

# THE **LOKT** NEWSLETTER

LOKT NEWSLETTER

FEBRUARY 2006

## THIS MONTH'S TOP STORIES:

<b>THE FEDERAL PAGES</b> .....	<b>1</b>
<b>FCC NEWS</b>	
FCC Concerned Over Protecting Consumer Information	
<b>CONGRESSIONAL NEWS</b>	
Bills Emerge to Free TV Whitespace for WISPs	
Congress Begins Debate on Net Neutrality	
<b>OTHER NATIONAL NEWS</b>	
AT&T Sued for allowing government to eavesdrop on customers	
<b>THE STATE PAGES</b> .....	<b>4</b>
State Briefs; Including New State VoIP E-911 Developments	
<b>INDUSTRY NEWS</b> .....	<b>6</b>
AT&T Accused of Hoarding Network Space	
Sprint Nextel Gets Excited about new ILEC and Logo	
<b>THE CALENDAR: UPCOMING FILING AND OTHER DEADLINES</b> .....	<b>7</b>
<b>THE MARCH CALENDAR</b>	



Law Office  
1725 I Street, NW, Suite 300  
Washington, DC 20006  
Phone: 202.250.3413  
Fax: 202.517-9175

TELECOM/INTERNET LAW

**LOKT**

REGULATORY CONSULTING



LoKT Consulting  
1519 East 14th Street, Suite A  
San Leandro, CA 94577  
Phone: 510.903.1304  
Fax: 510.868.8418

# The Federal Pages

## News and Updates in Federal Telecommunications Law

---

### FCC News

---

#### FCC SHOWING INCREASED CONCERN OVER PROTECTING CONSUMERS' PERSONAL INFORMATION

The FCC will consider imposing stricter security standards for telephone carriers' handling of customer proprietary network information ("CPNI"). FCC Chairman Kevin Martin told the House Energy and Commerce Committee earlier this month that the FCC will consider approving an Electronic Privacy Information Center ("EPIC"), and will seek to impose more strict regulations on carriers' handling of CPNI. The FCC has grown particularly concerned of late about "data brokers" and private investigators who take part in the practice of "pretexting": they pose as law enforcement or otherwise falsely state to those in possession of customer information that they have the authority to demand the information. They also are known to hack into online telephone accounts. As of now, telephone carriers must to protect the CPNI of consumers under the Telecommunications Act of 1996. Due to the availability of this information online, however, the rules may need to adapt. Earlier this

month, the FCC fined AT&T and Alltel \$100,000 each for failing to file paperwork certifying the security of their CPNI. The FCC



FCC Chairman Kevin Martin – Photo courtesy AP

had required all carriers to only keep track of CPNI protection procedures internally. For the first time ever, the FCC recently required all carriers to file a certificate and summary of how they protect CPNI.

---

#### CDT, OTHERS FILE BRIEF WITH COURT CHALLENGING FCC WIRETAPPING RULING:

The Center for Democracy and Technology ("CDT") and a coalition of public interest, academic, and business groups have filed a brief urging a federal appeals court to overturn an FCC ruling requiring that VoIP services be designed to make government wiretapping easier. The brief argues that Congress explicitly excluded the Internet from the wiretapping design mandate, and that the FCC has no statutory authority to overrule that exclusion. [Story from Center for Democracy and Technology – [www.cdt.org](http://www.cdt.org)]

## Congressional News

### TWO BILLS EMERGE TO FREE TV SPECTRUM FOR WISPS

Two bills were introduced in the Senate on February 17th that would attempt to allow wireless ISPs the unlicensed use of so-called "TV whitespace." The first bill was bipartisan and introduced by Senators George Allen (R-VA), John Kerry (D-Mass), John Sununu (R-NH), and Barbara Boxer (D-Calif). It is titled the Wireless Innovation Act of 2006, or WINN Act. Senator Ted Stevens (R-Alaska), Senate Commerce Committee Chairman, also introduced a similar bill titled, the American Broadband for Communities Act, or ABC Act. The bills urge the FCC to move more quickly to allow unlicensed use of the spectrum currently "occupied" by empty television channels. It has been estimated that in most markets, less than half of the total available spectrum in this range is actually being used for over the air television reception. Given the tremendous propagation characteristics for this lower frequency spectrum, WISPs could benefit greatly from the unlicensed use of television spectrum. Senator Stevens stated, "Allowing unlicensed operations in the broadcast band could play a significant role in bringing wireless broadband and home networking to more of our citizens by lowering costs, particularly in Alaska where connectivity is so important due to our remoteness." For the WINN Act, Senator Kerry argued, "Instead of just talking about it, we need to make affordable broadband a reality everywhere." It is possible that the two bills will merge before further consideration in the Senate occurs. Now would be a good time for ISPs to contact their state's senators and let them know that these bills are a great idea.

