

## IN THIS ISSUE:

- **SUMMARY OVERVIEW AND ANALYSIS: GRASSROOTS CAMPAIGN AGAINST JOINT BOARD RECOMMENDATION SIGNIFICANTLY ALTERS THE DYNAMIC FOR DEBATE ON RURAL TELECOM ISSUES IN CONGRESS**
- **SENATE COMMITTEE CONVENES HEARING ON JOINT BOARD RECOMMENDATION**
- **SENATORS PROBE 700 MHz AUCTION RULES**
- **MARTIN, DINGELL SPAR OVER DTV TRANSITION**
- **A LA CARTE LEGISLATION INTRODUCED**
- **CONGRESS LOOKS AT OBJECTIONABLE TV PROGRAMMING**

## Editorial Information

The *RICA Report* is published semi-monthly exclusively for RICA's CLEC Members and the Vendors/Suppliers that provide products and services to them. With 80+ Carrier Members, RICA is the premier trade association representing the independent rural competitive local exchange carrier industry. The *RICA Report* concisely captures regulatory and legal news, commentary, and insight relevant to rural CLECs.

The *RICA Report* welcomes your input, feedback and commentary. Membership submissions such as opinions, success stories, Q&A, etc. are encouraged. Please contact the editors at:

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## **SUMMARY OVERVIEW AND ANALYSIS: GRASSROOTS CAMPAIGN AGAINST JOINT BOARD RECOMMENDATION SIGNIFICANTLY ALTERS THE DYNAMIC FOR DEBATE ON RURAL TELECOM ISSUES IN CONGRESS**

The U.S. Congress has taken a brief one week break for the July 4 holiday. Before leaving town, however, members of Congress continued to flex their muscles on telecommunications issues. There is general consensus that the Congress will not try to pass a major comprehensive rewrite of the 1996 Act this year or next. Instead, members of Congress are using their oversight authority to give clear signals to the FCC how they want the Commission to resolve key telecommunications issues ranging from USF reform to the 700 MHz auction rules.

Yet, there is increasing speculation that key members of the congressional committees with oversight on telecommunications issues are growing more frustrated with the FCC and may resolve to pass legislation before the 2008 elections on some specific issues, particularly universal service. Members of Congress are growing tired of the slow pace of USF reform at the FCC and they want the Commission to speed it up.

Grassroots campaigns, like that conducted by the Keep USF Fair Coalition, are having an impact on the congressional debate over USF. This coalition has been urging consumers to call members of Congress to express their concerns about the increasing costs of USF. Members of Congress are reporting a steady increase in calls from constituents complaining about USF. Members of Congress are growing particularly weary of calls from constituents complaining about increasing "taxes" on their telephone bills.

Since the May recommendations issued by the Federal-State Joint Board on Universal Service, USF reform has been front and center in Congress. Advocates for the wireless industry who vehemently object to the interim cap on competitive ETCs have also mounted an aggressive, targeted, and highly effective grassroots campaign in Congress. These advocates are pushing for Congress to discourage the FCC from accepting the Joint Board recommendation on the interim cap. A recent hearing by the U.S. Senate Committee on Commerce on the Joint Board recommendation – which focused primarily on the problems of imposing an interim cap – demonstrated how effective these efforts have been.

New USF reform legislation may be introduced next month in the Senate by Senators Daniel Inouye (D-HI) and Ted Stevens (R-AK), the key players on the Senate Commerce Committee. If the two senators are able to agree on the components of a USF reform measure, the legislation may speed through the U.S. Senate. This would enhance chances for passage of a similar measure in the U.S. House of Representatives. Representative Ed Markey (D-MA), the chairman of the House Subcommittee on Telecommunications, is thought to be tracking the progress of Inouye and Stevens and may introduce a similar measure in the House. Markey is strongly opposed to the Boucher-Terry USF reform legislation that has been embraced by some rural telecommunications groups. The Boucher-Terry measure is thought to have no chance of passage in this Congress.

There is growing consensus in the Congress on the steps that should be taken to reform USF. But, the Congress still seems prepared to wait until the FCC first takes some action on the Joint Board recommendation. If the Congress perceives the FCC is not serious about USF reform, it seems primed to step in.

The effective campaign on the Joint Board recommendation waged by the wireless industry also has altered the congressional balance on USF reform. For many years, members of Congress, especially those that represent rural districts or rural states, have shied away from moving forward with USF reform for fear that the debate would prove divisive within the rural telecommunications industry. Although the Joint Board recommendation has demonstrated once again that USF reform can be divisive, the lack of a grassroots effort supporting the Joint Board recommendation has prompted some in Congress to ask whether the rural wireline industry is positioned any longer to dominate the debate on the future of USF reform.

