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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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PROSPECTS FOR MAJOR COMMUNICATIONS LEGISLATION REMAIN HIGHLY UNCERTAIN

The House and Senate continue to explore substantially different paths to possible amendments to the Communications Act. The national video franchise bill passed by the House Energy and Commerce Committee last month (RICA Report, May 1) did not reach the House floor as expected, apparently as a result of efforts of the Judiciary Committee for a sequential referral. The House does have a hearing scheduled this week on an additional bill which would outlaw "spoofing" caller ID service. Also, a hearing was held on Universal Service Reform by a subcommittee of the House Small Business Committee and which Congressman Terry and several rural carrier representatives testified.

The major legislative development was the filing of S. 2686, a 135 page bill by Senate Commerce Committee Chairman Ted Stevens (R-AK) as the proposed "Communications, Consumer's Choice and Broadband Deployment Act of 2006." Stevens scheduled hearings for this week and next and expects to have Committee action in early June. Witness lists for the hearings have not yet been announced.

The Senate bill would revise the Universal Service mechanisms in several ways. On the contribution side, all telecommunications service providers, including broadband and VoIP would be required to contribute to USF support, under a mechanism to be developed by the FCC, which could assess inter- and intrastate revenues, working phone numbers and network capacity.

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On the distribution side, USF recipients would be required to deploy broadband service within their service area within five years after enactment. However, that requirement may be waived if a carrier shows that the cost of deployment is at least three times the average cost for USF recipients, that such deployment is not technically feasible, or that deployment would "materially impair the carriers to continue to provide local exchange service." Waiver requests not acted on within 60 days would be deemed granted. The FCC would be prohibited from limiting USF distribution to a "primary line."

Eligible Telecommunications Carrier qualification would be revised to include requirements for: a five year plan demonstrating how support will be used to improve service, a demonstration of ability to remain functional in emergency situations, demonstration that the carrier will satisfy consumer protection standards, offer local usage plans comparable to the incumbent, and acknowledge that it may be required to provide equal access if other ETCs withdraw. These provisions generally follow the existing FCC procedures which were written with competitive wireless carriers in mind. State Commissions (and the FCC where it is the designator) will be required to conduct "random periodic audits" of each carrier receiving USF support.

The bill also establishes a separate $500 million fund to support broadband in unserved areas. Eligibility for this fund would include satellite carriers, but is limited to one facilities-based carrier per unserved area. The FCC would determine how to identify "unserved" areas. The unserved area broadband fund would not operate under the existing ETC rules, and would not be subject to a requirement for joint board referral.

The Senate bill addresses the Phantom Traffic issue similarly to other proposals by requiring that originating carriers provide traffic identification.

The majority of the bill is devoted to "streamlining" the video franchise process, but takes a significantly different approach than the House bill. Instead of creating a national franchise, local franchising authority is maintained, but made subject to very specific rules, including a 30 day "shot clock" for processing applications, filed using an FCC prescribed form.

Also in the video area, the "Sports Freedom" provision would prohibit multichannel video programming distributors from entering exclusive contracts with program vendors, and preserves the ability of MVPDs to develop their own local programming.
In the Network Neutrality arena, the Senate bill would only require the FCC to study information transmission over the Internet annually and make recommendations to Congress as to any further authority it might require. Net Neutrality proponents have been particularly upset that the bill does not go even as far as the House bill, and they believe the House bill is much too weak. Although Senator Inouye (D-HI) is a co-sponsor of the bill, he quickly made it clear that he would like to see specific net neutrality protections.

It remains to be seen whether the Senate bill will advance, or whether it can be reconciled with whatever eventually comes out of the House, as the number of legislative days left in the year are rapidly dwindling.

USA TODAY STARTS MAJOR FLAP OVER NSA "DATA MINING" OF SUBSCRIBER CALL RECORDS

The media frenzy which began last week with *USA Today's* story asserting that AT&T, Verizon and Bell South provided complete records of all customer's calls to the National Security Agency showed no sign of dying down. This week, Ed Markey (D-MA), Ranking Minority Member on the House Subcommittee on Telecommunications and the Internet sent a letter to

(USA Today Continued)

FCC Chairman Martin asking for the FCC's plan to investigate whether the carriers violated the consumer privacy provisions of Section 222 of the Communications Act. FCC Commissioner Copps issued his own statement calling for an FCC investigation and Bell South released a statement denying that it had provided customer calling records to NSA.

Ripple effects from the story were seen affecting several other issues, besides making more contentious the confirmation hearings of former NSA head General Michael Hayden to be the new director of Central Intelligence. The House postponed a scheduled floor vote on the Prevention of Fraudulent Access to Phone Records Act, which had unanimously passed the Energy and Commerce Committee, apparently because of concerns raised by the Intelligence Committee. Stiffel Nicolaus analyst Blair Levin wrote that the data sharing incident could raise questions about trust for the Bell Companies which could affect the ultimate passage of their priority national video franchise legislation and perhaps provide support for the Silicon Valley and other proponents of stronger network neutrality regulation.

