

New Agenda When Republicans Return to Senate Majority

December 2002

With the Republican Party reclaiming a majority in the Senate and slightly expanding its House majority, the 108th Congress, which convenes on January 7, 2003, will press for early action on several fronts, including the unfinished FY '03 appropriations bills and additional tax relief. Here's a brief overview of the midterm election impact on leadership and telecom issues:

The Senate: While early expectations were that Senator Trent Lott would be easily returned to the Majority Leader slot, recent developments have called that assumption into question. Senator John McCain will return as Chairman of the Committee on Commerce, Science and Transportation and Senator Conrad Burns as Chairman of the Communications Subcommittee. Senator Ted Stevens resumes the Chairmanship of the Appropriations Committee and Senator Orrin Hatch once again will chair the Judiciary Committee. Two Democratic members of the Commerce Committee, Senators Jean Carnahan and Max Cleland, were defeated, while Senator John Edwards may leave Commerce to hold his Judiciary assignment. Other shifts on relevant committees are likely as committee assignments and ratios are negotiated.

The McCain agenda for the 108th Congress will take shape over the next few months. It is expected that defense and homeland security issues will continue to be priorities. While some communications issues will be added or move higher in priority, such as spectrum policy and cable rates. The issues of likely interest to Senator Hatch, such as CARP reform, online music, copyright and mass media consolidation, may raise jurisdictional tensions with Commerce.

The House: The House configurations will remain generally as they were in the 107th Congress with some changes in committee assignments to reflect vacancies and a Republican net gain in House seats. Leadership changes include Rep. Tom DeLay's selection as Majority Leader, Rep. Nancy Pelosi's election as Minority Leader and Rep. Steny Hoyer's selection as Minority Whip.

Rep. Billy Tauzin will continue to chair the Committee on Energy and Commerce and Rep. Fred Upton will remain Communications Subcommittee Chair. Early areas are likely to include industry infrastructure, oversight, DTV transition and spectrum policy. Rep. James Sensenbrenner remains Chairman of the Judiciary Committee, but the term limit rule forces Rep. Howard Coble to step down as Intellectual Property Subcommittee Chair and Rep. Lamar Smith is expected to replace him.

Drawing on past positions and actions as well as recent statements as helpful guideposts, the issues of interest to the wireless industry are likely to include:

Broadband: With broad consensus that government action would help jumpstart broadband deployment, the challenge for legislators remains finding consensus on an appropriate government role: passive options, such as tax credits, or more active initiatives, including mandated access and relaxation of ILEC rules. The much-discussed differences that stalled past action may have moderated, as various parties adjust their positions to reflect changes in the market. For example, Senator Ernest Hollings, who will continue to play a significant role, has signaled an interest in reaching consensus. Senator McCain has signaled a similar desire.

Unlicensed Services: Having constrained Ultra-Wide Band services through tough interference protections in the FCC rules, the Defense Department has turned its attention to the Wi-Fi industry, which it contends poses similar threats to its operations. The commercial wireless industry also is concerned with the FCC rules that would condition the operation of unlicensed services. Accordingly, Wi-Fi is likely to draw Congressional interest in 2003. Senators Barbara Boxer and George Allen are circulating draft legislation to prevent interference with Defense operations while allowing the industry to operate. In August, four Senators asked NTIA, the FCC and DOD to find a similar sharing accommodation.

Deregulation: Senator McCain will likely approach the telecom industry with the presumption that regulation is unnecessary without clear evidence of its need - a position apparently echoed in the Court of Appeals' standard for the biennial review process. The House committee leadership also favors further deregulation of the industry and one of its early hearings may cover the FCC's pending review of its unbundling and pricing rules. It is less clear that Congress will focus on the wireless industry concern with the growing burden of new regulations, which are being imposed on this competitive market. This "unfunded mandates" argument does not yet have a broad following in Congress. In fact, some members who would otherwise favor deregulation strongly support E911 and local number portability regulations.

Spam: Legislation moved in the House during the past Congress and Senators Hollings and Burns had reached agreement on a compromise bill, but were unable to move it. The apparent consensus suggests action next year is likely, even though recent aggressive enforcement action against spam by the Federal Trade Commission reduces the need for additional legislation.

