

NPRG's E-Newsletter

Competitive Telecom Advisor



A periodic look at the competitive telecom industry...

New Paradigm Resources Group, Inc....Explaining the Competitive Telecom Last Mile.

The following is from the January 2005 edition of **Chit-Chat with Tom, Dick & Harry**. Reprinted with permission from Connecticut Research, Inc.
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Winners and Losers in the New FCC UNE Rules

- DICK:** FCC Chairman Powell got his Christmas wish. The FCC came out of their December 15 meeting with a new set of rules under which competitive telephone companies (CLECs) can get access to Unbundled Network Elements (UNEs) from incumbent telephone companies (ILECs).
- TOM:** Powell didn't quite get everything he wanted. He made good on his self-imposed "before the end of the year" deadline to issue a new Order, but he couldn't get the consensus he wanted ... the Commission split 3 to 2 on the approval vote.
- DICK:** Not surprising. Powell and the majority were very intent on writing rules that would not be overturned again by the courts ... having been rejected three times was enough. The minority still thinks that they can write rules that more aggressively promote competition ... and pass judicial muster.
- TOM:** The split within the FCC couldn't be broader. Commissioner Adelstein for the minority said, "With this Order, the Commission officially cuts the cord on local competition ...". Powell, for the majority, said, "Today's decision crafts a clear, workable set of rules that preserves access to the incumbent (telephone company's) network where there is or likely will be no other viable way to compete... (but) ... one can expect to hear dire predictions of competition's demise from those who wanted more ...".
- DICK:** OK. So who are the winners and who are the losers with this new Order?
- TOM:** You can only answer that in a general way because the precise wording of the Order has not been released ... only a summary overview. The devil, as usual, may be in the details.
- DICK:** Well then, just based on the summary, what's the answer?
- TOM:** In the broadest sense, ILECs won and those CLECs who were offering local service via the UNE-P, Unbundled Network Element - Platform, lost, and some facilities-based CLECs kind of won ... but there are a lot of collateral implications.
- DICK:** Let's break it down ... the Order is grouped under four headings:
- Unbundled Framework
 - Dedicated Interoffice Transport
 - High Capacity Loops
 - Mass Market Circuit Switching.
- TOM:** Under **Unbundled Framework**, the FCC bows to the courts' view that the test of whether a competitor faces

DICK: **impairment** in a given location ... and thus should be entitled to the relief of leasing network elements from the incumbent telephone company at low UNE rates ... should not be based on whether actual competition has been created there but rather whether circumstances permit competition in theory ... that is, whether competition by a "reasonably efficient competitor" should be possible.

Some say that is a definite win for the ILECs. The court assumes that the ILECs will compete fairly and not game the rules by, for instance, simply stalling or making excuses for not processing CLEC circuit orders. The CLECs say that only the actual existence of competition is proof that competition is possible. Do you think it's true that the ILECs will frustrate competition which is theoretically feasible ... but not really in existence?

TOM: Apparent competition breeds strange behavior.

DICK: Hmm. There are a few other items in the **Unbundling Framework** section ... it makes explicit that UNEs will not be available for wireless or long distance service since these are competitive and, hence, not impaired.

TOM: There is one small loss for the ILECs in this section. It rejects their idea that there should be a general rule prohibiting access to UNEs whenever a requesting carrier is able to compete using a tariffed offering. These tariff rates are not only higher, in general, than UNE rates but the ILECs, under pricing flexibility, can raise these rates on short notice.

DICK: The next section, **Dedicated Interoffice Transport**, tries to set up specific criteria for when there is impairment in transport between wire centers. If there is impairment at either end, the circuit is impaired. For a DS-1 circuit, the rules say a wire center is defined as **not impaired** if there are at least four fiber-based collocators **or** at least 38,000 business lines in it. For DS-3 or dark (unlit) fiber circuits the definition changes to three fiber-based collocators or at least 24,000 business lines.

TOM: The definition is too loose. What is a "fiber-based collocator?" I think the rule should have been stated in terms of whether there is an alternative carrier offering dedicated transport on a wholesale basis on the route between those wire centers.

DICK: Yes, and who determines if a wire center is impaired or not? Will the FCC require the ILECs to publish a list of unimpaired wire centers or will the CLECs have to deploy their networks without knowing ... and what happens when a previously unimpaired wire center later meets the "impairment" standard?

