United States Code Annotated Currentness

Title 47. Telegraphs, Telephones, and Radiotelegraphs
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter II. Common Carriers (Refs & Annos)
Part II. Development of Competitive Markets (Refs & Annos)

§ 251. Interconnection

(a) General duty of telecommunications carriers

Each telecommunications carrier has the duty--

(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and
(2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256 of this title.

(b) Obligations of all local exchange carriers

Each local exchange carrier has the following duties:

(1) Resale

The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

(2) Number portability

The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

(3) Dialing parity

The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

(4) Access to rights-of-way

The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 of this title.

(5) Reciprocal compensation

The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

(c) Additional obligations of incumbent local exchange carriers

In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties:

(1) Duty to negotiate

The duty to negotiate in good faith in accordance with section 252 of this title the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

(2) Interconnection

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--
(A) for the transmission and routing of telephone exchange service and exchange access;
(B) at any technically feasible point within the carrier's network;
(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

(3) Unbundled access

The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

(4) Resale

The duty--

(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and
(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

(5) Notice of changes

The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

(6) Collocation

The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

(d) Implementation

(1) In general

Within 6 months after February 8, 1996, the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section.

(2) Access standards

In determining what network elements should be made available for purposes of subsection (c)(3) of this section, the Commission shall consider, at a minimum, whether--
(A) access to such network elements as are proprietary in nature is necessary; and
(B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

(3) Preservation of State access regulations

In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that--
(A) establishes access and interconnection obligations of local exchange carriers;

(B) is consistent with the requirements of this section; and
(C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

(e) Numbering administration

(1) Commission authority and jurisdiction

The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

(2) Costs

The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.

(3) Universal emergency telephone number

The Commission and any agency or entity to which the Commission has delegated authority under this subsection shall designate 9-1-1 as the universal emergency telephone number within the United States for reporting an emergency to appropriate authorities and requesting assistance. The designation shall apply to both wireline and wireless telephone service. In making the designation, the Commission (and any such agency or entity) shall provide appropriate transition periods for areas in which 9-1-1 is not in use as an emergency telephone number on October 26, 1999.

(f) Exemptions, suspensions, and modifications

(1) Exemption for certain rural telephone companies

(A) Exemption

Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof).

(B) State termination of exemption and implementation schedule

The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission. The State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission regulations.

(C) Limitation on exemption

The exemption provided by this paragraph shall not apply with respect to a request under subsection (c) of this section, from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company provides video programming. The limitation contained in this subparagraph shall not apply to a rural telephone company that is providing video programming on February 8, 1996.

(2) Suspensions and modifications for rural carriers

A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) of this section to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification--
(A) is necessary--
(i) to avoid a significant adverse economic impact on users of telecommunications services generally;
(ii) to avoid imposing a requirement that is unduly economically burdensome; or
(iii) to avoid imposing a requirement that is technically infeasible; and
(B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

(g) Continued enforcement of exchange access and interconnection requirements

On and after February 8, 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in

accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding February 8, 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after February 8, 1996. During the period beginning on February 8, 1996 and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

(h) Definition of incumbent local exchange carrier

(1) Definition

For purposes of this section, the term 'incumbent local exchange carrier' means, with respect to an area, the local exchange carrier that--
(A) on February 8, 1996, provided telephone exchange service in such area; and
(B)(i) on February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or
(ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in clause (i).

(2) Treatment of comparable carriers as incumbents

The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if--
(A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);
(B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and
(C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.

(i) Savings provision

Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201 of this title.

CREDIT(S)

(June 19, 1934, c. 652, Title II, § 251, as added Feb. 8, 1996, Pub.L. 104- 104, Title I, § 101(a), 110 Stat. 61; Oct. 26, 1999, Pub.L. 106-81, § 3(a), 113 Stat. 1287.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1996 Acts. House Report No. 104-204 and House Conference Report No. 104- 458, see 1996 U.S. Code Cong. and Adm. News, p. 10.

1999 Acts. Statement by President, see 1999 U.S. Code Cong. and Adm. News, p. 242.

Amendments

1999 Amendments. Subsec. (e)(3). Pub.L. 106-81, § 3(a), added par. (3).

LAW REVIEW COMMENTARIES

Antitrust and local competition under the Telecommunications Act. James B. Speta, 71 Antitrust L.J. 99 (2003).

Elusive goals under the Telecommunications Act: Preserving long distance competition upon Baby Bell entry and attaining local exchange competition. Lawrence A. Sullivan, 25 Southwestern U. L.Rev. 487 (1996).

Entry policy in local telecommunications: Iowa Utilities and Verizon. Douglas Lichtman and Randal C. Picker, 2002 Sup.Ct.Rev. 41 (2002).

FCC authority to regulate the Internet: Creating it and limiting it. James B. Speta, 35 Loy. U. Chi. L.J. 15 (2003).

Federal common law, cooperative federalism, and the enforcement of the Telecom Act. Philip J. Weiser, 76 N.Y.U. L.Rev. 1692 (2001).

Good faith negotiation clause of the Telecommunications Act of 1996: An analysis. Thomas B. Romer, 69 Colorado L.R. 257 (1998).

Network interconnection and takings. Adam Candeub, 54 Syracuse L. Rev. 369(2004).

Speta on antitrust and local competition under the Telecommunications Act: A comment respecting the accommodation of antitrust and telecom regulation. Steven Semeraro, 71 Antitrust L.J. 147 (2003).

Telecommunications Act of 1996: The challenge of competition. Deonne L. Bruning, 30 Creighton L.R. 1255 (1997).

LIBRARY REFERENCES

American Digest System

Telecommunications ⚿46, 267.
Key Number System Topic No. 372.

Corpus Juris Secundum

CJS Telecommunications § 32, Federal Law.
CJS Telecommunications § 114, In General.

RESEARCH REFERENCES

Encyclopedias

94 Am. Jur. Trials 211, Appealing Adverse Arbitration Awards.

Am. Jur. 2d States, Territories, and Dependencies § 100, Effect of United States Constitution; Violation of Constitutional Provision or Federal Law.

Am. Jur. 2d Telecommunications § 13, Communications Act of 1934.

Am. Jur. 2d Telecommunications § 16, Telecommunications Act of 1996.

Am. Jur. 2d Telecommunications § 25, Interconnection.

Am. Jur. 2d Telecommunications § 26, Interconnection -- Review of Interconnection Agreements Between Local Exchange Carriers.

Am. Jur. 2d Telecommunications § 30, Public Service Commission Actions.

Am. Jur. 2d Telecommunications § 34, Persons Liable; Use of Telephone by Person Other Than Subscriber.

Am. Jur. 2d Telecommunications § 169, Federal Regulation.

Am. Jur. 2d Telecommunications § 184, Mobile Telephone Service.

Treatises and Practice Aids

Federal Procedure, Lawyers Edition § 72:1, Generally.

Federal Procedure, Lawyers Edition § 72:274, FCC Jurisdiction Over Common Carriers.

Wright & Miller: Federal Prac. & Proc. § 3524, Actions in Which a State is a Defendant.

NOTES OF DECISIONS

Unbundling, generally - Competition 27
Unbundling, generally - Cost benefit 25
Unbundling, generally - Impairment 30
Unbundling, generally - Nuanced standard 29
Unbundling, generally - Reasonably efficient competitor 28
Withholding information, antitrust provisions 1d
Yellow pages listings 18

1. Purpose

The Telecommunications Act of 1996 is intended to introduce competition into the market and does not guarantee all local telephone service providers a sufficient return on investment. Alenco Communications, Inc. v. F.C.C., C.A.5 2000, 201 F.3d 608. Telecommunications ⇦855

Congress intended Telecommunications Act of 1996 to be national in scope. TCG Detroit v. City of Dearborn, E.D.Mich.1997, 977 F.Supp. 836, affirmed 206 F.3d 618, rehearing and suggestion for rehearing en banc denied. Telecommunications ⇦604

Congress enacted Telecommunications Act to foster competition in local telephone service. GTE Northwest Inc. v. Hamilton, D.Or.1997, 971 F.Supp. 1350. Telecommunications ⇦855

Telecommunications Act was designed to foster rapid development of telecommunications competition in local markets served by incumbent providers. GTE Northwest, Inc. v. Nelson, W.D.Wash.1997, 969 F.Supp. 654. Telecommunications ⇦855

Telecommunications Act of 1996 is intended to foster competition in local telephone service. GTE South Inc. v. Morrison, E.D.Va.1997, 957 F.Supp. 800. Telecommunications ⇦729

Congress enacted Telecommunications Act (TCA) with intent to increase competition in telecommunications industry. Western PCS II Corp. v. Extraterritorial Zoning Authority of City and County of Sante Fe, D.N.M.1997, 957 F.Supp. 1230. Telecommunications ⇦623

1A. Construction with other laws

Consumers stated Sherman Act antitrust claim against incumbent local exchange carriers (ILECs), in complaint that asserted conspiracy both to prevent competitive entry into local telephone and Internet service markets, in contravention of purposes of Telecommunications Act, and to avoid competing with each other in their respective markets, by alleging that ILECs had not attempted to compete meaningfully in other ILECs' territories surrounding their own despite having acknowledged inherent profitability of doing so, and that ILECs had interfered with competing local exchange carriers' (CLECs') customer relationships by, e.g., denying access to essential network

equipment. Twombly v. Bell Atlantic Corp., C.A.2 (N.Y.) 2005, 425 F.3d 99, petition for certiorari filed 2006 WL 558413. Monopolies ⇦12(2)

Regional telephone company did not commit antitrust violation under the essential facilities doctrine when it allegedly denied internet service provider access to its network and facilities, since company could be compelled to provide access under the Federal Telecommunications Act (FTCA). Covad Communications Co. v. BellSouth Corp., C.A.11 (Ga.) 2004, 374 F.3d 1044, rehearing and rehearing en banc denied 116 Fed.Appx. 257, 2004 WL 2156835, certiorari denied 125 S.Ct. 1591, 544 U.S. 904, 161 L.Ed.2d 277. Monopolies ⇦17(2.2)

