



North Carolina  
Telephone Cooperative  
Coalition



**Special points of interest:**

- Broadband Legal Fight
- State Budget Woes
- Telecom in the Short Session
- Broadband Grants



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**FCC GETS SLAPPED BY THE D.C. CIRCUIT COURT, THEN INITIATES SWEEPING BROADBAND REFORM. STILL, MANY QUESTIONS REMAIN**

The Federal Communications Commission’s proposed National Broadband Plan involves sweeping changes for telecommunication companies and a new age of high-speed Internet. However, without Congressional approval, the Plan could be dead on arrival. In April of 2010, the United States Court of Appeals for the D.C. Circuit ruled that the FCC does not have authority to regulate an Internet service provider’s network management practices.

Although this narrow holding does not directly affect the implementation of the National Broadband Plan, the Court’s reasoning suggests that the FCC **does not** have broad authority over the Internet. Whatever the ultimate legal decision, years of litigation may be on the horizon.

In *Comcast v. FCC*, the Court of Appeals held that the FCC does not have ancillary authority to bar Comcast from interfering with its customers’ use of peer-to-peer networking applications. Comcast had decided to “choke” service to a peer-to-peer content provider that Comcast thought was using a disproportionate amount of bandwidth. The FCC ruled that Comcast acted inappropriately and that it could not discriminate among Internet users. To a large degree, the FCC’s decision was based on traditional rules of discrimination related to regulated carriers.

The unanimous decision by the three judge panel of the DC Circuit Court reverses the FCC and holds that the FCC acted beyond the scope of its authority. Although the court acknowledged that the FCC has wide latitude to keep pace with rapidly evolving technology, it ruled that such wide latitude is “not

the equivalent of untrammled freedom to regulate activities over which the statute fails to... give the Commission authority.”

Although further legislative or judicial action is possible, the decision, at least at this point, establishes some further guidelines over the long debated issue of “net neutrality,” which has been the subject of considerable controversy between content providers

and providers of the Internet pipelines. On the one hand, content providers have argued that treatment of Internet customers should be neutral and pricing distinctions based on usage should be discouraged. Internet providers, on the other hand, argue

that prices should be reflective of costs and that limiting pricing flexibility in the emerging Internet market will discourage innovation and investment. For Coalition member companies, the *Comcast* decision may be welcome news since it will permit additional pricing flexibility for Internet services.

Now that the FCC’s authority to regulate the Internet has been called into question, many are wondering whether the FCC has the authority to implement its proposed National Broadband Plan. The American Recovery and Reinvestment Act (ARRA) required the FCC to report to Congress on a National Broadband Plan. It did not mandate the implementation of the Plan and the FCC’s Authority under ARRA is not broad.

If the FCC attempts to implement the Plan without receiving Congressional approval, litigation will likely follow, and the FCC could be found not to have “ancillary” authority to implement the plan. Some members of Congress are talking of reviewing the Plan and could provide clearer authority to the FCC.



## BUDGET CLOUD CONTINUES TO LOOM



Just as it did in the 2009 Session, the budget cloud loomed over the 2010 session of the General Assembly. Although estimates varied, budget shortfalls were estimated that ranged between approximately \$800 million and \$1.2 billion. Although there are many reasons for the lingering problems, perhaps the main reason is that the continuing effects of high unemployment rates continue to produce less tax revenue than originally forecasted. The deficit projections could have been worse except for increased efforts by the Department of Revenue to resolve some tax disputes with corporations. Those efforts resulted in higher growth in corporate income tax revenues than originally anticipated. Additional hope for yet unrealized federal help may also reduce the problem in the short-run.

Nonetheless, for the first time since 2003, the 2010 budget was adopted before the start of the new fiscal year. On July 2, lawmakers approved a budget of approximately \$19 billion, largely along party line votes. The House approved the plan 66-50, while the Senate voted to approve the budget by a margin of 28-15. Governor Bev Perdue signed the budget legislation a short time later with much fanfare.

The question is whether this budget is an innovative approach to funding smart government in difficult economic times, or whether the budget uses smoke and mirrors to hide significant economic deficiencies and merely postpones dealing with these realities to another year. The answers to these questions largely depend on who you ask and, in most cases, whether you are a Democrat or Republican.

