

# Regulatory Strategies for Competitive Carriers in the new Administration

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# Overview

- The new Administration and new FCC leadership create opportunities for competitive carriers to improve their regulatory position
  - Martin FCC left much unfinished business
- In tough economic times, regulatory intervention is a key leverage point for competitors
- COMPTEL members can and should play an active role on these issues to protect their business plans
  - Regulatory advocacy has paid dividends before, and can again

# FCC Nomination Outlook

- Julius Genachowski is widely reported to be the next FCC chair, but hasn't yet been formally announced or nominated
  - White House likely is hoping to send a package of nominations including one for the vacant Republican FCC seat
  - Nomination and confirmation of new Commissioners could take months
  - Genachowski's views on competitive access and pricing issues not yet known

# Congressional Outlook

- Telecom is not a top priority for Congress this year; economic crisis and energy are likely to preoccupy the committees of jurisdiction
  - DTV transition, Satellite Home Viewer Act renewal, and other media issues will compete for Telecom Subcommittees' attention
- BUT: Congressional oversight hearings, budget process, and informal contacts all influence FCC priorities and actions
  - Democratic Congress will give a Democratic FCC more latitude, not a free pass -- historically, Democrats have not been hesitant to conduct oversight on an Administration of their own party

# Economic Stimulus Opportunities

- **NTIA Broadband Technology Opportunities (BTO) grants**
- \$3.75 billion available for grants (out of \$4.7B total appropriation)
- NTIA drafting grant guidelines in consultation with FCC, and will seek public comment
  - Although NTIA has final grant authority, State recommendations are expected to be highly influential
- Funding available until September 30, 2010
- Broadband deployment project must be completed within two years of award
- Federal share is limited to 80% in most cases

## Economic Stimulus Opportunities (cont'd)

- Purpose of BTO Grants:
  - Provide access in unserved areas
  - Improve access in underserved areas
  - Provide broadband education, awareness, training, access, equipment, and support
  - Improve access for public safety agencies
  - Stimulate demand for broadband, economic growth, and job creation

# Economic Stimulus Opportunities (cont'd)

- Uses of Funding
  - Acquire equipment, instrumentation, networking capability, hardware and software, digital network technology, and infrastructure for broadband services
  - Construct and deploy broadband service related infrastructure
  - Ensure access to broadband service by community anchor institutions
  - Facilitate access of broadband services to vulnerable populations for educational and employment opportunities
  - Construct and deploy broadband facilities that improve public safety broadband communications services
  - Any other projects NTIA finds to be consistent with the BTO program

## Economic Stimulus Opportunities (cont'd)

- Award Considerations:
  - Award at least one grant in each State
  - Applicant is a socially and economically disadvantaged small business concern
  - Will infrastructure deployment for the greatest population of users in the area:
    - increase the affordability of service
    - provide the greatest broadband speed
    - enhance service for health care delivery, education, or children

# FCC Agenda for the Obama Administration

- Special Access:
  - Next chair could revive long-dormant investigation of RBOC rates, to rein in excess profits and fix flawed pricing-flexibility rules
- Intercarrier Compensation and USF funding:
  - If D.C. Circuit remands ISP compensation order again, the FCC could have to address this issue on a short deadline
  - Otherwise, these dockets are likely to languish for the foreseeable future due to their complexity and intractability

## FCC Agenda (cont'd)

- Network Neutrality:
  - New FCC leadership likely will be sympathetic to calls for greater protection of net neutrality, but it's not yet clear whether this will take the form of specific regulatory obligations or just more broad principles
- Copper retirement:
  - FCC has taken no action on petitions for rulemaking to preserve access to copper loops after FTTH deployments
  - New Administration could revisit, but it will take a push to bring this issue to the top of the agenda

