

**DOWJONES** | Newswires**US High Court Backs FCC Rate Scheme For Phone Competition**

By Scott Ritter

865 words

13 May 2002

10:05

Dow Jones News Service

DJ

English

(Copyright (c) 2002, Dow Jones & Company, Inc.)

Of DOW JONES NEWSWIRES

WASHINGTON -(Dow Jones)- The U.S. Supreme Court blessed a rate-setting formula used to determine the prices would-be rivals pay to plug into a local phone company's calling network.

Monday's ruling was a blow to Baby Bells like Verizon Communications (VZ), which said the formula makes it impossible for them to recoup billions of dollars spent stringing wires and building switches across the country.

The justices also handed the Bells a setback on another front, concluding that the Federal Communications Commission could require a local carrier to bundle pieces of its network for lease at the request of a competitor.

WorldCom Inc. (WCOM), AT&T Corp. (T) and other companies with an eye on lucrative local calling markets strongly supported the FCC rules, saying they'd spur the kind of competition Congress envisioned when it deregulated the nation's telecommunications industry in 1996.

One issue: An FCC cost scheme that helps determine the prices long-distance carriers and others pay to plug into, or lease parts of, a local phone company's calling network. A federal appeals court in St. Louis blessed the agency's use of "forward-looking costs" to formulate the rates, but said the agency erred when it based those costs on a hypothetical, super-efficient phone network.

Writing for the majority, Justice David H. Souter disagreed. He said the FCC formula wasn't out of line with what Congress called for in the 1996 statute.

"Whether the FCC picked the best way to set these rates is the stuff of debate for economists and regulators versed in the technology of telecommunications and microeconomic pricing theory," Souter wrote. "The job of judges is to ask whether the commission made the choices reasonably within the pale of statutory possibility in deciding what and how items must be leased and the way to set rates for leasing them.

"The FCC's pricing and additional combination rules survive that scrutiny," he added.

WorldCom lauded the decision, calling it a "tremendous victory" for consumer and business customers.

"This ruling finally ends six years of uncertainty created by Bell legal challenges and other stonewalling," said WorldCom General Counsel Michael H. Salisbury. He said the decision validates the company's new all-distance offering called The Neighborhood, which depends on leasing parts of the Bell networks at "reasonable rates."

A spokesman for Verizon said the ruling maintains the status quo, and added that the FCC has recognized that changes to its bundling policies may be needed to establish facilities-based competition that the law intended.

"Because the court upheld (the formula) as a legal matter does not mean it is the best policy for the times," the spokesman said. "We hope that (FCC) Chairman (Michael) Powell will not reflexively follow the bankrupt policies of the past, but emerge as a leader in his own right."

Local phone companies argued that they have spent about \$342 billion to build their networks, which would be valued at just \$180 billion under the FCC's formula. The result, they said, was an unconstitutional "taking" of phone company property.

But the justices dismissed that argument, in part because the local carriers weren't challenging a specific rate. The court also called into question the numbers. Justice Souter said the \$180 billion figure was too low, while the \$342 billion investment was actually closer to \$166 billion after depreciation.

"What the best numbers may be we are in no position to say: The point is only that the numbers being thrown out by the incumbents are no evidence that (the formula's) lease rates would be confiscatory, sight unseen," he wrote.

Indeed, WorldCom said the Bells greatly exaggerated the gap between their historical costs and what the FCC rules would allow them to recover by leasing parts of the network to rivals. While the FCC crafted the formula, the 1996 statute left it up to state regulators to approve the actual rates. WorldCom said states have enough leeway to set rates that give the Baby Bells a fair rate of return on their investment.

The justices upheld the FCC rate formula on a 7-1 vote, with Justice Souter joined by Chief Justice William H. Rehnquist and Justices John Paul Stevens, Anthony M. Kennedy, Ruth Bader Ginsburg, Antonin Scalia and Clarence Thomas.

Justice Stephen Breyer dissented, saying he backed the underlying thrust of the FCC's methodology, but said the agency erred when it wrote the specific pricing and bundling rules. Justice Scalia agreed that the FCC couldn't order local carriers to combine pieces of their network for lease to competitors.

A lower court had rejected that rule, saying it was up to the new entrant to bundle the "network elements" it leases from an incumbent.

The FCC argued that would lead to unnecessary costs and delays, putting newcomers "at a substantial competitive disadvantage." Indeed, analysts said that's been the most widely used route by companies looking to offer local calling in the residential market.

-By Scott Ritter, Dow Jones Newswires; 202 862-6687; [scott.ritter@dowjones.com](mailto:scott.ritter@dowjones.com)

Document dj00000020020513dy5d000um

#### Search Summary

Text	"By Scott Ritter"
Date	All Dates
Source	All Sources
Author	All Authors
Company	All Companies
Subject	All Subjects
Industry	All Industries
Region	All Regions
Language	English
News Filters	Date: 1 January 2002 - 31 December 2002
Results Found	143
Timestamp	19 January 2020 15:55