

SOUTH CAROLINA CABLE TELEVISION ASSOCIATION NEWSLETTER

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SOUTH CAROLINA BROADBAND TECHNOLOGY & COMMUNICATIONS STUDY COMMITTEE

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The S.C. Broadband Technology & Communications Study Committee has met numerous times this fall to gather information and evaluate the state's broadband infrastructure. The last meeting was held January 9, 2008. The Committee voted on a number of recommendations to be made to the General Assembly. The Committee will make recommendations about increasing broadband availability and use of South Carolina's Educational Broadcasting Spectrum, held mostly by ETV.

The Committee voted to recommend that Connected Nation be retained to start a program in SC to encourage greater use of broadband. Connected Nation is a national nonprofit organization hired by a number of states to facilitate comprehensive technology expansion efforts. That program will focus on identifying where

broadband is currently deployed and on increasing use of broadband. This is mostly a "demand-side" approach which could be helpful in creating more demand and higher take rates. While that could be good for business, the best news is that there was no support on the Committee for any publicly funded broadband offering. There was also no support for any mechanism to offer broadband at subsidized or below market prices. During the Committee hearings a number of people advocated for cheaper broadband. At this point it doesn't look like there will be anything in the report that will support the idea of a government owned or subsidized broadband offering.

SCETV has about 65 EBS licenses for 2.5 GHz spectrum. It is required to meet a number of FCC imposed deadlines to convert it from analog to digital. If it meets those
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S.C Broadband Technology & Communications Study Committee (continued from page 1)

deadlines it can keep the spectrum even though the state only needs a small portion of it (around 5-10%). Thus the state has an opportunity to lease the spectrum to a commercial operation and perhaps realize substantial income from leasing it. ETV has argued that it should be allowed to lease the spectrum to a provider of Wi-Max services. The concerns that have been raised by SCCTA and other broadband providers have been about whether the leasing process would produce a market price for the spectrum (if not, there is a chance that the Wi-Max provider would be a subsidized broadband competitor). We have advocated that the state should retain an advisor to assist in the leasing process (preparation of an RFP, for example) to make sure that the asset was leased in a competitively neutral manner and at a market rate. After much discussion the Committee ended up unanimously agreeing to include that in its report. That would be a good check on the process. It is readily apparent that Clearwire has been very involved in advising ETV on how it should lease the spectrum and there were a lot of suspicions that Clearwire would end up with the spectrum, perhaps at below-market rates. The Committee staff is now preparing a report which will be released shortly.

**2007 Annual Report on the Status of
Local Telephone Competition in South Carolina**

The Office of Regulatory Staff released its annual report on telephone competition in South Carolina in November. While the total number of competitive local exchange carriers declined from 206 in 2005 to 166 in 2006, the competitive companies have gained almost 18% of the market since 2000. The increase is attributed mainly to two carriers gaining access lines, one of which is primarily a cable television provider. Wireless usage has increased while wireline usage has declined. In 2006, twelve wireless carriers reported 2,984,417 wireless access lines in South Carolina. Over the past 8 years, high-speed lines in South Carolina have grown from 25,229 to 645,886. The two primary technologies used to deliver broadband are cable modem and Digital Subscriber Line. The report indicates that based on 2006 data there were 368,338 lines for cable modem and 242,548 lines for DSL. The report is available on-line at ORS' website <http://www.regulatorystaff.sc.gov>.

911 Advisory Board

The South Carolina 911 Advisory Board is considering introducing a revised 911 bill during the current legislative session. The intent of revising the legislation is to make sure that wireless and VoIP providers pay 911 charges and that it is done in an equitable manner. Early drafts of the industry proposal are based on North Carolina's 911 statute.

Confidential Treatment – Telecom Reports

On November 14, 2007, the Public Service Commission granted the joint petition of AT&T, S.C. Telephone Coalition, Embarq, and Windstream for a generic and standing protective order in regard to certain reporting information that telephone utilities are required to provide to the Office of Regulatory Staff. The first report was the quarterly service report and the other involved information on new service applications, upgrade applications, and access lines. Most telephone companies consider the information provided to be confidential, proprietary and competitively sensitive. Most companies were filing requests for confidential treatment along with each quarterly report filed. The generic order eliminates the need for the quarterly request for confidential treatment. The reports will now be held as confidential by ORS.

