



Telecommunications Law Forecast

Our Outlook on Congress and the FCC
for 2009 and Beyond

January 27, 2009



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or to establish an attorney-client relationship.**



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Today's Presenters

(in order of appearance)

- Stephanie Joyce, Of Counsel, Telecom Group
- Mark Harkins, Senior Government Relations Advisor, Government Relations Group
- John Mashburn, Of Counsel, Government Relations Group
- Jon Canis, Member, Telecom Group
- Jennifer Kashatus, Of Counsel, Telecom Group
- Ross Buntrock, Member, Telecom Group
- Mike Hazzard, Member, Telecom Group



President Obama's Telecom Agenda

- Telecom was core of Technology Platform
 - “[P]rotect the openness of the Internet”
 - “[G]et true broadband to every community in America”

Quoted from <<http://www.barackobama.com/issues/technology/>>

- Two tenets of American Reinvestment and Recovery Plan involve telecommunications
 - Computerizing the health care system
 - Modernizing classrooms, labs, and libraries



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The Obama Stimulus Package: H.R. 1

- ARRA, H.R. 1, will reach House Floor on January 28
 - House Rules Ctte to decide today which amendment Rule applies
- Commerce Dept. and Dept. of Agriculture will administer separate funds
- House Commerce Ctte approved Commerce Dept. allocation is \$2.825B by voice vote 1/22/09
 - \$1B Wireless Deployment; \$1.825B Broadband
- Dept. of Agriculture allocation is \$2.825B
 - Rumored to include “open access” conditions
 - CTIA would oppose; Anna Eshoo (D-CA) supports conditions



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The 111th Congress Telecom Agenda

- Broadband Access and Investment
 - Senate Finance Ctte will consider amendment to stimulus to provide tax benefits for broadband
 - On January 22, House Commerce Ctte approved by voice vote \$2.825B wireless broadband fund
 - NTIA will administer to “eligible entities”
 - 25% of funds for wireless voice/75% for wireless broadband



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The 111th Congress Telecom Agenda, cont.

- Privacy and Data Security
 - More than a dozen bills related to Internet privacy and child online safety were pending when the 109th Congress adjourned
- Consumer Protection
 - Targeted advertising and behavioral tracking raised concerns in House Commerce this past term and is likely to be a focus in this Congress



Relevant Leadership in 111th Congress

- House Commerce

- Chair: Henry Waxman (D-CA)

- Ranking: Barton (R-TX)

- Telecom Subcommittee: Boucher (D-VA) to replace Markey (D-Mass) (to Energy Subcommittee)

- Consumer Protection Subcommittee: Rush (D-IL) will remain

- Senate Commerce

- Chair: Rockefeller (D-WVa)

- Ranking: Hutchinson (D-TX)

- Science Subcommittee: Kerry (D-MA) is Chair

- Thune (R-SD) a vocal member of this Subcommittee



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Relevant Leadership in 111th Congress, cont.

- House Judiciary
 - Chair: Conyers (D-MI)
 - On January 13 released 500-page report “Reining in the Imperial Presidency”
 - Ranking: Smith (D-TX)
- Senate Judiciary
 - Chair: Leahy (D-VT)
 - Ranking: Specter (R-PA)



Possible Points of Congressional Interest

- USAC
 - Recent enforcement measures and efforts to impose USF on larger pool of carriers have raised concerns
 - Should USAC be converted to a division of the FCC to ensure accountability?
- Agency Procedure
 - “Deception and Distrust” Report by House Committee revealed circumventions of APA
 - Excessive rulemaking by adjudication blurs effect
 - Key Staff have predicted increased Congressional oversight
 - Possible revisit of Sunshine Act to permit Commissioner collaboration



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Possible Points of Congressional Interest, cont.

