

RICA REPORT

News and Views for the Rural CLEC Community

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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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1. FCC to Address IP Telephony, MAG Plan at Open Meeting

The big news issuing from the FCC at the end of the week is that it intends at its February 12 open meeting to release a notice of proposed rulemaking on "IP-enabled services," including Voice over Internet Protocol (VoIP). The Commission has also teed up and is widely expected to grant the petition of pulver.com to exempt its "Free World Dialup" service from the bulk of Title II common carrier regulation. (WC Docket No. 03-45)

The *Wall Street Journal* and *L.A. Times* reported today that this VoIP go ahead was facilitated by an agreement between the Commission and the FBI, which agency had recently and urgently sought delays to the Commission's Internet telephony policy making process until CALEA issues could be resolved. The Commission has reportedly agreed to fast track new rules determining the obligations of service providers to assist law enforcement to tap Internet-based calls.

The Commission announced that it also will entertain a Report and Order and Second Further Notice of Proposed Rulemaking regarding its May 2001 MAG Plan order (concerning several interstate access charge and universal service reforms affecting rate-of-return local exchange carriers).

2. Federal Appeals Court Panel Harshly Critical of UNE Order

During lengthy oral argument January 28, two judges on a three-judge panel of the U.S. Court of Appeals for the District of Columbia sharply criticized the FCC's decision, in its controversial August 2003 Triennial Review Order (TRO), to give state commissions considerable authority to determine the availability of unbundled network elements (UNEs) and the UNE platform to competitors.



The judges crisply queried the FCC's attorney on the legal justifications of the TRO, which came about only after the same court twice overturned the Commission's earlier attempts at crafting UNE rules. While oral argument is never a guaranteed predictor of the outcome of any case (a decision is expected as early as February), it seemed that a majority of the panel was quite hostile to the FCC's order, and that once a decision is released, it very well may overturn the TRO and send the policy review back again to the FCC. If such an outcome results, the FCC will either take another crack at drafting the rules, or appeal the decision.

Should the court unsettle this portion of the TRO, state commission proceedings mandated by the TRO will likely halt, at least for the time being. Consequently, RICA members currently facing discovery requests from RBOCs relating to market conditions during the state UNE review process may wish to consult with their state counsel to determine an appropriate response to such requests.

The panel seemed less hostile to the Commission's TRO broadband determinations—largely viewed as beneficial to the RBOCs, but did focus on apparent inconsistencies in RBOC arguments; observers concurred that the court gave no clear indication of which way it might rule on the various broadband issues at play in the TRO.

3. Resolution of RICA CLEC Access Charge Reform Reconsideration Petition Delayed

Despite indications from the Commissioners' offices late last year that a draft order was circulating among Commissioners, the pending decision resolving RICA's and others' petitions seeking reconsideration of CLEC Access Charge Reform Order has been further delayed.

The cause of the delay appears to be a controversy surrounding the joint provision of access services, especially with regard to CLEC aggregation of CMRS 8YY traffic. According to a document filed by the Association for Local Telecommunications Services (ALTS), some CLECs, rural ILECs and others aggregate CMRS 8YY traffic and collect access charges. The Commission is considering the reduction of CLEC access charges for 8YY traffic (it issued a further notice of proposed rulemaking on the issue along with the CLEC Access Charge Reform Order back in 2001), as well as potential reductions to take into account when certain access functions are not performed by CLECs (such as in the UNE situation). ALTS and a variety of CLECs have recently urged the Commission not to reduce CLEC access rates further.

In its 2001 petition, RICA urged the FCC to correct the CLEC Access Charge Reform order to withstand judicial review. AT&T has appealed the order in court, and the court

already overturned another order based on the same legal grounds as the CLEC Access Charge Reform order. RICA also stressed that the Commission should make substantive improvements to the order so that rural CLECs do not continue to be unfairly disadvantaged by the access charge rules.

Copies of RICA's advocacy documents are available online to RICA members at www.ricalliance.org. (CC Docket No. 96-262)

4. Iowa Utilities Board Concludes Most Iowans Have No Phone Choice

Most local exchange customers in Iowa "do not have a significant choice of providers" according to a new report issued by the Iowa Utilities Board (IUB). Reporting the results of a survey aimed at obtaining a "snapshot" of the state of competition in Iowa as of July 2003, the IUB concluded that the great majority of business and residential customers in the state are served by ILECs and that only "some customer classes in some exchanges appear to have a choice" of local service provider.



