

RICA REPORT

News and Views for the Rural CLEC Community

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IN THIS ISSUE

1. FCC Moves on IP Communications
2. RICA to Host May 26 Half-Day VoIP Seminar at Annual Conference
3. Wireless CETC Pressure on USF Grows
4. Commissioner Adelstein Embraces RICA USF Positions
5. In the States and In Brief
6. Mark Your Calendar for RICA Events



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 Moves on IP Communications

The Commission last week took two new steps in its much-anticipated regulatory review of VoIP (Voice over Internet Protocol). First, the Commission issued an order granting the petition of pulver.com to have its FWD service declared neither telecommunications nor a telecommunications service. Second, it issued a broad notice of proposed rulemaking on IP-enabled services leaning, apparently, toward applying light regulation to such services. In addition, the FCC committed to initiating soon a related rulemaking proceeding on the interplay between CALEA (Communications Assistance for Law Enforcement Act) and IP-enabled services.

As this report is written, the Commission had made neither NPRM nor the pulver.com order available for review. Accordingly, the full impact of each item cannot yet be assessed. Nevertheless, the press releases and related Commissioners' statements shed some light on each item.

The pulver.com order granted the petition and, over the dissent of Commissioner Copps, declared pulver.com's FWD (Free World Dialup) service to be an interstate information service.

(The FWD service allows FWD subscribers to utilize IP phones and software-based phones to make "calls" to one another over existing broadband (and dialup) connections; it neither charges for the service nor provides transport itself.) The Commission at once preempted state regulation and placed the service under Title I of the Communications Act of 1934, as amended (the Act). The Title I determination means that the Commission's ability—and likelihood—to regulate the service is greatly reduced. Both Commissioners Copps and Adelstein objected to the Commission's apparently sweeping classification of FWD to be in the same league as email and instant messaging, and other similarly situated IP-enabled services, and so free from common carrier regulation under Title II of the Act.

Commissioner Copps accused the Commission of "leap[ing] before we look," and indicated that he would have dissented purely on national security and law enforcement grounds, as the Title I classification raises law enforcement hurdles. He called the majority to task for preferring "to act now and fix law enforcement issues later—along with universal service, public safety, disability access and a host of other policies" that the Commission is only beginning to address in the NPRM. Regarding the need to address law enforcement matters before resolving pulver.com's petition, he dismissed as insufficient company "assurances" (pulver.com apparently promised to respond to law enforcement warrants for information on access to FWD subscribers' communications), Commission statements and "last-minute letters" from the Executive Branch. Said Copps, "like before, our approach is backwards. With bugles blaring, we pronounce the classification of a service [referring to the Commission's order declaring cable modem service a Title I information service, which has been overturned by the 9th Circuit], but leave the hard part—understanding the consequences—for another day and time."

The VoIP NPRM, per the related press release, recognizes "that Internet services should continue to be subject to minimal regulation" and that mechanisms implementing public safety, law enforcement, disability access and consumer protection policy objectives "may change as communications migrate to Internet-enabled services." The NPRM "specifically" asks "which regulatory requirements—for example, those relating to E911, disability accessibility, access charges, and universal service—should be extended to different types of Internet services."

Commissioners Copps and Adelstein expressed their views that the Commission had gone too far in the NPRM (and Order), and had perhaps teed up conclusions not questions. Chairman Powell's ringing endorsement of the NPRM offered them little comfort. Indeed, the Chairman indicated that the NPRM's "starting point—and our most important finding—is the recognition that all IP-enabled services exist in a dynamic, fast-changing environment that is peculiarly ill-suited to the century old telephone model of regulation." Commissioner Abernathy, perceived to be aligned with the Chairman on VoIP issues, seemed only slightly less enthusiastic. She reiterated her views that IP-enabled services be regulated at the federal level but should doubtfully be subjected to economic regulation. Like the Chairman and all other Commissioners, she indicated that IP-services regulation, or the lack thereof, must take into account the societal goals referenced by Commissioner Copps above.

Within the industry, of course, the big ballyhoo over VoIP concerns money—specifically, how VoIP will affect inter-carrier compensation and universal service. Commissioner Abernathy and Commissioner Adelstein stressed the need to address pressing issues (including those involved in such VoIP petitions as AT&T's to avoid access charges and Vonage's for federal preemption) before completely defining the broad regulatory framework contemplated by the NPRM. Chairman Powell stated his belief that "VoIP can help control high universal service costs" but acknowledged that "IP services ride atop a physical layer [e.g., a telephone network] that, in

many areas, is still expensive to build and maintain." Commissioner Adelstein, touching on universal service issues, said that he was "particularly glad that this Notice seeks direct comment on issues of concern to Rural America."

Commissioner Martin offered perhaps the biggest glimpse into the NPRM, stating that it:

"acknowledges that VoIP offerings, at times, may or may not need to use the public switch network (PSTN) and asks how we should take their key distinctions into account. The [NPRM] also makes clear that functionally equivalent services should be subject to similar obligations and that the cost of the PSTN should be born equitably among those that use it in similar ways. As we move forward, we must ensure that our policies treat similar services in a similar fashion and that we do not create a regulatory framework that promotes potential arbitrage opportunities."

2. RICA to Host May 26 Half-Day VoIP Seminar at Annual Conference

To kick off its 5th annual conference, RICA will host a timely half-day seminar on the challenges and opportunities that new IP-based communications technologies bring to the rural CLEC industry. In-depth panels will focus on Technology and Applications; Real World Business Opportunities; IP Communications as a Radical Challenge to Traditional Telecom; and Regulatory Issues and Hurdles. The FCC's Thomas Navin, Deputy Chief of the Wireline Competition Bureau's Competition Policy Division, and chief manager of the VoIP NPRM, has agreed to participate. Check www.ricalliance.org for details on the seminar.

