

MiCTA Legislative & Regulatory Update April 2009



The News You REALLY Can Use!

By
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Welcome to the April MiCTA Leg/Reg Update!

While it might have begun to feel like spring, as I’m completing this article I’m looking out my window upon a pretty intense blizzard-type day, in early April. It sure lets us know that life can be full of surprises!

Speaking of surprises, a number of news sources reported in mid-March that Comcast said it had taken over the Number 3 position as provider of primary telephone service provider in residences, taking that spot away from Qwest Communication. But, in looking at cable telephony, it’s been reported that telecom providers Verizon and AT&T are topping the rate of growth in providing video connections! For those who have been around awhile, it sure turns what we’ve been used-to topsy-turvy!

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FCC Commissioner Adelstein Nominated for Director of RUS

On March 20th, the Obama Administration announced it was nominating current FCC Commissioner Jonathan Adelstein to head the Rural Utilities Service (RUS), an agency of the U.S. Department of Agriculture.

The RUS provides many programs for financial the ongoing development of the telecommunications infrastructure in rural America. The *Traditional Telephone Loan Program* includes hardship, cost of money, and guaranteed loans that finance voice telephone service. And, as many of us have noted over the years, the financing and development of telecommunications infrastructure from a voice standpoint also provided the infrastructure in many cases for offering broadband via digital subscriber loop (DSL). According to the RUS, every telephone line that has been constructed since 1995 using RUS money has had that infrastructure or multi-use capability. The RUS also administers a Broadband Access Loan program, a Distance Learning and Telemedicine program, and a Community Connect Grant program. It also works with water, electric, and waste programs.

Adelstein has been an FCC Commissioner since 2002. Prior to that position, he had worked for 15 years in the Senate, with 7 years as an advisor to then-Senate Majority Leader Tom Daschle (D., SD). He has held teaching positions at Harvard and Stanford, and had been a communications consultant to the Stanford Graduate School of Business.

Of the announcement, fellow FCC Commissioner and Acting Chair Michael J. Copps noted that Adelstein will bring "a depth of knowledge, experience, and commitment to the job that will enable him to make a huge contribution to advancing the well-being of rural America. Copps also stated that Adelstein knows the issues and challenges "inside out" and will be able to hit-the-ground running, stating that's exactly what the RUS needs.

With the FCC Chair position as well as two Commissioner positions now open, the Obama Administration must fill 3 positions on the 5-member Commission. As reported in the January issue, the Administration has announced they hope to have Julius Genachowski fill the Chairman position. However, for the FCC to move forward in any kind of efficient mode, the other two positions must receive nominations, and all three move through the confirmation process as quickly as possible.

The Obama Stimulus Plan and Universal Broadband

So much has been reported recently on the Obama stimulus plan that there's almost no way that anyone could not have heard of at least the basics, and of the areas where the money will go.

With the amount of the stimulus going to efforts to increase broadband accessibility being \$7.2 billion, the continued debate over broadband universality has an added dimension, but the opinions on each side are really no different. Many believe the marketplace should be the entity that should get broadband expanded, with many providers saying it isn't commercial financing that's stopping them; and, that a substantial number of those the statistics show are "targets" for receiving broadband or higher bandwidth have reported they don't want broadband or higher bandwidth. Others say the government should step-in, likening the effort to that of building the interstate highway system; and that there are sufficient "have-nots" in both broadband itself and higher speeds that the massive effort is worth it. Both sides agree it will take much, much, more than \$7 billion to do the job, but again, some say it's not an appropriate job to do....in the manner suggested so far.