---

### CONGRESS BEGINS DEBATE ON NET NEUTRALITY

With RBOCs on one side of the debate, and everyone apparently on the other, it appears that Congress is getting ready to finally address the issue of net neutrality. Congress may consider the question of net neutrality as it attempts to update telecommunications laws, last updated in 1996. Companies like BellSouth, AT&T (including the company formerly known as SBC) and Verizon (which recently bought MCI) want to be able to prioritize Internet search results and otherwise create a "priority content delivery system." Opponents argue that there should be net neutrality, so that network owners should remain neutral with respect to the content they carry. These companies insist that their plans would not impair Internet content. In fact, AT&T contends that they have had an agreement

with Yahoo for several years in which Yahoo is given priority on AT&T's web portal. AT&T says these types of arrangements do not really affect web surfers' ability to get to any website they wish. Critics on the other side argue that these types of arrangements could lead to ones in the future where access to the open Internet is entirely blocked. Two of several telecom reform bills that have been introduced include net neutrality principles, but neither would prevent the kind of commercial arrangements the Bells have outlined. The debate has already started on Capitol Hill in the Senate Committee on Commerce, Science and Transportation.

## Other National News

### NARUC ADOPTS VOIP NUMBERING, BROADBAND ACCESS, OTHER RESOLUTIONS; ADDRESSES NETWORK NEUTRALITY

In its recent winter meeting, the National Association of Regulatory Utility Commissioners ("NARUC") adopted resolutions on VoIP numbering, separations reform, broadband access and consumer call record protection. NARUC's VoIP numbering resolution asked the FCC to adopt a national policy for assigning numbers for VoIP and to expand local number portability and 1,000-block number pooling to all U.S. markets (not just the top 100). The members agreed that, with the exponential increase in VoIP numbers, there could be a shortage of available numbers. To address the issue of separations reform, NARUC suggested that the FCC extend for two years the

current freeze so that the Federal-State Separations Joint Board has time to consider possible changes. NARUC also urged the FCC, Congress and other policymakers to promote customer choice in broadband service providers by discouraging mandatory ties between traditional voice service and broadband (in other words, NARUC supports requiring naked DSL). The resolution said that forcing customers to pay for separate voice telephone in order to get broadband access will slow the implementation of advanced services. Finally, NARUC's Telecom and Consumer Affairs Committees jointly adopted a consumer privacy resolution aimed to get NARUC to work with Congress and others to protect privacy of consumer telephone records. The resolution

stated that authorities must act fast to prevent the theft of Americans' phone records, and to educate consumers about how to protect themselves. Meanwhile, there was division within the group as to whether to represent states' interests in the network neutrality debate, or to advocate for the states to step in to mandate neutrality. Those urging that states leave the issue alone for now insist that any meaningful legislative fix would be certain to spur litigation. On the other side, those desiring regulation say that a lack of real competition in the broadband market will make a laissez faire approach ineffective in protecting neutrality. No resolution was reached on this issue at the meeting.

---

### AT&T SUED FOR ALLOWING GOVERNMENT TO EAVESDROP ON CUSTOMERS

The Electronic Frontier Foundation ("EFF") has filed class-action lawsuit against AT&T, accusing the carrier of being an accomplice to illegal domestic spying by the United States government, according to an AFP report. The report went on to say that the Internet advocacy group claimed AT&T violated the law by allowing the National Security Agency ("NSA") to "data-mine" its records and eavesdrop on telephone conversations and e-mails of customers. The EFF wants the federal court in Northern California to order AT&T to pay damages and stop cooperating with officials seeking information without proper warrants. While earlier reports said President George Bush had authorized the NSA to intercept telephone and Internet communications without court orders, EFF decided to go after the telecom giant for their role in complying with the NSA requests. Suits have already been filed against the government, but this is the first against an actual telecom provider. According to EFF attorney Lee Tien, "AT&T's customers reasonably expect that their communications are private and have long trusted AT&T to follow the law and protect that privacy."



