

# **Telecom, Media, & Technology Legal and Regulatory Outlook 2013**

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# AGENDA

- Outlook -- 2012
  - U.S. Congress -- Election Run Up
  - Federal Communications Commission
  - Department of Justice
  - TMT Deal Outlook
  - Telecom Compensation Issues

# U.S. Congress

- Leadership
- Developments
- Outlook for the 113<sup>th</sup> Congress

# Legislative Leadership

- Committee Leadership not yet finalized, but considerable turnover in membership due to election results, retirements, and vacancies
  - **House Commerce Committee (2012 leadership)**
    - Fred Upton (R-MI), chair
    - Henry Waxman (D-CA), ranking minority member
  - Telecommunications subcommittee:
    - Greg Walden (R-OR), chair
    - Anna Eshoo (D-CA), ranking minority member
  - **Senate Commerce Committee**
    - Jay Rockefeller (D-WV), chair
    - John Thune (R-SD), ranking minority member (probable)
  - Communications subcommittee leadership TBA:
    - John Kerry (D-MA), chair, nominated for Secy of State
    - Jim DeMint (R-SC), ranking minority member, resigned

# Legislative Developments

- Middle Class Tax Relief and Job Creation Act of 2012 (overview)
  - Passed and signed into law in February 2012
  - Authorizes national wireless broadband network using “D” Block spectrum for first responders with \$7 billion available for development
  - FCC to reallocate spectrum in 470-512 MHz band (currently used by public safety entities) and auction for commercial wireless purposes by 2023
  - FCC to reallocate and auction 65 MHz from other spectrum bands within 3 years
  - FCC authorized to conduct “reverse” auction for underutilized broadcast spectrum and re-auction by 2023 to wireless companies (no eligibility restrictions)

# Legislative Outlook for 113<sup>th</sup> Congress

- Expect many telecom bills to be introduced, few to pass
  - Partisan gridlock and focus on financial issues makes it difficult to move legislation without broad consensus
  - Some areas of agreement:
    - Opposition to ITU efforts to increase regulation of Internet
    - Opposition to FCC Universal Service surcharges on consumer Internet access bills
- Major FCC reform unlikely but small changes possible
  - Congress often reacts to issues after they cause wide public outcry

## Legislative Outlook (2)

- While FCC net neutrality rules are a hot-button issue, no action is expected
- Media ownership concentration is a perennial Democratic issue, but Republicans oppose any legislation in this area
- Broadcast retransmission bill unlikely
- Radio performance fee legislation stalled
- LightSquared/GPS battle generated Congressional interest but divisions in political objectives resulted in conflicting requests

## Legislative Outlook (3)

- Congress could quickly respond to consumer protection and cyberspace abuses
  - Privacy/Spam/Identity Theft, Cybersecurity and Electronic Surveillance remain important and could have legislation (Rogers cybersecurity bill)
  - Google Wi-Fi packet-sniffing and News Corp. phone-hacking scandal may provide additional impetus for legislation
    - Facebook, Instagram terms of use controversies
  - If Congress does not act, expect further action by FTC to protect consumers' online data



# Federal Communications Commission

- Leadership
- Spectrum Issues
- Broadband
- Net Neutrality
- Media Ownership

## FCC Commissioners

- Julius Genachowski (D), Chair, 6/30/2013
  - Many rumors of departure, but no confirmation
  - Could stay until late 2014 even without Senate reconfirmation
  - Chairman appoints Bureau Chiefs; controls agenda
- Robert McDowell (R), 6/30/2014
- Mignon Clyburn (D), 6/30/2017
- Jessica Rosenworcel (D), 6/30/2015
- Ajit Pai (R), 6/30/2016

## Spectrum Policy: Reallocation Progress in 2012

- 2009 National Broadband Plan (NBP) proposed to reallocate additional 500 MHz for broadband use between 225 MHz and 3.7 GHz
- Major FCC spectrum reallocation victories in 2012:
  - FCC action on DISH AWS-4 proposal opened 40 MHz of 2 GHz S-band
  - Interference agreements between AT&T and SDARS opened 20+ MHz of 2.3 GHz Wireless Communications Service (WCS)
- Progress made in 2012, but FCC will not carry momentum into 2013

