

THE **LOKT** NEWSLETTER

LOKT NEWSLETTER

JUNE 2006

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JUNE CALENDAR



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The Federal Pages

News and Updates in Federal Telecommunications Law

FCC News

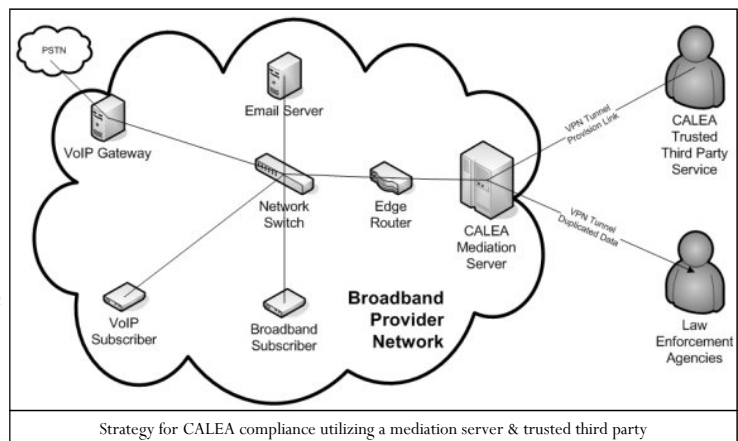
CALEA REQUIREMENTS FOR BROADBAND AND VOIP

The FCC has resolved a Second Report and Order (R&O) in the Communications Assistance for Law Enforcement Act (CALEA) and Broadband Access Services proceeding. As a result of this order, Voice over Internet Protocol (VoIP) and facilities based Broadband Access Providers must bring their networks into compliance with wiretaps, surveillance and other official law-enforcement requirements by May 14, 2007. In the event that a provider is incapable of meeting compliance in-house, the Act provides “safe-harbor” alternatives via third party contractors. Whether tackled in house or outsourced, the provider will bear the expense of meeting the CALEA requirements. The FCC has clearly rejected any call for a national surcharge to offset CALEA expenses.

In October of 1994, Congress enacted CALEA to protect the public safety and national security. The law defined the obligations of telecommunications carriers who were to assist law enforcement in carrying out certain electronic surveillance. As enacted, the law focused on wireline and cellular communications. The Act required carriers to pass intercepted voice traffic and call data to law enforcement agencies when lawfully ordered to do so.

The FCC’s 2006 R&O attempts to address the growing concern that CALEA can be circumvented through the use of new technology. During the 12 years since CALEA’s inception, the Internet has grown to provide a viable and popular alternative to traditional circuit switched telephony. Voice over IP (VoIP), Email, Instant Messaging and other real-time or near-real-time communications tools enable would-be wrongdoers to communicate effectively without the threat of government eavesdropping. The FCC’s ruling works to close this loophole by requiring broadband and VoIP providers to comply with CALEA.

While clearly establishing new obligations for providers, the second R&O does not provide bright-line rules for compliance. The Order does not define what data or what content must be captured. Will Internet Service Providers (ISPs) be held responsible for analyzing application-level traffic? Will VoIP providers be required to route all SIP data through some centralized clearinghouse in order to facilitate CALEA surveillance? If an ISP and a VoIP provider share a common subscriber, which entity is responsible for reporting the traffic and content to law enforcement? Much is left undecided at this point, but one thing is clear, the government wants to hold broadband ISPs and VoIP providers to a higher standard for reporting and compliance. With less than a year to meet the terms, providers should contact their equipment vendors, be investigating their options now and budgeting for changes in their infrastructure.



FCC BRIEFS

- ◆ In an effort to accelerate acceptance/availability of an additional 255Mhz of license exempt spectrum in the 5 GHz range, the FCC will NOT be issuing an additional Notice of Proposed Rule Making (NPRM). Rather, the Commission is briefly accepting comments on “petitions for reconsideration” which were filed in early 2004. Those petitions address the rules promulgated in 2003, which were established for originally opening the 5 GHz spectrum.
- ◆ M-LMS licensed wireless providers petitioned the FCC to loosen regulations regarding their use of spectrum between 904-928Mhz. M-LMS providers currently hold spectrum earmarked for simple vehicle location services. Rules prohibit extended transmissions and any messaging services within the M-LMS band. However, if the petitions meet with success, M-LMS providers will be free to utilize their licenses in much the same way as Wireless Internet Service Providers (WISPs) currently do under Part-15 rules. In addition, M-LMS providers will continue to enjoy the ability to operate at power levels exceeding ten times that of competing Part-15 WISPs. The FCC is accepting comments through May and reply comments through the end of June regarding this petition.

