

CLECs' FACE UPHILL BATTLE TO GET UNE RULES REINSTATED AFTER SOLICITOR GENERAL DECISION

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Competitive carriers were dealt a blow last week when U.S. Solicitor General Theodore Olson decided not to appeal to the U.S. Supreme Court a recent federal appeals court's decision that vacated the FCC's network unbundling rules in its "triennial review" order. That prompted FCC Commissioner Kevin J. Martin to abandon the Commission majority's plans to pursue an appeal.

Both state regulators and competitive local exchange carriers (CLECs) said they would move forward with appeals but lack of support from the SG substantially decreases the chances of the Supreme Court taking up for review the decision by the U.S. Court of Appeals in Washington, which takes effect June 16. The FCC, along with state regulators and a group of CLECs, petitioned the D.C. Circuit to stay its decision vacating key network unbundling rules, but their requests were denied earlier this month.

With the D.C. Circuit's deadline looming, carriers have been engaged in commercial negotiations for network access, but competitive carriers have voiced concerns that Bell companies will hold all the cards under the appeals court's mandate, placing subscribers at risk of increased rates.

Besides the expected applause from the Bell companies, several consumer groups, CLECs, state regulators, and lawmakers expressed disappointment in the SG's decision not to take the matter to the nation's high court.

"I regret that the solicitor general has decided not to appeal to the Supreme Court," said FCC Commissioner Michael K. Copps. "The lower court decision drastically limits competition in telecommunications markets. The result of the executive branch sitting this one out is that higher consumer prices and fewer choices

are more likely. The people who pay America's phone bills deserve better."

House Judiciary Committee Chairman F. James Sensenbrenner Jr. (R., Wis.) and Ranking Member John Conyers Jr. (D., Mich.) said the SG's decision "undermines the clear intent of Congress in the 1996 Telecommunications Act and threatens to undermine consumer choice and local telephone competition for millions of Americans." They added, "We fear millions of Americans may lose the ability to choose a local telephone company or be forced to pay higher rates for local phone service if the misguided D.C. Circuit Court decision is not appealed."

"In refusing to support a bipartisan majority at the FCC, the White House has seriously reduced the chances that the Supreme Court will take the case," said Mark Cooper, director-research for the Consumer Federation of America. "The Bush administration has shown just how far it would go in promoting the interests of the big corporations at the expense of consumers."

"Consumers and small businesses will pay the price for the solicitor general's decision not to seek *certiorari*, because entry costs will now become economically prohibitive," said Lawrence J. Spiwak, president of the Phoenix Center for Advanced Legal & Economic Public Policy Studies. "Unless the Supreme Court grants the FCC majority's expected petition for certiorari, the Bells will dominate the big troika of local, long distance and wireless markets without fear of meaningful competition. As such, don't be surprised when the Bells raise prices and their service quality degrades."

The National Association of State Utility Consumer Advocates (NASUCA) said, "The future of competition, and the advantages it brings consumers, has been imperiled by the solicitor general's decision today."

"We are deeply disappointed in today's decision by the administration," said Jim Cicconi, AT&T Corp.'s general counsel. "In one stroke, and under intense lobbying pressure from entrenched monopolies, the Bush administration has reversed its legal position in this case, and reversed the legal and policy position it has maintained since it took office." He added, "AT&T will press forward with its appeal of the D.C. Circuit decision, and will press our arguments with the state public utility commissions."

Stasia Kelly, MCI, Inc.'s executive vice president and general counsel said, "Nationwide, more than 19 million consumers have already switched their residential phone service from the monopoly Bell to a competitive provider, including more than 3.5 million who

have chosen MCI's all-distance service, The Neighborhood. The administration's decision will clearly disrupt the marketplace."

"We believe the solicitor general's decision is wrong since it is contrary to the law and the public interest," said H. Russell Frisby Jr., CompTel/ASCENT's chief executive officer. "However, based strictly on its merits, we believe that the high court will have no other choice but to consider this appeal. Absent a Supreme Court stay and review of the D.C. Circuit decision, consumers and small businesses will see their phone bills rise and the nation's economy will suffer while a select few giant corporations reap all the windfalls."

"Just as the nation's economy is on the verge of recovery, the Bush administration has just told over 20 million American consumers and small businesses that it does not care if they pay higher prices for phone and broadband services," said John Windhausen Jr., president of the Association for Local Telecommunications Services (ALTS). "The Bush administration position effectively endorses the Bell efforts to recapture their century-old monopoly, while it ignores the tens of millions of American residential and small business consumers that will suffer higher prices as a result," he said.

Jason Oxman, ALTS' general counsel, said the SG's decision "does not settle the matter," adding, "ALTS and other CLECs intend to file for a stay with the Supreme Court, and we remain hopeful that the FCC will support our request and that the Supreme Court will grant the stay and overturn the circuit court's decision on appeal."

Meanwhile, the Bell companies cheered the decision and pledged not to cut off competitors from their incumbent networks, nor increase rates - at least not in the near term.

"Allowing these unlawful rules to lapse will ensure a bright new era of stability in the highly competitive telecommunications industry that will benefit American consumers," said James D. Ellis, general counsel for SBC Communications, Inc. "To insure continuity during this important transition to a rational, free-market-based approach to the industry, and help assure regulators, policy-makers and consumers that there will be no marketplace disruption, SBC has committed to no unilateral increase in mass market UNE-P prices, as well as loop and high-capacity transport between SBC's offices as a result of this ruling, at least through the end of this year."

"The best news is that by letting go of the continual litigation of the past, we can begin to focus on the future," Mr. Ellis said. "This decision will give new life to the FCC's ruling on broadband regulations, which will help meet the president's ambitious goals."

"BellSouth has pledged to its wholesale customers that we will not cut off service or raise rates for any wholesale interconnection services without going through established processes," said Herschel Abbott, BellSouth vice president-governmental affairs. "In addition, we have offered our wholesale customers an opportunity to lock in today's rates until the end of the year and set stable rates through 2007 by negotiating and signing a new long-term agreement with us. We will redouble our efforts to negotiate these agreements." He added, "To the degree interim regulations are deemed necessary, we are eager to work with the FCC."

"We applaud the Bush administration for making a tough call today, but one that will bring the benefits to consumers of stepped-up investment in advanced telecommunications networks by competing providers," said Tom Tauke, Verizon Communications, Inc.'s executive vice president-public affairs and communications. "When faced with a choice between reliance on market forces and government mandates, the administration has placed its faith in market forces."

Gary Lytle, Qwest Communications International, Inc.'s senior vice president-federal relations, said, "Qwest, through its historic wholesale services agreement with MCI, has demonstrated that commercially negotiated relationships are not only possible, but preferable to further litigation and uncertainty. We will continue to negotiate with any and all wholesale customers in an effort to reach similar agreements."

U.S. Telecom Association CEO Walter B. McCormick Jr. said the SG's decision demonstrated "bold leadership from the administration on American jobs, investment and economic growth." Mr. McCormick said, "The clear public interest today lies with encouraging companies to face each other across a negotiating table rather than a courtroom."