1B. Antitrust provisions--Generally

Allegation that incumbent local telephone exchange carrier (ILEC) engaged in disparagement of product offered by competitive local exchange carrier (CLEC), was claim of exclusionary conduct violating antimonopoly provision of Sherman Act, which was not blocked by Supreme Court *Trinko* decision barring private suits for violation of Telecommunications Act provisions granting CLECs access to ILECs' facilities. Z-Tel Communications, Inc. v. SBC Communications, Inc., E.D.Tex.2004, 331 F.Supp.2d 513. Monopolies ⇦28(6.3)

1C. ---- Private enforcement

Allegation that incumbent local telephone exchange carrier (ILEC) abused government processes by deliberately disobeying orders of state utility commissions, forcing competitors to spend time and resources contesting noncompliance, was claim of exclusionary conduct violating antimonopoly provision of Sherman Act, which was not blocked by Supreme Court *Trinko* decision barring private suits for violation of Telecommunications Act provisions granting CLECs access to ILECs' facilities. Z-Tel Communications, Inc. v. SBC Communications, Inc., E.D.Tex.2004, 331 F.Supp.2d 513. Monopolies ⇦28(6.3)

Supreme Court's *Trinko* decision, that no private right of action existed for enforcement of Telecommunications Act requirement that incumbent local telephone exchange carriers (ILECs) share facilities with competitive local exchange carriers (CLECs), did not bar claim that ILEC violated Sherman Act § 2 prohibition on monopoly by leveraging legitimate advantages derived from ownership of facilities to engage in anticompetitive conduct. Z-Tel Communications, Inc. v. SBC Communications, Inc., E.D.Tex.2004, 331 F.Supp.2d 513. Monopolies ⇦28(1.2)

1D. ---- Withholding information

Allegations that incumbent local telephone exchange carrier (ILEC) deliberately withheld current information regarding customer cancellations from competitive local exchange carrier (CLEC) leasing ILEC's interchange facilities pursuant to Telecommunications Act, causing CLEC to pay excessive leasing fees, and prepared false billings, were claims of exclusionary conduct violating antimonopoly provision of Sherman Act, which was

not blocked by Supreme Court *Trinko* decision barring private suits for violation of Telecommunications Act provisions governing access to ILEC electronics. Z-Tel Communications, Inc. v. SBC Communications, Inc., E.D.Tex.2004, 331 F.Supp.2d 513. Monopolies ⇦28(6.3)

1E. ---- Refusal to deal

Competitive local telephone exchange carrier (CLEC) stated refusal to deal claim, in support of monopolization suit under Sherman Act, by alleging that incumbent local exchange carrier (ILEC) currently refusing to deal fully with CLEC by sharing its facilities, as required by Telecommunications Act, had voluntarily made its facilities available to ILECs as cooperative venture with rivals, prior to passage of Act which made sharing compulsory, even though failure to deal in coerced relationship imposed by Act, without prior history of cooperation, would not be violation. Z-Tel Communications, Inc. v. SBC Communications, Inc., E.D.Tex.2004, 331 F.Supp.2d 513. Monopolies ⇦17(2.2)

2. State control

Doctrine of *Ex Parte Young* permitted incumbent local exchange carrier's (LEC) suit against Maryland Public Service Commission, seeking injunctive relief against state commissioners in their official capacities on ground that Commission's order requiring payment of reciprocal compensation for Internet Service Provider (ISP) bound calls violated the Telecommunications Act of 1996, since LEC's prayer for injunctive relief, that state officials be restrained from enforcing an order in contravention of controlling federal law, allowed court to make a straightforward inquiry into whether there was an ongoing violation of federal law. Verizon Maryland, Inc. v. Public Service Com'n of Maryland, U.S.2002, 122 S.Ct. 1753, 535 U.S. 635, 152 L.Ed.2d 871, on remand 232 F.Supp.2d 539. Federal Courts ⇦269; Federal Courts ⇦272

Federal Communications Commission (FCC) could not delegate to state utility commissions its statutory duty to determine which telephone network elements incumbent local exchange carriers (ILECs) were required to unbundle and make available to competitive local exchange carriers (CLECs). U.S. Telecom Ass'n v. F.C.C., C.A.D.C.2004, 359 F.3d 554, 360 U.S.App.D.C. 202, certiorari denied 125 S.Ct. 313, 543 U.S. 925, certiorari denied 125 S.Ct. 316, 543 U.S. 925, certiorari denied 125 S.Ct. 345, 543 U.S. 925, 160 L.Ed.2d 223, on remand 2005 WL 289015. Telecommunications ⇦860

State legislative leaders and telecommunications workers' union would not be permitted to file amicus curiae briefs on telephone company's appeal from federal district court decision that Telecommunications Act preempted certain conflicting provisions of state public utilities statute concerning, inter alia, calculation of company's costs for purpose of setting market entrants' access rates; amicus briefs sought to be filed essentially covered same ground as parties' appellate briefs, no party was inadequately represented, and would-be amici had no direct interest in any other case that might be materially affected by instant decision. Voices for Choices v. Illinois Bell Telephone Co., C.A.7 (Ill.) 2003, 339 F.3d 542. Amicus Curiae ⇦1

Statute giving Federal Communications Commission (FCC) exclusive jurisdiction over those portions of the North American Numbering Plan (NANP) that pertain to the United States did not preclude FCC from authorizing state audits of service providers' use of telephone numbers or compliance with the numbering regulations. Sprint Corp. v. F.C.C., C.A.D.C.2003, 331 F.3d 952, 356 U.S.App.D.C. 367. Telecommunications ⇦853

Once federal courts determine that state commissions properly interpreted the Telecommunications Act and its regulations, courts apply an arbitrary and capricious standard to review the remaining state commissions' determinations. Southwestern Bell Telephone Company v. Apple, C.A.10 (Okla.) 2002, 309 F.3d 713.

Commissioners of public utility commission (PUC), in their individual capacities, were subject to suit brought by incumbent local exchange carrier (ILEC) and competitive local exchange carrier (CLEC) which sought prospective relief relating to various terms, rates, and conditions contained in interconnection agreement established and approved by PUC as an ongoing violation of Telecommunications Act; although state had long history regulating telecommunications, state's general sovereign powers were not implicated because any interest state had in matter was bestowed upon state by federal government. MCI Telecommunication Corp. v. Bell Atlantic Pennsylvania, C.A.3 (Pa.) 2001, 271 F.3d 491, certiorari denied 123 S.Ct. 340, 537 U.S. 941, 154 L.Ed.2d 247. Federal Courts ⇦269; Federal Courts ⇦272

State interconnection and access rules for competing local access carriers need not be consistent with Federal Communications Commission's regulations under Telecommunications Act. Iowa Utilities Bd. v. F.C.C., C.A.8 1997, 120 F.3d 753, amended on rehearing, certiorari granted 118 S.Ct. 879, 522 U.S. 1089, 139 L.Ed.2d 867, affirmed in part, reversed in part 119 S.Ct. 721, 525 U.S. 366, 142 L.Ed.2d 835, opinion after remand 1999 WL 156020, on remand 219 F.3d 744. Telecommunications ⇦855

Federal Communications Commission's (FCC) ruling that internet service provider (ISP) bound traffic was inherently interstate in character did not preempt state public service board's power to arbitrate interconnection agreement involving ISP-bound traffic. Global NAPS, Inc. v. Verizon New England, Inc., D.Vt.2004, 327 F.Supp.2d 290. Telecommunications ⇦870

The Telecommunications Act does not restrict the exercise of supplemental jurisdiction over state law claims that arise out of the same transaction as claims alleging violations of the Telecommunications Act, i.e., state law claims involving the interpretation and enforcement of interconnection agreements. Wisconsin Bell, Inc. v. TCG Milwaukee, Inc., W.D.Wis.2002, 301 F.Supp.2d 893. Telecommunications ⇦263

Kentucky Public Service Commission order requiring incumbent local exchange carrier (ILEC) to continue to provide digital subscriber line (DSL) service over competitive local exchange carrier (CLEC) unbundled network elements platform (UNE-P) lines was not preempted by federal law; Telecommunications Act made room for state regulations,

orders and requirements of state commissions as long as they did not substantially prevent implementation of federal statutory requirements. BellSouth Telecommunications, Inc. v. Cinergy Communications Co., E.D.Ky.2003, 297 F.Supp.2d 946. States ⇦18.81; Telecommunications ⇦734

3. Information services

"Enhanced services," such as voicemail and inside wire maintenance, offered to public by incumbent local exchange carrier (ILEC) were "information services," and not "telecommunications services" which it was required to offer for resale to competitor local exchange carriers (CLECs) at wholesale prices. U.S. West Communications v. Hix, D.Colo.2000, 183 F.Supp.2d 1249. Telecommunications ⇦857

Voice mail was "information service," which local exchange carrier providing telephone services was not required to make available to competitor at wholesale rates, under Telecommunications Act, rather than being "telecommunications service" required to be provided. MCI Telecommunications Corp. v. Sprint-Florida Inc., N.D.Fla.2001, 139 F.Supp.2d 1342. Telecommunications ⇦860

4. Interconnection generally

Wireless telecommunications service provider was not required to establish physical connection within local exchange carrier's (LEC's) network for exchange of local traffic; provider could insist that LEC deliver local calls to it through interexchange carrier switch. Atlas Telephone Co. v. Oklahoma Corp. Com'n, C.A.10 (Okla.) 2005, 400 F.3d 1256. Telecommunications ⇦267

Internet service provider's price squeezing claims against regional telephone company, based on allegations that wholesale prices company charged providers for digital subscriber line (DSL) service, and the retail prices it charged individual customers for combined DSL and internet access service, were significantly lower than the unbundled wholesale loop prices it charged pursuant to parties' interconnection agreement, were not barred by Federal Telecommunications Act's (FTCA) regulatory priority over antitrust law enforcement. Covad Communications Co. v. BellSouth Corp., C.A.11 (Ga.) 2004, 374 F.3d 1044, rehearing and rehearing en banc denied 116 Fed.Appx. 257, 2004 WL 2156835, certiorari denied 125 S.Ct. 1591, 544 U.S. 904, 161 L.Ed.2d 277. Monopolies ⇦10