## Spectrum Policy: Reallocation Shortfall Inevitable in 2013-2014

- NBP projected 90 MHz of MSS spectrum; likely final yield approx. 40-50 MHz
  - Interference concerns hindering L-band and Big LEO reallocations
- NBP projected 120 MHz of TV spectrum; likely final yield <60 MHz
  - Voluntary surrender of 120 MHz: unrealistic goal
- Additional 60 MHz of AWS spectrum likely made available in 2013/2014, after which the well runs dry for the near term
- By end of 2014 FCC will likely have reallocated between 130-200 MHz to wireless broadband, well below 300 MHz 5 year goal and 500 MHz 10 year goal

# Spectrum Policy: Alternative Approaches to Avoiding Spectrum Crunch

- FCC recognized in 2011/2012 that reallocation alone cannot avoid the spectrum crunch; inadequate greenfield spectrum below 3.7 GHz
- FCC looking for alternative spectrum management techniques to avoid a crisis
  - Spectrum sharing to become the norm where clearing the band is impractical
  - FCC will encourage CMRS carriers to regroom existing capacity for downlink
  - Cellular offload onto unlicensed networks promoted
  - Receiver standards (really interference standards) will eventually enable further spectrum repurposing, but will not offer immediate relief

# Spectrum Policy: Shift toward Spectrum Sharing Gains Momentum in 2013

- FCC taking deliberate and expeditious action to implement Presidential Council of Advisors on Science and Technology (PCAST) recommendation to share underutilized government spectrum
- Geolocation database technology developed for TV band “white spaces” core technology that enables sharing without creating harmful interference for incumbent spectrum users
- 1,000 MHz is the 10 year goal; rules to share initial 300 MHz may be in place by end of 2013
  - Rulemaking underway to share the 3550-3650 MHz band currently used by coastal radar and pair it with existing “light licensed” 3650-3700 MHz spectrum
  - Rulemaking about to initiate to open 195 MHz of spectrum near 5 GHz
  - FCC exploring sharing full 1,000 MHz block between 2700-3700 MHz, but will likely not be able to implement a sharing scheme simultaneously across the entire band given the disparate incumbent users that require varying degrees of protection

# Spectrum Policy: Asymmetric Regrooming Existing Cellular Spectrum

- Wireless broadband inherently asymmetric (i.e., end users download much more content than they upload)
- Historically spectrum has been allocated pairing uplink and downlink blocks 1:1 based on symmetric needs for telephony
- Regrooming underutilized uplink spectrum in favor of downlink spectrum that can be used for base station transmissions a viable option for existing cellular carriers that need to squeeze more efficiency out of existing networks
- FCC willing to explore regrooming proposals so long as adjacent users do not experience elevated levels of OOB or overload

## Spectrum Policy: Unlicensed Cellular Offload Gains Traction

- While mobile carriers continue to publicly urge the FCC to clear and reallocate spectrum, privately they recognize offloading traffic onto unlicensed networks can alleviate some of the spectrum pressure on their networks
- T-Mobile aggressively deploying 802.11 hotspots, but AT&T, VZW and Sprint will start to experiment with unlicensed network access points in 2013
- Expect the big cellular carriers to support sharing initiatives above 3 GHz; they recognize that these frequencies cannot be cleared (cost effectively), and value the ability to reuse these frequencies due to their favorable propagation characteristics



## Spectrum Policy: Receiver Standards Coming

- Requiring receivers to have tighter filters is key to unlocking bands that are trapped in limbo (LightSquared's L-band)
- Rulemaking likely in 2013 to explore interference levels for different classes of receiver
- Not a true standard, but instead will inform incumbent services how much energy to expect from adjacent band services; incumbents that cannot tolerate the specified adjacent band energy will lose interference protection rights
- Cumbersome and difficult to implement because currently fielded equipment needs to be retired or modified, but will eventually enable the FCC to free stranded spectrum for high-power uses

# Incentive Auctions

- Middle Class Tax Relief Act of 2012
  - FCC receives authority to pay licensees for underutilized broadcast spectrum and resell spectrum at auction
  - Large wireless carriers free to participate subject to any general FCC restrictions on spectrum holdings
  - Congress hopes to raise \$25 billion in auction revenue
  - FCC must hold “reverse auctions” to determine the amount of compensation that licensees would accept in return for voluntarily relinquishing spectrum usage rights
  - FCC to determine the revenue split with relinquishing licensees

## Incentive Auctions (2)

- Unclear how much interest broadcasters have in surrendering spectrum
- Investment community is circling and transactions involving broadcasters have picked up
- Auction will succeed or fail based on how many broadcast licenses are surrendered for auction in top 10 markets
- Reallocating anything less than 40-50 MHz in major markets will be viewed as an unsuccessful auction

