

“MASS MARKET” SWITCHING PROCEEDING

Thomas M. Koutsky

Vice President, Z-Tel Communications

December 3, 2003

tkoutsky@z-tel.com

703-395-7117

Z-Tel in Kentucky

- Apx. 17,000 *residential and small business* end users, all through UNE-P
- Offers and provides service in all BST density zones in state
- Enhanced services and software focus
 - Personal Voice Assistant
 - Voice Recognition Dialing
 - FindMe, FollowMe services
- Wholesale provider of “mass market” enhanced and telecom services to Sprint and MCI

UNE-P in Kentucky

- Fastest-growing CLEC method of entry
- In 2H2002, UNE-P almost doubled in Kentucky, from 35k to 66k lines
- Nationwide, 42% of all UNE-P lines are by start-up companies (not AT&T and MCI)

Source: PACE Coalition, UNE-P Fact Report (July 2003), available at www.telepolicy.com

- On average, throughout BST region, Z-Tel pays \$32.80/mth per line for UNE-P access vs. BST ARMIS estimated total wholesale expense of \$20.27/mth per line: the largest UNEP margin of any BOC

Source: Beard, Ford and Klein, "The Financial Implications of the UNE-Platform," *CommLaw Conspectus* (forthcoming Fall/Winter 2003), available at www.telepolicy.com/finapp.pdf

A Deal's a Deal

- Bells required by section 271 to provide “loop transmission”, “transport”, “switching” and “signaling” to CLECs
47 U.S.C. 271(c)(2)(B)(iv), (v), (vi) and (x)
- FCC: 271 checklist is an “independent legal obligation” on Bells to provide wholesale access to specifically-listed items
- Section 271(c)(2)(A): requires Bells to implement terms of checklist through 251-252 interconnection agreements
- Issue is not whether BellSouth has an obligation to provide wholesale access to CLECs to these network elements – issue is one of *price, terms and conditions*

“Mass Market” Switching Inquiry

- The trigger analysis application centers around whether multiple CLECs are “actively providing voice service to mass market customers”
- Trigger must also be applied in ‘the context of the entire’ TRO Discussion of “Mass Market” Switching Impairment
- Customer-focused inquiry
 - Residential and small business customers
 - Do not require high bandwidth connectivity (DS1+)
 - Smaller, lower revenue accounts that can only be economically served with voice grade loops
 - Typically serviced on a month-to-month basis
 - Demand reliable, easy to operate service and trouble free installation

National Finding of Impairment

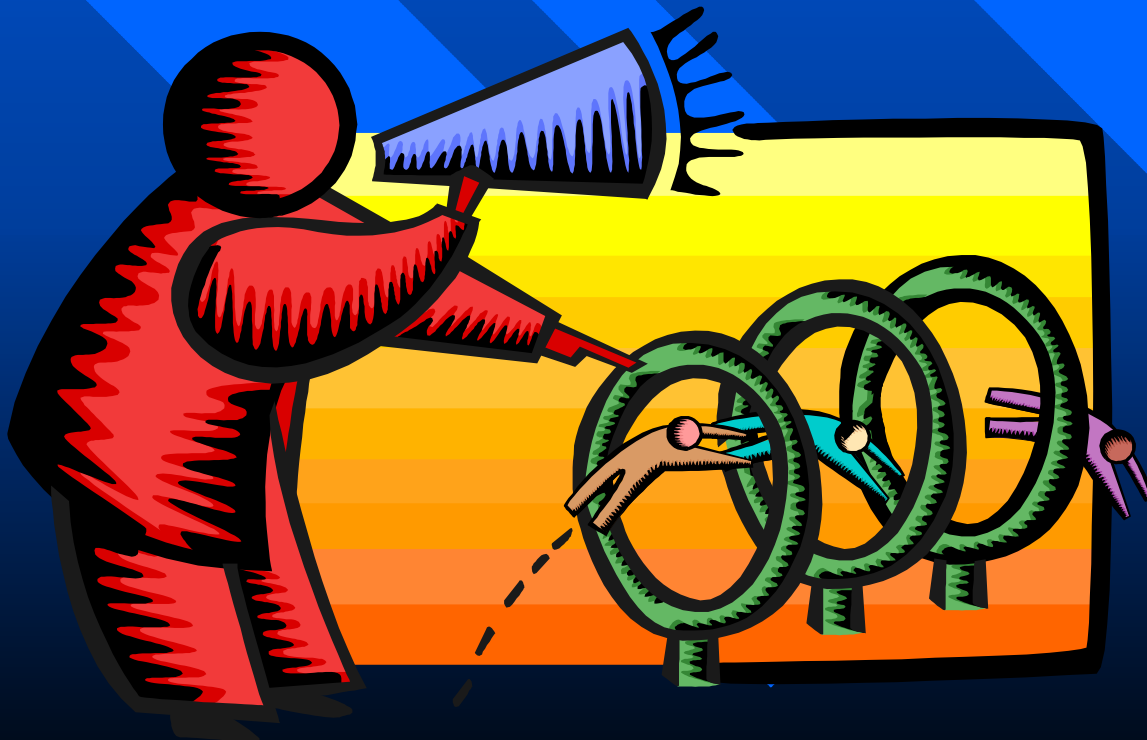
FCC: CLECs are impaired without access to unbundled local switching for mass market customers

