

Verizon May Respond to Threat of Losing Number One Spot

Some speculators on Wall Street are betting that Verizon will challenge Qwest Communications in its bid for MCI. The news comes just a week after SBC Communications' announced it was planning to bid \$16 billion to acquire AT&T. The SBC/AT&T deal threatened Verizon's spot as the top U.S. telecom company.

Qwest is offering \$6.3 billion for MCI to build up more long-distance operations and wants to close the deal in the coming days.

But the New York Post reports that Verizon shouldn't be ruled out for a rival bid because it's been known for a while that Verizon covets MCI's worldwide roster of clients. Industry sources say MCI has also held tentative discussions with Verizon, but neither company would comment.

The battle over MCI is the latest move in an industry that is rapidly evolving to keep up with technological advances and also to maintain and increase market share. On learning of the SBC/AT&T deal, the President and CEO of the United States Telecom Association, Walter B. McCormick, Jr., remarked that no industry has experienced the rapid, fundamental change telecommunications has undergone in recent years. "[The SBC/AT&T deal] is an historic announcement that will translate into new services and products for consumers," McCormick said. "This news, and recent announcements from other companies of all sizes, indicates how important it is for Congress to begin its work on updating the nation's telecom laws."

Meanwhile, the Financial Times reports that the perception among mergers and acquisitions bankers is that Verizon remains strategically hamstrung by its focus on Verizon Wireless, its joint venture with Britain's Vodafone group. Both partners want to increase their stake in Verizon Wireless but neither wants to leave the US mobile business.

Although MCI has appointed financial advisers, people close to the company said yesterday there were no active negotiations under way. MCI is, in any case, a distant second to AT&T in the corporate communications market and is viewed as a much less attractive acquisition target.

While Verizon and Vodafone executives insist the Verizon Wireless partnership works well, Verizon has made no secret of its desire to own 100 per cent of an asset it sees as fundamental to its longer-term growth strategy.

But despite Vodafone's abortive bid for AT&T Wireless a \$41 billion bid battle that was ultimately won by SBC and BellSouth's Cingular joint venture Vodafone has repeatedly said it is not interested in selling its stake in Verizon Wireless to its US partner.

Verizon Challenges PUC October Decision in Federal Court

Verizon Inc. is urging a federal judge to overrule an October 2004 decision by the Pennsylvania Public Utilities Commission that established lower rates for competitors who lease portions of the Verizon network, claiming that the new rate structure will cause it to suffer annual losses of \$690 million.

In a motion for summary judgment, Verizon argues that the PUC's ruling defied a mandatory rate freeze imposed by the Federal Communications Commission in *Verizon v. Pennsylvania Public Utilities Commission*.

Verizon's lawyers - Barbara W. Mather and Joanna J. Cline of Pepper Hamilton, along with Verizon in-house counsel Julia A. Conover and Suzan Debusk Paiva - are asking Senior U.S. District Judge Marvin Katz to reverse the PUC's entire slate of new rates on the grounds that the PUC failed to properly apply federal law.

"These rates are unlawfully low and confiscatory because the PUC misapplied the FCC's required cost methodology with regard to critical inputs and made arbitrary and unsupported decisions, ultimately producing rates well below any rational estimate of Verizon's forward-looking costs," the Verizon team argued.

Verizon's lawsuit challenging the PUC order was filed in federal court because the Telecommunications Act of 1996 requires that all appeals from state utility commissions relating to telephone rate structures must be waged in federal court.

Under the law, major carriers like Verizon are required to lease portions of their networks to competitors to provide local telephone service.

The law requires that the rates for the leased portions - referred to as "unbundled network elements" or UNEs - must be based on the cost of restructuring the network using the most efficient technology currently available.

In its motion for summary judgment, Verizon claims that the new rates "are illegal because the PUC failed to comply with mandatory federal orders and standards."

The brief says the PUC "has attempted to evade a federally imposed floor on UNE rates changes."

According to the Verizon brief, the FCC has repeatedly failed in its efforts to establish unbundling rules, and a recent decision from the U.S. Court of Appeals for the District of Columbia left Verizon with no legal obligation to provide access to certain UNEs.

