

Legislative and Regulatory Updates - October 2008



The News You REALLY Can Use!

By

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As a gentle chill begins to permeate the air, we realize the change of seasons is upon us!

And with that change of seasons is the need to prepare for changes such as Daylight Savings Time (begins Sunday, November 2nd), as well as to review procedures for events such as "snow days," where hopefully in-place telecommunications procedures allow an easy change of primary number and call center announcements, as well as options for some staff to work-at-home.

Added to our day-to-day activities, the seasonally-induced additional chores make for a busy, but interesting Fall Season! Enjoy!

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Enacted Legislation Slows to a Trickle, But Congress Moves Forward

While those who don't normally closely follow legislative and regulatory issues, it may appear Congressional action on ICT issues was essentially done for the year even a while ago, Leg/Reg wonks realize that enacting legislation is but a part of Congressional responsibility.....and that other activities have been taking place.

If you look at any number of web sites that categorize and track ICT-related legislative and regulatory issues before Congress and the FCC, you see a great number of items listed. While Congress has passed a few technology-related bills, most of the action in Congress has been in the form of hearings, inquiries, and research into various technology issues on the forefront. I've long considered part of the job of Congress to be the "fly in the ointment" on any number of issues, sticking their nose in just enough to have federal agencies and business entities determine to resolve the issue without legislation needing to be enacted. This fall, the Associated Press had an article in the same vein, which was very timely, given the large number of outstanding ICT legislative issues compared with the little amount of actual legislation being enacted. Some fairly obvious examples of applying pressure points to issues include Congressional questions and introduced legislation concerning Universal Service and Net Neutrality, which has prompted both the FCC and carriers to get more serious about making changes. But again, even with this pressure, the wheels can grind slowly, as with the Comcast issue, where the company has now issued a judicial challenge to the FCC's ruling.

Speaking quite correctly to this issue, Verizon's VP for Legislative Affairs and former Iowa Congressman Tom Tauke noted at a September 25th Senate Commerce Committee Hearing on Broadband issues:

"Congressional Hearings change behavior. You hold a hearing on certain practices, and there is a change in practice – having the practice seeing the light of day." (ie., forcing the industry to address the issue. RJH)

So while we are often quite critical of the apparent slow-moving nature of Congress, at least in some part there is a method to the madness; and we ultimately see the results of this madness, albeit often without legislation being enacted.

Universal Service in the News

Fourth Quarter USF Contribution Factor to Remain at 11.4%

On September 12th, the FCC Office of the Managing Director (OMD) announced that the proposed universal service contribution factor for the fourth quarter of 2008 will be 11.4%, the same as for the third quarter.

As we've noted, the contribution factor is determined through both a mathematical formula and wizardry, reviewing the ratio of total projected quarterly costs/needs of the universal service support mechanisms to USF contributors' total projected collected end-user interstate and international telecom revenues, net of projected contributions.

No increase for the fourth quarter is definitely good news, particularly for those whose USF pass-through fees are substantial. Of course, with the recent FCC decision that conference calling providers must contribute to the USF, I'm sure a number of MiCTA members are beginning to see pass-through fees on contracted conference calling services, which for some could also be quite substantial!

The FCC, the USF & ICC? What Will They Do?

While most telecom professionals are very familiar with the Universal Service Fund (USF), far fewer are familiar with the other financial mechanism, or as I put it, the pieces of the puzzle, which make-up the remainder of the overall funding mechanism for telecommunications in the U.S., that being Intercarrier Compensation (ICC). And now, the FCC must make some decisions regarding ICC by November 5th, which essentially could mean some changes to the USF at the same time.

A Bit of History..... In essence, in the tumultuous 1980s, with a number of telecommunications regulatory changes being made, including many prompted by the breakup of the Bell System, the financial model for sustaining such a system, including Universal Service, also was revamped. The financial model allowed Incumbent Local Exchange Carriers (ILECs) to charge Interexchange or Long Distance Carriers (IXCs) originating & terminating access charge fees (artificially inflated) for the use of their facilities in long distance calling, but the ILECs used a reciprocal compensation mechanism to account for access charges for local calls between them. In addition, the USF was funded by assessing a percentage fee to the IXCs on interstate & international long distance calling (which, of course, is now being passed-through to the customers). The funding mechanism received a number of other changes with the passing of the Telecommunications Act of 1996.

