



Evolving Federal Communications Policies - Recent FCC Decisions and Policy Initiatives Affecting Local Government and What to Expect from the FCC in the Coming Year Regarding Broadband Services Provided by Wireline Telecommunications Carriers and Cable Operators

**Local Broadband Regulation & Deployment
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By Chérie R. Kiser



Goals for Broadband Deployment

- **Congressional goals for broadband deployment**
 - Section 706: encourage the rapid deployment of advanced services
 - Section 230: “to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation”
- **Presidential goals for broadband deployment**
 - 2004 directive that the mandates of the Act, requiring “the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans” be fully implemented by 2007, with “broadband technology to every corner of our country by the year 2007”
- **State commission goals for broadband deployment**
 - January 2007 NARUC resolution

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FCC Takes Steps to Create a National Policy on Broadband Deployment and Internet Access

- **Key FCC decisions designed to meet Congressional and Presidential goals**
 - Cable Modem Order
 - pulver.com Order
 - Vonage Order
 - Wireline Broadband Order
 - Broadband Consumer Protection Notice
 - Broadband Policy Statement
 - Forbearance Petitions
 - Cable Franchising



Key FCC Decisions

March 2002 - Cable Modem Order

- **FCC determines cable modem service is an interstate information service**
- **FCC recognizes that cable modem service is provided over facilities of cable systems that occupy the public rights-of-way in local communities and is provided by cable operators that are subject to local franchising requirements and to state consumer protection and customer service standards**
- **FCC seeks comment on application of state and local government regulations to cable modem service because of concerns that state and local regulation of cable modem service might limit the ability of the FCC to achieve its national broadband policy goals**

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Key FCC Decisions (cont'd)

February 2004 - pulver.com Order

- **FCC determines pulver.com's Free World Dialup service is an interstate information service**
- **FCC finds assertion of federal jurisdiction over Free World Dialup was consistent with the national policy of nonregulation and would facilitate the further development of Internet applications, which would, in turn, encourage more consumers to demand broadband service**



Key FCC Decisions (cont'd)

November 2004 - Vonage Order

- **FCC finds Vonage's service is interstate and preempts the Minnesota PUC's entry requirements**
 - Ruling extends to other IP-enabled services that have the same basic characteristics as Vonage's service: (1) a requirement for a broadband connection from the user's location; (2) a need for IP-compatible CPE; and (3) a service offering that includes a suite of integrated capabilities and features able to be invoked sequentially or simultaneously, that allows customers to manage personal communications dynamically, including enabling them to originate and receive voice communications and access other features and capabilities, even video
- **FCC determines decision to preempt is consistent with the national policy of nonregulation of the Internet and will drive consumer demand for broadband connections thereby encouraging more broadband investment consistent with its national goals**
- **Appeal pending in 8th Circuit**

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Key FCC Decisions (cont'd)

September 2005 - Wireline Broadband Order and Broadband Consumer Protection Notice

- FCC determines that wireline broadband Internet access service is appropriately classified as an interstate information service
- FCC's goal is to “promote the availability of competitive broadband Internet access services to consumers, via multiple platforms, while ensuring adequate incentives are in place to encourage the deployment and innovation of broadband platforms” consistent with the FCC's national policy goals
- FCC seeks comment on the consumer protection rules that should apply in the broadband age while remaining consistent with the national policy framework for broadband services, including:
 - Privacy requirements similar to the Act's CPNI requirements; anti-slamming requirements; truth-in-billing requirements; network outage reporting requirements; rural and urban rate parity policies; and the role of the states

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Key FCC Decisions

September 2005 - Broadband Policy Statement

- **FCC intends policy statement to set forth the FCC’s “approach to the Internet and broadband that is consistent with . . . Congressional directives”**
- **FCC indicates it will incorporate the principles into its ongoing policymaking activities**
- **FCC adopts the following principles to encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet:**
 - Consumers are entitled to access the lawful Internet content of their choice
 - Consumers are entitled to run applications and use services of their choice, subject to the needs of law enforcement
 - Consumers are entitled to connect their choice of legal devices that do not harm the network
 - Consumers are entitled to competition among network providers, application and service providers, and content providers

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Key Decisions (cont'd)

March 2006 - Verizon Forbearance Decision

- **Verizon sought forbearance from Title II and *Computer Inquiry* access requirements for its high-speed data services (Verizon did commit to continue contributing to the universal service fund on revenues generated from the provision of these services to end users)**
- **Verizon's request was granted by operation of law after expiration of the statutory period**
- **Chairman Martin and Commissioner Tate state that allowing Verizon's petition to take effect was "another step in establishing a regulatory environment that encourages [broadband] investments and innovation"**
- **Other carriers have similar requests pending**
 - FCC staff has indicated that the "primary driver" of the 2007 agenda may be the numerous pending petitions - Qwest



