

# THE **LOKT** NEWSLETTER

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OCTOBER 2005

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# The Federal Pages

## News and Updates in Federal Telecommunications Law

### FCC News

#### FCC APPROVES MERGERS, ORDER SBC AND VERIZON TO OFFER NAKED DSL AS A CONDITION

The FCC agreed to the SBC/AT&T and Verizon/MCI mergers, but is requiring the incumbents to offer DSL to customers without requiring active local telephone service (i.e., "naked DSL"). They were given 12 months to make naked DSL available and must continue to provide it for two years. In addition to this condition, others were forced through by the Democratic commissioners:

- The applicants committed not to seek an increase in state-approved rates for unbundled network elements (UNEs) for two years (except for rates that are subject to current appeals in specific states).
- The applicants committed to a one-time recalculation to exclude fiber-based collocation arrangements established by AT&T in SBC's region and MCI in Verizon's region in identifying wire centers in which SBC or Verizon claims there is no impairment pursuant to the UNE triggers in the Triennial Review Remand Order so that dedicated transport and/or high-capacity loops need not be unbundled.
- The applicants committed, for 30 months, not to increase the rates paid by existing in-region customers of AT&T in SBC's region or MCI in Verizon's region for wholesale DS1 and DS3 local private line services.
- SBC/AT&T acknowledged: (1) that the merger does not change carrier of last resort obligations imposed by the State of Alaska on interexchange services provided by Alascom; (2) that the merger will not alter statutory and regulatory geographic rate averaging and rate integration rules that apply on the merger closing date to Alascom; and (3) after the merger closing date, they will operate Alascom as a distinct, though not structurally separate, corporate entity.
- The applicants committed to provide, within 12 months of the Merger Closing Dates, DSL service to in-region customers without requiring them to also purchase circuit-switched voice telephone service. The companies will make the offering for two years from the time it is made available in a particular state.
- The applicants committed for a period of two years to conduct business in a way that comports with the Commission's Internet policy statement issued in September.



FCC Commissioner  
Jonathan S. Adelstein (D)

This follows recent approval by the Department of Justice with only minor conditions regarding freezing prices for some business services.

#### NUVIO SEEKS STAY OF FCC'S NOVEMBER 28 E911 DEADLINE

Nuvio Corp., a VoIP provider, filed a motion with the FCC for a stay of the Nov. 28 deadline requiring VoIP service providers to have full E911 functionality. This follows Nuvio's court appeal that was filed in August. In its motion, Nuvio is requesting a stay for portions of the order. "While we share the commission's concern about deploying 911 service, and we have worked diligently to provide our users with

911 access, the 120-day requirement imposed by the FCC is arbitrary and capricious and without support in the record," say Jason Talley, president and CEO of Nuvio. "No service provider is going to be able to provide a nationwide solution for nomadic VoIP users, and this order is inconsistent with the commission's past decisions regarding implementation of E911 capabilities by other service providers, such as wireless."

#### APPEALS FILED OPPOSING FCC CALEA ORDER

Several entities have filed appeals opposing the FCC's order requiring all providers of VoIP providers and facilities-based broadband to become fully CALEA compliant within 18 months. The Electronic Frontier Foundation, Center for Democracy and Technology ("CDT"), and Pulver.com filed an appeal on regarding VoIP providers. A number of educational entities are challenging the order arguing that it is too expensive. CDT issued a press release arguing that the CALEA order "extends the wiretapping rules to technologies it was never intended to cover, imposes a burdensome government mandate on innovators, and threatens the privacy rights of individuals who use the internet and other new communications technologies." Universities fear that the total cost of implementing CALEA into their networks could exceed \$6 or \$7 billion. In late September, the Commission released a Final Notice of Proposed Rulemaking ("NPRM") seeking comment on various issues related to the applicability of CALEA to providers of facilities-based broadband Internet access services and providers of interconnected VoIP services (OET Docket No. 04-295, DA 05-2712). A summary of the FNPRM was published in the Federal Register on October 13, 2005, triggering the cycle for comments and reply comments (Comments Due: November 14, 2005; reply Comments Due: December 12, 2005).

