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The recent blocking of VOIP services by incumbent providers demonstrates a basic truth about telecommunications policy—incumbents will act like incumbents. As early as the break up of the AT&T monopoly, the federal courts recognized that any incumbent network provider, if permitted to discriminate against a rival service provider, would do so:

The Regional Companies argue at some length that they have no incentive to discriminate against competitors in the information service market because to do so would diminish use of the network and hence a reduction in their revenues. But in any market where Regional Companies are in competition with independent information service providers, their economic interest lies in manipulating the system toward their own services, rather than in encouraging maximum use of the network by their information service competitors . . . That the ability for abuse exists as does the incentive, of that there can be no doubt. As stated above, information services are fragile, and because of their fragility, time sensitivity, and their negative reactions to even small degradations in transmission quality and speed, they are most easily subject to destruction by those who control transmission.<sup>1</sup>

Although written nearly 20 years ago with regard to internet access and other “information services,” these same words apply with equal or even greater force to VOIP services. Given both flat rate pricing and the desire of the network operator to offer an identical service, network providers will inevitably block rival services such as Vonage or Skype in favor of their own VOIP offerings.

During the dial-up period, the presence of rival ISPs limited the ability incumbents to block services. In the early days of the internet, services such as Compuserve and Prodigy lost customers to America Online by charging extra fees to communicate with people outside their networks. By contrast, although AOL at its height had 20 million subscribers more than its nearest rival, it could never block rival content for fear of losing customers to more open rivals.

The current broadband market, however, imposes no such competitive limit. Because network providers need not open their facilities to rivals (“open access”), the vast majority of Americans find themselves limited to a choice between cable or DSL, with perhaps a licensed wireless provider. By contrast, at the height of the dial-up boom, most Americans enjoyed dozens of local, regional, and national dial up options.

Blocking VOIP makes good sense for incumbent networks, but poorly serves the public. The internet and electronic commerce has flourished because of the principles of openness and user control. VOIP marks the first test as to whether these principles will survive in the broadband world. Without principles of common carriage and interconnection to protect users and promote competition, the diversity of information and services offered over the internet will drop from a universe “as diverse as human thought,” to use the phrase of the Supreme Court, to “as diverse as incumbent networks find profitable.”

*Media Access Project* is a not for profit public interest law firm that works to protect the public’s First Amendment Right to speak and hear information from a diversity of sources in the electronic media of today and tomorrow.

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<sup>1</sup> *United States v. Western Electric Co., Inc.*, 673 F. Supp. 525, 565–66 (D.D.C. 1987).