FCC APPOINTMENTS FINALLY GAIN CONGRESSIONAL APPROVAL

After his nomination was slowed by months of congressional roadblocks, Robert McDowell finally gained confirmation on May 26th and became the newest commissioner at the FCC.

Recent Bush appointments to the FCC have been presented but delayed. In March, Robert McDowell received the presidential nod to fill the FCC's last open Republican seat. The seat has remained vacant since former commissioner Michael Powell resigned from the commission in March of '05. In April, Bush re-nominated current FCC Chairman Kevin Martin to serve as chairman for a second five year term.



Robert McDowell

While Martin's re-nomination came as little surprise and serves to maintain the status-quo until 2011, McDowell's appointment shifts the dynamics within the FCC and is anxiously awaited by those on both sides of the aisle. Seating McDowell will give the Republicans a 3-2 edge within the agency, which should help promote the administration's agenda to process media and telecommunications mergers. Soon after he takes office, McDowell is expected to end a year-long deadlock affecting the sale of Adelphia Communications.

Given his background and his strong stands on policy issues, many interest groups and industry observers hope that McDowell will be a voice of reason within the FCC. McDowell has served as the senior vice president and assistant general counsel of COMPTTEL, a trade group representing many Bell rivals. Myle McSarrow, President of the National Cable & Telecommunications Association commented that "Robert McDowell is a thoughtful and fair professional with a deep understanding of telecommunications

issues, and will be a great addition to the FCC."

McDowell's appointment breezed through committee in early March, but full Senate approval did not follow. Because executive agency appointments must pass through the Senate, it is not uncommon for senators to put a "hold" on nominees in order to exact a price with special interest legislation.

In March, Louisiana Sen. Mary Landrieu leveraged her "hold" power and tied up about 20 presidential nominations in an effort to obtain promises for an additional \$4.1 billion for the reconstruction of storm damaged levees. Her efforts met with some success to the tune of \$2.2 billion dollars allocated on April 27th.

Yet, McDowell's affirmation remained sidelined throughout May due to yet another Senatorial "hold." It was reported that Sen. Jay Rockefeller (D WV) held the McDowell nomination in an effort to secure further assurances related to universal service funding.

The Universal Service Fund (USF) has been in financial trouble since September of 2004, when the FCC determined that the USF was subject to the OMB's Anti-deficiency Act. The Act requires that the government appropriate funds for a program before it spends money on that program. Limiting the USF to the terms of the Anti-deficiency Act has had adverse impact on the distribution of USF funds for libraries, schools and rural telephone companies.

In a statement, Rockefeller indicated that FCC Chairman Martin had provided the desired guarantees for funding of the USF "at least through the beginning of 2008."

MORE FEDERAL BRIEFS

STATE IMPOSED INTERCARRIER ACCESS CHARGES REVIEWED

The First Circuit Court of Appeals addressed two important issues in their recent review of *Global NAPS v. Verizon*. First, the Court determined state regulatory agencies gain implicit jurisdiction over telecommunications disputes via the Telecommunications Act of 1996. Second, the Court declared that "the FCC [has] not expressly preempt[ed] state regulation of intercarrier compensation for non-local ISP-bound calls." This decision leaves state level regulatory commissions with a free hand to impose access charges for such calls under state law.

TENNESSEE REGULATORY AUTHORITY IMPOSES INTERCONNECTION RATES

In a related matter, the Tennessee Regulatory Authority voted to regulate the interconnection rates that BellSouth imposes on local carriers. BellSouth contends that the Authority lacks jurisdiction in the matter and that only the FCC should have such authority. Pat Miller, the Director of the Tennessee Regulatory Authority, indicated that there is a pending BellSouth petition before the FCC to pre-empt state commission oversight. Should the FCC choose to pre-empt, Miller stated that the Authority will abide by the decision.

Other National News

IRS CAVES AFTER TELEPHONE EXCISE TAX FALLS IN FIVE CIRCUITS

On May 25th, the Treasury Department announced that starting July 2006, it will no longer collect the Federal Excise Tax on long distance telephone services and it will no longer litigate the issue in the courts.

