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In this issue, VOIP technology continues to rock the telecom sector. SBC announces historic deal to provide wholesale local phone services to Sage Telecom. In DC, the FCC is reportedly close to ruling that AT&T owes millions in fees for calls carried over the Internet. In NJ, Verizon wins the right to charge competitors more money to access networks but the modest increase isn't enough, the company says and a major investment in fiber optic system is in jeopardy. In Pa, debate over Chapter 30 continues as one key player looks at impact of competition on the issue.

From the Papers

Internet phone service "goes mainstream."

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SBC and Sage Telecom reach deal.

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Forbes looks at "ominous cloud" hanging over traditional phone companies – VOIP.

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Verizon reconsiders fiber optic network in NJ in wake of disappointing BPU decision.

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Ruling That Federal Courts Have Jurisdiction over Interconnection Agreements Good for Both Sides, Analysts Say

A recent Pennsylvania Supreme Court decision that the federal courts have exclusive jurisdiction over interconnection agreements between regional carriers and the CLECs should benefit both sides in the fight over local phone competition, according to telecommunications analysts.

"More and more the CLECs don't want these fights in the state courts and the incumbents don't either," said an attorney with the Public Utility Commission. "From a business perspective, it's probably good for both sides."

The March High Court ruling stems from action brought by MCI WorldCom against the Pennsylvania Public Utility Commission over a 1999 Global Telecommunications Order, which attempted to resolve 17 different proceedings before the Commission. One of the issues addressed concerned the charges that CLECs pay to Verizon and other incumbents for access to their networks. MCI brought action in Commonwealth Court arguing that the rates were too high. (Verizon and other incumbents have long maintained, rather, that the rates were lower than the cost of providing the service.) Commonwealth Court upheld the global order and with it the rates. The case was then appealed to the Supreme Court, which then ruled on jurisdiction.

“The elements of the Global Order stand,” said an attorney specializing in telecommunications issues. “This simply means that future actions involving interconnection agreements can’t be brought in state court.”

In the case, the Supreme Court flatly rejected the PUC's argument that the Telecommunications Act is unconstitutional because it violates the 10th Amendment's protection of state sovereignty by prohibiting a state court from reviewing the decisions of a state commission.

Instead, Justice Ronald Castille wrote in the court's opinion, the 10th Amendment simply prohibits Congress from "requiring states to administer federal programs against their will."

But Castille said the 10th Amendment does not prohibit Congress from offering states the choice of either regulating an activity according to federal standards or having state law pre-empted by federal legislation.

"Federal regulation does not commandeer a state's legislative power or violate the 10th Amendment as long as the state is given a choice regarding whether or not to enforce the regulation," Castille wrote.

The Telecommunications Act passes constitutional muster, Castille said, because it allows states to opt-out completely, ceding all authority to the FCC. But those states that opt to regulate, he said, must follow the federal law.

"Because participation in the 1996 Act is voluntary, federal regulation, including exclusive federal jurisdiction in reviewing state commission acts, does not infringe on the state's sovereignty in violation of the 10th Amendment," Castille wrote.

Castille also rejected the PUC's argument that the exclusive federal jurisdiction covered only appeals from a state commission's approval or rejection of an "interconnection agreement."

Instead, Castille opted to follow a decision by Senior U.S. District Judge Marvin Katz in *Bell Atlantic v. PUC*, 295 F.Supp.2d 529 (E.D. Pa. 2003), which held that the Telecommunications Act of 1996 explicitly confers jurisdiction solely with the federal courts to decide all appeals from state commissions relating to "interconnection agreements."

Emerging Broadband Services May Nullify Chapter 30 Mandate on Universal Service (Power Lines May Play Key Role in the Future)

The 1993 amendments to the Public Utility Code established a 2015 deadline for the implementation of statewide broadband service. Now, lawmakers and industry officials believe that emerging broadband services, including service over the power lines, may eclipse that deadline by a number of years. State Senator Jake Corman, R-Centre, a key player in the debate on local phone competition, said this past week that new technologies unforeseen when Chapter 30 was adopted by the General Assembly in 1993 offer the best hope for universal broadband access in the near future.