Federal Communications Commission (FCC) was not arbitrary or capricious, when ordering incumbent local exchange carriers (ILECs) to provide competitive local exchange carriers (CLECs) with unbundled access to narrowband portion of hybrid copper-fiber loops, in allowing ILECs to use different type of connection technology than ILECs used for themselves, absent showing that substitute technology severely impacted performance. U.S. Telecom Ass'n v. F.C.C., C.A.D.C.2004, 359 F.3d 554, 360 U.S.App.D.C. 202, certiorari denied 125 S.Ct. 313, 543 U.S. 925, certiorari denied 125

S.Ct. 316, 543 U.S. 925, certiorari denied 125 S.Ct. 345, 543 U.S. 925, 160 L.Ed.2d 223, on remand 2005 WL 289015. Telecommunications ⚷860

Section of Communications Act, which provided that each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers, applied solely to the physical linking of two networks, and not to exchange of traffic between networks. AT&T Corp. v. F.C.C., C.A.D.C.2003, 317 F.3d 227, 354 U.S.App.D.C. 325, on remand 2003 WL 21355221. Telecommunications ⚷857

In determining that discount-for-resale provision of the Telecommunications Act does not apply when an incumbent local exchange carrier (ILEC) offers digital-subscriber-line (DSL) service to internet service providers (ISPs), the Federal Communications Commission (FCC) was reasonable in treating ISPs as resellers whose purchases from ILECs are not made "at retail" for the purposes of the provision. Association of Communications Enterprises v. Federal Communications Com'n, C.A.D.C.2001, 253 F.3d 29, 346 U.S.App.D.C. 325. Telecommunications ⚷865

Federal Communications Commission (FCC) order requiring that incumbent local exchange carriers (LECs) make shared transport available to market entrants on an unbundled basis was consistent with Communications Act, as such requirement would not necessarily erode statutory distinction between resale and unbundled access, and FCC action was made pursuant to express statutory authority. Southwestern Bell Telephone Co. v. F.C.C., C.A.8 1998, 153 F.3d 597, rehearing denied, vacated 119 S.Ct. 2016, 526 U.S. 1142, 143 L.Ed.2d 1029, on remand 199 F.3d 996.

Federal Communications Commission need not inquire into whether competing carrier could obtain element from another source in considering whether access to incumbent local exchange carrier's proprietary network element is necessary and whether failure to provide access to network element would impair ability of competitor to provide services that it seeks to offer, pursuant to Telecommunications Act. Iowa Utilities Bd. v. F.C.C., C.A.8 1997, 120 F.3d 753, amended on rehearing, certiorari granted 118 S.Ct. 879, 522 U.S. 1089, 139 L.Ed.2d 867, affirmed in part, reversed in part 119 S.Ct. 721, 525 U.S. 366, 142 L.Ed.2d 835, opinion after remand 1999 WL 156020, on remand 219 F.3d 744. Telecommunications ⚷860

Obligation of incumbent local exchange carrier (LEC), under Telecommunications Act of 1996, to provide any requesting telecommunications carrier "interconnection" to LEC network was reasonably interpreted by Federal Communications Commission (FCC) to require LEC to provide only physical linking to network, and not transmission and routing services as well. Competitive Telecommunications Ass'n v. F.C.C., C.A.8 1997, 117 F.3d 1068. Telecommunications ⚷857

Obligation of incumbent local exchange carrier (LEC), under Telecommunications Act of 1996, to provide any requesting telecommunications carrier "interconnection" to LEC

network was reasonably interpreted by Federal Communications Commission (FCC) to require LEC to provide only physical linking to network, and not transmission and routing services as well. Competitive Telecommunications Ass'n v. F.C.C., C.A.8 1997, 117 F.3d 1068. Telecommunications ⇦857

Iowa Utilities Board did not violate federal law in rendering decision that telecommunications traffic within major trading area (MTA) between providers of commercial mobile radio services (CMRS) and incumbent local exchange carriers (ILECs), using transmission facilities of both LEC network and transiting carrier, involved "local" traffic not subject to long distance access charges under Telecommunications Act. Iowa Network Services, Inc. v. Qwest Corp., S.D.Iowa 2005, 385 F.Supp.2d 850. Telecommunications ⇦866

Iowa Utilities Board did not violate federal law in rendering decision holding that transiting carrier was not required to compensate the termination by incumbent local exchange carrier (ILEC) of intraMTA "local" calls placed by subscribers of third-party wireless carriers to the ILEC's subscribers; indirect connection through a transiting carrier did not convert intraMTA "local" calls into "long distance" calls for which the transiting or any other carrier had to pay "access" charges to the terminating carrier. Rural Iowa Independent Telephone Ass'n v. Iowa Utilities Bd., S.D.Iowa 2005, 385 F.Supp.2d 797. Telecommunications ⇦866

Competing local exchange carrier's (CLEC) decision to convert from special access services to combinations of unbundled network elements (UNE) did not constitute termination under interconnection agreement, where CLEC continued to be customer of ILEC upon transition, and nothing changed in operations of parties. BellSouth Telecommunications, Inc. v. Public Service Com'n of Kentucky, E.D.Ky.2004, 380 F.Supp.2d 820, affirmed 142 Fed.Appx. 886, 2005 WL 1799390. Telecommunications ⇦860

State public service commission exceeded scope of Telecommunications Act's dialing parity requirement when it required incumbent local exchange carrier (ILEC) to make its customer directory database available to competitive local exchange carrier (CLEC) at rates, terms or conditions at least as favorable as those given to "any" third party; statutory nondiscrimination requirement applied only to providers of telephone exchange or toll service. Southern New England Telephone Co. v. MCI WorldCom Communications, Inc., D.Conn.2005, 353 F.Supp.2d 287, motion to amend denied 359 F.Supp.2d 229. Telecommunications ⇦858

Supreme Court's *Trinko* decision, that no private right of action existed for enforcement of Telecommunications Act requirement that incumbent local telephone exchange carriers (ILECs) share facilities with competitive local exchange carriers (CLECs), barred claim that ILEC violated antimonopoly provision of Sherman Act by refusing to share essential facility. Z-Tel Communications, Inc. v. SBC Communications, Inc., E.D.Tex.2004, 331 F.Supp.2d 513. Monopolies ⇦28(1.2)

State public service board's order in arbitration proceedings between local exchange carriers (LEC), which allowed incumbent local exchange carrier (ILEC) to provide foreign exchange (FX) service, but did not permit competitive local exchange carrier (CLEC) to provide virtual NXX (VNXX) service, did not discriminate against CLEC, in violation of Telecommunications Act, even though FX service functioned same as VNXX service from point of view of retail customer, where FX service required installation of FX line by ILEC, but VNXX service did not require purchase of any equipment or require CLEC or its customer to pay for costs of transporting call. Global NAPS, Inc. v. Verizon New England, Inc., D.Vt.2004, 327 F.Supp.2d 290. Telecommunications ⚯855

Tandem-routed local calling as approved by the Oklahoma Corporation Commission and as implemented pursuant to interconnection agreement, by requiring rural telephone companies (RTC) to deliver land-to mobile calls to the nearest tandem switch, was consistent with the Telecommunications Act and the Act's general purposes, including the fostering of competition; tandem-routed local calling was feasible, reasonable, and did not place undue economic burdens on RTCs. Atlas Tel. Co. v. Corporation Com'n of Oklahoma, W.D.Okla.2004, 309 F.Supp.2d 1313. Telecommunications ⚯862

Oklahoma Corporation Commission's final orders requiring interconnection agreements between rural telephone companies (RTC) and wireless telecommunications carriers did not impermissibly require RTCs to waive recovery of costs associated with the transport and termination of telecommunications; Commission's orders provided for compensation through a bill and keep arrangement specifically allowed by Federal Communication Commission (FCC) rules, and were supported by evidence that no forward-looking rate was established and by RTCs' failure to rebut presumption of "roughly balanced" traffic. Atlas Tel. Co. v. Corporation Com'n of Oklahoma, W.D.Okla.2004, 309 F.Supp.2d 1299, affirmed 400 F.3d 1256. Telecommunications ⚯862

5. Agreements

Telecommunications Act, as specific legislation meant to encourage competition, did not take precedence over general antitrust laws, so as to preclude antitrust action against incumbent local exchange carrier (ILEC) whose conduct allegedly violated both antitrust laws and interexchange agreement required by the Act. Law Offices of Curtis V. Trinko, L.L.P. v. Bell Atlantic Corp., C.A.2 (N.Y.) 2002, 305 F.3d 89, as amended, dissenting opinion 309 F.3d 71, certiorari granted in part 123 S.Ct. 1480, 538 U.S. 905, 155 L.Ed.2d 224, reversed and remanded 124 S.Ct. 872, 540 U.S. 398, 157 L.Ed.2d 823. Monopolies ⚯12(2)

Provision in interconnection agreement requiring incumbent local exchange carrier to combine unbundled network elements at competing carrier's request before leasing did not violate Telecommunications Act. US West Communications v. MFS Intelenet, Inc., C.A.9 (Wash.) 1999, 193 F.3d 1112, certiorari denied 120 S.Ct. 2741, 530 U.S. 1284, 147 L.Ed.2d 1005, rehearing denied 121 S.Ct. 18, 530 U.S. 1297, 147 L.Ed.2d 1042. Telecommunications ⚯860

Decision of state public service commission (PSC) allegedly impairing rights of incumbent local exchange carrier (ILEC) under interconnection agreement did not violate Contract Clause, where PSC's decision was based on its application of federal Telecommunications Act. BellSouth Telecommunications, Inc. v. Public Service Com'n of Kentucky, E.D.Ky.2004, 380 F.Supp.2d 820, affirmed 142 Fed.Appx. 886, 2005 WL 1799390. Telecommunications ⚷855

