



**POLICYMAKERS RUN AMOK  
WHAT'S A CLEC TO DO?  
POLICY & PRACTICE FOR THE NEW MARKET  
REALITIES**

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# AGENDA

- A ROUGH TWO YEARS: THE STATE OF THE CLEC INDUSTRY
- POLICYMAKERS RUN AMOK
  - THE FCC
  - THE D.C. CT. COURT OF APPEALS
  - THE SUPREME COURT & THE VOICE OF REASON
- POLICY & PRACTICE FOR THE NEW MARKET REALITY
  - REAL BUSINESS PLANS
  - COHERENT PUBLIC POLICY

# STATE OF THE CLEC INDUSTRY

## THE “PERFECT STORM”

- **STARTED IN APRIL 2000**
- **TO DATE, OVER 100 CLEC BANKRUPTCIES**
- **MUCH TALK ABOUT THE “PERFECT STORM”:**
  - **SUDDEN CLOSING OF CAPITAL MARKETS**
  - **RECESSION, GENERAL ECONOMIC DOWNTURN**
  - **UNREALISTIC CLEC BUSINESS PLANS, UNSUPPORTABLE EXPANSION**

# FCC RUN AMOK

## DON'T FORGET THE FCC TSUNAMI: OUTRIGHT HOSTILITY

- **ACCESS CHARGES: APRIL 2001, CLECs REGULATED, RATES FLASH-CUT BY 40%**
- **RECIP. COMP.: APRIL 2001, FCC OVERTURNS 30 STATE DECISIONS, REDUCES RATES 70-100%**
- **GUARANTEES CLECs CAN'T MEET DEBT COVENANTS**

# FCC RUN AMOK (cont'd)

## THE FCC TSUNAMI: APATHY

- **NET 2000 EEL COMPLAINT**
  - **IGNORED FOR 1½ YEARS, FINALLY REJECTED AFTER COMPANY GOES BANKRUPT**
- **IDT REQUEST FOR EMERGENCY RULING ON TURNOVER OF CUSTOMER BASE**
  - **IGNORED**
- **CLEC COMPLAINTS ON UNEs “NOT AVAILABLE”**
  - **DELAYED -- ROLLED INTO TRIENNIAL REVIEW**
- **IGNORED E.D.V.A. COURT REQUEST FOR RULING ON ACCESS CHARGES FOR MONTHS AFTER DEADLINE**

# COURTS RUN AMOK

## THE 8<sup>TH</sup> CIRCUIT COURT OF APPEALS

- THE SUPREME COURT'S ACTION OVERTURNING *IOWA UTILITIES BOARD v. FCC* SPEAKS FOR ITSELF

## THE DC CIRCUIT COURT OF APPEALS

- UNPRECEDENTED POLICY ACTIVISM
  - *USTA* DECISION IGNORES SUPREME COURT HOLDINGS & DEFERENCE IN *VERIZON*
    - TELRIC (BELOW COST), UNE-BASED COMPETITION (SYNTHETIC), ILEC MONOPOLY POWER (CATV)
  - REPEATS “SYNTHETIC COMPETITION” BELIEF IN OVERTURNING FCC DECLARATORY RULING ON ACCESS CHARGES
    - WHATEVER HAPPENDED TO CHEVRON DEFERENCE?

# COURTS RUN AMOK (cont'd)

## THE SUPREME COURT & THE VOICE OF REASON

- **CONSISTENT DEFERENCE ON POLICY MATTERS IN *VERIZON v. FCC***
- **STATUTORY CONSTRUCTION FAITHFUL TO THE LANGUAGE OF THE 1996 COMMUNICATIONS ACT**
- **ONLY PROBLEM: SUPREME REVIEW TAKES TOO LONG**

# **PRACTICE & POLICY FOR THE NEW TELECOM MARKET**

# THE NEW TELECOM MARKET

## THE BASIS FOR FACILITIES-BASED COMPETITION REMAINS STRONG

- BY END OF 2000, CLECs COLLECTED \$45B IN REVENUES
- DEMAND REMAINS STRONG
  - LARGE USERS DEMANDING NETWORK & VENDOR REDUNDANCY
    - HOMELAND DEFENSE WILL INCREASE DEMAND
  - RBOCs CUTTING CAPEX
    - 2001 – 10%; 2002 – 22%; 2003 – 1% (UBS WARBURG PROJECTIONS)
    - RBOC LAYOFFS WILL ADVERSELY AFFECT CUSTOMER CARE

# **THE NEW TELECOM MARKET** (cont'd)

## **BANKRUPTCIES PROVIDING BASIS FOR STRONG, LOW-DEBT CLECs**

- **IDT (WINSTAR); XSPEDIUS (E.SPIRE)**
- **FIBER CAN BE PURCHASED AT 1/5 OF GOING PRICE 2 YEARS AGO**
- **ENTERPRISE EQUIPMENT AVAILABLE AT PENNIES ON THE DOLLAR – EVEN FREE**
- **NEW TECHNOLOGIES (VoIP) OFFER ENORMOUS CAPEX/OPEX SAVINGS**

# COHERENT REGULATORY POLICY

## FIRST, DO NO MORE HARM TO EXISTING COMPETITORS

- DON'T MESS WITH THE UNE-P PLATFORM
- DON'T MESS WITH TELRIC
- MAKE EELs AVAILABLE AFTER 3 YEARS OF INACTION
- DON'T EXPAND UNIVERSAL SERVICE SUBSIDIES TO ILECs

# COHERENT POLICY (cont'd)

## SECOND FACILITATE NEW ENTRY

- **DON'T MESS WITH THE UNE-P PLATFORM**
  - **THE NEW CLEC ENTRY STRATEGY: PHASED IN, PROFITABLE BUSINESS**
- **FACILITATE ACQUISITION OF ASSETS & CUSTOMER BASES OUT OF BANKRUPTCY**
  - **THE NEW CLEC: PHOENIX FROM THE ASHES**
- **DON'T REGULATE VoIP**
  - **SIP-BASED VoIP IS THE FUTURE**
  - **ILEC NUMBERING ISSUE: THE 1<sup>ST</sup> SALVO**