Governor Perdue and other Democratic leaders argue that pay for public school teachers was once again protected despite an \$800 million budget shortfall. Perdue also claimed that the budget would help "create or protect" 20,000 jobs over the next three years due to small business tax credits and new transportation funding. Perdue argued that the

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## FCC ... INITIATES SWEEPING BROADBAND REFORM.

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The National Broadband Plan is ambitious and would affect the entire telecommunication industry. Its ultimate goal is to provide at least 100 million U.S. homes with affordable access to actual download speeds of at least 100 megabits per second and actual upload speeds of at least 50 megabits per second. Also, the National Broadband Plan creates a universal goal of 4 megabits per second. These nationwide targets are expected to be implemented fully by 2020. Although the plan does not state it specifically, some rural companies believe the plan favors urban centers at the expense of rural areas, perpetuating the digital divide. These concerns include unfairly targeting the 100 megabit service to urban areas, using an average Connect American Fund (CAF) cost model that will leave rural companies under funded, favoring wireless technology over traditional landline services and conducting reverse auctions to determine which provider gets subsidy support.

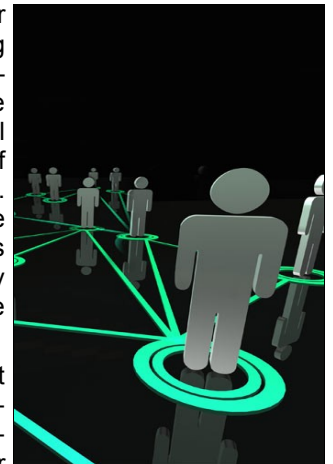
Perhaps the most important tool the FCC is proposing to achieve these goals is the creation of the CAF. To create the CAF, the FCC has proposed scrapping the current Universal Service Fund (USF). The current USF was created in 1997— at a time when only 23% of Americans had dial-up Internet access at home, and virtually no one had broadband. While the USF and earlier programs have played a critical role in the universalization of voice service in the last century, the current USF was not designed to support broadband directly, other than for schools, libraries and rural health care providers.

Over a number of years, the CAF will take the place of the USF. It is intended to address the broadband availability gap in unserved areas and provide any ongoing support necessary to sustain service in areas that require public funding, including areas that already have broadband. Specifically, the new fund will only provide funding in geographic areas

where there is no private sector business capable of providing broadband and high-quality voice-grade service with sustainable revenue. Furthermore, there will be only one subsidized provider of broadband per geographic area. As long as the company is in the broadband business and meets certain specifications to be set by the FCC, then it is eligible. The CAF will be technologically neutral.

The Plan has some important ramifications for telephone companies. First, the Plan should, over-time, end all financial support for networks that only provide "Plain, Old Telephone Service" or POTS. The Plan also calls for the creation of a Mobility Fund. It states the United States should lead the world in mobile innovation, with the fastest and most extensive wireless networks of any nation. The Mobility Fund will help ensure the U.S. has 100% wireless coverage at 3G speed. The Plan estimates the current spread of 3G coverage at 98%, but many industry observers believe the number is too high.

The National Broadband Plan is designed to create changes in the United States infrastructure. However, the new rules will be phased in over a reasonable time period, and policy-makers will be required to give service providers and investors time to adjust to a new regulatory regime. Much uncertainty still exists. However, one thing is certain: many of the issues will be fiercely litigated and it will be a long time before all issues are finally resolved. Rural companies must remain vigilant to assure that the traditional notions of universal service for rural, high cost areas are not abandoned in the Internet world.



## BUDGET CLOUD CONTINUES TO LOOM

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budget was a perfect example of government "doing more with less." Republicans, on the other hand, argue that the budget gap was achieved by using smoke and mirrors as well as resources that do not exist, at least at this time.

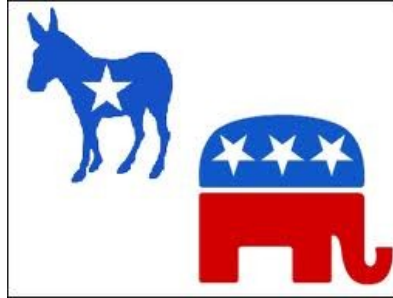
Included in the budget calculations is Medicaid funding relief from the federal government, which has yet to materialize. Without this help from the federal government, the shortfall in the budget could increase by more than \$500 million. Thus, some suggest that the 2010 budget is not truly balanced.

