

SOUTH CAROLINA CABLE TELEVISION ASSOCIATION NEWSLETTER

PREPARED BY
ROBINSON MCFADDEN & MOORE, P.C.

FALL 2008



CUSTOMER CHOICE & TECHNOLOGY INVESTMENT ACT

Inside

HTC Challenges Franchise Act.....	2
Telecom Carriers Granted State Franchise Certificates.....	2
Broadband Commission.....	3
USF Annual Audit.....	3
Revisions to PSC Regs.....	3
PEG Case.....	4
State Issued Certificates of Franchise Authority.....	4
Legislative Update.....	6
FCC Briefs.....	8

AT&T-backed deregulation legislation was introduced in the House and Senate on January 15, 2009. The “Customer Choice and Technology Investment Act of 2009” establishes a new type of “alternative regulation” available to all carriers who elect to come under it. Electing carriers would be deregulated for virtually all of their services. The only exceptions would be for switched access which would be price-cap regulated and existing customers with only basic residential service. Prices for existing customers who currently receive only stand-alone basic residential lines would be subject to inflation-based price controls. Any carrier who makes the election would be able to use any technology including VoIP to provide service.

The new bill would also impact the state universal service fund. Electing companies would continue to pay into the fund as it is now. An electing company’s withdrawals from the fund would

be phased out over 4 years. If the company wants to continue receiving funds before the end of the 4th year, the company would petition the Public Service Commission to continue based only on the company’s grandfathered customers who have basic residential service. The PSC would also establish a process for annually reducing the amount of state USF payments based on the company’s stand-alone basic residential lines that were in service prior to the alternative regulation date and that remain in service as of the adjustment date.

Senate Bill 295 was referred to the Judiciary Committee. House Bill 3299 was referred to the Committee on Labor, Commerce and Industry. The House Public Utilities Subcommittee held a hearing on January 28, 2009. Representatives from the S.C. Cable Television Association testified during the hearing.

STATE ISSUED CERTIFICATE OF FRANCHISE AUTHORITY NEWS

Horry Telephone Cooperative Challenges S.C. State Franchising Act

Horry Telephone Cooperative ("HTC") applied for a state-issued certificate of franchise authority to provide cable and video service within the City of Georgetown on October 17, 2007. In November 2007, the City Council gave first reading approval to an ordinance which would have allowed HTC to begin offering cable television. The Council voted to deny the request at a subsequent council meeting. The City indicated that the reason for the denial was the existence of sufficient competition within the City. Currently, Southern Coastal Cable and Time Warner Cable both serve the City of Georgetown. HTC then requested that Georgetown re-consider its request. On May 15, 2008, the City Council passed the first reading of an ordinance that consented to the state-issued franchise. Two readings of an ordinance are required before it becomes operative. In August 2008, during the second reading the City reversed its vote and denied consent for a second time.

HTC filed a case in U.S. District Court in the Charleston Division on November 4, 2008, against Georgetown, the S.C. Secretary of State and Southern Coastal Cable, LLC. In its complaint, HTC alleges that Southern Coastal Cable and Georgetown have conspired to unlawfully stifle competition in the Georgetown cable market. The HTC complaint indicates that representatives of Southern Coastal Cable requested that the City refuse to grant consent to the state-issued certificate.

In the complaint HTC alleges that the City's refusal to grant consent was arbitrary, willful and unlawful. HTC contends that the State Franchising Act is unconstitutional because it gives unlimited discretion to the local government to refuse consent for any reason. HTC argues that the Act allows the City to unreasonably refuse an additional competitive

franchise which violates the Federal Cable Act. HTC also argues that the Act is unconstitutional since it infringes on the Company's rights to freedom of speech, freedom of the press, due process and equal protection. Finally, HTC contends that the City and Southern Coastal Cable have violated the Sherman Act by limiting HTC's participation in the cable market, restricting consumer choices, and favoring the economic interests of Southern Coastal at the expense of fair competition. Georgetown answered the Complaint in December and Southern Coastal Cable filed a Motion to Dismiss the Complaint on January 2, 2009. The case was assigned to Judge Margaret B. Seymour and is subject to be called for trial in October 2009.

Telecom Carriers Recently Granted State-Issued Franchise Certificates

Applications for state-issued certificates of franchise authority by telephone companies have increased in the last few months. AT&T, Farmers Telephone Cooperative, FTC Diversified Services, and Palmetto Rural Telephone Cooperative have been granted state-issued franchise certificates. AT&T's Certificate was issued on August 20, 2008. AT&T is currently authorized to serve portions of the following areas pursuant to the certificate: Blythewood, Camden, Cayce, Columbia, Elgin, Forest Acres, Irmo, Springdale, West Columbia, York, Kershaw County, Lexington County, Richland County, and York County. Farmers Telephone Cooperative and its affiliate, FTC Diversified Services', certificates were issued on August 29, 2008. Both are authorized to provide services in the Counties of Florence, Clarendon, Georgetown, Lee, Sumter and Williamsburg in addition to several towns in these areas. Palmetto Rural Telephone Cooperative's certificate was issued on October 2nd for Bamberg and Colleton Counties and several towns.

