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FCC Officials Call for Global Coordination on VoIP

Top FCC officials said global coordination is needed to address VoIP issues, but they said that didn't mean they supported a global regulatory regime for IP-enabled services. "There needs to be a rationalization of approaches," FCC Policy Development Chief Robert Pepper told us after a VoIP roundtable the FCC sponsored Fri. in Washington: "My concern is that you don't translate that into meaning that there has to be global regulatory regime for VoIP; I think that would be the wrong answer."

FCC International Bureau Chief Donald Abelson said solutions should be examined from a global prospective: "Clearly, the U.S. IP policy will be affected by how the rest of the world treat IP-enabled services." FCC Wireline Bureau Senior Deputy Chief Jeffrey Carlisle told us: "Rational, reasonable assessment of all regulatory systems in light of VoIP is necessary and it has to be in place." He said he was "hesitant to say there should be some sort of international regulatory system for VoIP — I think it works in certain cases like spectrum, but I don't know if it's appropriate in all instances. I think definitely there needs to be [understood] internationally what is the standard set of regulatory obligations that should be on these providers, so that you don't end up with everybody going to some island in the Carribean to set up their VoIP company because they can do it there."

Pepper told us the conclusion he was taking from the roundtable was: "Almost every country is recognizing the importance of VoIP, there is just a wide variety of approaches to it. What we heard today is the countries that appear to be the most open and flexible and deregulatory have seen the greatest deployment and uptake of IP services." Carlisle said one of his takeaways was that "consistent with what we see here... regulators are not entirely sure how to handle [VoIP], but consumers get benefits out of this service. This should not be viewed as a problem by regulators; this should be viewed as an opportunity and as a new development that should be allowed to continue."

Pepper said the FCC was watching other countries to see "how different models [are] working." For example, he said he found "very interesting what is happening in Japan," which has 4 million VoIP customers, constituting 6.5% of PSTN users. "That's enormous. So, there are things we can look at that other countries are doing." He said Canada in many ways was "the most interesting country, because the geography is similar to the United States, there is very low density in remote areas, they have cable industry and cellphone industry that are similar to the United States... Canada has been very successful with its

deployment of broadband and uptake of VoIP. So, we'll continue discussions that we have with our colleagues around the world."

British Telecom Americas Vp-U.S. Regulation Kristen Verderame said she was concerned that implementation of different regulatory frameworks in EU member states and other countries could stall VoIP development. Industry representatives on the panel called for bringing regulatory clarity to VoIP marketplace as soon as possible. But Canada's Assistant Deputy Minister-Spectrum, IT, Telecom Michael Binder said: "I don't see what is the urgency here." For example, he said in Canada, only 0.01% of voice traffic was VoIP.

Panelists said VoIP service quality should be left up to the market. "Let the consumer decide," Abelson said. He said similar to wireless service, "everyone knows that [quality] could be poor — let companies use quality to get customers." Pulver.com CEO Jeff Pulver said quality of service on the public Internet backbone globally had "dramatically improved" over the last 4 years: "The quality of service is getting better without anyone having to do much. Just sit there and watch." Nortel Vp-Wireline Networks Al Safaricas said just as wireless carriers have come to roaming agreements without regulatory interference, "the same will happen with VoIP."

Pulver expressed concern that other countries may not follow the course the FCC took in its decision on Pulver.com's petition. For example, he said the EU had suggested that VoIP services must be "subjected to some onerous regulatory restrictions." He also strongly criticized Sen. Dorgan's (D-N.D.) amendment to Sen. Sununu's (R-N.H.) VoIP bill (S-2281), which would allow states to collect access charges and universal service contribution on VoIP call. "This absolutely runs counter to the logic of the Pulver order," he said. "The Dorgan amendment should have never existed," he said adding that if it does go through, which he said was "unlikely," he would be the first on the Hill protesting the amendment.