Competing local exchange carrier (CLEC) was not denied equal protection by imposition of costing docket rate to interconnection agreement by New Mexico Public Regulation Commission (NMPRC), since CLEC failed to allege or show that imposition of costing docket rate was discriminatory, and action of NMPRC in modifying Internet service provider (ISP) call termination rate was rationally related to legitimate state interest of ensuring greater competition in local telephone services market. E. Spire Communications, Inc. v. Baca, D.N.M.2003, 269 F.Supp.2d 1310, affirmed 392 F.3d 1204. Constitutional Law ⚷242; Telecommunications ⚷866

Consumers who brought action against telecommunications companies, alleging antitrust conspiracy to prevent competitive entry into local telephone and Internet service markets, failed to allege facts showing agreement between companies not to intervene in one another's service areas as competing local exchange carriers (CLECs), as required to maintain action under Sherman Act; failure of companies to attempt to enter adjacent territories was in each company's individual economic interest, since companies' infrastructures as incumbent local exchange carriers (ILECs) were duplicative of one another. Twombly v. Bell Atlantic Corp., S.D.N.Y.2003, 313 F.Supp.2d 174, vacated and remanded 425 F.3d 99, petition for certiorari filed 2006 WL 558413. Monopolies ⚷28(6.3)

6. Propriety element

Federal Communications Commission (FCC) had jurisdiction to promulgate a rule pertaining to local telephone dialing patterns for City of New York; although Telecommunications Act had reserved to states jurisdiction over intrastate matters, establishing local dialing patterns and a uniform telephone numbering system were "numbering administration" responsibilities granted to FCC under Act. New York & Public Service Com'n of New York v. F.C.C., C.A.2 (N.Y.) 2001, 267 F.3d 91. Telecommunications ⚷754

Incumbent local exchange carrier's proprietary element is necessary, for purposes of Federal Communications Commission's determination of whether incumbent has obligation under Telecommunications Act to unbundle that element, if requesting carrier's ability to compete would be significantly impaired or thwarted without it. Iowa Utilities Bd. v. F.C.C., C.A.8 1997, 120 F.3d 753, amended on rehearing, certiorari granted 118 S.Ct. 879, 522 U.S. 1089, 139 L.Ed.2d 867, affirmed in part, reversed in part 119 S.Ct. 721, 525 U.S. 366, 142 L.Ed.2d 835, opinion after remand 1999 WL 156020, on remand 219 F.3d 744. Telecommunications ⚷860

7. Network elements--Generally

Complaint alleging breach of incumbent local exchange carrier's (LEC's) duty under Telecommunications Act of 1996 to share its network with competitors did not state monopolization claim under Sherman Act; complaint did not allege that incumbent LEC voluntarily engaged in course of dealing with its rivals so its prior conduct shed no light on whether its lapses from legally compelled dealing were anticompetitive, incumbent LEC's reluctance to connect at cost-based rate of compensation was uninformative as to future price or dreams of monopoly, and rather than involving refusal to provide competitor with product already sold at retail, unbundled elements were not available to public but were provided to rivals under compulsion and at considerable expense. Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP, U.S.2004, 124 S.Ct. 872, 540 U.S. 398, 157 L.Ed.2d 823. Monopolies ⇦28(6.3)

Section of the Telecommunications Act stating that an incumbent local exchange carrier (ILEC) shall provide "network elements in a manner that allows requesting carriers to combine such elements" does not preclude the Federal Communications Commission (FCC) from requiring incumbent local exchange carriers (ILECs) to combine elements of their networks at the request of competing local exchange carriers (CLECs) who cannot combine themselves, when they lease them to the CLECs. Verizon Communications, Inc. v. F.C.C., U.S.2002, 122 S.Ct. 1646, 535 U.S. 467, 152 L.Ed.2d 701, on remand 301 F.3d 957. Telecommunications ⇦860

Federal Communications Commission (FCC) reasonably determined that telephone network element unbundling obligations faced by Bell operating companies (BOCs) who wished to enter long distance service market were independent of and not controlled by unbundling obligations such companies faced in order to avoid impairment of competition by competitive local exchange carriers (CLECs). U.S. Telecom Ass'n v. F.C.C., C.A.D.C.2004, 359 F.3d 554, 360 U.S.App.D.C. 202, certiorari denied 125 S.Ct. 313, 543 U.S. 925, certiorari denied 125 S.Ct. 316, 543 U.S. 925, certiorari denied 125 S.Ct. 345, 543 U.S. 925, 160 L.Ed.2d 223, on remand 2005 WL 289015. Telecommunications ⇦860

Although shared transport was a "network element," as defined in the Telecommunications Act, shared transport did not have to be made available by incumbent local exchange carriers on an unbundled basis. Southwestern Bell Telephone Co. v. F.C.C., C.A.8 1999, 199 F.3d 996. Telecommunications ⇦860

Software systems and accompanying databases necessary to process orders, handle billing, and provide maintenance and repair capabilities to phone customers, operator services, directory assistance, caller I.D., call forwarding, and call waiting were network elements subject to incumbent local exchange carriers's obligation, under Telecommunications Act, to provide such services to competitors on unbundled basis. Iowa Utilities Bd. v. F.C.C., C.A.8 1997, 120 F.3d 753, amended on rehearing, certiorari granted 118 S.Ct. 879, 522 U.S. 1089, 139 L.Ed.2d 867, affirmed in part, reversed in part

119 S.Ct. 721, 525 U.S. 366, 142 L.Ed.2d 835, opinion after remand 1999 WL 156020, on remand 219 F.3d 744. Telecommunications ⇦860

Incumbent local exchange carrier (ILEC) could not be required, at competitive local exchange carrier's (CLEC's) request, to combine unbundled network elements not ordinarily combined in ILEC's own network; rather, ILEC could at most be required to perform the functions necessary to combine elements when CLEC could not do so itself, where such combination was technically feasible and would not undermine ability of other CLECs to access elements or achieve interconnection. Southern New England Telephone Co. v. MCI WorldCom Communications, Inc., D.Conn.2005, 353 F.Supp.2d 287, motion to amend denied 359 F.Supp.2d 229. Telecommunications ⇦860

Incumbent local exchange carrier's (ILEC) "dark fiber," fiber optic cable installed for future use but not currently operational, was a "network element" under Telecommunications Act, and thus ILEC was required to provide it to market entrant on unbundled basis if necessary to entrant's ability to provide services. MCI v. Bell-Atlantic, D.D.C.1999, 36 F.Supp.2d 419. Telecommunications ⇦860

"Dark fiber," or fiber-optic cable which had been laid into network of incumbent local exchange carrier (ILEC) but was not currently being used, was "network element," for purposes of Telecommunications Act of 1996, so that ILEC was required by Act to offer dark fiber access to competitor on unbundled basis as part of interconnection agreement for access to local telephone services market, and to provide nondiscriminatory access if failure to provide such access would impair competitor's ability to provide services. MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc., E.D.N.C.1998, 7 F.Supp.2d 674, remanded 229 F.3d 457. Telecommunications ⇦860

Provision of interconnection agreement for access to local telephone services market between incumbent local exchange carrier (ILEC) and competitor which was arbitrated by North Carolina Utilities Commission (NCUC), under which ILEC was required to offer each unbundled network element individually and in combination with any other network element or elements in order to permit competitor to provide services for customers, was improper application of Telecommunications Act of 1996, and would be stricken and remanded to NCUC for renegotiation; provision was negotiated before FCC requirement that ILECs combine unbundled elements was struck down in separate case, and was thus no longer consistent with federal law. AT & T Communications of Southern States, Inc. v. BellSouth Telecommunications, Inc., E.D.N.C.1998, 7 F.Supp.2d 661. Telecommunications ⇦860; Telecommunications ⇦911

Local public service commission requirement that incumbent local exchange carrier (ILEC) allow competitors to purchase pre-assembled platforms of network elements was invalid as contrary to requirement of Telecommunications Act of 1996, which required only that ILEC provide unbundled access to elements which it had not already combined in its own network. Verizon North, Inc. v. Strand, W.D.Mich.2000, 140 F.Supp.2d 803,

affirmed in part and vacated in part 309 F.3d 935, certiorari denied 123 S.Ct. 1649, 538 U.S. 946, 155 L.Ed.2d 488. Telecommunications ⇦860

8. ---- Recombining network elements

Incumbent local exchange carriers are not required, by Telecommunications Act, to recombine network elements that are purchased by requesting carriers on unbundled basis. Iowa Utilities Bd. v. F.C.C., C.A.8 1997, 120 F.3d 753, amended on rehearing, certiorari granted 118 S.Ct. 879, 522 U.S. 1089, 139 L.Ed.2d 867, affirmed in part, reversed in part 119 S.Ct. 721, 525 U.S. 366, 142 L.Ed.2d 835, opinion after remand 1999 WL 156020, on remand 219 F.3d 744. Telecommunications ⇦860

9. Colocation

Digital subscriber line (DSL) service provider's allegations that competing incumbent local exchange carrier (ILEC) unlawfully refused to cooperate in providing adequate co-located space and facilities, in making its local loops sufficiently available, in maintaining adequate operation support systems (OSS) for provider's use, and in bargaining in good faith over terms of interconnection were insufficient to state monopolization claim under Sherman Act; provider failed to allege that ILEC had at one time voluntarily dealt with it, or that it would have been in ILEC's interest to have done so. Covad Communications Co. v. Bell Atlantic Corp., C.A.D.C.2005, 398 F.3d 666, 365 U.S.App.D.C. 78, rehearing denied 407 F.3d 1220, 366 U.S.App.D.C. 24. Monopolies ⇦28(6.2)

Under primary jurisdiction doctrine, Federal Communications Commission (FCC) was proper body to determine meaning of term "location," in Telecommunications Act provision requiring number portability only "at the same location," for purpose of request of bankruptcy debtor, a network operator that furnished local access numbers to Internet service providers (ISPs), that competitive local exchange carrier (CLEC) with which debtor had existing contracts be required to port such local numbers to other CLECs from which operator wished to acquire services. In re StarNet, Inc., C.A.7 (Ill.) 2004, 355 F.3d 634, rehearing and rehearing en banc denied. Telecommunications ⇦753; Telecommunications ⇦901(2)

Interconnection agreement's requirement that incumbent local exchange carrier (ILEC) allow competing telecommunications provider to collocate remote switching units (RSUs) on ILEC's premises was permissible under Telecommunications Act. US West Communications, Inc. v. Jennings, C.A.9 (Ariz.) 2002, 304 F.3d 950.

