Before the
Federal Communications Commission
Washington, D.C. 20554

Comments - NBP Public Notice #25	)))	GN Docket Nos. 09-47, 09-51 and 09-137

I. INTRODUCTION

On December 1, 2009, the Federal Communications Commission (FCC) published a Public Notice seeking comment on the transition from a circuit-switched network to an all-IP network. In its request for comments, the FCC did not seek policy assertions, conclusory arguments, or self-serving statements. Rather, the FCC sought identification of the appropriate areas of inquiry that should be considered in any Notice of Inquiry relating to this transition.

In the following comments, the Oklahoma Corporation Commission, Public Utility Division (OCC-PUD-PUD) identifies several possible areas of inquiry. In suggesting these several areas of inquiry, the OCC-PUD does not express any opinion or commit to a particular policy. The OCC-PUD suggests these areas of inquiry in the spirit of understanding the policy issues facing federal regulators, state regulators, industry and consumers in said transition.

II. FEDERAL PREEMPTION

One important area of inquiry is the scope and breadth of federal preemption over state regulation of wireless and IP telecommunications. During the infancy of the wireless and IP telecommunications, the FCC insulated wireless and IP telecommunications from state regulation. At the same time, the public-switched networks, that are integral to the distribution of wireless and IP telecommunications, were subject to state regulation. This inequality of regulation led to competitive and other financial advantages for wireless and IP telecommunication providers.

The FCC should consider the appropriate level of federal preemption over wireless, IP, and wireline telecommunications. The FCC should consider whether the lack of state regulation in one telecommunications sector, like wireless or IP, gives that sector a competitive or financial advantage over other telecommunications sectors. The FCC should consider the advantages of state regulation; like local expertise and manpower, the availability of local regulators to resolve consumer complaints and carrier disputes, and the fair regulatory treatment of small carriers without a significant presence in Washington D.C. The FCC should not limit its analysis to the disadvantages of state regulation often articulated by large national carriers.

The FCC should consider whether consumers and small telecommunications carriers would benefit if states are permitted to regulate the intrastate components of wireless and IP, as well as, wireline telecommunications. Of course, some states may not want to regulate wireless or IP

services. Wherefore, the FCC should also consider establishing a boiler-plate set of federal regulations for states that choose not to regulate wireless, IP, and wireline telecommunications even if permitted to do so by federal authorities.

A. Consumer Protection

Consumer protection covers a broad category of topics. The FCC should consider whether it has the resources and manpower to adequately address the consumer complaints and the disputes between consumers and telecommunications carriers.

At the state level, individual consumer complaints are generally handled quickly and efficiently. In some instances, the state regulator simply explains an issue to a consumer and the consumer is satisfied with the better understanding. In other instances, an issue is resolved with a few phone calls and an email to the carrier. In a few instances, an issue is resolved with official action.

One common complaint of federal oversight is that individual consumer complaints are rarely resolved. Generally, the FCC considers implementing a policy to restrict the abusive industry practice rather than addressing individual complaints. Unfortunately, the adoption of a new consumer protection policy is a time-consuming and arduous process.

The FCC should consider the appropriate role for state regulators in addressing consumer protection issues for wireless and IP telecommunications. The FCC should also consider whether state regulators have sufficient tools to enforce consumer protections over wireless and IP telecommunications. Of course, some states may not want to regulate wireless or IP services. Wherefore, the FCC should also consider establishing a boiler-plate set of federal regulations for states that choose not to regulate wireless, IP, and wireline telecommunications even if permitted to do so by federal authorities.

1. Certificates of Convenience and Necessity

State Certificates of Convenience and Necessity (CCNs) are generally required for wireline carriers but are prohibited for wireless and IP carriers as barriers to entry into the telecommunications marketplace. While the OCC-PUD agrees that CCNs are barriers to entry, CCNs serve other purposes that are important for consumer protections. The FCC should consider whether state regulators could be permitted to require CCNs, in some form, of wireless and IP carriers.

CCNs permit state regulators to compile an accurate list of telecommunications carriers operating within state boundaries. The requirement that a telecommunications carrier possess a CCN gives the state regulator the authority and power to enforce rules, punish bad actors, to require regular reporting, to ask questions, and to obtain a general understanding of the telecommunications marketplace within the state. The FCC should consider whether allowing states to require CCNs of wireless and IP carriers would improve consumer protection.

2. Tariffs

State tariffs are generally required for wireline carriers but are prohibited for wireless and IP carriers. Tariffs are reviewed by state regulators and insure fair and equitable treatment of consumers. The FCC should consider whether state regulators should be permitted to require tariffs, in some form, of wireless and IP carriers to enforce federal and state consumer protection standards.

3. Early Termination Fees

Excessive early termination fees (ETFs) have confounded federal regulators for years. The FCC should consider whether some concrete restrictions on excessive fees might be appropriate. The FCC might also consider what role state regulators might play in the enforcement of rules limiting excessive ETFs.

4. Long Term Contracts

Long Term Contracts restrict a consumer's ability to change carriers in the event a carrier does not provide the services or coverage promised. The FCC should consider whether some concrete restrictions on the use of long term contracts would be appropriate.

5. Quality of Service

The FCC should consider whether quality of service standards for wireless and IP telecommunications would be appropriate.

