

# U.S. POLICY: TELECOMMUNICATIONS ACT OF 1996

## U.S. Communications Policy Legislation

The Telecommunications Act of 1996, the first successful attempt to rewrite the sixty-two year old Communications act of 1934, was passed on 1 February 1996. The act refocuses federal communications policymaking after years of confused, multi-agency and intergovernmental attempts to regulate and make sense of a burgeoning telecommunications industry. The bill relies on increased competition for development of new services in broadcasting and cable, telecommunications, information and video services while it reasserts Congress' leadership role as the dominant communications policymaker.

Portions of the act became effective immediately after President Clinton signed the bill into law on 8 February 1996. Other sections of the act will be implemented as the Federal Communications Commission (FCC) promulgates new rules and regulations to meet provisional requirements of the act. Noting the historic nature of the bill, President Clinton stated that the legislation would "stimulate investment, promote competition, provide open access for all citizens to the Information Superhighway." However, many public interest groups are concerned that the act undermines public interest values of access. The act includes several highly controversial provisions that various interests groups claim restrict speech or violate constitutional protections. One section of the bill prohibits the transmission of indecent and obscene material when the material is likely to be seen or read by a minor, and another provision requires broadcasters to formulate a ratings scheme for programs. After nearly four years of work, the bill's passage was eagerly awaited by government and industry leaders alike. Public interest and various industry groups, upset with provisions that would restrict First Amendment rights of telecommunications users vowed to challenge the constitutionality of those provisions in court. Within hours of the bill's passage, a number of civil liberties groups led by the ACLU sought an injunction against provisions of the act.

The Telecommunications Act of 1996 is a complex reform of American communication policymaking that attempts to provide similar ground rules and a level playing field in virtually all sectors of the

### Telephone Services

The Telecommunications Act of 1996 contains sweeping provisions that will restructure the telephone industry in the United States. As noted, LECs can offer video programming services themselves or carry other video programming services under the "open video systems" provisions of the act. In addition to allowing telephone companies to offer video services, important structural barriers erected under the Modified Final Judgment (MFJ) have been swept away. The act allows the seven regional Bell operating companies to offer long-distance telephone service for the first time since the 1984 breakup of AT and T. At the same time, long distance companies and cable operators are allowed to provide local exchange service in direct competition with the regional Bell operating companies, but the act prohibits cross subsidies from non-competitive services to competitive services. Representative Thomas Bliley, (R-Virginia), stated, "we have broken up two of the biggest government monopolies left: the monopolies in local telephone service and in cable television." While investors and legislators hailed a new era of competition in the telephone industry, it now becomes the task of the FCC to work out details of the act with state public utilities commissions (PUCs) to ensure a smooth transition of services. The act preempts all previous state rules that restrict or limit competition in telephone services for both local and long distance services.

The act requires regional telephone companies (regional Bell operating companies) to undertake a series of reforms designed to open competition in their service areas. Companies must implement these reforms in order to "qualify" for providing long distance service outside their regional areas. LECs are also required to interconnect new telecommunications service providers and to "unbundle" their networks to provide for exchange access, information access, and interconnection to their systems. In order to provide customers continuity of service, LECs must provide number "portability" by allowing customers to keep their telephone numbers when switching from one service provider to another. The FCC has the task of assessing whether RBOCs and LECs have met

communications industries. The act's provisions fall into five general areas:

- radio and television broadcasting
- cable television
- telephone services
- Internet and on-line computer services
- telecommunications equipment manufacturing

The act abolishes many of the cross-market barriers that prohibited dominant players from one communications industry, such as telephone, from providing services in other industry sectors such as cable. New mergers and acquisitions, consolidations and integration of services previously barred under FCC rules, antitrust provisions of federal law, and the "Modified Final Judgment," the ruling governing 1984 "break-up" of the AT and T telephone monopoly, will be allowed for the first time, illustrating the belief by Congress that competition should replace other regulatory schemes as we enter a new century.

### **Radio and Television Broadcasting**

The act incorporates numerous changes to the rules dealing with radio and television ownership under the Communications Act of 1934. Notably broadcasters have substantial regulatory relief from old and sometimes outmoded federal restrictions on station ownership requirements. Broadcast ownership limits on television stations have been lifted. Group owners can now purchase television stations with a maximum service area cap of 35% of the U. S. population, up from the previous limit of 25% established in 1985. Limits on the number of the radio stations that may be commonly owned have been completely lifted, though the bill does provide limits on the number of licenses that may be owned within specific markets or geographical areas. Also amended are previous restrictions on foreign ownership of stations.

