

Video Policy:

The Signal is Scrambled for 2007

Congress and local officials are gearing up to challenge the FCC's year-end rulemaking

By Bill Burhop ■ IMCC

This year and next promise to be quite active but not necessarily productive for video providers. The telecommunications business is still one of the most regulated sectors of the economy. That's whether either the Democrats or Republicans are in charge. And the regulators are awake.

Just look at the Federal Communications Commission (FCC), particularly Chairman Kevin Martin. He has adopted several views contrary to his Republican predecessors and potentially troublesome for the new majority in Congress. Here are examples:

Regarding Franchise Reform, Verizon, AT&T and other LECs (local exchange carriers – your local telco) have used their political muscle in nine states to get laws that give them an expedited procedure to acquire certificates so they can provide video service pretty much independent of the Local Franchising Authorities. Quite unexpectedly, Mr. Martin pushed through the FCC a provision that essentially does the same thing.

We at the IMCC, speaking for private cable operators, argued that whatever any triple play provider is granted should be granted to all Multichannel Video Programming Distributors (MVPDs), including PCOs. That includes crossing Public Rights of Way. The telcos, of course, continue seeking state legislation.

Curiously, this may backfire on the LECs because many cities, states and consumer groups oppose such laws. Those opponents now can argue that no state should proceed because the FCC

has acted and will probably be in court for a long time, meaning no state should do anything pending the litigation. Congress will ask why the FCC charged forward on this issue before it had a chance to question the FCC about the

programming under reasonable terms. Both Republicans and Democrats have supported these provisions in the past, but the FCC Chairman now opposes them.

Martin is also pushing for a la carte

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implications of such a policy.

Another aspect of Verizon's effort to recoup its \$20 billion investment in FiOS is to kill exclusive service contracts, between video providers and property owners. Therefore, the issue is back on the table at the FCC (which spent five years studying this issue and decided these contract provisions are useful for competition).

Beyond Franchise Rule Changes

Chairman Martin also publicly stated support for the elimination of Program Access rules. These rules make sure that programmers sell their satellite-delivered content (not terrestrial – therefore all the problems with sports programming) to all MVPDs.

Without these rules, small MVPDs, including small cable companies and PCOs, would have difficulty buying

programming sales, something anathema to Republicans in the past.

Another item he supports is mandatory carriage by MVPDs of broadcast stations' digital signals, known as the "multicast must carry" rule. Remember, all analog spectrum used by over-the-air broadcasters must be turned back to the government in 2009, and then they can only broadcast using digital signals. The issue is whether those stations can force MVPDs to carry numerous digital channels even if prior to this they only carried one analog station. This is a tremendous use of spectrum and puts a significant burden on small MVPDs.

Net Neutrality is the controversial amendment Congress debated last year, supported mainly by the Democrats. Those companies that send huge quantities of content, such as Google, basically pushed it. It says that the companies that own the pipes, such as the

RBOCs, can not charge differing rates for large users of the Internet system or give them preferential treatment, such as transmission putting their content ahead of some other company's data packets.

The bills failed in Congress. Regardless, now the FCC has blessed the merger of AT&T/BellSouth. In that proceeding those telcos agreed to a position essentially committing to be even handed, or neutral, for at least the next two years. This has re-ignited the debate in Congress and the Democrats are hot to adopt such a law. They feel as if Mr. Martin was trying to usurp Congressional turf.

CALEA is the Communications Assistance for Law Enforcement Agencies statute. The assertion is that the law and the FCC regulations demand that telecommunications companies will assist the Office of Homeland Security and the FBI to track down terrorists. The FCC regulations require any company that owns facilities to provide Internet connectivity or VoIP service, and this includes inside wiring or transmission devices, must file reports and have a system to track down subscribers sought by the FBI. The FCC considered a safe harbor for very small companies but rejected that option. All the implications of this process are yet to be seen.

In Congress, the Democrats feel emboldened because they are in charge, with control of all committees, including the telecommunications panels. That gives them the power to hold hearings, to pursue investigations and to control the purse strings.

Remember, the FCC is an arm of the Congress, not of the White House, so several powerful committees will scrutinize Chairman Martin's agenda. For example, Chairman John Dingell is famous for assertive oversight – grilling witnesses until they sweat – and for requiring agencies to answer pages of questions.

Chairman Martin, by challenging Congress to stop him or to set different policies, could produce an explosion on Dingell's committee. If you have not experienced the wrath of Chairman Din-

gell, you have not really had a bad day. I have. I will not forget it because it still keeps me awake at night.

Then There's Florida

Florida has adopted a law pushed by BellSouth, which says that a telco is relieved of its Carrier of Last Resort (COLR) responsibilities if the MDU owner has entered into any exclusive service provisions or received any payment such as revenue sharing. This

could mean that LECs can simply refuse to wire new builds. This could spread to other states.

Stay tuned for exciting developments. **BBP**

About the Author

Bill Burhop is executive director of the Independent Multi-Family Communications Council, which watches out for non-franchise video providers. The organization's Web site is at www.imcc-online.org.

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