# Advanced Wireless Services

- AWS is 40 MHz of 50 MHz the FCC says it has in the pipeline for wireless broadband
  - Significant potential value. Can support 4G path
- NBP recommended making use of the AWS-2 and AWS-3 spectrum
  - To unlock value, create solution to pair AWS-3 spectrum with reallocated federal spectrum (1755-1780 MHz) or even with AWS-2
  - FCC was to commence auctions if reallocation is “strong possibility”
  - Challenges for reallocation of 1755-1780 MHz availability in the near-term
- The FCC likely to adopt rules in 2013 for auction of the unpaired AWS-3 spectrum
- Plan calls for integrating the PCS J block into one of the AWS blocks to maximize broadband potential

# LightSquared

- Interference with GPS receivers has stalled the company's proposed L-band network
- Interference issues involve LightSquared base stations that overload GPS receiver filters
- Problem can be alleviated, but will require years to harden fielded GPS equipment
- LightSquared's upper L-band spectrum is unaffected by the problem, but is only viable for terrestrial mobile handset uplinks

## DISH Networks

- Charlie Ergen is 2012's spectrum windfall grand prize winner
- Has access to 20 MHz of AWS-4 spectrum suitable for downlink (2180-2200 MHz band) and 15-20 MHz of spectrum suitable for uplink (2000-2020 MHz band)
- Possibly could convert all of this AWS-4 spectrum for downlink if he could find a network partner with available uplink spectrum
- Needs to build out network infrastructure under each geographic call sign in 7 years; likely necessitates a partner
- Most likely candidates
  - AT&T
  - T-Mobile
  - Sprint/Clearwire

# Broadband Regulation

- Broadband deployment very important “signature issue” for Obama Administration; economic development tool
- FCC spent most of 2009 developing a National Broadband Plan, and is in the process of implementing the Plan
- Even before the Plan was released, a court ruling in *Comcast* case cast doubt on extent of FCC’s authority over broadband services
- FCC, industry, public interest groups now maneuvering over agency’s authority, with Congress unlikely to legislate on issues in the near-term

## Broad Overview of Plan

- Competition policies
  - Regulatory actions to encourage investment in broadband networks
- Infrastructure policies
  - Spectrum reallocation
  - Access to government-owned, -regulated, and funded property
- Universal availability and adoption
  - Universal Service reform: subsidies for network deployment and operation
  - Subsidies for low-income subscribers
- Achieving national priorities
  - Recommendations for using broadband to improve health care, education, public safety, and other areas



## Transition to IP Networks

- FCC has talked broadly about transitioning voice services to IP networks, but has not yet adopted any policies or timetable
  - AT&T in particular is pushing for FCC action, has filed a petition seeking “trials” in which ILECs would move customers in specific areas to IP
  - NTCA, others ask FCC to address policy questions before conducting trials
  - Unanswered questions about mechanics and economics of network interconnection, consumer protections, obligation to serve, etc.

# Network Neutrality: Principles

- Increasing concentration of Internet access coupled with increasing diversity and capability of applications has given rise to calls for “network neutrality”
- Historically, FCC policy rested on four “principles”:
  - consumers are entitled to access the lawful Internet content of their choice;
  - consumers are entitled to run applications and services of their choice, subject to the needs of law enforcement;
  - consumers are entitled to connect their choice of legal devices that do not harm the network;
  - consumers are entitled to competition among network providers, application and service providers, and content providers
- FCC’s first attempt to enforce these principles was vacated by D.C. Circuit in *Comcast* case due to failure to justify ancillary jurisdiction

# Net Neutrality Rulemaking (1)

- In 2011, FCC adopted rules under Title I designed to address the D.C. Circuit's jurisdictional concerns in *Comcast* case
  - Four existing Internet principles made enforceable rules
  - Non-discrimination principle added; broadband providers cannot discriminate against services or applications based on content
  - Disclosure obligations added re network management
  - “Reasonable network management” exception recognized
  - “Specialized services” not covered, but not defined; subject to case-by-case review
  - Wireless broadband exempt from nondiscrimination rule, but subject to disclosure obligations and prohibited from blocking websites or access to applications that compete with the wireless provider's voice or video services

## Net Neutrality Rulemaking (2)

- Court challenges
  - Several appeals consolidated in D.C. Circuit
  - Jurisdictional issues, not FCC's policy objectives, will be the deciding factor
  - Recent D.C. Circuit data-roaming ruling strengthens FCC jurisdiction over wireless carriers, but doesn't affect wireline services
  - Briefs have been filed, oral argument likely in 2Q'13, with decision before end of year

