

**DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS
COMMITTEE ON COMPETITION LAW AND POLICY**

Working Party No. 2 on Competition and Regulation

COMPETITION AND REGULATION ISSUES IN TELECOMMUNICATIONS

-- United States --

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COMPETITION AND REGULATION ISSUES IN TELECOMMUNICATIONS

United States

1. ***Developing Local Competition.*** In 1996, the U.S. Congress enacted a fundamental reform of federal telecommunications law, with the objectives of promoting competition and reducing or eliminating regulation in all telecommunications markets. The Telecommunications Act of 1996¹ provided interrelated mechanisms through which interexchange carriers and other competitors could enter markets for local telecommunications services and through which the regional Bell operating companies (known as “RBOCs”) could enter long distance markets after opening their local monopoly markets to competition.²

2. To promote local competition, the 1996 Act provides for the preemption of state laws prohibiting such competition. In addition, Section 251 of the Act requires incumbent local exchange companies (known as “incumbent LECs”)³ to (1) interconnect their networks to those of other carriers at just, reasonable and nondiscriminatory rates,⁴ (2) lease elements of their networks, such as loops, switches and transport, at just, reasonable and nondiscriminatory rates (these parts of the network are known as “unbundled network elements” or “UNEs”),⁵ and (3) sell retail services at wholesale rates for resale by competitors to end users.⁶

3. Section 252 of the 1996 Act establishes a process to effectuate the obligations of incumbent LECs to share the use of their networks. Local service providers entering the market (called “competitive local exchange carriers” or “CLECs”) must first attempt to negotiate contracts (“interconnection agreements”) with incumbents. If the parties are unable to reach agreement, either party can ask the state public utility commission to arbitrate the dispute. Parties dissatisfied with a state commission’s decision may appeal to the Federal Communications Commission (FCC).⁷

6. *Combinations of Unbundled Network Elements.* The FCC's local competition rules permit CLECs to lease virtually all of the individual network elements needed to provide service to end users. In January 2000, the U.S. Supreme Court upheld the FCC rule which permits CLECs to purchase combinations of elements that are already combined in the incumbent's network. Whether an incumbent LEC properly can be required to combine previously uncombined elements at the request of a CLEC will be reviewed by the U.S. Supreme Court during the 2001-2002 term.¹²

7. *Operational Support Systems.* As providers of local telecommunications services to millions of customers, incumbent LECs in the United States have developed and implemented sophisticated systems to manage their networks and communicate with customers. These operational support systems ("OSS") permit most routine transactions (e.g., billing inquiries, orders for new services and responses to service outages).

their own facilities. There is also significant entry by the same CLECs to serve medium-sized businesses with substantial telecommunications needs. Some of these medium-sized businesses, like large businesses, can be economically served by direct connections to CLEC networks. CLECs also use unbundled loops, resale or a combination of unbundled elements known as the “UNE-platform” to serve them. A few CLECs are offering local services to medium-sized businesses using “fixed wireless” technologies that are less dependent on incumbent LEC policies and practices than are services which require unbundled loops, resale or UNE platform arrangements.

11. Competitive entry to serve the mass market (residential and small business customers) has been slow to develop. Seventy-six percent of all U.S. telephone lines serve residential or small business customers; CLECs serve 3.2 percent of these lines, amounting to 2.49 percent of all U.S. telephone lines.¹⁹

12. ***Long Distance Markets.*** Long distance services are used by residential consumers as well as small, medium and large businesses. Long distance providers tailor their services to meet the needs of each type of customer, marketing and pricing these services differently depending on the customer. AT&T, WorldCom (formerly MCI) and Sprint continue to dominate mass market long distance services. Two regional Bell operating companies have entered the long distance market within several states in their

mobile telephony in the United States has fallen substantially over the past several years. At present, these services are used by consumers to provide mobility as a complement to the basic local exchange services offered by incumbent LECs, rather than as a substitute for wireline services in the home or office.²²

15. **Review of Enforcement Actions** . Over the past five years the United States, under the auspices of the U.S. Department of Justice and the Federal Trade Commission, have investigated a number of telecommunications mergers to determine whether the proposed acquisition will substantially lessen competition in a relevant market in violation of Section 7 of the Clayton Act.²³ The U.S. agencies examine whether the merger will lead to higher prices, lower service quality or less innovation than would be the case if the proposed acquisition were not consummated. Acquisitions examined have included those among regional Bell operating companies, incumbent LECs, major long distance carriers, cable companies, broadcast satellite assets and Internet service providers. (In those matters where telecommunications licenses must be transferred as part of the proposed acquisition, the parties cannot consummate the merger until the FCC grants the license transfer applications.)

16. **Bell Atlantic-NYNEX**. In April 1997, after a year-long investigation, the Department of Justice decided not to challenge the merger of two contiguous regional Bell operating companies, Bell Atlantic Corporation in the mid-Atlantic region and NYNEX in the northeast Atlantic region. The investigation focused on the likelihood and efficacy of competition between the two RBOCs in the metropolitan New York City market for local services to residential and business customers.

