



*The State Senate
Senate Research Office
204 Paul D. Coverdell Office Building
18 Capitol Square
Atlanta, Georgia 30334
404.656.0015 (office) 404.657.0929 (facsimile)*

**FINAL REPORT
OF THE
JOINT HOUSE AND SENATE
EMERGING COMMUNICATIONS TECHNOLOGIES
STUDY COMMITTEE**

Honorable Mitch Seabaugh

Senator, District 28

Co-Chair

Honorable Jeff Lewis

Representative, District 15

Co-Chair

Honorable Don Balfour

Senator, District 9

Honorable Amos Amerson

Representative, District 9

Honorable Judson Hill

Senator, District 32

Honorable Barry Loudermilk

Representative, District 14

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I. INTRODUCTION

The Joint House and Senate Emerging Communications Technologies Study Committee (ECT Study Committee) was created pursuant to Senate Resolution 298. The ECT Study Committee was charged to undertake a study of the emerging technologies of broadband, Voice Over Internet Protocol (VoIP), and wireless service and will consider what role, if any, the Public Service Commission should play in the growth and development of these competitive services, including the effect of state regulation of these services on economic development, job growth, and capital investment in the State of Georgia.

The Senate Committee on Assignments appointed the following members to serve:

- Senator Mitch Seabaugh of Coweta County, Co-Chair;
- Senator Don Balfour of Gwinnett County; and
- Senator Judson Hill of Cobb County.

The Speaker of the House of Representatives appointed the following members to serve:

- Representative Jeff Lewis of Bartow County, Co-Chair;
- Representative Amos Amerson of Lumpkin County; and
- Representative Barry Loudermilk of Bartow County.

II. BACKGROUND

The regulatory authority of broadband, wireless, and VoIP by the Georgia Public Service Commission (PSC) became uncertain when the Georgia Attorney General released Attorney General Opinion 2004-5 (Opinion) pursuant to a request by the PSC asking for guidance regarding the authority of the PSC over mobile and wireless providers of telecommunications services, providers of internet protocol (“IP”) telephony, and providers of cable-based broadband.

The Attorney General opined that “[t]he Georgia Public Service Commission has authority over mobile and wireless providers of telecommunications services to the extent that the laws it administers apply to “telecommunications companies” ... and do not exempt mobile or wireless providers; the Georgia Public Service Commission also has authority over “phone-to-phone” internet protocol telephony as this service is described by the [Federal Communications Commission] (FCC)¹, and over cable-based broadband service to the extent that the laws it administers apply to “telecommunications companies.”²

The Opinion provided that the Telecommunications and Competition Development Act of 1995 (TCDA) and the Telecommunications Marketing Act of 1998 (TMA) (collectively known as Acts) “made clear that the PSC had authority over

¹ See O.C.G.A. §§ 46 5 162(17) and 46-5-181

² Id.

“telecommunications services” and “telecommunications companies.” The threshold question, therefore, is whether the services included in [the] request meet the definition of “telecommunications services” in the Acts...[the Attorney General has] relied upon descriptions of these [complex technical] services set forth in orders of the Federal Communications Commission (“FCC”) and decisions of the Ninth Circuit Court of Appeals.”³

The Opinion noted that “neither wireless nor commercial mobile service is defined in either the TCDA or the TMA, the definitions of “telecommunication service” and “telecommunication service provider” are defined elsewhere in Title 46 to include wireless service and wireless service providers respectively.”⁴ The Opinion further provides that “even though the definitions relied upon for this analysis are found in statutes not administered by the PSC, in the absence of any conflicting authority within the Acts themselves it is reasonable to conclude that wireless service is a “telecommunications service” within the meaning of the Acts.”

The Opinion also provided that “[t]he Federal Telecommunications Act provides a sound background upon which to analyze the state Acts. The federal Act defines “telecommunications” as “the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.” The Ninth Circuit recently held that cable-based broadband service constitutes a telecommunications service within this definition.”⁵

Additionally, it is the “official opinion that the Georgia Public Service Commission has authority over mobile and wireless providers of telecommunications services to the extent that the laws it administers apply to “telecommunications companies” ...and do not exempt mobile or wireless providers; the Georgia Public Service Commission also has authority over “phone-to-phone” internet protocol telephony based upon the understanding of this service as described by the FCC, and over cable-based broadband service to the extent that the laws it administers apply to “telecommunications companies”....”