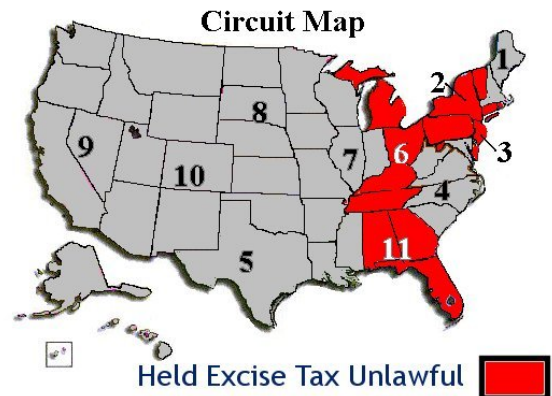
In recent months, the IRS has come under fire for its collection of the Federal Excise Tax. On May 9th, the Third Circuit joined with four previous decisions (prior decisions in the 2nd, 11th, 6th and D.C. Circuits) holding that the current application of the Federal Excise Tax on telephone service set forth in 26 U.S.C. § 4251 is unlawful.

The tax in question is historically referred to as the “Spanish American War tax.” It was originally created to assist in funding the war effort. In 1898, only a few thousand phones existed in the United States. As enacted, the 3% tax (approximately 1 cent per call) was somewhat of a luxury tax. With the war lasting only four months, it is of little surprise that the validity of the statute be questioned today.

The form of attack presented in each of the recent circuit cases has been to question whether the IRS may legally collect taxes on certain types of long distance phone service. The original act did not provide a definition of taxable telecommunications. However, in 1965, Congress reformed the excise tax act and defined “taxable toll service.” 26 U.S.C. § 4252(b)(1)(A) defines toll telephone service as “(1) a telephonic quality communication for which (A) there is a charge which varies in amount with distance *and* elapsed transmission time of each individual communication” (emphasis added). This wording was developed in an era when AT&T held a near monopoly on the United States long distance market and toll call charges were based on time and distance or were fixed periodically via a Wide Area Telephone Service (WATS) plan. Today the wording of the statute provides a con-

venient loophole for avoiding the tax.

Choosing to follow a strict textual interpretation of the law, the circuits have held that toll calls must be variably-priced based on BOTH distance and transmission time in order to be subject to the excise tax. Since much of the long distance market has switched to time based or bundled pricing in recent years, many calls should be exempt from the excise tax.



The circuit decisions apply to most cell phone service, Internet phone service, and some long distance plans. Industry reports indicate that as much as \$9 billion in refunds may be due.

The Treasury Department has not yet released complete details regarding refunds. However, the IRS has indicated that taxpayers will be allowed to claim up to three years (due to the statute of limitations) worth of overpayments on their 2006 federal tax return. For those businesses with significant telecommunications bills (i.e. ISPs), the 3% tax refund will certainly be worth investigating.

EARTHLINK APPEALS UNBUNDLING DECISION

Appearing before the U.S. District Court of Appeals for the D.C. Circuit, Earthlink lawyer Mark O'Connor recently argued that federal regulators acted illegally when they discharged the Bell companies from the obligation to share their networks with competitors.

In 2004, the FCC decided to release the remaining Baby-Bells, SBC, Verizon, Qwest and BellSouth, from the stipulations of the Telecommunications Act of 1996 which require incumbent telephone companies to “unbundle” broadband elements for use by competitors.

The Act allows the FCC to grant forbearance to these rules only when government believes that a sufficiently competitive

environment exists such that market forces will ensure non-discriminatory charges and practices.

THE FCC
“UNLAWFULLY
ERADICATED THE
RIGHTS OF
BROADBAND
COMPETITORS”

Earthlink’s case hinges on the argument that the government did not engage in appropriate market analysis when reviewing the state of broadband competition. In so acting, the FCC “unlawfully eradicated the rights of broadband competitors to serve the public.”

While government contends that cable companies present an effective deterrent against predatory pricing in the telecom industry and no further review is warranted, but O’Connor retorts that there is no evidence that the Bells are actually offering access to their infrastructure at “just and reasonable rates” as required by the Telecommunications Act of 1996.

Congressional News

STEVENS' ALL ENCOMPASSING TELECOMMUNICATIONS BILL

Senate Commerce Committee Chairman Ted Stevens introduced Senate Bill 2686 on May 1st. The proposal contains sweeping legislation intended to reform existing communications laws, promote competition, reduce costs to consumers and speed the deployment of broadband internet.

