

## US REGULATION

# FCC pulls its punches

The RBOCs largely came out the winners, but they are still complaining about UNE-P implementation



Michael Powell

The Triennial Review, delivered by the FCC after months of speculation, still managed to surprise many in the industry, but those looking for regulatory clarity will be disappointed, say analysts.

The Federal Communications Commission had been expected to axe a rule that regional Bell operating companies must sell network elements to competitors at cost, also known as the UNE-P rules. The Bells had lobbied intensively for the change, and the FCC Chairman Michael Powell staked his authority on it. But it didn't happen exactly.

It came as a shock that the FCC lifted UNE-P requirements for broadband elements while keeping them for basic services like voice. And the decision to remove restrictions on line sharing for DSL services was also a surprise.

"Nobody saw this coming," says Matthew Davis, director of broadband access technologies at the Yankee Group. "This was a backroom deal at the eleventh hour."

The move was typical of the disparate collection of regulations and decisions brought together in the review. Line sharing regulations did not even win majority support among the FCC Commissioners. That typified a split FCC decision that passed the raft of new regulations on a 3-2 vote and saw the Chairman dissenting from a decision for the first time since 1991.

That dissent is set to be echoed in courtrooms across the US over the next few years as RBOCs and their rivals contest the new decisions. "The review is an attempt to find a compromise that will be heading to the courts before anything is implemented," says Dianne Northfield, regulatory analyst at the Yankee Group.

Chairman Powell even set out why the ruling will be challenged in court, and the RBOCs were equally quick to denounce the decision to push the ultimate decisions on UNE-P implementation on State regulators. "This is a recipe for continued disarray in the industry and more litigation," says Tom Tauke, senior vice president of public policy and external affairs for Verizon.

Analysts say the FCC actions could also have wider international implications. "A lot of regulators in other parts of the world have modelled themselves on US deregulation, and the clarity of direction that they and the US market sought was not delivered by the FCC," says Davis at the Yankee Group.

RBOCs put the case in stronger terms. "This tells overseas regulators to look elsewhere for your model because regulations in the US are in a state of chaos and indecision," says Steve Davis, senior vice president, public policy for Qwest Communications.

The FCC tried to balance expectations that had arisen around its Triennial Review, including the promise of reinvigorating the US telecoms industry. The RBOCs say being free of UNE-P

leasing would enable them to reinvest in their networks, kick starting the depressed infrastructure market. But rivals claim that stronger RBOCs would mean less competition and less spending. By keeping UNE-P while releasing RBOCs from regulations in the broadband market, the FCC is taking both sides.

In fact, Bells make a profit on wholesale supply of unbundled network elements, say policy analysts at the Phoenix Center in Washington DC. It estimates wholesale operating costs are about \$10 per line per month across the RBOCs and that operating margins are almost as much (see table below).

AT&T says RBOCs have found another way to protect their local monopolies. "In one fell swoop, the FCC granted the Bell companies the broadband deregulation they have so aggressively sought," says Jim Cicconi, AT&T general counsel.

The day before the FCC decision, Qwest said it would invest 15%-20% of its revenue next year on capital investments. "If this broadband decision had gone the other way, that would have had to have been looked at again," says Davis at Qwest.

Whether investment actually flows through will be a key test. "The Bells have said they needed deregulation incentives to build out broadband networks. Now it's time to put up or shut up," says Jason Knowles, analyst at Current Analysis, of Sterling, Virginia.

RBOCs will be free from unbundling packet services or fibre-to-the-home facilities. That should allow them to compete with cable companies' rival broadband services, but analysts doubt much fibre will be deployed. "It's a non-starter because demand isn't there," says Larry Spiwak, president of the Phoenix Center.

But it is the FCC's decision to remove restrictions on how much RBOCs can charge for shared lines that could have the biggest impact. At present, around 40% of high-speed Internet connections running over phone lines rely on line-sharing rates. Now, after a three-year transition period, RBOCs will be free to set prices for DSL lines or demand operators take the whole loop.

The decision makes a major difference for an operator like Covad Communications, the biggest independent DSL provider. Covad resells to operators like AT&T, AOL and Earthlink. Giving RBOCs the power to set prices for those loops will lead to higher rates for the company and consumers, say analysts.

But the extent of the FCC's rule in other areas may not be known for some time. "Details are very vague on what defines packet switching and other issues, but the devil is in the details," says Spiwak. ■

Jonathan Collins

## UNBUNDLING NETWORKS IS PROFITABLE

(figures in \$US, per line, per month)	UNE-P Revenues	Wholesale Costs	EBITDA Margin	EBIT/Operating Margin
Verizon	24.43	10.42	14.00	9.42
BellSouth	32.80	9.46	23.33	18.75
SBC	20.57	9.91	10.67	6.08
Qwest	24.63	9.93	14.70	10.12
BOC-Wide	24.43	9.99	14.43	9.85

Source: Phoenix Center, Washington DC