

**The Weekly TeleCom Report from www.pabroadbandnews.com.
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In this issue ... broadband competition continues to heat up as the Baby Bells pare their prices. The NY Times reports that those same Baby Bells are starting to catch up with their cable competitors. VOIP continues to rattle the industry and leap ahead of regulators. Customers, meanwhile, are the main beneficiaries. Verizon "risks profits" contends Bloomberg by betting it will win TV, internet customers. AT&T's debt has been cut to junk. MCI & AT&T settle a no-call lawsuit in Missouri. In Virginia, the State Corporation Commission has thrown out a request by a CLEC to mandate unbundling.

From the Papers

Newsday on broadband competition: "Baby Bells benefit by paring prices."
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The Baby Bells are catching up in the race to provide broadband.
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Deregulation is the mantra of the main players in Internet-based phone service, a new technology that could increase competition and further drive down phone prices."
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Bloomberg: "Verizon risks profit betting it will win TV, internet customers."
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Internet phone-service firms charge less, offer new options.
[Click Here](#)

AT&T's debt cut to 'junk.'

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MCI & AT&T settle no-call lawsuit in Missouri.

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Virginia Throws Out CLEC Request to Mandate Unbundling

The Virginia State Corporation Commission (SCC) stuck by a recent federal court decision stating that federal regulators had no authority to give the states purview over the rates that competitive carriers pay for access to local networks. In so doing, the SCC threw out petitions from AT&T and the Competitive Carrier Coalition that contended that state law requires the continued unbundling of transport, loops and switching (UNEs). Also turned back was the Coalition's request that the Commission should clarify that Verizon is required to provision UNEs at the rates and terms of its existing interconnection agreements for the foreseeable future.

The July 19 action by the SCC was the latest in a series of victories for Verizon, which has long contended that continued mandated access to its networks at rates below cost only serve to hurt the competitive marketplace by discouraging new investment in telecommunications infrastructure. Emerging wireless and cable/modem applications, moreover, provide plenty of competition in the telecommunications marketplace.

The SCC's action stems from a March federal court ruling that effectively ended the requirement that incumbent carriers provide access to their networks at rates dictated by state regulators. After the ruling, the Federal Communications Commission (FCC) urged both competitive and incumbent carriers to negotiate access agreements outside the regulatory scheme. Some such deals have since been negotiated.

In its argument before the SCC, AT&T said that any measures by Verizon to raise UNE rates (after the June 15 implementation of the federal court ruling) or limit their availability would be contrary to Verizon's obligation under federal law. AT&T further argued that the any such move by Verizon would be at "odds with the terms of its interconnection agreements; in violation of obligations arising out of Bell Atlantic/GTE merge; and inconsistent with its obligations under Virginia law."

For its part, Verizon argued that among other things the petitioners were trying to change the status quo by asking the Commission to override the terms of existing interconnection agreements. The SCC lacks authority under Virginia law to abrogate the provisions of a lawful contract, the Verizon argument continued. Finally, Verizon state that only a finding of impairment by the FCC could impose certain unbundling requirements.

In its dismissal statement, the SCC wrote that it would not grant injunctive relief if it might preempt binding, valid contracts – the existing interconnection agreements. “Moreover, certain issues raised...by the petitioners, such as conditions imposed by the FCC in its approval of the Bell Atlantic/GTE merge...are the result of actions by the FCC and should be enforced by the FCC,” the dismissal statement read.

No Real Estate Tax for Electric Co-ops

(Devising Wireless High-Speed Internet Service for Customers)

Nonprofit electric cooperatives in Pennsylvania are not subject to the Public Utility Realty Tax Act since they do not furnish "public utility services," a divided en banc Commonwealth Court has ruled.

In *Adams Electric Cooperative Inc. v Commonwealth*, the 3-2 panel said the tax statute, known as PURTA, limited the definition of "public utility" to electric cooperatives "furnishing public utility service." In so ruling, the court rejected the commonwealth's argument that the state Legislature intended a less technical meaning in the PURTA definition.

Meanwhile, the Pennsylvania Rural Electric Association (PREA) is working with the National Rural Telecommunications Cooperative to provide high-speed Internet service via satellite by the fall of 2004.