Iowa has 161 operating ILECs—more than any other state— 158 of which are small independents. Another 114 entities were asked to respond to the IUB voluntary survey, including 70 CLECs. Thirty-nine entities, especially wireless carriers, did not respond. The IUB discounted wireless service as a real competitor to wireline service, however, citing national statistics suggesting that only 3-5% of wireless customers have "cut the cord."

The IUB did take note of the inroads that carriers [such as RICA members] had made by edging out their own facilities to take significant market share in certain large ILEC exchanges, but generally painted a bleak picture of the current competitive landscape. The IUB contributed the slow growth of competition in the state principally to the downturn in the telco market and unsettled FCC UNE policy, each of which discourages investment in the industry. It also cited the new FCC-FTC "do not call" rules as a potential hurdle to competitive entry. In its report, the IUB stated its belief that new technology, such as Voice over Internet Protocol (VoIP) telephony—especially over cable TV systems, will "probably provide the necessary catalyst for future growth and competition." (<http://www.state.ia.us/government/com/util/util.html>)

5. RICA Files Opposition to Western Wireless Petition to End Rate-of-Return Regulation

RICA filed last month a document opposing the Western Wireless (WW) petition before the FCC to end rate-of-return regulation. RICA explained that while its members are not rate regulated at the federal level, they do have a substantial interest in WW's proposal because it would substantially affect the Universal Service Fund, as well as the access rates of the National Exchange Carrier Association to which many RICA members' rates are benchmarked. RICA urged the commission to deny the petition and act expeditiously in pending Commission proceedings to adopt rational rules for the provision of universal service support. RICA's Opposition is available online at www.ricalliance.org.

6. Other VoIP News

VoIP legislation on horizon. *TR Daily* reports that Senator John Sununu (R.-N.H.), member of the Subcommittee on Communications of the Senate Commerce, Science & Transportation Committee, intends to circulate draft VoIP legislation in February. The legislation reportedly would clarify that VoIP is a “data” service and not telecommunications, to be regulated at the federal level and free from taxation.

Connected consumers know of, want VoIP. *Telephony Online* reports that a new survey by Parks Associates reveals that 50% of 3300 Internet households (52% of broadband households) are interested in VoIP as a means of reducing long distance costs, and that many Internet households are interested in the service as a replacement for basic phone service.

House hearing on competition emphasizes VoIP. The survey described above jibes with reports of Time Warner VoIP trials in Portland, Maine, as reported by Michael J. Balhoff of Legg Mason to members of the House Subcommittee on Telecommunications and the Internet during the Subcommittee’s February 4 hearing on the state of Competition in the Telecommunications Industry. He testified that Time Warner reported that nine months after the cable company’s service trial began in May 2003, it had captured more than 10,000 VoIP customers—about 23% of high-speed Internet customers, 9% of the company’s video customers in the region, and, by Legg Mason’s estimate, 5% of the homes passed in Portland. (<http://energycommerce.house.gov/>)

VoIP made easier. IPN Communications announced that it will license its technology to allow phone manufacturers to permit dual TDM/IP functionality on a single phone, allowing the phone to make and receive both standard and VoIP phone calls. VoIP calls would be routed over IPN’s servers. (<http://www.ipncom.com/>) Subscribers to VoIP services currently typically require an adaptor that allows a standard phone to plug into a broadband modem. The announcement comes, according to *America’s Network*, on the heels of an announcement by Intel Corp. to embed VoIP over broadband functionality in its computer processors.

7. In the States and In Brief

Antitrust Case against BellSouth Dismissed; SBC sued in California. *Warren Communications* reports that a Florida federal district court dismissed an antitrust case against BellSouth in light of the Supreme Court’s recent *Trinko v. Verizon* decision (reported in RICA Report No. 15). *Warren* also reports that CLEC Fones4All sued SBC in California state court for wrongfully terminating its wholesale service.

Qwest under Investigation in Colorado. *Warren Communications* reports that the Colorado Public Utilities Commission (PUC) directed staff to file by February 27 a report on its investigations into whether Qwest had made secret deals with CLECs in return for support of its bid to provide long distance service in the state.

UPCOMING RICA EVENT ☎ MARK YOUR CALENDARS!

- **Annual Conference 2004**, featuring half-day seminar (May 26) dedicated to VoIP challenges and opportunities. May 26-28, Luxor Hotel Las Vegas, Nev. Details: <http://ricalliance.org/events/index.php>.

