



FCC Preempts State Decisions Forcing Bells to Provide DSL Broadband to Consumers of “Unbundled” Voice Services

-- Commission Opens Inquiry into Tying or Broadband with Other Services --

March 28, 2005

On March 25, 2005, the Federal Communications Commission (“FCC” or “Commission”) released an order preempting state commission decisions that require Bell companies to allow competitive carriers to provide unbundled voice service over Bell DSL lines.

Specifically, the Commission found that its existing unbundling rules preempt state decisions that effectively require the Bells to provide DSL service to consumers over unbundled loops leased by competitors. In so doing, the FCC noted that its rules require competitors to purchase “exclusive access” to unbundled network elements, and a state decision requiring a Bell company to provide DSL over an unbundled loop would violate that rule.

By constraining its decision to an “unbundling” analysis, the Commission was able to punt issues associated with the provision of “naked DSL” – standalone DSL, free from voice service (and other services) – to a “notice of inquiry.” As part of the notice of inquiry, the Commission is seeking comment on whether and to what extent the tying of DSL service (and other forms of broadband, such as cable modems) to other services is harmful to competition, particularly to independent VoIP service providers, such as Vonage.

Given recent FCC action to materially restrict unbundling, it is unlikely the FCC’s order in this proceeding will provide much additional help to the Bells, or create much additional harm to competitors. The impact issues are teed-up in the notice of inquiry and stand to substantially affect independent service providers. That said, because the Commission is under no obligation to resolve the controversial issues outlined in the notice of inquiry, no decision is expected quickly.

Please contact Mike Hazzard (202.857.4540) or Ross Buntrock (202.857.4479) if you have any questions regarding this advisory.