Members of Congress from rural districts or rural states are growing increasingly concerned that the delay in solving the universal service “crisis” eventually will lead to severe cutbacks in the program that will harm their constituents. They are eager to reach agreement on some form of USF reform as a way to ensure the program’s viability in the future. There is also growing consensus that USF should be expanded to cover broadband services. But, members of Congress view the “USF crisis” as preventing any effort by the FCC or the Congress to use USF to speed deployment of high-speed services. Members of Congress have tied broadband deployment to economic growth and prosperity and many now consider it the single most important domestic priority for the Congress.

Although USF dominates the congressional telecommunications scene now, it is not the only issue capturing attention on Capitol Hill. The Congress continues to monitor plans for the transition to digital TV. New disagreements have emerged between key members of the U.S. House of Representatives and the FCC that could derail the transition date. The Congress also is watching how the FCC resolves issues around the auction rules for the 700 MHz auction.

## SENATE COMMITTEE CONVENES HEARING ON JOINT BOARD RECOMMENDATION

FCC Commissioner Deborah Tate told a group of U.S. Senators that imposing an interim cap on the high cost USF support that competitive eligible telecommunications carriers (CETCs) can receive is only the first step in bringing about “fundamental reform” in the program. Tate was the major presenter before a hearing of the U.S. Senate Committee on Commerce probing recommendations made recently by the Joint Board.

Members of the committee made it clear to Tate that they were disappointed that the Joint Board had not taken a more comprehensive approach to USF reform. But, Tate responded that she did the best that she could to build consensus. In fact, she seemed to frustrate senators by often saying the Joint Board was limited in what it could do and suggested that Congress should take a more prominent role to force industry to reach consensus on USF reform if members were unhappy with the Joint Board recommendation.

Several senators expressed dissatisfaction with Tate’s responses by saying that comprehensive USF reform should not be conditioned on the willingness of industry representatives to reach consensus on the scope and specifics of USF reform.

Senator Claire McCaskill (D-MO) said that Tate was acknowledging that the FCC was incapable of reforming USF. “The FCC is supposed to have the statutory authority and the ability to look at this program and see if it is accomplishing its purpose,” said McCaskill, “and then take some action – not wait for all the people who are making money to join hands and sing kumbaya.”

Senator Ted Stevens (R-AK), who chaired the hearing in the absence of Senator Daniel Inouye (D-HI), the committee chairman, was highly critical of the Joint Board recommendation. “This is an ostrich approach as far as I’m concerned,” said Stevens. “Somebody is putting their head in the ground.”

The Joint Board recommendation has prompted an emotional debate and sometimes a bitter struggle in Congress over the last two months that has been growing increasingly shrill. As the wireless industry has focused on a grassroots lobbying strategy to mount opposition to the Joint Board recommendation, the rural wireline industry has relied mainly on advertising in some publications distributed to Congress to show support for the Joint Board recommendation.

Tate appeared very well-rehearsed at the hearing as she laid out the rationale for the Joint Board’s decisions. “It became clear to the Joint Board during the course of its deliberations that high-cost support has been rapidly increasing in recent years,” she said, “largely due to increased support provided to CETCs. The growth is not only due to multiple providers receiving high-cost support in many study areas, but also because CETCs receive universal service support based on the incumbent LECs embedded costs or the per line support amount that the incumbent LEC receives.

“In light of those facts,” she said, “the Joint Board reached a consensus that immediate action was required to stabilize the high cost fund.”

Tate also told the committee that CETC costs generally were lower than the incumbent telephone carrier’s costs and added that this was one of many inequities in a system “that was fraught with inequities.” But, Stevens bluntly told Tate that the Commission could fix this “problem” immediately. “I just can’t believe we would have a situation like this continue when the Commission has the authority to change this without the Joint Board,” an exasperated Stevens said. “The Commission could solve this now.” Stevens repeated.

In a response that provoked Stevens, Tate acknowledged that the Joint Board did not focus on this issue, but only the interim cap on multiple CETCs.

The Joint Board recommendation also sparked some long-time USF opponents – who had been mostly silent over the last six months on the issue -- to once again give new life to their USF opposition. Senator John Sununu (R-NH), one of the most strident opponents of USF last year, criticized the Joint Board for taking a “piecemeal” approach to reform when more is needed to be done to fix USF. Sununu also complained that the USF contribution factor is too high and that consumers are being forced to pay too much in USF charges.

“The Joint Board has called for an arbitrary cap on one segment of the industry,” said Sununu. “I think a piecemeal approach is not fair, has the potential to skew the market, and just passes these significant problems down the road. We are subsidizing companies instead of consumers and we are subsidizing companies that are not deserving of subsidies.”

Senator David Pryor (D-AR) expressed concern that the interim cap would actually become permanent and that it would hurt investment in the deployment of broadband in rural areas.