The highly-complex, intricate, quite imperfect, and somewhat artificial funding mechanism actually worked for a time under POTS (Plain Old Telephone Service), but did need to be tweaked over time. However, serious cracks in the system began to emerge as new technologies emerged and as carriers and others learned how to "work" the system (arbitrage). Not only did carriers define services in a way such that they could pay lower access and other fees, dial-up Internet allowed carriers and ISPs to greatly tilt the balance on reciprocal compensation, causing some to reap enormous profits at the expense of others.....causing a "tilt" in the ICC funding mechanism itself. In addition, as long distance rates fell and more-and-more Internet, Voice Over IP (VOIP) and cellular services have emerged (causing less long distance minutes), it has become more-and-more-difficult to sustain the Universal Service Fund. This is why the USF contribution factor has risen from 8.7% in the first quarter of 2004 to its current rate of 11.4%.

To keep the system working, over the past several years the FCC has been band-aiding it, making individual decisions on issues, some of which were not only controversial but conflicting.....rather than seriously looking to revamping the entire funding mechanism to fit the highly-changed telecom (now Information Communications Technology—ICT) environment.

Present Time

What brings us to a present-day deadline is a court ruling from 2002, which rejected an FCC decision regarding ISP-bound traffic, but which also left the FCC decision in-place while the FCC was to provide its legal justification for its decision. Well, it's several years later and the FCC has still not provided that justification. So, the court ruled this summer that the FCC has until **November 5, 2008** to justify its decision, or the entire FCC decision will be vacated.....throwing a good part of the ICC mechanism into chaos.

So, the FCC has promised it will revamp the ICC and USF by that time-frame.

What does this mean?

Well, as we reported, in January the FCC released three Notices of Proposed Rulemaking (NPRM) for comprehensive reform of the USF; and in May 2008 the FCC placed an interim cap on USF payments to CLECs. We believe the FCC will release an Order yet this fall implementing the proposed changes.

One item that was not mentioned in the more recent FCC proposal was USF contribution **methodology change**, but which now is being discussed quite extensively. This proposal would change how the USF receives its funding, moving from a percentage of interstate & international revenues to a telephone number-based proposal. This should be looked at carefully by MiCTA members, as it could greatly impact your USF fee. For those who have relatively few telephone numbers but have substantial long distance call volume (call centers, for example), there may be some savings. However, for those who have a large complement of telephone numbers but lesser long distance call volume (colleges & universities for example), there could be huge increases!

For intercarrier compensation itself, there is great debate on what to do. Because of the diminishing of geographical boundaries in processing long distance traffic (via IP, VOIP, cellular, etc.), there is a call for unifying the terminating access charge into one rate. However, there is pushback by rural carriers saying they will lose revenues necessary to provide service in their higher-cost environments; as well as pushback by state regulatory bodies, saying it's a states'-rights issue, of which the FCC cannot preempt. If the terminating access charge is unified, the SLC-fee (Subscriber Line charge) we pay now will be increased, as will most likely USF fees themselves.

*The bottom-line.....*what impact will any changes have on MiCTA members? In my best estimate and because I honestly believe the so-called "experts" have no clue as to the real-world outcome of many of their decisions and because I have little faith that the FCC will get this right (and that's based on a lot of history, folks!), the changes will not save us money, nor will they move the same money from one pocket to another.....no, the changes will cost the end-user customer, and rather substantially!

We will stay on top of this situation, and provide analysis when the decisions are made.

FCC Seeks Input on Improving USF Oversight

While the FCC wrestles with overall reform of the USF and ICC, it is also seeking input on how it can improve oversight of the USF, as it released a Notice of Inquiry (NOI) to that effect on September 12th.

In its NOI, the FCC is seeking comment on ways to further strengthen the management, administration, and oversight of the USF, as well as to define more clearly the goals of the Fund. The FCC also wants to know what additional quantifiable performance measures may be necessary or desirable. They are also looking for additional safeguards to be in place so the USF operates as Congress intended.

Although the FCC has already put additional measures in place to strengthen oversight of the USF, they had done so due to weaknesses identified through audits as well as some well-publicized excesses in various aspects of the USF. Hopefully this NOI will not be just an exercise but will result in substantial improvements in the oversight of the USF.

IRS Cellphone Legislation a Dead-Duck for this Session

After an inquiry to the U.S. Senate Finance Committee, it was pretty clear the IRS Cellphone Legislation, regarding personal use of employer-provided cellphones being subject to a taxable income designation by the IRS, is a "dead-duck" for this year. This is indeed unfortunate, as there was great encouragement that the legislation would pass.