- If ILECs challenge finding, Commission will need to proceed with an investigation
- Operative question is whether Operational or Economic “barriers to entry” prevent a CLEC from serving the “mass market” without access to unbundled local switching
- The FCC’s evidence (TRO para. 422) –
 - » “only minimal deployment” of CLEC switches “to serve mass market customers”
 - » “significant barriers to CLEC use of self-provided switches”
 - » “inherent difficulties arise from” hot cut process: high costs, high churn, service disruption, and capacity

The Process

- ILEC should be required to identify those areas where it intends to challenge the finding of impairment, and to present the basic evidence to support its case
- Such an approach streamlines the process by focusing resources on areas where ILEC elects to challenge the finding of impairment

SWITCH TRIGGERS



Mass Market Switching— Applying the Triggers

- Not a simple counting exercise
- Purpose is to ensure that objective data demonstrates that the national economic and operational impairments have in fact been overcome in the market
- Triggers are not a “trick” to support a finding of no impairment when impairment still exists
- Application of the triggers and the potential deployment test should yield the *same result* – otherwise the analysis is not economically rational
- If there is any doubt as to whether applying a trigger would eliminate access to switching even where there is continuing impairment, the Commission should find the trigger is not met

Mass Market Switching— Applying the Triggers

- Examples of appropriate considerations under the trigger analysis:
 - CLECs providing service to niche markets or de minimus numbers of customers do not qualify under the triggers
 - Qualifying CLECs must be serving the “mass market”, which includes both residential and small business customers
 - Qualifying CLECS make alternatives available in substantially all of the Geographic Area
 - Qualifying CLECs must offer real alternatives or substitutes to ILEC service offerings
- The Bottom Line – Will consumers be as well off after a trigger is met as they were before?

Objective Criteria

- The trigger analysis is not a simple counting exercise. The Commission must also consider the objective data presented.
- That “objective criteria” must be reviewed in order to determine whether
 - The market can support multiple competitive carriers using their own switches
 - The national barriers to entry are not insurmountable in the defined market
 - Consumers will have alternatives that place competitive pressure on ILEC pricing and terms

Possible ILEC Trigger Application

Lines of State Commission inquiry...

- » Are residential customers being served?
- » How many “mass market” customers being served?
- » Did the potential “trigger” utilize UNE-P as part of its entry strategy?
- » Are services being actively offered?
- » What types of services are being offered and are those services comparable in cost, quality and maturity to ILEC services?
- » How big is the defined market?
- » How many mass market customers in that market are being served by CLEC switches?
- » Can “mass market” customers throughout the defined geographic area get access to the alternative provider?

Trigger Application: The Aftermath

- In setting geographic areas, must consider whether entry possible in “residual” area
 - » UNE-P offers statewide entry...
 - » ...and ability to serve entire state may be dependent upon serving larger cities
- As stated, not just counting to 3, the Commission must review objective criteria and determine that viable competitive alternatives are available, are likely to continue, and that such alternatives:
 - » Are of comparable cost, quality, and maturity to ILEC services
 - » Are actively available
 - » Are able to serve a competitively meaningful # of customers
 - » Are in substantially all of the affected area

Competition Must be Real!

- Commission must ensure that competitive alternatives:
 - Are able to serve each group of mass market customers within the market area
 - Allow carriers to continue to place competitive pressure on ILEC prices and terms
- Commission must also ensure that:
 - Carriers will have ready access to necessary competitive facilities
 - Consumers have ongoing access to multiple competitive providers

Ultimate Goal Remains...

Ensure competitive choice for “mass market” customers

- KY Commission has invested considerable time and resources over the years in an effort to bring competitive alternatives to “mass market” consumers;
- This competition, while a long time coming, is in its infancy
- With “The Goal” in the balance, a review of unbundled switch triggers is more than a simple counting exercise.

ECONOMIC IMPAIRMENT



Mass Market Switching— Economic Impairment

- Would make economic sense for a CLEC to enter the local mass market in the absence of UNE switching?
- Requires a “broad business case analysis that examines all likely potential costs and revenues”
- Based on an efficient business model for entry, not any actual entrant
- Based on a review of the typical revenues available from the average customer in the mass market

Economic Review.....States must...