# Media Ownership

- Broadcasters, newspaper owners perennially seek loosening of FCC restrictions on multiple-station ownership and newspaper/TV combinations
  - Democrats generally support ownership restrictions, Republicans oppose them
  - FCC currently conducting required quadrennial review of rules, likely to retain most restrictions but some loosening of newspaper rules possible
    - NewsCorp, Tribune Companies potentially affected
- FCC has historically tried to limit cable TV consolidation, but has been rebuffed by the courts
  - 30% nationwide subscriber limit rejected several times
  - Antitrust agencies may still block some horizontal mergers

## Department of Justice -- Antitrust Division

- Leadership
  - William Baer confirmed as Assistant Attorney General Jan. 1
    - Former director of the FTC's Competition Bureau
    - Likely to maintain aggressive stance on antitrust issues
- Antitrust Outlook

# TMT Antitrust Policy: Outlook

- Demise of AT&T/T-Mobile deal does not necessarily preclude mergers of less dominant firms
  - Both DOJ and FCC are taking a hard look at mergers, but both have shown flexibility
  - Bright-line issue for regulators was elimination of one of the four nationwide wireless networks and loss of “maverick”
- Big carriers can still grow their networks, within limits
  - FCC approved AT&T-Qualcomm deal with modest interference and roaming conditions
  - FCC also approved AT&T purchase of up to 30 MHz of AWS spectrum in multiple markets
  - Verizon Wireless and Leap Wireless swap spectrum
  - T-Mobile seeking to acquire MetroPCS

## TMT Antitrust Policy – Outlook (2)

- Verizon/CableCos spectrum deal: behavioral conditions imposed with additional voluntary divestitures
  - DOJ sought to maintain Verizon's incentives to aggressively market FiOS against CableCos
  - Imposed limited duration on technology joint venture between the companies that might otherwise lessen competition
  - Eliminated Verizon Wireless as the exclusive wireless partner of the CableCos
  - Verizon to sell its 700 MHz A and B spectrum licenses as part of the deal
  - Verizon also sold AWS-1 spectrum to T-Mobile (218 regions)



## TMT Antitrust Policy: Outlook (3)

- Policy on merger remedies has developed slowly
  - Current DOJ leadership is more open to behavioral/conduct conditions (e.g., Live Nation/ Ticketmaster, Comcast/NBCU, Verizon/CableCos)
  - Baer likely to continue that approach given FTC background with behavioral remedies
  - Internet still viewed as “nascent” potential alternative platform for traditional media but view may be changing
- Concern with Telco/CATV duopoly
  - Would likely not affect smaller transactions, but would likely block or impose significant conditions on larger deals
- DOJ talking tough on vertical integration but still difficult to convince courts

## TMT Antitrust Policy: Outlook (4)

- DOJ has said it will more closely scrutinize unilateral firm conduct, but this has not yet led to any enforcement actions
  - Google acquisitions and alleged leveraging of search engine led to increased FTC/DOJ scrutiny (FCC does not have jurisdiction), but FTC found no basis for enforcement
  - Investigation of AT&T and Verizon related to prices for text messages closed but DOJ still examining cell phone exclusive deals; led to self behavior modification
- Current pending deals have limited horizontal overlaps (e.g., T-Mobile/MetroPCS, Sprint/SoftBank, Sprint/Clearwire)

# TMT Deal Outlook

- Rural LECs
- Spectrum
- Cable TV
- Video/Satellite

# TMT Deal Outlook

- Rural LEC transactions:
  - Expect continued consolidation in this sector
  - These deals usually face relatively minimal antitrust review
  - Acquisitions by AT&T or Verizon would receive more scrutiny
- State regulatory agencies are concerned with price controls, quality of service, and financial backing

## TMT Deal Outlook (2)

- Spectrum Acquisitions
  - Smaller spectrum swaps/acquisitions not likely to raise significant competitive concerns (e.g., Leap-Verizon deals) but will still receive review
  - Any deals by major players will be scrutinized
- Future Cable TV deals
  - FCC rules do not limit acquisitions *per se*, but any horizontal merger involving Comcast, TW, or Cox could still raise antitrust concerns
  - More Cable/CLEC transactions possible since FCC granted forbearance of rules requiring municipal approvals

