

PROPOSALS FOR REVISION OF THE COMMUNICATIONS ACT OF 1934:

TELECOMMUNICATIONS ISSUES

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ISSUE DEFINITION

The revision of the Communications Act of 1934 -- the law that gives the Federal Communications Commission (FCC) the authority to regulate the communications industry -- has been a subject of significant congressional concern since the 94th Congress. While a number of legislative alternatives to amend the Communications Act have been proposed, due to the complexity of the issues facing telecommunications reform and conflict over the numerous available options, no major legislation to amend the Act has been passed. Unlike in previous Congresses when revisions were introduced primarily in the form of omnibus measures, legislative initiatives in the 97th Congress have taken the form of bills dealing separately with specific facets of communications (e.g., telephone, television, radio, or telegraph). While there are numerous pieces of legislation pending, all containing significant ramifications for the communications industry, one of the most far-reaching and controversial areas under review is that of communications common carriers (i.e., telephones). In April 1981, Senator Packwood introduced the "Telecommunications Competition and Deregulation Act of 1981," S. 896, to deregulate and restructure the telecommunications industry. The Senate Commerce Committee reported the bill in July, and an amended version of S. 896 was passed 90-4 by the Senate Oct. 7, 1981 and referred to the House on Oct. 20, 1981. A companion bill, H.R. 5158, the "Telecommunications Act of 1981," was introduced by Rep. Wirth on Dec. 10, 1981 and a substitute version the "Telecommunications Act of 1982", was unanimously reported by the Subcommittee in March 1982. Full Committee markup of H.R. 5158 was terminated, however, when it was determined that remaining controversies could not be resolved in the limited time remaining in this session. Such action appears to have derailed any major legislative attempts to revise the Communications Act in the 97th Congress thereby focusing further attention on FCC and Justice Department activities.

BACKGROUND AND POLICY ANALYSIS

Attempts to revise the laws governing the regulation of communications can be a massive and controversial undertaking affecting not only the telephone industry, but the broadcast, newspaper, computer, satellite and electronics industries as well. Due to the advent of computers and other technological developments, the barriers between basic telecommunications, data processing, and mass media services are becoming indistinguishable.

Among the most controversial issues facing the revision of the communications Act is the restructuring of AT&T and the modification of a 1956 consent decree to allow AT&T to enter unregulated markets, such as data processing. Some of the main concerns facing such a restructuring include: a) the prohibition of cross subsidization between regulated and unregulated services; (b) the control of network dominance so that access of equal quality at an equal price is assured and; (c) the prevention of the deterioration of the regulated network in favor of the unregulated alternative. Attempts to restructure the industry have been addressed at the Justice Department, at the Federal Communications Commission, as well as in Congress.

Justice Department Action

The restructuring of AT&T has been addressed by the Justice Department, which in a 7-year-old suit charged AT&T with using its monopoly position to inhibit competition in the communications market. Unlike provisions in S. 898 that call for separate subsidiaries as a condition for further diversification, the Justice Department sought divestiture of existing components of AT&T. Their reasoning was based on the premise that divestiture is the best way to assure that the company cannot use revenues from its monopoly services to subsidize advanced communications services in the competitive marketplace, or use its monopoly control over the communications network to hinder competitive access.

Provisions of the January 8th Proposal

Although the Justice Dept. did consider seeking a legislative solution, on Jan. 8, 1982, a negotiated settlement was reached with AT&T. AT&T agreed to divest itself of its 22 local operating companies which account for two-thirds of its assets (\$80 billion) in return for a modification of a 1956 consent decree. This consent decree, an agreement AT&T entered into with the Justice Dept. to settle a previous antitrust suit, restricted AT&T from entering anything but regulated communications services. The modification removed restrictions so that AT&T could enter into unregulated fields.

In addition to its ability to enter unregulated markets the parent corporation (AT&T) will continue to keep its long lines (interexchange) network, Western Electric (its manufacturing arm), and Bell Labs (its research and development arm). AT&T will also gain control of the intrastate long distance network as well as the installed customer premises equipment presently provided by the local operating companies. Although modified in the final settlement local operating companies were restricted to only providing local, regulated, telephone services. While the terms of the initial settlement have since received additional modifications and are still subject to clarification some of the major provisions in the initial negotiated settlement appear to require---

-- AT&T to transfer to the local operating companies enough facilities, staff, systems, and rights to operate independently;

-- local operating companies to separate out and transfer to AT&T all intrastate long distance switching and transmission capacity as well as customer premises equipment;

-- no joint ownership of any property between AT&T and the local operating companies is allowed, however shared use is permitted as long as local operating companies keep control over all local exchange functions;

-- all license contracts and standard supply contracts between AT&T, Bell Labs and Western Electric, and the local operating companies will be terminated;

-- local operating companies may set up a centralized organization for management and administrative services. There are no prohibitions regarding structural reorganization;

-- local operating companies are required to set up a centralized

organization and single point of contact to deal with national security and emergency preparedness;

-- local operating companies must provide all carriers and information providers access, information and interconnection, that is equal in type, quality, and price to that provided to AT&T and its affiliates.

-- local operating companies will charge tariffs that are equal in price for equal levels of services for the provision of exchange access to all interexchange carriers.

-- local operating companies may not discriminate in their procurement of services and equipment;

-- AT&T, Bell Labs, and Western Electric must provide research, manufacturing and other support services on a priority basis for local operating companies to enable them to meet settlement requirements until September 1987;

-- AT&T is prohibited from buying any stock in the local operating companies after reorganization;

-- the Justice Dept. will retain visiting rights to local operating companies and may obtain access to necessary records to assure compliance with this agreement.

