



MiCTA Legislative & Regulatory Update July 2009

The News You REALLY Can Use!

By
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Welcome to the July MiCTA Leg/Reg Update!

I certainly hope all are having an enjoyable, yet busy summer!
My summer has been quite busy, full of system installations, upgrades, and budget reconciliations.....fun!

But, speaking of being busy, with FCC Commissioner confirmations, FCC staff changes, the national broadband plan/stimulus plan, USF issues, U.S. Justice Department inquiries regarding antitrust, and other such items, the legislative and regulatory aspect of our industry has been quite hectic as well!

Justice Department Launches Antitrust Investigation Over Wireless

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Genachowski Confirmed As FCC Chairman

(McDowell Reconfirmed; Clyburn/Attwell Baker Nominated)

On June 25th, the U.S. Senate confirmed Julius Genachowski as the new chairman of the Federal Communications Commission (FCC). He was sworn-in by Supreme Court Justice Souter on July 1st. He replaces Kevin Martin who had resigned earlier in the year, and took the helm from Acting Chair Michael Copps, who served well in the interim.



Genachowski is a Harvard Law School classmate of President Obama, and has an impressive history in both business and politics, including a stint as chief-counsel to former FCC Chairman Reed Hundt.

Current Commissioner Robert McDowell was reconfirmed for another term, and the Obama Administration has nominated Mignon Clyburn to fill one of the open Commissioner slots (Clyburn is the daughter of House Majority Whip James Clyburn). The Obama White House more recently nominated Meredith Attwell Baker to fill the open Republican slot on the FCC (she is the daughter-in-law of former Secretary of State James Baker). The Senate held confirmation hearings for Clyburn and Attwell Baker July 15th, which appeared to go well. If confirmed, and joining current Commissioner Michael Copps, the FCC will be at full-strength....and with a number of huge items to deal with, it's just in time!

In addition, Lawrence Strickling was confirmed as assistant secretary of Commerce for Communications; and will lead the National Telecommunications and Information Administration (NTIA).

In his first address to the FCC staff, on June 30th, Genachowski joked about the length of time it took to confirm him, but more importantly, laid-out his goals for the FCC:

- Promoting universal broadband that's robust, affordable, and open.
- Pursuing policies that promote job creation, competition, innovation, and investment.
- Protecting and empowering consumers and families.
- Helping deliver public safety communications networks with the best technology to serve our firefighters, police officers, and other first responders.
- Advancing a vibrant media landscape, in these challenging times, that serves the public interest in the 21st century.
- Seizing the opportunity for the United States to lead the world in mobile communications.

Genachowski ended his address by simply saying, "Let's get to work!"

Universal Service in the News

Third-Quarter USF Contribution Reaches Record Height!

(There is push-back even before Announcement, but to no avail!)

In April, we reported and bemoaned the fact that the 2nd-quarter USF fee would increase from 9.5% to 11.3%, but we had no idea the proposal for the 3rd quarter would reach a record high of **12.9%**!

That's right, the 3rd quarter USF fee, assessed against interstate and international telecommunications revenues, increased 1.6% above the second quarter. That's 1.2% above the highest previous level, which was 11.7% for the second quarter of 2007!

Interestingly, even before the proposal was announced, some folks who obviously must love math looked at some of the raw figures and determined the proposal would be 12.9%. Congressmen Joe Barton (R., TX) and Cliff Stearns (R., FL) sent a letter to Acting FCC Chairman Copps, questioning the increase and asking for more detail. NASUCA (National

Association of State Utility Consumer Advocates) requested the FCC reduce the proposed figure to protect consumers for exorbitant telecom add-on fees.

