Why the Telecommunications Industry Is Not Like OPEC

By Braden Cox[1]

A recent cover story in the April 1 issue of *America's Network* magazine claims that the four[2] Regional Bell Operating Companies (RBOCs) are "increasingly coordinating their activities, in part to eliminate local service competitors." The article characterizes the companies – Verizon, BellSouth, SBC Communications, and Qwest – as a "telecom cartel" because of an "implied agreement" not to compete in each others' territories.

When one thinks of a cartel, images of organized crime or the oil barons of the Organization of the Petroleum Exporting Countries (OPEC) come to mind. But there is a small but growing movement of people determined to label the telecommunications industry as a cartel. Proponents of this cartel theory are themselves blinded by the collective action of their anti-RBOC agenda. Competition in telecom has been hindered not by concerted RBOC actions but by incomprehensible telecommunications legislation and regulatory implementation failures.

Promoting the concept of a "telecom cartel" is a part of a larger movement to have antitrust law play a more active role in the telecommunications market. The pro-antitrust forces were dealt a setback earlier this year by the Supreme Court's decision in *Verizon v. Trinko*. The holding of *Trinko* reversed a prior appeals court ruling that could have let consumers sue regional phone companies for not providing competitors with enough access to their phone networks. The *Trinko* decision reinforces the skepticism courts have about claims that dominant companies should be forced to deal with competitors.

The cartel theory will get more hype now that refusal-to-deal is a losing antitrust argument. And in light of the D.C. Circuit Court's decision in March that again struck down the Federal Communications Commission rules that force RBOCs to lease their local phone networks to rivals at government-mandated prices (referred to as UNE-P), calls for regulation beyond that imposed by the 1996 Telecom Act will grow stronger.

Mr. Smetannikov's article revives the cartel issue. In it he explores the nuanced argument that the RBOCs are a cartel due to withholding – that they have impliedly agreed to not to compete on each other's home turf. At issue is not the duty to aid competitors as in *Trinko*, but the duty to compete.

Why is it that the RBOCs aren't invading each other's territory for a battle of the heavyweights? Unfortunately, the pro-antitrust analysts interviewed for Smetannikov's article provide the wrong answer to this valid question. Instead of knee-jerk accusations

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[2] Originally seven RBOCs were created by the divestiture of AT&T in 1984 and not as a result of the Telecommunications Act of 1996 as reported. The article is located at www.americasnetwork.com/americasnetwork/article/articleDetail.jsp?id=91547.

of corporate conspiracy, the cartel camp should examine the dominant forces that truly affect the competitive state of the industry – government regulation, economic conditions and technological change in the way people communicate.

The Telecommunications Act of 1996 is a contradictory piece of legislation that befuddles even its implementing body, the FCC. The preamble of the Act states that the law is a "pro-competitive, de-regulatory national policy framework" yet its text is over one hundred pages of government “managed” competition. Its two-tiered goal of promoting competition for both lower prices and the deployment of new technologies is stymied by the UNE-P open network access regime that creates disincentives for companies to invest in new technology. The regulatory mix is further muddled by the FCC’s attempts at interpreting the law. It has lost in court each and every time it has attempted to implement the UNE-P access rules – that’s three times in eight years since 1996 – what company would expand with such regulatory uncertainty?

Despite Mr. Smetannikov’s incorrect notions that RBOC networks were the property of the federal government and were built with taxpayer money, RBOCs are, in fact, publicly traded companies in a highly competitive industry. As is true within any competitive industry, the RBOCs are faced with basic financial decisions of where to spend limited dollars. But the economic downturn of the last few years has seen an overall investment decline. RBOCs have less available capital to spend in other regions and instead have concentrated on core services in region. Given the regulatory disincentives and technological trends, RBOCs have been investing in fiber, broadband and other new services within their region rather than in non-facilities resale based competition in other regions.

Finally, why invest in old technology when consumers have loudly expressed a preference for more? Fiber and other facilities offer greater long-term opportunities for competition. Consumers already are demanding the kinds of services demonstrated by competition from other technology industries – wireless, cable telephony and Internet telephony (VoIP). It is this intermodal competition that defines the universe of choices for consumer communications.

Consumers increasingly describe their traditional phone service as a backup to their wireless phone for emergency purposes or to have a common household phone number – this trend doesn’t exactly inspire the RBOCs to enter new geographic markets. But RBOCs are beginning to compete in the long distance segment, especially for enterprise customers against AT&T and MCI, as well as other incumbent companies.

The idea that there is an implied understanding among the telecommunication giants to not compete against each other is a red herring to the real issues facing the industry. There is no telecom OPEC.