BROADBAND COMMISSION'S REQUESTS FOR PROPOSAL

The South Carolina Educational Broadband Service Commission issued a request for proposals on January 2, 2009, seeking offers to lease excess Educational Broadband Service spectrum from the 67 licenses issued to the S.C. Educational Television Commission. The spectrum covers nearly the entire State of South Carolina and parts of North Carolina and Georgia. The RFP solicits proposals to lease all or a portion of the spectrum that is not retained for educational purposes. The spectrum can be used for many services, including broadband Internet access, multichannel video, voice communications and video conferencing. The deadline for responses is February 16, 2009. A copy of the RFP can be downloaded from the Commission's website at <http://ebscommission.sc.gov>.

USF ANNUAL AUDIT

The South Carolina Office of Regulatory Staff issued the annual audit of the state Universal Service Fund on November 3, 2008. ORS made adjustments to the fund which resulted in a decrease in the USF factor from 3.6465% to 3.4571% effective on billings on or after December 1, 2008. According to the audit, assessable revenues reported during 2007 were down. Factors listed as contributing to the decline included (1) the Public Service Commission's decision to exclude revenues from international calls, (2) SC consumer migration to alternative communication services including wireless and Voice over Internet Protocol, and (3) nationwide, flat-rate calling plans and other pricing changes instituted by carriers. Total revenues to the funds increased to \$54,627,496 as of December 31, 2007. The audit is available on the ORS website at www.regulatorystaff.sc.gov.

REVISIONS TO PSC REGULATIONS

The Public Service Commission submitted several proposed regulations that affect telecommunications carriers to the General Assembly on January 13, 2009. The first addresses annual certification for telecommunications carriers that are eligible to receive federal high-cost support funds from the federal Universal Service Fund. The Commission is required to file an annual certification with the Universal Service Administrative Company and the FCC stating that all federal high-cost USF funds provided to eligible telecommunications carriers (ETCs) are used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The proposed regulation would establish annual reporting requirements for ETCs. The requirements for incumbent carriers are different than those for ETCs designated after January 1, 2007. (Document No. 3197, 26 SC Regs. 103-690.1).

Another proposed regulation would govern telephone utilities offering prepaid local exchange service. It would impose bonds and/or other security on some telephone utilities to provide protection to consumers who paid in advance and then do not receive telephone services for which they have prepaid. (Document No. 3203, 26 SC Regs. 103-607). Continued on page 4.....

Revisions to PSC Regulations continued....

The next proposed regulation affects practice and procedure before the Commission. One portion of this proposal amends the regulation governing computation of time to exclude petitions for reconsideration and rehearing. The next portion amends a regulation governing emergency procedures to provide for publication of disconnections on the Commission’s website. Finally, one portion adds a new regulation that allows electronic service of documents between parties of record. (Document No. 3222, 26 S.C. Regs. 103-831, 103-859 & 103-803.1).

The other proposed regulation also affects practice and procedure. One portion of the proposal governs representation of parties in cases pending at the Commission. It provides guidance regarding representation of entities and individuals, notice of appearance, motions to withdraw from representation, and unopposed matters in which an entity may proceed without counsel. (Document No. 3223, 26 S.C. Regs. 103-805).

BRIGHT HOUSE WINS PEG CASE

The Cities of St. Petersburg and Tampa, Florida filed a case in U.S. District Court seeking a declaration that Bright House Networks, LLC had violated the Cable Television Consumer Protection & Competition Act by moving its public, educational, and government access (“PEG”) programming from analog to digital channels. A subscriber had to have either a digital cable-ready television set or a digital-to-analog converter box to view the channels. Bright House leases converters for \$1.00 per month. The Cities alleged that the federal act obligates the company to provide access to PEG channels on its basic service tier without imposing an additional charge for equipment to receive digital signals. The Cities also argued that they would incur substantial expense to re-brand their government access channels and to equip the television sets in City offices to receive digital. The Court disagreed with the Cities’ arguments and concluded that since the cable system faces effective competition and is deregulated pursuant to a FCC order, the cable operator is free to place a broadcaster’s digital signal on upper tiers of service or on a separate digital tier.