One bone I have to pick with the overall effort is the amount of money, both before the stimulus and after, the government believes is necessary to map broadband and speeds in the U.S. I agree totally that a better picture of where we are with regard to the overall availability of broadband/speeds and penetration rates is necessary. However, the federal government is saying that it will take over **\$300 million** to compile this information (I forget that anything under a billion is not real money)! But, if you look at any amount of vendor information that's already being submitted to the FCC on a periodic basis which is readily available as well as current government information, it looks as though some tweaking of the requests for information from vendors and massaging of data is pretty-much all that is needed to get the desired result! And for those who contend that data direct from providers cannot be trusted, I then suggest the data be collected on the basis that it is subject to perjury laws! It reminds me of vendors who want to charge you \$10,000 for some proprietary database work only to find-out they have a simple program that will produce the information in seconds.....with only a couple of hours of data entry work required! This is lunacy! (ask me how I really feel)

And, regarding broadband mapping, the State of Virginia has created a toolkit for communities to use in evaluating their broadband needs, their assets, and how to create and build-out broadband for pennies-on-the-dollar compared to how the feds think it should be done! The website (http://www.otpba.vi.virginia.gov/roundtable_toolkit.shtml) provides droves of information as well as a methodical process for expanding broadband in a locale.

Whatever the opinion, I'm just a bit skeptical about how much good the \$7 billion will do to expand broadband or to stimulate the economy. As is noted below, Qwest recently noted that it would take \$3 billion alone just to increase their 7 Mb footprint to 95% of their area. Multiply that out by the number of vendors and areas of the U.S. supposedly in the "unserved" or "underserved" designation, and you're talking some real money! In addition, the whole definition of an area as being "unserved" or "underserved" is not in concrete, is being hotly debated and may take some time for consensus to be reached. Ultimately, I'm believing much more that it will simply stimulate a few companies at taxpayer expense for work that would have been done anyway, with current companies' lenders providing the resources.

FCC Issues NOI on National Broadband Initiative

Public Input Sought to Ensure Every American has Access to Broadband Capability

On April 8th, the Federal Communications Commission began the process of developing a national broadband plan that will seek to ensure that every American has access to broadband capability.

In the American Recovery and Reinvestment Act of 2009 – known as the stimulus package – Congress charged the Commission with creating a national broadband plan. In a Notice of Inquiry (NOI) adopted, the FCC began a proceeding to create that national broadband plan, seeking input from all stakeholders: consumers, industry, large and small businesses, non-profits, the disabilities community, governments at the federal, state, local and tribal levels, and all other interested parties.

The Commission must deliver the plan to Congress by Feb. 17, 2010. It will provide a roadmap toward achieving the goal of ensuring that all Americans reap the benefits of broadband. The Recovery Act requires the plan to explore several key elements of broadband deployment and use, and the Commission now seeks comment on these elements, including:

- The most effective and efficient ways to ensure broadband access for all Americans
- Strategies for achieving affordability and maximum utilization of broadband infrastructure and services
- Evaluation of the status of broadband deployment, including the progress of related grant programs
- How to use broadband to advance consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, worker training, private sector investment, entrepreneurial activity, job creation, and economic growth, and other national purposes.

For read the complete Notice of Inquiry:

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-31A1.pdf

Cellphone Tax Fairness Act Introduced

In mid-March, Representatives Zoe Lofgren (D., Ca) and Trent Franks (R., Az) introduced the Cell Phone Tax Fairness Act of 2009 (HR 1521)

The bill would ban, for a five-year period, any state or local government bodies from imposing new "discriminatory taxes regarding mobile services/service providers/mobile services property. The ban is not to be confused with current local, state, or federal taxes or surcharges assessed on cellular.

With 20 congressional co-sponsors and a number of supporters in the lobbyist arena, Representative Lofgren noted that the Act is designed to provide a period of tax stabilization with regard to cellular services, not removing any existing revenue for local and state governments, but providing consumers with the ability to better make choices about the type of cellular service and technology desired, while not being as concerned with the taxation rate.

Now, if we can just get the MOBILE Cell Phone Act of 2009 also passed (the bill which would remove cellphones from the "listed property" designation by the IRS)!

To read the legislation:

<http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.1521>:

Universal Service in the News

Second Quarter 2009 USF Contribution Factor to Increase!

Well, the respite from a higher Universal Service Fund contribution factor was extremely short-lived, as the FCC Office of the Managing Director (OMD) announced the proposed figure for the second quarter of 2009 will be increased to 11.3%!

