



# Communications Daily

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## Today:

**SENSENBRENNER VOWS BILL IF COURTS EXEMPT BELLS FROM ANTITRUST** laws. Supreme Court ruling in favor of Verizon over Trinko would lead to 'swift' legislation, he says. (P. 1)

**DSL EXEMPTION OFFERED BY INTERNET TAX MORATORIUM OPPONENTS**, but S-150 supporters still push their language. Two-year extension proposed. Votes due soon. (P. 2)

**MOST BROADCASTERS HAVEN'T PRACTICED DISASTER PLANS**, FCC Media Security & Reliability Council finds in survey. (P. 5)

**COPPS SAYS COMMISSIONERS SHOULD SEIZE ON PAY-FOR-PLAY** questions themselves and do so immediately. He doesn't draw link on CBS Reagan program and congressional action. (P. 6)

**U.S. NEEDS MORE ENGINEER INPUT, LESS FROM LAWYERS**, NTIA'S Gallagher tells Next Generation Networks show. (P. 7)

**TELECOM NOTES:** FCC's promised hearing on voice-over-IP will be Dec. 1... Senate restores some funding for Rural Utility Service broadband loans... Nextel criticizes waiver request by NextWave and Cingular involving interest on C- and F-block PCS licenses. (P. 9)

**MASS MEDIA NOTES:** Some CE companies say fighting tuner mandate would be futile... Sinclair Bcstg. reports \$3.9 million 3rd-quarter profit... EchoStar adds local programming in 7 markets. (P. 12)

## No Antitrust Safe Harbor

### **SENSENBRENNER SET TO ACT IF COURT EXEMPTS BELLS IN TRINKO CASE**

House Judiciary Committee Chmn. Sensenbrenner (R-Wis.) said Thurs. that any effort to exempt Bell companies from antitrust laws would result in a "swift and decisive legislative response from the Judiciary Committee and Congress." Speaking at a Phoenix Center conference in D.C., he said if the U.S. Supreme Court circumvented antitrust oversight with its decision in the *Verizon vs. Trinko* case, he would respond with legislation.

Sensenbrenner said 2 clauses in the Telecom Act of 1996 reaffirmed antitrust jurisdiction over the telecom market. "In passing the 1996 Act, Congress emphatically did not intend to create an antitrust safe harbor in which monopolists could violate the antitrust laws with impunity," he said.

Verizon Deputy Gen. Counsel John Thorne said he saw a lot of room for agreement with Sensenbrenner on antitrust issues. He said the telecom companies shouldn't be exempt from antitrust requirements, and free markets required antitrust enforcement. However, Thorne said Sensenbrenner also understood "how antitrust can also be used to threaten incentives to invest." He said UNE-P and TELRIC were creations of telecom regulators, not antitrust enforcers. "These types of requirements are often tested, but then later withdrawn when they're shown to inhibit investment," he said.

Sensenbrenner expressed frustration with the Justice Dept. (DoJ) handling of the *Trinko* case. He said its brief seemed to undermine the applicability of the antitrust laws it implemented. "I was surprised that the DoJ's *Trinko*

brief redefined exclusionary conduct in a manner that would undermine the savings clauses in the 1996 Act and alter the application of the antitrust laws in the telecom field,” he said.

DoJ Antitrust Chief Hewitt Pate will be called before the Committee to testify at an upcoming hearing on telecom antitrust issues, Sensenbrenner said. The hearing, originally scheduled for next week, might be delayed for scheduling reasons, he said, but it would be “rescheduled promptly due to the importance of the issue.” Other telecom industry officials also would be called to testify, he said.

Referring to both the *Trinko* case and the FCC’s Triennial Review, Sensenbrenner said: “While the last few years have seen impressive strides toward competition, the competitive outlook for the telecom industry and the historic role of the antitrust law in promoting market-based competition is under assault.” He said the long distance applications granted to the Bells were “predicated upon the ability of nonincumbent carriers to reach consumers via the unbundled network element platform (UNE-P).”

The broadband portion of the Triennial Review also raised some antitrust concerns, Sensenbrenner said. “This segment of the telecom markets requires additional scrutiny by antitrust enforcement agencies and the FCC,” he said. The local loop “may be viewed as an essential facility necessary to sustain local telecom competition,” Sensenbrenner said. He also said the Judiciary Committee would closely watch both the implementation of the Triennial Review and the FCC’s TELRIC proceeding.

Two 2 clauses in the Telecom Act provide clear guidance to regulators and the courts that antitrust standards are to apply to the telecom industry, Sensenbrenner said. The Act contains an “antitrust savings clause” that specifically says nothing the Telecom Act would “modify, impair or supersede” any antitrust laws, he said, and a “general savings clause” that prohibits it from superseding any federal, state or local law “unless expressly so provided in such act or amendments.” “Anyone schooled in rudimentary statutory interpretation would have to conclude that the clarity of this language leaves very little to the imagination of a judge or regulator,” Sensenbrenner said. “However, the imaginations of judges and regulators can be far more active than we can predict.”

Sensenbrenner could have the support of Committee ranking Democrat Conyers (Mich.) In a July hearing of the Judiciary Committee (CD July 28 p4), Conyers questioned Pate on the DoJ amicus brief in the *Trinko* case that was filed jointly with the FTC. Conyers said the brief encouraged a standard that would favor corporate efficiency no matter what harm was done to consumers. He also said DoJ had a “gratuitous involvement” in the case on Verizon’s behalf. Pate disagreed and said: “I don’t believe that great harm to consumers would be excused.”

In Dec., Conyers and Rep. Lofgren (D-Cal.) wrote the DoJ asking for an investigation of Bell companies on anticompetitive practices (CD Dec 20 p7). Conyers sent the letter after Qwest CEO Richard Notebaert was quoted as saying that it would be fundamentally wrong for Qwest to compete with SBC in its territory. A Qwest spokesman said the company was competing with SBC and other Bells. But Conyers said the Bells “collude extensively” in efforts to get regulators and Congress to undo market access laws. — *Terry Lane*