A Retrospective Overview of The United States Telecommunications Act of 1996

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Introduction

The Telecommunications Act of 1996 is clearly an important development in the cost and transmission of information in the Unites States. It provides a substantial influence on the sociology and business marketplace of this country. The content of that influence, and its endurance are the subject of much debate.

This debate is often centered on what many identify as the act's primary failure, an inability to spur competition. In no area is that failure more prevalent than in the last mile, the point from which consumers connect with their local service providers. Although the act proposed to bring prices down for communities typically lacking in adequate telecommunications services through increased competition, most critics claim it simply failed to do so.

Little Change in Real World Markets

Many experts believe that one of the primary expected benefits of the act was to encourage a competitive environment. The anticipation was that a competitive environment would encourage a higher level of service and decrease the cost of telecommunications services for retail home consumers. Specialists sight the fact that for the 6 percent of households that do not have telephone service in their home, the barrier to entrance is price. Research by the Benton Foundation and the Consumer Federation of America found that for "households with incomes below $30,000 . . . telephone subscribership can represent too much of the family's earnings to bear" (Benton). The foundation also claims that over 53% of the households in American earn less than $30,000. This means that many consumers are very near failing to be able to afford phone service.

The annual yearly cost for telecommunications related services affected by the act is, for the typical American family, about $1000. That amount affords for basic local, long distance, and cable service. The majority of these costs are allocated to "local and long distance phone service" (Consumer Union). Proponents of the act suggest that market forces in a competitive environment should drive the cost to consumers down. According to economic theory, competition should drive market inefficiencies, such as inflated service costs, down.

The act's primary means of encouraging a competitive market is by removing a source of market inefficiency, monopoly. The act purposed to offer new opportunities for customers' choice of telecommunications providers. By deregulating certain aspects of the market, while providing more stringent limitations on incumbent providers, the act aimed to create a more efficient marketplace. However, as one author suggests "national policy must recognize that no market mechanism is perfect and that there are serious social and economic costs to bear when some individuals . . . are isolated from the information society" (Benton).

There are clear problems with the economic approach that the act has encouraged during the last 5 years. Since few real world market mechanisms are

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faithful to their models, analysts are finding that the market remains highly inefficient. Prices have not fallen; providers of service have multiplied, but in terms of majority share, have not diversified.

Likewise, there is a substantial cost in providing services to groups for which there had not previously been an economic impetus for servicing. Even though, for example, the act explicitly recommends "rural market entry" (USTA) guidelines, many recent reports suggest there is simply no economic reason for companies to provide substantial attention to these small markets. Other remote areas and some technologically underdeveloped urban areas were also expected to benefit from the changes created by the act.

Such problems point toward several issues that prove much more qualitative than the economic theory entwined in the act. Some critics analogize the lack of improved service in remote areas to the issue transportation service providers have faced for years. An Arthur Andersen consultant is quoted as saying that "'. . . it just may not happen . . . just as we may not have competition for bus routes to rural areas, because there just aren't enough economic opportunities'" (Goodman). It simply does not make fiscal sense to develop a strong service in an area where that service will be used infrequently and perhaps cost more to maintain than the profit the service generates.

The government expected that the movement into rural markets could be facilitated by shaving profits from lucrative long distance and business markets. As Robert Crandall stated in the Wall Street Journal, "regulators allowed these companies to overcharge business and long distance customers and use the excess charges to subsidize residential . . . rural service." Despite this force, areas with sparse populations have experienced little growth in the availability of telecommunications services during the years following the signing of the act. The increased charges, however, have continued.

In larger volume markets, there has also been little change. A report by Ken McGee, a Gartner Analyst, reiterates Gartner's previous expectations. In 1997 Gartner had speculated that "by 2002, the overwhelming majority of large enterprises . . .will not replace their current IXC [Interexchange Carrier] service with the services provided by the RBOC [Regional Bell Operating Companies]"(McGee). In 2001, the group has found that "not one major enterprise has changed Interexchange carriers as the primary or sole provider" (McGee). In that report he claims, "the major beneficiaries of the act have been attorneys and investment bankers" (McGee), not business or residential customers.