Another concern of Republicans is that this budget merely delays the inevitable by pushing off difficult decisions public officials will have to make in 2011. In some respects, the State continues to tread water during these difficult times due to the uncertainty of federal stimulus money and temporary tax increases passed in 2009 and set to expire in 2011. If these problems are not fixed, next year's deficit could be as much as \$3 billion, or about 15% of the total budget. Democratic House Majority Leader Hugh Holliman, responded to these concerns saying, "We got a budget that is shrinking. We got a budget with no new taxes. So they (Republicans) had to find something else to complain about. Now, it's next year's budget."

While lawmakers made a conscious effort to protect education spending at both the K-12 and college level, education funding could not completely escape cuts which had to be made across all levels of government. Funding for school transportation, school supplies, and mentoring programs in grades K-12 were cut to varying degrees. Community colleges largely escaped the budget ax; however, tuition rates will rise for North Carolina residents by \$208 per year. The UNC-System was mandated to cut \$70 million although campus officials were given latitude in how to make these cuts, but with instructions to focus on non-teaching related programs. One interesting cut to the University system may affect fans of the Wolfpack and Tar Heels, as well as the athletic programs of other public universities. The budget repealed a measure that allowed scholarship athletes from out of state to pay in state tuition. Now booster clubs will have to find more dollars to pay the increased tuition of scholarship athletes.

Some of the hardest hit areas were Health and Human Services, as well as State Pensions. According to State Treasurer Janet

## Telecom Issues Addressed in 2010 Short Session



The 2010 short session has ended and while budgetary concerns weighed most heavily on the minds of legislators this session, there were a small number of bills which represented significant policy shifts and opportunities for the telecommunications industry. In a short session the legislature is generally limited to considering the budget bills which passed one House in the long session, as well as bills that emerge from study committees. Bills affecting the telecommunication industry this session include E-911, broadband deployment, and municipal entry into telecommunications markets.

The House Select Committee on the Use of 911 funds completed its work shortly before the session be-

gan. The final bill released by the committee raised significant concerns about the extension of uses for the 911 fund as well as other factors. The Committee received input from the E-911 Board, the industry, municipalities, counties and trade associations that support people that work in E-911 centers.

Several issues were included in the committee's work including the makeup of the 911 Board, acceptable uses of 911 funding, and the creation of a sustainable funding mechanism for E-911 services. The largest battle focused on acceptable uses of E-911 funds. The counties and municipalities argued that the scope of 911 funds should be expanded to include the purchase of radios for first responders. After significant work by legislators, the industry, and public interests, a compromise was reached which allows local governments some freedom over surplus dollars in their current 911 funds, while limiting the use of those funds in the future.

Competitive entry by local governments into businesses generally reserved to private providers continues

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Cowell, the pension will only receive half the money it needs over the next two years to stay financially sound.

The budget for Health and Human Services is largely dependent on holding out for aid from the federal government. Without this aid, payments to Medicaid providers would be cut, reserve funds raided and contributions to the state's retirement system reduced.

One fallout of the State budget crunch is the continuing dispute between the on-line retailer, Amazon.com, and the N.C. Department of Revenue. Amazon recently filed suit to block North Carolina, as well as some other states, from obtaining personal information about customers from the on-line shopping site. North Carolina tax returns have a self-reporting requirement that asks taxpayers to pay use taxes on items purchased on line for which no sales tax is paid. Amazon does not collect sales taxes from consumers and argues that collecting the differing state taxes from all 50 states would be burdensome. Its suit also argues that providing the information requested by the Department of Revenue would violate the first amendment rights of its customers. On the other hand, the Department of Revenue says that it is not trying to pry into the personal buying habits of North Carolina citizens but is just seeking enough information to administer the tax system in a manner that is fair to all businesses.

Clearly, budgetary issues are complex and opinions vary, but there is no doubt that barring a miraculous economic recovery, policymakers will be forced to make difficult decisions concerning taxes and spending in North Carolina in future years. Not surprisingly, political expediency played a large role in delaying what will likely be unpopular choices until after the 2010 elections. In addition using federal funding that has not yet be appropriated may put further pressure on Congress and the President to give states more federal support.

## INTRASTATE ACCESS CHARGE REVIEW UNDERWAY

Another source of TMC revenue is under review. On average, it is estimated that 70% of the revenue for rural telephone companies comes from various types of intercarrier compensation. That term includes revenue from the Universal Service Fund (USF), which is significantly impacted by FCC's broadband proposal as well as access charges. Although access charges involve several elements, the term is generally used to describe the compensation that long-distance companies pay to local telephone companies to originate and terminate calls.