Upon the rendering of this Opinion, parties in the telecommunications industry, specifically BellSouth, sought to address this issue by proposing legislation clarifying the degree to which the PSC could regulate broadband, wireless, and VoIP. Telecommunications companies had invested and planned under the guidance that these emerging technologies were not regulated. The Opinion, although not binding, created uncertainty as to the future of regulatory authority over the emerging technologies.

Senate Bill 120, which was filed during the 2005 General Assembly, gave rise to the creation of the ECT Study Committee.

³ The Ninth Circuit Court of Appeals is based in San Francisco, California.

⁴ See O.C.G.A. § 46 5 3(a) (Supp. 2003).

⁵ Brand X Internet Services v. FCC, 345 F.3d 1120 (9th Cir. 2003).

III. HEARINGS AND PRESENTATIONS

The ECT Study Committee convened on August 10, 2005, in Room 450 of the State Capitol. Opening comments by the Co-Chairmen reflected the desire to set parameters on regulatory authority over broadband, wireless, and VoIP, and that there is real need to determine what, if any, regulation is needed over these stated emerging technologies. Protection of these emerging technologies from regulation could lead to an enormous positive economic impact for the State of Georgia.

Appearing before the ECT Study Committee were representatives of BellSouth and members of the Georgia Public Service Commission.

A. BELLSOUTH

Mr. Pete Martin, Vice President of Regulatory Affairs for BellSouth, presented testimony regarding the current status of the emerging technologies in Georgia. Mr. Martin detailed what emerging technologies were being discussed: broadband, Voice Over Internet Protocol and wireless service, and provided working definitions of those technologies. All three technologies are highly competitive and continue to expand quickly; moreover, they have developed in an unregulated environment at the state level and in a lightly regulated environment at the federal level. Mr. Martin stressed that continued investment in these emerging technologies would be ensured if the state regulatory environment was clarified.

1. Broadband Service

Mr. Martin noted that approximately 85 percent of Georgians who live and work in the BellSouth service territory have access to Digital Subscriber Loop (DSL), and BellSouth began deploying DSL in Georgia in 1998; moreover, all 178 of BellSouth's switching centers in Georgia are DSL equipped. BellSouth has invested over \$450 million to deploy broadband in Georgia over the last five years. Georgia has nearly 1.3 million broadband subscribers, and ranked only behind the State of California in DSL subscribers per capita. Ranked by the number of broadband providers, Georgia is third behind the States of Iowa and Texas.

Georgia is in the forefront of all states in rural DSL deployment, and only 1 percent of Georgia zip codes are not currently served by a broadband provider. According to Mr. Martin, as of January 2005, 94 percent of Georgia's zip codes are served by two or more broadband providers, and 83 percent are served by three or more providers. Mr. Martin noted that barriers to rural deployment of broadband include the cost, long loops, and low customer demand, but that the regulatory "fog" over the technologies could hinder continued growth.⁶

⁶ "We also suffer from a market-distorting lack of regulatory certainty in the broadband market." Federal Communications Chairman Ken Martin.

2. Wireless

Mr. Martin claimed that Georgia is a wireless leader with more than ten wireless licenses and resellers serving Georgia.⁷ Specifically, the Atlanta market has the heaviest penetration of wireless service in the United States. Sixty five percent of Georgians have a wireless phone, and this ranks Georgia fifth in the nation and above the national average. More than 95 percent of Georgians have a choice of three or more wireless carriers; moreover, 76 percent possess a choice of five or more wireless carriers. The Athens market and Savannah market have the most choices with nine wireless carrier options each. Mr. Martin noted that there are now more wireless phones than wireline (landline) telephones in Georgia.

Mr. Martin provided that a formula of marketplace competition plus minimal regulation equals lower consumer costs, noting that consumer cost per minute has steadily declined since the first quarter of 2000 falling from almost twenty five cents (\$.25) per minute to under ten cents (\$.10) per minute.