Provision in arbitrated and state-approved interconnection agreement between incumbent local telephone exchange carrier (ILEC) and competing local exchange carrier (CLEC) requiring ILEC to allow CLEC to co-locate remote switching units (RSUs) on ILEC's property did not violate Telecommunications Act, which imposed duty on ILEC to provide for physical co-location on its property of equipment necessary for interconnection and, thus, would be upheld by Court of Appeals, even if state utilities commission relied on Federal Communications Commission's (FCC's) judicially

discredited interpretation of "necessary"; while Act may not have required co-location of RSUs as necessary, it did not forbid it. MCI Telecommunications Corp. v. U.S. West Communications, C.A.9 (Wash.) 2000, 204 F.3d 1262, certiorari denied 121 S.Ct. 504, 531 U.S. 1001, 148 L.Ed.2d 473. Telecommunications ⇦857

Pursuant to requirement of Telecommunications Act that incumbent local exchange carrier (LEC) allow new entrants to collocate at incumbent's premises any equipment that was "necessary for interconnection or access to unbundled network elements" and on terms and conditions that were "nondiscriminatory," competing local exchange carriers (CLECs) could use switching function of their remote switching modules (RSM) collocated on incumbent's premises; because RSMs were used for interconnection and access, they were necessary and had to be collocated, and requiring that switching function of CLECs' collocated RSMs be disconnected would have been discriminatory condition. AT&T Communications of Virginia, Inc. v. Bell Atlantic-Virginia, Inc., C.A.4 (Va.) 1999, 197 F.3d 663. Telecommunications ⇦857

Term "necessary" in Telecommunications Act section requiring incumbent local exchange carriers (LECs) to provide physical collocation of equipment as necessary for competitors' interconnection or access to unbundled network elements at LECs' premises did not extend to equipment that was "used or useful" for either interconnection or access to unbundled network elements, regardless of other functionalities inherent in such equipment, and Federal Communications Commission (FCC) order requiring LECs to collocate such "used or useful" equipment was overbroad and diverged from any realistic meaning of the Act. GTE Service Corp. v. F.C.C., C.A.D.C.2000, 205 F.3d 416, 340 U.S.App.D.C. 308, on remand 2001 WL 893313. Telecommunications ⇦857

10. Feasible access

Federal Communications Commission (FCC) reasonably interpreted statutory requirement, that incumbent local exchange carriers (ILECs) supply competitive local exchange carriers (CLECs) with access to unbundled telephone network elements, as allowing it to withhold unbundling orders, even in face of some impairment of CLECs' ability to compete, where such unbundling would pose excessive impediments to infrastructure investment. U.S. Telecom Ass'n v. F.C.C., C.A.D.C.2004, 359 F.3d 554, 360 U.S.App.D.C. 202, certiorari denied 125 S.Ct. 313, 543 U.S. 925, certiorari denied 125 S.Ct. 316, 543 U.S. 925, certiorari denied 125 S.Ct. 345, 543 U.S. 925, 160 L.Ed.2d 223, on remand 2005 WL 289015. Telecommunications ⇦860

Under Telecommunications Act, incumbent local exchange carrier need not provide competitor with unbundled access to network element merely because it is technically feasible to provide access on unbundled basis. Iowa Utilities Bd. v. F.C.C., C.A.8 1997, 120 F.3d 753, amended on rehearing, certiorari granted 118 S.Ct. 879, 522 U.S. 1089, 139 L.Ed.2d 867, affirmed in part, reversed in part 119 S.Ct. 721, 525 U.S. 366, 142 L.Ed.2d 835, opinion after remand 1999 WL 156020, on remand 219 F.3d 744. Telecommunications ⇦860

11. Impaired ability

Federal Communications Commission's (FCC's) blanket finding that competitive local exchange carriers (CLECs) were impaired without unbundled access to high-capacity dedicated transport elements of incumbent local exchange carriers' (ILECs') telephone networks, and thus that ILECs were required to provide unbundled access, was unreasonable; there was evidence that impairment occurred only under certain circumstances. U.S. Telecom Ass'n v. F.C.C., C.A.D.C.2004, 359 F.3d 554, 360 U.S.App.D.C. 202, certiorari denied 125 S.Ct. 313, 543 U.S. 925, certiorari denied 125 S.Ct. 316, 543 U.S. 925, certiorari denied 125 S.Ct. 345, 543 U.S. 925, 160 L.Ed.2d 223, on remand 2005 WL 289015. Telecommunications ⚿860

Requesting carrier's ability to provide particular service is impaired, for purposes of Federal Communications Commission's determination of whether incumbent local exchange carrier has obligation under Telecommunications Act to unbundle that element, if quality of service entrant can offer, absent access to requested element, declines and/or cost of providing service rises. Iowa Utilities Bd. v. F.C.C., C.A.8 1997, 120 F.3d 753, amended on rehearing, certiorari granted 118 S.Ct. 879, 522 U.S. 1089, 139 L.Ed.2d 867, affirmed in part, reversed in part 119 S.Ct. 721, 525 U.S. 366, 142 L.Ed.2d 835, opinion after remand 1999 WL 156020, on remand 219 F.3d 744. Telecommunications ⚿860

Provision in city's franchise agreement by which telecommunications carrier was permitted to use public rights-of-way upon payment of portion of its annual gross revenues from city business to city violated Telecommunications Act's prohibition on conduct inhibiting ability of any entity to provide any interstate or intrastate telecommunications service, where fee requirement was applied on discriminatory basis. Qwest Communications Corp. v. City of New York, E.D.N.Y.2005, 387 F.Supp.2d 191. Telecommunications ⚿735

12. Quality of access

Reseller of telecommunications services could not prove under essential facilities doctrine that incumbent local exchange carrier (ILEC) denied reseller access to local exchange network by modification of its pricing scheme to eliminate arbitrage in multiple telephone line access and features market; reseller could have obtained reasonable access to local exchange network of ILEC through compelled sharing provisions of Telecommunications Act, even if reseller could not make profit by buying that bundled service in retail market and reselling it to small businesses. MetroNet Services Corp. v. Qwest Corp., C.A.9 2004, 383 F.3d 1124, certiorari denied 125 S.Ct. 2300, 544 U.S. 1049, 161 L.Ed.2d 1089. Telecommunications ⚿866

Incumbent local exchange carriers are not required, by Telecommunications Act, to provide interconnection, unbundled network elements, and access to such elements at levels of quality superior to those levels at which incumbents provide such services to themselves, even if requested to do so by competing carriers. Iowa Utilities Bd. v. F.C.C., C.A.8 1997, 120 F.3d 753, amended on rehearing, certiorari granted 118 S.Ct. 879, 522 U.S. 1089, 139 L.Ed.2d 867, affirmed in part, reversed in part 119 S.Ct. 721, 525 U.S.

366, 142 L.Ed.2d 835, opinion after remand 1999 WL 156020, on remand 219 F.3d 744. Telecommunications ⚭860

13. Rate determination--Generally

Digital subscriber line (DSL) service provider's allegations that competing incumbent local exchange carrier (ILEC) attempted to monopolize the market for DSL by engaging in "price squeeze" through its prohibitively high and discriminatory price for access to its loops were insufficient to state attempted monopolization claim under Sherman Act; ILEC's duty to make its loop available to all was a creature of the Telecommunications Act of 1996, not a duty imposed by the Sherman Act. Covad Communications Co. v. Bell Atlantic Corp., C.A.D.C.2005, 398 F.3d 666, 365 U.S.App.D.C. 78, rehearing denied 407 F.3d 1220, 366 U.S.App.D.C. 24. Monopolies ⚭28(6.2)

Internet service provider's price squeezing claims against regional telephone company, based on allegations that wholesale prices company charged providers for digital subscriber line (DSL) service, and the retail prices it charged individual customers for combined DSL and internet access service, were significantly lower than the unbundled wholesale loop prices it charged pursuant to parties' interconnection agreement, were not barred by Federal Telecommunications Act's (FTCA) regulatory priority over antitrust law enforcement. Covad Communications Co. v. BellSouth Corp., C.A.11 (Ga.) 2004, 374 F.3d 1044, rehearing and rehearing en banc denied 116 Fed.Appx. 257, 2004 WL 2156835, certiorari denied 125 S.Ct. 1591, 544 U.S. 904, 161 L.Ed.2d 277. Monopolies ⚭10

Criteria established by Federal Communications Commission (FCC) for determining whether competitive local exchange carrier (CLEC) was eligible to purchase unbundled enhanced exchange links (EELs) from incumbent local exchange carrier (ILEC) at total element long-run incremental cost (TELRIC) rate, were reasonable. U.S. Telecom Ass'n v. F.C.C., C.A.D.C.2004, 359 F.3d 554, 360 U.S.App.D.C. 202, certiorari denied 125 S.Ct. 313, 543 U.S. 925, certiorari denied 125 S.Ct. 316, 543 U.S. 925, certiorari denied 125 S.Ct. 345, 543 U.S. 925, 160 L.Ed.2d 223, on remand 2005 WL 289015. Telecommunications ⚭860

Federal Communications Commission (FCC) order, which allowed local exchange carrier (LEC) to charge paging carrier a fee for transporting paging calls from LEC's customers that originated and terminated within same Local Access and Transport Area (LATA) but went through paging carrier's single point of interconnection (POI) in same LATA, was arbitrary and capricious, though applicable FCC regulations did not preclude paging carrier and LEC from entering into wide area calling "buy-down" arrangements; paging carrier was entitled under statute to make use of one POI within a LATA, FCC regulation prohibited LECs from levying charges for traffic originating on their own networks, and FCC had reached opposite result in previous case with identical facts. Mountain Communications, Inc. v. F.C.C., C.A.D.C.2004, 355 F.3d 644, 359 U.S.App.D.C. 349. Telecommunications ⚭866

The tariff opt-in provision of the Telecommunications Act does not diminish the

opportunity of a competing local exchange carrier (CLEC) to negotiate prices and terms provided by an incumbent local exchange carrier (ILEC), but instead ensures that a CLEC will be able to obtain the most favorable prices and terms available, thereby allowing it to remain competitive in the local marketplace. U.S. West Communications, Inc. v. Sprint Communications Co., L.P., C.A.10 (Colo.) 2002, 275 F.3d 1241.

