

New Wiretapping Rules Could Be Very Costly

By Daniel Schoonmaker

GRAND RAPIDS — In the basement of Calvin College's Hekman Library, the school's information technology department had turned into a nervous war room.

About a dozen school administrators and technicians were gathered to watch a Nov. 17 teleconference on the potential impact of the Federal Communication Commission's declaration that an 11-year-old wiretapping law now applied to "any type of broadband Internet access service."



PHOTO ILLUSTRATION/KELLY NUGENT



Though wiretaps on college campuses are virtually unheard of, a new interpretation of an old law may cost colleges millions to upgrade equipment to facilitate possible wiretapping.

On the bottom of the projection screen was a scroll of questions posted from across the country. Over the course of the hour, the mood digressed from caution and concern to a frustrated hilarity. Throughout, most questions were some form of "How do we comply?"

To this, one of the panelists, Doug Carlson of New York University, flatly and consistently responded: "We just don't know."

Toward the end of the discussion, a question of another sort popped onto the screen, "What happens if we don't comply?"

At Calvin, an echo: "It'd probably be cheaper to just take the fine."

From what little information he had, Henry DeVries II, Calvin vice president for administration, finance and information services, prepared himself to walk into a budget meeting later that afternoon with the proclamation that the school could be faced with a minimum \$1 million upgrade to its IT infrastructure.

"I have about 45 days to build this into the budget, and every single dollar is going to come out of someone's tuition," DeVries said.

For the fiscal year beginning July 1, 2006, DeVries had earmarked \$4.5 million for the IT department, roughly \$250,000 of that amount for equipment upgrades. The \$1 million guess — four times normal expenditures — assumes that the school would need to replace all network routers and switches.

Under that same scenario, Terry Hartle

of the American Council on Education (ACE), who called the new rules the "mother of all unfunded mandates," estimated the cost nationally at over \$7 billion.

How accurate that assumption is, no one knows.

"I've never seen anything like this," Carlson said. "You get a sense of confusion surrounding this that is really quite amazing."

The 1994 passage of the Communications Assistance for Law Enforcement Act (CALEA) required telephone companies to rewire networks and switches to facilitate court-authorized wiretaps by law enforcement agencies. The law did not initially apply to Internet service providers, but at the request of the Justice Department, the FCC expanded the law's scope this past August, with no guidance as to how ISPs, educators, libraries, airports, municipalities or any of a host of other entities offering broadband Internet access should comply.

Since then, the ACE filed a lawsuit in the U.S. Court of Appeals in Washington, D.C., asking the court to overturn the regulations.

It is joined in the legal action by the Center for Democracy and Technology, the Electronic Frontier Foundation and a host of nonprofit organizations and ISPs.

The group's complaint is multifaceted. Beyond the cost and administrative burden the regulation places on providers, including the 17-month compliance time-

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Telecommunications Act Rewrite Angers All

*Unless You're
An ILEC Such
As AT&T*

By Daniel Schoonmaker

LANSING — There might be no greater testament to the political impact and lobbying efforts of an industry than the number of angered constituents the passage of a major piece of legislation can produce.

Take, for instance, the rewrite of the set of bills commonly known as the Michigan Telecommunications Act. With the notable exception of incumbent telecommunication providers such as AT&T (formerly SBC Communications) — which dished out \$139,965 to 339 state campaigns in 2004 and roughly \$350,000 over the past three election cycles, according to The Center for Public Integrity — the legislation was all but universally despised.

"Our challenge was that the Michigan Telecommunications Act was, in my opinion, not clearly thought out," said Vic Shepherd, CEO of Grand Rapids ISP and technology firm Iserv Technology Group. "This clearly favors the Bell companies. In the future, if enacted the way it is currently written, it will put a crimp on competition and force people like us to raise our rates."

Plus, he believes it is going to hurt people in outlying areas — where it's tough to get any type of telecommunication as it is — and "is clearly the result of the huge budget figures for lobbyists to influence the writing of law."