Key Decisions (cont'd)

December 2006 - Cable Franchising

- FCC adopts rules governing the franchising process for “competitive” franchises (*i.e.*, franchises issued to telephone companies such as Verizon and AT&T that are entering the video market to compete with incumbent cable operators)
- FCC preempted any local laws, regulations, and requirements to the extent they impose greater restrictions on market entry than the rules adopted by the FCC
- FCC’s goal is to create “a regulatory environment that promotes broadband deployment”
- FCC seeks comment on whether same principles adopted for “competitive” franchises should apply to incumbent franchisees

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Continuing to Meet Broadband Goals in 2007

- **Commissioner Copps has stated that the goal of having universal broadband access by 2007 has provided a failure and that “the FCC needs to do more to make sure broadband technology is available across the country”**
- **Resolution of pending proceedings provides the FCC the opportunity to continue to meet its broadband goals:**
 - Universal service
 - Intercarrier compensation
 - Time Warner Cable petitions
 - IP-enabled services



Continuing to Meet Broadband Goals in 2007

(cont'd)

Universal Service

- Chairman Martin expects the FCC to make progress on reform of universal service in 2007, but the direction the agency will take depends on outcome of interconnected VoIP appeal and reverse auctions decision
- FCC has recognized that universal service issues are important to the deployment of broadband facilities in rural areas, including for rural health care providers, and in the nation's schools and libraries

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Continuing to Meet Broadband Goals in 2007

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Universal Service (cont'd)

- **Interconnected VoIP appeal**

- In June 2006, the FCC determined that interconnected VoIP providers were required to contribute to universal service based on (1) interim safe harbor of 64.9%; (2) actual interstate/international end user revenues; or (3) pre-approved traffic study
- Use of actual revenues may eliminate *Vonage* preemption
- Appeal pending in DC Circuit claiming that FCC actions were arbitrary and capricious
- States using FCC statements to support appeal of *Vonage Order*

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Continuing to Meet Broadband Goals in 2007

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Universal Service (cont'd)

- **Reverse Auctions**

- FCC contemplating allowing competitive bidding for the obligation to serve a specified area at an acceptable quality of service for a specified term, with the benefit of receiving universal service support to do so
- Auction used to determine the amount of high cost universal service funding to be provided to ETCs
- FCC questions appropriate role of state commissions in the administration of the auction process, the oversight of winning bidders, and the distribution of funds

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Continuing to Meet Broadband Goals in 2007

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Intercarrier Compensation

- FCC tentatively concludes that carriers should move to a unified regime for all intercarrier compensation payments
- Missoula Plan
- Possible preemption of state authority over intrastate access payments
- FCC's goal is to create a regime that "encourages the efficient investment in, and deployment of, network infrastructure, including investment in broadband infrastructure" while ensuring that the regime is technologically and competitively neutral

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Continuing to Meet Broadband Goals in 2007

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Time Warner Cable Petitions

- **TWC Petition for Preemption**

- Asks FCC to preempt the South Carolina PSC's refusal to grant TWC's affiliate (TWCIS(SC)) an expanded CPCN to offer services in geographic areas served by RLECs
- RLECs refuse to interconnect with TWCIS(SC) because it is not certificated in the RLEC area

- **TWC Petition for Declaratory Ruling**

- Asks FCC to find that telecommunications carriers are entitled to interconnect with ILECs, in particular RLECs, for the purpose of selling telecommunications services to VoIP service providers

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Continuing to Meet Broadband Goals in 2007

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IP-Enabled Services

- **FCC issues NPRM to address legal and regulatory framework for IP-based services, including VoIP services**
 - Seeks to categorize different IP-based services
 - Asks how each category should be classified
 - Asks what, if any, regulations should apply to each category
- **FCC recognizes that IP-enabled services generally, and VoIP services in particular, will encourage consumers to demand more broadband connections**
- **FCC staff has indicated that this proceeding is on agenda for 2007 because “carriers are interested in getting some conclusive determinations as to the classification of their services”**

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Questions?

Chérie R. Kiser

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

701 Pennsylvania Avenue, NW

Suite 900

Washington, DC 20004

Phone: 202-434-7325

Cell: 202-329-6796

E-mail: crkiser@mintz.com

Web site: www.mintz.com

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