

Abstract

Lawrence R. Freedman & Richard L. Davis

Negotiating Competition

52 Admin. L. Rev. 999 (2000)

Abstract by Sanford A. Fine

In *Negotiating Competition*, Freedman and Davis delve into the heretofore opaque world of interconnection agreement bargaining. The authors first provide a brief review of the unique background and consequential difficulties of negotiating interconnection agreements under the recently enacted 1996 Communications Act. Here, Freedman and Davis detail the inherent bargaining advantage for the incumbent local exchange carriers, and how these advantages enable these carriers to strike favorable bargains to the detriment of new connection providers.

Secondly, the authors identify various approaches for practitioners and government agencies that will facilitate successful negotiations of interconnection agreements pursuant to the Communications Act. The authors recommend that the negotiation team have developed expertise in the telecommunications industry, specifically interconnection law and the technical components therein. Prior to the initial bargaining session with an established carrier, Freedman and Davis recommend that a new competitor identify the core interconnection issues vital to a business plan; these issues may include financial, technical, or operational concerns. Negotiators should then obtain copies of prior agreements made by other carriers with the incumbent local exchange carriers in order to survey the contractual, regulatory and competitive landscapes.

The authors conclude that a successfully bargained interconnection agreement is a valuable asset for a competitor in the interconnection marketplace. Freedman and Davis suggest focusing on the key regulatory and technical aspects of the agreement, as well utilizing all available regulatory procedures and options, in order to arrive at the best possible interconnection agreement.