Pepper raised a question on what access to numbers VoIP providers should have: "There's been some proposals that there should be a separate country code for IP or separate numbers for VoIP numbering." But Pulver responded: "A number is just a number, and it's the way that people in the 20th and 19th century used to communicate with each other." He predicted in the future, "you may be calling people by name, rather than by number." He said he had intended to propose last summer that "we take the 500 blocks in the U.S. and use that for IP," but he said that wasn't supported by many. "I look at this as pure marketing," he said: "It really comes to what consumers want, what enterprises want, and then you get the policies behind it." Merrill Lynch Canada Telecom Analyst Glen Campbell said there were benefits to retaining geographic numbers, such as number portability, "a key marketing advantage for a lot of VoIP providers... You don't want to create a situation where VoIP providers can be discriminated against by incumbents."

Verderame said numbering was "a big issue and I think it is in fact stalling VoIP rollout across Europe." For example, she said some VoIP providers in Germany had assigned geographic numbers to their customers, and they're under investigation because they may not be fulfilling the regulatory requirements that come with those numbers. She said Austria has assigned a specific number range, Ireland is moving in that direction and the U.K. is considering 056 or 055 prefix. Japanese Telecom Attache Yasu Taniwaki said Japan, which has 4 million residential VoIP users, started allocated the prefix number 050 for IP services in Sept. 2002, which he said helped promote a "remarkable increase of VoIP users." He said "this measure has allowed users to call from PSTN telephones to IP telephones and it has stimulated the demand for VoIP services."

With regard to the FCC's NPRM on IP-enabled services, Pepper said there would be "pieces... that we can do sooner than others. We are not necessarily going to wait to do everything at once. We'd asked a lot of questions through a broad range of issues, and there will be some that we'll be able to make recommendations [to the Commission] on first, without having to wait for everything." — *Susan Polyakova*

Recommendations In Fall

State BPL Task Force Begins Tackling Regulatory Issues

The NARUC task force on broadband over power lines (BPL) has moved its focus from technology to regulatory issues, Mich. PSC Comr. Laura Chappelle, who heads the group, told us. The 6-member task force — set up last Dec. to explore BPL's potential and the role of state regulators in advancing the technology — aims to release its finding and recommendations by early fall. "The task force is focused on regulatory issues and we are talking the time to talk to interested parties about the issues," Chappelle said. The BPL industry contends it's still "pre-mature" for states to take up regulation because technology issues need to be resolved at the federal level.

Chappelle said the group's thrust was to find ways to cut red tape and "add certainty" to the regulatory scenario "to help the rollout of BPL or simply just stay out of the way." The task force is working in "earnest" to get its recommendations out by fall, she said. The "message" that came out of the NARUC summer meeting was "don't rush to regulate until there is something to regulate," said Brett Kilbourne, regulatory dir. of the United Power Line Council. The issues are still technical, he said, and still at the federal level. "Once you get beyond that it makes sense" for states to look at regulation, he said: "But even then there's some differences between BPL and other broadband platforms and there are regulations of services and regulations of networks. So you don't want the two confused."

Asked about the issue of regulatory and jurisdictional oversight among the FCC, the Federal Energy Regulatory Commission (FERC) and the state commissions, Kilbourne said the industry was trying to "stay under the radar as far as this whole jurisdictional battle brewing between the FCC and states over broadband." He said BPL remained a nascent technology and there were public policy and practical reasons BPL jurisdiction should be settled among the regulators: "We are going to hold off on a position at this point."

As for concerns expressed by a section of the industry that the regulatory picture was clouded — because competitive BPL providers would be using heavily-regulated monopoly power lines to reach customers — he said while there were advantages to regulatory certainty, "there are lot of times you reach issues that are nonissues and that's my concern." He said he believed it was premature to "attack issues at this point because we haven't got commercial yet. We really don't know what the issues are, although we can sort of predict some of them." If utilities were encouraged to enter the BPL business, he said, regulators have to stick to their current approach of "less [regulation] is more." If regulators came up with different kinds of proposals "we are going to run into a patchwork of inconsistent regulations that will discourage utility companies from getting into BPL," he said. — *Dinesh Kumar*

