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A POST-ELECTION ANALYSIS:

The Impact of the Mid-Term Elections on Local Government's Communications

Agenda

By

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I. INTRODUCTION

This is an assessment of the impact of the elections on the House and Senate Commerce Committees, the committees of initial jurisdiction over telecommunications and cable matters. This is written on November 8, 2006, the day following the 2006 mid-term elections and a week before the Congress returns for a lame duck session.

II. DIFFERENT DAY AND DRAMATICALLY CHANGED AGENDA

First evidence that today is a different day in Washington: Rep. John Dingell (D-Mich.), the presumptive chair of the House Energy and Commerce Committee,² announced that the FCC should postpone a vote on the AT&T - BellSouth merger until Democrats have taken power in the House in January.

III. FRANCHISE LEGISLATIVE THREAT IS DIMINISHED

Yesterday's election probably marked the end of Bell company-sponsored national franchise legislation this year. Net neutrality and buildout advocates will not allow HR 5252 to be moved. Looking to the new 110th Congress, the Bell

companies will have to compromise on these two terms if Reps. Dingell and Markey (D-Mass), both of whom have championed the issues in the House, are to allow a bill to move out of Committee -- Verizon has publicly stated that it will not seek a federal franchise bill in 2007; AT&T is likely to agree.

IV. FRANCHISE THREAT MOVES TO STATES, FCC AND COURTS

State franchise legislation will not go away. The companies think they may obtain franchise relief at the state level without the threat of net neutrality³ nor buildout obligations.⁴

Also, the FCC may use its pending rulemaking on local franchising (FCC docket 05-311) to cut back on local authority. Chairman Martin has promised to move the docket as soon as it is clear that the Congress will not move franchise legislation. Look for Verizon to become engaged in this docket in a more active fashion.

The FCC has a number of other open dockets in which the issue of IPTV as a cable service could be considered. Look for AT&T and BellSouth to seek to jumpstart these dockets.

The franchise issue may be raised in 2007 as part of a public interest sponsored net neutrality bill. Rep. Conyers has already indicated he may introduce such a bill in his new role as the Chairman of the House Judiciary Committee.

²The Washington rumor mill is likely to search for evidence that Dingell may have challengers. Pelosi and Dingell have differences on some issues, like gun control, and in 2002 they had disagreements on who should be leader. Since 2002 they have worked hand-in-hand to address net neutrality and buildout in the House. The reader should assume Pelosi will need the support and gravitas of the "Dean" of the Democratic Caucus in the 110th Congress.

³ States could require net neutrality as a condition for the use of rights-of-ways. No state to date has even debated the issue.

⁴ Previous TeleCommUnity memos point out that only California, New Jersey and Virginia impose any kind of buildout obligation.



V. HOW DOES LOCAL GOVERNMENT BEST DEFEND ITS FRANCHISE INTERESTS?

The Bell companies may decide not to seek federal franchise legislation. But others, including local government, may conclude federal legislation makes sense. There are major telecommunications issues of importance to TeleCommUnity members that will go unaddressed, such as E-911 for VOIP.

Issues that local government will demand Congress should attend to in 2007 include, but are not limited to:

- Fund interoperable radios to help police, fire, and medical emergency responders.
- Protect affordable communications through the universal service fund.
- Ensure broadband services to unserved areas.
- Extend ADA requirements to IP services (voice and video services).
- Protect local government rights to offer broadband services.
- Address DTV conversion with public service announcements and education.
- Protect children from pornography when provided by new services.
- Preempt state limits on PEG facilities and PEG support.
- Preempt state limits to local government cable buildout requirements.
- Ensure net neutrality for broadband providers.
- Address telecommunications and Internet tax issues that disadvantage Main Street merchants.

VI. COMMITTEE MAKE-UP

The most immediate and visible changes will be in the Committee membership as ratios change between Ds and Rs and many individual members have either departed or been defeated.

MEMBERSHIP RATIO CHANGES

	House	House Subcommittee	Senate	Senate Cmte.
109TH Congress	232 R to 203 D	18 R to 15 D	55 R to 45 D	12 R to 10 D
110th Congress (estimates)	232 D to 203 R	18 D to 15 R	51 D to 49 R ⁵	11 D to 10 R

VII. POSSIBLE LOOK OF TELECOMM SUBCOMMITTEE IN 110TH CONGRESS

In addition to the ratio changes, there will be changes in the membership of the Telecomm Subcommittee. Three GOP members will need to be moved off. Since there are already two departures from the subcommittee (Bilirakis and Bass), if the GOP makes assignments based on straight seniority, Reps. Blackburn Sullivan & Ferguson may be moved off the Subcommittee.

On the Democratic side of the aisle, there will likely be four additions. Early bets would be that Reps. Solis and Baldwin are two of those.