- i. Consider the likely revenues and costs associated with all services that the efficient CLEC would provide to mass market customers
- ii. Not consider a particular carrier's business model but rather must be based on a most efficient business model (this includes consideration – but not necessarily required use - of new technologies)
- iii. Consider how sunk costs and competitive risks affect likelihood of entry

Operational Impairment

Mass Market Switching— Operational Impairment

- Issue is whether ILEC has eliminated all operational barriers to mass market use of UNE-L
- Operational barriers include, at a minimum, issues related to
 - unbundled loop provisioning,
 - collocation
 - CLEC to CLEC cross connects
 - ability to provide DSL to mass market customers
 - OSS

Four areas of operational impairment were cited in TRO:

<p>1. Hot Cut Process (FCC finding)</p>	<p>“We find on a national basis, that competing carriers are impaired without access to unbundled local switching for mass market customers. This finding is based on evidence in our record regarding the <u>economic and operational</u> barriers caused by the cut-over process.” Para.459 (emphasis added).</p>
<p>2. Loop Provisioning</p>	<p>“We recognize, though, that even after such (batch hot cut) processes are implemented, competitive carriers may face barriers associated with loop provisioning – even problems arising from the newly improved hot cut processes – which may continue to impair a requesting carrier’s entry into the mass market ... Specifically, we ask the states to determine whether incumbent LECs are providing nondiscriminatory access to unbundled loops.” Para.512.</p>
<p>3. Collocation</p>	<p>“We therefore direct the state commissions to consider evidence concerning the costs and physical constraints associated with collocation in a particular market.” Para. 513.</p>
<p>4. CLEC to CLEC Cross Connects</p>	<p>“We have also determined that an incumbent LEC’s failure to provide cross-connections between the facilities of two competitive LECs on a timely basis can result in impairment.” Para. 514 (see also Para. 476).</p>

What does the FCC Propose?

- In addition to the finding of impairment, the FCC proposed an approach for a potential solution- a batch cut process
 - BellSouth has no batch hot cut process.
- Directed that state commissions approve and implement a batch hot cut process within 9 months. (If a Commission declines to develop a process, it must produce detailed findings why the current individual process is adequate)

Commissions must address, at a minimum:

1. Determine volume of orders to be included in batch
 2. Approve specific processes to be used in performing a batch
 3. Ensure timely migrations through testing and adoption of performance standards and consequences for failed performance
 4. Adopt TELRIC rates for batch process
- Must consider whether the adoption of rolling access to UNE-P would eliminate all remaining impairment

BATCH HOT CUTS

The Batch Cut Process

FCC: States to “put in place concrete steps to mitigate these causes of impairment” (TRO para. 423)

- Commission must approve a “seamless, low-cost” process for transferring large volumes of mass market customers
- Must be scalable and reliable at commercially reasonable volumes and cover all types of loops and loop transfers between all types of carriers, both ILEC and CLEC
- Performance standards and metrics must be developed and should result in performance as good as under UNE-P
- Must be priced at TELRIC
- “Paper promises insufficient”-- must be tested and implemented to demonstrate sufficiency

The Batch Cut Process

- The process itself could be developed regionally on an operating company basis, with coordination among state commissions
- Some inquiries state specific:
 - Establishment of a TELRIC rate
 - Determination of scalability
 - Testing and implementation
 - Performance plan and financial consequences for inadequate performance

Batch Hot Cut Panacea?

- “Batch” does very little (if anything) for onesy-twosey entry
- “Batch” process must accommodate voice and data
(October 8, 2003 CA Batch Hot Cut Order)
- “Batch” not eliminate manual provisioning
- “Batch” may increase CLEC administrative costs
- “Batch” combined with “rolling access” requires CLECs to “double-pay” for switching
 - CLEC must pay ILEC for unbundled switching until it reaches a “batch” level
 - At same time, CLEC would still need its “own” switch to cut-over the “batch” to
 - FCC did not analyze economic impact of CLEC paying for switching twice

Geographic Area Analysis

Geographic Market Definition

The TRO directs the states to determine “the relevant geographic area” to be included in a “market.” For example, In defining geographic markets, the TRO directs that a state commission shall take into consideration numerous objective criteria, including , but not limited to:

- the locations of mass market customers actually being served (if any) by competitors,
- the variation in factors affecting competitors' ability to serve each group of customers,
- and competitors' ability to target and serve specific markets profitably and efficiently using currently available technologies.

Defining Geographic Areas

- Dynamic and fact-specific inquiry
- Many factors used to determine the geographic area are intertwined with the potential deployment analysis
- Cannot be defined in economic abstract: “geographic impairment zones”
- While may not encompass the entire state...state cannot define area so narrowly that a competitor cannot take advantage of scale and scope economies
- Fact-based: should be decided as part of the Commission’s final decision

Residual Geographic Areas

- “Mass market” is as geographically dispersed as a state’s population
- Baseline information is location of customers of the most recent competitive activity
- Residual area is a “market” as well – it cannot be so small “that a competitor serving that market alone would not be able to take advantage of available scale and scope economies from serving a wider market.” TRO para. 495