## FCC CONTINUES TO STRUGGLE WITH VOIP:

FCC Seeks Comment on VoIP Access Charge Debate — The FCC, in WC Docket No. 05-276 is soliciting comments on competing Petitions for Declaratory ruling filed by SBC and VarTec. SBC wants the FCC to Order that wholesale providers of IP technology must pay access charges. VarTec, on the other hand, believes that they and other similar providers should not be required to pay access charges to terminating LECs when enhanced service providers or other carriers deliver calls directly to the terminating LECs for termination. VarTec has also petitioned for a declaratory ruling that such calls are exempt from access charges when they are originated by a commercial mobile radio service (“CMRS”) provider and do not cross metropolitan trading area (“MTA”) boundaries, and that terminating LECs are required to pay VarTec for the transiting service they provides when terminating LECs terminate intraMTA calls originated by a CMRS provider.



VarTec Founder and  
CEO; A. Joe Mitchell

Petition on VoIP Inter-carrier Compensation — In another Petition filed this month seeking FCC clarification of VoIP rule, Grande Communications has filed a petition (WC Docket No. 05-283) for declaratory ruling asking the FCC to declare that: 1) a LEC may properly rely on a customer’s certification that the traffic being sent originates in IP format at the calling party’s premises and therefore undergoes a net protocol conversion, or is otherwise enhanced, IP-enabled traffic; 2) a LEC may send such certified traffic to other terminating LECs over local interconnection trunks; and 3) terminating LECs receiving such traffic over local interconnection trunks are to treat that traffic as local traffic for inter-carrier compensation (“ICC”) purposes and may not assess access charges for such traffic. Comments are due on December 12, 2005, with reply comments due January 11, 2006.

Comments Sought on Need for Broadband Consumer Protection – In WC Docket No. 05271 (FCC 05-150) the Commission has published a notice in the Federal Register initiating a rulemaking to explore whether regulations it adopted pursuant to its ancillary jurisdiction under Title I of the Communications Act should apply to broadband Internet access, regardless of the underlying technology providers use to offer the service. Specifically, comment is sought on whether any non-economic regulatory requirements are necessary to ensure that consumer protection needs are met by all providers of broadband Internet access service. Comments are due January 17, 2006; reply comments are due March 1, 2006.

## HAM OPERATORS RALLY AGAINST BPL

On October 13, the American Radio Relay League (“ARRL”) formally asked the FCC to order that the city of Manassas, VA shut down its broadband over power line (“BPL”) system. The league and the three ham radio operators that brought the issue to their attention claim that interference caused by the system has made it impossible for them to operate their radios. According to the filing, the city and Communications Technologies (“ComTek”), the BPL operator, have been notified several times of the problem, but have either refused or failed to do anything to fix it. The ARRL believes that the FCC’s Part 15 regulations require the Commission to impose such an order. Many telecommunications commentators have argued that BPL is not a viable or attractive long-term solution, and this allegation does not help the BPL cause.



Monument to Thomas “Stonewall” Jackson  
in Manassas, VA

## FEDERAL TRADE COMMISSION JOINS DEBATE OVER MUNI BROADBAND

Federal Trade Commission (“FTC”) Commissioner Jon Leibowitz recently announced that the agency may get involved in the intensifying national debate over the issue of municipal broadband. The statement came at a recent meeting of the National Association of Telecom Officers & Advisors (“NATOA”) in the nation’s capital. According to Leibowitz, the FTC can get involved because it has advocacy authority over consumer issues. The FTC’s Policy & Planning Office will initiate a study on the pros and cons of mu-



FTC Commissioner Jon  
Leibowitz

nicipal broadband, to decide whether the FTC will formally oppose attempts to restrict municipal broadband. Leibowitz did tell the group that, “[t]he interests of consumers and competition seem squarely aligned with [municipalities’] efforts to provide broadband.” Legislation to pave the way for municipal broadband is currently pending in the Senate, and a bill is forthcoming in the House. “The tide is clearly turning on this issue,” Leibowitz said.

## CONGRESS BUSTS THE FCC FOR WASTING MILLIONS

According to the recently released results of a Congressional investigation, the FCC is responsible for millions of wasted dollars in the E-Rate program. The program, overseen by the FCC, provides discounted Internet access and connection equipment to help expand Internet availability, especially in rural and low-income schools and libraries. According to the investigation, the \$2.25 billion program "is extremely vulnerable to waste, fraud, and abuse, is poorly managed by the FCC, and completely lacks tangible measures of either effectiveness or impact." The oversight subcommittee of the House Energy and Commerce Committee issued the report after spending two years investigating the matter. One specific example from the report; more than \$100 million was provided to Puerto Rico for an E-Rate funded network that ended up being implemented in just a few schools, and almost no students had access to it. Also, in Chicago, more than \$8 million in unused connection equipment allegedly sat in a warehouse.