- Revisiting the 1996 Act
 - Challenges to several FCC decisions under Section 10 (forbearance) and Sections 251-252 have revealed significant flaws in the statute
 - Senator Stevens (R-AK) hinted for years that he would reopen all or most of the 1996 Act – is Rockefeller of the same mind?
 - Climate change and “bail-outs” are likely to remain high priorities for 2009, pushing telecom down the agenda



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FTC Areas of Interest

- Targeted advertising and behavioral tracking
- Red Flag Requirements – applicable to telecommunications providers
 - Section 114 of the Fair and Accurate Credit Transactions Act of 2003 (FACTA)
 - Requires all entities subject to the legislation to develop and implement by 5/1/09 a written “Identity Theft Prevention Program” to detect, prevent, and mitigate identity theft in connection with the opening of certain new and certain existing accounts



- Privacy issues



The New FCC

- Chair (D): Julius Genachowski
 - Counsel to Chmn. Kennard 1994-1997
 - Member of Obama Transition Team
 - After FCC went to Silicon Valley, largely stepping out of regulated industry for 10 yrs.
 - Anticipated to be pro-innovation and pro-Internet (de-regulatory bent?)
- Replacement for Commissioner Tate (R)
 - Meredith Baker (fmr NTIA), Bill Bailey (fmr Ctte Counsel), Bryan Tramont (fmr Advisor to Powell)



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The New FCC, cont.

- Returning Commissioners:
 - Commr. Copps (D) Sworn in for 2d Term January 3, 2006; named Interim Chair
 - Commr. Adelstein (D) Sworn in for 2d Term December 6, 2004; will he serve 3d Term?
 - Commr. McDowell (R) First term presently expires June 30, 2009

Terms are 5 years and last until replacement or expiration of the Congressional term.



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The New FCC, cont.

As Chairman, Genachowski can appoint
new Bureau and Office chiefs

- Wireline Competition Bureau
- General Counsel
- Enforcement Bureau



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Federal Chief Technology Officer?

- President Obama has stated that he will establish a new federal office of Chief Technology Officer

See <<http://www.barackobama.com/issues/technology/>>

- CTO will set oversee federal use of technology
 - Competition
 - Infrastructure
 - Some have proposed Privacy and Online Safety Officer
- Conceived as a Cabinet position
 - Policy candidate? Blair Levin?
 - Tech candidate? Vivek Kundra (CTO DC); Padmasree Warrior (CTO Cisco); Jeff Bezos (Amazon)?



Interaction with FCC unclear

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Big-Ticket Issues in Telecom Regulation

- Intercarrier Compensation – Goal since 2005 has been unification of rates
 - Access Charges
 - Reciprocal Compensation
 - Net terminators want high rates
 - Net originators want low rates
- November 2008
 - FCC got very close to adopting comprehensive reform; plan ultimate failed
 - Ongoing comment cycle
 - TELRIC or LRIC as “additional cost” standard?
 - State-wide rate or ILEC-by-ILEC rate within a state?
- Outlook for 2009 – Action very unlikely before Q4



Big-Ticket Issues in Telecom Regulation

- Litigation persists in the face of FCC inaction
 - Access charges for calls to conference bridges
 - VoIP classification
 - CMRS-to-CLEC calls
 - Transit traffic
 - 8XX origination
 - Calls to calling card platforms



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Big-Ticket Issues in Telecom Regulation, cont.

Intercarrier Compensation, cont.

– Reciprocal Compensation

- RBOCs seek a \$0.0007 per-minute rate
- Rural ICOs advocate rates equivalent to access
- Wireless carriers seek \$0.00 rate



Big-Ticket Issues in Telecom Regulation, cont.

- Universal Service Contribution Reform
 - Possible mechanisms: by BTN, by voice-grade access line
 - USAC has convinced the FCC to broaden pool of contributing carriers
 - Interconnected VoIP in 2007
 - Conference/audio bridge providers in 2008
 - Comment sought on segregating Internet access revenue for USF contributions (*Madison River*, comments due January 29)



Will new FCC seek to refresh record?

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Important FCC Deadlines

- CPNI Compliance
 - 2008 Annual Filing due March 2, 2009 (Monday)
- Universal Service Compliance
 - Form 499Q (4Q08) due February 2, 2009 (Monday)
(unless *de minimis*)
 - Form 499A Corrections of 2007 interstate telecommunications revenue due March 31, 2009
 - Form 499A to report final 2008 interstate telecommunications revenue due April 1, 2009
 - Form 499Q (1Q09) due May 1, 2009
(unless *de minimis*)



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Important FCC Deadlines, cont.

- Network Reporting
 - FCC Form 477 Local Telephone Competition and Broadband Reporting due March 1, 2009
 - International Circuit Report due March 31, 2009
- Numbering Rules Compliance
 - FCC Form 502 Numbering Resource Utilization/Forecast (NRUF) due February 2, 2009

Our Telecom Group completed dozens of each of these filings in 2008 and would be pleased to assist you.



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