Modifications to the initial settlement

Termination of the antitrust suit was subject to final judicial approval by U.S. District Court Judge Harold Greene. While Judge Greene did not have the authority to modify the terms of the settlement, in an August 11th decision he announced that he would refuse to approve the settlement, unless a number of modifications were incorporated. Although Judge Greene supported the basic framework of the settlement, that is the divestiture of the local operating companies and the entrance of AT&T into unregulated markets, he required the incorporation of 10 modifications to resolve his concerns over the settlement's terms. These modifications largely enable the divested local operating companies to provide customer premises equipment, produce "yellow pages," and petition the court to provide long distance service and manufacture equipment if they can prove that it will not impede competition. The modifications also prohibit AT&T from engaging in "electronic publishing" over its own transmission facilities for a minimum of seven years; require a relatively equal distribution of debt between AT&T and the divested companies; require or clarify specific behavioral requirements for the divested local operating companies; and grant the court jurisdiction over the implementation and enforcement of the settlement. (For a more detailed discussion of the modifications incorporated into the final settlement see U.S. Library of Congress, Congressional Research Service. Status of the Justice Department/American Telephone and Telegraph Co. Antitrust Settlement: A Brief Overview. Angele A. Gilroy.) While the Justice Dept. stated that it disagreed with Judge Greene's modification which permits the divested local operating companies to provide in particular more complex customer premises equipment, both parties announced on August 19 that they would agree to incorporate Judge Greene's modifications into their proposed settlement. Once these modifications were incorporated into the newly filed settlement Judge Greene's approval quickly followed on August 24, thereby dismissing the antitrust case.

A plan that details the restructuring process must now be presented by AT&T within 6 months for Justice Dept and judicial approval, with divestiture to be completed 12 months after. While AT&T would like to have the divestiture process completed by January 1984, Judge Greene's decision to hold hearings and seek third-party comments on the divestiture plan will most likely delay AT&T's divestiture target date.

Although AT&T has not formally submitted a divestiture plan, on February 19, AT&T did reveal a tentative "planning model" for divestiture that would group the local operating companies into seven independent regional corporations, with each corporation having its own stock, chief executive officer, and board. The tentative plan calls for a three-level structure where existing service areas will remain intact keeping their current name, holding groups will oversee the regional groups, and a central organization will coordinate national defense and possibly other undisclosed functions. While the seven regional divisions were designated by a task force which included four Bell unit presidents, the parent corporation on May 19 announced the appointment of the chief operating officers for each of the regional operating companies.

Although the interpretation and total ramifications of the settlement are still unclear, the restructuring of AT&T's communications network, though the divestiture of the local operating companies and subsequent Judicial and Justice Dept. requirements, seem to address the following concerns that are facing communications law revision:

-- concern over assurances of both equal access and procurement policies by the local network for Bell System competitors has been addressed through the divestiture of the local operating companies coupled with additional behavioral requirements.

-- concerns regarding local operating company financial viability and erosion of the local rate base have been addressed by enabling them to engage in selected additional activities (i.e., the publishing of yellow pages directories and the sale of new customer premises equipment) and requiring a relatively equal distribution of the quality and quantity of debt between AT&T and the local operating companies at divestiture.

-- AT&T's 7-year prohibition on the offering of "electronic publishing" over its own transmission lines resolves concerns over AT&T's potential to eliminate competitors and control information flow in a newly developing industry.

-- continued court jurisdiction over the implementation and enforcement of the settlement addresses concerns over the protection of the "public interest" standard during the settlement's implementation and post-divestiture enforcement of settlement provisions.

-- the release of AT&T from its 1956 consent decree enables it to use the vast potential of Bell Labs and Western Electric to enter into additional markets for the benefit of consumers and our international trade balance.

-- concern over the possible negative effects divestiture could have on our favorable international telecommunications position seems to have been alleviated since Bell Labs and Western Electric will remain intact, and will continue to operate in conjunction with each other under the control of a single entity, AT&T.

-- concern expressed over the divestitures' possible negative effect on national security and emergency preparedness are addressed to some degree, since the vital AT&T long lines division remains intact and provisions are made to require the local operating companies to maintain a single emergency contact point through a central organization.

Controversies Surrounding the Issue

It appears that the settlement of the Justice Dept. suit does have far reaching implications addressing many concerns facing the restructuring of the industry which will cause the reassessment of recent FCC and congressional initiatives. FCC Chairman Fowler has stated that the commission will be reviewing the Justice Dept. action and will undertake to study FCC activities to assess what impact the terms of the settlement will have on FCC decisions. The Commission has stated, however, that it does not see any inconsistencies between the implementation of its Computer II decision, the FCC plan to restructure the telecommunication industry, and the terms of the antitrust settlement. Under the FCC plan, which was adopted in December 1980, and is to be effective by January 1983, AT&T is permitted to provide "enhanced" unregulated services and customer premises equipment through one or more separated subsidiaries. Additional accounting and separations provisions are also required. AT&T is continuing its plans to comply with this order, and received FCC approval for the establishment of a separate subsidiary to offer advanced communications services and new customer premises equipment. The subsidiary called American Bell Inc. became operational in July 1982.

Many feel that the Justice Dept. settlement does not pre-empt the need for legislation and to the contrary makes it imperative that legislation be enacted to address the many issues and controversies surrounding the restructuring of the industry. They feel that a number of issues still remain or are only partially addressed by the Justice Dept. settlement. Some of these issues include:

-- what effect will the separation of long distance and local service as well as other factors such as the removal of presently installed customer premise equipment, have on local rates and what possible transition requirements may be provided if desired, to protect rate payers from possible significant local rate increases;

-- by what method and through what entity (FCC, State commission or Federal courts) will inter-city access charges be determined.