## FCC Agenda (cont'd)

- Forbearance:
  - Verizon's "try, try again" petitions for Rhode Island and Virginia Beach must be decided in 2009
  - Legislation to repeal "deemed granted" clause may make progress in 2009
  - DC Circuit should rule on Verizon 6 MSA appeal any day; AT&T Broadband forbearance appeal was argued this month and decision is likely in 2nd Q; Qwest forbearance appeal deferred until after Verizon decision
- VoIP Regulation:
  - Under Martin, most legacy telecom regulation was extended to VoIP
  - Access charges/call termination rates the major unresolved issue
- Pole Attachments:
  - FCC action to eliminate cable/telecom rate disparity could benefit both CLECs and ILECs

# Competing in the Regulatory Arena

- AT&T and Verizon are well-placed to withstand economic downturn, as they have greater resources to weather any storm--
  - deep pockets
  - extensive last-mile networks (wired and wireless)
- But their advantages are less overwhelming in the regulatory arena
  - Although they can outspend competitors on any given issue, this does not always guarantee success, as some recent decisions show
  - Many State regulators in particular are willing to take on the RBOCs to protect competition

# Competing in the Courtroom

- When times get tough, companies fight more fiercely over their slices of the shrinking pie
- Intercarrier compensation has been a growing area of dispute recently
  - Litigation proliferating over interconnection rates, alleged access charge avoidance, wireless origination/termination, and related issues
- Carriers disputing underlying carrier bills or seeking refunds of overpayments have a choice between suing in court or complaining to the FCC/state commission
- Carriers seeking to collect unpaid/disputed bills often must go to court (with exceptions in some states)
- In either forum, carriers must be able to document their claims/defenses, including applicable tariffs and compliance with existing regulations -- also be sure you have followed dispute resolution procedures in tariffs/interconnection agreements

# A Fresh Start for CLEC Advocacy

- The new Administration is an opportunity to revitalize the image of competitive carriers in policy circles
- For the last 8 years, our industry has been overshadowed at FCC and Congress by cable, wireless, and other new technologies
- Still, we are not without influence:
  - United front by COMPTEL and CLECs contributed to defeat of Verizon's and Qwest's UNE forbearance petitions
  - Persistent efforts by COMPTEL and its members led to the SBC/AT&T, Verizon/MCI, and AT&T/BellSouth merger conditions

## Goals for CLEC Advocacy

- Competitive carrier executives must take the message to the new FCC and the Congressional leadership:
  - We are still here
  - We are investing and creating jobs
  - We create cost savings that help businesses in their districts be more competitive
  - Government policies that foreclose wireline competition would transfer (more) money from customers' pockets to the deep pockets of the RBOCs

# Keys to Effective CLEC Advocacy

- Remember that the ultimate audience is 5 people on the 8th floor of the FCC; both direct and indirect approaches are essential
- Congress has powerful influence through the oversight and budget processes
- Therefore, the most effective way to get your message to the FCC is often through Capitol Hill
- Support from investors, customers, employees, state/local governments, and general public can add strength to our arguments

# Targeting Advocacy

- Work through Senators and Representatives where you have a local presence
  - Having employees residing in the relevant State/district carries more weight than having customers there
  - If you have a PAC, consider contributing to key members; if you don't, why not?
- Members of the House and Senate Commerce Committees and Appropriations subcommittees on Financial Services and General Government have the most direct influence on FCC
  - If you have a local tie to one of these members, make the most of it!

# Delivering the Message

- Bring your CEO, COO, or other key decision-makers to meet Senators/Representatives, not just lawyers
  - Bring someone who lives in the State/District
- Focus the message on *Competition* – we want more of it, the RBOCs want less of it!
  - We're not trying to stand in the way of deregulation where markets are truly competitive (*i.e.*, wireless and interexchange services)
  - But it's misguided to deregulate the only bottleneck facility available for last-mile access
  - Competitive access to the loop works in Japan, E.U., etc., and it's still the best policy for USA

# Conclusion

- Get out there and use your influence!