceed with “Missoula Plan” (continued)

Other parties publicly declining to support the plan included Comptel, Cox Communications, CBICC, and Xpedius. NASUCA went further by urging that the “Plan should be rejected in its entirety and should not be passed on to the FCC.” NASUCA, representing the state consumer advocates complained of the preemption of state authority over intrastate rates and the substantial increase in rates to consumers.

House Committee Adopts National Video Franchise Bill, Rejects Democrats’ Net Neutrality Amendments

On Thursday, the House Energy and Commerce Committee approved by a wide margin of 42-12 legislation which will provide telephone companies, and cable companies with telephone competition, to obtain national video franchises without having to go through the local franchise process. The Committee rejected several Democratic sponsored amendments which would have imposed tougher network neutrality regulations and established build out requirements.

According to a Committee press release, the Communications Opportunity, Promotion and Enhancement Act (“COPE”) includes the legislation would:

- A national approval process for telephone companies and cable companies to offer subscription television.
- Improve competition between VOIP and local telephone service
- Require provision of broadband service by telephone and cable companies without requiring consumers to take other services
- Preserve municipalities rights to collect up to a 6% fee, part of which will support PEG channels
- Establish penalties of up to \$500,000 for blocking lawful content on broadband services, and allow the FCC to enforce its network neutrality policy.
- Require Internet Based telephone service to offer 911 capability
- Allow cities and towns to develop their own broadband networks
- Require broadband providers to “take additional steps to ensure their networks aren’t used for child pornography.”
- Prohibit discrimination and impose fines of up to \$500,000 and revocation of franchise.

The legislation is expected to move to the House floor as early as next week, where it will probably pass, assuming that the Judiciary Committee is unable to obtain a sequential referral. There will, however, be substantial efforts by proponents of “Net Neutrality” to strengthen that portion of the legislation. The bill’s prospects are not so clear on the Senate side however, so there is considerable question as to whether, or at least how soon, it would get to the President. RICA Report will provide further analysis when the as-amended bill text becomes available.

Meanwhile, with no specific legislation coming from Senate Commerce Committee Chairman Stevens, Senator Gordon Smith of Oregon announced he will soon introduce legislation which he described as “disciplined” and “directed” as opposed to sweeping. The bill, which he said would be introduced soon, draws on bills already introduced by other Senators addressing such issues as minimizing local video regulation, universal service reform, municipal broadband, and “white space.” In the universal service section, a new account will be created to invest \$500 million per year in broadband infrastructure for areas “private investors are reluctant to reach.”

FCC Modifies “Designated Entity” Rules for Spectrum Auctions; New Rules Will Apply to June 29, 2006 Auction for Advanced Wireless Service, And To Future Auctions.

Working against a very tight auctions schedule calendar, the FCC managed to very quickly propose and adopt new rules for determination of “designated entity” (“DE”) status for spectrum auctions. DE status is intended to help small businesses which meet specific financial criteria in competitive bidding by providing bidding credits. The new rules exclude from DE eligibility on grounds of “impermissible material relationship” applicants which have agreements to lease or resell more than 50% of their spectrum capacity. Applicants with less or resell agreements for more than 25% of their capacity to any individual entity will be considered to have an “attributable material relationship” for the purpose of determining DE eligibility. In order to prevent “unjust enrichment,” the revised rules provide that if a DE loses its eligibility during the first five years of a license term or seeks to transfer or lease its spectrum to an unqualified entity, it must repay 100 percent of the bidding credits, plus interest, to the FCC.

The FCC also adopted a Further Notice examining further restrictions to ensure that only designated entities receive the benefits intended for them. Commissioner Adelstein agreed with the restrictions adopted, but dissented in part because he thought the Commission should have gone much further.

McDowell FCC Confirmation Apparently Remains “On Hold”

Although approved by the Senate Commerce Committee several weeks ago, Robert McDowell’s confirmation as the fifth FCC Commissioner remains in limbo as another victim of Hurricane Katrina. Although Senator Mary Landrieu (D-LA) has reportedly lifted her hold on as many as 20 presidential nominations in a dispute with the White House over funds for Katrina relief, press reports indicate that the nomination may still be blocked by Senator Jay Rockefeller (D-WV). As a result the FCC remains evenly split between Republicans and Democrats. Some press reports speculated this split was holding up FCC action on the proposal by Time Warner and Comcast to take over Adelphia Communications.

Press Reports Treasury Considering Conceding On Telephone Excise Tax

The federal communications excise tax applicable to long distance service applies where the charge varies depending upon the call duration and distance. After an extraordinary series of losses in court on its contention that the tax applies to long distance calls where the rate is determined by either call duration or distance, there have been several press reports that the Treasury is considering a plan to stop collections of the tax and pay refunds. There has been no public announcement as of yet, and the press reports have not distinguished between taxing long distance calls rated under the historical time and distance formula and those rated only by either time or distance. Nevertheless, even for the later group, the refund liability could be so large that Congress might take action to limit the government’s liability.