However, FCC Chairman Copps noted in an address June 18th to the P & F Broadband Policy Summit V that while the USF is essentially broken and needs fixing (using the record contribution factor increase as an example), under the current financial model, the 12.9% is what the formula indicates is needed.....essentially saying the FCC would take no action to reduce the amount. Copps said this about the USF contribution increase:

Definitely, not great news for the Universal Service Program, The industry, or consumers. We all know there are some solid Reasons for the high number – the state of the economy has Consumers and businesses reconsidering expenses and cutting Telephone lines and services in an effort to cut costs. That leads To lower revenues from which to receive contributions. And on The demand side, we’re seeing more consumers turning to our Lifeline programs that subsidize service for low-income consumers. With a decrease in contributions and an increase in demand comes An increase in the contribution factor. One thing the Commission Can do is redouble its efforts to make sure that contributors to the Fund are paying in what they are supposed to. I’ve asked our Enforcement Bureau to look at their current efforts and identify Where we can be doing more.

While I hope the contribution factor is just a blip that will come Down as the economy recovers, the reality is that we need Comprehensive, holistic reform of Universal Service.

Seizing the opportunity, AT&T filed an emergency petition with the FCC, asking the agency to change the USF contribution methodology to a numbers-based system. As we’ve reported, a strict numbers-based contribution methodology would cause a mega-increase in USF fees for those entities who have a large amount of telephone numbers, but relatively lower long distance traffic; but could actually provide some relief for those with smaller amounts of telephone numbers but relatively high long distance traffic! For this reason, many believe including a graduated scale or a cap on the amount of telephone numbers for which end users could be assessed USF fees would eliminate the potential for the unintended consequence of increasing an end user’s USF contribution fee responsibility 10 times or more (AT&T has not included this in their emergency petition, but does address certain consumer issues to minimize the potential for unintended consequences there).

With current economic conditions continuing to be quite difficult, it is especially disturbing that the USF contribution factor not only increases, but increases to a record level. As with our reporting on the 2nd quarter increase, we can only hope the factor drops for the fourth quarter.

To read the FCC Proposal for the 3rd Quarter Contribution Factor:
http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-1322A1.pdf

To read AT&T’s emergency petition to the FCC regarding contribution methodology:
https://www.neca.org/portal/server.pt/gateway/PTARGS_0_0_307_206_0_43/http%3B/prodnet.www.neca.org/wawatch/wwwpdf/710attpetition.pdf

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Broadband Update

Obama Broadband Stimulus Act Starting to Take Shape (But Many Questions Remain & Much Organization Left to Accomplish)

The broadband expansion programs, part of President Obama’s overall American Reorganization and Reinvestment Act of 2009, are beginning to take shape, with the July 1st release of the Notice of Funds availability by the National Telecommunications Information

Administration (NTIA) and the Rural Utilities Service (RUS). But many basic on-the-ground questions are yet to be answered, potentially signaling some bumpy road ahead.....

As has been widely reported, the overall Recovery Act appropriated \$7.2 billion to expand broadband access to unserved and underserved areas across the U.S., with the primary goals of increasing jobs, spurring investments in technology and infrastructure, and to provide long-term economic benefits. To implement this project, the NTIA created the Broadband Technology Opportunities Program (BTOP) and the Rural Utilities Service created the Broadband Initiatives Program (BIP). The BTOP program will provide grants which will fund broadband infrastructure development, public computer centers, and "sustainable" broadband adoption projects ("sustainable" in question here, since the program as funded offers absolutely NO long-term sustainability funding). The BIP program will make both loans and grants for broadband infrastructure development projects particular to rural areas.

The FCC has the responsibility for preparation of an overall National Broadband Plan, which must be presented to Congress in February, 2010. They have developed a plan-for-creating-The Plan, for which they have a 230-day schedule and countdown. They have enlisted the Berkman Center for Internet and Society, at Harvard University, to conduct "an independent expert review of existing literature and studies about broadband deployment and usage throughout the world."

While it's clear a great many people and organizations are working very hard to implement both the economic recovery and actual broadband development aspects of this project, there are questions ranging from potentially fundamental flaws in the project strategy and the ability to stimulate the economy to policy concerns that could restrict viable efforts from being approved for funding and the potential for the rapidity of project implementation leading to waste, fraud, and abuse.