In the Senate, the Committee will likely have a new Senator on D side and no change in Rs.

⁵ For purposes of this paper, we are assuming that the reports of Sens. Allen (Virginia) and Burns (Montana) losing are accurate.

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Fred Upton, Michigan
Chairman
~~Michael Bilirakis, Florida~~
Cliff Stearns, Florida
Paul E. Gillmor, Ohio
Ed Whitfield, Kentucky
Barbara Cubin, Wyoming
John Shimkus, Illinois
Heather Wilson, New Mexico
Charles "Chip" Pickering, Mississippi
Vito Fossella, New York
George Radanovich, California
~~Charles F. Bass, New Hampshire~~
Greg Walden, Oregon
Lee Terry, Nebraska
Mike Ferguson, New Jersey
John Sullivan, Oklahoma
Marsha Blackburn, Tennessee
Joe Barton, Texas
(Ex Officio)

Edward J. Markey, Massachusetts
Ranking Member
Eliot L. Engel, New York
Albert R. Wynn, Maryland
Mike Doyle, Pennsylvania
Charles A. Gonzalez, Texas
Jay Inslee, Washington
Rick Boucher, Virginia
Edolphus Towns, New York
Frank Pallone Jr., New Jersey
~~Sherrod Brown, Ohio~~
Bart Gordon, Tennessee
Bobby L. Rush, Illinois
Anna G. Eshoo, California
Bart Stupak, Michigan
John D. Dingell, Michigan
(Ex Officio)

(Plus at least 4 new members. Two likely candidates are Solis, CA and Baldwin, WI)

Chairman Ted Stevens (AK)
John McCain (AZ)
~~Conrad Burns (MT)~~
Trent Lott (MS)
Kay Bailey Hutchison (TX)
Olympia J. Snowe (ME)
Gordon H. Smith (OR)
John Ensign (NV)
~~George Allen (VA)~~
John E. Sununu (NH)
Jim DeMint (SC)
David Vitter (LA)

Co-Chairman Daniel K. Inouye (HI)
John D. Rockefeller (WV)
John F. Kerry (MA)
Byron L. Dorgan (ND)
Barbara Boxer (CA)
Bill Nelson (FL)
Maria Cantwell (WA)
Frank R. Lautenberg (NJ)
E. Benjamin Nelson (NE)
Mark Pryor (AR)
Newly elected Senator?

Any changes in either of those two states result in a different Senate structure.



VIII. IMPACT ON ROLL CALL VOTES IN COMMITTEE

Below are a number of important votes cast during the mark-up of H.R. 5252 in the Senate. If Sens. Burns and Allen had not been present, the net neutrality amendment would have carried 11 to 9, and other amendments on buildout, consumer protection and FTC oversight would have won or tied 10 to 10. These votes include

- Senator Rockefeller offered an amendment that would make available from the universal service fund amounts to pay for discounted interoperable emergency communications equipment for police, firemen, and medical response personnel. Absent Sens. Burns and Allen, the vote would be a 10 to 10 tie.

YEAS--10	NAYS--12 10
Mr. Inouye	Mr. McCain 1
Mr. Rockefeller	Mr. Burns
Mr. Kerry	Mr. Lott
Mr. Dorgan	Mrs. Hutchison 1
Mrs. Boxer	Ms. Snowe 1
Mr. Nelson of Florida 1	Mr. Smith 1
Ms. Cantwell	Mr. Ensign
Mr. Lautenberg 1	Mr. Allen
Mr. Nelson of Nebraska 1	Mr. Sununu
Mr. Pryor	Mr. DeMint 1
	Mr. Vitter
	Mr. Stevens

- Senator Lautenberg offered an amendment that would allow States to enact consumer protection laws governing video programmers. Absent Sens. Burns and Allen, the vote would be a 10 to 10 tie.

YEAS--10	NAYS--12
Mr. Inouye 1	Mr. McCain 1
Mr. Rockefeller 1	Mr. Burns
Mr. Kerry 1	Mr. Lott
Mr. Dorgan	Mrs. Hutchison 1
Mrs. Boxer	Ms. Snowe
Mr. Nelson of Florida	Mr. Smith 1
Ms. Cantwell	Mr. Ensign
Mr. Lautenberg	Mr. Allen
Mr. Nelson of Nebraska	Mr. Sununu
Mr. Pryor	Mr. DeMint
	Mr. Vitter
	Mr. Stevens

1 By proxy

- Senators Kerry and Boxer offered an amendment that would mandate build-out requirements for new video service providers. Absent Sens. Burns and Allen, the vote would be a 10 to 10 tie.

