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Today's News

HUNGARIAN EU PRESIDENCY to focus on network security, spectrum policy, official says. (P. 1)

LEGAL CHALLENGE TO NET neutrality rules likely, but who will challenge is less certain. Industry, public interest groups mulling appeal. (P. 2)

CAPITOL HILL: NTIA funded to March 4 ... Congress unlikely to reverse FCC net neutrality order ... Shimkus, Eshoo take shots at net neutrality order ... Groups ask lawmakers to refrain from limiting First Amendment due to WikiLeaks. (P. 4)

AGENCIES: FTC seeks legal action against Internet company offering bogus government grants ... U.S. Customs and Border Protection procurement officers prefer online reverse auctions, Reverse Auction Research Center study says. (P. 4)

INTERNATIONAL: Sony launches online digital music service in U.K., Ireland. U.S. launch in 2011. (P. 5)

INDUSTRY NOTES: Newspaper circulation of electronic editions increasing, Audit Bureau of Circulations says ... IBM to develop cloud computing project for NATO programs. (P. 6)

Telecom Groups Urge New Presidency to Stress Next-Generation Network Rollout

Key telecom priorities of Hungary, which assumes the EU presidency Jan. 1, are "strategy, security and spectrum policy," Information and Communications Minister Zsolt Nyitrai said. The byword for the term will be "continuity" of ongoing work on the Europe 2020 strategy, the country's foreign minister said at a Tuesday news briefing. That work includes several communications items agreed upon in November 2009 by the then-upcoming Spanish, Belgian and Hungarian presidencies. Industry groups, meanwhile, urged the presidency to focus on fiber deployment and investment in new networks. ISPs said their priorities for coming months include EU-level talks on traffic data retention and ISP liability.

Hungary wants to extend the European Network and Information Security Agency's term and give it more flexibility to protect against network threats, Nyitrai said earlier this month. ENISA's authorization expires in March 2012. Completion of a five-year radio spectrum policy plan is a top priority, he said. The new presidency's tasks in the area of e-communications are outlined in the European digital agenda, which aims to roll out fast and ultra-fast broadband by 2020, Nyitrai said at a Dec. 3 Telecom Council meeting in Brussels. The three presidencies' 2009 agreement also includes work on issues such as universal service in e-communications, deployment of next generation networks, network security, e-commerce and digital anti-piracy efforts.

Hungary is in a "perfect position" to put a "special focus" on telecommunications and fiber networks during its term, said the Fiber-to-the-Home Council Europe. Although fiber deployment is just starting there, data shows there are large fiber projects in Eastern European countries such as the Baltic States, Slovakia, Czech Republic and Bulgaria, said Director General Hartwig Tauber. The key priority of the incoming presidency should be to create the right conditions for private investment in high-speed broadband networks, said the European Telecommunications

Network Operators' Association. It also stressed the need to open up the 800 MHz "digital dividend" spectrum band to mobile broadband services and urged the presidency to "works towards a timely adoption" of the proposed multi-year spectrum policy plan.

Hungary's priorities are already set out in its joint program with Spain and Belgium, said European Internet Services Providers Association Policy Head Andrea D'Incecco. ISPs face several key issues in 2011, he said, including: (1) Possible changes to the EU data protection and data retention directives. (2) A European Parliament report on Web blocking. (3) The European Commission's copyright action plan. (4) The EC internal security strategy, which envisions a private-public partnership to fight online illegal activities. (5) ISP liability for digital infringement and possible changes to the e-commerce directive. — *Dugie Standeford*

Weighing Options

Net Neutrality Order Expected to Face One or More Court Challenges

Legal challenges of FCC net neutrality rules appear all but certain, but where they will come from remains unclear. Verizon is the leading candidate, industry and FCC officials said. Other industry players, including mid-sized wireline-only carriers, also could challenge. Public interest groups who lost their fight to get the commission to reclassify broadband transmission under Title II of the Communications Act also appear to be considering an appeal.

"Not only does the policy outcome of the order make it ripe for appeal, but the glaring legal infirmities provide a target-rich environment for potential appellants," FCC Commissioner Robert McDowell said in an interview Wednesday. "I would be very surprised if there's not an appeal." McDowell and fellow Republican Commissioner Meredith Baker Tuesday both questioned the legal underpinning of the order, with its reliance on Section 706 of the Communications Act (WID Dec 22 p1). McDowell's written dissent includes an extended legal analysis of flaws in the order, which goes into more detail than his statement at the meeting. Industry and FCC officials agreed Wednesday it's too early to predict where the appeal will come from, especially since the agency has yet to publish the full order.

Verizon is "going to look at the order and look at our options and see where we go from there," spokesman Ed McFadden said. "Beyond that, everything is just conjecture and hypothetical — much like net neutrality itself." One Verizon official said that company executives are unhappy Chairman Julius Genachowski's order didn't have sunset provisions that were in aborted neutrality legislation by Rep. Henry Waxman, D-Calif. The rules themselves were "things that we've been living with and under anyway," but Verizon had hoped they would be in place only while "the broader policy issues were being addressed" by Congress, the official said.

USTelecom issued a strong statement on the order, calling it "an expansive assertion of regulatory authority over the Internet: one that goes far beyond the Waxman legislative proposal, assumes prerogatives that are more appropriately the province of the Congress, and is arbitrary in its application of disparate mandates to competing Internet services, applications, and technologies in ways that have nothing to do with protecting consumers." Some observers read that as a sign USTelecom could provide the challenge. Association spokeswoman Anne Veigle said Thursday the group is not considering a lawsuit. "Any discussion of challenging the final order in court would be highly premature," she said.

CLECs are likely to wait for a bigger company to challenge the net neutrality order before joining in, two industry officials said. The odds-on favorite for the first challenge is Verizon, the officials said. They said RLECs and CLECs are most upset by the disparate treatment of fixed wireline and wireless.