-- how to prohibit possible cross subsidization between regulated long distance service which AT&T will be offering, and unregulated services and equipment provided by AT&T;

-- how to allocate, value, and transfer plant, equipment and employees between AT&T and the local operating companies, and who will oversee and determine the process;

-- how to assure that the viability of the local operating companies and the integrity of the network will be maintained despite divestiture and the effect the tentative reorganization of the local operating companies into 7 regional firms will have on the network and competitive markets.

-- should patents developed from research financed primarily through regulated telephone rates be made available to the public without charge

-- what effect the divestiture and reorganization of the local operating companies will have on employee wages, pensions and other negotiated benefits.

-- how to remedy remaining national defense and emergency issues such as the transfer of equipment and personnel among unrelated entities during emergencies and the payment for such services.

-- how will inter-exchange equipment manufactures compete with Western Electric if AT&T, the major purchaser of inter-exchange equipment is not required to provide equal access to technical information for the network to all competitors.

-- what effect terms of the settlement will have on the regulatory role of the FCC and the State Public Utility Commissions and what will be the ramifications for the industry.

-- the effect of the entrance of AT&T on other industries in the communications and information field (e.g., cable, data processing, and computers) and whether a transmitter should also be a provider of information services.

Many feel that the Justice Department settlement does not negate the need for legislation. Additional measures addressing some of these concerns have been introduced by Members of Congress and hearings on the ramifications of the Justice Dept. settlement were held this session by both chambers.

Although the need to revise the 1934 Communications Act and set the framework for a new national telecommunications policy incorporating technological change and the entrance of competition is not disputed, the manner in which this should be accomplished has been a subject of significant controversy. The controversies presently surrounding such a revision focus on two major issues: (1) the scope and extent of the legislation needed at this time; and (2) the necessity for, and the content of, specific structural and behavioral provisions and their impact on the suppliers and users in the industry.

In the past there has been little disagreement over the need for Congress to develop some form of comprehensive legislation to revise the outdated 1934 Communications Act. The recently announced settlement of the AT&T/Justice Department antitrust suit, however, has brought into question the present necessity for the enactment of a major legislative initiative. Due to the settlement's required major restructuring of the Bell System and its potential impact on the telecommunications industry's structure, some seem to question the desirability of the enactment of a major legislative proposal at this time, while others feel that such a restructuring makes the enactment of an immediate legislative vehicle more imperative.

In addition to the basic controversy over the scope of the legislation, a considerable amount of controversy has been generated regarding the need for, and the impact of, specific provisions contained in H.R. 5158. Although there are many provisions contained in the legislation that address various telecommunications concerns, perhaps those that seek to modify the terms of the proposed AT&T-Justice Department settlement have attracted the most attention. Although the settlement's terms have been subject to a

significant amount of criticism, agreement on the manner in which the terms should be modified and the desired goals to be accomplished have been open to debate. (For a detailed discussion of proponents and opponents viewpoints regarding the controversies surrounding these issues see U.S. Library of Congress. Congressional Research Service. The Telecommunications Act of 1982 (H.R. 5158, 97th Congress): Provisions and Controversies. Angele A. Gilroy.)

The consensus is that the incorporation of competition into our telecommunications industry structure as well as the melding of information and communications due to technological advances have necessitated the revision of the 1934 Communications Act and the formulation of a new, national telecommunications policy. The manner in which this should be accomplished and the framework around which this policy should be developed, however, continues to be a subject of considerable debate. The complexity of the issues, as well as the simultaneous actions by the courts, the FCC, and the Congress to revise our telecommunications policy, have added further controversy to the task.

SIGNIFICANT LEGISLATIVE ACTION IN THE 97TH CONGRESS

Unlike most actions taken by previous Congresses to amend the Communications Act through omnibus initiatives, the Members of the 97th Congress have taken a different approach to communications reform by introducing a series of separate measures dealing with more specific aspects of communications reform. Although legislation affecting most facets of the communications industry has been introduced and limited broadcasting measures were enacted in conjunction with budget reconciliation passage, the most far-reaching telecommunications measures to be introduced in the 97th Congress are S. 898, the "Telecommunications Competition and Deregulation Act of 1981," and H.R. 5158, the "Telecommunications Act of 1982." Both initiatives seek to restructure major segments of the telecommunications industry as well as the Nation's largest communications entity, A.T.& T. It is felt that due to vast changes in communications technology and subsequent changes in industry structure, major amendment of the 1934 Communications Act is necessary: Withdrawal of H.R. 5158 from full committee consideration, however, due to the inability of Committee members to resolve remaining controversies in a Congress facing considerable time constraints, appears to have terminated any major attempts to formulate a new national telecommunications policy in the 97th Congress.

The passage of any significant telecommunications legislation in this Congress is now extremely unlikely. What effect AT&T's \$2 million lobbying campaign against H.R. 5158, as well as additional opposition to specific provisions expressed by other groups, had on the termination of House Committee action remains a significant question. The far-reaching impact of such legislative reform, as well as the inability to gain a consensus among communications specialists regarding the best legislative approach, resulted in further controversy. The possible sequential referral of any legislative initiative, the strong opposition to H.R. 5158 expressed by Senate Communications Subcommittee Chairman Goldwater, and Administration opposition to any legislation that would at this time attempt to modify the structural provisions contained in the proposed antitrust settlement remained as additional hurdles in a Congress facing significant time limitations.

