

FCC Establishes New Regulatory Framework For Wireline Broadband Internet Access Service

On Friday, September 23, 2005, the FCC issued its Report and Order and Notice of Proposed Rulemaking in its Wireline Broadband proceeding.¹

- ▶ The FCC determined that facilities-based wireline broadband Internet access service ("BB Internet access service") is an information service that is not subject to Title II regulations imposed on telecommunication services. The FCC also eliminated any existing *Computer Inquiry* requirements on BB Internet access service.
- ▶ The FCC's new regulatory classification of BB Internet access service will not impact CLECs' ability to access UNEs under section 251 of the Act and the FCC's rules.
- ▶ Facilities-based wireline carriers are permitted to offer transmission arrangements for wireline broadband Internet access services (e.g., DSL) on a common carrier basis or a non-common carrier basis.
- ▶ BB Internet access service providers must grandfather existing transmission arrangements for a period of one year from the effective date of the Order.
- ▶ BB Internet access service providers must continue to make universal service contributions for a 270-day period pending resolution of the *USF Contribution Methodology* proceeding.

- ▶ The FCC's Notice of Proposed Rulemaking seeks comment on whether, under the new regulatory framework, regulations are required to address consumer protection matters previously regulated under Title II.

New Regulatory Framework for BB Internet Access Service

The FCC determined that BB Internet access service is an information service, and that continued application of the *Computer Inquiry* requirements to those services is no longer appropriate. Accordingly, the FCC relieved facilities-based wireline providers of BB Internet access service of all Title II and *Computer Inquiry* requirements, subject to a one-year transition period designed to protect unaffiliated ISPs that currently rely on transmission arrangements for wireline broadband Internet access services (e.g., DSL) offered on a common carrier basis.

The scope of the FCC's Order is limited only to wireline BB Internet access service and its underlying transmission component, whether that component is provided over all copper loops, hybrid loops or other types of wireline facilities and whether the component is provided using circuit-switched, packet-based or any other switching technology. The regulatory framework established in this Order does not apply to Internet access serv-

ices provided over cable, wireless or power line networks.

Facilities-based wireline BB Internet access service providers may choose to provide the underlying transmission component to unaffiliated entities on a common carrier or non-common carrier basis. However, the FCC specified that such providers may not simultaneously offer the same type of transmission arrangement on both a common carrier and non-common carrier basis. If a provider chooses to offer the transmission component on a common carrier basis, it may do so on a permissive detariffing basis by posting its rates, terms and conditions on its website and keeping physical copies of its rates, terms and conditions at one of its places of business.

Continued Availability of UNEs Under Section 251 of the Act

The FCC held that the new regulatory classification of BB Internet access service as an information service will not affect a CLEC's ability to access UNEs under section 251 and its implementing rules. The FCC stated that as long as the CLEC is offering an "eligible" telecommunications service (*i.e.*, not exclusively long distance or mobile wireless service), it may continue to have the same access to UNEs that it is otherwise entitled to receive.

Transition Plan

Facilities-based wireline BB Internet access service providers must grandfather existing transmission arrangements for a period of one year from the effective date of the Order. If these arrangements are provided through a tariff, the provider may retain the tariff for one year or cancel the tariff pursuant to normal tariff cancellation procedures and honor the arrangements in another manner. Non-tariff arrangements must also be honored for

one year, but may expire during the transition period if they would otherwise expire under the pre-existing terms.

The FCC granted facilities-based wireline BB Internet access service providers a blanket certification, pursuant to section 214 of the Act, to discontinue providing existing customers common carrier transmission services. This discontinuance may occur at the end of the transition plan or earlier if all of the grandfathered customers are transitioned to some other type of service arrangement. To effectuate the discontinuance, BB Internet access service providers must provide advance notice to their customers, which must include the company name, address, date of planned discontinuance, geographic area to be discontinued and a description of the service to be discontinued. After customer notice has been sent and at least 30 days prior to the date service will be discontinued, notice must be filed with the FCC.

In addition to the grandfathering requirement, BB Internet access service providers are required to contribute to Universal Service, NANPA and TRS for a period of 270 days from the effective date of the Order. If new Universal Service contribution rules are not completed with 270 days, the FCC may extend the 270-day period or expand the contribution base. Moreover, BB Internet access service providers must report, on the FCC's Form 499-A, the revenue associated with the transmission component as of the effective date of the Order for an additional 270-day period for purposes of contributing to the TRS fund for that same 270-day period.

Impact of New Regulatory Framework on Existing Obligations

The FCC exercised its Title I authority in order to reduce the impact of the new regulatory framework on existing obligations. For example, providers of BB Internet access service will remain subject to:

- ▶ accessibility policies for persons with disabilities embodied in section 255(c) of the Act;
- ▶ the Commission's enforcement rules designed to prevent anti-competitive conduct;
- ▶ the CALEA requirements;²
- ▶ the rules implementing the National Security Emergency Preparedness; Telecommunications Priority (TSP) System; and
- ▶ the Part 64 cost allocation rules.

The FCC also clarified that the new regulatory framework will not impact application of the USA Patriot Act or its Network Reliability and Interoperability rules.

Notice of Proposed Rulemaking

The FCC seeks comments on whether it should impose other regulations on BB

Internet access service providers to address customer protection matters previously regulated under Title II. These consumer issues include, CPNI, Slamming, Truth-in-Billing, Network Outage Reporting, Section 214 Discontinuance, rate averaging, federal and state involvement and enforcement options. The FCC seeks further comment on whether these consumer issues are more or less relevant for BB Internet access service than traditional telephony service and whether these consumer matters could be adequately addressed through market forces. Comments are due 90 days after publication in the Federal Register and reply comments are due 135 days after publication in the Federal Register.

Endnotes

1. *In the Matter of Appropriate Framework for Broadband Access to Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, CC Docket No. 02-33, FCC 05-150 (Sept. 23, 2005).
2. The FCC addresses the impact of its broadband regulations on CALEA in a separate order issued on September 23, 2005 in ET Docket No. 04-295.

For more information
please contact:

Todd D. Daubert
(202) 955-9788
tdaubert@kelleydrye.com