"The shame is (that) Michigan was really leading the country in its ground-

breaking thought process toward open competition," he said. "This will significantly curtail that."

Shepherd spent a fair amount of time in Lansing this fall speaking to senators and representatives about his views, particularly about one provision concerning a product called virtual NXX that could have a tremendous impact on his company.

Iserv has local phone numbers across the state that allow customers to call its Grand Rapids headquarters locally and not incur a long-distance charge. Called virtual NXX, the practice consists of using a code (called an NPA-NXX code) at a local Incumbent Local Exchange Carrier (ILEC) exchange.

The Competitive Local Exchange Carrier (CLEC), often an ISP such as Iserv, then leases dedicated transportation facilities to its primarily locations. Iserv ends up paying only for the cost of transporting the numbers back to Grand Rapids. This is why the competitive exchange carriers often have so many NXX codes, so they can be local to many different locales.

However, the ILECs such as AT&T argue that virtual NXX is actually a long-distance call.

"They'd like to levy a long distance call on people like Iserv or the end user," Shepherd said. "That's ridiculous in my mind."

As the telecommunications act is written, ILECs could begin assessing fees as early as January 2008, even though the Michigan Public Service Commission has ruled nine times that the ILECs incur no additional cost from the use of virtual NXX.

Virtual NXX wasn't nearly the most controversial of ILEC wins. That was the decision to completely deregulate the price of most telephone service. Normal

consumer protections remain, but as of March, the commission will no longer set prices.

"It's a step backward," said Bill Knox, lobbyist for AARP Michigan.

According to the commission, under current law it regulates rates for various kinds of call plans, as well as wholesale line rates for CLECs. Under the new law, only the 100-call plan will be regulated. Small businesses have no rate regulation in any plan.

"The argument is that people are going to cell phones in droves," Knox said. "That's basically foolish when you're talking about older people. And No. 2, businesses can't operate using cell phones."

So, Knox argues, small businesses, senior citizens and rural residents, where cell phone coverage is spotty, are especially subject to rate increases.

"There is this argument that it could promote the use of new technology," Knox said, referring to Voice over Internet Protocol (VoIP). "The law doesn't regulate any technology other than landline, so that argument seems to be kind of bogus."

Knox expects rates will remain steady until the 2006 election, after which he predicts a steady rise.

With the advent of landline competition, local phone rates plummeted from 2000-2005. In 2000, \$40 barely covered the cost of a standard local plan. Today, an unlimited local and long-distance call plan is roughly the same price.

But because of an 11th-hour compromise, the CLEC trade association, the Michigan Alliance for Competitive Telecommunications, took a neutral position on the law.

"We'll be watching very closely to what happens after Jan. 1 to Michigan's telecommunication system," said association spokesman David Waymire. "There

are some that are concerned that a lack of competitive landline competition will allow huge increases in phone rates. But it may also spur new forms of telecommunication services; we'll have to wait and see."

Of local note is a provision that prohibits municipalities from providing telecommunication service. For any project not under way by Nov. 1, the municipality must accept bids for any such project to be privately owned and operated. Only if there are less than three bids can the municipality proceed with a self-contained project.

This halts several initiatives across the state that, unlike the majority of those in West Michigan, had intended to establish nonprofit authorities to own and operate wireless broadband Internet networks.

Joe Fivas, manager of state and federal affairs for the Michigan Municipal League, said local residents and communities should be able to petition their local government to provide certain services. The most disconcerting part of the bill, he said, is that there were communities that had already invested money into feasibility projects.

"It's not good policy to ask local governments to be more efficient and effective and pass a bill that essentially wastes their money," he said.

Fivas doesn't agree with the argument of telecommunication companies against competition from local governments because, he said, no government would invest in such an initiative unless asked to by its businesses and residents.

"Clearly SBC and Verizon don't want that kind of competition coming in," said Waymire of the trade association. "It could make it easier to do VoIP phones ... and (ILECs) strongly opposed that wherever they could. So did cable companies, obviously." BJ

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