

The Weekly Telecom Report provided by www.PaBroadbandNews.com.
For more information, contact John Kennedy at Johnk@pabroadbandnews.com

In this issue, some experts wonder whether the war between Baby Bells and competitors might mercifully end. Broadband boom will continue, analysts contend, and the nation's power companies gear up to offer Internet service as competition continues to roil the industry. In DC, the U.S. Senate extends moratorium on broadband taxes and the Federal Communications Commission focuses on portability complaints. In Pennsylvania, a telecom fails in efforts to pierce corporate veil; North Pittsburgh Systems reports earnings and Comcast Online names a new president.

From the Papers

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VOIP taxable under Senate moratorium on broadband taxes

In approving compromise language that includes a four-year moratorium on taxing access to broadband, the U.S. Senate did permit 11 states that imposed taxes before the original ban on broadband access to maintain their taxes. Pennsylvania is not one of the states. It collects sales and use tax for sales over the Internet, two taxes not affected by the Senate measure.

The language does however allow state and local governments for the first time to tax VOIP (voice over the Internet protocol). VOIP has been the center of a debate on whether it should be subject to taxes the same as other telecommunications services. The Federal Communications Commission is currently crafting language to regulate VOIP.

The Senate vote came six months after the first moratorium on taxing broadband expired. President Bush asked Congress for a permanent ban on taxes, which the House approved this past September. Now the House and Senate versions will have to be reconciled.

The Senate vote was hailed by Verizon, other broadband providers, the U.S. Chamber of Commerce and other business organizations as a way to ensure that access and deployment of broadband continue their rapid rise. Two in five households now have broadband, with the numbers accelerating.

The Senate vote was 93-3 for passage of the measure, which included the compromise broadband language sponsored by Arizona Republican John McCain. The key vote that cleared the way for Thursday approval of the bill came on a motion to limit debate on the McCain language. The Senate invoked cloture with a 63-34 vote.

Incumbent carrier charges no access fees for VOIP

For the first time, an incumbent carrier has decided to charge no access fees for use of its networks when the service offered is VOIP (voice over the Internet protocol). The carrier, Qwest Communications, is likewise getting into the VOIP service over its 14 state West and Midwest coverage area. "We're offering the service and getting into it with the hopes of taking it national at the start of next year," said Kate Varden, a spokesperson for Qwest.

Along with the no access charges, Qwest is putting together a package of services that VOIP providers might want to purchase from the carrier. The move also means that one Qwest division will not have to charge another for access to the network. "If we didn't eliminate the fees, we would have to charge ourselves the access fees under the way the regulations are set up," Varden said.

In Washington, the Federal Communications Commission (FCC) stated that it would address in future proceedings the regulatory requirements, including interstate access charges, to which specific types of phone-to-phone VOIP services might be subject if they were determined to be telecommunications services.

Specifically with regard to interstate access charges, the Commission stated, "to the extent we conclude that certain forms of phone-to-phone Internet protocol telephony service are 'telecommunications services' and to the extent the providers of those services obtain the same circuit-switched access as obtained by other interexchange carriers and therefore impose the same burdens on the local exchange as do other interexchange carriers, we may find it reasonable that they pay similar access charges."

Verizon says value of AT&T offer, and others, to be decided at negotiating table

Verizon officials said that AT&T offer to deal with the incumbent carriers on wholesale rates was encouraging but that the deal, as with all CLECs, will have to be worked out through hours of negotiations.

"If AT&T has a serious proposal to make ... contract negotiations are the appropriate place to make and discuss them," said Harry Mitchell, a spokesman for Verizon.

AT&T has proposed moving from a dependency on leasing a platform of services, called UNE-P, to facilities-based competition, where ATT would build its own switches. To smooth the transition, AT&T would enter into long-term commercial wholesale agreements with the Bell companies that will accelerate facilities deployment by addressing operational barriers associated with the provisioning of unbundled loops, increasing prices for UNE-P facilities, and reducing costs associated with the use of unbundled loops.

