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FCC's Hundt Expresses Doubt On Phone Rules --- Courts Expected to Deny Bid for More Rivalry In the Local Markets

By Scott Ritter
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WASHINGTON -- The nation's top telephone regulator said the government is likely to lose its battle over new rules aimed at bringing competition to the $90 billion local phone market.

"I think, realistically, it's a long shot," Federal Communications Commission Chairman Reed Hundt said of an FCC court victory. Key pricing provisions of the rules were recently suspended by a federal appeals court, which will hear broader challenges to the rules in January.

The rules, part of the agency's so-called interconnection order that was adopted earlier this year, were challenged by local phone carriers and some states that argued that the FCC overstepped its bounds when it wrote the rules. Opponents said the states -- not the federal government -- should set guidelines concerning the prices would-be competitors will pay to plug into local phone networks.

The Eighth U.S. Circuit Court of Appeals, based in St. Louis, said it was likely that the FCC erred when it crafted the rules. The court agreed to suspend the rules at the request of some state regulators and local carriers, led by GTE Corp. The FCC has taken its case to the Supreme Court, which is considering the agency's request to lift the stay. Already, Justice Clarence Thomas has declined to overturn the appeals-court decision.

Mr. Hundt, in a briefing with reporters, said the high court was unlikely to lift the stay. Indeed, the appeals court is also unlikely to ultimately side with the agency, he said. That would prompt a Supreme Court appeal, which wouldn't be heard until 1998, Mr. Hundt said.

"Our mandate has been set aside," he said. "I would not expect it is likely that it would be put back into effect unless and until the Supreme Court reverses the Eighth Circuit, which I don't think is likely to be decided any earlier than the spring of 1998."

Analysts said the court challenges throw a great deal of uncertainty on the process to open local phone markets to potential competitors like long-distance carriers and cable-TV companies.

Also at stake is the push by regional Baby Bells to enter the market for long-distance callers. Under the new telecommunications law, the FCC determines when a local carrier faces enough competition to be allowed to offer long-distance calling.

Without the pricing portions of the interconnection rules in place, Bell entry into long-distance could be slowed, some analysts said. Indeed, Mr. Hundt said the FCC will scrutinize state-brokered agreements that allow new entrants into the local calling market.

"We are absolutely going to look into the question of whether or not the competition policy in those states was the right one, was the optimal one and was the one we think Congress intended," he said.

Still, Mr. Hundt expressed optimism that the states would adopt interconnection policies not unlike those in the FCC's rules. The FCC guidelines were based on forward-looking costs, rather than historical, embedded costs that local phone companies argued were a more appropriate gauge for figuring pricing.

"A lot of states have on their own been adopting those policies," Mr. Hundt said. "So I'm pretty encouraged about the general trend here."

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