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Newswatch

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AT&T and T-Mobile Merger on the Ropes

Just six months ago, public consensus was that the proposed AT&T/T-Mobile merger was imminent and unstoppable. Discussion was framed around "when" instead of "if." After all, the US Government seemed reluctant to interfere with the massive Comcast-NBC merger, and that touched an ISP. As the regulatory review period became protracted however, doubts began to arise.

In late August, the Department of Justice sued to block the $39 billion deal, and this month the proposed merger of AT&T and T-Mobile was dealt another serious blow, this time by the FCC, who also moved to block the deal with a 111-page report. FCC Chairman Julius Genachowski said that after careful review, the regulatory body wasn't buying AT&T's claims, and believed the merger would be bad for competition, consumers, and most importantly, job-seekers. The Washington Post pointed out the significance of the action, noting that the last time the FCC moved to block a deal was in 2002.

AT&T took issue with the extensive FCC report. "The report cherry-picks facts to support its views, and ignores facts that don't. Where facts were lacking, the report speculates," Jim Cicconi, AT&T's chief lobbyist, said in a statement. Still, the negative reaction by the FCC prompted AT&T to withdraw the application for FCC approval.

The FCC permitted the withdrawal, but not without a warning. Commissioner Michael J. Copps said he hoped this would be the last word from the two CSPs. "While I welcome withdrawal of this application, I would like to think we will no longer be expending significant FCC resources to examine this paradigm-shifting and complex transaction," said Copps. "I would hope the withdrawal is not a strategic gambit along the road to resubmission of this or a similar application in the months ahead. That would not strike me as a good route to travel."

The problem is AT&T stands to lose billions in concession payments to T-Mobile parent Deutsche Telekom (DT) if the deal doesn't go through. Further, from the looks of it, there is no firm plan-B, aside from perhaps a joint venture, which would be subject to regulatory scrutiny as well.

Some analysts feel that the withdrawal of the FCC application was a strategic move meant to consolidate resources and avoid engaging in a two-front war. An analyst op-ed in Thompson Reuters quoted an anti-trust lawyer who said, "While people sometimes litigate with the DOJ over mergers, I don't think anyone has ever successfully litigated with the FCC. Conventional wisdom is if the FCC refers something to trial, the trial will never happen because no one will have stomach to deal with it."

The hurdles facing the merger are appearing insurmountable; even if AT&T is able to beat the DoJ lawsuit (which is no easy task), they still will have to garner FCC approval, and the Commissioners have made it clear that they've done their due diligence and don't want to spend more time looking at the deal.

Sprint Throws Clearwire a $1.6B Lifeline

Just when you thought the official expiration date of WiMAX in the US was 2012, Sprint rekindled its relationship with Clearwire and extended their WiMAX collaboration to 2015. For Clearwire, the news couldn't have come at a better time; the company was on the verge of missing a $237 million debt interest payment when Sprint stepped in at the eleventh hour with new funding.

Sprint will offer up to $1.6 billion in funding in exchange for continued use of the Clearwire WiMAX network. Specifically, Clearwire will receive $926 Million from Sprint for unlimited 4G WiMAX Services in 2012 and 2013. The funding will enable the WiMAX network to operate through at least 2015. In addition, Sprint will pre-pay Clearwire $350 million for LTE capacity, provided certain build-out goals are met by 2013.

One interesting part of the deal was related to mobile data plans: the two companies will re-work their network sharing agreement in order to enable unlimited data packages for Sprint. This means Sprint will be the only one of the top three CSPs in the US to offer unlimited data.

Analysts and investors alike feel that a large influx of cash from principal shareholder Sprint bodes well for Clearwire's ability to secure additional funding. As a result, Clearwire stocks have been consistently climbing since the news broke.

Usage-Based Billing: Coming to an ISP Near You

The days of buffet-style all-you-can-eat data plans are fading faster than Herman Cain's political career. Consumers tend to understand these data limits for mobile, but as more and more consumers turn to over the top (OTT) service to consume video, usage-based billing for terrestrial internet is coming into focus.

Currently most large providers, like Comcast, use data caps to control capacity, but they are high enough that only a fraction of their subscribers ever approach the caps. Since data throttling and capping is publicly very unpopular, some caps are cloaked in an amorphous "acceptable use policy." In the US, Comcast sets their cap at 250 Gb/Month, AT&T sets the cap at 150 Gb/Month, and Time Warner backed away from caps, but has an acceptable use policy. Compared to other countries, these limits are very generous.

> **Netflix: The marginal cost of providing an extra gigabyte of data...is less than one cent, and falling.**

In some ways data caps and usage-based billing can be seen as rate increases, and when you examine the economics at a glance, it makes sense. How are service providers supposed to cover the costs of their network upgrades needed to provide the capacity and speed required to handle data demands of video? For cable providers, who have a foot firmly planted in both video and broadband, the business model is changing, and their billing has to change with it.

The problem with this logic, say opponents, is two-fold. First, while it is true that demands have risen, the cost of IP transit has fallen significantly, so even as customers are consuming more data, the cost per customer has remained fairly flat. Secondly, "Data caps that may make logical sense today make no sense tomorrow, yet once they are in place they'll tend to stay in place," writes technology analyst Robert Cringely.

Data caps aside, usage-based billing just feels more equitable and the concept will probably have a much warmer public reception once plans begin to roll out. The idea is simple: pay for what you use. Most people grasp this concept in other areas of their life, so ISPs are betting that usage-based billing for bandwidth will eventually become the cultural norm.

This all makes sense if what you are consuming is a static commodity. However, bandwidth valuation is eternally dynamic, so the bytes you bought for $40 in 2007 were probably more valuable than the $40 of bytes you bought in 2011. This is the side of the argument favored by OTT players like Netflix, who profit heavily from wide open data pipes. Netflix general counsel David Hyman wrote an op-ed in the Wall Street Journal, claiming that, “The marginal cost of providing an extra gigabyte of data—enough to deliver one episode of “30 Rock” from Netflix—is less than one cent, and falling.”

Other opponents of usage-based billing cite net neutrality concerns—that charging for consumption is related to creating illegal barriers internet access. However, FCC Chairman Julius Genachowski signaled approval of “usage-based pricing” in December of 2010, provided ISPs continue to meet advertised speeds and don’t throttle certain services over others. Broadband internet providers jumped on the endorsement, and will likely rollout usage-based billing in early 2012.