White House

President Bush late Fri. announced 20 more recess appointments, bypassing the Senate confirmation process. Two of the appointees were for the FTC, including Deborah Majoras for chmn. and Jon Leibowitz as comr. Majoras will replace Republican Chmn. Timothy Muris, while Leibowitz is taking the Democratic seat held by Mozelle Thompson. Sen. Wyden (D-Ore.) has had a hold on Majoras' nomination, accusing her of being unwilling to use the FTC to pursue oil companies about gas prices. It led him to use a Senate procedural move to block a Senate Commerce Committee markup at which Majoras was to be voted on (WID July 23 p1), a move that infuriated Chmn. McCain (R-Ariz.). Wyden's maneuver also meant Leibowitz wasn't considered at the markup. Majoras headed the Justice Dept. Antitrust Div. earlier in this administration, while Leibowitz, currently with MPAA, previously worked for Sen. Kohl (D-Wis.) on the Senate Judiciary Antitrust Subcommittee. Recently Bush used a recess appointment to name Michael Gallagher dir. of NTIA; Gallagher had been acting dir. Jon Dudas has for months been acting dir. of the U.S. Patent & Trademark Office; he also was among the 20 included in the recess appointments. Another receiving a recess appointment was Albert Frink, named asst. secy. at the Commerce Dept. for manufacturing.

The major Presidential candidates promised boosts in R&D spending and education in math and science, issues tied to the controversy over outsourcing jobs overseas. Sen. Kerry (D-Mass.), accepting his party's nomination in Boston, said he would push for new incentives to revitalize manufacturing and "investment in technology and innovation that will create the good-paying jobs of the future." He also vowed to "close the tax loopholes that reward companies for shipping jobs overseas." Several speakers at the Democratic Convention vowed to spend more on math and science education to equipment the workforce better for high-tech jobs. President Bush campaigned in Springfield, Mo., Fri. and made his own promises on high tech. Speaking at Southwest Mo. State U., he said "we will expand math and science education so our young people can compete in a high-tech world... We

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will expand the use of the Internet to bring high-level training into our classrooms.” He also promised more spending for R&D, but mentioned it only in the context of fighting disease.

Agencies

Former Enron Broadband Services (EBS) CEO Kenneth Rice pleaded guilty Fri. to charges of security fraud. Rice, 45, of Houston, entered a guilty plea to one count of security fraud at U.S. Dist. Court, Houston. He was the lead defendant in an indictment of 7 former Enron executives charged with criminal acts arising out of EBS activities. Rice will cooperate with the investigation, the Justice Dept. (DoJ) said Fri. Rice must pay \$13.7 million for victim compensation and a \$1 million fine to the SEC. The DoJ said Rice and others made false statements about EBS products, services and business performance of EBS to mislead investors and others about the success of the company and to inflate the price of Enron stock. Rice made false statements about the company’s development of software capabilities and its fiber-optic network during 2000 and 2001 analyst conferences, among other places, the DoJ said. Rice portrayed EBS as a commercial and business success and said EBS had developed network control software known as the “Broadband Operating System,” (BOS) which Rice claimed was “up and running” on the EBS system. Rice told DoJ the BOS software hadn’t progressed beyond internal development. Rice also didn’t tell investors that the company would take operating losses in 2001 and didn’t have a sustainable customer and commercial base. “These misrepresentations contributed to a sharp rise in Enron’s stock price,” DoJ said. The trial of the other EBS executives is to start Oct. 4.

The Dept. of Defense has to do more to adopt IT best practices, the GAO said Fri. In a report to Senate Armed Services Readiness Subcommittee Chmn. Ensign (R-Nev.) and ranking Democrat Akaka (Hawaii), GAO said “DoD’s acquisition policies and guidance fully incorporate 8 of the 18 best practices that they were evaluated against, partially incorporate 5 practices, and do not incorporate the remaining 5 practices.” DoD has done well in adopting practices related to acquisition of IT business systems, GAO said, but hasn’t addressed how commercial component-based systems are acquired. GAO said the Secy. of Defense needed to incorporate all the best practices and ensure they’re followed. DoD agreed with some of the report, but in a letter to GAO said it didn’t need to develop a plan to govern its incorporation of best practices or impose stronger controls to ensure they’re followed.