Telecommunications Business Response

The act was a dramatic, enormous, and unprecedented edict. The 600-page document not only endeavored to inspire competition to improve market efficiency, it recommended an aggressive economic policy. It employed a more rigorous effort to inspire the competition than those laws that govern airlines, freight trucking, and railroads. The act outlined the rules for using incumbent owned technologies specifically, describing explicitly the requirements down to switches and wires.

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The act also required many charges to be based on simple cost, instead of the assorted rates that commonly used by businesses to expense their investments in technology. In a summary provided by the USTA it is written that "facility interconnection charges shall be based on cost (to be determined without . . . rate based proceeding) and may include a reasonable profit" (USTA). Pricing facilities in this way is described as "revolutionary" (Crandall).

It is no wonder that in the hours following the announcement of the act, "former Bell companies and GTE, fell 4% to 10%" (Crandall) in public equity value. In the three years following "144 CLECs held IPOs, raising more then US$25 billion" (Glassman). This is a tremendous action for what a Washington Post staff writer describes as little change in choice. He claims that "only a bare faction of the nation's residential customers today [February 1, 2001] has a choice for . . .service" (Goodman).

Some analysts state that this limited change is due to insufficient pressure by the FCC, while others indicate corporate mergers and weak incentives. James Glassman suggest that the telecommunications industry has simply gone through a "'remonopilization'" that is held by the four businesses. The merging of Bell Atlantic with NYNEX, SBC with Pacific Telesis, and Time Warner with Turner Broadcasting after 1996 concentrated the market, offering power to an even smaller group. Glassman suggests that "Verizon, SBC, Bell South, and Qwest " handle "95 percent of the local [service] monopoly " (Glassman). Goodman also sites a supporting FCC statistic that states "'93 percent of the nations local telephone wires'" are owned by "Bell companies and smaller rural systems."

In opposition to what some consider a shortsighted evaluation there are some that suggest positive aspects to the investments made to inspire this competitive environment. Proponents suggest, "the investment and new enterprises unleashed by deregulation have permanently altered the competitive landscape" (Goodman). Others argue that even if the competitive local exchange carriers fail "their assets will endure for others to fashion into sustainable businesses" (Goodman).

The Last Mile

In recent years there has continued to be a struggle over, what industry specialist call the last mile. This is the service line that runs into homes and offices. The last mile constitutes much of the "93 percent of the nations local telephone wires" (Goodman) owned by Bell companies and rural systems. Since it is an end point of the link between customer and provider, it is an extremely important element.

Peter Goodman suggests that the "Bell companies enduring domination of the 'the last mile' . . . denies millions of people the benefits of increased competition." He reminds us that the "local rates have roughly kept up with inflation,"(Goodman) not declined sharply as expected. Mark Cooper, a research director for the Consumer Federation of America, supports Goodman's assertions by stating that "'we clearly have a failure to produce competition . . . the industry organization that Congress hoped would come into being just has not materialized'" (Goodman).

What has materialized is a clear realization that little has changed between 1996 and now. In 1998 The Consumer's Union, the non-profit organization that

publishes Consumer Reports, released a document outlining the status of the industry after the act's enactment. This press release describes the "failure of the Telecommunications Act of 1996 to promote effective competition" ("Two Years After the Telecommunications Act: A Snapshot of Consumer Impact"). They claimed then that the "failure to deliver the benefits promised to consumers" is proved by the "act's failure to increase competition for local phone and cable services" ("Two Years After the Telecommunications Act: A Snaphshot of Consumer Impact"). In later years, they followed with additional proof, linking the lack of competition in the last mile to the act's lack of positive impact.

Ironically, the last mile is the area in which consumers will feel substantial effect. Consumer Union claimed that in 1998 "local phone rates [were] up 1-2%" ("Two Years After the Telecommunications Act: A Snapshot of Consumer Impact"), suggesting that the current monopoly of the last mile prevented decreases.

Suggestions for the Future

Few critics of the Act have said that it needs to be removed. Instead, they suggest varied enhancements. Many of these enhancements center around simply policing the industry incumbents more attentively and more severely. Others suggest entirely new measures and approaches.

