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*FCC Broadband Policy: More Power For the Bell Monopolies*

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Abstract by Caroline Katz

The Federal Communications Commission (FCC ) has developed broadband initiatives such as the Wireline Broadband Notice which mistakenly deemed the transmission of broadband used to provide internet access to be “telecommunications” as opposed to a “telecommunications service.” This proposed rule in turn prevents broadband services from being regulated under the statutory framework governing telecommunications.

There has been a history of disparate regulation between of telephone carriers and cable operators. The importance of this difference regarding broadband services is cable operators’ broadband services (enhanced services) and networks are free from federal regulation, while telephone companies (basic services) are subject to federal regulation. This “basic/enhanced” distinction was maintained in the Telecommunications Act of 1996, but the terminology used in the Act was “telecommunications services” in place of “basic” and “information services” in place of enhanced. Before the Wireline Broadband Notice concluded that DSL transport is not a “telecommunications service,” the FCC had characterized it as such.

The FCC’s statutory interpretation of the terms “telecommunications” and “telecommunications service” is inconsistent with the 1996 Act. The distinction between providing and using used by the FCC is flawed. Basically, the FCC holds that telephone companies do not offer telecommunications directly to the public for a fee. This conclusion is erroneous because since the telephone companies are providing telecommunications capability to the internet service providers (the public for statutory purposes), they are providing a telecommunications service and therefore should be regulated.

The telephone companies’ arguments regarding regulation and unbundling obligations as hindering investments are based on faulty assumptions and generally unsupported. Additionally, the telephone companies’ call for regulatory parity is flawed as well, as they fail to see several fundamental differences between themselves and the cable industry, including incentive, risk and competition issues.

The proposed rule will have a negative effect on competition in both the DSL and ISP markets by creating two dominant players in the market: the cable monopolies and the telephone monopolies. Telephone companies will not voluntarily open their networks to internet service providers if there are no regulations forcing them to, and they may become the only providers of DSL as well. The author suggests that telephone company broadband transmission to internet service providers should be defined as a “telecommunications service,” therefore attaching unbundling requirements to telephone companies. This is important because as long as telephone companies possess control over basic transmission facilities, they can potentially dominate the broadband market.

The author notes that on February 20, 2003, the FCC adopted its “Triennial Review” Order in which it approved new rules governing telephone companies’ unbundling obligations.

In conclusion, the author suggests that the FCC’s current broadband initiatives are the result of political pressure from powerful Bell companies to ensure they retain a monopoly over the link between the user and the provider. The FCC should focus on the real problem- lack of demand, and it should reverse its conclusion in the Notice that the transmission component of self-supply wireline broadband internet access is not a telecommunications service.