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Where Do We Go From Here?

First Stop: State Regulatory Commissions

By Josh Long

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The battle over wholesale phone rules will be fought at state public service commissions over the next year. Regulators have nine months to analyze whether there is adequate competition in a designated market to phase out rules that allow local phone companies to lease the Bell networks at steep discounts

through the so-called unbundled network element -platform (UNE-P).

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In August, the Federal Communications Commission released the Triennial Review order, the 576-page document governing new phone and broadband regulations.

"I haven't heard of one state yet that wants to do it without a hearing," says a federal regulatory expert who works for a large phone company.

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Kevin Bloom, a spokesman with the Florida Public Service Commission, which oversees eight local exchange carriers, says the five commissioners would have to vote on whether to hold hearings.

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There definitely is precedent for open forums in Florida. When Florida regulators considered how to set the wholesale price of UNEs, there were “endless hearings and rounds of discovery and interrogatories and depositions,” Bloom says.

Much of the evidence, however, will be presented on paper. In the Florida UNE rate-setting case, says Bloom, BellSouth Corp. electronically submitted a cost study that was the equivalent of 35,000 pages.

Robert Nelson, a commissioner with the Michigan Public Service Commission, says the state regulator solicited comments from phone companies regarding how to handle the Triennial Review analysis a few weeks before the order was released. During an interview in late August, he said the commission had not decided whether to hold hearings.

Mark Cooper, director of research with the Consumer Federation of America, expects bloody regulatory battles in big-money states where there is fierce local phone competition, including California, Florida, Illinois, New York and Texas. Expect a big battle in Michigan too, say observers. “In certain states I think it’s going to become trench warfare,” says Tom Koutsky, vice president of law and public policy with Florida-based Z-Tel Technologies Inc.



Brad Ramsay

Brad Ramsay, general counsel with the National Association of Regulatory Utility Commissioners, says it is likely big states will hold open forums where industry insiders, consumer advocates and other stakeholders will testify and answer to cross-examination.

However, “It’s [not] going to be like a zoning hearing where all the people in the community line up and say I think, I think, I think,” Ramsay says. “Public opinion is not germane to the findings we have to make,” the lawyer adds. “It’s not going to help the record at all to say nine out of 10 consumers in the state of Texas want us to keep the platform.”

The FCC listed specific criteria state regulators must evaluate in determining whether to preserve the resale platform or remove it in a market. However, there is room for different interpretations. For example, the FCC did not define geographic areas. How regulators define a market will prove

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vital in determining whether the states are obligated to preserve the rules. "That may be the battle," says Koutsky.

Koutsky says regulators must involve the public in the process. "I think the state commissions ... are really going to need to talk with customers, consumers and figure out ways to get their input," he says. "It's not about ILECs vs. CLECs. It's about the service customers are receiving today and whether they will be able to receive it tomorrow."



Tom Koutsky

Charlie Beck, interim general counsel with the Florida Office of Public Counsel, which represents Florida citizens in matters before the public service commission, said he did not know whether the agency would travel throughout the state and accept public testimony on the Triennial Review.

In August, the agency requested public hearings on petitions by three incumbent phone companies — BellSouth Corp., Sprint Corp. and Verizon Communications Inc. — to raise local phone rates in Florida. "We are trying to get public hearings on the local rate increases ... and we are swamped right now," he said.



Larry Spiwak

"Certainly the commission is going to hold hearings [on the Triennial Review] that are open to the public but they will do it in Tallahassee."

Larry Spiwak, president of The Phoenix Center for Advanced Legal and Economic Policy Studies, says the public will play a large role in the Triennial Review analysis. "I can guarantee you there is going to be outside involvement," he says. "It is a very public process but it is a very difficult process" for state regulators, who have been instructed to sort out a highly complex controversy in less than a year.

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AT&T Corp. www.att.com

FCC www.fcc.gov

Florida Public Service Commission www.psc.state.fl.us

National Association of Regulatory Utility Commissioners
www.naruc.org

SBC Communications Inc. www.sbc.com

The Phoenix Center for Advanced Legal and Economic Policy
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