A number of individuals and groups have been concerned that some wireline and wireless broadband providers may choose not to apply for stimulus funds in underserved or unserved areas they've previously determined to be unprofitable.....the very reason these providers have not built-out service in those areas to-date (why build-out a network with stimulus funds, only to be stuck with few customers and ongoing maintenance). On the voice side of ICT, this is why there is "the carrier/provider of last resort (COLR/POLR). And, for those who do receive stimulus funds in these areas and ultimately find them to be unprofitable (maybe even with USF support?), will there be some type of bailout necessary....extended USF funding perhaps? The New America Foundation issued a paper calling into question some of the rules concerning BTOP, saying they are weighted "against participation of urban, metropolitan, and even some rural communities." Steven Ross, of *Broadband Properties* noted "the problem starts with sloppy legal drafting and traditional rules for government grant and loan programs, combined with administrators' good intentions and nervousness." He also notes that the timeline for distribution of funds "sabotages the intent of the American Investment and Recovery Act." And, in reading of the projects for which grant funding will be sought I've found some may be already-failed projects which will be dusted-off and prettied-up for which funds may be requested simply for the sake of obtaining federal funding.

It's obvious this country needs sound economic recovery efforts and a successful and efficient national broadband plan. Hopefully, the concerns and shortcomings of the current efforts can be worked-through to fulfill those goals.

FCC National Broadband Plan Clearinghouse Website:

<http://broadband.gov>

To read FCC Broadband –next 230 days:

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291879A1.pdf

Applications for Funding (can be filed July 14-August 14):

http://broadbandusa.sc.egov.usda.gov/download_app.htm

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Hi-Cap/Special Access Price Control Hotly Debated Issue

(But It's Not and Never Was Just About Broadband!)

Hi-Capacity/Special Access circuits have been around for a long time, but advocates of universal broadband have entered the debate over regulation/deregulation of the services, as they make their case for appropriate middle and last-mile access and pricing for broadband services. All this, while a federal appeals court just deferred to the FCC on the issue.

High-capacity/special access circuits are dedicated, point-to-point circuits that most of us first encountered as the last-mile local carrier connections when ordering voice long distance T1 connections. However, as a transport service, they were also used to provide intra and inter-carrier connectivity. With the evolution of technologies, services, and applications, these circuits are currently used in a myriad of ways, for everything from the more traditional to providing intra-wireless provider connectivity and access to and for Internet Service Providers (ISP). As such, the circuits are critical for both the voice and data aspects of ICT, including broadband connectivity.

The issue being debated pertains to the price control/relief regulation put on the ILECs for these circuits. Do you remember the days when the ILEC no-distance last-mile portion of a long distance T1 connection could reach \$1000 - \$1500/month? Well, FCC regulation brought those prices down substantially, which aided in the development and expansion of competitive LECs (CLECs); but the regulation also provided relief methodology from price controls when sufficient competition was in-place. Over the years, a substantial number of ILECs have been provided this relief, most often in larger Metropolitan Statistical Areas (MSAs), where Hi-Cap/Special Access customer density is high, spurring CLECs and others to enter the market, eventually passing the competition threshold required to trigger the regulatory relief.

One of the problems with the regulation pertains to the lucrative nature of hi-cap/special access circuits, even with the price controls. While the FCC regulation says the pricing must remain "just and reasonable," reported exorbitant profit margins on the circuits bring into question whether even the regulated rates should be lowered. NoChokePoints.org and others claim the profit margins exceed 100%, while US Telecom claims that figure is a distortion based on outdated allocations from the FCC's Automated Reporting Management Information System (ARMIS). Thus, one side of the debate is calling for further regulation for Hi-Cap/Special Circuits while the other side is saying the current regulatory schematic (with its regulatory relief attribute) is working just fine.

While the truth probably exists somewhere in-between, my 27-years experience from the end-user side of the industry tells me hi-cap/special access circuit pricing could be reduced substantially....but the complexity of the telecom industry's 5,000-piece financial infrastructure puzzle also calls for any potential changes to be thoroughly researched, lest such changes cause problems elsewhere in the puzzle (and we've all experienced the results of such unintended consequences in the regulatory arena of ICT!).