3. Voice Over Internet Protocol

Mr. Martin described VoIP generally as a service in which the internet is used to make voice calls. Under this service, consumers could choose from over one thousand (1,000) VoIP providers. Utilizing the internet, consumers could make VoIP calls to anywhere in the world. VoIP is growing by more than 400 percent annually. This new emerging technology is dominated by non-traditional communications providers. VoIP constitutes 11 percent of all international calls, and growth is expected from three million subscribers to twenty eight million subscribers by 2009.

Among southern states, Mr. Martin noted that Kentucky, North Carolina, South Carolina, Mississippi, Alabama, and Florida have enacted market-based broadband legislation, yet Georgia and Tennessee have not acted. Louisiana is barred by Constitutional limitations. Thirty states now have statutorily precluded the state utility commission from exerting jurisdiction over wireless carriers; four states allow the commission to deregulate providers; six states authorize the state utility commission to regulate wireless, but these commissions generally do not exert such authority⁸; and ten states authorized the commission to retain jurisdiction to the extent preempted by federal law.

Mr. Martin stressed that the Federal Communications Commission (FCC) had ruled that broadband and VoIP are interstate services and fall under federal jurisdiction. Answering a question from an ECT Study Committee member, Mr. Martin stated that E911 service is required by the FCC.⁹

“A proper role for the government is to clear regulatory hurdles so those who are going to make investments do so. Broadband is going to spread because it’s going to make sense for private sector companies to spread it so long as the regulatory burden is reduced....” President George W. Bush.

⁷ The nation’s largest wireless carrier, *Cingular Wireless*, is headquartered in Georgia.

⁸ Georgia falls within this classification.

⁹ A recent Court ruling upheld a FCC order requiring VoIP provider to include E911 service or else the VoIP providers must stop selling service in the areas in which it does not have E911 capability.

B. GEORGIA PUBLIC SERVICE COMMISSION

Ms. Angela Speir, Chairman of the Public Service Commission (PSC) and Commissioner David Burgess presented testimony before the ECT Study Committee. The Commissioners stated that it is the intent of the PSC to promote competition in Georgia by noting that competition was the intent of the Georgia Legislature when it passed The Telecommunications and Competition Development Act of 1995 (TCDA). Under the TCDA, Georgia sought to remove obstacles to competition, promote economic growth, provide universal service, and ultimately protect consumers. The PSC plays two roles: (1) arbitrator of carrier disputes; and (2) protecting consumers against fraud, cramming, and billing disputes.

The PSC recommended that the Legislature should amend the TCDA by revising the definitions, by defining and including the emerging technologies; moreover, the PSC further suggested the Legislature study communications technologies' effect on Georgia consumers, specifically affordability, public safety, and ensuring that the Universal Service Fund (USF) is fully funded. The PSC noted that there has been an increase in consumer complaints regarding wireless providers. Ultimately, the PSC concluded, that federal courts will weigh in on the jurisdiction of the FCC and of the state in regulating and monitoring these emerging technologies.

The PSC stated that the competition issue is also a quality of life issue. The PSC seeks to ensure continued consumer protection and balancing the interest of the utilities while promoting innovation, affordability, and reliability. There has been a 6 billion dollar investment in communications in Georgia since the TCDA become effective, and that competition remains the primary focus under the TCDA. The PSC further stated that 150 Local Exchange Carriers rely upon BellSouth lines to provide service to their consumers.

The PSC concluded by reminding the ECT Study Committee that service, quality, and reliability should guide minimum service standards for Georgia consumers, and that the PSC is an essential referee between the carriers and for consumers.

IV. ADVISORY COMMITTEE

The Advisory Committee was appointed by the ECT Study Committee. The composition of the Advisory Committee was comprised of interested industry experts, representatives from various associations, and governmental entity personnel. The Advisory Committee was appointed by the Joint House and Senate Study Committee to assist in reviewing and understanding the nature of the emerging technologies of broadband, VoIP, and wireless service; moreover, the Study Committee provided wide latitude to the Advisory Committee to set its own schedule and establish its topics for discussion. The Advisory Committee was further charged with making recommendations, if necessary including, but not limited to, recommended legislation.

