

APPA COMMUNITY BROADBAND
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Key Legal and Regulatory Issues

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Louisiana

“ALEC” Model

Burdens on retail –
wholesale exempt

Feasibility study –
impossible standards
and burdensome,
costly procedures

Act No. 736

Same

Feasibility study –
achievable standards
and procedures

Louisiana (continued)

Feasibility study must show, for each service separately, and for both first year and projected 5-year period, that annual revenues will exceed annual costs by amount sufficient to cover bond obligations

Feasibility study must show, for communications services as a group, that revenues will exceed costs over the life of the bonds, in an amount sufficient to cover bond obligations

Louisiana (continued)

Municipalities “may” hold referenda under the cumbersome procedures in the bill

Municipalities to follow own existing procedures for comparable projects; if none, use those in Act

No protection of public providers’ commercially sensitive information

Exempts commercially sensitive information from disclosure, under same LPSC rules as apply to private providers

Louisiana (continued)

Must use separate enterprise fund for each service, and cannot transfer funds in from other funds or other sources

One enterprise fund for all communications services

- Can fund “startup costs” (up to bond closing) from any source; repay, with interest, only if go forward
- Can make inter-utility loans at market rates

Louisiana (continued)

Municipalities can secure and pay bonds for a communications service only with revenues from sales of that service

Municipalities can pledge resources of other utilities to get best interest rates, terms and conditions

Municipalities can use revenues from all communications services to pay off bonds

Louisiana (continued)

To ensure no cross-subsidies, municipalities must set prices high enough to cover actual direct and indirect costs plus imputed costs (fees, assessments, and taxes) that private providers typically pay

Municipalities must set rates to cover direct, indirect and imputed costs, but

- credit for PILOT
- can use lowest income tax rate that any private provider actually paid in prior year, or zero, which ever is higher

Louisiana (continued)

Could be read to prohibit municipalities from “bundling,” offering promotions, or using other common business practices

Municipalities can bundle or use any other lawful practice, as long as they recover the direct, indirect and imputed costs of all communications services, in the aggregate, over the useful life of the facilities involved

Louisiana (continued)

Municipalities must comply with all applicable federal, state and local requirements

Same, except that

- LPSC will regulate municipalities only like private CLECs
- LPSC to write cost-allocation and inter-affiliate transfer rules
- Rules to be enforced through independent auditing process

Louisiana (continued)

Prohibits services
outside municipal limits

Allows statewide
municipal service

Bars access to state
universal service funds

No such restriction

5-day public notice
before price moves

No such requirement

Regulatory/Operational Issues

- Key classifications – telecom v. cable v. information v. wireless v. satellite
 - Effects: authority, federal-state jurisdiction, regulation, taxation, pole attachments, universal service, E911, CALEA, rights of way, customer service, CPNI....
 - Local governments <> municipal utilities <> other utilities <> building owners
 - Internet access service
 - *Cable Modem Declaratory Ruling...Brand X*
 - Wireline NPRM ...

Reg/Op Issues (continued)

- Internet Protocol Enabled Services
 - Courts: Vonage VoIP cases (MN, NY)
 - FCC: Pulver, AT&T, Vonage ... all IP-Enabled Services
 - Congress: several bills pending
 - States: decisions and moratoria
- Verizon Forbearance Petition – Fiber
- Comcast position in cable competition NOI

Reg/Op Issues (continued)

- Issues with cable incumbents
 - anticompetitive practices (Scottsboro, Braintree...)
 - inside wiring, particularly MDUs
 - “level playing field” disputes
- Issues with broadcasters (Must carry / RT Consent)
 - Big 5 - price discrimination and channel tying
 - Dual / Multiple Must Carry
 - DTV transition – “Ferree Plan”
 - Non-duplication (“blackout”) rules (Dalton)
 - MLB territories (Bristol)
- Other video-related issues (A la carte, copyrights, ...)

Reg/Op Issues (continued)

- BPL – Interference, classification, open access, ROW, easements, finance, tax, other issues
- 800 MHz realignment and other spectrum issues
- ROW, easements and zoning issues
- Privacy issues
- UNEs (TRO, BellSouth, etc.) → Interconnection
- Tax “simplification” and other tax issues
- Homeland Security
- Bankruptcy issues (e.g., Adelphia)