Terms of license for both radio and television have been increased to eight years and previous rules allowing competing applications for license renewals have been dramatically altered in favor of incumbent licensees. New provisions under the act prevent the filing of a competing application at license renewal time unless the FCC first finds that a station has not served the public interest or has committed other serious violations of agency or

the necessary requirements in order to offer long distance services while state public utilities commissions (PUCs) are charged with implementing local telephone competition.

Section 254 of the act defines the nature of "universal service" as "an evolving level of telecommunications services" that take into account telecommunications service advancements. The FCC and a working group of PUC officials are charged with designing policies to promote universal service, especially among rural, high cost and low-income telecommunications users. Also included in the act is a provision that directs the FCC to create discounted telecommunications services for schools and libraries.

Regional telephone companies are now free to manufacture telephone equipment once the FCC qualifies and approves their applications for long distance services. The act prohibits Bellcore, the research arm of the RBOCs from manufacturing as long as it is owned by one or more regional operating companies.

### **Internet and On-line Computer Services**

The Telecommunication Act of 1996 includes Title V, called the Communications Decency Act of 1996 (CDA). The inclusion of the CDA culminates more than a year of debate by members of Congress over the degree to which government could regulate the transmission of objectionable material over computer networks. It creates criminal penalties for anyone who knowingly transmits material that could be construed as indecent to minors. The act criminalizes the intentional transmission of "any comment, request, suggestion, image, or other communications which is obscene, lewd, lascivious, filthy, or indecent...." Enforcement of the CDA includes the filing of criminal charges against any person who uses the computer network for such a transmission. Additionally, the CDA establishes an "anti-flame" provision by prohibiting any computer network transmission for the purpose of annoying or harassing the recipients of messages. If enforced, penalties under the CDA could range as high as \$250,000 for each violation.

The act exempts commercial on-line services that engage in "blocking" from prosecution if they have demonstrated "good faith, reasonable, effective and appropriate" actions to restrict or prevent access by

federal rules. This provision will make it increasingly difficult for citizen's groups to mount a license challenge against a broadcast station. The act requires licensees to file a summary of comments and suggestions received from the public while prohibiting the Commission from requiring licensees to file information not directly pertinent to the renewal question. However, the bill gives the FCC no guidance as to how it should interpret service in the "public interest" in light of the new legislative mandates. Public interest groups who oppose relaxing ownership provisions claim that the combined effect of the new rules will be to accelerate current trends toward increased control of most media outlets by a few communications conglomerates.

The Telecommunications Act of 1996 makes significant changes in FCC rules regarding station affiliations and cross-ownership restrictions. Stations may choose affiliation with more than one network. Though broadcasting networks are barred from merging or buying out other networks, they may start new program services. For the first time, broadcasters will be allowed to own cable television systems, but television licensees are still prohibited from owning newspapers in the same market. The act affirms the continuation of local marketing agreements (LMAs) and waives the previous restrictions on common control of radio and television stations in the top fifty markets, the one-to-a-market rule.

While broadcasters won new freedoms in licensing and ownership, the act mandates that the industry develop a ratings system to identify violent, sexual and indecent or otherwise objectionable programming. The Communications Decency Act of 1996, embedded in the Telecommunications Act, requires the FCC to devise a rating system if the industry fails to develop such a system within one year of passage of the act. However, early indicators appear to signal a desire on the part of the industry to develop its own ratings system rather than allow government to define program standards. Although development of a ratings system is required under the act, application of the system is voluntary. In conjunction with the establishment of a ratings system, the Telecommunications Act requires television set manufacturers to install a blocking device, called the V-chip, in television receivers larger than 13 inches in screen size by 1998. Recognizing the potential for constitutional challenges of these

minors. In addition, the CDA contains provisions for a "Good Samaritan Defense" against civil liability for on-line service providers who voluntarily restrict access or availability of material that the provider considers "obscene, lewd, lascivious, excessively violent or otherwise objectionable." The act does not authorize the FCC to enforce the statutory requirements as written.

Various free speech advocates and First Amendment scholars claim that the language in the Communications Decency Act of 1996 is overly broad. Computer experts express concern over whether government should regulate the flow of information on the Internet and other computer-based networks. On the day the President signed the bill into law, the ACLU and other plaintiffs filed suit against Attorney General Janet Reno seeking to enjoin the enforcement of the provisions of Title V on the grounds that it was unconstitutional. Judge Ronald L. Buckwater, a federal judge in Philadelphia, ruled that the language in the law regarding indecent material was unconstitutionally vague but upheld parts of the law regulating obscene and patently offensive information. The Justice Department has stated that it would not prosecute anyone under the law until the challenges mounted against the act were resolved in court. This suit and a companion suit filed by the American Library Association may ultimately go to the Supreme Court for resolution.

