

*Firm Advisory*

March 2, 2007

**FCC ADOPTS BROAD INTERPRETATION OF  
INTERCONNECTION RIGHTS FOR WHOLESALE  
CARRIERS**

*DECISION ASSURES VOIP ACCESS TO THE PSTN*

The FCC yesterday issued an order determining that “wholesale telecommunications carriers are entitled to interconnect and exchange traffic with incumbent local exchange carriers (ILECs) when providing service to other service providers, including VoIP service providers.”<sup>1</sup> In its order, the FCC reached the following conclusions:

- Wholesale providers of telecommunications services are entitled to interconnection and access under the Sections 251(a) and (b) of the Act.
- States are preempted from denying such interconnection to wholesale carriers.
- The statutory classification of each end-user service is not dispositive of a wholesale carrier’s interconnection rights, provided the carrier is in fact offering qualifying telecommunications service.
  - VoIP providers are therefore assured access to the PSTN, through qualifying wholesale carriers.

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<sup>1</sup> *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, WC Docket No. 06-55 (rel. Mar. 1, 2007) (decision by the Wireline Competition Bureau Chief under delegated authority)

*Legal and Operational Ramifications*

Since the decision preempts states from denying interconnection to wholesale telecommunications carriers, it is of particular significance in states that have previously denied (or might be considering a denial of) interconnection to carriers serving VoIP providers.<sup>2</sup>

The FCC determined that the Communications Act does not differentiate between retail and wholesale services for the purposes of interconnection under §251(a) and (b). Therefore, as long as a wholesale carrier qualifies as a “telecommunications carrier” under the Act, and seeks interconnection in its own right (*i.e.*, not solely as an agent), that carrier has the right to interconnect with other LECs regardless of the statutory classification of each end-user service. Thus, upon obtaining interconnection, the wholesale provider may exchange VoIP traffic, even though VoIP providers may not themselves be entitled to the same interconnection rights.<sup>3</sup>

In reaching its conclusion, the FCC found that the new policy will advance competition and broadband deployment. The FCC also relies on section 706 as a basis for its holding, finding that the right to such interconnection will “spur the development of broadband infrastructure.” Predictably, the FCC avoids a determination as to the statutory classification of VoIP service.<sup>4</sup>

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<sup>2</sup> The FCC noted that South Carolina and Nebraska have both previously denied interconnection for such purposes in some circumstance, and that other states currently have pending proceedings on the issue.

<sup>3</sup> In other words, the issue of whether VoIP is a “telecommunications service” or an “information service” does not impact the interconnection rights of a wholesale carrier. The FCC does indicate, however, that the wholesale carrier has to assume responsibility for compensating the ILEC for traffic termination – though the FCC is careful to say that it does not “prejudge” the issues pending in the Intercarrier Compensation docket (01-92).

<sup>4</sup> The regulatory classification of VoIP is currently being considered in another FCC proceeding. *See IP-Enabled Services*, WC Docket No. 04-36.