## TMT Deal Outlook (3)

- Other Video/Satellite
  - Sirius XM - no FCC rules prevent its acquisition by a satellite TV operator; antitrust concerns would be minimal because different markets
  - DirecTV - no rules prevent its acquisition by a landline or mobile telco; but antitrust agencies may have a concern with reduced competition
  - DISH/DirectTV combination would pose even greater antitrust concerns
  - AT&T/DISH combination would be complicated by DISH's acquisition of the TerreStar/DBSD S-band spectrum

# Telecom Compensation Issues

- Major issues:
  - Universal Service reform
  - Inter-Carrier Compensation
  - Unbundled Network Element availability and pricing
  - Special Access pricing

# Universal Service Reform: Introduction

- Universal telephone service has long been an implicit goal of Federal and state regulatory policy
- Under 1996 Act, FCC created Universal Service Fund (\$8.1B in 2011) to support 4 programs:
  - “High cost” rural local service (\$4.0B)
  - Telecom/Internet services for schools and libraries (\$2.2B)
  - Lifeline service to low-income residential users (\$1.8B)
  - Telecom services for rural health care (\$80M)
- Small and mid-sized ILECs receive substantial support from the High Cost fund
  - Even the RBOCs receive some support to subsidize their basic local rates
  - Wireless carriers have received support for overbuilding rural areas, which caused the Fund to grow until the FCC capped this support



# Universal Service Reform: Contributions

- USF currently funded by “contributions” from providers of interstate “telecommunications services” based on end-user revenues
  - Effectively a gross receipts tax; rate is now over 16%
  - Rate has increased due to Fund growth and reduction in interstate voice minutes of use
  - Concern over arbitrage arising from bundling of telecom (assessed) and information (non-assessed) services
- FCC sought comment in 2012 on proposals to reform and modernize how USF contributions are assessed and recovered
  - Proposals included bringing broadband services into the contribution base, which provoked public and Congressional reaction
  - As a result, Commissioners have pledged no USF contribution on consumer Internet access
  - Action later in 2013 possible

# Universal Service Reform: High Cost Fund

- Order released Nov. 18, 2011
- Adopts \$4.5 B/year budget for renamed “Connect America Fund”:
  - \$2 B for rate-of-return ILECs
  - \$1.8 B for price-cap ILEC territories
  - \$0.5 B for Mobility Fund
  - \$0.1 B for remote areas fund (satellite)
- Highly complex reallocation of support
  - Significant reductions in payments to mobile carriers
  - Significant increases in payments to price cap ILECs, but with build-out conditions attached
- Numerous court appeals consolidated in 10th Circuit (Denver)
- Multiple petitions for reconsideration/clarification filed with FCC
- Stay unlikely; sorting out recon/appeal issues could take years

## USF High Cost Reform: Goals

- FCC adopted five performance goals for high-cost support:
  - (1) preserve and advance voice service to consumers;
  - (2) ensure universal availability of voice and broadband services;
  - (3) ensure universal availability of *mobile* voice and broadband;
  - (4) ensure reasonably comparable voice and broadband service rates throughout the country; and
  - (5) minimize the burden on consumers and businesses for contributions to the fund.

# Universal Service Reform: CAF

- The new Connect America Fund:
  - will only provide funding in geographic areas where there is no private sector business case to provide broadband and high-quality voice-grade service
  - will not subsidize more than one provider of broadband per geographic area
  - will have company- and technology-agnostic eligibility criteria
- Requirements for broadband build-out and performance as a condition of receiving funds
  - 4 Mbps downstream, 1 Mbps upstream required
- States continue to enforce Carrier-of-Last-Resort obligations (for voice service) and to designate eligible carriers

# USF Reform: Price Cap ILEC territories

- Phase I (2012-13):
  - Legacy support (\$1.0 B) frozen
    - ILECs must accept broadband build-out obligations to continue receiving support
    - Exception for areas with “artificially low” telephone rates
  - Additional \$300 M to price cap carriers that commit to building out broadband to unserved customers
    - FCC missed its own 3/31 deadline for implementing by two months
- Phase II (2013?-2017)
  - Support to be based on forward-looking cost model
    - Exclusions: areas served by unsubsidized competitor; extremely high-cost areas
  - Incumbents have right of first refusal (by state), subject to build-out obligations
    - Three and five-year build-out milestones
  - Competitive bidding if incumbent declines