Economic concerns are not to be considered in determining if point of interconnection or unbundled access is technically feasible, under Telecommunications Act; however, costs of such interconnection or unbundled access are taken into account when determining just and reasonable rates, terms, and conditions that incumbent local exchange carrier may set for these services. Iowa Utilities Bd. v. F.C.C., C.A.8 1997, 120 F.3d 753, amended on rehearing, certiorari granted 118 S.Ct. 879, 522 U.S. 1089, 139 L.Ed.2d 867, affirmed in part, reversed in part 119 S.Ct. 721, 525 U.S. 366, 142 L.Ed.2d 835, opinion after remand 1999 WL 156020, on remand 219 F.3d 744. Telecommunications ⇦866

Evidence at hearing before Oklahoma Corporation Commission regarding interconnection obligations between rural telephone companies (RTC) and wireless telecommunications carriers was sufficient to support the Commission's rejection of the RTCs' cost study as flawed, and its rejection of the rate or rates proposed by the RTCs; RTCs' proposed rates were based on an average cost study that did not establish a forward-looking rate representative of all the RTCs. Atlas Tel. Co. v. Corporation Com'n of Oklahoma, W.D.Okla.2004, 309 F.Supp.2d 1299, affirmed 400 F.3d 1256. Telecommunications ⇦866

Public utility commission should have employed Total Element Long-Run Incremental Cost (TELRIC) method when calculating forward-looking costs, for purpose of determining price at which incumbent local exchange carrier (ILEC) was required to offer interconnection and network elements to competitor local exchange carrier (CLEC). MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc., N.D.Fla.2000, 112 F.Supp.2d 1286, affirmed 298 F.3d 1269. Telecommunications ⇦866

14. ---- Promotional rates, rate determination

Federal Communications Commission's rule that promotional rates offered by incumbent local exchange carriers for more than 90 days qualified as retail rates, subject to wholesale discount by incumbent local telephone exchange carriers for purposes of resale to competitors, was reasonable interpretation of Telecommunications Act's terms and was not made arbitrarily or capriciously; rule restricted ability of incumbent carriers to circumvent their resale obligations simply by offering their services to subscribers at perpetual promotional rates. Iowa Utilities Bd. v. F.C.C., C.A.8 1997, 120 F.3d 753, amended on rehearing, certiorari granted 118 S.Ct. 879, 522 U.S. 1089, 139 L.Ed.2d 867, affirmed in part, reversed in part 119 S.Ct. 721, 525 U.S. 366, 142 L.Ed.2d 835, opinion after remand 1999 WL 156020, on remand 219 F.3d 744. Telecommunications ⇦866

15. Reciprocal compensation

Order in which Federal Communications Commission (FCC) upheld its rule allowing

competing local exchange carrier (CLEC) to recover tandem interconnection rate for terminating local traffic on its network upon showing that its switch served geographical area comparable to that served by tandem switch of incumbent local exchange carrier (ILEC) was not arbitrary and capricious, despite contention that rule allowed CLEC to receive entire tandem rate even when associated switching functions were not performed, given that statute authorized reciprocal compensation rates based upon reasonable approximation of costs and specifically barred calculation of LECs' actual costs of transporting and terminating calls. SBC Inc. v. Federal Communications Com'n, C.A.3 2005, 414 F.3d 486. Telecommunications ⇦866

Rural telephone companies, as local exchange carriers (LECs), had mandatory duty to establish reciprocal compensation agreements with wireless telecommunications service providers for calls originating and terminating within single major trading area, regardless of whether such traffic was transported on interexchange network. Atlas Telephone Co. v. Oklahoma Corp. Com'n, C.A.10 (Okla.) 2005, 400 F.3d 1256. Telecommunications ⇦267

State public service commission (PSC) had authority under Telecommunications Act to require reciprocal compensation for traffic bound for internet service providers (ISP) in arbitration of dispute between incumbent local exchange carrier (ILEC) and competing local exchange carriers (CLEC), where Federal Communications Commission (FCC) had explicitly provided that state commissions could order reciprocal compensation for ISP-bound traffic pending completion of FCC rulemaking on issue, rule was entered before final rule was adopted, and final rule did not preempt state decisions entered before its adoption. Verizon Maryland, Incorporated v. Global Naps, Inc., C.A.4 2004, 377 F.3d 355. Telecommunications ⇦864(2)

Section of Telecommunications Act, which provided for continued enforcement of certain pre-Act regulatory interconnection restrictions and obligations until they are superceded by Federal Communications Commission (FCC) action, did not authorize FCC order creating exception to Act's reciprocal compensation requirement for calls made to ISPs located within the caller's local calling area. WorldCom, Inc. v. F.C.C., C.A.D.C.2002, 288 F.3d 429, 351 U.S.App.D.C. 176, rehearing and rehearing en banc denied, certiorari denied 123 S.Ct. 1927, 538 U.S. 1012, 155 L.Ed.2d 848. Telecommunications ⇦864(2)

Iowa Utilities Board did not violate federal law in ruling that, under Federal Communications Commission's (FCC's) reciprocal compensation rules, intermediary transiting carrier had no obligation to compensate network of intermediary carriers for intraMTA calls originated by customers of third-party commercial mobile radio service (CMRS) providers (i.e. wireless carriers) to end-user customers served by third-party incumbent local exchange carriers (ILECs). Iowa Network Services, Inc. v. Qwest Corp., S.D.Iowa 2005, 385 F.Supp.2d 850. Telecommunications ⇦864(1)

Federal Communications Commission's (FCC) order requiring reciprocal compensation for transport and termination of telecommunications traffic whenever local exchange

carrier exchanged telecommunications traffic with another carrier applied to all internet service provider (ISP)-bound traffic, not just local ISP-bound traffic. Southern New England Telephone Company v. MCI WorldCom Communications, Inc., D.Conn.2005, 359 F.Supp.2d 229. Telecommunications ⇦864(2)

Interconnection agreement provision imposed by state public service commission, defining Internet traffic as subject to local reciprocal compensation but requiring incumbent local exchange carrier (ILEC) and competitive local exchange carrier (CLEC) to exclude Internet service provider (ISP) traffic from such compensation, was internally inconsistent, and thus arbitrary and capricious. Southern New England Telephone Co. v. MCI WorldCom Communications, Inc., D.Conn.2005, 353 F.Supp.2d 287, motion to amend denied 359 F.Supp.2d 229. Telecommunications ⇦864(2)

State public service board retained authority to determine what geographic areas constituted "local areas" for purpose of applying reciprocal compensation obligations between local exchange carriers (LEC) pursuant to Telecommunications Act, and thus competitive local exchange carrier's (CLEC) definition of its own local calling areas for purposes of billing its retail customers did not affect CLEC's reciprocal compensation obligations under its interconnection agreement with incumbent local exchange carrier (ILEC), despite Federal Communications Commission's (FCC) ruling that internet service provider (ISP) bound traffic was inherently interstate in character. Global NAPS, Inc. v. Verizon New England, Inc., D.Vt.2004, 327 F.Supp.2d 290. Telecommunications ⇦864(1)

Federal Communications Commission (FCC) regulations permitted Oklahoma Corporation Commission to apply reciprocal compensation obligations to all calls originated by a rural telephone company (RTC) and terminated by a wireless provider within the same major trading area, without regard to whether those calls were delivered via an intermediate carrier. Atlas Tel. Co. v. Corporation Com'n of Oklahoma, W.D.Okla.2004, 309 F.Supp.2d 1299, affirmed 400 F.3d 1256. Telecommunications ⇦ 864(1)

Interconnection agreement that included reciprocal compensation for internet service provider (ISP) bound interstate calls did not violate Telecommunications Act or with regulations or rulings of Federal Communications Commission (FCC). Southern New England Telephone Co. v. Connecticut, Dept. of Public Utility Co., D.Conn.2003, 285 F.Supp.2d 252. Telecommunications ⇦267

Commercial mobile radio service provider (CMRSP), having prevailed in arbitration to renegotiate interconnection agreement with incumbent local exchange carrier (ILEC) so as to conform to Telecommunications Act of 1996, was entitled to receive reciprocal compensation retroactively to date it requested renegotiation, even though that date preceded effective date of rule allowing for reciprocal compensation; Act itself required reciprocal compensation. US West Communications, Inc. v. Public Service Com'n of Utah, D.Utah 1999, 75 F.Supp.2d 1284. Telecommunications ⇦864(1)

15A. ---- Local areas, reciprocal compensation

State public service board had authority to determine what geographic areas constituted "local areas" for purpose of applying reciprocal compensation obligations between local exchange carriers (LEC) pursuant to Telecommunications Act, and thus competitive local exchange carrier's (CLEC) definition of its own local calling areas for purposes of billing its retail customers did not affect its reciprocal compensation obligations under its interconnection agreement with incumbent local exchange carrier (ILEC); both the language of the Act and the decisions of the Federal Communications Commission (FCC) support determination that the Act did not preempt state commissions' authority to define local calling areas to govern intercarrier compensation. Global NAPs, Inc. v. Verizon New England, Inc., C.A.2 (Vt.) 2006, 454 F.3d 91. Telecommunications ⚯864(1)

16. Rural exemptions

Telecommunications Act section, authorizing termination of rural telephone company's exemption from Act's network sharing requirements if competing carrier's request for sharing met certain requirements, placed burden of proving appropriateness of termination on requesting carrier, and thus Federal Communications Commission (FCC) rule, which required rural company to prove its continued entitlement to exemption, was invalid. Iowa Utilities Bd. v. F.C.C., C.A.8 2000, 219 F.3d 744, certiorari granted in part 121 S.Ct. 877, 531 U.S. 1124, 148 L.Ed.2d 788, certiorari granted in part 121 S.Ct. 878, 531 U.S. 1124, 148 L.Ed.2d 788, certiorari granted in part 121 S.Ct. 879, 531 U.S. 1124, 148 L.Ed.2d 788, affirmed in part, reversed in part 122 S.Ct. 1646, 535 U.S. 467, 152 L.Ed.2d 701, on remand 301 F.3d 957. Telecommunications ⚯867