"It now appears that the 2015 goals will be met with new technology not through Chapter 30 network modernization plans," Corman said at an April 6 breakfast meeting in Harrisburg. Corman, who is the Chairman of the Senate Communications and High Technology Committee, cited the emergence of cable, wireless, and most recently, service over the power lines.

In Pennsylvania, power companies have begun looking at offering broadband service to their customers.

"We have member companies looking into," said Doug Biden, President of the Pennsylvania Electric Power Generation Association. "They can develop a whole new business with the existing structure already in".

One member, the PPL Corporation, has set up pilot projects in the Allentown area. The Pennsylvania Rural Electric Association, moreover, is about to offer service through its cooperatives, which principally service rural areas. Industry analysts say that the service can eventually help reach the estimated 30 percent of Pennsylvania residents who have no access to broadband.

"Every outlet in the house becomes a source for service," said an aide to Senator Corman, whose office has looked into the emerging technologies. "And it can either be done directly through the wires, or offered as an umbrella wireless service for a number of homes in any community."

Nationwide, Allentown and Cincinnati, Ohio, through Cinergy Corp, are the only other U.S. cities where residents are paying for the new high-speed Internet service, but electric companies from North Carolina to Hawaii are testing the service or plan to begin a pilot project, according to a recent news report. Internet access from power lines began to get attention last year, when the Federal Communications Commission (FCC) promoted it as a way to offer high-speed Internet services for people in rural areas. In February, the FCC proposed rules to govern broadband over power lines. The rules aren't final, but a handful of cities, utilities and technology companies are pushing forward, nonetheless.

AT&T to Pay Verizon/Other Incumbents for Internet Calls

In the next few weeks, the Federal Communications Commission (FCC) is expected to rule that AT&T Corp. must pay regional phone companies access charges for calls that travel over the Internet, according to industry sources. While the complaint was brought by SBC Communications Inc., the ruling is likewise expected to benefit Verizon and other regional carriers.

"We're not sure the extent of the payments, because we're not sure yet if the Commission's ruling will be retroactive, covering calls in the past or just hold for future calls," said Harry J. Mitchell, Director-Media Relations for the Mid-Atlantic Bureau of Verizon Communications.

AT&T has been withholding payments to the regional carriers for up to two years in some cases, arguing that because the calls traveled over the Internet they fall in the same category as VOIP calls (voice over the Internet protocol), and should not be subject to regulation and access fees. But the FCC is expected to rule that the calls don't fall under VOIP because local switching equipment is still needed to complete the calls.

"We're not talking here about a call that originates, say, on the Internet through a cable modem service and where the receiver gets the call through his cable modem service," Mitchell said. "These calls only travel on the Internet for part of their journey and still require local switching service for completion."

The expected ruling will be a blow for AT&T, which will likely have to begin paying millions in access charges for these Internet calls. It could become even costlier if the regional companies, with the strength of an FCC ruling, sue AT&T for calls made in the past.

Access Agreement Shows Good Faith Negotiations Possible, Industry Officials Say

The recent announcement of an agreement between SBC Communications Inc. and Sage Telecom to provide wholesale local service in SBC's territory shows that good faith negotiations can result in network agreements that make sense for both sides, phone industry officials said.

"I'm not sure of all the details of the Sage agreement," said a Verizon official. "But we have maintained all along that if there are good faith attempts on both sides, then deals can be made."

At the same time, a Verizon spokesman said that the company wasn't on the verge of any access agreements along the same lines as the SBC/Sage deal, but believed that a similar arrangement was possible.

"There have been ongoing discussions regarding access arrangements and these will continue," said Verizon spokesman Harry J. Mitchell. "We're hopeful that something can be reached."

Recently, the Federal Communications Commission (FCC) urged the CLECs to come to terms with the regional carriers. The FCC even asked the D.C. Circuit Court of Appeals to delay implementing its March 2 decision where it ruled that the Commission had no authority to grant state regulating bodies the right to set rates that CLECs pay Verizon and the other incumbent carriers for access.

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