Paul|Weiss

Current Telecom Developments

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FCC Approves Order to Ease Regulation of Business Data Services

By a vote of 2-1 yesterday, the FCC adopted a Report and Order (R&O) which relaxes or lifts regulatory requirements for many providers of special access, or business data services (BDS), based on the agency's conclusion that the U.S. market for BDS is largely competitive. Valued last year at $45 billion, the U.S. BDS market sources the high-capacity broadband connections used by thousands of businesses to facilitate ATM and credit card transactions and a host of other essential services.

The deregulatory approach approved yesterday by the FCC's Republican majority stands in contrast with proposed BDS rule changes that were announced a year by a Democratic FCC majority led by former FCC Chairman Tom Wheeler. In an April 2016 Further Notice of Proposed Rulemaking (FNPRM) from which then-FCC Commissioner Ajit Pai and Commissioner Michael O'Rielly dissented, the agency proposed to replace its existing special access regulatory framework with a new, technology-neutral approach to BDS that would classify markets as competitive or non-competitive in accordance with certain principles. Citing data collected over a period of years in the FCC's long-running special access proceeding, the FNPRM maintained that "competition in this essential market is uneven, and . . . the FCC's existing rules have failed to identify markets where competition is lacking, even as they have failed to identify competitive markets."

Relying on the sources of data highlighted in the April 2016 FNPRM as well as "a robust public record garnered from numerous requests for comment," the FCC instead found that "strong competition" exists in the U.S. BDS market. In support of that conclusion, the FCC noted that BDS has evolved from copper-based TDM technologies deployed by incumbent local exchange carriers (ILECs) to high-speed, Ethernet network technologies that "are often deployed by lightly-regulated competitive carriers which now account for nearly half" of the BDS marketplace. Asserting that "legacy regulation inhibits the investment required for the transition of BDS" from TDS to broadband Ethernet connectivity, the FCC decided to lift price regulations for packet-based BDS services that operate at speeds in excess of 45 Mbps. With respect to TDM BDS, the R&O eliminates price regulation in counties where (1) at least half of the buildings are located within a half mile of a location served by a competitive BDS provider or (2) 75% of the census blocks have at least one cable network provider. ILECs that satisfy either tenet of TDM competitive test will no longer have to file tariffs with the FCC at the end of an unspecified transition period. Price regulation will remain in effect for lower-speed TDM services in counties that fail to satisfy the competitive test. All BDS providers—whether TDM or packet-based—will "continue to be subject to statutory requirements that rates, terms and conditions be just and reasonable." Industry reaction to the R&O was mixed, with ILECs and cable operators applauding the rule changes and representatives of competitive carriers warning that deregulation will lessen competition and lead to higher rates.

Verizon Strikes $1.05 Billion Optical Fiber Deal With Corning

On Tuesday, Verizon Wireless took further steps toward fulfilling its fifth-generation (5G) network ambitions with the signing of a $1.05 billion purchase agreement with Corning that will provide Verizon with up to 12.4 million miles of optical fiber infrastructure each year from 2018 through 2020. The Corning deal compliments Verizon's recently-completed $1.8 billion acquisition of fiber optic network assets held by XO Communications. Combined with a separate, but related lease of XO spectrum assets that was approved by the FCC last summer, the XO transaction gave Verizon access to (1) a national, inter-city fiber network which spans 20,000 route miles and includes fiber rings in 45 of the top 50 U.S. markets and (2) FCC licenses in the 28 GHz and 39 GHz bands that cover 45% of the U.S. population.

According to a Verizon spokesman, the Corning purchase is intended to help Verizon pursue "growth opportunities in 5G" that include "fixed 1 GB service, smart cities and low-latency applications for commercial use in transportation and other industries" as well as "4G LTE densification to add network capacity nationwide." Pointing to Verizon's plan to conduct 5G technology trials in eleven markets and to his company's ongoing "One Fiber" initiative which began last year with a $300 million, six-year long commitment to replace Boston's aging copper network lines with fiber infrastructure, Verizon chief supply chain officer Viju Menon also noted that "securing the required volume of optical fiber and hardware solutions with Corning will ensure we meet our planned rollout schedules."

Meanwhile, funds from the Verizon deal are expected to offset Corning's projected $250 million cost of expanding and updating its optical fiber, cable and solutions manufacturing facilities "to help meet the demand of its global carrier and enterprise customers." A Corning spokesman informed reporters that work on the expansion project will begin later this year with the goal of bringing all manufacturing facilities into full operation during 2018. In a press statement praising the deal, FCC Chairman Ajit Pai predicted that the agreement "will create thousands of high-quality jobs building and laying fiber" that will "go a long way toward closing the digital divide." Asserting that "a forward-thinking approach" which "relies on market incentives" is "the best way to deliver digital opportunity," Pai promised that the FCC "will continue to focus on creating a regulatory climate that favors greater investment."

Regulator Orders Vivendi to Halt Italian Market Expansion

Officials of Vivendi confirmed Tuesday that they are considering legal action against an order, handed down by Italian telecommunications regulator Agcom, that requires the French media conglomerate to reduce its stake holdings in Telecom Italia (TI) or in national broadcaster Mediaset. Vivendi currently ranks as the single largest TI shareholder with a 24% stake. Although Vivendi withdrew last year from a $860 million deal to acquire Mediaset's pay TV unit (an action which is now the subject of a pending lawsuit), Vivendi recently pursued a series of minority share purchases in Mediaset that have enabled Vivendi to build a stake of nearly 29% in the broadcaster with corresponding voting rights.

Spurred by a complaint filed by Mediaset, Agcom launched an investigation last December through which it ultimately concluded that Vivendi's Italian shareholdings provide Vivendi with significant influence over TI and Mediaset in violation of Italian antitrust law. Agcom also declared that the current relationship among Vivendi, TI and Mediaset could produce a negative effect "on the existing level of competition in the markets involved and on the degree of pluralism" in the Italian media sector. As such, Agcom notified Vivendi that it would have one year in which to reduce its stake in either TI or Mediaset to avoid liability for fines of between two and five percent of Vivendi's annual revenues. While the directive did not specify the amount of TI or Mediaset shares that Vivendi would be required to divest, Agcom told Vivendi that it would have to submit a "specific plan of action" within 60 days.

While voicing surprise at the ruling, a Vivendi spokesman countered that his company "has always operated within the Italian law, and specifically . . . [antitrust] law regarding the protection of media pluralism." Stressing that Vivendi "neither controls nor exercises a dominant influence on Mediaset," the spokesman declared that Vivendi "reserves the right to take any appropriate legal action to preserve its interests."

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