## USF Reform: Rate-of-Return companies

- ROR ILECs remain under legacy high-cost support system on an interim basis
  - Support capped at \$2B, roughly equal to 2011 level
    - Many adjustments to existing support formulas, mostly targeting companies with unusually high per-line costs
    - Order capping support based on complex multi-variable regression formula has sparked multiple protests by RLECs, requests for stay of implementation
  - FNPRM on retargeting support to broadband services, and reducing interstate rate of return from 11.25% (possibly as low as 8 – 8.5%)

## USF Reform: Mobile Services

- Equal support rule repealed, existing support (nearly \$1B) phased out over five years (2012-2016)
- One-time \$300M allocation to extend mobile networks to areas currently without 3G service, plus \$50M for tribal areas
  - Reverse auctions to allocate funding
  - Roaming and collocation obligations on recipients
- New Mobility Fund: \$500M per year to expand and sustain mobile broadband coverage, includes \$100M set aside for tribal areas

## USF Reform: Remote Areas

- \$100M annual allocation for service to areas where terrestrial service is not economically justified
  - Est. 1% of U.S. population
  - FNPRM on allocation of funds
  - Means-testing for recipients



## Inter-Carrier Compensation: Background

- Current rules create a hodge-podge of systems for carriers to pay each other for rights to transmit calls over other networks
- Rate for call termination depends on where the call originated, not on the service provided by the terminating carrier
  - Most charges are per-minute
  - Application of these charges to VoIP has been unclear
- Rural carriers have sought to attract additional minutes to their switches to increase these revenues; FCC has found some of these arrangements unlawful
- November 2011 Order reforming USF also addressed ICC

# Inter-Carrier Compensation: Transition

- Order eliminates most access charge and reciprocal compensation payments (“bill-and-keep”) as of 7/1/2018
- All rate increases prohibited immediately (subject to WCB clarification that individual rate elements may increase where consistent with goal of unifying intrastate and interstate rate structures)
- Seven year transition for price cap ILECs (nine for ROR):
  - Intrastate and interstate terminating switched end office and transport rates and originating and terminating dedicated transport rates brought to parity in two steps by 7/1/2013
  - All terminating end office rates reduced to \$0.0007 by 7/1/2016, to zero by 7/1/2017; transport rates reduced in 2017 and 2018
- Reductions in originating access, and details of interconnection/transport rules, deferred to next phase

## Inter-Carrier Compensation: Revenue Recovery

- ILECs are permitted to recover some, but not all, revenue lost due to inter-carrier rate reductions
- “Lost revenues” baseline subject to alternative recovery mechanisms assumes minutes of use decline of 10% annually for price cap, 5% annually for rate-of-return
- Most price cap ILECs may recover 90% of baseline
- LECs recently converted from rate-of-return to price cap may recover 100% for five years, 90% thereafter
- Rate-of-return may recover 100% of baseline
- ILECs must seek recovery first through increased end-user charges
  - Transitional payments available from CAF, but only for ten years, and only if end-user recoveries are inadequate

## Inter-Carrier Compensation: Access Recovery Charge

- Monthly end user rate similar to the subscriber line charge (“SLC”)
- Residential and single line business
  - Max increase \$0.50 per year to \$2.50 for price cap, \$3.00 for ROR
  - No ARC if monthly residential local rate plus fees exceeds \$30
  - FCC expected average increase to be 10 to 15 cents per month
    - Actual ARC rates filed in July 2012 were all over the map, varying by company and by state
  - No ARC for Lifeline customers
- Multi-line business ARC may increase by 2 X residential rate
  - SLC plus ARC capped at \$12.20
  - LECs must apportion access recovery baseline recovered through ARCs between consumer and business customers
- ARC phases down as access recovery baseline is reduced
- CLEC end user rates not regulated, may recover ARC as market permits

# Special Access Pricing: Outlook

- FCC opened rulemaking in 2005 to consider reimposing price controls on special access service, which could cut into RBOC profit margins
  - Current FCC rules deregulate “broadband” special access, including packet-switching (Ethernet) and Optical Carrier (OC-n) services, nationwide
  - Also allow pricing flexibility for DS-1 and DS-3 services in particular MSAs on a showing of sufficient competition
- In 2012, FCC suspended new ILEC applications for pricing flexibility, but left existing MSA-based flexibility in place while rulemaking is pending
- Staff is seeking to develop analytically-correct market definitions so that it can make a market-dominance finding
- FCC recently approved mandatory data request to provide sufficient empirical data to support market definition
- Timing is uncertain, and FCC may not take any action before end of year

## Questions & Contact Info

- Please submit any questions using the Q&A tool on your screen.
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