And, just to make it more interesting, although the matter has been before the courts for some time, on July 17th, the U.S. Court of Appeals for the D.C. Circuit issued an opinion simply deferring the issue and potential for any action back to the FCC. The decision of the appeals court is not unusual; judicial protocol provides substantial deference to the expertise of agencies such as the FCC, sending cases back to the agency for further review and action, intervening in specific decisions only if necessary.

While NoChokePoints.org and others are pressing for further regulation because of the impact on broadband, it's also important to remember the continued impact on the more traditional Hi-Cap/Special Service applications, which continue to be substantial budget items and which will be around for quite awhile....and that even with newer services such as carrier SIP trunking, pricing for access will still be an issue.

To read a report from US Telecom on Special Access/Hi-Cap:

http://www.ustelecom.org/uploadedFiles/News/News_Items/High.Capacity.Services.pdf

To read a report from the Phoenix Center on Special Access/Hi-Cap:

https://www.neca.org/portal/server.pt/gateway/PTARGS_0_0_307_206_0_43/http%3B/prodnet.www.neca.org/wawatch/wwwpdf/609phoenixreport.pdf

To read the No Choke Points positions on Special Access/Hi-Cap:

<http://www.nochokepoints.org>

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FCC Queries Internationally to Obtain Info on Broadband Expansion

One of the ideas I've touted for some time had to do with the OECD and ITU rankings for broadband globally. I said that instead of simply whimpering and whining about the ranking of the U.S., we should be determining in context the best practices for broadband expansion in those countries tending to lead those rankings....and to create a template from those best practices. Well, it looks like the FCC is at least heading down that road.

In late May, the FCC sent letters to 26 countries, asking them for information about developments in their broadband Internet market. The Commission said it is interested in obtaining broadband data at more granular levels, for example, by city, county, state, province or prefecture, and is interested in demographic and socioeconomic data at comparable unit levels. Letters were sent to:

Austria	Finland	Italy	Portugal	United Arab
Belgium	France	Lithuania	Slovakia	Emirates
Brazil	Germany	Netherlands	Slovenia	United Kingdom
Chile	Hungary	New Zealand	Spain	
Croatia	Ireland	Norway	Sweden	
Czech Republic	Israel	Poland	Switzerland	

Also, the U.K. just released it's comprehensive report....Digital Britain, which is good reading, if you'd like to get an idea of what such a strategic document should look like.....it's easy reading, and is segmented well, so you can download just what you want to read, or the entire document.

To read sample letters:

[Austria](#)
[Hungary](#)
[United Kingdom](#)

To read the Digital Britain Report:

http://www.culture.gov.uk/what_we_do/broadcasting/6216.aspx

And, to better understand International Broadband Comparisons (2009):

<http://www.techpolicyinstitute.org/files/international%20broadband%20comparisons%202009%20update%20final.pdf>

Justice Department Launches Antitrust Investigation Over Wireless

In early July, reports surfaced that the U.S. Department of Justice (DOJ) was performing an initial inquiry into telecommunications carriers, particularly Verizon and AT&T, over potential antitrust issues. Later, the *Wall Street Journal* reported the DOJ's inquiry includes the entire telecommunications industry, not just wireless.

Although the investigation into wireless could involve a number of areas such as roaming disputes with smaller carriers (reminiscent of wireline interconnection disputes from the early 1900s to more modern times), texting fees, and others, what has risen to the forefront is the issue of handset exclusivity. This issue not only involves the thorn-in-the-side customer aspect of early termination fees but involves big-player handset exclusivity deals that purportedly shut-out regional and smaller wireless providers from being able to offer the latest smartphones.

In its first defensive salvo, AT&T sent letters to the DOJ, the FCC, and the Senate Judiciary Antitrust Subcommittee disputing allegations of antitrust violations. Verizon, however, responded in mid-July with an announcement that it would reduce its exclusivity agreement with handset providers to 6-months, after which the regional and smaller wireless providers could offer the handsets as well.

