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FCC Releases Analysis of Emerging European Telecommunications Regulatory Framework

Washington, D.C. - The Federal Communications Commission's Office of Plans and Policy (OPP) has released a Working Paper discussing the European Union's ("EU") new regulatory framework, adopted in March of this year, and the possible relevance of that framework to the US market. The FCC describes the EU's new regulatory framework as "a bold and innovative response to the challenges of technological and market convergence in the area of telecommunications."

Most fundamentally, the EU's new regulatory framework focuses on market power and the need to recognize and respond to market power. The Working Paper recognizes that, "[I]n particular, [the EU framework] associate[s] the possession of *Significant Market Power* (SMP) with obligations that could include transparency, non-discrimination, accounting separation, access to and use of specific network facilities (including Unbundled Network Elements [UNEs], wholesale obligations, collocation and interconnection), price controls and cost accounting, making necessary leased lines available, and carrier selection and pre-selection." (Footnotes omitted.)

According to the Working Paper, the EU will apply these principles in creating the new regulatory framework. More specifically, the Working Paper states that the EU "will begin by defining a series of relevant telecommunications markets, and by providing a set of guidelines for determining the presence of absence of market power, all based on methodologies borrowed from competition law and economics. Within each market, the National Regulatory Authority (NRA) in each state will determine whether one or more parties possess Significant Market Power (SMP). If SMP exists, the NRA will impose appropriate obligations from the set noted in the previous paragraph, taking into account the specifics of the particular marketplace in question.

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In taking this approach, the EU is attempting to move completely away from technology-specific and service-specific regulation. According to the Working Paper, this is “a significant and dramatic innovation.”

The Working Paper makes very interesting reading, particularly for those of you confronting RBOC abuse of market power in U.S. markets. If you would like additional information regarding the Working Paper and its conclusions, competition issues in general, or if you would like a copy of the Working Paper, please feel free to contact us.

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