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### Congressional News

## CONGRESS MAY OPEN UP NEW UNLICENSED SPECTRUM

An amendment may be added to the currently pending Digital Television ("DTV") transition bill that would open up spectrum access without requiring licenses. The Senate Commerce Committee would add the amendment, which may include opening current channels 2-4 after they are "abandoned", or may simply move the FCC to wrap up the "white spaces" proceeding. One of the reasons many tech companies and ISPs are pushing for this amendment is that the spectrum in the TV broadcast bands is in many ways ideal for

providing broadband internet service, especially wireless. Because it takes significantly less energy to send signal on the TV band than along currently used spectrum, sending signal is cheaper and batteries in mobile devices last longer. The signal is also able to penetrate solid objects, while current wireless signals are often interrupted by buildings, trees and the like. The DTV bill initially required broadcasters to return their spectrum

back to the FCC by the end of 2008. The recent hurricanes and subsequent loss of communications on the Gulf coast has prompted Congress to look into a quicker transition. Proponents of a faster transi-

tion argue that the government could have used those airwaves for emergency communications to the public and between and among public officials and emergency service workers.



Senator Ted Stevens (R-AK) – Chairman of the Senate Commerce Committee and Senator for 36 years

# The State Pages

## News and Updates in State Telecommunications Law

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### STATE BRIEFS:

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

**California:** Although perhaps not quite as active as Michigan this month (see below), California has nonetheless had a busy month, as usual. Leading off, Governor Schwarzenegger has signed bill that will broaden the role of the PUC's Office of Ratepayer Advocate. The new legislation (SB-608) not only gives more money and adds new positions (such as a lead attorney) to the office, but changes the name to the *Division of Ratepayer Advocates*.

The PUC has also decided that they will not hold evidentiary hearings in the Verizon-MCI merger proceeding (Case 05-04-020). It is the option of the PUC to hold hearings in such a matter, and according to Commissioner Susan Kennedy, the hearings are unnecessary in this merger case. A proposed Order is due October 31 and a final vote is scheduled for the 1<sup>st</sup> of December.

The PUC, in a separate matter (Docket 04-08-026) has decided that Verizon must offer UNEs to competitors on a wholesale basis in exchanges where Verizon has placed packet switches. Verizon had argued that they were no longer required to provide any UNEs in central offices where their old switching gear had been replaced by a packet-based switch.

Finally, in Long Beach, a toll service outage affected more than 10,000 customers in the area. Local calls were apparently unaffected, but toll and long distance were out, and 911 calls were significantly delayed as they were re-routed. Verizon says the outage was caused by an equipment failure.

**Florida:** Contrary to a staff recommendation, the PSC has decided to allow Sprint to charge its customers an extra 85¢ per line, per month to help cover losses from the gulf coast hurricanes. Sprint is aiming to recover \$30 million in the 12-month period during which the surcharge will be allowed.

**Georgia:** BellSouth will be allowed to waive installation fees over next 3 months for Katrina evacuees in seeking to establish, or re-establish, phone service. Katrina evacuees from all affected states will also be eligible for Lifeline/Link-up assistance.

**Illinois:** Verizon and interested parties have reached a settlement to finally conclude a four year-old investigation into setting Verizon's unbundled network element rates.

**Iowa:** According to the state Utilities Board, Qwest violated its interconnection agreement ("ICA") with McLeod USA by providing an unacceptably weak signal to the company's collocation location in its Des Moines central office. McLeod had filed a formal complaint (Case FCU-05-49) alleging Qwest provided an inferior interconnection, impairing McLeod's ability to serve customers. Qwest argued that it was not responsible for the cause of the poor signal, which they blamed on McLeod's circuits. Qwest was simply ordered to fix the problem at their own expense.

**Kentucky:** The PSC has struck a compromise with Alltel regarding service quality standards. Subsequent to Alltel's purchase of Verizon's Kentucky exchanges in 2002, it was subject to very high service quality standards set after the earlier Bell Atlantic-GTE merger. After it complained that its competitors had little or no standards, the PSC decided to lower the standards, however, Alltel still has higher standards to maintain than other KY providers. The PSC insisted that, given Alltel's stronghold on the KY market, it was reasonable to continue to require above-par standards.

**Michigan:** Michigan is the busy state of the month, with telecom developments coming from both the legislative and executive branch. The top story in the Wolverine state is the possible emergence of a major telecom deregulation bill. SB-754 has been passed in an attempt to replace the soon-to-expire Michigan Telecom Act. The bill deregulates rates for all retail bundles and any retail service available from the incumbent and another provider, wireline or wireless. The bill originally would have deregulated all business phone services including essential basic and greatly reduced PSC consumer protection powers, but it was significantly amended in order to pass. Now in the House, HB-5237 has already been approved by the Energy and Technology Committee.

