

Wireline Broadband Internet Access Services Reclassified As Information Services

In an open meeting held August 4, 2005, the 4-member Federal Communications Commission (“FCC” or “Commission”) unanimously adopted an order reclassifying wireline broadband Internet access services as information services, thereby placing wireline broadband Internet access services within the same general regulatory framework as cable modem services. As an information service, wireline broadband Internet access no longer is subject to regulation under Title II of the Communications Act of 1934, as amended, or the FCC’s *Computer Inquiry* rules, but is subject to specific obligations imposed under Title I of the Act.

More specifically, the Commission held:

- Facilities-based providers of wireline broadband Internet access services no longer are obligated to offer the underlying broadband transmission component of their services on an unbundled basis to unaffiliated information service providers, subject to a one-year transition period.
- The one-year transition period will allow information service providers that currently rely on the unbundled broadband transmission component of wireline broadband Internet access to transition to other arrangements.
- Providers of wireline broadband Internet access services may offer

those services on a common carrier basis, a negotiated basis, or both.

- Providers of wireline broadband Internet access must continue to contribute to the federal universal service fund (“USF”) based on their current level of revenues from the transmission component of Internet access offerings for 270 days from the effective date of the FCC’s order or the date a new universal service rule takes effect, whichever occurs first. (Several Commissioners noted that the FCC may choose to extend the 270-day period and/or extend the base of entities required to contribute to USF as necessary to protect the fund).
- Wireline broadband Internet access providers and interconnected VoIP service providers are subject to the requirements of CALEA.

Further, the FCC voted to issue a Notice of Proposed Rulemaking (“NPRM”) to address the appropriate non-economic, consumer protection requirements to apply in the future regardless of the technology used to afford access to the Internet. The issues to be addressed in the NPRM include, among other things, privacy, truth-in-billing, rate averaging, and access by individuals with disabilities. It appears that the Internet “open access” issue so critical to competitors also will be addressed in the NPRM.

Finally, the Commission adopted a “Statement of Principles” to guide the industry. Based on comments by Commissioner Capps at the open meeting, the Statement of Principles likely will include discussion of, among other things, homeland security, access by persons with disabilities, and promotion of universal service. Importantly, ensuring continued access to facilities and interconnection by fledgling competitors and protecting against unfair discrimination also reportedly will be addressed in the Statement of Principles.

Until the Commission releases the text of the decision, many important details regarding the decision (including, for example, the impact reclassification of wireline broadband Internet access may have on current intercarrier compensation and USF support rules) will remain unclear. We will update you as further details of the action taken today become available. In the interim, if you have any questions, please feel free to contact us.

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