TOM: As acknowledged ... the devil is in the details. There is time to work all this out. The non-UNE rates for DS-1s and DS-3s on unimpaired routes aren't effective until 12 months after the full order is finally published ... whenever that is ... and 18 months for dark fiber. Meanwhile the ILECs can raise rates by 15% on those routes.

DICK: The next section - **High Capacity Loops** - is really much more important to CLEC viability... that's the big expense. CLECs really can't do without economic DS-1 and DS-3 high speed circuits for loops to the customer ... UNE-L ... and there is seldom a viable alternative to using ILEC circuits to reach from a wire center to a customer's building. That is the bottle neck. Haven't the FCC Commissioners, including Powell, said time and again that they will see that these crucial UNE loops are available to CLECs?

TOM: They have and I don't think that will change. But the courts have introduced a new wrinkle by suggesting that these UNEs could be replaced with the telcos' tariffed offerings ... like Special Access and High Capacity Transport which

DICK: carry discounts for volume and term commitments. The ILECs have jumped on this opening but the FCC didn't bite. That's a great example of why the courts shouldn't be making telecommunications policy. They don't understand the real-world dynamics of the industry... nor should they have to ... the Congress intended that the expertise of the FCC should make the critical implementation decisions vital to the spirit of the Telecom Act of 96.

TOM: When these challenges to the FCC UNE rules began, I don't think the ILECs expected to get anything on the High Capacity loop front. They were focused on their main issue ... getting rid of UNE-P competition... so getting anything at all on High Capacity must seem like a win for them.

DICK: What the FCC put forward were rules which ... similar to the Interoffice Transport rule formulation ... set up specific criteria to determine whether there was impairment. They said that a DS-3 loop linking a building to a wire center is impaired unless the building contains 38,000 or more business lines **and** 4 or more fiber-based collocators. Note, however, that this is a different format than the one used for Interoffice Transport because it uses the word "**and**" rather than "**or**" ... both criterion must be met. For DS-1s, the impairment definition changes to 60,000 or more business lines and 4 or more fiber-based collocators. All dark fiber loops are defined as "unimpaired".

TOM: That standard for DS-1s is really pretty strong protection for the CLECs. I think they won on that.

DICK: As with transport, these loop rules phase in over 12 months ... 18 for dark fiber ... and in the interim, the ILECs can raise the rates on unimpaired circuits by 15% and, during this period, CLECs can't add new circuits at UNE rates.

TOM: Which brings us to the last section ... **Mass Market Local Circuit Switching** ... and it's very simple. It says, ILECs have no obligation to provide CLECs with UNE-P. CLECs which don't own switches and were serving local telephone customers by reselling ILEC service via Unbundled Network Element-Platform have 12 months to find an alternative. During the transition, ILECs can raise rates by a dollar a month per line and CLECs can't add new lines at UNE-P rates.

DICK: All as it was expected. What do the UNE-P based CLECs do now?

TOM: They have options. They can install switches and use UNE-L rather than UNE-P. They can partner with a facilities-based CLEC. They can sue and try to win in court. They can negotiate a commercial deal with the ILEC to retain the UNE-P type setup. They can fold.

DICK: How viable are these options?

TOM: Time will tell. Most UNE-P CLECs have at least installed experimental switches and are testing migration tactics. The good news for them is that soft switches are now available which are much cheaper than the old circuit switches. Z-Tel has announced that it has a negotiated agreement with Qwest covering 14 states. The other ILECs claim to be open to negotiation but their terms are steep ... typically an immediate \$3 raise followed by two years of \$2 raises for a total of \$7.

DICK: How about the option to sue?

TOM: You can count on it. The lawyers we have ... "always with us"... in this case, on both sides.

DICK: Do you see other winners?

TOM: Equipment manufacturers ... in addition to soft switch manufacturers, anyone with equipment that can terminate business lines on the edge ... like Lucent and Nokia.

Several of the facilities-based CLECs will actually be helped and may be winners if they don't go broke ... there are interesting times ahead. Hey, where is Harry? Wasn't he supposed to be part of this discussion?

DICK: He went to a Christmas party to play Santa Claus and never came back ... said something about being off until the end of January. I think he's hiding out from some angry investors who listened to his advice.

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