While the bill contains ten titles covering everything from child pornography to wireless spectrum reform, the hot button issues continue to be video franchise rights, universal service reform and network neutrality regulation.

Telecom Reform Bill - Top Ten

- 1) Provide Grants for Interoperability of Law Enforcement Communication Systems
- 2) Universal Service Reform (see related story on page 5 re: the USF Reform Act)
- 3) Video Franchise Reform - Creating National Video Franchise Rights
- 4) Video Content Rules
- 5) Affirmatively Permit Municipal Broadband Networks
- 6) Allocate Unlicensed Whitespace for License-Exempt Use
- 7) Provide Warnings Concerning the Deadline for Adoption of Digital Television
- 8) Promulgate Child Pornography Regulations for the Video Industry
- 9) Provide the FCC Authority to Conduct a Study on Net Neutrality Issues
- 10) Other Miscellaneous Rule Changes Regarding FCC Commissioners

The former Bell operating companies are anxious to obtain nationwide video franchise rights which would accelerate their entry into the video market and enable them to deploy TV services across their broadband infrastructure.

Universal service reform is sought by legislators from many rural areas. The fear is that e-rate funding for schools and libraries may be diminished or eliminated unless budget issues are addressed soon.

Net Neutrality, the debate as to whether network owners should be free to charge premiums for certain content delivery, was given a cursory glance within Stevens' bill. Rather than setting forth regulations or restricting content discrimination, the bill simply gives the FCC the

authority to conduct a study on the need for network regulation. This approach falls far short of what consumer groups and industry content providers had hoped but sits well with the likes of AT&T and Comcast.

IS NETWORK NEUTRALITY DEAD ON THE HILL?

Taking heed of warnings by industry content providers, consumer advocacy groups and even FCC Commissioner Michael Copps, several legislators have drafted competing bills which could provide differing degrees of protection against Internet content and service level discrimination.

A bi-partisan bill, HR5417, was recently approved by the House Judiciary Committee. This bill would amend the Clayton Anti-trust Act and extend its protections to the Internet. This strict measure would prohibit network providers from discriminating against unaffiliated services,

"This Internet may not be the one we know in the future. There are threats to it out there... Entrenched interests are already jockeying to constrain the openness that has been the Internet's defining hallmark."

-- FCC Commissioner Michael Copps



content and applications.

An opposing effort, HR5252, the COPE bill, passed through the House Energy and Commerce Committee in May. This bill is supported by major telecoms such as AT&T and Verizon. The purpose of the bill is to create nationwide video franchises. However, legislators,

hoping to silence the network neutrality debate, tacked on an additional measure that provides the FCC with weak authority to investigate complaints of network abuse.

With the network neutrality debate in the public's eye, several other bills have been introduced: Rep. Markey introduced

the Network Neutrality Act of 2006 (HR5273), Senator Wyden promoted the Internet Non-Discriminatory Act of 2006 (S.2360), and Senators Snowe and Dorgan issued the Internet Freedom Preservation Act (S.2917). All of these proposed enactments seek to prohibit broadband providers from discriminating amongst services and content.

With the exception of Senator Stevens' bill (S.2686) and the Barton/Rush Cope bill (HR5252), all current legislation points towards the undeniable need to prohibit the creation of a multi-tiered Internet.

Congressional News

CONGRESS MAY CALL UPON ISPS TO PLAY THE ROLE OF BIG BROTHER

U.S. Attorney General Alberto Gonzales aired his frustration with the current inconsistent nature of ISP data retention. He believes that the failure of some Internet Service Providers to retain logs for a reasonable amount of time is hampering investigations of online sex crimes. While Gonzales stopped short of supporting legislation on the matter and chose not to specify a preferred data-retention period, he did indicate a willingness to work with ISPs in developing standards.

ISPs are already bound by the 1996 Electronic Communication Transactional Records Act which require them to retain logs/information for 90 days upon government request. However, this Act falls short of the goals of the Attorney General because it leaves each ISP to determine which records to maintain.

Colorado Representative Diana DeGette recently proposed legislation which would require ISPs, email providers and possibly web hosting providers to maintain records which would permit law enforcement to identify each user. DeGette's proposal would mandate that this information be retained for a minimum of one year after a user's account is closed.