The FCC responded by issuing an order that required Verizon and other incumbent local exchange carriers to continue providing UNEs to competitors as an "interim transitional measure," but froze the rates at the levels in effect in June 2004, the brief says.

Verizon argues that the FCC order allowed states the discretion to raise those rates, but not to reduce them.

The PUC's October 2004 order defied that mandatory freeze, Verizon argues.

"The PUC has attempted to require Verizon to do precisely that which the FCC has stated Verizon is not required to do: to reduce the rates that Verizon is permitted to charge for mass market switching, enterprise market loops and dedicated transport," the brief says.

WorldCom Litigation Rumbles On

Merrill Lynch won a major round recently in the ongoing ERISA litigation arising from WorldCom's collapse when a federal judge ruled in its favor on a summary judgment motion.

Southern District of New York Judge Denise Cote, who is also presiding over WorldCom's securities class action cases, held that as a "directed trustee" under ERISA, Merrill Lynch's fiduciary duties were limited in nature and that its decision not to block investment in WorldCom stock by the company's 401(k) participants did not amount to a breach of its fiduciary duties.

The decision, *In re WorldCom, Inc. ERISA Litigation*, is one of many class actions filed in the wake of WorldCom's 2002 bankruptcy. The former telecommunications giant implemented an \$11 billion accounting fraud in which it overstated revenues and hid expenses in an effort to keep up with investor expectations.

When news of the overstatement became public, the company quickly fell into bankruptcy. It emerged last April under its former name, MCI.

Several former executives pleaded guilty to securities fraud. WorldCom's former chief executive, Bernard Ebbers, is being tried on charges of securities fraud and related claims before Southern District of New York Judge Barbara Jones.

The plaintiffs in the case before Cote, a class of employees who participated in WorldCom's 401(k) plan, accused Merrill Lynch of breaching its fiduciary duty as a trustee administering the retirement plan. They blamed Merrill Lynch for failing to warn participants about investing in WorldCom stock - an investment option under the plan - and not encouraging the selling of WorldCom shares as its prospects and stock price began crumbling amid news of government investigations, resignation by top executives and mounting concerns about the company's financial viability.

Under its contract with WorldCom, Merrill Lynch was a "directed trustee" under ERISA, the Employee Retirement Income Security Act, Cote held. She found that WorldCom held the power to select the investment options for its employees participating in the 401(k) plan. Merrill Lynch merely followed WorldCom's instructions on how funds were to be invested. Although it provided WorldCom with market and investment information, Merrill Lynch's contract imposed no obligation to review the soundness of the plan's investment options.

Wireline and Wireless Competition Issues Under Consideration at FCC Open Meeting on February 10

At its February 10 open meeting, the Federal Communications Commission will take on a number of wireless and wireline competition issues:

The Commission will consider a Notice of Proposed Rulemaking concerning the use of "white space" in the 900 MHz Business and Industrial Land Transportation Pool;

The Wireless Broadband Access Task Force will report on its findings and recommendations relating to the Commission's wireless broadband policies (GN Docket No. 04-163);

The Commission will consider a Report and Order that will address the Commission's policies governing the federally-tariffed charges of incumbent LECs for changing the presubscribed interexchange carrier for end user subscribers (PIC change charges);

The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking that resolves a number of issues regarding application of the Commission's intercarrier compensation rules and solicits comment on a number of reform proposals submitted by the industry as well as other issues related to intercarrier compensation reform.

Verizon Online Expands Broadband Access in Snyder and McKean Counties

More consumers and businesses in Snyder County and McKean Counties can enjoy the benefits of high-speed Internet access now that Verizon Online has expanded its availability in several communities.

As the result of the company's most recent expansion and upgrade of its local telecommunications network, Verizon Online DSL is now available on about 11,500 additional lines in the Beaver Springs, Middleburg, Mt. Pleasant Mills and Selinsgrove areas, and 1,800 additional lines in the Smethport area in McKean County.

Verizon has invested \$8.5 billion in its network over the last 10 years and will continue to invest aggressively under recently enacted state telecom legislation. The new law requires companies such as Verizon to deploy broadband service across their service areas - the most comprehensive broadband deployment requirement in the nation. Under this legislation, Verizon also must make broadband available to all students throughout the company's Pennsylvania service area.