But, Senator Olympia Snowe (R-ME) challenged Tate to consider the real-life implications of the cap in rural areas and called for the FCC to put the Joint Board recommendations “on hold.” Snowe outlined a series of “real-life” situations in which wireless had made the difference between life and death in Maine and argued that the cap would have a devastating impact on telecommunications services in Maine, especially on the ability of law enforcement to provide emergency services. Snowe said that half of all E-911 calls in the state of Maine originate from wireless phones.

“There is no denying that we need reform and we should do our part in Congress,” said Snowe. “But, we don’t have to accept a recommendation that disadvantages rural America. As a result of this cap, what is going to happen is that there will be fewer towers built, so that means that the rural parts of my state as well as across America are going to be denied the very technology that can make the difference between life and death. It’s one thing to say we can’t afford that service, but if the consequences are that rural Americans are not getting the benefit of these services – these are life threatening situations and there are economic implications – the inherent unfairness that is placed on rural America should lead the FCC to put this on hold.”

Also testifying at the hearing were John Rooney, the President and CEO of U.S. Cellular; Roger Nishi of Waitsfield and Champlain Valley Telecom; Jonathan Foxman, President and CEO of Chinook Wireless; Joel Lubin of AT&T; and Everett Flannery, the Chief Deputy of the Kennebec County, Maine, Sheriff’s Office.

Rooney told the committee that the interim cap would have a “profound impact” on wireless service in rural areas and added that the interim cap is “wildly unfair” and not competitively neutral. Rooney questioned whether USF was experiencing a real crisis that would justify a cap on CETCs. “The Joint Board’s rationale for a cap is that the fund will become unsustainable,” he said. “It doesn’t, however, explain what that means. Nor do the Board’s numbers add up.”

Nishi testified on behalf of OPASTCO, NTCA, the Western Telecommunications Alliance (WTA), and the Independent Telephone and Telecommunications Alliance (ITTA). He strongly supported the Joint Board recommendation saying it was equitable and the most logical way to “rein in the rapid growth” of the high cost fund. Nishi also advocated the elimination of the identical support rule and an expansion of the base of contributors to the fund.

Foxman's argument against the cap seemed to resonate with several members of the committee, especially Stevens and McCaskill. He said the cap would inhibit competition and would not address the long term problems of the USF. He criticized wireline carriers saying that many carriers spend more only so they can get more from USF.

Lubin outlined AT&T's support for the interim cap, but he tried to enhance the credibility of his arguments by noting that AT&T would be "required to shoulder at least a short-term reduction in otherwise certain funding." However, his testimony focused primarily on AT&T's recommendations for comprehensive USF reform. He advocated replacement of the existing revenues-based contribution mechanism with a numbers-based system; reform of the intercarrier compensation system; and a reverse auctions approach to select carriers to receive USF for offering wireless and broadband services in rural America. Lubin also warned the committee about pursuing "seemingly easy solutions," like eliminating the identical support rule.

Flannery delivered some of the most emotional testimony at the hearing. Testifying on behalf of the Maine Sheriffs Association, Flannery explained in dramatic fashion how dropped wireless calls or no wireless service in certain parts of the state have impacted emergency workers' ability to evaluate injuries at the site of accidents; hampered law enforcement's ability to deal with domestic violence disputes; and put law enforcement officers' lives at risk.

At the conclusion of the hearing, Stevens reiterated his own level of frustration saying the Joint Board had not offered a solution, and then he added that the problem probably could only now be solved through legislation.

## **SENATORS PROBE 700 MHz AUCTION RULES**

Like the Joint Board recommendation, uncertainty over FCC rules for the upcoming 700 MHz auction has also drawn considerable attention from Congress in the last month. The U.S. Senate Committee on Commerce convened a hearing recently on issues related to the auction.

Members of Congress expect the auction to generate additional funds for the government. In fact, estimates of receipts from the auction have already been incorporated into federal budget projections to reduce the size of the national deficit. Congress also expects the auction to facilitate the development of a new nationwide public safety communications network. There also is hope that the auction will help deploy new wireless broadband services in underserved or unserved communities.

Frontline Wireless is pushing a public-private partnership that would set aside 22 MHz of wireless spectrum for the creation of an interoperable public safety network that would be shared by commercial users with emergency personnel. Google also has recommended a plan that would allow winners of the spectrum to auction any unused spectrum in real time. There is also an effort to ensure that the new auction rules provide opportunities for smaller carriers. Legislation has been sponsored by Senator Olympia Snowe (R-ME) to mandate that the 700 MHz band be reconfigured to include spectrum licensed in small geographic areas. Some groups want the FCC to bar carriers winning the spectrum from warehousing it. Meanwhile, CTIA is pushing the FCC for simple rules.