With much speculation but little factual information available at this time, we'll continue to monitor the DOJ inquiry. However, from what has occurred so far, the major telecom players in this are acting in a quite predictive manner, with both a puffy denial and an announcement of a strategy change. The initial responses from the telecom providers also shows the power of regulatory and legislative inquiries, as quite often reform comes about as a result of the pressure from initial inquiries, hearings, and the like, without actual regulatory or legislative changes being initiated to force them.

We'll monitor this issue and report as necessary.

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International News

Finally! EU Roaming Rules Take Effect!

On July 1st, the new European Union rules lowering wireless voice, text, and data roaming charges went into effect, which could assist those MICTA member companies with activities in the EU.

The cost of voice roaming will cap-out at .43 euro cents per minute outgoing, and .19 per minute incoming. Roaming text message rates will fall from .28 euro cents to .11, and wholesale data roaming rates will be capped at 1.00 euro per megabyte. In addition, the EU implemented per-second billing for voice calling, with a 30-second minimum and then per-second billing for outgoing calls and an immediate per-second billing for incoming calls.

Commissioner Reding noting the new rules are caps, expressed hope that competition would drive rates even lower. She said, "Remember, that this is a price ceiling under which operators should be able to offer even more attractive prices."

Commissioner Reding Nominated for Another Five-Year Term

(Early rumors said this was unlikely....and political maneuvering may complicate the process)

In early July, EU Information Society Commissioner Viviane Reding was nominated for another five-year term, although there had been rumors to the contrary.

In late June, EuroActiv.com reported that Commissioner Reding was beginning to make plans to find her new "flagship policy" for her next stint as Commissioner, similar to the policy/issue of wireless roaming that she was so successful in reforming. However, *Total Telecom* reported on an early July article by the *Financial Times* that stated a senior aide in the European Commission President's office expressed doubts that Commissioner Reding would retain her post in December, when the new Commission session begins. However, just days later, her re-nomination was reported (sounds like one "senior aide" didn't know what they were talking about!).



The question of her continuing-on as Information Society Commissioner does not end there, however. In discussing her potential new agenda, EuroActiv.com reported she may work toward seeking a stronger role on issues she currently only has partial control. These issues include online copyright, broadband, e-privacy, and e-commerce. They also reported that a success in seeking a stronger role could be seen either as a reward for the progress she made in her first five years as Commissioner or as a reward for not trying for even more responsibility under ICT. And, politics could be heavily involved in the outcome for Ms. Reding. On one hand, *Yahoo.com* stated that Germany, Spain, and other countries may try to oppose her re-appointment due to opposition/retaliation for some of her telecom industry reform activities that impacted some of the former state telecom monopolies in those countries. On the other hand, her overwhelming success at not only the Commission and in leading the Christian Democratic Party to victory in Luxembourg but in attaining her current rank as a second-term commissioner going for a third term essentially promises her a Commission ranking of some type....even if not with the Information Society.

It will be interesting to observe how this progresses.....and personally I do hope Commissioner Reding does get the third term as Info Society Commissioner, as she has done an excellent job!

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Recently-Released FCC Reports

3rd Quarter Report on Informal Consumer Inquiries/Complaints

http://www.fcc.gov/Daily_Releases/Daily_Business/2009/db0506/DOC-290583A2.pdf

http://www.fcc.gov/Daily_Releases/Daily_Business/2009/db0506/DOC-290583A4.pdf

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-290583A1.pdf

4th Quarter Report on Informal Consumer Inquiries

http://www.fcc.gov/Daily_Releases/Daily_Business/2009/db0506/DOC-290586A2.pdf

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-290586A1.doc

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-290586A1.pdf

Informal Consumer Complaints concerning access to telecommunications for people with disabilities.

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-290584A1.pdf

Telecommunications Provider Locator

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

Report on a Rural Broadband Strategy

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291012A1.pdf

FCC Releases New Telephone Subscribership

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291220A1.pdf

FCC Releases 2007 International Traffic Data

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291391A2.pdf

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291391A1.pdf

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