The Advisory Committee was formed on August 10, 2005, and met at least once a month from August through November to discuss various issues relating to these technologies

and to suggest possible legislation and areas for further study.¹⁰ The ECT Study Committee appointed Mr. Joseph R. Bankoff, an attorney, to serve as the Advisory Committee Facilitator.

The members appointed to serve on the Advisory Committee were:

Incumbent Telecommunications, Tier 1¹¹

- Pete Martin, representing BellSouth.

Incumbent Telecommunications, Tier 2¹²

- Rick Moreland, representing Alltel; and
- Bob Krueger, representing the Georgia Telephone Association.

Competitive Telecommunications, Tier 1

- Brian Sulmonetti, representing MCI;
- Sylvia Anderson, representing AT&T; and
- P. Shane Muchmore, representing Sprint.

Competitive Telecommunications, Tier 2

- Wanda Montano, representing US LEC;
- Riley Murphy, representing NuVox;
- Roy Robinson, representing Covad; and
- Mark Baxter, representing Access Integrated.

Cable

- Nancy Horne, representing CTAG; and
- Tom Hall, representing the Georgia Municipal Association.

Internet Service Providers

- Dave Baker, representing Earthlink; and
- Dusty Brighton, representing Microsoft.

Power Companies

- James Ucci, representing Georgia Power/SouthernLinc.

¹⁰ The Advisory Committee met on August 18; September 2; September 22; October 6; and November 2, 2005.

¹¹ A Tier 1 provider is generally defined as a larger carrier.

¹² A Tier 2 provider is generally defined as a smaller carrier.

Wireless Telephone

- Steve Skinner, representing Cingular; and
- Chris Jones, representing Verizon.

Consumer Groups

- Clare McGuire, representing the Governor's Office of Consumer Affairs;
- Jeff Strane, representing the Georgia Department of Economic Development; and
- Danae R. Gambill, representing the Georgia Chamber of Commerce.

Public Service Commission

- Commissioner David Burgess, representing the Georgia Public Service Commission; and
- Commissioner Bobby Baker, representing the Georgia Public Service Commission.

Hardware

- Linda Arnold, representing Nortel.

The Advisory Committee operated under a set of “ground rules” intended to promote participation and candor by assuring all participants that they remained free to comment upon or criticize any of the Advisory Committee’s recommendations; moreover, comments were not be recorded or documented in order to encourage dialogue and discussion. Each member was afforded equal opportunity to voice opinions, address issues, or ask questions.

Issues were presented for discussion, and Advisory Committee members voted on their respective position anonymously via electronic means.¹³ Each vote tally was presented on a screen for viewing. Occasionally, votes were conducted by sector rather than by individual member.

The Advisory Committee reviewed and discussed a number of policy issues, and while there remain areas of competitive disagreement there is a broad consensus on some important trends and issues.

- The emerging communications technologies are creating a fundamental change in the manner in which important telecommunications services and information are provided and transported (100 percent);¹⁴

¹³ Absent Advisory Committee members who participated via teleconference voted by voice.

¹⁴ The percentage number reflects the percent of the members of the Advisory Committee voting on the issue.

- Universal access to the emerging communications technologies is important to the economic development, job growth, and capital investment in Georgia (91 percent);
- Consumers are entitled to competition among network providers, applications, and service providers, and content providers (95 percent);
- Consumers have the right to choose who provides them with content, music, video, e-mail, and other services over broadband (95 percent);
- There is no need to regulate the price at which the emerging communications technologies are offered to the public and that pricing flexibility will encourage competition (86 percent);
- Consumers need accurate information as to prices and services in order to make choices among competing options for emerging communications technologies (100 percent);
- All providers of emerging communications technologies should remain subject to the laws regarding competition and prohibitions of anti-competitive activities (100 percent);
- All providers of emerging communications technologies should be subject to the consumer protection laws (95 percent);
- Providers of the emerging communications technologies have the responsibility to accurately inform and educate the public about the prices, uses, and limitations of the services they provide (100 percent);
- Access to and provision of high speed transport of data (regardless of form or protocol) is a service distinct from the content of the data that may be obtained, utilized or transported (music, video, e-mail, www, etc.) (95 percent);
- Consumers are entitled to run applications and services of their choice subject to the needs of law enforcement (90 percent); and
- Consumers are entitled to connect their choice of legal devices that do not harm the network (95 percent).