"There is no question that the auction of 700 MHz frequencies will yield the Treasury substantial sums of money," said Senator Daniel Inouye, chairman of the Senate Committee on Commerce. "But, we should not let that fact seduce us into forgetting the importance of designing service rules that also meet other critical policy goals. This auction must ensure a diversity of license ownership,

promote universal service and the deployment of services beyond major cities and highways, and encourage entrepreneurship and the development of innovative technologies and applications that will stoke demand for high speed services.”

According to Inouye, the FCC rules should encourage the development of next generation networks for public safety. Inouye also stressed that the Commission should develop rules that will attract new entrants to the auction and promote competition. He expressed concern about proposals to auction spectrum in big regional blocks covering large geographic areas.

Senator John Rockefeller (D-WV) called on the FCC to maximize the “public interest benefit” of the auction. He stressed the importance of making sure that rural Americans are “provided the new and innovative wireless services that this auction is certain to bring.” Senator John Kerry (D-MA) also called on the Commission to promote the broadest level of participation possible. He said the FCC should mandate strict build-out requirements as a condition of winning the spectrum. Kerry also said winning bidders should offer open access to the spectrum.

Much of the hearing focused on the Frontline Wireless proposal. Testifying on behalf of Frontline, James Barksdale said the plan offered by Frontline would cover 99 percent of the country, including Alaska and Hawaii. But, Senator Ted Stevens (R-AK) expressed concern that emergency responders would have to pay to use the network. Only after repeated questioning by Stevens and Senator Byron Dorgan (D-ND) did Barksdale acknowledge that emergency responders would have to pay a wireless lease fee to access the network.

Paul Cosgrave, Commissioner of the New York Department of Information Technology and Telecommunications, was highly critical of the Frontline plan saying it would strip local agencies of control over their emergency communications networks. He also warned that the network may be jammed during disasters if responders must share spectrum with commercial providers.

Verizon also testified at the hearing in opposition to open access rules sought by several consumer groups. Verizon found a strong supporter in Senator Jim DeMint who said it was very important the auction “allow the larger companies to establish a seamless network.”

## **MARTIN, DINGELL SPAR OVER DTV TRANSITION**

FCC Chairman Kevin Martin and Representative John Dingell (D-MI), the chairman of the House Committee on Energy and Commerce, are sparring over the role of the FCC in facilitating the transition to DTV. The issue is whether the FCC or the National Telecommunications and Information Administration (NTIA) has the primary responsibility to educate consumers about the DTV transition and whether the FCC has requested enough money for consumer outreach.

In a recent letter to Dingell, Martin said Congress had designated the NTIA as the lead agency, not the FCC. But, Dingell has a different view. Martin also told Dingell that Congress should appropriate more money for consumer education if it wants the Commission to increase its efforts. Dingell has been highly critical of Martin for asking only for \$1.5 million as part of the FCC budget.

Ongoing disputes between Dingell and Martin on the DTV transition could eventually lead Congress to consider legislation later this year to delay the DTV transition.

## **A LA CARTE LEGISLATION INTRODUCED**

Legislation has been introduced in the U.S. House of Representatives that would require cable and satellite providers to offer a la carte programming or make other changes in programming to protect children from indecent television. The legislation was introduced by Representatives Dan Lipinski (D-IL) and Jeff Fortenberry (R-NE). FCC Chairman Kevin Martin demonstrated his support for the legislation at a press conference announcing introduction of the legislation.

The legislation would force cable companies and satellite providers to provide one of three options for subscribers. First, companies could offer an “opt-out” a la carte option in which providers would refund subscribers for channels in a programming package that a subscriber does not want. Second, providers could create a package of child-friendly programming, news, and sports that omits channels with mature content. The third option would enable cable and satellite providers to comply with the same rules that govern broadcasters.

The National Cable and Telecommunications Association (NCTA) quickly announced its opposition to the legislation calling it an “unnecessary mandate.” Several minority and religious groups echoed NCTA’s opposition saying the legislation would “snuff out” minority and religious programming.

## **CONGRESS LOOKS AT OBJECTIONABLE TV PROGRAMMING**

Both the House and Senate held hearings related to objectionable television programming. The House Subcommittee on Telecommunications held a hearing on children’s television viewing that focused both on programming content and advertising images. Representative Ed Markey (D-MA), the subcommittee chairman, stressed at the hearing that parents already have tools to block objectionable programming, but that these tools would not allow parents to limit their children’s exposure to commercials for products that may not be healthy. Markey added, however, that the Congress already has given the FCC the authority to address many of these issues if industry does not voluntarily solve the problem.

The Senate Committee on Commerce held a hearing on television violence. Senator John Rockefeller (D-WV) plans to introduce legislation in July to give the FCC authority to regulate violent television programming. Only Senator Byron Dorgan (D-ND) indicated support at the hearing for Rockefeller’s legislation. Several senators at the hearing questioned whether such legislation could survive a First Amendment challenge.