Historically, access charges have been used as one means of supporting universally available local telephone service in rural and high cost areas. The access charge regime was initiated with the breakup of the legacy AT&T in the early 1980's, and access charges were generally priced to replace the universal support levels that were implicit in traditional long distance rates. Overtime, competition and disparate regulatory policies between federal and state regulators resulted in intrastate access charges at higher levels than similar charges for interstate services. As competition has increased and access lines have been lost, pressure for access charge reform has increased. It is not a simple undertaking.

On April 14, 2010, in response to a Petition by Sprint and following comments by other interested parties, the Utilities Commission created the Access Charge Working Group (ACWG) made up of representatives of industry and consumer interests. The ACWG has developed a comprehensive list of issues that need to be addressed. However, as a threshold question, the ACWG must consider whether the current level of interstate access charges should be reduced to a level that is closer to equal with the current level of interstate access charges as well as the factual, legal and policy implications associated with such reform.

Although TMCs are not regulated by the Commission, they were invited and have chosen to participate as part of the group. Although all telecommunications providers are impacted, all telephone markets are not the same, and it is important that the ACWG be mindful of the unique role that rural telephone companies play in the total telecommunications landscape. Fundamentally, while technology and telecommunications markets have changed since the concept of universal service was created, everyone benefits when all citizens have access to communications services at reasonably affordable rates. Many other states engaged in similar exercises have recognized the unique challenges of small companies that provide service to high cost and rural areas and have formulated reform plans accordingly. Our hope is that the ACWG will prove to be as enlightened.



## Telecom Issues Addressed in 2010 Short Session

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to be of great concern. Following a decision by the N.C. Court of Appeals, municipalities received significantly more power to enter into telecommunications competition with private industry. This is particularly seen in broadband as Wilson and Salisbury have begun plans for municipal broadband service. Some proposals would give county governments the same authority. While this debate remains largely between the cable industry and municipalities, it is certainly a concern that local governments with the power to tax and control right of ways, and subsidize their enterprises through tax revenue and other ventures can use these advantages to compete unfairly with private industry. Many states have rules governing this competition; however, North Carolina has yet to define these rules. This session a bill introduced by Sen. David Hoyle (D-Gaston) would have created a study committee to consider rules governing municipal entry into competition with private providers. This committee would be made up of representatives from the private sector and local governments. In addition this bill prohibited the Local Government Commission from approving financing for these projects until a bill is introduced from the study committee or until the end of the 2011 legislative session.

This bill faced strong opposition from municipalities that already provide broadband service, as well as those who may choose to explore that option in the future. While the bill passed the Senate easily, it stalled in committee in the House. The result was a study committee formed as part of Senate Bill 900. This bill addresses several items to be studied by the legislature including municipal entry into competitive industries. The study committee will look at the current law in North Carolina, and what must be changed to ensure that if municipalities, counties, or other divisions of government enter into competitive industries, they compete with private industry on an equitable basis. The concept of public-private partnerships is also an area of consideration which deserves significant attention. This issue will continue to arise each session until the legislature acts to design rules to govern the new system which was unleashed by the Court of Appeals. Until that time, expect bills similar to Senator Hoyle's and a never ending parade of municipalities, counties, and other public entities seeking approval to provide broadband.

As in the past, broadband deployment continues to be a major issue for the legislature. While broadband deployment is clearly important for the State from issues of economic development to education, the legislature continues to view the problem from the perspective of "The Field of Dreams"-if you build it they will come. While infrastructure and access are important, the fact is the overwhelming majority of North Carolinians have access to broadband. The larger issue, which has been mostly ignored, is how to increase the number of people who choose to use broadband.

## Commission and Legislature Deal with House Bill 1180



Last session, the legislature took another step in the long process of deregulating the telecommunication industry with the passage of House Bill 1180. Following its adoption, the Utilities Commission was charged with developing rules to implement the bill. On March 30, 2010 the Commission released its Order concerning the implementation of House Bill 1180. The Commission created a “working group” consisting of interested parties to help determine the rules for executing House Bill 1180. Following its ruling, several parties requested reconsideration of several issues. The Commission issued its final order on April 8, 2010.