H.R. 5158 as passed by the Subcommittee

On Mar. 25, 1982, the House Subcommittee on Telecommunications, Consumer Protection and Finance, unanimously passed a substitute version of H.R. 5158 that revises the common carrier provisions of the Communications Act of 1934. The legislation, which was substituted three days previously for the original working draft introduced in December 1981, received further revision during subcommittee markup and was unanimously referred to the full committee. Although full committee markup commenced in June, the inability to resolve significant controversies in conjunction with a limited legislative calendar prompted Representative Wirth to withdraw the measure from consideration. While a number of limited telecommunications measures are pending before the subcommittee (see legislative and chronology sections) the enactment of any initiatives to significantly revise telecommunications policy is extremely doubtful.

The subcommittee approved version of H.R. 5158, titled the "Telecommunications Act of 1982," not only continues to address the many issues necessary for the formulation of a comprehensive national telecommunications policy, but is also modified to reflect the terms and issues raised by the recently proposed AT&T/Justice Dept. antitrust settlement. According to Subcommittee Chairman Wirth, who introduced the substitute H.R. 5158 along with six other subcommittee members, the legislation incorporates five major themes: (1) consumer protection; (2) viability of the divested local operating companies; (3) competition; (4) information flow; and (5) regulatory reform and employee protection, which combine to formulate a national policy addressing our present and future telecommunications needs.

Although much of the controversy surrounding H.R. 5158 results from the provisions that modify terms of the AT&T-Justice Department settlement, there are many provisions that not only incorporate most of the settlement's terms, but go beyond its scope. The overall objective of the legislation is to modify our outdated communications law and develop a framework for a new, national telecommunications policy. The major guideline for this policy is to rely "to the maximum extent possible" on the forces of competition rather than regulation to provide reliable, efficient, and diverse telecommunications services and facilities at an affordable price. The legislation directs the FCC not only to deregulate markets where they are competitive, but also to take actions to promote competition where it is not present. The major framework of the legislation, according to the subcommittee, addresses the needs of users and ratepayers as our telecommunications industry changes from a monopoly to a competitive structure. (For a discussion of the provisions contained in H.R. 5158 see U.S. Library of Congress. Congressional Research Service. The Telecommunications Act of 1982 (H.R. 5158, 97th Congress); Provisions and Controversies. Angele A. Gilroy).

Although H.R. 5158 incorporates many of the changes provided for in the proposed antitrust settlement, reflecting the reality of a restructured Bell System, the legislation also seeks to modify selected settlement terms in an attempt to alleviate concerns over its potential negative effects on both the industry's suppliers and users. Subcommittee members feel that the settlement's provisions fail to address some major issues surrounding its enactment and that the provisions contained in H.R. 5158 which modify its terms are necessary for the formulation of a sound and viable telecommunications industry.

Some of the deficiencies that the subcommittee feels are contained in the settlement but which their legislation addresses include: the prevention of AT&T's potential ability to use its dominant position in the long lines transmission market to cross-subsidize products and services and inhibit competitive access and information flow; the protection of the financial health and viability of the local exchange network; and the minimization of possible high increases in local telephone rates, particularly in rural and small exchange areas.

H.R. 5158 proposes to address the above issues by, among other provisions, imposing further structural and behavioral requirements on AT&T, assuring equitable asset valuation and debt allocation, expanding the range of activities of the divested local operating companies, and providing for additional transitional and subsidy mechanisms to help ease the possible negative impact of the divestiture on local telephone rates. While Rep. Wirth felt that the modifications incorporated into the judicially approved settlement had "significantly" improved it over the original January 8 proposal, he still feels that many issues must be addressed through the formulation, by Congress, of a new national telecommunications policy.

S. 898 as Passed by the Senate

S. 898 states that due to technological and structural changes, extensive regulation of the telephone industry and its emerging technologies and services results in delay in the introduction of new services, wastes taxpayers' dollars, and hinders the development of competitive alternatives. In addition, Senator Packwood believes that the establishment of telecommunications policy through Federal regulatory agencies and the judiciary, instead of through congressional mandate, has created excessive uncertainty in the industry. Based on the above reasoning, S. 898, while continuing the regulation of basic telephone service, would promote marketplace competition, deregulation, and reliance on the private sector to provide telecommunications services.

After holding hearings and gaining input from the Senate Judiciary Committee the legislation was brought to a full floor vote and an amended version of S. 898 passed the Senate by a vote of 90 to 4, on Oct. 7, 1981. Although this initiative was passed previous to the proposed Justice Department/AT&T settlement, the Senate has examined the concerns raised by the settlement during a series of hearings and had planned to make any modifications to their measure during conference.

A compromise was reached with Senator Hollings so that a filibuster against consideration of S. 898 the Senate restructuring proposal could be terminated with the Senate Commerce Committee incorporating various aspects of selected safeguards and "ratepayer" protection provisions offered by Hollings. Senator Hollings was not completely satisfied however, and offered an amendment which was defeated, which would have required that at least 10% of the fully separated affiliates' stock be owned by outside investors, therefore increasing SEC oversight, and that the affiliate acquire its financing "directly from the capital market" rather than from its parent company (AT&T), as permitted in S. 898. Senator Hollings was one of the four senators who voted against the bill's final passage. Other groups such as the Ad Hoc Committee for Competitive Telecommunications, a non-profit industry association representing nine companies that compete with each other and with AT&T and Western Union in offering a variety of long distance

services continue to express their dissatisfaction with the legislation. Strong opposition by the American Newspaper Publishers Association and the fire and intrusion alarm industry was moderated by amendments added during the Commerce Committee's July markup which limited AT&T's entry into electronic publishing, and prohibited AT&T's entrance into the fire and intrusion alarm industry unless alternative delivery systems (i.e., a system other than telephone lines) are available.