EFF Attorney Lee Tien

# The State Pages

## News and Updates in State Telecommunications Law

### STATE BRIEFS:

LISTED BELOW ARE BRIEFS OF THIS MONTH'S IMPORTANT NEWS FROM STATE UTILITY COMMISSIONS, LEGISLATURES, COURTS, AND OTHER NOTEWORTHY STATE NEWS:

California: Consumer groups want the recent the PUC to reopen its approval of the SBC-AT&T merger after it came out earlier this month that AT&T gave \$25,000 to the campaign fund of Governor Schwarzenegger; only 4 days before the merger was approved. The groups also point out that Susan Kennedy voted to approve the merger at the time (just before she was appointed Schwarzenegger's new Chief of Staff), and 21 days before the AT&T contribution, Schwarzenegger paid Kennedy \$25,000 for consulting on a 2005 referendum campaign. Schwarzenegger as well as AT&T spokespeople have denied any link between the donation and Kennedy's consulting payment or any of her decisions during her tenure with the PUC.



California Attorney General Bill Lockyer

Also in California AT&T news, the company agreed to pay \$25 million for failing to test and repair underground storage tanks at its facilities statewide. State Attorney General Bill Lockyer said AT&T also failed to shut down tanks with inadequate pipe systems.

Colorado: The state House Finance Committee has narrowly defeated HB-1173, a VoIP tax bill that would have made illegal municipal taxation of VoIP services. The committee voted 7 to 6 to kill the bill. Opponents of the ban said that making VoIP exempt from local taxes would artificially and detrimentally drive consumers to VoIP, and ultimately deprive municipalities of telecom tax revenue.

Georgia: A House Committee advanced a deregulation bill that would deny the PSC any jurisdiction over rates, terms and conditions of wireless, VoIP or broadband services. SB-120, which has already been passed in Georgia's Senate, states that market forces are the best mechanism for regulating these emerging technologies. Also in Georgia, the PSC concluded it has authority to address rates for Section 271 UNEs in ICAs filed under Sec. 251 and 252, and initiated an expedited case in which it plans to set rates for Sec. 271 UNEs by March 11. The PSC in (Case 19341-U) said that when the FCC reserved jurisdiction over Sec. 271 unbundling compliance, it left open who will regulate rates for 271 UNEs.

Indiana: In contrast to Georgia, state regulators in Indiana have found that they lack authority to enforce UNE requirements under Section 271. The state Utility Regulatory Commission ("URC") came to this conclusion as it settled several disputes between ILECs and CLECs regarding ICA changes needed to carry out the FCC's triennial review orders. CLECs (Case 42857) argued that the state has authority to enforce unbundling obligations under Sec. 271, but the URC said most courts and state commissions that looked at 271 obligations concluded there's no explicit delegation of authority to states for UNEs under Sec. 271.

Kansas: Corporation Commission staff recommend that the Commission reject Sprint Nextel's plan to spin off its local exchange telephone operation into a new company, Embarq. The move was proposed to meet a Sprint Nextel merger condition, but staff say the plan would shift Sprint debt to the spin-off with no offsetting benefits or savings for Embarq, as well as serve no real public interest. Kansas is one of 6 states where approval is still needed for the "Embarq" plan. Get the full Embarq story in the "Industry News" section of this newsletter.

*Continued on next page*

## STATE BRIEFS (CONTINUED)



Louisiana Governor Kathleen  
Babineaux Blanco and her husband  
Raymond

Also in Kansas, the state Senate's Utilities Committee has scheduled hearings on a VoIP 911 bill that would set VoIP E-911 service and customer fee requirements. The bill (HB- 2590), which has already been passed in the House, would let VoIP providers charge 25¢ per month per phone number to be paid into a fund for grants to rural towns and counties to set up and maintain VoIP E-911 systems. The bill would allow another 25¢ fee to cover ongoing local E-911 system costs.

