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The News Review

Welcome Back, Oligopoly

By Joshua E. Barbach

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The U.S. Appeals Court, D.C. decision that vacated much of the FCC's Triennial Review Order took effect June 15. In March, the Appeals Court overturned the FCC's guidelines on UNE rates, and delegated rate-making responsibility to the states. The White House, the FCC, and the U.S. Supreme Court all chose not to stand in the way as the standing structure for wholesale rates expired. Should the Supreme Court continue not to act, it will retard much of the momentum gained since 1996 toward real consumer choice in telecommunications. U.S. corporations and taxpayers are instead more likely to experience the results of a restored oligopoly in telecom.

Lobbying Catches Up with Wholesale

The changes to the wholesale rate structure reflect the RBOC's lobbying efforts. SBC, the largest of the RBOCs, leads the charge. When SBC hired William Daley as President in November 2001, it was with lobbying in mind. SBC was quoted at the time of his hiring as saying, "As president of SBC, Daley will be responsible for strategic planning, regulatory matters, governmental initiatives, external affairs and international affairs." William Daley brought significant political clout with him, having been the Secretary of Commerce under President Clinton. He also brought Illinois connections to SBC, being brother to Chicago Mayor Richard M. Daley and son of notorious former Chicago Mayor Richard J. Daley. One of William Daley's early tasks was to lobby for the Tauzin-Dingell bill. This bill would have eliminated the restrictions preventing the Bells from offering high speed data services in local phone markets until they proved they had opened those markets to competition. The Tauzin-Dingell bill passed the House but was defeated in the Senate.

SBC seemed to have won a major victory when a law that would have allowed it to nearly double its wholesale rates was passed in Illinois on May 10, 2003. SBC's proposed amendment would have required the Illinois Commerce Commission (ICC) to change the way it set prices. The bill passed through the General Assembly was signed into law by Governor Rod Blagojevich in only four days. Chicago Mayor Daley, who was present on the day of the vote, denied having any influence on its outcome. Just a few days later, on May 13, 2003, the ICC granted SBC long distance approval in Illinois. SBC was enjoying its victories, but the wholesale law was short-lived. A U.S. District Court Judge, on June 9, 2003, overturned Illinois' rate decision, stating it was "an intrusion into federal law and [was] clearly inconsistent with it."

A Notorious Feast

The RBOC influence again was an issue in November 2003. According to multiple sources, SBC and the other RBOCs held a dinner meeting with their suppliers, including the chief executives of Intel, Lucent, and Motorola. The RBOCs asked them for help - 3/1000th of a cent for every dollar of income - in financing lobbying efforts directed at the White House, Congress, and the FCC. According to a leaked memo reported in multiple mainstream media sources, the goal of the lobbying was "to end government management of competition where the consumer has a choice of telecommunications service." A group of 26 CLECs, including Allegiance, Sage Telecom, and the Association of Local Telecommunication Services (ALTS), suggested this could be anti-trust behavior and urged the U.S. Senate and House judiciary committees to hold hearings.

The allegations resulting from the November dinner gained strength when it was revealed that the FCC invited the RBOCs, AT&T and WorldCom (MCI) to negotiations the final weekend of May. The stated goal was to get AT&T, WorldCom and at least one or two of the RBOCs to agree in principle on a wholesale pricing scheme for UNEs. CLECs that wished to be involved in the negotiations were specifically excluded. This brings into question the credibility and fairness of these negotiations, given that a significant percentage of the affected parties were left out of the discussion. This kind of exclusivity may suggest favoritism and may indicate that the efforts of lobbying-focused Bell leaders like Daley have been successful.

Daley: His Work Is Done Here

Although SBC had gained Long Distance access in all of its states, it had failed to achieve its goals in UNE rate regulation until the U.S. Appeals Court decision. Daley's resignation in May has been described as "abrupt" and SBC has declined to discuss it in depth. It is possible Daley left his post because his primary goal – the elimination of regulated wholesale rates – was to be accomplished June 15.

What is certain, given the history of the rulings for which they've lobbied, is the RBOCs' intent to protect their monopolistic strangle-hold on U.S. access networks. An old quote from a Bell Atlantic executive vice president is revealing. "Prices today do not reflect the cost of connecting to the network – they need to," Mr. Newport of Bell Atlantic said in December of 1984, less than a year after divestiture. AT&T's RBOC subsidiaries controlled 80 percent of the local market prior to divestiture. According to the most recent FCC release, the RBOCs control 84 percent of the local access market today.