The majority of the amendments, some of which were advanced by the Senate Judiciary Committee and others which were agreed to by the Commerce Committee, as the result of a compromise with Senator Hollings, focus on additional safeguards to assure the structural separation of AT&T and its fully separated affiliate and modify operational requirements to prevent possible competitive abuses and monopoly control of the marketplace. The major provision of S. 998 as passed by the full Senate would:

- o Establish as national policy the promotion of competition in the telecommunications industry.

- o Continue regulation of ordinary telephone service and basic telecommunications services. Federal regulation would pre-empt State regulation of long-distance telephone service within the State.

- o Direct the FCC to reduce or eliminate regulation of telecommunications services as competition develops, unless the change would hurt national security.

- o Direct the FCC to prevent unreasonable charges for basic telephone service. The FCC would be allowed to set surcharges on long distance connection rates to subsidize telephone service.

- o Bar regulated local telephone carriers from discontinuing local service to enforce the collection of long distance service charges owed by a customer.

- o Direct the FCC within 30 days of enactment of the bill to identify the carriers to be regulated.

- o Classify AT&T as a dominant-regulated carrier and allow the FCC under certain conditions to reclassify any regulated carrier as a dominant-regulated carrier.

- o Require carriers to file tariffs, contracts and technical equipment information with the FCC for regulated services.

- o Prohibit a carrier from discontinuing or reducing a regulated service unless the FCC certified that the public will be served by the change.

- o Establish a board to determine the costs of long-distance telecommunications carriers' connections to local telephone networks. The FCC in accordance with the board's decisions would create a method for apportioning the costs of access to local telephone networks.

- o Allow the FCC to require carriers to coordinate operations to ensure maintenance of the telephone network.

- o Prohibit regulation of the production, marketing or other provision of customer premises equipment, such as telephone receivers or data processing

services.

o Require a regulated carrier to provide service existing at the time of enactment under tariff for at least two years, by which time the FCC would have to determine which services should be deregulated, based on whether there is effective competition. A service which the FCC deregulated would continue under regulation for 6 months.

o Bar the FCC from regulating the resale of services and bar any carrier that sells regulated services to a second company from prohibiting that company from reselling that service to other customers.

o Modify the 1956 consent decree settling a Justice Department suit to allow AT&T to enter new and unregulated markets, such as data processing, through a separated subsidiary.

o Set requirements for AT&T's establishment of a fully separated subsidiary. No more than one member of the subsidiary's governing board may be a member of the AT&T governing board or an officer or employee of AT&T or its affiliates. There may not be common employees and officers.

o Require that at least 50% of the board of directors of the fully separated affiliate be composed of outside directors (i.e., not affiliated with the fully separated affiliate or AT&T).

o Limit joint ventures and partnerships between AT&T and the fully separated affiliate to national defense and international undertakings and affirm any business between them for the transfer of goods, services, facilities and property be conducted on a "fully auditable and compensable basis and by contracts", available for public inspection. There may be no joint property except for international telecommunications property.

o Exclude AT&T from participation in the assets evaluation board (a board empowered to evaluate any assets transferred from AT&T to the fully separated affiliate) and give the FCC the power to select all three members, with one member chosen at the recommendation of the National Association of State Commissioners.

o Permit common institutional advertising but would clarify the allocation of advertising costs to insure that the fully separated affiliate pays its full share of such costs regarding its own products.

o The subsidiary within a 6-year period would have to do its own marketing, sales, manufacturing, research and development for unregulated services and products.

o Grant the FCC the authority to delay the transfer of AT&T's customer leased telephone equipment to the fully separated affiliate for up to five years and ban the fully separated affiliate from offering services which duplicate those of AT&T for up to 4 years after the bill is enacted.

o Clarify that patents developed by AT&T before the fully separated affiliate is established cannot be transferred to the affiliate to avoid making them available to competitors on a cross-licensing or payment basis.

o Require a complete separation between the fully separated affiliate and Western Electric in the production of components and subassemblies.

o Clarify that all information regarding AT&T's telephone network given to the fully separated affiliate be disclosed in the same manner and basis to all non-affiliated entities.

o Prohibit AT&T from supplying its affiliate with research and development, administrative services, management or marketing information except on a "fully auditable and compensatory basis." Any information paid for by regulated rate-payers supplied by AT&T to its fully separated affiliate must also be disclosed free of charge to competing companies.

o Provide for Securities and Exchange Commission (SEC) oversight by requiring the fully separated affiliate to file with the SEC all reports usually required of companies offering securities to the public.

o Require the Bell System to sell their equipment to unaffiliated enterprises in the competitive marketplace as a pre-condition to selling any telecommunications equipment to its regulated affiliates.

o Require AT&T and its affiliates to purchase equipment from outside competitors at 20% per year for a period of 5 years with a gradual phaseout over the succeeding 5 years.

o Clarify the FCC's authority to prohibit cross-subsidization and other anticompetitive practices and authorize the FCC to request the fully separated affiliate to produce books and records for oversight purposes.

o Require AT&T and other local exchange carriers to give equal access to their network at the same charges to all interexchange carriers in a non-discriminatory manner so that competitors may provide a service "that is equal in type and quality."

o Bar the FCC or any state commission from considering revenues derived from unregulated services when deriving rates for regulated services. However states are permitted to continue including revenues derived from the printed yellow pages when calculating AT&T's rate of return for up to 4 years following the bill's enactment.

o Retain the FCC power to suspend tariff increases while it investigates those it finds may not be justified.

o Authorize the FCC to establish policies and rules to assure that reciprocity occurs between U.S. market conditions in telecommunications or information services, facilities or equipment and foreign nations' markets. The President will have veto power over any FCC decisions in this regard.

o Bar AT&T and its affiliates from providing cable or mass media services in their operating area. AT&T would be allowed to lease facilities to others to provide those services. Mass media includes television and radio broadcasting, printed or electronic publications, and any service similar to the traditional functions of a newspaper.

