

UTILITIES AND TELECOMMUNICATIONS ALERT

THE FCC SEEKS COMMENT REGARDING IP-TECHNOLOGY TRANSITION

The Federal Communications Commission (“FCC” or “Commission”) recently released a Notice of Proposed Rulemaking and Declaratory Ruling (“NPRM”) focusing on the transition from networks based on time-division multiplexed (“TDM”) circuit-switched voice services to those relying on an all-Internet Protocol (“IP”) infrastructure. Because of the far reaching effects of the transition to IP technology, the NPRM seeks comments on a wide range of topics. However, this proceeding will be of specific interest to any competitive provider who relies on other providers’ last-mile facilities.

In particular, FCC identified the following three goals as its primary focus:

- Ensuring reliable back-up power for consumers of IP-based voice and data services across networks that provide residential fixed service that substitutes for and improves upon the kind of traditional telephony used by people to dial 911;
- Protecting consumers by ensuring they are informed about their choices and the services provided to them when carriers retire legacy facilities (*e.g.*, copper networks) and seek to discontinue legacy services (*e.g.*, basic voice service); and
- Protecting competition where it exists today, so that the mere change of a network facility or discontinuance of a legacy service does not deprive small- and medium-sized business, schools, libraries, and other enterprises of the ability to choose the kinds of innovative services that best suit their needs.

The Commission’s first goal is intended to ensure reliable access to emergency and other communications services when electrical power to a residence or other customer location goes out. When commercial power sources fail, it often is in times of weather-related or manmade disasters, which is the very same time that consumers are most likely to need to call for emergency services. In the past, consumers became accustomed to retaining the ability to use their landline phones even without power. However, with today’s IP-based services and new network facilities, consumers’ CPE generally requires a backup power source such as batteries in the event of a power outage in order to ensure continuity of communications. Thus, the Commission is seeking comment on rules that the Commission could implement to promote continuity of residential communications throughout a power outage.

The Commission’s second goal focuses on providing information and protection for consumers as networks and services change. First, the Commission asserts that that IP-based and other new retail services must meet consumers’ fundamental needs before it will allow a carrier to remove legacy services from the marketplace. Similarly, the Commission specifically noted that it would like to implement rules ensuring that consumers have sufficient information to make informed choices as technologies transition.

With respect to its third goal, the Commission emphasized that consumers are not the only stakeholders with which it is concerned. The Commission noted that competition for enterprise communications services is currently supplied by both incumbent carriers and competitive carriers. To provide choices to business and non-profit customers, competitive carriers must rely on a combination of their own facilities and the purchase of last-mile facilities and services from the incumbent carriers, such as unbundled

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copper loops and special access services. Thus, the Commission warned incumbents that “technology transitions should not be used as an excuse to limit competition.” Despite this, the Commission asserted that it will not currently seek to impose any new wholesale access obligations on incumbent carriers.

However, the Commission did take several steps to protect competitive carriers. First, the Commission stated that it would consider updating the nature and process by which incumbent LECs notify interconnecting carriers of planned copper retirements. Second, the Commission recognized that as incumbents move to turn off legacy services, competitive carriers could face the prospect of having no access to critical inputs, at least not on reasonable terms and conditions. Thus, the Commission is comment regarding a proposed requirement that in order to receive authority to discontinue, reduce, or impair a legacy service that is used as a wholesale input by competitive providers, an incumbent LEC must commit to providing competitive carriers with equivalent wholesale access on equivalent rates, terms, and conditions. The Commission is also specifically seeking comment regarding six potential guidelines for it to use when evaluating future replacement offerings:

1. Price per Mbps Shall Not Increase;
2. A Provider’s Wholesale Rates Shall Not Exceed Its Retail Rates;
3. Basic Service Pricing Shall Not Increase;
4. Bandwidth Options Shall Not Be Reduced;
5. No Backdoor Price Increases; and
6. No Impairment of Service Delivery or Quality.

Parties that wish to provide an initial comment must do so by February 5, 2015 and reply comments are due by March 9, 2015. The full text of the NPRM can be found [here](#). Obviously, as noted above, any competitive provider who relies on incumbents’ last-mile facilities to provide their own service should be particularly interested in this proceeding.

If you have any additional questions regarding the above or if you are interested in further advocacy with respect to these issues, please contact Jim Falvey at 202.659.6655 (jfalvey@eckertseamans.com), or Rob Gastner at 202.695.6674 (rgastner@eckertseamans.com).

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