State utility commissions had exclusive authority, under Telecommunications Act, to determine standards to use in deciding whether rural and small local exchange carriers were entitled to exemptions from or suspensions or modifications of duties generally imposed by Act on incumbent local exchange carriers, and thus Federal Communications Commission exceeded its authority by establishing standards for state commissions to follow in making such determinations. Iowa Utilities Bd. v. F.C.C., C.A.8 1997, 120 F.3d 753, amended on rehearing, certiorari granted 118 S.Ct. 879, 522 U.S. 1089, 139 L.Ed.2d 867, affirmed in part, reversed in part 119 S.Ct. 721, 525 U.S. 366, 142 L.Ed.2d 835, opinion after remand 1999 WL 156020, on remand 219 F.3d 744. Telecommunications ⚯867

17. Liability

Competing local exchange carrier (CLEC) was not liable for penalties under interconnection agreement to purchase special access services from incumbent local exchange carrier (ILEC) at discount due to its failure to meet revenue and term requirements, where ILEC had improperly refused to unbundle unbundled network elements (UNE) when parties entered into agreement, and CLEC's inability to meet agreement's revenue requirements was result of its decision to convert from special access services to combinations of UNEs. BellSouth Telecommunications, Inc. v. Public Service Com'n of Kentucky, E.D.Ky.2004, 380 F.Supp.2d 820, affirmed 142 Fed.Appx. 886, 2005 WL 1799390. Telecommunications ⚯860

State commission's refusal, in arbitrating interconnection agreement between incumbent local exchange carrier (LEC) and competitor pursuant to Telecommunications Act of 1996, to allow LEC to limit its liability to competitor's customers, except in cases of gross negligence or intentional misconduct, violated Act, in that requiring LEC to be directly liable to competitor's customers would force it to provide better services to competitor's customers than it provided to its own. AT&T Communications of the Southwest, Inc. v. Southwestern Bell Telephone Co., W.D.Mo.1999, 86 F.Supp.2d 932, reversed in part, vacated in part 236 F.3d 922, rehearing denied, stay granted, vacated 122 S.Ct. 1958, 535 U.S. 1075, 152 L.Ed.2d 1019. Telecommunications ⇦914(1)

18. Yellow pages listings

Incumbent local exchange carrier's (ILEC) statutory obligation to provide competing local exchange carrier (CLEC) access to directory listings included requirement that it allow CLEC's business customers to be listed in yellow pages in which ILEC caused its customers' names to be published. MCI Telecommunications Corp. v. Michigan Bell Telephone Co., E.D.Mich.1999, 79 F.Supp.2d 768, affirmed 37 Fed.Appx. 767, 2002 WL 1354693. Telecommunications ⇦876

19. Interim service

Two interim orders issued by the Federal Communications Commission (FCC), which limited access to enhanced exchange links (EELs) to competitive local carriers (CLECs) who would use EELs to provide a significant amount of local exchange service, were not arbitrary and capricious, where FCC's justification for the orders was that it was necessary to avoid disruption of its reform of access charge policies, and that restrictions were needed to promote facilities-based competition. Competitive Telecommunications Ass'n v. F.C.C., C.A.D.C.2002, 309 F.3d 8, 353 U.S.App.D.C. 356. Telecommunications ⇦857

Federal Communications Commission's (FCC) decision to delay implementation of new regime of explicit universal service subsidies until at least January 1, 1999, while at same time promoting immediate competition in local exchange market, was reasonable interpretation of Telecommunications Act of 1996; Act contemplates sequential implementation of, initially, its market opening provisions, followed by its new explicit universal service support mechanisms. Southwestern Bell Telephone Co. v. F.C.C., C.A.8 1998, 153 F.3d 523. Telecommunications ⇦869

20. Rules and regulations

Federal Communications Commission (FCC) had jurisdiction to promulgate rules regarding state review of pre-existing interconnection agreements between incumbent telephone local exchange carriers (LEC) and other carriers, regarding rural exemptions, and regarding dialing parity; while Telecommunications Act of 1996 entrusted state commissions with job of approving interconnection agreements, and granting exemptions to rural LECs, those assignments did not logically preclude Commission's issuance of

rules to guide state-commission judgments, and provision of Act addressing dialing parity did not even mention the states. AT & T Corp. v. Iowa Utilities Bd., U.S.1999, 119 S.Ct. 721, 525 U.S. 366, 142 L.Ed.2d 835, opinion after remand 1999 WL 156020, on remand 219 F.3d 744. Telecommunications ⚿856

Federal Communications Commission (FCC) order setting conditions under which wireline telecommunications carriers were required to transfer telephone numbers to wireless carriers was a legislative rule required to be issued pursuant to the notice-and-comment requirements of the Administrative Procedure Act (APA); order effectively amended FCC's previous order by requiring carriers to provide their subscribers with ability to retain their numbers when moving from one physical location to another. U.S. Telecom Ass'n v. F.C.C., C.A.D.C.2005, 400 F.3d 29, 365 U.S.App.D.C. 149, on remand 2005 WL 937606. Telecommunications ⚿267

Decision of Federal Communications Commission (FCC) to retain some limits on common ownership of different-type media outlets was based on reasonable conclusion that repealing cross-ownership ban was necessary to promote competition and localism, while retaining some limits was necessary to ensure diversity. Prometheus Radio Project v. F.C.C., C.A.3 2004, 373 F.3d 372, certiorari denied 125 S.Ct. 2902, 162 L.Ed.2d 310, certiorari denied 125 S.Ct. 2903, 162 L.Ed.2d 310, certiorari denied 125 S.Ct. 2904, 162 L.Ed.2d 310. Telecommunications ⚿1100

Federal Communications Commission (FCC) regulation establishing business relationship exception to its national do-not-call registry was not arbitrary and capricious, despite contention that FCC failed to give appropriate consideration to anti-competitive effect that exception might have on telecommunications markets, as required by Telecommunications Act (TCA), where Telephone Consumer Protection Act (TCPA) specifically authorized FCC to establish national database of residential telephone subscribers who objected to receiving telephone solicitations, FCC solicited comments on anti-competitive effect that exception might have on telecommunications industry, and FCC determined that proposed alternatives would not comply with TCPA's mandate. Mainstream Marketing Services, Inc. v. F.T.C., C.A.10 (Colo.) 2004, 358 F.3d 1228, certiorari denied 125 S.Ct. 47, 543 U.S. 812, 160 L.Ed.2d 16. Consumer Protection ⚿13.1; Telecommunications ⚿888

Federal Communications Commission's (FCC's) refusal to grant permanent forebearance from enforcement of wireless telephone number portability rules was not arbitrary or capricious; FCC reasonably interpreted requirement for forebearance, that enforcement was not "necessary" for consumer protection, as not being required to achieve that goal, and reasonably found that lack of portability was acting as barrier to wireless consumers' switching of carriers. Cellular Telecommunications & Internet Ass'n v. F.C.C., C.A.D.C.2003, 330 F.3d 502, 356 U.S.App.D.C. 238. Telecommunications ⚿868

Petitioners, including incumbent telephone local exchange carriers (LEC) and state utility commissions, would be granted stay of pricing rules and "pick and choose" rule, governing rates for incumbent LEC provision of services and facilities to competitors

entering local telephone market, under Telecommunications Act of 1996, pending judicial review of Federal Communications Commission (FCC) report and order promulgating rules; petitioners would likely succeed on the merits of their appeals based on their argument that, under Act, Commission lacked jurisdiction to establish pricing regulations as to intrastate telephone service, petitioners would be irreparably harmed if stay was not granted, any harm to other parties from stay was outweighed by irreparable injury petitioners would sustain absent stay, and public interest weighed in favor of granting stay. Iowa Utilities Bd. v. F.C.C., C.A.8 1996, 109 F.3d 418, motion to vacate stay denied 117 S.Ct. 429, 519 U.S. 978, 136 L.Ed.2d 328. Telecommunications ⇦900

Portion of telephone companies' interconnection agreement requiring competitive local exchange carrier (CLEC) to provide incumbent LEC with reciprocal access to CLEC's poles, ducts, conduits, and rights-of-way violated Telecommunications Act and its implementing regulations; Federal Communication Commission's (FCC) statutory interpretation, that ILECs were precluded from seeking reciprocal access under Act's provisions governing LECs' obligations, was not contrary to plain meaning of Act or regulations. AT&T Communications of Midwest, Inc. v. U.S. West Communications, Inc., D.Neb.2001, 143 F.Supp.2d 1155. Telecommunications ⇦267

21. Review of agreements

Filed rate doctrine, requiring common carriers and their customers to adhere to tariffs filed and approved by appropriate regulatory agencies, did not apply to preclude incumbent local exchange carrier (ILEC) from receiving refund, or retroactive relief, based on rates already paid to competing provider in the event that ILEC prevailed on challenge to decision of state public utilities commission, during arbitration of parties' interconnection agreement, to award provider tandem reciprocal compensation rate for calls originating on ILEC's network and terminating on provider's network, given that ILEC was not challenging tandem rate itself, but rather provider's entitlement to receive that rate instead of lower rate, and provider and ILEC agreed that refund could be sought in their most recent interconnection agreement. MCI Telecommunications Corp. v. Ohio Bell Telephone Co., C.A.6 (Ohio) 2004, 376 F.3d 539. Telecommunications ⇦864(1)

Limitation imposed by incumbent local exchange carrier (ILEC) on its optional toll calling plans sold to new competitor local exchange carrier (CLEC), under which CLEC could only sell one plan to one end-user, due to fact that ILEC offered such plans to single-user customers only, did not violate resale provisions of Telecommunications Act. Southwestern Bell Telephone Company v. Apple, C.A.10 (Okla.) 2002, 309 F.3d 713. Telecommunications ⇦865