Meanwhile, other press reports described growing Congressional interest in legislation that would require Internet Service Providers to keep records regarding their subscribers in order to facilitate law enforcement investigations, particularly of child pornography.

VERIZON REPORTED CONSIDERING DIVESTING FIVE MILLION ACCESS LINES

According to the *Wall Street Journal* and Stifel Nicolaus, Verizon is working on sales of access lines in New England and the Midwest in two blocks totaling five million lines which would yield somewhere between six and eight billion dollars. The New England sale would be all lines in Vermont, New Hampshire and Maine. The Midwest sale would involve former GTE lines in Indiana, Illinois, Ohio and Michigan. Buyers have not yet been identified. Reportedly, the sale would involve a tax-free simultaneous spin-off and merger which would leave Verizon shareholders with a majority in the new company.

CORE COMMUNICATIONS ASKS FCC TO FOREBEAR FROM REGULATION OF SWITCHED ACCESS CHARGES, RATE AVERAGING AND RATE INTEGRATION

Last month Core Communications filed a petition with the FCC asking that it forebear from regulation of interstate access rates, and from enforcing the rate averaging and rate integration provisions of the Communications Act. The FCC has now announced that comments on the Petition will be due June 5, with replies on June 26th. Under the Act, if the FCC does not deny such forbearance petitions within one year of receipt, they are automatically granted, although the FCC can extend the period for 90 days. Core Communications is an Annapolis, Maryland based CLEC which claims to be a "wholesale access provider" with a "focus on bridging the gap between Carriers/Internet Service Providers and their end users."

In its petition, Core argues that even though the Commission recognized in 1996 that "transport and termination of traffic, whether it originates locally or from a distant exchange, involves the same network functions," rates for transport and termination of local traffic and long distance traffic have not converged. Core asserts convergence has not occurred mainly because of successful lobbying by incumbent LECs who engage in regulatory arbitrage by collecting above-cost access charges and paying below-cost reciprocal compensation. Core claims forbearance is the only way to overcome the "overwhelming strength of the rural LEC and Bell Operating Company lobbies" which makes "reform next to impossible." Core also attacks the rate averaging and rate integration provisions of the 1996 Communications Act amendments as "classic regulatory arbitrage" which forces IXCs to pay above-cost rates for termination, but are precluded from passing these costs on to their retail customers.

The Core petition addresses issues already being considered in the FCC's Intercarrier Compensation proceeding, but could have the procedural effect of forcing the FCC to move faster because of the one year deadline. Core's call to forbear from enforcing the rate integration and rate averaging provisions won't win it any friends in the Senate, where the key committee chairman and co-chairman are from Alaska and Hawaii, respectively, the major beneficiaries of those provisions. Because grant of Core's petition would have the effect of undoing the 2001 FCC order which permits some rural CLECs to tariff interstate access at the NECA rate and would move all access, interstate and intrastate to reciprocal compensation levels, RICA expects to file appropriate comments with the FCC.

Meanwhile, the NARUC Intercarrier Compensation Task Force continues to study the "Missoula Plan" as discussions within its author group continue on possible modifications. (See RICA Report April 12, 2006) The expectation is that NARUC will want to send some kind of report or recommendation to the FCC prior to its summer meeting at the end of July.

FCC ISSUES SECOND REPORT ON CALEA APPLICATION TO BROADBAND WHILE JUDGE RIDICULES LOGIC OF FIRST ORDER

Last week the FCC released a Second Report and Order in its proceeding dealing with the application of CALEA to broadband services. The FCC concluded it would be premature for it to intervene in the industry/law enforcement efforts to develop standards for implementation of last year's decision finding CALEA applicable to broadband and VoIP services. It gave facilities-based carriers providing broadband Internet access and interconnected VoIP service until May 14, 2007 to come into compliance with CALEA. The Commission also decided to require carriers to file Monitoring Reports on an FCC form which will provide information as to whether the deadline will be met. The FCC will issue a public notice specifying when the report must be filed, once it has received approval of the form from the Office of Management and Budget. Submitted forms will be provided to the FBI, but will not be made public.

Between the FCC's May 3 announcement of adoption of the Second Report and the May 12 release of the text of the report, it had to defend the conclusion in its First Report that CALEA applied to services the FCC has categorized as "information services" in a contentious hearing before the U.S. Court of Appeals for the District of Columbia Circuit. Since the CALEA statute contains an express exemption for information services, the FCC decided in its First Order that although broadband Internet Access was an information service for Communications Act purposes, it was not an information service under CALEA. According to press reports, the oral argument in an appeal of this decision did not go well for the Commission. One member of the three judge panel, Judge Harry Edwards, repeatedly told the FCC attorney his argument was "gobblegook" and made no sense. The court did appear more inclined to accept that interconnect VoIP service was a functional equivalent of telephone service and should be covered. Judge Edwards' suggestion that the FCC should ask Congress for more guidance would appear to be the logical way out of this problem, but that isn't often how things work in Washington.