Using a fully separated subsidiary, AT&T could provide weather, time, some sports and electronic directory information, including general business and product categories, addresses and phone numbers but not prices or advertising. The subsidiary could not offer transmission services.

o Bar a regulated carrier from providing cable television in its operating area unless the FCC determines that it would provide significant new media

diversity and competition.

- o Allow carriers serving rural areas with low population densities to provide cable television in those areas. If such permission is granted the telephone carrier must make available for lease to nonaffiliates whatever number of channels the FCC specifies.

- o Specifically state that cable television is not a common carrier service.

- o Bar AT&T from providing fire and burglar alarm service over telephone lines.

- o Include a job protection provision for AT&T employees transferred to a separated affiliate.

- o Require the Senate Commerce Committee to hold annual oversight hearings on the Act.

- o State that the measure does not express a sense of Congress in regard to any antitrust suits.

Among additional amendments passed were a provision introduced by Senator Stevens to grant the U.S. Postal Service separate treatment in creating a branch for transmitting electronic mail, as well as an amendment introduced by Senator Bradley which would provide when technically feasible, for the allocation of at least one VHF television station in each State. An amendment introduced by Senators Hart and Glenn which modified the power of the Defense Department and any other government entity, to prevent public disclosure of information about telephone networking on behalf of national security also received approval.

PREVIOUS LEGISLATIVE INITIATIVES

Actions in 94th and 95th Congresses

Attempts to make major revisions in the 1934 Communications Act began in the 94th Congress with the introduction of H.R. 12323 and S. 3192 both known as the "Consumer Communications Reform Act of 1976." The Act was introduced in a variety of forms and was reintroduced in the 95th Congress (H.R. 8, S. 530). This legislation gave a presumption in favor of a monopoly communications network, declaring that an integrated interstate and foreign common carrier service maintains reasonable charges that are "lower than otherwise would be required" and results in an efficient, high quality, universal service. The proposed Act favored a single integrated system free from marketplace competition, finding that such competition resulted in inefficiencies and was "contrary to the public interest."

Although both the House and Senate introduced resolutions reaffirming competition as the best means of serving our communication needs, it was not until the second session of the 95th Congress that major legislation favoring marketplace competition was submitted. H.R. 13015, "the Communications Act of 1978" introduced in June 1978, was the long awaited legislation prepared by the House Subcommittee on Communications that attempted to revise all major aspects of the Communications Act of 1934. Among the key common carrier provisions were (a) the reliance on competition rather than regulation to

keep telephone and other rates within limits ("affordable" telephone rates and nationwide basic telephone service were assured through the formation of a "Universal Service Compensation Fund"); (b) the required divestiture of the manufacturing arms of both American Telephone and Telegraph (AT&T) (Western Electric) and General Telephone and Electronics Corporation; and (c) the lifting of restrictions barring AT&T and other established carriers from offering related communications services. While extensive hearings on all aspects of communications reform were held by the House Communications Subcommittee, H.R. 13015 did not receive further action.

Actions in the 96th Congress

It was not until the 96th Congress that both House and Senate Communications Subcommittees introduced major legislative initiatives (H.R. 3333; S. 611; S. 622). All three legislative measures contained extensive proposals dealing with the deregulation of the common carrier and broadcast industries. Because of conflicts over the various provisions and uncertainty among subcommittee members over the effects of the proposals, major revisions occurred in the legislation.

As a result of unresolved differences H.R. 3333 was tabled and a more limited legislative initiative (H.R. 6121), dropping all broadcast provisions and solely addressing common carrier issues, was introduced in December 1979. The major concept promoted by the House legislation was the reliance on market forces and competition when possible as a substitute for present regulation. However this deregulation would not remove the obligation of the industry to provide basic telephone service at "reasonable and affordable" rates. The major highlights of the House legislation as approved by the Commerce Committee included the following:

- o Deregulation of intercity markets and services, while retaining regulation over basic telephone service and services provided by "dominant" carriers (i.e., AT&T).

- o Modification of a 1956 consent decree permitting AT&T to provide services in various competitive markets. AT&T would be prohibited, however, from offering mass media service (e.g., the type of information offered by newspapers, periodicals, radio or television). AT&T was also required to create a separate subsidiary with separate accounting procedures for offering any unregulated telecommunications services so that no cross-subsidization could occur between monopoly and competitive services.

- o Payment of an access charge by any intercity carrier to the local carrier for use of the local carrier's facilities.

- o Development of a National Telecommunications Pool, funded by the intercity carrier local hookup-access charges, to help keep the costs of providing basic telephone service in local exchanges, particularly in small communities, affordable in a deregulated market.

- o Deregulation of the manufacture and sale of terminal equipment (e.g., telephone receivers and switchboards) including a provision permitting customers to connect their own terminals.

- o Various proposals to protect and prevent discrimination against rural phone service customers.

After lengthy discussion the House Commerce Committee approved H.R. 6121 in July 1980 and hoped to advance the proposal to the House floor. However, the bill was referred to the House Judiciary Committee for examination of its effects on the structure of AT&T and the Justice Department's pending antitrust suit against the firm. After the House Judiciary Subcommittee on Monopolies and Commercial Law held hearings and reviewed the antitrust aspects of the legislation, the full Judiciary Committee followed the Subcommittee's recommendation and reported H.R. 612 "adversely without prejudice." For all practical purposes the Judiciary Committee's "recommendation" stopped further action on the bill.