Courts

Keywords used for search engines shouldn’t be protected under trademark law, Public Citizen told a court last week. The group filed an amicus brief in the U.S. Dist. Court, Eastern Dist. of Va., in a case where GEICO is suing Google. Google allows companies to pay to have ads — clearly marked as such — appear on the right of search results if certain keywords are used. GEICO contends that Google shouldn’t allow competitors to pay to have their ads placed if someone searches with the keyword GEICO, as that’s a trademark. But Public Citizen attorney Paul Levy said in a statement that “GEICO’s assumption that any member of the public using the term ‘GEICO’ must be searching for the official company Web site is preposterous.” A search could be for information on the trademark or about the trademark holder, or the user “may have a grievance about the trademarked item and want more information about other similar grievances.” Public Citizen said it’s concerned about the increasing commercialization of search engines and wants to protect all free speech, including that of businesses, “thus enabling companies to make information more available to consumers and increasing consumer choices while fostering competitive pressures that reduce product prices.” “It is vitally important that the legal rules governing use of the Internet be crafted to provide a maximum opportunity for the free exchange of information,” Levy said.

States

The Cal. PUC approved a settlement of consumer complaints against SBC and AOL of unauthorized toll charges incurred by AOL users. The 2002 complaint by the consumer group UCAN alleged the companies converted local calls to extended area and virtual numbers into toll calls when customers were dialing up AOL, and

customers didn't realize this until getting bills for hundreds of dollars in unexpected toll charges. The settlement had 2 parts. The first part, between UCAN and SBC, requires that SBC notify customers when they exceed \$50 in toll charges for dialing AOL access numbers. This arrangement will be in place the next 18 months. The 2nd part, between UCAN and AOL, requires that AOL put in place by the end of 2005 new procedures to help ensure customers' access numbers actually are toll-free. AOL will provide local access numbers based on the area code and exchange prefix of the customer's dial-up location. UCAN agreed to drop all further litigation but reserved the right to refile its complaint if the companies don't follow through on their commitments.

Spam

The Cal. Attorney Gen.'s office has quietly geared up to resume attacking spam after passage of the federal CAN-SPAM Act, which preempted much of a tougher state opt-in law, Deputy AG Ian Sweedler said late last week. State spam enforcement lapsed last year when a weaker Cal. spam law was wiped off the books in anticipation of the new one taking effect, he told an International Spam Law & Policies conference in Millbrae, Cal. (WID July 30 p2). Some of the new state law isn't preempted by CAN-SPAM, and Cal. authorities still can go after spammers using other state laws, such as those barring unfair competition or false advertising generally, Sweedler said. CAN-SPAM also authorizes state AGs to enforce it, he said. Federal consumer laws of this nature usually require state AGs to file in federal court, "which is not our venue of choice," but Sweedler said there's a good argument CAN-SPAM allows state court filings. Meanwhile, the state Justice Dept. found an idle Unix server, "literally dusted it off" and dedicated it to spam enforcement, Sweedler said. The Dept. has "totally revamped its system for soliciting spam complaints" to help address the problem that "there are a million spammers out there — who do you go after?" With little publicity, the office is receiving about 40,000 complaints a month and processing them into an easily searchable database, he said. That's far fewer than the FTC receives — but the state has had little access to the commission's database, and "we haven't gotten great results" when it has been available because the collection is so large and hard to search, Sweedler said. The AG's office also has solicited from ISPs information on spammers who are worth going after and has received leads on some with enough Cal. connections for the state to take on, he said. The office is "very close to the filing stage... on the one that looks most promising," Sweedler said, without elaborating. He said enforcers have found subpoenaing ISPs hosting contact e-mail addresses and beneficiary websites referred to in spam to be much more fruitful than trying to trace the origins of the original messages. "We recognize that our efforts are largely symbolic," Sweedler conceded. "They're worthwhile, but they're going to be symbolic as long as the technology continues to work the way it does." It's also hard to make spam a high AG priority given the harm to any single person compared to victims of other offenses, he said. — *LT*

