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The Broadband Debate Continues

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The debate among policy makers on Capital Hill, at the Federal Communications Commission (FCC) and in the White House about the specifics for a national broadband policy continues, leaving the telecommunications market in an unprecedented state of regulatory confusion and uncertainty. And, given recent actions (or inaction, as the case may be) by members of Congress, President Bush and the FCC, it seems clear that no major broadband program will be passed or implemented this year.

Congressional Activity

Numerous members of Congress have invested considerable time and effort reevaluating the Telecommunications Act of 1996 (1996 Act), considering what, if anything, should be modified or newly implemented to promote broadband competition. A current search of the Congressional docket yields twenty-one bills that have been introduced to Congress with the word “broadband” in their title, including, the *Internet Freedom and Broadband Deployment Act of 2001*, the *Broadband Regulatory Parity Act of 2002* and the *Broadband Telecommunications Act of 2002*.

The bitterly debated *Internet Freedom and Broadband Deployment Act of 2001* (H.R. 1542), commonly referred to as “Tauzin-Dingell” after its authors Billy Tauzin (R-LA) and John Dingell (D-MI) was passed this year by the House of Representatives by a vote of 271-158. This bill, if enacted, would allow Baby Bells to limit competitor access to their digital subscriber line (DSL), permit the entry by the Baby Bells into the long distance data services market prior to there being local competition, and prohibit FCC and state regulation of high-speed access. Specifically, Tauzin-Dingell would prohibit any FCC regulation of the rates that Baby Bells can charge for leasing their equipment. Competitive local exchange carriers (CLECs) and Internet service providers (ISPs) are among those most strongly opposed to Tauzin-Dingell. They assert that the elimination of requirements that the Baby Bells provide access to their broadband facilities will create less competition and higher prices for consumers rather than the desired result of greater deployment of broadband. The Baby Bells claim, however, that the network sharing requirements of the 1996 Act actually stifle the deployment of broadband by discouraging them from investing in their broadband networks. Key Senators vow to kill this bill once it comes before them.

Well in advance of Tauzin-Dingell, Senator Sam Brownback (R-KS), in April, 1999, introduced the *Broadband Internet Regulatory Relief Act of 1999* (S. 877), which was cosponsored by Senator Don Nickles (R-OK) and Senator Larry Craig (R-ID). Senator Brownback has indicated that his bill is designed to accelerate the deployment of broadband networks throughout the United States and to make residential high-speed Internet access a widely-available service. The essence of the bill is that it gives incumbent local exchange carriers (ILECs) relief from certain of the regulatory burdens of the 1996 Act when providing broadband ADSL (i.e., Asymmetric Digital Subscriber Line) service.

The *Broadband Regulatory Parity Act of 2002* (S. 2430), introduced this year by Senators John Breaux (D-LA) and Don Nickles (R-OK), seeks to accelerate the growth of broadband use by creating regulatory parity among the competing broadband delivery technologies of cable modem, DSL, fixed wireless and satellite. The bill aims to reach this goal by requiring the FCC to issue regulation within 120 days of the bill's enactment to make regulations for all broadband delivery technologies more comparable. The FCC, however, would retain the power of discretion as to what regulations to enact. Senator Ernest Hollings (D-SC) and Senator John McCain (R-AZ) staunchly oppose Tauzin-Dingell, and argue that deregulation of the broadband industry will only allow Baby Bells to further capitalize on the broadband market, rather than promote competition.

The *Broadband Telecommunications Deployment Act of 2002* (S. 2448) was also recently introduced by Senate Commerce Committee Chairmen Ernest "Fritz" Hollings (D-SC). With a focus on promoting competition, this bill includes a proposal to use low interest loans and grants to support the deployment of broadband networks in rural and other underserved areas. Telephone excise tax revenues would be used to provide two billion dollars for these loans and grants. The Baby Bells would continue to be required to share their broadband networks with their competitors.

Senator John McCain is also currently in the process of drafting a broadband bill. Originally expected to be introduced in June, 2002, McCain now says that this bill is not yet close to being proposed. He is still looking for a fair and balanced way to present a deregulatory approach to promoting broadband deployment. Making cable TV high-speed Internet services also subject to "open access" rules is one of the possible proposals currently being considered for the bill.

Senator Joseph Lieberman (D-CT) is also currently working on a bill to be introduced which addresses broadband growth. He has issued a sixty two page white paper discussing the challenges of promoting broadband deployment. The objective of Senator Lieberman's bill, *The National Broadband Strategy Act of 2002*, is to make a plan for the future, not just to deal with current short-term problems. He said his bill, if enacted, would direct the FCC to develop broadband legislation to meet the obstacles of the next-generation Internet. The bill would also propose tax credits along with other incentives for broadband deployment, research and development of broadband networks.

Regulatory Actions

There has also been much recent activity in the regulatory arena. The FCC currently has no fewer than four pending proceedings regarding the regulations imposed on broadband that could dramatically change the current regulations. The *Cable Modem Declaratory Ruling and Notice*, for example, addresses the regulatory treatment of cable-modem services used to provide high-speed Internet access. The *LEC Broadband Notice* considers whether Baby Bells, currently dominant in the provision of local exchange and exchange access services, should also be considered dominant when providing broadband telecommunication services. The *Wireless Notice* deals with the regulatory treatment of entities that utilize traditional telephone platform to provide broadband Internet access service. A fourth ongoing proceeding is the *Triennial UNE Notice* which discusses Baby Bells' wholesale obligations to make their facilities accessible for use by CLECs and ISPs, enabling them to be competitive with the Baby Bells.

The manner in which the FCC resolves these proceedings, which is expected to be consistent with FCC Chairman Michael Powell's goals of simplifying the regulatory framework for broadband services, will likely have a dramatic affect on the broadband regulatory and competitive landscape. However, the contemplated relaxation of existing statutory requirements imposed on ILECs raises fundamental questions about whether this type of deregulation will truly promote deployment of broadband or merely undermine the growth of competition.

The Bush Administration's Position

In recent weeks, the Bush Administration has indicated that it strongly supports efforts to make high-speed Internet access available in more areas, including to help state and local governments that are having trouble setting up systems. However, while emphasizing that the Country must be aggressive about the expansion of broadband, President Bush discusses the federal government's role in fostering deployment of broadband service and demand for broadband service only in the most general terms and has failed to set any national goals or propose any new programs. Furthermore, the Administration has not endorsed any of the competing broadband bills that are currently before or which may soon be introduced to Congress and has, in fact, steadfastly avoided taking sides on the contentious regulatory questions concerning broadband policy that are currently among the most intensely debated in Washington.

It is clear that the ongoing and heated debate among members of Congress, the FCC and the Administration about the specifics of a national broadband policy will remain center-stage for the near term. With the telecom industry heavily divided over the parameters of a national broadband program, it seems likely that the FCC will step in and dictate a direction for telecom policy in an effort to establish greater regulatory certainty and promote broadband deployment and competition.

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