Louisiana: In the wake of hurricane Katrina and an apparent subsequent collapse in emergency communications, Governor Kathleen Babineaux Blanco (D) wants to devise a state voice, data and video system that all emergency responders can use to talk with each other. "You can't coordinate if you can't communicate," Blanco said. She has set up a Statewide Interoperable Communication System Executive Committee to work with local, state and federal agencies to design, build, run, maintain and manage a statewide system.

Minnesota: A federal appeals court has decided that the Minnesota PUC did indeed have authority in 2002 and 2003 to set lower rates retroactively for Qwest UNEs. The 8th U.S. Appeals Court in St. Louis upheld several lower court rulings. Qwest may now have to refund competitors \$13 million after the PUC in April 2002 set interim UNE rates, and Qwest challenged them.

Missouri: A state court issued a temporary injunction requiring two "data brokers" to stop dealing in telephone customer call records and trying to get call records from wireless or wireline carriers. The defendants, First Data Solutions and First Source Information Specialists, are barred from contacting any telecom service provider about anything other than their own telephone service. Missouri Attorney Gen. Jay Nixon (D) requested the injunction. For more on this increasingly important issue, see our story in the FCC section of this newsletter about steps the FCC is taking to try to protect consumer information.

New Hampshire: A state House committee has defeated a VoIP 911 bill that would have extended to VoIP providers the state's 42¢ monthly E-911 surcharge. HB-1232 died by a vote of 14-1 in the House Science, Technology & Energy Committee due to concerns about tracking and collecting surcharges from unregulated providers.

New Mexico: The state Supreme Court is hearing a suit originally brought by Qwest against the Public Regulation Commission ("PRC"), in which Qwest claims the PRC exceeded its authority last year when it required Qwest to make more than \$200 million in "unneeded network investments". The PRC gave Qwest the option to do so or refund the amount to customers. In a 2001 price cap regulation pact, Qwest committed to spend \$788 million on its network infrastructure, but later asked the Commission to allow them to reduce the amount because of decreased demand.

North Carolina: The Utilities Commission ("NCUC"), in Case P-772-sub 8 said \$252 UNEs can be mixed with \$271 UNEs in an ICA. This ruling came out of a dispute between BellSouth and three CLECs over whether FCC TRO/TRROs bar commingling of 252 and 271 UNEs.

Ohio: Despite several important consumer group petitions, the PUC has rejected requests to reopen the Verizon-MCI merger case for consideration of additional conditions. The PUC (Case 05- 497-TP-ACO) rejected petitions by the Office of Consumer Counsel and 2 consumer groups that sought evidentiary hearings on how to guarantee the merger will ensure adequate service at reasonable prices for all customers. The PUC did say that these groups will be able to review merger compliance information that Verizon-MCI is required to provide to PUC staff, subject to confidentiality agreements.

Pennsylvania: The state Senate passed a bill (SB-936) to require VoIP providers that interconnect with the PTSN to impose the state's \$1 monthly 911 fee per line and forward collections quarterly to the state Emergency Management Agency (as other telecom providers must do) The bill is now pending in a House committee.

South Carolina: The PSC granted BellSouth's petition for statewide deregulation of residential and business voice mail service. BellSouth petitioned the PSC last year to stop regulating the service. BellSouth claims that South Carolina was the only state in its home region that still regulated voice mail.

Virginia: The state Senate passed a VoIP E-911 bill (SB-395) to give the Wireless E-911 Service Board greater jurisdiction; to include VoIP providers that interconnect with the PTSN. The bill (approved by the Senate Commerce & Labor Committee) is now in a House committee.

Washington: The Utilities & Transportation Commission told Qwest (Case UT-053036) it must pay PacWest \$640,000 in back intercarrier compensation on calls originated by Qwest and terminating on local numbers of PacWest ISP customers in the same local calling area. The UTC said its decision also applied to virtual exchange calls where the terminating ISP number would be treated as a local call on the originating party's phone bill.

# Industry News

## Telecommunications Industry News and Notes

### VERIZON ACCUSED OF HOARDING BANDWIDTH

According to documents recently filed with the FCC, Verizon is setting aside a wide lane on its fiber-optic network for delivering its own television service. Specifically, more than 80% of Verizon's current capacity has been earmarked for carrying its own service, leaving all other traffic the

remaining 20%. Many industry analysts believe that Verizon's actions will have a severe effect on competition, as this could cause severe traffic jams for Internet users. A group of companies opposing Verizon's plan will take these complaints to the Senate during a hearing on telecom reform. Verizon's defense for this move (same defense as always) is that it needs to

claim the territory in order to get a return on its network investments.