As we reported in the last issue, the USF contribution factor had remained at 11.4% for the third and fourth quarters of 2008, but then dropped to 9.5% for the first quarter of 2009. Regarding the jump to 11.3%, the mathematical formula used to determine the contribution factor included a decrease in the estimate of collected interstate and international end-user telecom revenues by the projected revenue requirements to account for circularity; and a decrease of the result by 1% to account for uncollectible contributions.

With so many companies and institutions struggling financially with the difficult economic conditions, it's unfortunate that the USF contribution factor increased.....we can only hope the factor again goes down for the third quarter.

House Sub-Committee Holds Hearing on USF Reform

On March 12th, the U.S. House Subcommittee on Communications, Technology and the Internet held a public hearing entitled "Universal Service: Reforming the High Cost Fund."

With the exception of comments regarding the \$7.2 billion in the recent economic stimulus package designated for broadband deployment grants and loans, this hearing evoked comments heard ad nauseum without action over the past several years about what should be done with the Universal Service Fund (USF), as well as what role it should play in expanding broadband access and penetration.

With the FCC taking temporary action including caps to lessen the monetary pressure which threatens the sustainability of the Fund, those offering testimony recommended both sides of almost every suggestion for USF reform. The one point of complete agreement was that the USF is a broken entity, but even in that there was disagreement over whether corrective action should be taken or if the USF should simply be scrapped.

When one representative asked why the federal government should pour more money into expanding broadband when some companies have announced mega-spending for broadband expansion, other companies said the costs for doing so are so great they cannot go it alone. Qwest reported it would take \$3 billion to expand broadband in their 14-state local service region from 86% of their current customer area to 95%, which would entail doing so in more costly rural areas (have you seen pictures of Qwest technicians riding burros in mountainous regions to reach some cable/gear?). Embarq stated it would take about \$2 billion to provide broadband to all of its customer areas, and that they cannot do so on their own.

The issues of sustainability of the USF and expansion of covered services among others are admittedly extremely complex and not easily solved. And, the aspect of hearings, even those in which it appears no headway is being made, is very important, as it gets all of the ideas out on the table for discussion and review. However, it is overall primarily critical that ultimately some kind of consensus is reached, and action begins to be taken soon.

You can read more details at:

[Opening Statement of Subcommittee Chairman Rick Boucher](#)

[Opening Statement of Committee Chairman Henry Waxman](#)

[Testimony of Leroy J. Carlson, Chairman of the Board, U.S. Cellular.](#)

[Testimony of Steve Davis, Senior Vice President, Public Policy and Government Relations, Qwest](#)

[Testimony of Mark Gailey, President and General Manager, Totah Communications](#)

[Testimony of Tom Gerke, Chief Executive Officer, Embarg](#)
[Testimony of Gregory A. Hale, General Manager, Logan Telephone Cooperative, Inc.](#)
[Testimony of Joel E. Lubin, Vice President, Public Policy, AT&T](#)
[Testimony of Tom Tauke, Executive Vice President, Public Affairs, Policy & Communications, Verizon](#)
[Testimony of Derek Turner, Research Director, Free Press](#)
[Testimony of Scott Walsten, Vice President for Research and Senior Fellow, Technology Policy Institute](#)

FCC to Refresh Record Regarding High-cost USF Support For Non-rural Carriers

On April 8th, the FCC issued a Notice of Inquiry (NOI) concerning the seemingly endless judicial wrangling over High-Cost Universal Service Fund Support. In the latest Notice of Inquiry (NOI), they seek to refresh the record regarding the issues raised by the United States Court of Appeals for the Tenth Circuit (Tenth Circuit) in the *Qwest II* decision.

In that decision the Tenth Circuit invalidated the FCC's high-cost universal service support mechanism for non-rural carriers, which determines the amount of support to be provided to each state by comparing the statewide average forward-looking cost per line for non-rural carriers to a nationwide cost benchmark.