The fear is that any legislation requiring ISP logging may devolve into something sinister. Jim Harper of the Department of Homeland Security's Data Privacy and Integrity Advisory Committee warned that with such rulemaking "[t]he FCC would be able to tell Internet service providers to monitor our e-mails, monitor our Web surfing, monitor what we post on blogs or chat rooms, and everything else under the sun."



USF REFORM ACT COULD MEAN NEW NET TAXES

In March, Rep. Lee Terry (R. NE) and Rick Boucher (D. VA) introduced HR5072, the "Universal Service Reform Act of 2006," in an effort to overhaul the ailing universal service program. A decade of change in the telecommunications industry has trebled the demand for funds from the Universal Service Fund (USF). At the same time, contributing telecommunications firms have experienced declining revenues and increased competition.



Lee Terry address school children

Since 1934, the purpose of the universal service program has been to provide cost subsidies to incumbent rural phone companies, enabling those companies to provide affordable service in hard to reach locales. However, that goal changed with the Telecommunications Act of 1996. The '96 Act redefined the scope of universal service not only to provide telephone subsidies, but also to fund internet access for schools, libraries and rural health care facilities. The Act established the USF which receives funding by charging telecommunications companies a percentage of their interstate end-user revenues. Despite mandating annual in-

creases of the contribution percentage and despite having already doubled the contribution rate since 1996, the USF remains under-funded.

Addressing these budget shortfalls, HR5072 seeks to increase the base of contributors to the USF. Not surprisingly, the bill intends that both intrastate and interstate phone service providers contribute to the USF. Somewhat more controversial, the bill targets non-traditional services such as cable modem service, VoIP, Wi-MAX and any other provider of electronic communications. Thus, all facilities-based broadband Internet service providers could be required to contribute to the Universal Service Fund under this proposal. Does this mean "New Net Taxes"?

As an additional measure, the proposed act seeks to narrow the availability of funds from the USF. While the proposed act provides some assurances that those already receiving funds from the USF will be allowed to sustain those funds temporarily, new rules regarding mandatory broadband deployment, quality of service and responsiveness will bar many from tapping the Fund in the future.

The State Pages

News and Updates in State Telecommunications Law

STATE BRIEFS

LISTED BELOW ARE BRIEFS OF RECENT IMPORTANT NEWS FROM STATE UTILITY COMMISSIONS, LEGISLATURES, COURTS AND OTHER NOTEWORTHY STATE NEWS:

AK: The Alaska Regulatory Commission is accepting proposals for broadband expansion projects until July 17, 2006. The state is willing to provide grants covering up to 75% of deployment costs. To qualify for these grants, projects must be capable of extending broadband to unserved parts of the state at rates similar to those in Anchorage, Fairbanks and Juneau.

CA: California legislators seek to explicitly permit municipalities with the right to provide wireless broadband services. SB-1803 would provide that no private organization would have a right to provide broadband service in place of a willing municipality.

CA PUC set rules for Broadband over Power Line (BPL) deployments within the state. Regulators hope that by providing loose regulation of the BPL industry, they will encourage new investment and widespread development of the new technology.

CO: PUC officials voted to deny Qwest's petition for less stringent regulation. Qwest sought to be held to the same regulatory and reporting standards as the non-incumbent telephone providers within the state. Not convinced that market forces can effectively regulate the incumbent, PUC officials did not feel that the time was right to make such a move. The PUC indicated a willingness to reconsider this decision at sometime in the future.

IL: AT&T filed suit against seven Chicago area municipalities which have been slow to grant the telecom giant right-of-way access for its Project Lightspeed deployments. Municipal officials explain that AT&T should have to apply for a local video franchise before being permitted to upgrade its networks to provide video services.

MA: State regulators are reviewing the state's retail telecom billing and regulation legislation which dates back to 1977. The commission seeks to address the implications of CLEC competition and emerging VoIP technology.

ME: PUC Commissioner Stephen Diamond resigned after eight years on the commission citing old age as the impetus of his decision.

MI: AT&T Michigan, formerly SBC Michigan, is seeking release from its designation as toll-provider of last resort for about 30 communities within the upper peninsula of Michigan. In so doing, the former baby bell will exit those markets and allow customers to choose among several other IntraLATA contenders including the parent AT&T Corporation.

NV: AT&T entered into a two year agreement to provide service for all of the state's voice and data traffic for all executive branch agencies.