More specifically, the proposal provides for increases in the price of UNE-P by at least \$3 in phases over the next 2 ½ years so as to impose a financial penalty on competitors that continue to rely on UNE-P. In exchange, however, competitors would be able to obtain operational and economic access to "last-mile" loop facilities on terms that are reasonable and fair.

Meanwhile, Verizon has launched a program intended to encourage agreements with wholesalers on access to its networks. Called Wholesale Advantage, the new program features customized, three-year agreements, restructured pricing and a number of high-value services not offered under the existing government-mandated plan. The framework offers services such as voice mail, inside wire maintenance and high-speed digital subscriber line (DSL) service. A Verizon spokesman said the package follows on FCC and other regulators urging the companies to make access agreements with CLECs. The urging comes in light of the March 2 federal court decision ruling that state regulators couldn't set access fees.

"We've made our own offer... to give our wholesale customers contracts to purchase everything they need to provide telephone service using the Verizon network," Mitchell said. "We are already in talks with many of these customers."

Pa. telecom fails in efforts to pierce corporate veil

The Superior Court has ruled there is no constitutional right to have a jury hear claims seeking to pierce a limited liability company's corporate veil so that company officers can be held personally responsible for corporate actions.

In *Advanced Telephone Systems Inc. v. Com-Net Professional Mobile Radio*, the parties agreed there was no statutory right to a jury trial on a corporate piercing claim.

To prove a constitutional right to a jury trial, a party must show that the cause of action existed at the time the state constitution was adopted or existed under the common law.

Advanced Telephone Systems Inc., a telecommunications company based in Hickory, outside of Pittsburgh, had argued on appeal that an action for piercing the corporate veil existed at the time the state constitution was adopted in 1790, said the company's attorney, Joseph Decker of Gefsky & Lehman in Pittsburgh.

Decker had also pointed to a cause of action that sought to impose liability on individual shareholders under the common law in England.

The Superior Court didn't agree.

"As ATS has failed to identify any specific cause of action for corporate disregard which predated the Pennsylvania Constitution or existed at common law, we find ATS's claim to a constitutional right to a jury trial on its corporate piercing claim to be without merit," Judge Joseph A. Hudock wrote.

Even though Pennsylvania trial courts have sent the corporate piercing issue to a jury and allowed juries to consider other equitable claims of relief, no case "squarely" addressed the right to jury consideration, Hudock explained.

Also, ATS hadn't made a good enough case as to why a trial court couldn't properly judge the credibility questions of a corporate piercing claim, Hudock said.

ATS, which now does business as ATS Mobile Communications, had brought a breach of contract claim and "alter-ego" allegations against a limited liability company, Com-Net Professional Mobile Radio, as well as W.E. Anderson Group, Com-Net Critical Communications Inc. and three individual company officers, according to the opinion.

After a trial in 2002, Allegheny County Common Pleas Judge Judith L.A. Friedman directed a verdict on the Com-Net LLC's liability for breaching a service agreement the LLC had with ATS. The jury awarded ATS \$2.5 million in damages, according to the opinion. (This issue was not challenged on appeal.)

FCC tracks wireless portability complaints

Since wireless phone number porting began on November 24, 2003, the Federal Communications Commission (FCC) has received approximately 7,040 informal complaints about wireless local number portability as of April 24, 2004. The number represents a downward trend in complaints. A spokesman for the Commission said that they didn't know what to expect in terms of the total number of complaints when they began tracking them.

"We really have nothing to compare it with," said FCC spokesperson Rosemary Kimball. "We're just happy the numbers are going down."

This is the fifth monthly report on LNP complaints and reflects the continuing downward trend in these complaints. The four reports indicate cumulative monthly totals, chronologically, of 2,400, 4,734, 5,852, 6,640 and now 7,040.

The carriers most often mentioned in the complaints as either the carrier ported from or the carrier ported to are: AT&T Wireless (3104); Sprint PCS (1712); Verizon Wireless (1059); T-Mobile (991); Cingular Wireless (991); and Nextel (501). Many of the complaints concern more than one carrier so the total number of complaints received is smaller than the number of times a carrier is mentioned in a complaint.

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