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Net neutrality: Now, more than ever

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By Lawrence Spiwak

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Say what you will about the Telecommunications Act of 1996, but at least it worked.

Several years ago, the U.S. Supreme Court observed that the purpose of the Telecommunications Act of 1996 was to "reorganize markets by rendering regulated utilities' monopolies vulnerable to interlopers." Congress required the Bell telephone companies to make essential unbundled elements of their network available to rivals at reasonable wholesale rates. In exchange, the Bells would be allowed to return to the long-distance market.

Under the 1996 act, consumers were saving more than $10 billion a year, employment levels in the wireline telecoms sector remained 17 percent above historical trend (about 92,000 new wireline jobs since 1996), and each unbundled access line increased Bell company average net investment by $759 per year.

But ever since assuming chairmanship of the Federal Communications Commission in 2001, Michael Powell has pursued a steadfast campaign to gut the act's unbundling provisions.

With the FCC's recent adoption of rules that will effectively put in the sunset these market-opening provisions over the next six months, Powell has achieved his anticompetitive goal. Already, industry stalwarts such as AT&T and MCI are exiting the consumer business, layoffs are imminent, and several Wall Street analysts predict that by the end of 2005, the Bells will recapture 80 percent of the approximately 20 million unbundled access lines (16 million) now used by competitors.

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The damage from Powell's anticompetitive agenda will not just be limited to the traditional long-distance carriers.

To the contrary, the future of so-called facilities-based competitors such as Time Warner Telecom, NuVox Communications, Allegiance Telecom and XO Communications are also in peril. Five private-investment firms that have major stakes in these companies--Kohlberg Kravis Roberts & Co., Centennial Ventures, Columbia Capital, Madison Dearborn Partners and M/C Venture Partners--wrote to Powell on July 22 urging him to recognize and halt the adverse consequences of his policies.

They noted that because most competitive local exchange carriers "operate on thin margins in highly price-sensitive markets...they simply (cannot) absorb such dramatic cost increases or pass them along to customers in the form of increased rates." As such, the expected radical "increase in the price of the embedded base of high-capacity loops and transport likely would cause some (competitors) to violate loan covenants."

So what to do? With the FCC doing everything in its power to sabotage new entry by preventing rivals from utilizing unbundled network elements at cost-based rates, how are competitive choices for consumers and businesses going to get "even better," as Powell has promised?

So-called competition from mobile phones certainly won't do it. Not only is there no empirical evidence demonstrating that the majority of consumers view their mobile phones as a substitute for fixed-line service, but you can't have meaningful "intermodal" fixed/mobile competition when the Bells dominate the local, long-distance and wireless markets. Indeed, should the FCC approve Cingular's proposed acquisition of AT&T Wireless, about 70 percent of wireless subscribers served by national wireless carriers will in the hands of the Bells. Intermodal competition? How about intermodal collusion?

The best remaining chance of giving residential consumers competitive choices for voice telephony will be from providers using VoIP services on a managed backbone.

The best remaining chance of giving residential consumers competitive choices for voice telephony will be from providers using voice over Internet Protocol, or VoIP, services on a managed backbone. However, because VoIP is so interlinked with--and dependent on--broadband implementation for the proverbial "last mile," even this technology is at risk unless cohesive policies are in place.

Right now, U.S. consumers essentially have only two choices for broadband: the local cable company or the local Bell phone company.

Putting aside the fact that not all Americans have access to some sort of broadband--much less afford it--basic economics tells us that given the huge costs associated with building and maintaining a local access network, if both the incumbent telephone and cable companies seek to sell their own VoIP product on a vertically integrated basis, they also will actively work to prevent other VoIP providers from selling customers similar services over the same

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broadband connection. This discrimination can come in a wide variety of forms.

For instance, the Bells can continue efforts to impose access charges that currently provide annual revenue of about $15 billion from competitors and VoIP providers that use their lines. While the cable companies are thus far quiet about this issue, with such huge sums at stake, they may side with the Bells, because lading would-be competitors with these fees works to their advantage, too.

Also of concern: Cable companies and the Bells may try to tie broadband service to their own telephone or other products (thus forcing consumers to pay twice for something of which they only need one). In fact, the regional Bells are already following this strategy in many states, refusing to sell "naked" DSL service to consumers unless they also buy local phone service from the Bells.

Another consideration is that cable companies and the Bells may attempt to prohibit consumers from using rival VoIP providers over their broadband connections--and, yes, technology exists today that can make this happen.

Unless policies are put in place to constrain this inevitable discrimination, we will be back to the old AT&T vertically-integrated monopoly--on a regional, not national, basis--and without the tight government constraints that once prevented price gouging and service interruptions.

As a BusinessWeek editorial once so aptly opined: Telecommunications "deregulation should not mean anarchy, deceit and greed hiding behind a twisted interpretation of Chicago School economic theory."

To date, the FCC chairman has strived to implement his own peculiar vision of what the telecommunications market should be instead of what the law requires. He has one last shot with VoIP to get it right and make sure his vision of a "digital migration" comes true in a way that delivers competitive choices for consumers.

biography
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