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Cable Modem Service Declared Interstate Information Service

Washington, DC., April 11, 2002. In a declaratory ruling, the FCC has concluded that cable modem service is an interstate “information service” as defined by the Communications Act, and therefore subject to the jurisdiction of the FCC. The FCC also determined that cable modem service is not a “cable service” as defined by the Communications Act and that cable modem service does not contain a separate “telecommunications service” offering and therefore is not subject to common carrier regulation.

Along with its ruling, the FCC also adopted a *Notice of Proposed Rulemaking* to examine a number of related issues, including: (i) the scope of the FCC's jurisdiction to regulate cable modem service, including whether there are any constitutional limitations on the exercise of that jurisdiction; (ii) whether there are legal or policy reasons why it should reach different conclusions with respect to wireline broadband and cable modem service; (iii) whether, in light of marketplace developments, it is necessary or appropriate at this time to require multiple ISP access; and (iv) the role of state and local franchising authorities in regulating cable modem service.

In seeking comments on these issues, the FCC stated that its goal is to promote broadband deployment, which should result in better quality, lower prices and more choices for consumers. The FCC also stated that in addressing these issues, it would be guided by the following principles and policy goals: (i) to encourage the ubiquitous availability of broadband access to the Internet to all Americans; (ii) to ensure that broadband services exist in a minimal regulatory environment that promotes investment and innovation; and (iii) to develop an analytical framework that is consistent, to the extent possible, across multiple platforms.

With respect to state and local issues, the *Notice* made three significant tentative conclusions: (i) that the statute does not provide a basis for a local franchising authority to impose an additional franchise for the provision of cable modem service; (ii) that the provision of cable modem service should not affect the rights of cable operators to access the public rights-of-way; and (iii) that, in the interest of national uniformity, the FCC should forebear from regulation.

If you would like additional information on this proceeding or on cable or Internet issues generally, please feel free to give us a call.

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