

**Telecom Regulation*****Tauzin and Dingell define the future?***

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Regulation of the telecommunications sector is complex. Regulators and legislators must continuously scan a wide range of changes and attempt to balance competing forces. This sometimes results in government action having unintended consequences. The Tauzin-Dingell bill, whether it passes or not, should provoke much thought. They may have hit on the right formula to end the debate, although it may not be the end they had in mind.

Regulation of the telecommunications sector is complex. Technologies are evolving at a tremendous pace, and new and unforeseen applications of those new technologies evolve even more quickly. Economic trends change, consumer demands change, and industrial development remains an important factor for a country's growth and success. Regulators and legislators must continuously scan all of these changes and attempt to balance competing forces. This sometimes results in government action having unintended consequences.

For example: in the early days of regulatory reform in the UK, the regulator set market share targets for the new entrants, and therefore mandated levels of losses for the incumbent (BT). This had the desired effect of encouraging the new entrant, Mercury; but it also gave BT a vested interest in losing customers. BT was able to shed their least profitable customers, while meeting the market share targets. This may not have been exactly what the government had in mind.

In several European countries, the competitive bidding process for 3G wireless spectrum should have resulted in operators keen to build networks and start recouping their spectrum investment. On the contrary, roll out has been slow, as companies have found themselves out of cash because they paid too much for spectrum.

Final example: in order to lower the barrier to entry for new competitors, incumbents in the US are required to allow their competitors to make use of local plant at wholesale rates. The incumbents have, as a result, been reluctant to invest in their own networks, since their competitors also benefit from these investments. This lack of investment in turn, has made the RBOCs less able to compete with cable TV companies who offer cable modem high-speed services over their HFC networks.

When legislation has unintended consequences, it can spawn more legislation in an attempt to redress the balance. Enter the Tauzin-Dingell bill, HR1542, which aims to relieve some of the obligations on US incumbents to open their networks to competitors.

The cable companies, with no requirement to share their networks have capitalized on their advantage to gain what some estimate to be 70% of the high-speed market. HR1542 would relieve the RBOCs of their obligation to share their networks with competitors offering high-speed access services. This would strongly encourage RBOCs to invest

confidently in building out an alternative to the cable companies' offerings, creating more choice for more consumers – the stated intent of the Bill.

Opposition and support for the bill fall along fairly predictable lines. The RBOCs approve, CLECs and cable companies disapprove. Who is right?

The RBOCs are right to predict that the bill, if passed, will remove at least one obstacle to their spending capital on modernizing their access networks. The cable companies are right to be worried that this could mean more serious competition. The CLECs are right to assert that this will undermine their business plans, even with the three-year breathing space allowed by the legislation.

The drafters of HR1542 clearly wanted to make a gesture to the competitors. Some sharing will continue to be mandatory. The RBOCs must continue to offer wholesale access to the switched voice portion of the local loop. And RBOCs must continue to make available the non-voice portion of each local copper loop for the provision of DSL services.

It is only when a competitor intends to use the incumbent's copper to deliver broadband-based voice plus data services that the RBOC needs no longer to make that available on a wholesale basis. This does more than just protect the RBOC's future investment in modernization: this directly impacts those competitors who supply integrated voice and data services. Using the incumbent's copper pairs and fairly old technology (PCM or HDSL), these CLECs deliver T1 equivalent bandwidth (1.5Mbps).

These integrated access providers (not the voice-only CLECs or the DSL-only DLECs) are currently providing strong competition for the RBOCs. HR1542 will mean they will have to negotiate new deals for the supply of the plant that is essential to their business model, and they will not be in a strong negotiating position.

On the other hand... While legislators, regulators and even the lobbyists focus on another round of rule changes for the legacy environment, technology has been moving ahead, even in the current capital-constrained telecoms market. Not every competitor depends on the RBOCs for access: competitive companies are already laying fiber to the home, fiber into offices, establishing Gigabit Ethernet networks. Technical problems with broadband wireless are being overcome and deployment will accelerate as prices drop further and reliability increases. Narrowband wireless companies are developing service packages to make cell phones more practical and economic for wireline replacement.

A possible consequence of the bill therefore, is that instead of investment funds flowing to a broad range of competitors, funds will now be concentrated on the minority of competitors who are building their own access infrastructures. This focus could create some very serious competitors for the RBOCs.

So, from one perspective the bill could be seen as totally favoring the RBOCs. From another it could be seen as a way of driving investment into a small number of serious long-term competitors who will then be more likely to successfully challenge the RBOCs. Deliberate intent or unexpected consequence?

HR1542 passed through the House of Representatives, and now is under review by the Senate. Competitive service providers are rethinking their business plans to take into

account the serious possibility of a significant change to the regulatory environment. Everyone else with an interest in the industry is thinking it through too.

Let's do some lateral thinking to consider not only the stated aims, but some likely consequences, intended or unintended. Maybe Tauzin-Dingell are simply spelling out the end to an unusual model, where the upstart was completely dependent on the giant for their very lifeblood. Maybe Tauzin-Dingell will be the catalyst for investment in new, robust, highly innovative networks that will accelerate the delivery of new services to many more Americans.

The more complicated we make things, the less predictable they turn out to be.

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