The Advisory Committee ranked these various issues discussed in order of their view of the importance:

1. Ensuring Competition (35 votes);
2. Uncertainty as to State Regulation (21 votes);
3. Public Safety (17 votes);
4. Timing of federal, state and judicial decisions (15 votes);

5. Consumer Protection / Information (10 votes);
6. Opinion of Georgia Attorney General (10 votes);
7. State of Emerging Technologies (7 votes);
8. Affordable Universal Service (5 votes); and
9. Service Quality and Reliability (3 votes).

The Advisory Committee found the following implications which are expected to occur due to current trends in communications technologies:

- The sharp drop in the number of traditional telephone access lines will continue;
- Within the next 10 years 90 percent of all voice calls will use Internet protocol;
- Broadband will be the principal way in which information and entertainment is obtained;
- Broadband technology will continue to evolve; and
- Broadband infrastructure and people competent and comfortable in its use provide competitive advantage in the global competition for good jobs.

The Advisory Committee concluded the following:

- The PSC (or other state authority) should not set the retail rates, terms or conditions for the offering of broadband, wireless, or VoIP. (95 percent)
- The PSC or any state authority should not be prohibited from exercising any authority or function granted or required under federal law or the rulings of the FCC or the courts. (100 percent)
- The PSC should not be prohibited from exercising any authority or function permitted or allowed under federal law or the rulings of the FCC or the courts (except for the setting of retail rates, terms and condition for BROADBAND ACCESS, WIRELESS or VoIP). (72 percent)
- Consumers in Georgia are to be provided with current and accurate information regarding the pricing of service offerings and the actual average levels of service or bandwidth provided. (81 percent)
- NO CHANGE is intended in the authority of municipalities to impose franchise fees and provide PEG (public, educational, governmental) access for Television Transmissions.
- NO CHANGE is intended in the existing authority of municipalities to regulate in a neutral manner and impose Right-of-Way access fees for the physical provisioning of emerging technologies.

- NO CHANGE is intended in the existing authority of the PSC to act under the federal law or FCC regulation in dealing with federal requirements of access to unbundled network elements or to arbitrate and enforce interconnection agreements.

Based upon the preceding conclusions, the Advisory Committee submitted proposed language for legislation to the ECT Study Committee to consider. The proposed language represents compromise among the members of the Advisory Committee.

In addition to the proposed language for legislation, the Advisory Committee recommended that the Legislature continue to investigate certain critical issues affecting the economic development and job growth within Georgia. Those issues are:

1. How the Broadband “take rate” (public adoption and use of broadband technology) might be improved in Georgia. The formation of a further legislative study committee or task force might be helpful, and such committee or task force should include the communications technology community in addition to the education community; and
2. The question of whether and how government-owned broadband networks should compete with private industry in providing access to emerging communications technologies.¹⁵

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The ECT Study Committee found that Georgia residents and consumers would benefit from continued investment and innovation by technology providers in this state; moreover, continued investment and innovation by industry providers into the emerging communications technologies of broadband, wireless, and VoIP are further encouraged by the removal of regulatory uncertainty in Georgia.

The ECT Study Committee considered the proposed language provided by the Advisory Committee. The ECT Study Committee accepted the language and amended the draft by removing the term “retail” from the proposed language. There were no additional alterations to the Advisory Committee’s proposed language. The ECT Study Committee’s proposed legislation addressing the regulatory uncertainty regarding the emerging technologies of broadband, wireless, and VoIP is attached hereto at “Attachment A.”

FINAL COMMITTEE REPORT

Prepared by:

Brian Scott Johnson, Esq.

Senate Research Office

¹⁵ The preceding findings of the Advisory Committee were compiled by Facilitator Joseph R. Bankoff.

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