PSC Advisory Committee

The Public Service Commission Advisory Committee met on October 1, 2007. The Commission Staff proposed making revisions to several statutes relating to hearing officers and examiners, deadlines for issuing orders and the application of the Code of Judicial Conduct to Commission employees. The purpose of amending those sections relating to hearing officers would be to broaden the scope of their duties so they could be appointed in all cases before the Commission. The Judicial Conduct proposal would allow Commission employees some freedom to engage in some fundraising activities and to provide pro bono service. The Staff also proposed submitting a Best Practices document related to videoconference hearings to the Commission which was approved at the October 10th meeting. A copy is available on-line at http://www.psc.sc.gov/laws/video_hearing_proc_edures.pdf. Staff also requested that motions for *pro hac vice* admission be submitted to the Supreme Court and the Commission prior to Commission hearings.

Revised Bill of Rights

The Office of Regulatory Staff's Consumer Services Division revised the Telecommunications "Bill of Rights." In 1991 the Public Service Commission ordered its Staff to draft the Bill of Rights for residential customers. It set out the customer's rights under the Commission's regulations governing telecommunications utilities and includes contact information for the Office of Regulatory Staff and the Public Service Commission. The revised version informs the consumer of their right to be included in a directory, deposit information, late-payment charges, bills, and how to file a complaint. The 1991 order required all telecommunications companies to send each residential customer a copy of the Bill of Rights. The document is available on-line at <http://www.regulatorystaff.sc.gov>.

Eligible Telecommunications Carrier

On January 11, 2008, the Public Service Commission submitted the proposed regulations for Annual Reporting Requirements for Designated Eligible Telecommunications Carriers to the General Assembly. The reporting requirements differ depending on when the ETC receives its designation which protects incumbent local exchange carriers from providing the detail required of new ETCs. For ETCs designated after January 1, 2007, must provide a progress report on its two-year service quality improvement plan, detailed information on any outage of at least 30 minutes in duration, the number of requests for service from potential customers that were unfulfilled, the number of complaints per 1000 handsets, and other detailed information. For ETCs designated prior to 2007, they must certify that any funds received from the federal Universal Service Fund were used in accordance with federal law and that they are in good standing with the USF Administrator and FCC regarding the prior year's support and audit.

Prepaid Local Carriers

The Commission Staff submitted a notice of a rulemaking to establish a regulation governing telephone companies that provide prepaid local exchange service to the S.C. Legislative Council on February 8, 2008. The proposed regulation would apply to telecommunications carriers who provide prepaid local exchange services (requiring advance payment from customers prior to providing telecommunications service) and who have not invested at least \$5,000,000 in telecommunications facilities in South Carolina. Advance payments include, but are not limited to, deposits, prepaid monthly service, and prepaid calling cards. The Commission could waive the requirement upon petition by the carrier if the carrier provides evidence of unbundled network element leases during the prior calendar year exceeding \$500,000 or other evidence of financial stability as deemed appropriate by the Commission.

The Commission determines the type and amount of bond or other security mechanism to be filed by the carrier. The Commission may order the carrier to file a performance bond, establish an escrow account, post an irrevocable letter of credit or certificate of deposit.

- a. **Performance Bond.** Performance bonds must be issued by an A-grade insurer having an office in South Carolina and must be posted with the Commission prior to offering prepaid service. In determining the amount of the bond, the Commission may consider the number of customers served by the carrier multiplied by the retail price for the prepaid service. However, the minimum amount of the bond shall be \$100,000.
- b. **Escrow Account.** An escrow account shall not be part of the carrier's standard business account. Further, the escrow agent shall not be employed by or have any business affiliation with the carrier. The Commission may require the account to equal the proposed monthly service multiplied by the number of customers served by the carrier or an amount equal to the annual prepayments collected as of July 1st or December 31st and require the filing of monthly reports showing escrow account activity.
- c. **Irrevocable Letter of Credit.** An irrevocable letter of credit shall be issued by a financial institution authorized to do business in South Carolina. The amount of the irrevocable letter of credit shall be determined by the Commission; however, the amount of the letter of credit shall be at least \$100,000. An updated irrevocable letter of credit shall be filed with the Commission annually.
- d. **Certificate of Deposit.** The certificate of deposit shall be issued by a financial institution authorized to do business in South Carolina and shall be at least \$50,000. In determining the amount of the certificate of deposit, the Commission may use, at a minimum, the following criteria: number of customers, retail price for prepaid service, and financial resources of the carrier.

Interested persons may submit written comments to the Commission by April 2, 2008. A public hearing on the proposed regulation will be held on April 29, 2008.