17. **British Telecom-MCI**. In July 1997, the Department sought to modify and extend an existing 1994 consent decree in order to resolve the Department of Justice's concerns about British Telecommunications plc's proposed acquisition of MCI Communications Corporation. (The earlier settlement resolved the Department's concerns about British Telecom's acquisition of a 20 percent interest in MCI.) The modifications were needed in order to continue to ensure that British Telecom could not use its market power in the United Kingdom to discriminate in favor of MCI in the market for international

20. **Primestar.** In May 1998, the Department of Justice filed a civil antitrust suit to block Primestar Inc. from acquiring the direct broadcast satellite (“DBS”) assets of News Corporation Limited and MCI. DBS is a service that uses orbiting satellites to transmit video programming directly to a subscriber’s home. Acquisition of the orbital satellite slot owned by News Corp./MCI would have allowed five of the largest cable companies in the United States, which controlled Primestar, to control the only remaining DBS orbital slot of the three licensed by the FCC, and thus protect their monopolies by foreclosing more new video competition by DBS operators. The parties abandoned the deal after the suit was filed.²⁶

21. **SBC-Ameritech-Comcast.** In March 1999, SBC Communications, Inc., a regional Bell operating company, resolved the Department of Justice’s concerns about SBC’s proposed acquisition of Ameritech Corporation, another regional Bell operating company, and Comcast Cellular Corporation by agreeing to divest one of the two cellular telephone systems in 17 markets in the Midwest. The Department sought these divestitures because these markets for wireless mobile telephone services were already highly concentrated and the proposed acquisitions would greatly increase concentration, giving SBC the ability to increase prices, reduce the quality and quantity of service and refrain from making network improvements.²⁷ The Department also required divestiture of Ameritech’s systems in certain markets due to Ameritech’s plans to compete with SBC in SBC’s own region by marketing a bundled package of local and long distance services to Ameritech’s customers.²⁸

27. ***AOL-Time Warner.*** In December 2000, the Federal Trade Commission (“FTC”) accepted a proposed consent decree from America On Line, Inc. (“AOL”), the largest U.S. Internet service provider, and Time Warner, Inc., a media conglomerate comprising a cable television system that serves 20 percent of U.S. households, cable programming networks, publishing and recording interests and a film library. The decree resolved the FTC’s concerns that the proposed merger would lessen competition in the residential broadband Internet access market, undermine AOL’s incentives to promote digital subscriber line (“DSL”) broadband Internet services as an alternative to cable broadband service and restrain competition in the nascent market for interactive television. AOL Time Warner is required to open Time Warner’s cable system to at least three non-affiliated cable broadband Internet service providers and cannot interfere with the content passed along by non-affiliated ISPs. AOL Time Warner is also required to market and offer DSL services to subscribers in Time Warner’s cable areas, and to offer the same price

NOTES

- 1 Pub. L. No. 104-104, 110 Stat. 56.
- 2 In 1982, AT&T entered into a consent decree with the Department of Justice settling the Department's monopolization claims. As part of the settlement, AT&T divested its local Bell operating companies and retained its long distance business. The 22 local Bell operating companies were organized into seven regional Bell operating companies which were prohibited from providing long distance services.
- 3 Incumbent LECs include the RBOCs and other large incumbents, but permits certain exceptions for small, rural LECs.
- 4 47 U.S.C. § 251(c)(2).
- 5 47 U.S.C. § 251(c)(3); *see* 47 U.S.C. § 153(29) (defining network element).
- 6 47 U.S.C. § 251 (c)(4).
- 7 47 U.S.C. § 252(e)(4), (6).
- 8 47 U.S.C. § 252(d) (1-3). In April 2001, the FCC determined that telecommunications traffic delivered to Internet service providers ("ISPs") was not subject to reciprocal compensation because it is interstate access traffic. At the same time, the FCC established a transitional cost recovery mechanism for the exchange of this traffic to phase out such payments over time. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 & 99-68, Order On Remand and Report and Order, available at <http://www.fcc.gov/Bureaus/Common_Carrier/Orders/2001/fcc01131.pdf>.
- 9 47 U.S.C. § 252(d)(1).
- 10 *American Tel. & Tel. v. Iowa Utils. Bd.*, 525 U.S. 366, 397 (1999).
- 11 *FCC v. Iowa Utils. Bd.*, *cert. granted*, -- U.S. --, 121 S. Ct. 878 (Jan. 22, 2001) (Docket Nos. 00-587, 00-590).
- 12 *FCC v. Iowa Utils. Bd.*, *cert. granted*, -- U.S. --, 121 S. Ct. 878 (Jan. 22, 2001) (Docket Nos. 00-587, 00-590).
- 13 47 U.S.C. § 271(c)(2)(B)(i)-(xiv). The fourteen requirements are as follows: (1) interconnection at rates and terms that comply with Sections 251(c)(2) and 252(d)(1); (2) access to network elements (which includes the necessary operational support systems) at rates and terms that comply with Sections 251 and 252; (3) access to poles, ducts, conduits and rights of way; (4) unbundled loops; (5) local transport; (6) local switching; (7) access to 911, E911 (emergency services), directory assistance and operator services; (8) white pages listings for CLEC customers; (9) compliance with the numbering administration guidelines; (10) access to the databases and signaling needed to route calls; (11) number portability (the customer

- 14 47 U.S.C. § 271(d)(3)(C). The FCC must also determine that the RBOC has satisfied the so-called Track A/Track B requirements, which state that at least one facilities-based CLEC is operating in the state (Track A) or that none have asked to do so (Track B), 47 U.S.C. § 271(c)(1)(A), (B); that there is an existing approved interconnection agreement or a general statement of available terms and conditions, 47 U.S.C. § 271(c)(2)(A); that the RBOC will

- 22 *Annual [FCC]Report and Analysis of Competitive Market Condition With Respect to Commercial Mobile Services*