YEAS--10	NAYS--12
Ms. Snowe	Mr. McCain

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Mr. Inouye	Mr. Burns
Mr. Rockefeller	Mr. Lott
Mr. Kerry	Mrs. Hutchison 1
Mr. Dorgan	Mr. Smith
Mrs. Boxer	Mr. Ensign
Mr. Nelson of Florida	Mr. Allen
Ms. Cantwell	Mr. Sununu
Mr. Lautenberg 1	Mr. DeMint
Mr. Pryor	Mr. Vitter 1
	Mr. Nelson of Nebraska
	Mr. Stevens

- Senators Snowe and Dorgan offered an amendment that would impose nondiscrimination obligations on broadband network operators. Absent Sens. Burns and Allen, the vote would be a 11 to 9 in favor of the amendment.

YEAS--11	NAYS--11
Ms. Snowe	Mr. McCain 1
Mr. Inouye	Mr. Burns
Mr. Rockefeller	Mr. Lott
Mr. Kerry	Mrs. Hutchison 1
Mr. Dorgan	Mr. Smith
Mrs. Boxer	Mr. Ensign
Mr. Nelson of Florida	Mr. Allen
Ms. Cantwell	Mr. Sununu
Mr. Lautenberg 1	Mr. DeMint
Mr. Nelson of Nebraska 1	Mr. Vitter 1
Mr. Pryor	Mr. Stevens

1 By proxy

- Senator Boxer offered an amendment that would retain basic cable rate regulation in markets for a longer period than provided for in the bill. Absent Sens. Burns and Allen, the vote would be a 10 to 10 tie.

YEAS--10	NAYS--12
Mr. Inouye	Mr. McCain 1
Mr. Rockefeller	Mr. Burns
Mr. Kerry 1	Mr. Lott 1
Mr. Dorgan	Mrs. Hutchison 1
Mrs. Boxer	Ms. Snowe
Mr. Nelson of Florida	Mr. Smith 1
Ms. Cantwell	Mr. Ensign 1
Mr. Lautenberg 1	Mr. Allen
Mr. Nelson of Nebraska 1	Mr. Sununu
Mr. Pryor	Mr. DeMint
	Mr. Vitter 1
	Mr. Stevens

1 By proxy

- Senator Inouye offered an amendment that would strike the bill in its entirety and replace it with a complete substitute. Absent Sens. Burns and Allen, the vote would be a 10 to 10 tie.

YEAS--10	NAYS--12
Mr. Inouye	Mr. McCain 1
Mr. Rockefeller	Mr. Burns



Mr. Kerry ¹	Mr. Lott ¹
Mr. Dorgan	Mrs. Hutchison ¹
Mrs. Boxer	Ms. Snowe
Mr. Nelson of Florida	Mr. Smith ¹
Ms. Cantwell	Mr. Ensign ¹
Mr. Lautenberg	Mr. Allen
Mr. Nelson of Nebraska ¹	Mr. Sununu
Mr. Pryor	Mr. DeMint
	Mr. Vitter ¹
	Mr. Stevens

¹ By proxy

IX. OVERALL LEADERSHIP

House

The House will gather on November 16th to choose its new leaders. It is anticipated that Rep. Pelosi will be the Speaker and that Rep. Hoyer will survive a race with Rep. Murtha for Majority Leader, although that prediction is not rock solid.

A major controversy that could have split the Democratic caucus before the 110th Congress even started was averted yesterday when Rep. Rahm Emanuel (D-Ill.) announced he would run for chairman of the House Democratic Caucus and not the 3rd ranking position in the House of Majority Whip. That position will be likely be held by Rep. Jim Clyburn (D-S.C.) a member of the Congressional Black Caucus. If chosen Whip, Clyburn would be the highest ranking person of color in the 110th Congress.

As Speaker, Pelosi will continue a trend of Speakers that are familiar with telecommunications policy matters. Speaker Hastert had been very active on telecommunications matters. Speaker Pelosi is a strong proponent of .net neutrality.

The leadership ladder for the GOP side of the House is not as clear. All of the leadership positions will be contested. The real race will be for Minority Leader as Speaker Hastert announced he will not stand for election as Minority Leader. That race will pit current Majority Leader John Boehner against former Commerce Committee Chair Joe Barton. Rep. Michael Pence (R-Indiana) is also expected to throw his hat into the race, but most feel this is a race between Boehner and Barton..

Senate

Senator Reid (D-Nevada) is slated to assume the roll of Majority leader in the Senate. His counterpart on the GOP side of the aisle will be Sen. McConnell. Senator Reid stood with local government on the issue of net neutrality and the Internet Tax freedom Act.

In other good news for local government, Sen. Lamar Alexander (R-Tenn.) says he has enough votes to become Republican Senate Whip in the 110th Congress. That would mean that the number one Democrat and number two Republican in the Senate are local government defenders on tax issues.

Should Sen. Voinovich (R-Ohio) win a seat on the Senate Finance Committee local government will go into the 110th Congress in a much stronger position.