STATE-ISSUED CERTIFICATES OF FRANCHISE AUTHORITY

As of February 4, 2008, the South Carolina Secretary of State has issued the following certificates of franchise authority:

<i>Company</i>	<i>Areas</i>
ATLANTIC BROADBAND	Snelling, Fairfax, Barnwell, Williston, Bamberg, Denmark, Allendale
BERKELEY CABLE TV, INC.	Moncks Corner, Harleyville
BROADBAND EXPERIENCE d/b/a FAMILY VIEW CABLEVISION	Central, Pickens County
CATAWBA, INC.	Rock Hill
CHARTER COMMUNICATIONS, LLC	Pickens County, Union County, Union, Cherokee County, Woodruff, Pelzer, West Pelzer, Easley, Greenville, Travelers Rest
CHESNEE COMMUNICATIONS	Cherokee County, Spartanburg County, Chesnee
COMCAST OF CAROLINA	Goose Creek, Hampton County, Edisto Beach, James Island
COMCAST OF GEORGIA/SC II	Edisto Beach, Meggett, Hollywood
COMCAST OF GEORGIA/SC INC.	Hampton County
HARGRAY CATV CO.,INC.	Jasper County, Estill, Hampton
HOME TELECOM	Goose Creek, North Charleston
HORRY TELEPHONE COOPERATIVE	Conway, Surfside Beach
HPI ACQUISITION CO., LLC	Anderson, Due West
MANAGED SERVICES INC.	Jasper County, Berkeley County, Richland County, Horry County
NORTHLAND CABLE NETWORKS	McColl, Marlboro County
NORTHLAND CABLE TELEVISION	West Union, Pickens County, Seneca
PASSPORT COMMUNICATIONS	Fort Mill
PINE TREE CABLEVISION	Lamar, McBee, Cottageville, Kershaw County, Bamberg County, Orangeburg County, Aiken County, Perry, Wagener, Salley, Bethune, Gaston, Jefferson, Barnwell County
TECHCORE CONSULTANTS II	Orangeburg County, Holly Hill, Ehrhardt, Bowman, Eutawville, Dorchester County
TIME WARNER CABLE, LLC	Georgetown County, Charleston County

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STATE-ISSUED CERTIFICATES OF FRANCHISE AUTHORITY

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<i>Company</i>	<i>Areas</i>
TIME WARNER ENTERTAINMENT ADVANCE/NEWHOUSE PTRSHP	Myrtle Beach, Conway, Surfside Beach, Sumter, Sumter County, Richland County, Orangeburg, Orangeburg County, Columbia, Forest Acres, Lee County, Quinby, Myrtle Beach Air Force Base, Cayce, Springdale, West Columbia
TIME WARNER ENTERTAINMENT ADVANCE/NEWHOUSE PTRSHP -CHARLOTTE DIVISION	Clover, Fort Mill
TIME WARNER NY CABLE, LLC	Dillon County, Nichols, Bluffton, Hardeeville, Jasper County, Hilton Head, Marion County
YRT2, INC	Greenville, Greenville County, Berkeley County, Dorchester County, Summerville, Columbia, Horry County, Myrtle Beach

4TH CIRCUIT ISSUES POLE ATTACHMENT DECISION IN NORTH CAROLINA CASE

Carteret-Craven Electric had a pole attachment agreement with Time Warner for many years. The 1997 pole attachment fee was \$6 per pole. After Carteret-Craven terminated the agreement in 2004, it demanded an increase to \$20 per pole as a condition of any new agreement. Time Warner refused to enter into a new agreement claiming that the proposed new rate was unreasonable and discriminatory. Time Warner filed a declaratory judgment action in federal court alleging that the excessive and discriminatory rate violated (1) a statutory duty imposed on electric cooperatives in North Carolina to charge only reasonable and nondiscriminatory rates and (2) a common law duty as an electric utility to charge only reasonable and nondiscriminatory rates. The district court dismissed both claims and Time Warner appealed the ruling on the common law claim only. On October 31, 2007, the 4th Circuit Court of Appeals issued Decision Number 06-1974 in *Time Warner v. Carteret-Craven Electric Membership Corp.*, upholding the ruling of the lower court by declining to extend North Carolina common law's requirement that an electric public utility charge reasonable and nondiscriminatory rates for electric service to pole-attachment agreements.