STATE-ISSUED CERTIFICATES OF FRANCHISE AUTHORITY

As of January 21, 2009, following are the current certificates of franchise authority with the South Carolina Secretary of State:

<i>Company</i>	<i>Areas</i>
ATLANTIC BROADBAND.....	Snelling, Fairfax, Barnwell, Williston, Bamberg, Bamberg County, Denmark, Allendale, Aiken, Aiken County, Burnetttown, Jackson, New Ellenton
BALDWIN COUNTY INTERNET/ DSSI SERVICE, LLC.....	Beaufort County, Charleston County, Greenville, Greenville County
BELLSOUTH.....	Blythewood, Camden, Cayce, Columbia, Elgin, Forest Acres, Irmo,
TELECOMMUNICATIONS, INC. d/b/a AT&T SOUTH CAROLINA	Springdale, West Columbia, York, Kershaw County, Lexington County, Richland County, York county

FRANCHISE CERTIFICATES continued...

Company	Areas
BERKELEY CABLE TV, INC.....	Moncks Corner, Harleyville
BROADBAND EXPERIENCE..... d/b/a FAMILY VIEW CABLEVISION	Central, Pickens County, Clemson
CATAWBA, INC.....	Rock Hill
CHARTER COMMUNICATIONS, LLC...	Pickens County, Union, Woodruff, Pelzer, West Pelzer, Easley, Greenville, Travelers Rest, Greenville County, Starr, Oconee County, Salem, Spartanburg, Clinton, Laurens, Honea Path, Six Mile
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, Aiken County, Burnetown
COMCAST OF THE SOUTH.....	Prosperity
FARMERS TELEPHONE..... COOPERATIVE, INC.	Andrews, Coward, Greeleyville, Lane, Lynchburg, Mayesville, Paxville, Pinewood, Scranton, Sumter, Turbeville, Clarendon County Florence County, Georgetown County, Lee County, Sumter County, Williamsburg County
FTC DIVERSIFIED SERVICES, INC.....	Bishopville, Kingstree, Lake City, Manning, Olanta, Summerton, Sumter, Clarendon County Florence County, Georgetown County, Lee County, Sumter County, Williamsburg County
HARGRAY CATV CO., INC.....	Jasper County, Estill, Hampton
HOME TELECOM.....	Goose Creek, North Charleston, 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
METROCAST COMMUNICATIONS..... OF MISSISSIPPI, LLC	McColl, Marlboro County
NORTHLAND CABLE TELEVISION.....	West Union, Pickens County, Seneca, Laurens County
PALMETTO RURAL TELEPHONE..... COOPERATIVE, INC.	Cottageville, Lodge, Smoaks, Walterboro, Williams, Bamberg County, Collegton County
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
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, Florence County, Georgetown County
TIME WARNER ENTERTAINMENT..... ADVANCE/NEWHOUSE PTRSHP -CHARLOTTE DIVISION	Clover, Fort Mill, York County
TIME WARNER NY CABLE, LLC.....	Dillon County, Nichols, Bluffton, Hardeeville, Jasper County, Hilton Head, Marion County, Lakeview, Goose Creek, Georgetown County
VIDEO VISION, INC.....	Heath Springs, Kershaw, Lancaster County, Fort Lawn
YRT2, INC.....	Greenville, Greenville County, Berkeley County, Dorchester County, Summerville, Columbia, Horry County, Myrtle Beach

SOUTH CAROLINA LEGISLATIVE UPDATE



The South Carolina General Assembly's new session began on January 13, 2009. Following is a summary of new bills of interest introduced since the session began.

Senate Bill 90 – Advertising

This bill amends the section which prohibits misleading advertising so that it includes broadcasts via television, radio and the Internet. It was referred to the Senate Judiciary Committee on January 13, 2009.

Senate Bill 131 – Electronic Waste Management Act

The Electronic Waste Management Act would establish electronic waste recycling fees on the purchase of electronic devices identified as hazardous waste under new DHEC regulations. An electronic waste recovery and recycling fund would also be established and payments made to authorized collectors of electronic wastes to operate free electronic waste collection, consolidation and transportation systems. The bill was referred to the Senate Committee on Medical Affairs on January 13, 2009.

Senate Bill 295—Customer Choice & Technology Investment Act of 2009 (H. 3299 Companion) House Bill 3299—Customer Choice & Technology Investment Act of 2009 (S.295 Companion)

This bill would deregulate most telecommunications services for carriers who elect to come under it. See page 1 for a complete discussion. Senate Bill 295 was referred to the Judiciary Committee on January 15, 2009. House Bill 3299 was referred to the Labor, Commerce & Industry Committee on January 15, 2009.

House Bill 3039 – Countywide Toll Free Calling

This bill would require countywide toll-free calling to be provided by all telephone utilities operating within a county. It was referred to the Labor, Commerce and Industry Committee on January 13, 2009.