The original legislation (H.R. 5450) was rolled into H.R. 4719, which includes a number of tax-related items, including at least one that is rather controversial. However, the legislation pass the House of April 15th. Once in the Senate, it was read twice and passed to the Finance Committee, where it currently resides.

Although there had been glimmers of hope that the legislation would pass, there was only a slight chance that the individual bill would get voted-on, and that was before the Wall Street meltdown. There had also been an even slighter chance that the bill could be bundled with other pending IRS/tax-type legislation and voted on en masse, but that is essentially a no-deal as well.

Since this will be the end of this session of Congress, the legislation would have to be re-introduced in the next session. However, there are two items which should be thought about in attempting to fix this problem. The first is to push for such a bill to not only be introduced individually, but to not be tacked-on to some other bill, particularly one that is controversial. The second is to push for a ruling by the IRS to place cellphones in the de minimus category, as with copy machines, etc., whereby minimal personal use of an employer-provided device need not be tracked and taxed.

So, while this current bill is essentially dead, ICT professionals should already be considering options for further legislation or a ruling from the IRS.

International News

EU To Require Reductions in Texting/Termination Fees

After the EU successfully implementing regulations to reduce international cellular roaming among EU countries by as much as 60%, it is now tackling the issues of text message fees and carrier-to-carrier termination fees.

EU Telecoms Commissioner Viviane Reding has announced plans to reduce the text message fees charged when roaming among EU countries. According to BBC News, currently text message fees while roaming have been as high as 80 euro Cents, with an average of about 29 euro Cents.....while in-country text message fees have been 10-15 euro cents. Commissioner Reding's proposal calls for text roaming fees to be no more than 11 euro cents.

The EU also plans to revise rules on data roaming charges among EU countries, calling for automatic SMS messages to the customer informing them of the roaming data rates in that particular country, and providing a method for customers to place maximums or ceilings on their cellular plan for how high their roaming data bill can go. The EU also plans to cap wholesale data rates at 1 euro per megabyte, to promote competition and level the playing field.

On the voice side, the EU Telecoms Commission is also seeking to lower and somewhat equalize carrier-to-carrier termination rates for roaming calls among EU Countries. The harmonization should simplify the overall price formula and obviously lower prices to consumers. The carriers have until 2011 to implement the plan.

With Commissioner Reding's announcement came the all-too-obvious doom & gloom projections from the cellular providers. The BBC News reported that Vodafone predicted cellular providers would have to raise their rates so high to offset the revenue losses from texting, roaming, data, and termination fees that as many as 40 million cellular users may give-up their cellphones. However, this is the same ignorant rhetoric the carriers spewed last year when the voice roaming rates were lowered.....and no cellular provider has gone out of business because of it.....and the cellular penetration rate in EU countries continues to climb. In fact, while the number of cellphones began to outnumber the EU population in 2006, at the end of 2007 it had grown to 112 cellphones in the EU to every 100 people.

So, for those MiCTA members who have business travelers to EU countries, some relief will be coming regarding those texting and data rates!

For more information:

http://ec.europa.eu/information_society/activities/roaming/index_en.htm

Recently-Released FCC Reports

FCC RELEASES STUDY ON TELEPHONE TRENDS.

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284931A1.pdf

FCC RELEASES NEW TELEPHONE SUBSCRIBERSHIP REPORT.

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284922A1.pdf

FCC RELEASES ANNUAL TELECOMMUNICATIONS INDUSTRY REVENUE REPORT.

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284927A1.pdf

FCC RELEASES TELEPHONE NUMBERING RESOURCE UTILIZATION REPORT.

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284924A1.pdf

FCC RELEASES REFERENCE BOOK OF RATES, PRICE INDICES, AND HOUSEHOLD EXPENDITURES FOR TELEPHONE SERVICE.

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284933A1.pdf

Local Telco Competition

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-285509A1.pdf

KEYNOTE REMARKS OF CHAIRMAN KEVIN MARTIN OF THE U.S. FEDERAL

- COMMUNICATIONS COMMISSION AT THE "NETWORK NEUTRALITY
- CONFERENCE-IMPLICATIONS FOR INNOVATION AND BUSINESS ONLINE",
- COPENHAGEN, DENMARK. OCM. September 30, 2008

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-285830A1.pdf