After months of discussion over unresolved differences between the two redrafted Senate legislative initiatives (S. 611, S. 622), the Senate Communications Subcommittee introduced a legislative compromise in June 1980. This new joint legislative effort, S. 2827, contained provisions affecting broadcast and cable communications as well as common carriers. Although the major thrust of the common carrier provisions, which were the primary focus of the legislation, was similar to the House proposal, significant differences existed. One of the major differences concerned the issue of Federal Communications Commission (FCC) authority. The Senate version retained the FCC's power over the structure of AT&T while H.R. 6121 barred the FCC from making any further structural changes in AT&T. S.2827 also expanded the list of "dominant" carriers to include the six largest common carriers and required the formation of separate subsidiaries for the provision of unregulated services. The Senate proposal directed the FCC to establish a board to assist the Commission in devising a uniform system for apportioning local telephone service costs and managing a surcharge pool to help maintain reasonable rural rates. The Senate's inclusion of significant broadcast and cable provisions created additional controversy. Such provisions included the following:

- o Extension of radio and television license terms from 3 to 5 years;
- o Use of a random selection system, e.g., a lottery, to choose among qualified applicants for broadcast licenses;
- o Development of procedures for renewal cases different from those for initial licensing cases, the former not necessarily requiring hearings;
- o Exemption of presidential and vice-presidential debates from the equal time rule if the debates are not organized by a broadcaster;
- o Requirement that the FCC study the concept of license fees and report its findings to Congress within 9 months and issue a deregulation progress report to Congress in 5 years.

S. 2827 also contained provisions affecting the regulation of cable television services as follows:

- o FCC was authorized to limit multiple system ownership and crossownership between cable systems and other media. Co-located telephone company crossownership was basically prohibited except in cases where specific public benefits and media diversity and competition would be enhanced. AT&T and its affiliated entities were prohibited from providing cable services, except in sparsely populated areas.
- o The local broadcaster had the burden of proving harm to programming efforts and the public interest of the cable carriage broadcast signals.

o No State or Government agency could require or prohibit any programming on a cable system or regulate basic subscriber or pay cable subscriber rates.

No further action was taken on S. 2827. The lateness of the session, the House Judiciary Committee's adverse report and the differences between House and Senate proposals all combined to block once again the passage of any significant legislation to amend the Communications Act of 1934.

LEGISLATION

H.R. 5158 (Wirth)

Amends the Communications Act of 1934 to revise provisions of the Act relating to telecommunications, and for other purposes.

H.R. 5421 (Mottl et al.)

Establishes a private, nonprofit corporation to serve as a representative for the interests of residential telephone users before regulatory agencies, and other public bodies and forums.

H.R. 5483 (Bailey, D. et al.)

Amends the Communications Act of 1934 to provide that the American Telephone and Telegraph Company shall not be divested of its ownership of any local telephone company, or of its holdings in any telecommunications manufacturing or research operations, for a period of 2 years.

H.R. 6797 (Corcoran)

Amends title II of the Communications Act of 1934 to assure diversity of sources of electronic information. Introduced July 20, 1982; referred to Energy and Commerce.

S. 898 (Packwood et al.)

Amends the Communications Act of 1934 to grant the Federal Communications Commission authority over interexchange and foreign telecommunications services. Requires dominant-regulated carriers to provide all but basic regulated telecommunications services through a fully separated affiliate. Requires the FCC to establish a Joint Board to assist in ascertaining and apportioning the costs of providing access to exchange facilities for interexchange services. Sets forth conditions concerning the relationship of a fully separated affiliate with its dominant-regulated carrier.

S. 1629 (Pressler)

Directs the Congress and the Administration to place high priority on the policy of universal telephone service at reasonable rates in rural areas.

HEARINGS

U.S. Congress. House. Committee on the Judiciary.
Subcommittee on Monopolies and Commercial Law.
Telecommunications Act of 1980. Hearings, 96th
Congress, 2d session. Sept. 9 and 16, 1980. Washington,
U.S. Govt. Print. Off. 1981. 803 p.

----- Committee on Interstate and Foreign Commerce. Subcommittee on Communications. The Communications Act of 1979. Vol. 1, Part 1. Titles I and III. General provisions; telecommunications carrier regulation. Hearings, 96th Congress, 1st session. April 24-26, May 1-4 and 8, 1979. Washington, U.S. Govt. Print. Off., 1980. 1154 p.

U.S. Congress. House. Committee on Energy and Commerce. Subcommittee on Telecommunications, Consumer Protection, and Finance. Status of Competition and deregulation in the telecommunications industry. Hearings, 97th Congress, 1st session. May 20, 27, 28, 1981. Washington, U.S. Govt. Print. Off., 1981. 607 p.

----- Telecommunications Act of 1982. Parts I-III. Hearings 97th Congress, 2d session, February-March 1982. Washington, U.S. Govt. Print. Off., 1982. 3 v.

U.S. Congress. House. Committee on Energy and Commerce. Subcommittee on Telecommunications, Consumer Protection on Finance and Committee on the Judiciary. Subcommittee on monopolies and commercial law. Proposed Antitrust Settlement of U.S.V. AT&T Joint hearings, 97th Cong. 2d sess. Jan. 26 and 28, 1982. Washington, U.S. Govt. Print. Off. 1982 141 p.

U.S. Congress. Senate. Committee on Commerce, Science and Transportation. Telecommunications Competition and Deregulation Act of 1981. Hearings, 97th Congress, 1st session. June 2, 11, 15, 16, 19, 1981. Washington, U.S. Govt. Print. Off., 1981. 650 p.

----- AT&T proposed Settlement. Parts I and II Hearings, 97th Congress, 2d session, January 25, February 4, March 25, 1982. Washington, U.S. Govt. Print. Off., 1982. 167 p.