The FCC had sought comment-on and then made a decision on comprehensive support of the high-cost mechanisms. Among other things, section 254(b) provides that consumers in rural, insular, and high-cost areas should have access to telecommunications services at rates that are "reasonably comparable to rates charged for similar services in urban areas." The FCC defined the term "sufficient" as "enough federal support to enable states to achieve reasonable comparability of rural and urban rates in high-cost areas served by non-rural carriers," in reaching a decision.

Because the non-rural high-cost support mechanism rests on the application of the definition of "reasonably comparable" rates that the court invalidated, the court deemed the support mechanism invalid. On December 9, 2005, the Commission issued the *Remand NPRM* seeking comment on a number of issues to enable the Commission to craft a non-rural high-cost support mechanism consistent with the court's decision and the statute. Specifically, the Commission sought comment on: (1) how the Commission should define the statutory term "sufficient;" (2) how the Commission should define "reasonably comparable" while also fulfilling the mandate to preserve and advance universal service; and (3) how, in light of the interpretation of the key statutory terms, the Commission should modify the high-cost funding mechanism for non-rural carriers.

In response to the FCC's request for comments responding to the Tenth Circuit's remand of the non-rural high-cost support mechanism and in comments on reform of the overall high-cost support disbursement mechanism, several parties have filed specific proposals related to disbursement of high-cost support to non-rural carriers. The FCC must now evaluate the proposals and hopefully make a determination reasonably soon in this matter.

To read the Notice of Inquiry:

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-28A1.pdf

NENA Model Legislation for E911 and Multi-line Telecom Systems

On February 19th, NENA issued an updated model for legislation regarding E911 and Multi-line telecom Systems (MLTS), ie., PBXs.

Although the number of states enacting such legislation has grown somewhat slowly, many industry analysts believe there's reasonably strong potential for more movement in this area, particularly in light of A) seemingly greater catastrophic emergency events as well as violent acts impacting masses; and B) the evaluation and move towards advanced 911 services, which may sweep this issue along with it.

To review the model legislation document:

http://www.nena.org/sites/default/files/20090219_06-750%20V2%20MLTSMModel%20Legislation.pdf

Other NENA MLTS/PBX documents regarding 911:

<http://www.nena.org/mlts-pbx>

NENA State MLTS/PBX Legislation Update:

<http://www.nena.org/mlts-pbx/state-legislation>

International News

EU Parliament Set for Final Vote on Texting & Wireless Data Fees

On March 9th, the Industry Committee of the European Union Parliament voted to reduce consumer wireless roaming charges for text messaging and downloading data across the EU, paving the way for an affirmative vote by the full European Union Parliament

As we've reported, the plan calls for a cap on SMS message fees at 11 Euro Cents per sent message (4 Euro Cents wholesale), down from an average of 29 Euro Cents. The plan also caps mobile data download charges at 1 Euro per 1 Mb data, which will be down about 90% from the current estimated data roaming average in the EU. The Committee also voted that providers will have to charge roamed calls "by the second, from the first second of a mobile call abroad."

Of the vote, Viviane Reding, EU Telecoms Commissioner, noted, "Yesterday's vote in the European Parliament is very good news for consumers all over Europe. In view of the current economic downturn, the Parliament is right in wanting to strengthen the purchasing power of European consumers as of this summer, which will encourage them to make even more use of their mobile phones." In attending the Committee vote in Strasbourg, Commissioner Reding also commented, "I welcome the fact that the Parliament's lead Committee on the new roaming rules yesterday evening voted in favor of all the main points of the Commission proposal. I congratulate Adina-Ioana Vălean, the Parliament's Rapporteur on roaming in the Industry Committee, for the impressive negotiation skills she has shown over the past months. I would also like to thank Syed Kamall, the Parliament's Rapporteur on roaming in the Internal Market and Consumer Protection Committee for his constructive work ensuring that both consumers and businesses can benefit from a practically borderless and transparent single telecoms market for roaming. I would also like to extend my thanks to the Rapporteur of the Culture and Education Committee, Manolis Mavromatis, for his strong support for the Commission proposal."