Also in Michigan, the PSC has settled several disputes between SBC and CLECs resulting from the FCC TRRO. Most notably, the PSC has required that deals be struck by March regarding UNE-P rates to take effect after the FCC's transition period ends. If any CLEC cannot reach an agreement with SBC, the Commission said it may simply adopt SBC's plan to charge the local wholesale complete rate (unless it is deemed that SBC unreasonably refused to negotiate an agreement).

Finally, four ILECs will be allowed to turn their territories into a single expanded local calling area. The companies' initial Petition was denied because their proposed rate was considered too high by the PSC. They have lowered the rate, and the Petition has been approved.

*Continued on next page*

## STATE BRIEFS (CONTINUED)

Missouri: SBC's retail rates, in most of its exchanges, are not deregulated. The PSC granted SBC's deregulation proposal in all but 3 of the 29 residential markets SBC requested, and in 45 of 61 of the business markets. The PSC said it is required by law to order deregulation in any market where at least one facilities-based wireline CLEC and one wireless competitor are providing local service.

New Hampshire: While telecom service providers struggle to reinstate service in the gulf coast, Verizon suffered some flooding in its Concord, NH till switching office. Apparently, a water pipe exploded, shutting down service across the southern part of the state for several hours at the end of September. The outage also caused delays in 911 calls, as they were rerouted around the soaked switch.

NY: The PSC has approved the merger between SBC & AT&T, and has decided not to place any conditions on the merger. The PSC says it believes the merger will not have negative impacts on competition. Only four states still have not approved the merger; including Ohio and California. Although the SBC/AT&T deal is not drawing quite as much scrutiny as Verizon/MCI, many thought New York and California would be the only potential problem states for the companies. Now that New York has granted SBC/AT&T their best-case-scenario, an approval with no conditions, it appears that California will be the only potential snag. See the Ohio brief below for more specific merger news from that state.

North Carolina: BellSouth's Petition to eliminate the requirement that it handle service calls in the order that they are received has been denied by the state Utilities Commission. BellSouth attempted to seize on an opportunity to save some... gas... when it claimed that it wanted the requirement eliminated so that fuel would be conserved. BellSouth wanted to be allowed to handle calls based on the location closest to the previous service call, and because this could lead to service restoration not within 24 hours, that could have violated UC rules.

North Dakota: State Attorney General Wayne Stenehjem has told consumers to be on the lookout for a growing telephone scam using IP-based deaf relay services. Apparently, calls are placed from other countries to U.S. businesses over the Internet through the relay system, pretending to be deaf. Usually, the caller will try to place a large order for items (using stolen credit cards).

Ohio: The Ohio Consumer Counsel and two other state consumer groups have filed comments in the Verizon/MCI merger proceeding, asking the PUC to either reject the merger or place significant conditions on it. The groups are seeking the following conditions, as well as some others: 1) require the merged companies to offer wholesale and resale naked DSL; 2) require that they reduce rates and increase Lifeline discounts; and 3) increase service quality violation penalties. The Consumer Counsel made similar suggestions in the SBC/AT&T merger proceeding. XO Communications was not allowed by the Commission to include a late piece of evidence against the Verizon/MCI merger. XO sought to have admitted a survey of telecom managers at Fortune 1000 companies showing that these companies were apprehensive that both mergers could lead to higher pricing.

Pennsylvania: The PUC in Pennsylvania has also responded to reactions to the FCC TRRO; they have suspended a Verizon tariff that seeks to end unbundling of entrance facilities. Verizon claimed the TRRO allows them to deny such access, but the PUC wants to wait until they decide, in interconnection arbitration case P-00042092, what the definition of an entrance facility is.

In another case where a telco has asked a state commission to waive or lower service standards, the PA PUC has denied MCI's Petition for waiver of the requirement that installations of new or transferred service be completed within 5 business days. The basis of this Petition, according to MCI, is that they are dependent on UNEs, and have had problems completing installations in time because Verizon is failing to complete the necessary physical hook-ups. The PUC simply ruled that MCI did not present sufficient evidence to show that Verizon was responsible for the alleged delays.

Rhode Island: An interesting E911 project is being tested in some counties in Rhode Island. So-called "pictometry" technology is being used in Cranston, Providence, Warwick and Newport Counties to give emergency operators more data on the originating location of 911 calls. Dispatchers actually receive photos of the location and immediate surroundings of the originating address, from up to four different angles.