6. Public Safety

The FCC requires all wireless and IP carriers to provide 911 services. However, some local public safety officials (in Oklahoma) have complained that wireless and IP carriers do not fully cooperate with local officials and refuse to provide data in the form requested or fail to remit local 911 fees. The FCC should consider enhancing the public safety obligations of wireless and IP carriers.

7. Other Consumer Protections

The FCC should consider what other consumer protections are appropriate in the regulation of telecommunications. The FCC should consider the role of state regulators in the enforcement of consumer protections. The FCC should also consider what consumer protection standards can be applied to all telecommunications carriers in a technologically neutral manner.

B. State's Rights to Regulate Intrastate Telecommunications

Some portion of telecommunications is intrastate telecommunications and would properly fall within the jurisdiction of state regulators. The FCC should considering establishing "safe harbor" standards to determine the appropriate percentages of interstate and intrastate telecommunications traffic. The FCC should also consider the appropriate role of state regulators in the regulation of wireless, IP, and wireline telecommunications.

III. COMPETITION

At this time, competitors using different technologies to provide substantially identical services receive significantly different regulatory treatment. The networks provided by wireline carriers are regulated by states. The networks provided by wireless and IP carriers are not tyopically regulated by states. However, wireline networks are generally necessary for the distribution and transport of wireless and IP services. The FCC should consider equalizing the regulatory treatment between the various technologies so that the most efficient and effective technologies are given a fair chance to compete. Accordingly, the FCC should consider whether state regulation, contribution to state funds, fair compensation for traffic and related issues should be applied in a technologically neutral manner.

A. Interconnection by Competitors

As carriers with legacy PSTN facilities transition to all-IP networks, the FCC should consider whether competition will be harmed if requirements to interconnect with competitors are diminished as a result.

B. Access to Last-Mile Facilities by Competitors

As carriers with legacy PSTN facilities transition to all-IP networks, the FCC should consider whether competition will be harmed if competitors are denied access to last-mile IP-network facilities.

C. Compensation for IP Traffic.

The transition from a circuit-switched network to an all-IP network will reduce or eliminate traditional streams of revenue, like access revenue. The FCC should consider replacing those lost revenues with appropriate and economically practical compensation mechanisms. The FCC might consider implementing appropriate compensation mechanisms to reimburse carriers for the origination, termination, and transport of IP-traffic.

D. Network Neutrality / Network Management

The FCC should consider resolving the current debate over network neutrality.

IV. UNIVERSAL SERVICE

State universal service funds and other state telecommunications funds compliment the important public goals of the federal Universal Service Fund. In Oklahoma, state telecommunications funds promote universal service and 911 programs. State funding supplements federal USF funding for telemedicine, internet access for schools and libraries, and Lifeline services. However, wireline carriers and their customers bear the heaviest financial burden for contributing to state telecommunications funds.

The FCC should consider whether states may require all telecommunications carriers to contribute to state telecommunications funds in a technologically neutral manner. Specifically, the FCC should determine whether states may require IP carriers to contribute to state universal funds.

A. Support for Rural Carriers

One particularly important facet of state universal service funds is the support that state funds provide to small rural wireline carriers that serve rural communities. The FCC should consider the important role these small rural carriers play in the distribution of not just wireline telecommunications but also in the distribution of wireless and IP services. The FCC should consider whether sufficient funding mechanisms are in place to support the continued operations of rural carriers as circuit-switched networks transition to all-IP networks.

1. Support for Redundant Networks

Recent growth in the federal Universal Service Fund can, in part, be attributed to the support paid for constructing redundant and duplicative wireless networks in rural communities. Universal service support is necessary to provide telecommunications in rural communities because the cost of service exceeds the reasonable revenue that derived in those rural communities. The FCC should consider whether the construction of redundant and duplicative telecommunications networks in high-cost rural communities is a wise investment of universal service dollars.

2. Identical Support Rule

The FCC should consider whether the identical support rule should be eliminated. The FCC should consider whether recipients of universal support dollars should be reimbursed for actual and reasonable expenses.

B. Protection of Rural Consumers in BOC Service Territories / COLR

The FCC should consider whether consumers in rural communities served by the Bell Operating Companies (BOC) will suffer reduced access to telecommunications services if carrier of last resort obligations (COLR) are removed. IP networks do not currently reach many rural communities and in high-cost portions of the BOC service territories. IP networks

will not extend to high-cost rural communities of the BOC service territories unless there is an economic benefit or COLR obligation to construct such networks. The FCC should consider the impact on rural consumers and businesses if wireline services are eliminated along with COLR obligations and replaced with less expensive but less reliable wireless or wireless IP services.

V. CONCLUSION

The OCC-PUD appreciates the opportunity to provide comment on this important topic. The OCC-PUD hopes that the FCC will consider the issues identified in this comment and arrive a technologically neutral and competitively neutral transition that benefits consumers, especially highly vulnerable consumers in rural communities.

Bennett Abbott, Chief of Telecom
Oklahoma Corporation Commission
Public Utility Division
580 Jim Thorpe Building
P.O. Box 52000
Oklahoma City, OK 73152-2000

b.abbott@occemail.com
405-521-3570