Verizon is spending about \$10 billion over seven years on new fiber lines to get into the television business. This type of service uses a relatively large amount of bandwidth. Verizon is aiming to compete with cable giant Comcast in the TV market.

### INDUSTRY BRIEFS:

#### AT&T ANNOUNCES SHOCKINGLY LOW DSL PRICING (WHICH WILL NEARLY TRIPLE AFTER 1 YEAR)

*Lowers prices on 1.5Mbps, 3Mbps tiers* — Taking pricing to a new low, AT&T will announce a new introductory \$12.99 1.5Mbps DSL offer that they'll set to start taking web-orders for (the rate applies to new customers only). The \$13 price tag is good for one year, after which it reverts to \$29.99. The company also dropped the introductory price of its 3Mbps tier to \$17.99, which will jump to \$35.99 once the one-year contract is up.

### SPRINT NEXTEL CREATES NEW COMPANY, NEW NAME, NEW PAPER AIRPLANE LOGO

The Sprint Nextel merger required the creation of a new and separate local communications affiliate in the second quarter of 2006, and it has announced its new name and unveiled its new logo. The new company will be called "Embarq", and you can see its new logo below. Sprint Nextel CEO Daniel R. Hesse made the announcement earlier this month to a group of employees. "This is a company that will be aggressive and innovative in the marketplace, and the new name and logo – with its distinctive and differentiating coloration -- is the brand we want customers to remember," said Hesse.

The new company, officially known as Embarq Corporation, will begin using the name and logo on a limited basis before the formal separation from Sprint Nextel is completed. The new company expects to trade on the NYSE under the ticker symbol "EQ".

Upon its separation from Sprint Nextel, Embarq is expected to generate approximately \$6 billion in annual revenues, and serve as the fifth largest incumbent local exchange carrier in the United States (based on the company's 7.4 million access lines as of September 30, 2005).



Embarq's logo – "with its distinctive and differentiating coloration"

# March 2005

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

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1 FCC Form 477 due	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30 FCC Form 507 due	31 Several State Annual Reports Due! (see right column)	

- 3/1: Form 477—Local Competition/Broadband Reporting — must be filed for each state in which: 1) a facilities-based broadband service provider serves 250 or more “full or one-way broadband” lines; 2) ILECs and CLECs provide 10,000 or more “voice-grade equivalent lines”; and 3) facilities-based mobile telephony providers serve 10,000 or more mobile telephony subscribers. For further info, visit [www.fcc.gov/broadband/data.html](http://www.fcc.gov/broadband/data.html). For forms and instructions: [www.fcc.gov/formpage.html](http://www.fcc.gov/formpage.html)

- 3/30: Form 507—Universal Service Quarterly Line-count Update must be filed by all carriers with ETCs operating in their study area must file quarterly line-count updates. ETCs without competition may file updates, but are not required to do so. In addition, all competitive ETCs are required to file line counts with USAC on a quarterly basis. For more information: <http://www.universalservice.org/hc/forms/default.asp#usacforms3/31>; Illinois Annual Report

STATE ANNUAL REPORTING TIME STARTS

- 3/31: Massachusetts Annual Returns and Intrastate Revenue Statement. For forms go to: <http://www.mass.gov/dte/telecom/Annreturn.htm>
- 3/31: New Hampshire Annual Report
- 3/31: New York Operating Revenue Reports
- 3/31: Utah Annual Report (Including Report of Gross Revenue)
- 3/31: Illinois Annual Report (electronic forms available at “Industries” section of [www.icc.illinois.gov](http://www.icc.illinois.gov))
- 3/31: California Annual Report: Click [here](#) for instructions and forms.

© 2006 LOKT; All Rights Reserved



1519 East 14th Street, Suite A  
 San Leandro, CA 94577  
 Phone: 510.903.1304  
 Fax: 510.868.8418

Email: [kris@lokt.net](mailto:kris@lokt.net)  
[www.lokt.net](http://www.lokt.net)

1725 I Street, N.W., Suite 300  
 Washington, DC 20006  
 Phone: 202.250.3413  
 Fax: 202.517.9175