REPORTS AND CONGRESSIONAL DOCUMENTS

U.S. Congress. Senate. Committee on Commerce, Science and Transportation. Telecommunications Competition and Deregulation Act of 1981. Report No. 97-170. Washington, U.S. Govt. Print. Off., 1981. 193 p. (97th Congress, 1st session)

U.S. Congress. House. Committee on Energy and Commerce. Subcommittee on Telecommunications, Consumer Protection, and Finance. Telecommunications in Transition: the Status of Competition in the Telecommunications Industry. Report no. 97-V. Washington, U.S. Govt. Print. Off., Nov. 3, 1981. 435 p. (97th Congress, 1st session)

CHRONOLOGY OF EVENTS

11/12/82 -- U.S. Court of Appeals affirmed the FCC's Computer II decision upholding the FCC's restructuring of the telecommunications industry.

- 11/04/82 -- AT&T filed in U.S. District Court, its plan of proposed geographic boundaries to define future exchange areas (local access and transport areas [LATA's]) designating the service areas of the divested 22 local operating companies.
- 10/25/82 -- Various groups filed appeals challenging the U.S. Justice Department/AT&T antitrust settlement.
- 08/24/82 -- Judge Greene approved the newly filed settlement which incorporated his 10 modifications thereby dismissing the antitrust case.
- 08/19/82 -- AT&T and the Justice Dept. announced that they would modify then proposed settlement to incorporate Judge Greene's changes.
- 08/11/82 -- Judge Greene announced that he would approve the terms of the AT&T Justice Dept. antitrust settlement only if the two parties agreed to his list of modifications.
- 07/20/82 -- Representative Corcoran introduced H.R. 6797, the "Assurance of Diversity of Electronic Information Sources Act."
- House Committee on Energy and Commerce markup of H.R. 5158 terminated before completion.
- 06/17/82 -- The House Committee on Energy and Commerce began markup of H.R. 5158.
- 05/19/82 -- AT&T announced the appointment of the chief executive officers of the seven tentative regional local operating companies.
- 03/25/82 -- The Subcommittee on Telecommunications, Consumer Protection and Finance unanimously passed, after further revision, the substitute H.R. 5158.
- 03/23/82 -- Representative Wirth along with six other subcommittee members introduced the substitute version of H.R. 5158 entitled the Telecommunications Act of 1982.
- 02/19/82 -- AT&T released its "planning model" for divestiture which groups the local operating companies into 7 independent, regional corporations.
- 02/17/82 -- The Justice Department's competitive impact statement appeared in the Federal Register, commencing the 60-day public comment period.
- 02/10/82 -- The Justice Dept. filed its competitive impact statement regarding the AT&T settlement with the United States District Court.
- 02/09/82 -- Representative Bailey introduced H.R. 5483.

- Senator Pressler introduced amendment to S. 1629.
- 02/02/82 -- Representative Mottl introduced H.R. 5421.
- 01/28/82 -- House Committee on Energy and Commerce, Subcommittee on Telecommunications, Consumer Protection and Finance and Committee on the Judiciary, Subcommittee on Monopolies and Commercial Law, completed 2 days of joint hearings on the ramifications of the AT&T/Justice Department settlement.
- 01/25/82 -- Senate Commerce, Science and Transportation Committee, Subcommittee on Telecommunications and the Senate Judiciary Committee held hearings on the ramifications of the AT&T/Justice Department settlement.
- 01/08/82 -- The U.S. Justice Dept. and AT&T reached a negotiated settlement of the pending antitrust suit.
- 12/10/81 -- Rep. Wirth introduced H.R. 5158, the Telecommunications Act of 1981.
- 11/03/81 -- House Committee on Energy and Commerce, Subcommittee on Telecommunications, Consumer Protection, and Finance majority staff released report entitled "Telecommunications in Transition: the Status of Competition in the Telecommunications Industry."
- 10/07/81 -- An amended version of S. 898 passed the full Senate 90-4.
- 09/24/81 -- House Committee on Energy and Commerce, Subcommittee on Telecommunications, Consumer Protection, and Finance, held joint oversight hearings on FCC regulation of telecommunications common carriers.
- General Accounting Office transmitted report on FCC regulation of telecommunications common carriers (CED-81-136; Exec Comm 2245) to House Committee on Energy and Commerce.
- 09/23/81 -- Hearings completed by House Committee on Energy and Commerce, Subcommittee on Telecommunications, Consumer Protection and Finance on information diversity.
- 08/06/81 -- Hearings completed by Senate Judiciary Committee on S. 898.
- 07/28/81 -- Hearings held by House Committee on Energy and Commerce, Subcommittee on Telecommunications, Consumer Protection and Finance on cable franchising.
- 07/16/81 -- Senate Committee on Commerce, Science and Transportation reported S. 898, Senator Hollings dissenting.
- 06/22/81 -- Senate Committee on Commerce, Science and Transportation completed six days of hearings on S. 898.

- 05/28/81 -- House Subcommittee on Telecommunications, Consumer Protection and Finance completed hearings on the status of competition and deregulation in the communications industry.
- 04/07/81 -- Senator Packwood introduced S. 898, the "Telecommunications Competition and Deregulation Act of 1981."

ADDITIONAL REFERENCE SOURCES

- U.S. Library of Congress. Congressional Research Service. International Data Flow Issues. Jane Bortnick. IB81040.
- Status of the Justice Department/American. Telephone and Telegraph Company Antitrust Settlement: A Brief Overview, Angele A Gilroy. Aug. 30, 1982.
- The Telecommunications Act of 1982 (H.R. 5158, 97th Congress): Provisions and Controversies, Angele A. Gilroy. May 21, 1982