Telemarketing: Senator McCain may raise questions concerning FTC jurisdiction over common carriers, especially for advertising and telemarketing activities. However, the FCC rulemaking to create a national "Do Not Call" rule largely parallels the FTC proposal and Congress may not see a need to address the matter, unless or until related issues, such as pre-emption of state telemarketing rules, further stir interest.

Spectrum Management Reform: This issue is slated to receive considerable attention next year, given the keen interest of Senator Burns as well as Senators Ernest Hollings and John Kerry and the press of related issues and events, such as WRC 2003. Given the release of the FCC's Spectrum Policy Task Force Report and related NTIA initiatives and the desire to boost the wireless industry, a reform initiative could move forward. The legislative challenge in addressing broad management problems will be to find the level of guidance and

procedural change that will foster strategic and forward-looking management changes while not upsetting the balance between government and private sector interests. The House has been less interested, but it has indicated plans to take up the issue sometime next year.

Spectrum Users Relocation Trust Fund: The Administration, with support from the private sector, proposed legislation to use auction proceeds to create a trust fund to be used to reimburse government users for relocation costs. Largely focused on the recently agreed to reallocation of "3G" spectrum, the legislation was introduced in the House and there appears to be Senate support as well. The bill is likely to be reintroduced and passed next year, either alone or as part of a broader package.

Public Safety/Homeland Security Communications: Funding for communications equipment and access to adequate spectrum are among the homeland security issues identified by the public safety community and key members of Congress. Several pending spectrum allocation and interference issues are implicated as well, including Nextel's 800 MHz proposal and the timing of the DTV transition. The failure to enact FY 03 appropriations legislation in 2002 has delayed the equipment grant programs and the delay may be exacerbated when the grant agencies are reorganized and relocated to become part of the new Homeland Security Department. In addition, state and local governments are experiencing reduced tax receipts, which could impact their ability to provide matching funds. Both Commerce and Appropriations Committees may take an interest in ways to provide funds and spectrum. Also, the new Homeland Security Department, likely led by Governor Tom Ridge, includes an Office of State and Local Government Coordination, headed by Deputy Secretary-designate Gordon England, is tasked with assessing and advocating for the resources needed by these first responders.

Priority Access: At this time, priority access for first responders is voluntary and applies only to top federal agents. Funding for this program has not yet been approved and there is some concern that absent more progress, the program could become mandatory. Congress is likely to consider a wide range of impacts including national security, fairness among first responders and impact on subscribers. It also is possible that members of Congress and members of the public safety community may see reason to look at first responder spectrum capacity and assured funding as the best way to address public safety communications needs.

Wireless Service Quality: There was some interest in the question during the last session and interest is likely to grow. Several state PUCs and advocacy groups also have zeroed in on this issue.

Number Take-Back: The California initiative could migrate to Washington as more States (and their Members of Congress) are faced with the need to address number shortages by adding new area codes.

State Action/Preemption: The CMRS industry faces increasing opposition to the siting of cell towers at the same time it is being compared to wireline carriers in assessing service quality and emergency access. As policymakers face the correlation between siting and service quality, they may be more inclined to provide parameters for state siting procedures.

Taxation: Cell site depreciation relief failed along with the large scale tax legislation many had hoped would be enacted in the last Congress. The Administration has indicated that tax legislation will be among its early 2003 initiatives, breathing new life into this CMRS provision.

Oversight: Both Senate and House Committee are considering oversight hearings early next year in a number of areas, including the economic situation of the industry, E911 compliance, corporate fraud, Title II deregulation and broadband deployment.

Online v. Offline Privacy: Senator McCain's version of privacy legislation is very similar to draft House proposals circulated by Chairman Tauzin and Congressman Cliff Stearns. These versions have considerable industry support, especially concerning private right of action and state pre-emption issues. Meanwhile, consensus is building for general protections of both online and offline privacy, raising committee jurisdiction questions and splitting much of industry.

Fair Credit Reporting Act: The FCRA must be reauthorized next year to preserve state preemption provisions that are very important to the financial services industry. As Chairman of the Banking Committee, Senator Richard Shelby, a very strong privacy advocate, will be in a position to propose additional privacy protections to such reauthorization legislation. Many expect that Senator Shelby also will seek to extend the privacy protections beyond the existing bounds of the FCRA, e.g. applying them to additional industries, which could trigger committee jurisdiction disputes.