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 8TH 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 happened 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

■ FACILITIATE 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 1ST SALVO