The Industry Committee has proposed two further changes to the Commission's proposal:

- A data roaming wholesale (inter-operator) cap of **€0.50 per megabyte**. The Commission had proposed a wholesale cap at €1 per megabyte, while the Parliament's Internal Market Committee had suggested a wholesale cap at €0.25 per megabyte.
- Ending the whole roaming legislation in **June 2012**, while the Commission had proposed a review in 2013. The Industry Committee proposal would allow the next Commission to review the new rules in the middle of its 5-year mandate.

To hopefully complete this process, the 785-member European Parliament is scheduled to vote on the totality of the roaming issues in their plenary session, scheduled for April 21-21. If affirmed, the new roaming rules will become effective July 1, 2009.

In expressing her desire to finalize this roaming reduction, Commissioner Reding stated, "I now call on Parliamentarians and Member States to work together very closely over the coming weeks to ensure that the final deal on SMS and data roaming can be concluded well before the European Parliament elections in June."

EU's Reding Calls for Faster Wireless Number Portability

On March 23rd, the European Union Telecoms Commissioner called for improvements in the time required to port telephone numbers among providers whether fixed or wireless.

As noted by Commissioner Viviane Reding, consumers in all 27 EU countries can port their fixed or wireless telephone number, increasing flexibility and opportunities for more competitive pricing. However, she also notes that the length of time required for porting can vary greatly among EU countries. She recognizes Ireland and Malta, where wireless portability can be accomplished in as little as one day, and noted that while traveling recently to Hong Kong, she saw number portability able to be accomplished in as little as two hours. But she also chastised Poland and Italy, where it can take up to 38 and 15 days respectively to port numbers. It should be noted that the average time to port wireless numbers in EU countries is 8.5 days and 7.5 days for fixed lines. Overall, since 2003 when number portability went into effect in the EU, 60 million wireless and 24 million fixed numbers have been ported.

Commissioner Reding is pushing a proposal introduced in November 2007 to require operators to port numbers within 1 day. It's currently under discussion in both the European Parliament and the Council of Ministers. With her recent successes and progress regarding the lowering of mobile voice and video roaming/termination rates, Commissioner Reding is riding that wave in her attempts to win approval for a number of ICT regulatory reforms.

To view a video of Commissioner Reding discussing portability:

http://ec.europa.eu/commission_barroso/reding/video/index_en.htm

May 17th is World Telecommunications and Information Society Day

As I have for several years, in May I join others around the world to recognize the International Telecommunications Union (ITU) World Telecommunications and Information Society Day (WTISD), whose 2009 theme is Protecting Children in Cyberspace.



WTISD began as World Telecommunications Day, celebrated on May 17th since 1969. It marked the founding of the International Telecommunications Union and signing of the first International Telegraph Convention in 1865. Between November 2005 and 2006, as a result of a declaration by its umbrella organization, the United Nations, the World Information Society Day was initiated, and it was combined with World Telecommunications Day.

In countries throughout the world, WTISD will not only be celebrated and commemorated, but a number of countries are holding initiatives to bring attention to the importance of protecting children while they utilize the increasingly valuable resource of information available in cyberspace.

We invite you to visit the ITU WTISD 2009 website and gain a bit more insight into the importance of this year's theme, as well as to look at some of the themes from past years, to note the historical significance of information communications technology worldwide in improving life around the world: <http://www.itu.int/wtisd/index.html>.

Recently-Released FCC Reports

Telecommunications Provider Locator

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-289170A1.pdf

Latest Telephone Subscribership Report

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-289168A1.pdf

Latest Quality of Service Report of Incumbent Local Exchange Carriers

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-289166A1.pdf

Latest Telephone Numbering Resource Utilization Report

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-289172A1.pdf

2007 Year-End Circuit Status Report for U.S. Facilities-Based International Carriers

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-289304A1.pdf

(Carriers must submit Year-End 2008 Ckt. Data by March 31, 2009 for 2008 report)