An Australian govt. official and the head of the U.K. Parliament's Internet caucus are banding with 6 private spam experts from around the world to form a "brain trust" to spread effective policy approaches from one country to another and to guide e-mail marketers through the increasingly tricky shoals of international compliance, said the group's initiator, Anne Mitchell. The International Council for Internet Communications, operating mainly by e-mail, will set up a Web portal laying out national spam restrictions and offering suggestions on compliance, she said, and will also encourage international action on spam-tolerant "rogue nations." Members are Lindsay Barton, developer of the Australian govt.'s anti-spam legislation and online policy mgr.-Dept. of Communications, Information Technology & the Arts; U.K. MP Derek Wyatt, founder and chmn. of the All Party Parliamentary Internet Group and ex-dir., BSkyB's Computer Channel; Furio Ercolessi, co-founder of Italian ISP Spin.it and physics faculty member at Universita degli Studi di Udine; Michael Geist, Internet law prof. at the U. of Ottawa; Jean-Christophe Le Toquin, a Microsoft lawyer for Europe, the Middle East and Africa; Taiwan intellectual property lawyer Christopher Neumeyer; Suresh Ramasubramanian, founder of the Coalition Against Unsolicited Commercial Email (CAUCE), Indian affiliate and anti-spam mgr. for Outblaze Internet services; and Mitchell, CEO of the conference sponsor, the Institute for Spam & Internet Public Policy. The institute is a company that tries to be a repository of information and expertise to bridge separations among e-mail marketers, ISPs, spam filter makers and govt., she said. The council will add members from as many other countries as it can, Mitchell said.

The European opt-in policy on spam "is rapidly gaining favor and will likely be the dominant model worldwide within the next two years," overtaking the looser U.S. opt-out approach now more prevalent, said Matthew Prince, John Marshall School of Law Prof. and spam policy consultant, in materials prepared for his conference presentation. "European direct marketers are resigned to the law taking the form it has and appear more willing to work with regulators within the permission-based framework than organizations such as the U.S. DMA [Direct

Marketing Assn.]. U.S. marketers [are] perceived as ‘villains’ who have created the spam problem and exported it to the rest of the world. [This] poses a particular risk to even legitimate U.S. email marketers who do not respect European law... Simply obeying the U.S. regulations is not enough to ensure you are not labeled a spammer internationally.” Despite the strictness of European regulation, “spam in Europe and other nations outside the U.S. is on the rise more swiftly than in this country,” Prince added. “Europe will likely lag behind any U.S. successes at controlling the spam. In fact, U.S. success may drive more spammers offshore and make the European problem worse.” Also: “European data laws are more stringent than in the U.S. and may pose more of a liability threat to marketers than the anti-spam laws themselves.”

Correction: The Anti-Spam Research Group, whose co-chair spoke at a spam policy conference (WID July 30 p2), is part of the Internet Research Task Force, as the story said. The headline and text referred to another organization’s acronym.