In the case, the majority also reasoned that PURTA, though a tax statute, must be read in context with the Public Utility Code and the Electric Cooperative Law of 1990 further supporting the court's conclusion that nonprofit co-ops are not subject to the tax.

Judge Doris A. Smith-Ribner penned the majority decision, which was joined by President Judge James Gardner Colins and Judge Rene L. Cohn, while Judge Dan Pellegrini dissented in a separate opinion, joined by Judge Bonnie Brigance Leadbetter.

In his dissent, Pellegrini disagreed with the majority's reliance on the electric cooperatives' regulatory status to decide their tax obligations. "In effect," he wrote, "the majority creates a 'regulation = taxation' rule which is at odds with PURTA."

PURTA, promulgated pursuant to a provision of the state Constitution, assesses a real estate tax on public utilities and spreads the revenue among all local taxing authorities in which the utilities provide service, according to Smith-Ribner's opinion. Sections 1102-A and 1104-A of PURTA specifically provides for the commonwealth to impose a standard and supplemental realty tax upon entities "furnishing public utility service under the jurisdiction of the Pennsylvania Public Utility Commission and any electric cooperative corporation furnishing public utility service on December 31 of the taxable year."

Allegheny Electric Cooperative Inc., along with 21 other gas and electric companies, challenged a December 1998 supplemental tax assessment under PURTA in the Commonwealth Court's original jurisdiction, the opinion states. During the pendency of that matter, Allegheny paid the tax, and then filed for a refund, which was rejected. The company appealed that determination to the state Board of Finance and Review, which upheld the assessment of the tax.

After the companies and the state Department of Revenue litigated several other issues, the opinion states, Allegheny and 12 other nonprofit electric co-ops proceeded with an appeal of the Finance and Review Board's decision on the tax assessment.

According to the opinion, the petitioners in their appeal argued that because they are electric cooperatives providing energy exclusively to their members rather than furnishing public utility services, they are exempt from the PURTA tax.

Alternatively, the companies contended that they are exempt from the tax under the Electric Cooperative Law, which imposes an annual membership tax on electric co-ops. That statute states that co-ops covered by the law "shall be exempt from all other State taxes of whatsoever kind or nature," and that electric cooperatives "shall be exempt in any way and all respects from the jurisdiction and control of the Pennsylvania Public Utility Commission."

Verizon Again Expands High-Speed Internet Access

More consumers and businesses in the Pittsburgh area can enjoy the benefits of high-speed Internet access now that Verizon Online has expanded its availability in portions of Allegheny and Washington counties.

Verizon Online DSL is now available to more than 2,340 additional subscribers as the result of the company's most recent expansion and upgrade of its local telecommunications network. The locations in which additional DSL-capable lines are available include the Summit Park Drive area in Robinson Township and the Lebanon Church Road area of West Mifflin, both in Allegheny County, and the Oakwood Road area of McMurray in Washington County.

“If you wanted DSL service from us in the past, but it wasn’t available in your neighborhood, now is the time to check with us on current availability,” said James V. O’Rourke, president and CEO of Verizon Pennsylvania.

Verizon has invested \$8.5 billion in its network across the commonwealth over the last 10 years.

DSL subscribers can have news in an instant, share digital photos, quickly send e-mail attachments, download movies and play interactive multi-media games in real time. DSL-powered businesses can increase productivity by spending less time doing research, paying bills online and e-mailing orders to suppliers.

Verizon Takes Yellow Book to Court

A trial began in federal court in Brooklyn, N.Y., this past week, pitting Verizon's yellow pages unit against its chief independent rival, Yellow Book USA.

Verizon Directories Corp., a subsidiary of Verizon Communications, claims that a Yellow Book advertising campaign begun in 2002 violates state and federal laws against false and misleading advertising.

In the first stage of the trial, Verizon seeks a permanent injunction to stop Yellow Book's campaign, which it says is built around the false claim that Yellow Book's directories are more heavily used than Verizon's.

The case is before Eastern District of New York Judge Jack Weinstein. He will first decide whether an injunction is appropriate. If Verizon wins, a second phase before a jury will address damages.

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