South Carolina: Sprint has been awarded an \$85 million contract by the state to replace the statewide data network with a new multiprotocol label switching ("MPLS") network. According to Sprint, the new network will provide VoIP as well as data and information services to state agencies. BellSouth will also get in on the deal, as they have been subcontracted to deliver the network and provide certain network services in most of the locations.

Texas: A suit between Verizon and the city of Sulphur Springs has been settled. Verizon was suing the city for \$160,000 for cutting a fiber phone cable back in the summer of 2003. The amount and terms of the settlement have not been disclosed. Allegedly, a city crew digging up a sewer line accidentally cut cables near a Verizon central office.

Utah: In more cable-cutting news, a contractor in Utah last month managed to slice some Qwest lines, knocking out business phone service in the area for several hours. The massacre also left the area without 911 service for over an hour.

Virginia: The Corporation Commission has adopted their "Telecom Bill of Rights." Some of the "rights" include timely installations and repairs, timely handling of customer complaints, and disclosure of rates and terms upon request. In conjunction with the new BOR, the Commission has adopted new service quality rules that will apply to all state CLECs and ILECs.

West Virginia: Wanted: Information leading to the arrest of persons responsible for theft of network equipment from Verizon WV switching centers. Verizon is offering a \$50K to track down the culprits, especially because they, "created... public safety concerns."

# Industry News

## Telecommunications Industry News and Notes

### STATES MOVE FORWARD ON MERGER PROCEEDINGS AS MCI DOES SOME HOUSEKEEPING

As proceedings heat up around the county over the proposed Verizon/MCI merger, MCI has agreed to a \$331 million tax settlement involving 16 states and D.C. The states alleged that questionable accounting by MCI led to underpayment of taxes over the past several years. \$315 million will go to 15 of the states plus D.C., while North Carolina will get the rest of the pot as part of a settlement in a separate suit. The biggest "winner" in the settlement is

Pennsylvania, which will get \$46.5 million. The attorney general there said MCI illegally moved income out of Pennsylvania to avoid taxes. As part of their, "sham royalty scheme," MCI also charged subsidiaries more than \$20 billion in royalties that it then took as tax deductions. The company is still in settlement negotiations with South Carolina, but they have managed to eliminate the issue, for the most part, as a potential threat to their proposed merger. MCI was not required to admit guilt as part of any of the settlements. Meanwhile,

the Corporation Commission in Virginia approved the Verizon/MCI merger, but attached two significant conditions. MCI will be required to honor current contract terms with wholesale providers until the Commission finds that MCI's exit as an independent entity would not hurt competition in the state. The companies will also be required to track merger costs and savings over the next three years. Pennsylvania has also approved the SBC/AT&T merger without any conditions.

### INNOVATIVE TELECOM PROVIDERS MOVE IN TO HELP, AND PROSPER, AFTER KATRINA

As we reported in our special Katrina section of last month's newsletter, the disaster knocked out communications across the gulf coast, with many unable to get into contact with family and loved ones for weeks. Groups like Part-15.org, WISPA, and others have taken the initiative to reconnect the victims of the hurricane, and in the process, have shown the many advantages of newer wireless and IP-based communication technology. The biggest advantage, especially in such an emergency, is that wireless ISPs don't rely on a traditional phone network. By using IP to transmit voice and data, and thus smaller and more mobile equipment, a wireless ISP can come into virtually any area without communications, and set up high-speed voice and internet service. The wireless ISPs who converged on the Gulf Coast were able to get communications restored to many victims within 24 hours. It remains to be seen how important the success of this effort will be to the future success of the technology, but the hurricanes made it abundantly clear that traditional telephone technology will have a tough time competing with emerging technologies that are cheaper, higher quality and more nimble.



AP/Eric Gay

Fires in New Orleans, like this one that burned on September 2, were just one of the culprits for the communications loss that occurred after Katrina

# November 2005

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

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	VoIP E911 90% Acknowledgement (10/31)	1 FCC Form 499Q: 11/1	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 E911 Compliance Letter: 11/28	29	30			

- FCC Form 499Q Telecom. Reporting Worksheet (this form replaced Form 499-S); must be filed by all providers whose annual contribution to the federal universal service support mechanisms is expected to exceed \$10,000 for the year. For more info: [www.universalservice.org/li/forms](http://www.universalservice.org/li/forms). Due Nov. 1.
- FCC E911 90% customer acknowledgement required (10/31). Compliance Letter (all interconnected VoIP providers) due 11/28.

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