E-Voting

A Harvard U. computer expert last week called on hackers to infiltrate electronic voting machines and report their successes. At the annual Black Hat conference for hackers in Las Vegas, research fellow Rebecca Mercuri cited VoteHere software — an e-voting system rare in that its source code is public — and called on other companies to reveal their code. “I’m tired of hearing members of the election community say that no problems have occurred with electronic voting systems when every election there’s plenty of newspaper reports of ‘glitches,’” she said, in direct challenge to Michael Shamos, a Carnegie Mellon U. computer scientist and voting consultant who’s so confident the machines won’t be tampered with that he has promised \$10,000 to anyone who can hack into a voting machine undetected. VoteHere founder Jim Adler, who recently testified before Congress that his software could fill most of the security holes in e-voting technology, also admitted it “isn’t a science. We’re literally making it up as we go along” (WID July 21 p1). Unconnected to Mercuri’s call to hackers, fellow conferees Herbert Thompson and Spyros Nomikos released a novel *The Mezonic Agenda: Hacking the Presidency*, in which the protagonist does just that, and the reader can use the included CD-ROM to see how it might be done. Meanwhile, in Fla., voting activist Lida Rodriguez-Taseff, who last week was instrumental in uncovering the loss of entire records from the 2002 Fla. gubernatorial primary (WID July 30 p4), has requested that monitoring of local primary elections this Aug. be made public and conducted in real-time “with real people” to counter fraud and incompetence. — *IM*

Industry Notes

Microsoft demonstrated a search engine that searches both the Web and users’ hard drives for information. Microsoft previously said it’s competing with Google for preeminence in the search engine market and its search engines would have capabilities beyond the Web; earlier this month Microsoft purchased Lookout, software that allows Outlook users to search e-mail and contacts. Google, which will become a publicly traded corporation in mid-Aug., offers no hard drive search, a spokesperson said.

TiVo can’t be used for real-time streaming of even standard-definition content, so concerns of the NFL and Major League Baseball (CD Jul 30 p4) are unfounded, the firm said in an FCC ex parte. TiVo and attorney James Burger said using TiVo to stream games live to sports bars, for example, wouldn’t happen because: (1) Even streaming standard-definition MPEG-2 programming requires 2-8 Mbps bandwidth, much higher than is available to most customers. (2) Streaming video to a sports bar would violate copyright law and TiVo user agreements, and the sports leagues already have sued bars for hundreds of thousands of dollars. (3) The broadcast flag rulemaking is based on the theory that program rights owners need to protect high-definition programming, which would be even harder to stream. “Functionality should not be denied to consumers in general based on unsupported concerns that some consumers may potentially attempt to misuse it,” TiVo said.

Minors were able to gamble on 30 online sites tested in a U.K. study released last week. The Children’s Charities’ Coalition on Internet Safety (CCCIS) worked with GamCare and Citizencard in the study, using a 16-year-old girl with a credit card who would enter 21 as her age if prompted. Thirty sites of 37 tested failed to so


much as ask for further verification of age, instead taking the girl directly to gambling. (No minors actually gambled as part of the study, CCCIS said.) Some of the sites that permitted entry to the minor are popular, including 888.com, Betfair.com, bet365.com and sportingbet.com. All 37 sites tested were registered in the U.K. or in Alderney, an island in the English Channel active in licensing online gaming. The U.K. Parliament has legislation before it that would overhaul gambling regulations, making it easier for online gaming sites to be licensed there. Legislation that has passed the U.S. House and is awaiting Senate floor action would require credit card companies to block online gambling transactions. Visa and MasterCard already do that voluntarily. The card used in the U.K. test was issued by Solo, a popular U.K. provider.

Washington Internet Daily Calendar

- Aug. 3-4 VoIP Developer Conference, sponsored by Avaya, Aculab and SIP Foundry, DoubleTree Hotel, San Jose — www.tmcnet.com.
- Aug. 6 Comments due at USTR on its Special 301 out of cycle review of Israel and other nations.
- Aug. 9 TIA's TR-41 Engineering Committee meeting on development of voluntary industry standard for VoIP terminal adapters, 1:30-5 p.m., Hamilton Crowne Plaza Hotel, 14th and K St. NW, Washington — www.tiaonline.org/standards/sfg/tr-41.
- Aug. 18 State Dept. Advisory Committee on International Communications & Information Policy meeting, 9-11:30 a.m., Rm. 1406, State Dept. — jillsonad@state.gov.

Internet People

Wiley, Rein appointments: **Lee Goodman** to Va. Gen. Assembly Joint Subcommittee on Economic Impact of Remote Sales Tax Collection; **William Baker** to Va. General Assembly Joint Commission on Science & Technology advisory committee.

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