NC: The North Carolina Utilities Commission is reviewing comments filed regarding a BellSouth request to remove certain unbundled network elements from the state's quality enforcement program. BellSouth contends that sufficient competition is in place to ensure against abuse and that regulatory review is no longer necessary.

OR: An Oregon state appeals court upheld a decision that the PUC has authority to set penalties against those that make unauthorized pole attachments. Shortly after this ruling, the commission began work on new rules regarding construction, regulation and enforcement of utility poles and attachments.

VA: The VCC refused to reconsider its earlier decision in which it denied Verizon a waiver on its price cap on local rate increases. The Commission stated that granting such a waiver would set a precedent through which CLECs throughout the state would be able to raise rates.

WA: Seeking to hasten the processing of minor regulatory affairs, the UTC has proposed delegation of some portion of their review power to administrative judges within the state.

STATE NEWS

STATES CAUTIOUSLY CONSIDER DEREGULATION

Pressured by the nation’s telecom giants, several states have recently considered significant changes to their telecommunications regulatory environments (Kentucky, Indiana, Georgia, New Hampshire and Florida). Montana and Illinois are just now approaching these issues. Some states have traded deregulation for broadband, others have rejected or hedged against deregulation in order to protect against unchecked price increases.

In hopes of spurring broadband deployment across the state, Kentucky almost completely deregulated its telecommunications carriers, with the slight exception that it retained oversight on basic phone line services. Similarly, Indiana enacted legislation which removed price caps on local service, stripped regulatory officials of oversight authority and worked to enable large telecom players to offer video services without local franchise rights, all done in an effort to entice faster deployment of high speed networks throughout their state. Georgia took a somewhat less drastic approach by simply deregulating broadband, VoIP and wireless services while leaving telephone services under regulation.



In contrast, if signed, Florida’s SB-142 will roll back its earlier deregulation of telecommunications and it will replace price caps and return oversight authority. Absent this legislation, Florida ILECs have been free to increase local phone service rates as much as 20% per year. New Hampshire has taken an intermediate approach to deregulation. They have provided that some small telcos may establish rates free from rate-of-return formulas, but the PUC chose to retain the right to re-establish price controls in the future if they become necessary.

Montana will be holding hearings starting in June regarding Qwest’s request that the PSC deregulate optional vertical services, additional listings and bundled packages.

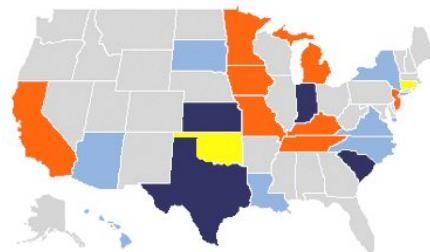
Illinois’s Citizen’s Utility Board has tentatively agreed to deregulate AT&T in return for a promise to make broadband available to at least 99% of Chicagoland residents within the next four years. This proposal must gain approval from the Illinois Commerce Commission before becoming binding.

VIDEO FRANCHISE AUTHORITY STRIPPED FROM LOCAL GOVERNMENT

Traditionally, cable operators have been required to contract with local government officials to obtain the necessary access to the public right of ways in which their coaxial or fiber optic cable lines and transmission equipment reside. Local governments provide for this access via franchise agreements. Most franchise agreements obligate cable operators to provide a percentage of their gross revenues to the municipality and, in some cases, other exactions such as public access channels are negotiated for the benefit of the community.

With the advent of widespread Digital Subscriber Line deployments and the increasing use of fiber to curb or fiber to premise, telecommunications carriers are now eyeing the video market. These new high speed technologies combined with Video over IP encapsulation promise to enable rapid deployment of competing “Cable-TV” services using ordinary phone lines.

Regulated as telecommunications carriers, AT&T, Verizon, Qwest and BellSouth have not been required to obtain local franchise agreements to lay fiber optics or copper within the areas they serve. Telecommunication is regu-



Yellow = States deciding that no franchise is necessary for IP-based Video
Orange = States with pending legislation threatening local control
Blue = States with actions passed threatening local control
Dark Blue = States with legislation granting telecom companies statewide franchises

lated at both the state and federal level, but is exempt from most local regulation.

Now that these carriers seek to enter the video market, they are subject to the same local oversight as traditional Cable-TV operators. This means that the former Bells could end up facing regulation by tens of thousands of individual local governments. This is simply not the way

that the telcos want to do business.