3. Wireless CETC Pressure on USF Grows

According to data released by the Universal Service Administrative Company (USAC), wireless carriers continue to receive the great bulk of USF support going to competitive carriers, and there is every indication that, unless the FCC's USF rules are changed, support to wireless carriers will continue the upward trend.

USAC's projected data for 2Q 2004 indicates that wireless competitive eligible telecommunications carriers (CETCs) are projected to receive an annualized \$212 million, up from \$176.5 million in the preceding quarter, a twenty percent increase. Landline CETCs are projected to receive only \$11.2 million in annualized support, in contrast with the \$8.3 million projection for 1Q 2004. The quarterly difference appears to be attributable mostly to an extraordinary (and perhaps anomalous) jump in the support received by GCI Communications in Alaska, which is projected to receive \$7.2 million, or 64% of all landline CETC support.

As with preceding quarters, the big data point is what is coming down the pipeline. Were all wireless carriers currently seeking ETC status to receive the full complement of support, the projected annualized wireless CETC support jumps to \$448.4 million, from \$368 million in the preceding quarter. The corresponding landline CETC 2Q and 1Q 2004 figures are \$13.3 million and \$11.3 million respectively. Wireless carriers continue to receive at least 95% of all CETC support.

4. Commissioner Adelstein Embraces RICA USF Positions

In a statement prepared for OPASTCO's annual winter convention, FCC Commissioner and Federal-State Joint Board on Universal Service (FSJB) member Jonathan Adelstein endorsed the substance of RICA's central recommendations in the USF "portability" proceeding, now before the FSJB. The Commissioner indicated his belief that providing USF support to competitive

eligible telecommunications carriers (CETCs) based on the costs of the incumbent carrier is “clearly inconsistent with the law.” He recommended that at minimum, the amounts received by CETCs in the form of portable ICLS not include the cost of equal access where the CETC is not providing equal access.

In addition, the Commissioner indicated his opposition to a “primary line” limitation to USF support, but voiced his own support, in principle, for a “benchmark” to be used to determine when CETC support might not be sustainable. Comm. Adelstein also indicated that the FSJB should shortly come out, in its recommended decision on “portability” issues with “public interest” guidelines to be used by the states in making CETC determinations in rural areas. “Competition alone cannot satisfy the public interest analysis,” according to the Commissioner. (<http://www.fcc.gov/commissioners/adelstein/speeches2004.html>)

5. In the States and In Brief

BellSouth Seeks UNE/EELs Waiver. The Commission announced that it seeks comment on a petition by BellSouth to obtain a temporary waiver of its obligation to provide certain unbundled network elements (UNEs) under the Commission’s TRO-mandated commingling and service eligibility requirements. Because the rules from which BellSouth seeks waiver primarily affect enhanced extended loops (EELs), BellSouth asserts that waiver is warranted until each state commission completes its review of unbundled enterprise loops and transport. BellSouth claims that each state in its operating region has pending reviews (expected to be completed by July 2, 2004) of impairment for enterprise loops and transport, which may conclude that BellSouth is not obligated to provide to competitors a substantial number of loop and transport UNEs, thereby limiting the number of EEL conversions. BellSouth claims that waiver is warranted to avoid the inefficiencies of converting special access circuits to UNEs, only to have to convert them back to special access circuits if a state concludes there is no impairment for all or part of a circuit. Finally, BellSouth claims that the temporary waiver it seeks will avoid significant stranded capital resulting from certain commingled circuits that require additional equipment to delineate special access segments from UNE segments of multiple segment circuits.

It remains possible that other Bells will similarly seek waiver in their respective service territories. Comments on the BellSouth petition are due March 19, 2004; reply comments, April 5, 2004. (CC Docket Nos. 01-338, 96-98, 98-147)

Other VoIP News. Confronting concerns that VoIP services may elude state taxation, some U.S. Senators are reportedly considering the inclusion of language in pending legislation banning Internet taxation that would explicitly exempt VoIP services. *CNET* reported that The California Public Utilities Commission (CPUC) voted to tentatively assert jurisdiction over VoIP calls that touch the PSTN, and to begin an 18-month process to develop VoIP regulations. Covad announced that by 4Q 2004 it will launch wholesale and retail VoIP services over its SDSL and T-1 lines, in anticipation of an eventual roll out of retail VoIP over ADSL. Verizon and the nation’s third largest ISP, Earthlink, announced a deal granting Earthlink greater access to Verizon broadband services, reportedly in exchange for Verizon eventual access to Earthlink broadband customers for the provision of VoIP services. SBC announced that it is abandoning its VoIP relationship with Level 3 and will bring its soft-switching capabilities in house, with equipment provided by Siemens. At the NTCA meeting in Miami, Qwest CEO Dick Notebaert indicated that the carrier’s VoIP trials in Minnesota are succeeding and it is looking to expand the service to its whole 14-state region.

WiFi Hotspots Predicted to Triple in 2004. According to *CNET News*, Gartner researchers predict that the number of WiFi hotspots in the world will triple in 2004, to a total of 30 million.

The increase is expected to have a big impact in the workforce, as Gartner estimates that mobile workers may gain 30 additional productive minutes each day.

6. UPCOMING RICA EVENTS 📞 MARK YOUR CALENDARS!

- **Annual Conference 2004**, featuring half-day seminar (May 26) dedicated to Voice over IP challenges and opportunities. May 26-28, Luxor Hotel Las Vegas, Nev.
- **Fall Conference 2004** to be held November 1-3, Westin Riverwalk Hotel, San Antonio, Tex.
- Details/registration:
<http://ricalliance.org/events/index.php>

