



FCC Releases Wireline Broadband Reclassification Order Eliminating Sharing Obligations on ILECs' Wireline Broadband Internet Access Services

Unaffiliated ISPs Have One Year to Transition to New Arrangements

September 26, 2005

Late on Friday, September 23, 2005, the Federal Communications Commission ("FCC" or "Commission") issued the text of its long-awaited Wireline Broadband Reclassification Order and Notice of Proposed Rulemaking ("Order"), which was adopted on August 5, 2005.

Background

The Order was promptly adopted following the Supreme Court's decision in *NCTA v. Brand X* (see WCSR advisory June 28, 2005), which upheld the FCC's classification of cable modem services as "information services," thereby exempting them from the obligations of Title II of the Communications Act, which imposes numerous obligations, including the requirement to file federal tariffs, the requirement to interconnect with other carriers, and the obligation to pay a percentage of revenues into the Universal Service Fund ("USF").

Key Points

The Order essentially relieves the Bell Operating Companies ("BOCs") from the Title II obligations imposed upon the transmission services that unaffiliated Internet Service Providers ("ISPs") like AOL and Earthlink lease from them.

The FCC took no action to impact commercial arrangements between BOCs and ISPs. In eliminating regulations, however, ISPs will have greatly reduced negotiating leverage going forward. Indeed, the Order's greatest impact is upon ISPs like AOL and Earthlink, who do not own their own facilities and who rely upon transmission paths leased from the BOCs in order to reach their end-user customers.

The Order supercedes the 30-plus year-old precedents set forth in the Commission's line of "*Computer Inquiry*" decisions, which required the BOCs to provide tariffed, non-discriminatory access transmission arrangements.

In eliminating these requirements across the board, the FCC relied upon changed market conditions, technological advances and the desire to promote facilities-based wireline providers of broadband Internet access. The FCC also expressed a desire to maintain an even regulatory playing field for broadband between cable operators and incumbent telephone companies.

Although the BOCs sought the relief enjoyed by the cable companies as quickly as possible, the FCC gave the unaffiliated ISPs one year from the effective date of the Order – likely sometime in mid October 2006 – to negotiate new contracts with the

Bells or make other arrangements in order to continue serving their customers.

Interim Rules Going Forward

The FCC took the following actions to maintain some portions of the *status quo* with respect to the BOCs obligations associated with provision of wireline broadband access services:

- The FCC held that CLECs are still able to purchase UNEs under Section 251(c)(3) of the Act, including UNE loops used to provide stand-alone DSL telecommunications service, regardless of the statutory classification of the service the ILECs provides over those same facilities;
- For 270 days, pending resolution of the FCC's *USF contribution Methodology* proceeding, facilities-based providers must continue to contribute to existing universal service support mechanisms and to NANPA funding mechanisms established by the FCC;
- In a separate order released on September 23, the FCC concluded that providers of facilities-based broadband Internet access services and interconnected VoIP services are subject to CALEA obligations;
- The FCC concluded that the reclassification of wireline broadband Internet access services will not affect obligations of providers under:

the USA Patriot Act; the National Security Emergency Preparedness Telecommunications Service Priority System; the Network Reliability and Interoperability Council; and the disability access provisions of Section 255 of the Act pursuant to the FCC's exercise of its ancillary jurisdiction under Title I.

The operational details of the FCC's 86-page, single-spaced order are complex, and individual companies should seek advice to determine company and/or industry-specific impact.

If you have any questions regarding the order please contact Ross Buntrock (rbuntrock@wcsr.com; (202)857-4479) or Mike Hazzard (mhazzard@wcsr.com; (202) 857-4540).

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