As a result, last year, AT&T (formerly SBC) attacked the need for local video franchise rights in its home state of Texas. Not surprisingly, AT&T was successful and now need only apply at the state level to obtain rights to deploy video services within the state.

Recently, AT&T successfully lobbied for similar statewide franchise rights in Kansas and Indiana. Following suit, BellSouth succeeded with its request for statewide franchising in South Carolina.

This month, Connecticut and Oklahoma each decided that video services over an IP-based network were not subject to **any** franchise authority.

Hawaii, Arizona, South Dakota, Louisiana, New York, Virginia and North Carolina have all passed legislation through at least one house regarding state video franchising. Pending legislation has been drafted in at least a half dozen more states.

It appears that the Bells are quickly gaining support for their video empire as they entice states with promises of competing video services and widespread broadband. The question remains: What is the cost of this “progress”?

Industry News

Telecommunications Industry News and Notes

VERIZON FREED FROM BUSINESS BROADBAND REGULATION - INDUSTRY CRIES FOUL

By abstention, the FCC permitted an environment-altering policy change in March. The politically-split commission allowed Verizon's petition for fewer regulations to pass without action. Now Verizon is uniquely endowed with unfettered discretion with regard to its business broadband services. Verizon is no longer required to provide services on a non-discriminatory basis, is freed from regulatory price reporting, and need not respond to "reasonable requests" for its services. The typical arguments for and against this action ensued. Both Democratic commissioners (Copp and Adelstein) aired their belief that left unchecked Verizon will raise prices. The Republican faction held that deregulation was necessary to spur new broadband investment by Verizon.

Attacking the "adoption by abstention" approach, COMPTEL, an industry advocacy group, filed a petition for review on March 19, 2006 in the United States Court of Appeals for the District of Columbia Circuit. COMPTEL contends that the statutory provision which allowed the FCC commissioners, as unelected officials, to grant Verizon's forbearance petition by default was unconstitutional. COMPTEL's theory appears to rely upon the premise that Commissioner Martin was under an affirmative obligation to ensure that deregulating Verizon would be in the public's best interest. Earl Comstock, CEO of COMPTEL, stated, "When the chairman of a federal agency is able to abdicate his responsibility to protect the public interest, and instead chooses to advance the private financial interests of a single giant corporation, it is time for the courts to step in and protect the public."

VONAGE LONG AWAITED IPO - YEAR'S WORST

After months of speculation, the world's largest Voice over IP (VoIP) provider, Vonage, made its initial public offering on May 26th. Shares opened at \$17, but slid throughout its first week of trading, ending at just \$12.50. A 26% loss in value in the first week; by far the weakest IPO of 2006.

Most portfolio managers are unsurprised by Vonage's dismal showing. According to initial reports, Vonage was only seeking to raise about \$250 million through its IPO. However, in recent weeks the cash strapped VoIP provider adjusted its target to raise nearly \$493 million. The result was a highly overpriced offering.

While the company has experienced rapid revenue growth and steady increases in subscribers, its marketing expenses have outpaced revenues quarter upon quarter and the company continues to bleed money. In addition, Vonage is facing increased competition from MSOs, LECs, and pure VoIP players such as eBay's Skype, which has recently begun offering free domestic calling in an attempt to convert Vonage market share.

Industry analysts have said that the message to be gained from this IPO is not to distrust VoIP technology, but rather to distrust business plans built upon endless losses and exuberant marketing strategies. No one is willing to finance another "dot-bomb."

In fact, Vonage even turned to its subscribers to promote its IPO. Vonage reserved 15% of the IPO shares for sale to its own customers. Some industry experts suggested that getting customers involved with the IPO would build up more buzz and help ensure that the shares traded up. But even the loyal masses could not overcome EBITDA.

June 2006

THIS MONTH'S FILING DEADLINES AND OTHER DATES TO REMEMBER:

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15 SD: Gross Receipts Tax	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30 FCC: ICLS RI: SBO	

- ◆ **6/15: South Dakota:**
Gross Receipts Tax Due.
For more info. visit:
<http://www.state.sd.us/puc/consumer/GRT%20from%20oldweb/GRT-FORM01.pdf>
- ◆ **6/30: Rhode Island:** If there are any changes to the SBO: SBO should be amended annually as of 6/30 of each year or before if changes are made, but in no event not later than 6/30 annually.
- ◆ **6/30: Interstate Common Line Support (ICLS) Self-certification**

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