The Consumer's Union outlined a series of suggestions that they hoped would help the consumer. These primarily focused on the same goal as the act, to increase competition. Consumer's unions suggested the following:

"Policy makers a the state and federal levels must:

- Impose substantial economic penalty for noncompliance with the Act;
- Withhold approval of mergers or acquisitions until enforceable commitments to open local markets are made;
- Fight the Bell Companies' courtroom assault on the public policy of opening local markets to competition . . .
- Vigorously implement the consumer protection sections of the Act"

-"Two Years after the Telecommunications Act: A Snapshot of Consumer Impact)

While none of these are exceptionally inventive solutions many analysts believe that the government has failed to make such efforts.

Robert Crandall provides simple but slightly more creative advice. He asks "why not simply limit this . . . process [identifying network parts that must be shared] to just those facilities that would be prohibitive to duplicate." He offers the copper wire that connects the last mile as a prime candidate. He also suggests that wireless telephony companies use their facilities to provide a wireless last mile instead.

Philosophical and Theoretical Problems

Before effective next steps can be taken, some would say it would be beneficial to assess the validity of the assumptions and approaches inherent in the act. For one, the act is looking to inspire competitiveness. Yet, it fails to recognize the

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natural tendencies of competitive markets. Competitive markets are not regulated markets. They are markets in which participants perpetually vie for market share. The idea of regulated competitive market is counter intuitive. That is why creating competition, in a formerly non-competitive market is so clearly difficult.

Justice Stephen Breyer questions the FCC's interpretation of the 1996 act. He asks, "why it is necessary for local companies to lease out all facilities, particularly those than be leased out easily" (Crandall). He questions whether the act is an effort to deregulate and increase competition, or an epic effort to create competition through comprehensive regulation. He is quoted as saying "'rules that force firms to share every resource or element of a business would create, not competition, but pervasive regulation, for the regulators, not the marketplace would set the relevant terms" (Crandall).

The question is then posed if the matter is of too much regulation, too little regulation, or regulation of the wrong kind. Proponents of the Consumer Unions perspective suggest that there are too few regulations. This can be construed as illogical. Glassman described the strange paradox, "the best route to complete deregulation is through tough but fair law enforcement." If something does not work properly, do you keep pushing harder until it does?

A small minority suggests that there needs to be less regulation. These professionals suggest that a competitive marketplace can only exist when regulatory factors are removed. They suggest instead a bold set of anti trust lawsuits to dismantle the incumbents, and an insurgence of a capital to build new companies from the resulting fragments. Less severe perspectives include Democrat Herb Kohl of Wisconsin's belief that "'Congress can't mandate competition'" (Ross). He suggests, "if competition doesn't make business sense, laws like the Telecommunications Act won't really work" (Ross). Critics of this theory suggest that that defers an inevitable re-establishment of current monopolies.

Others suggest that the focus of the act should have been realigned. They suggest that more emphasis should have been focused on the last mile or other aspects that would apply market pressure to the incumbents to alleviate what to some, is a stronghold on the market. Another plan requires more freedom toward wireless companies, to allow them to become more closely competitive with the traditional telephony services provided by the incumbent telecommunications providers.

The success or failure of the Telecommunications act of 1996 may simple be undiscovered. With only 5 years of time to change more than 50 years of history, it may be too early to assess. It is clear that it has had an effect on the industry. The scope and depth of that effect has yet to be completely described. Speculation of future acts by the government, performance of the industry, or other related changes will of course remain speculation until proven.

This summary endeavored to describe some criticism of the act. It ends, as many preceding sophomoric works have, with the too used idiom, *only time will tell*.

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References:

The references page for this document has been lost. Information was gathered from the following resources online:

http://www3.gartner.com/Init (Gartner Group)
http://www.washingtonpost.com/ (The Washington Post)
http://www.fcc.gov/ (The Federal Communications Commision)
http://www.benton.org/ (The Benton Foundation)

As well as other resources not listed here.

Please contact the author if you would like more information about the references in this document.

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