SOUTH CAROLINA LEGISLATIVE UPDATE



The second session of the General Assembly convened on January 8, 2008. Following is a list of pending bills of interest introduced this year:

Senate 859 – Motion Picture Production Company Rebate

This proposed amendment to the Motion Picture Incentive Act would provide a tax rebate equal to 20% of the production company's S.C. payroll, raise the aggregate annual limit on the rebate from \$10 to \$15 million, and provide a carry forward to the percentage of admissions tax revenues appropriated to the Department of Commerce. Referred to the Senate's Finance Committee on January 8, 2008.

Senate 878 – Small Business Tax Credit Reform Act

This bill expands the current moratorium on corporate income and insurance premium taxes for certain companies investing and creating jobs in S.C. to include that a sole proprietorship, partnership, limited liability company, limited liability partnership or an association taxable as a business entity may also claim the tax credit. Referred to the Senate's Finance Committee on January 8, 2008.

Senate 898 – Government Accountability Act of 2008 (H. 4538 companion) House 4538 – Government Accountability Act of 2008 (S. 898 companion)

This bill would significantly restructure state government in South Carolina. As part of the proposed restructuring authority to issue state-issued certificates of franchise authority would be transferred from the Secretary of State's Office to the Department of Commerce. S. 898 referred to the Senate's Judiciary Committee on January 8, 2008, and H. 4538 to the House's Judiciary Committee on January 23, 2008.

Senate 989 – Cable Television Antidiscrimination and Dispute Resolution Act of 2008 (“NFL Bill”) (H. 4374 companion)

House 4374 – Cable Antidiscrimination and Dispute Resolution Act of 2008 (“NFL Bill”) (S. 989 companion)

This bill prohibits discrimination by a cable operator when providing programming which competes in the same programming category of a competing cable programmer. If a competing cable programmer believes it has not been treated in a fair and nondiscriminatory manner, then it may submit a request for arbitration with the AAA. S. 989 referred to the Senate's Judiciary Subcommittee headed by Senator Rankin. No hearings have been scheduled on the bill to date and H. 4374 referred to the House's Labor, Commerce & Industry Committee on January 8, 2008.

FCC BRIEFS

FCC Orders and Notices can be downloaded from the FCC's website at www.fcc.gov.

On January 9, 2008, the FCC released its 4th Report & Order on verification of a consumer's intent to switch carriers. FCC 07-223.

On December 31, 2007, the FCC released new data on local telephone competition. End-user customers obtained local service by using 138.8 million ILEC switched access lines, 28.7 CLEC switched access lines, and 229.6 million mobile telephony subscriptions at the end of December 2006.

On December 31, 2007, the FCC released its Report & Order in the Third Periodic Review of the Commission's Rules affecting the Conversion to Digital Television. FCC 07-228

On December 18, 2007, the FCC adopted an Order which will expand opportunities for participation in the broadcasting industry by new entrants and small businesses to own broadcast outlets. FCC 07-217

The FCC adopted proposals to increase local programming content in diversity in communities across America in the Report on Broadcast Localism and Notice of Proposed Rulemaking on December 18, 2007. FCC 07-218.

On November 27, 2007, the FCC adopted a notice seeking comment on whether to require telemarketers to honor registrations with the National Do-Not-Call Registry beyond the current 5 year period. FCC 07-203.

The FCC adopted an Order requiring television broadcasters to provide more information on the local programming being broadcast and to facilitate the public's

access to that information on November 27, 2007. FCC 07-205.

On November 27, 2007, the FCC adopted a Report and Order allowing consumers to receive a broader and more diverse range of programming from their cable operators. FCC 07-208.

On November 27, 2007, the FCC adopted its 13th Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming. The FCC finds that while competition in the delivery of video programming services has provided consumers with increased choice, better picture quality, and greater technological innovation, prices continue to outpace the general level of inflation. DBS competition has not checked cable prices to the same extent as competition from wireline providers.

On October 31, 2007, the FCC adopted a Second Report & Order that extends a number of rules to incumbent operators adopted in the 1st Order which prohibits franchising authorities from unreasonably refusing to award competitive cable franchises. FCC 07-190.

On October 31, 2007, the FCC clarified that the obligation to provide local number portability extends to interconnected VoIP carriers and the carriers that obtain numbers for them. FCC 07-188.

On October 31, 2007, the FCC adopted an Order banning the use of exclusivity clauses for the provision of video services to multiple dwelling units or other real estate developments. The Commission prohibits the enforcement or execution of existing exclusivity clauses and the execution of new ones. FCC 07-189.