Telephone industry all tangled up

Eight-year dispute over rates, territories may head for high court.

By Ellen Simon
Associated Press

NEW YORK — Competition in the local phone business wasn't supposed to be this difficult to engineer.

A landmark telecommunications law in 1996 prompted rules that now let more than 15 million customers buy local service from a company other than their traditional phone provider. The rules probably keep rates down for almost everyone else, too.

But those rules aren't certain to last. A recent court ruling is unlikely to end eight years of fighting between local phone carriers and companies that want to break into their markets.

"You have a total Hatfield and McCoy feud," said analyst Scott Cieland, head of the Precursor Group. "This is an eight-year, claw-your-opponent's-eye-out battle regulatorily, legally and politically. If they could have settled this, they would have, a long time ago."

Some critics say the dispute has distracted both sides from serving customers.

"Instead of spending their time and energy figuring out how to deliver cool services to us, they're spending it on lawyers and consultants," said John Till Johnson, president of Nemertes Research. "Maybe we got DSL six months later than we would have, or it cost $50 more."

The imbroglio started with the 1996 Telecommunications Act, which sought to end a century of local phone monopoly.

Incumbent local phone providers, mainly the regional Bell companies — Verizon Communications Inc., SBC Communications Inc., Qwest Communications International Inc. and BellSouth Corp. — own the copper phone wires into American homes.

The 1996 law didn't spell out how the companies would share those wires and the equipment that competitors need to offer local service.

So the Federal Communications Commission developed some rules and left states to set their own rates, using a pricing model the FCC created. The Bells challenged the rules almost immediately.

The crux of the issue: The Bell companies say they are required to lease their equipment at such low prices that they lose money. Competitors, such as AT&T Corp, say the Bells already make a profit and are opposing the rules only to avoid competition.

AT&T has called for binding arbitration. If a deal can't be worked out, some long distance companies may pull out of the local markets they've entered since 1996. That would reduce options for consumers and likely raise prices, said Carolyn Tyler, a spokeswoman for No. 2 long-distance carrier MCI Inc.

The U.S. Court of Appeals for the District of Columbia Circuit has overturned the FCC's rules and rates for the second time, though at the FCC's request, it kept the rules in place until June 15. Under a recent Supreme Court ruling, the government has until June 30 to appeal.

The FCC responded to the March ruling by encouraging the telecom companies to negotiate their own prices, saying that the continued legal wrangling had "unsettled the market." A few big carriers struck deals with small competitors, but the largest companies are at loggerheads and negotiations seem just as rancorous as ever.

The same day AT&T made a proposal it said "moves away from previously drawn battle lines," BellSouth rejected it.

Meanwhile, SBC criticized FCC Commissioner Kevin J. Martin for requesting information about its talks with Talk America Holdings Inc. and demanding it return documents Talk America gave him.

Despite all the rhetoric, industry analysts say the telecom companies aren't to blame.

Johnson said the rules they're trying to play by are "ambiguous at best and contradictory at worst."

One example: Because the states set rental rates, the companies must deal with a patchwork of prices.

"Congress passed the buck on the really tough issues to the FCC and the state regulators," said Adam D. Thierer, director of telecom studies at the libertarian Cato Institute. "No other industry — airlines, trucking, railroads, banking — has ever witnessed the sheer volume of litigation we've seen in telecoms."

Johnson said the companies could call a summit and hammer out answers, but they would risk violating antitrust laws in doing so.

So it's likely, one way or another, the telcos will go back to court. The government can appeal the recent court decision to the U.S. Supreme Court. The FCC can also write new rules, but those are likely to be challenged, too.

The irony is that while the telcos fight over access to local copper wires, new technology is able to bypass that network completely.