House Bill 3053 – Business License Tax

This bill would require counties and municipalities to levy license taxes based on the size of the business instead of the business' gross income. It was referred to the Ways & Means Committee on January 13, 2009.

House Bill 3079 -- York County Toll Free Calling

This bill would require countywide toll-free calling to be provided by all telephone utilities operating within York County. It was referred to the Labor, Commerce & Industry Committee on January 13, 2009.

S.C. Legislative Update continued.....

House Bill 3092 – Campaign Practices

In regard to campaign practices definitions, this bill provides that the term “contribution” does not include certain things of value used to pay for communications made more than 45 days before an election to influence the election’s outcome. It was referred to the Judiciary Committee on January 13, 2009.

House Bill 3093 - Campaign Contribution Limits

This bill eliminates certain campaign contribution limits. It was referred to the Judiciary Committee on January 13, 2009.

House Bill 3173 -- Campaign Practices

In regard to campaign practices definitions, this bill provides that anything of value given to make communications more than 45 days before an election to influence the outcome of an elected office is subject to certain campaign accounting and reporting requirements. It was referred to the Judiciary Committee on January 13, 2009.

House Bill 3174 – Discount Coupon

This bill makes it an unfair trade practice to advertise a price for a product that reflects a discount requiring a buyer to submit a coupon to the manufacturer for a cash rebate in order to obtain the advertised price. It was referred to the Labor, Commerce & Industry Committee on January 13, 2009.

House Bill 3200 – Electronics Recycling Act

The Electronics Recycling Act would provide a statewide electronics recycling program for electronic scrap. The program would be funded by fees paid by manufacturers of certain electronic devices. It was referred to the Agriculture, Natural Resources & Environmental Affairs Committee on January 13, 2009.

House Bill 3269 – Contributions to General Assembly Members

The bill prohibits a candidate for an office elected or appointed by the General Assembly from making a contribution to a member of the General Assembly. The prohibition also applies to a member of the candidate’s immediate family, a business or an individual with whom he is associated. It was referred to the Judiciary Committee on January 14, 2009.

FCC BRIEFS

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

On January 16, 2009, the FCC released new data on high-speed Internet connections based on data as of December 31, 2007. High-speed lines increased 20% during the first half of 2007. Of the 121.2 million total high speed lines 74 million serviced primarily residential end users. Cable modem service represented 47.8%. The report can be downloaded from the Wireline Competition Bureau Statistical Reports at www.fcc.gov/wcb/stats.

On January 16, 2009, the FCC issued its *Report on Cable Industry Prices*. The average monthly price of expanded basic service increased by 5% in 2008. From 1995 to 2008, the price of expanded cable service has grown from \$22.35 to \$49.65. DA 09-53.

The *13th Annual Report on the Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming* for 2006 was released on January 16, 2009. As of June 2006, 87% of the 110.2 million TV households subscribed to an MVPD service. Cable's share of the MVPD marketplace continues to decline. FCC 07-206.

On January 8, 2009, the FCC released its report on the top subject areas for inquiries and complaints for the 2nd quarter of 2008. The number of Radio and Television Broadcasting inquiries and complaints decreased from the first quarter. The bulk of the inquiries, 84%, pertained to digital television issues. Cable and Satellite Services-related complaints increased over 53% from the first quarter. The quarterly report can be viewed at <http://www.fcc.gov/cgb/quarter/welcom.htm>.

On January 2, 2009, the *Universal Service Monitoring Report for 2008* was issued. The various universal service support mechanisms amounted to about \$7 billion in 2007. Total telecommunications services revenues provided to end users in 2007 were approximately \$238 billion. It can be downloaded from the Wireline Competition Bureau Statistical Reports at www.fcc.gov/wcb/stats.

On December 23, 2008, the FCC released two reports that show changes in the coverage of the nation's full-power television stations as they prepare to transition from analog to digital broadcasting on February 17, 2009.

On November 4, 2008, the FCC adopted an order that establishes rules to allow new, sophisticated wireless devices to operate in broadcast television spectrum on a secondary basis at locations where the spectrum is open. FCC 08-260.

On October 21, 2008, the FCC issued a report and order adopting rules implementing certain key provisions of the New and Emerging Technologies 911 Improvement Act of 2008 which requires VoIP providers to make 911 and enhanced 911 service available. FCC 08-249.

On September 19, 2008, the FCC released *Local Telephone Competition: Status as of December 2007*. End user customers obtained local service by using 129.7 million ILEC lines, 28.7 million CLEC lines and 249.2 million mobile service subscriptions. It can be downloaded from the Wireline Competition Bureau Statistical Reports at www.fcc.gov/wcb/stats.