The Telecommunications Act of 1996 has garnered substantial praise as a pro-competitive bill designed to allow anyone to enter any communications business and to let any communications business to compete in any market against other competitors. Supporters of the bill predict job creation and lower telecommunications costs as two benefits likely to accrue as a result of its passage. Other experts say the Telecommunications Act will allow smaller telephone companies to successfully compete with larger companies for telephone, paging and cellular services. Manufacturers of cable modems and network connectivity devices should benefit from rapid advances as a result of increased competition.

Critics of the act claim its extensive deregulatory provisions coupled with relaxed restrictions on concentration of media ownership dilute the public responsibility guarantees built into the Communications Act of 1934 and tilt the preference in favor of private market forces. Critics claim that in

provisions, the act allows for accelerated judicial review by a special three-judge federal district court panel. Other provisions of the Communication Decency Act require programmers to limit minors' exposure to objectionable material by scrambling channels depicting explicit sexual behavior and blocking access channels that might contain offensive material.

Perhaps the biggest concession to the broadcast industry centers around provisions for allowing, but not mandating, the FCC to allocate extra spectrum for the creation of advanced television (ATV) and ancillary services. Eligibility for advanced television licenses is limited to existing television licensees, insuring current broadcasters a future in providing digital and enhanced television services. However, Senate Majority Leader Robert Dole, (R, Kansas), expressed reservations about giving broadcasters extra spectrum without requiring payment for the new spectrum. Thus, the bill includes a provision that allows Congress to revisit this issue before the FCC awards any digital licenses. Broadcasters vehemently oppose the notion of paying for spectrum, but the act includes provisions that would allow the Commission to impose spectrum fees for any ancillary (non-broadcast) services that broadcasters may provide with these new allocations.

Generally, though the act provides for new possibilities for broadcasters and calls for the FCC to eliminate unnecessary oversight rules, a substantial portion of regulation implemented since the passage of the 1934 Act remains. Thus, while FCC Chairman Reed Hundt issued a statement that claimed that the ubiquitous world of telecommunications had changed forever, analysts and industry experts, remind us that the act amends, but does not replace, the Communications Act of 1934.

### **Cable Television**

Dramatic changes in rate structures and oversight contained within the Telecommunications Act of 1996 are meant to provide new opportunities and flexibility as well as new competition for cable service providers. Under the provisions of the act, uniform rate structure requirements will no longer apply to cable operators where there is effective competition from other service providers including the telephone company, multichannel video, direct broadcast satellites and wireless cable systems.

many areas of the country which are not likely to see real competition, the cost of telecommunications and video services are likely to rise dramatically. Other critics oppose giving broadcasters extra spectrum at a time when the government could reap hundreds of millions of dollars for those frequencies through spectrum auction.

At this time it is too early to predict the outcomes of the Telecommunications Act of 1996. Analysts and financial experts views are mixed but they predict market shake-outs and consolidations are likely to radically transform the telecommunications industry in the next few years as a result of the implementation of the act.

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However, for the new effective competition standards to apply, comparable video programming services would have to be available to the franchise community. For smaller cable companies, programming tier rates and basic tier rates would be deregulated in franchise areas where there are fewer than 50,000 subscribers. Additionally, states and local franchise authorities are barred from setting technical standards, or placing specific requirements on customer premise equipment and transmission equipment. Sale or transfer of licenses are expedited under the act. Franchise authorities are required to act upon requests for approval to sell or transfer cable systems within 120 days. Failure to comply with the 120 window will provide an "automatic" approval of the sale unless interested parties agree to an extension.

Common carriers and other operators that utilize radio communications to provide video programming will not be regulated under cable rules if the services are provided under a common carriage scheme. Common carriers who choose programming for their video services will be regulated as cable operators unless the services are provided under the "open video systems" provision of the Telecommunications Act. Open video systems operators can apply to the Commission for certification under section 653 of the act which will provide the operator with reduced regulatory burdens. Local Exchange Carriers (LECs) can provide video services under the open video provisions. Further, LECs are not required to make space on their open video systems available on a non-discriminatory basis. Joint ventures and partnerships between local exchange carriers and cable operators are generally barred unless the services qualify under provisions for rural exemptions, or LECs are purchasing a smaller cable system in a market with more than one cable provider, or the systems are not in the top 25 markets.

In an attempt to spur competition between cable operators and local exchange carriers, Congress provided incentives for cable operators to compete with local telecommunications companies. Under the act, cable systems operators are not required to obtain additional franchise approval for offering telecommunications services.

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