The Commission ruled that with respect to filing for deregulation a traditional LEC or competing local company (CLP) must make a sworn statement that its territory is open to competition, that it commits to provide basic service at comparable rates for both urban and rural customers, that it will continue to provide stand-alone residential service and that rate increases for such lines will not exceed the GDP-PI.

The Commission also considered the role of CLPs, and whether they may elect for deregulation under 1180. The Commission concluded the CLPs were eligible for deregulation so long as they complied “to the extent applicable” with the requirements of the new legislation.

The Commission further considered what powers it main-

tains under HB 1180. The Commission ruled that it still had power to enforce a company’s compliance with the requirements for deregulation under HB 1180, including stand alone rate increases, and urban/rural price parity.

The Commission declined to determine whether or how it may revoke an election of a company to enter into alternative regulation. While concerns about House Bill 1180 and its implementation remain, the Commission has taken an important step in executing what the legislature intended by passing House Bill 1180. It is likely that more time will bring more clarity to the situation. The two orders consist of more than 35 pages and numerous appendixes. If you wish to view the orders they are available at

[www.ncuc.commerce.state.nc.us](http://www.ncuc.commerce.state.nc.us)

by using the docket search function. The docket number is P100 Sub 165.

The Legislature adopted its own changes to clarify sections of House Bill 1180, in House Bill 466. The Bill clarified that by opting into alternative regulation, telecommunications providers are not subject to existing regulation which they had avoided under their previous regulatory model. The bill modified a section concerning equitable pricing of stand-alone phone lines by clarifying that companies opting for alternative regulation must provide stand alone phone service to rural areas at cheaper or competitive rates than rural areas, while excluding competing local providers from this rule. The legislature also adopted language which further clarified that the Utilities Commission still retains jurisdiction over wholesale services.

In 2009, House Bill 1180 provided the next step in the deregulation of the telecommunications industry in North Carolina. We continue to look toward the future to see what it will bring.

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## Two Coalition Companies Receive Federal Broadband Grants

Congratulations to Wilkes Telecommunications and ATMC. Each company was awarded a federal grant to improve broadband service in their communities. When combined these grants total \$37.6 million and will benefit more than 17,000 North Carolinians, and more than 3500 North Carolina businesses. This is an exciting and proud time for the Coalition and its members. In addition other Coalition companies have applied for federal broadband money and at the time of this publication, have not received a decision. We hope they will be answered with the same good news received by Wilkes and ATMC, as Coalition companies continue to bring high quality broadband service to rural North Carolina.



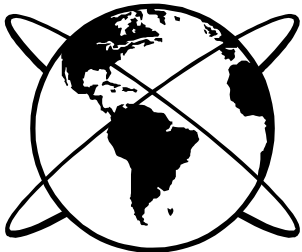
## The Linkage

CarolinaLink

3737 Glenwood Ave  
Suite 100  
Raleigh, NC 27612  
Phone: 919-573-6107  
Fax: 919-573-6104



*Telecommunications –  
Yesterday,  
Today and Tomorrow*



If you have questions, contact  
Dwight Allen at  
dwrightallen@intrex.net.

## MEMBER COMPANIES NAME NEW MANAGERS



Mitzie Branon has been appointed General Manager of Yadkin Valley TMC. Mitzie grew up in the Yadkin Valley area and attended the University of North Carolina at Greensboro where she graduated magna cum laude with a degree in accounting. She has more than twenty years of experience with Yadkin Valley TMC and is on the Board of Directors of several industry organizations. She currently lives in Falls Creek with her husband, Mitchell. They have a son, Mason, currently a student at NC State University, and a daughter, Sydney, in high school. She replaces Jim Crabtree, who continues to work with the company on an interim consulting basis.



Eric Cramer was also recently appointed General Manager of Wilkes Telecommunications. He replaced Eddie Ritenour who retired. Eric joined the company in January of 2005 as the company's CFO, and he was promoted to CFO and Assistant General Manager in August of that same year. He has more than 14 years of experience in the telecommunications industry, much of which involved working with small rural companies across the country, specializing in financial and strategic management and planning. Eric is originally from Crofton, Maryland, and holds a Bachelors of Science in Business Administration with a concentration in Finance from Shippensburg University of Pennsylvania, and graduate degrees including a Master of Science in Telecom and Technology Management and a Master of Business Administration from the University of Maryland.