Federal Communications Commission's general authority to hear complaints under Telecommunications Act did not empower it to review interconnection agreements approved by state utility commissions under Act and to enforce terms of such agreements. Iowa Utilities Bd. v. F.C.C., C.A.8 1997, 120 F.3d 753, amended on rehearing, certiorari granted 118 S.Ct. 879, 522 U.S. 1089, 139 L.Ed.2d 867, affirmed in part, reversed in part 119 S.Ct. 721, 525 U.S. 366, 142 L.Ed.2d 835, opinion after remand 1999 WL 156020, on remand 219 F.3d 744. Telecommunications ⇦856

Rates implemented for unbundled network elements (UNEs) were not interim, but permanent, and state telecommunications commission could not retroactively alter them, where commission explicitly adopted combined rates, commission's order did not provide notice of interim rate to any party, retroactive application was initiated and implemented long after time for judicial review had passed, and state law, which empowered commission to retroactively amend its order, was refuted by commission's limited role under federal law to arbitrate, approve, and enforcing interconnection agreements. Qwest Corp. v. Arizona Corp. Com'n, D.Ariz.2004, 349 F.Supp.2d 1228. Telecommunications ⇦866

Telecommunications Act provision, allowing for parties damaged by common carrier to make complaint to Federal Communications Commission (FCC) or sue in federal court, but not both, applied to suit by competitive local telephone exchange carrier (CLEC) claiming that incumbent local exchange carrier (ILEC) violated terms of interconnection agreement, despite claim that provision applied only to damage claims and present suit sought other relief, and that CLEC's FCC complaint was informal and not covered by provision. Z-Tel Communications, Inc. v. SBC Communications, Inc., E.D.Tex.2004, 331 F.Supp.2d 513. Telecommunications ⇦901(2)

22. Standing

Hypotheses, of incumbent local telephone exchange carriers and state utility commissions, that Federal Communication Commission's rules, promulgated under Telecommunications Act, requiring local telephone exchange carriers to sell unbundled services to competitors would infringe intellectual property rights of third parties who license their technology to incumbent carriers did not satisfy injury in fact test for determining whether carriers and commissions had standing to bring claim; carriers and commissions did not present specific unbundling duties contained in either particular negotiated agreement between incumbent and competitor or state arbitration decision, and thus court could not determine if such infringements or takings were imminently likely to occur. Iowa Utilities Bd. v. F.C.C., C.A.8 1997, 120 F.3d 753, amended on rehearing, certiorari granted 118 S.Ct. 879, 522 U.S. 1089, 139 L.Ed.2d 867, affirmed in part, reversed in part 119 S.Ct. 721, 525 U.S. 366, 142 L.Ed.2d 835, opinion after remand 1999 WL 156020, on remand 219 F.3d 744. Telecommunications ⇦860

Incumbent local exchange carriers and state utility commissions lacked standing to bring claim that Federal Communication Commission's rules, promulgated under Telecommunications Act, requiring local telephone exchange carriers to sell unbundled services to competitors, would infringe intellectual property rights of third parties who license their technology to incumbent carriers, absent claim that third-party manufacturers of telecommunications technology were unable to protect their intellectual property or constitutional rights. Iowa Utilities Bd. v. F.C.C., C.A.8 1997, 120 F.3d 753, amended on rehearing, certiorari granted 118 S.Ct. 879, 522 U.S. 1089, 139 L.Ed.2d 867, affirmed in part, reversed in part 119 S.Ct. 721, 525 U.S. 366, 142 L.Ed.2d 835, opinion after remand 1999 WL 156020, on remand 219 F.3d 744. Telecommunications ⇦906

Telecommunications provider lacked standing to seek declaratory judgment that consultant to town violated Telecommunications Act and Constitution by submitting for town's approval illegal draft ordinance regulating communications towers; necessary requirement that provider be facing future harms was not satisfied, as town had rescinded ordinance in question, and provider was no longer serving town, obviating prospects of future problems. Omnipoint Communications Inc. v. Comi, N.D.N.Y.2002, 233 F.Supp.2d 388. Declaratory Judgment 300

Consumers who brought action against telecommunications companies, alleging antitrust conspiracy to prevent competitive entry into local telephone and Internet service markets, failed to allege facts showing conspiracy to thwart market entry by competing local exchange carriers (CLECs), as required to maintain action under Sherman Act; it was in each company's individual economic interest to attempt to keep CLECs out of its market, since companies were required to provide services to CLECs at wholesale rates, and such parallel action did not give rise to inference of agreement. Twombly v. Bell Atlantic Corp., S.D.N.Y.2003, 313 F.Supp.2d 174, vacated and remanded 425 F.3d 99, petition for certiorari filed 2006 WL 558413. Monopolies 28(6.4)

23. Injunction

Preliminary injunctive relief against setting or enforcing interim rates by Maine Public Utilities Commission (PUC) for competitive access to certain telecommunication network elements no longer required to be unbundled but nonetheless required to be provided under the Telecommunications Act (TA) would be denied, as incumbent local exchange carrier (ILEC) failed to show likelihood of success on its claims that authority of PUC to fix rates in question was preempted by the federal law or that the interim TELRIC (Total Element Long Run Investment Cost) rates imposed were precluded by the TA or orders of the Federal Communications Commission (FCC). Verizon New England, Inc. v. Maine Public Utilities Com'n, D.Me.2005, 403 F.Supp.2d 96. Telecommunications 903

24. Unbundling, generally

Decision of Federal Communications Commission (FCC) was reasonable, to not eliminate unbundling in local exchange markets solely on basis of limited competition for tariffed special access service (TSAS), in implementing "unbundling" provisions of Telecommunications Act; although wireless and long-distance markets thrived with TSAS-based competition, such competition in local exchange markets was much more limited, carriers generally only made limited use of special access offerings to provide service in local exchange services market, and FCC took into account such factors as administrability and risk of abuse by incumbent local exchange carriers (ILECs). Covad Communications Co. v. F.C.C., C.A.D.C.2006, 450 F.3d 528. Telecommunications 860

25. ---- Cost benefit , unbundling

Conclusion made by Federal Communications Commission (FCC) was reasonable, in

implementing "unbundling" provisions of Telecommunications Act, that some wire centers identified by alternative unbundling thresholds of incumbent local exchange carriers (ILECs) exhibited indicia of impairment because they did not generally exhibit extensive competitive fiber deployment and did not offer sufficient revenue opportunities to create incentive for such deployment; FCC confronted issue of costs and benefits of unbundling and made reasonable trade-offs between allowing unbundling where it was necessary and eliminating unbundling where it was not. Covad Communications Co. v. F.C.C., C.A.D.C.2006, 450 F.3d 528. Telecommunications ⇦860

26. ---- Analysis, unbundling

Conclusion made by Federal Communications Commission (FCC) on transport thresholds was reasonable, in implementing "unbundling" provisions of Telecommunications Act, that there was no impairment if wire centers met either business line or collocation metrics; although there may have been some over-inclusiveness and under-inclusiveness in FCC's unbundling rules, FCC's analysis bore some relationship to underlying regulatory problem. Covad Communications Co. v. F.C.C., C.A.D.C.2006, 450 F.3d 528. Telecommunications ⇦860

27. ---- Competition, unbundling

Conclusion made by Federal Communications Commission (FCC) on high-capacity loops was reasonable, in implementing "unbundling" provisions of Telecommunications Act, that loop impairment would be assessed at wire center level because wire centers provided best evidence of not only actual competition within given market, but also potential competition within that market; FCC did not ignore evidence of competition, either actual or potential, in impaired areas and confronted issue of costs and benefits of unbundling and made reasonable trade-offs between allowing unbundling where it was necessary and eliminating unbundling where it was not. Covad Communications Co. v. F.C.C., C.A.D.C.2006, 450 F.3d 528. Telecommunications ⇦860

28. ---- Reasonably efficient competitor, unbundling

"Reasonably efficient competitor" standard promulgated by Federal Communications Commission (FCC) was logical outgrowth FCC's "open-ended" impairment inquiry into "uneconomic entry," in implementation of "unbundling" provisions under Telecommunications Act, where FCC promulgated "reasonably efficient competitor" standard in response to rejection of "open-ended" impairment inquiry by Court of Appeals and interim order and notice of proposed rulemaking put interested parties on notice that FCC wanted to answer Court's concerns. Covad Communications Co. v. F.C.C., C.A.D.C.2006, 450 F.3d 528. Telecommunications ⇦860

29. ---- Nuanced standard, unbundling

Use of nuanced standard, which assessed impairment vel non at wire center level and imposed "caps" on unbundling in markets in which prevalence of unbundled network elements (UNEs) suggested that facilities-based competition was viable with regard to

high-capacity loops and transport trunks, was reasonable implementation of "unbundling" provisions under Telecommunications Act. Covad Communications Co. v. F.C.C., C.A.D.C.2006, 450 F.3d 528. Telecommunications 860

30. ---- Impairment, unbundling

Conclusion made by Federal Communications Commission (FCC) was reasonable, in implementing "unbundling" provisions of Telecommunications Act, that competitive local exchange carriers (CLECs) were not "impaired" without unbundled access to mass market local circuit switching (MMLS), where CLECs had deployed their own switches in 86% of wire centers across country and CLECs were deploying high-tech switches that had higher capacity and wider geographic reach than old switches employed by incumbent local exchange carriers (ILECs). Covad Communications Co. v. F.C.C., C.A.D.C.2006, 450 F.3d 528. Telecommunications 860

31. Burden of proof, unbundling

Incumbent local exchange carriers (ILECs) did not concede impairment in some mass market local circuit switching (MMLS) markets by submitting evidence of non-impairment in other markets, in Federal Communications Commission's (FCC) implementation of "unbundling" provisions under Telecommunications Act, since burden of persuasion rested upon party that urged Commission to find impairment. Covad Communications Co. v. F.C.C., C.A.D.C.2006, 450 F.3d 528. Telecommunications 860

47 U.S.C.A. § 251, 47 USCA § 251

Current through P.L. 109-279 approved 08-17-06

END OF DOCUMENT