

Where We've Been and What's Ahead

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The fifth anniversary of the landmark Telecommunications Act of 1996 and the end of the Clinton-Gore Administration marks a good opportunity to take stock of telecommunications policy changes over the last eight years and the challenges that lie ahead. By any objective measures, the Clinton-Gore era succeeded in fostering innovative economic growth through telecommunications, creating millions of new jobs, and fostering inclusion by bringing more Americans into the Digital Age.

The numbers speak for themselves.

- In 1992, virtually no classrooms were connected to the Internet. In fact, in those days before the web browser, the Internet was a technically forbidding place, inaccessible to the vast majority of Americans. As we entered the 21st century, approximately two-thirds of all public school classrooms (not just schools) have Internet access. Today, a majority of Americans now have Internet access at home – a number that tripled since 1997.
- In 1992, wireless phones were used only by elite businesses. Since then, wireless subscribership has grown nine-fold, to almost 100 million customers. And the price of a mobile phone call has dropped dramatically, cut by more than half during the same period.
- Domestic and international long distance rates have also fallen dramatically. Domestic long distance rates stand nearly a third lower than they did in 1992, while international calling rates have on average been cut in half – and seen even more dramatic drops for specific destinations.

- In local telecommunications markets, almost 7% of telephone lines are now provided by new entrants, up from almost zero in 1992. In effect, the Telecom Act created a whole new industry.
- Another major development is that broadband services have roared into our lives. Today, broadband communications – primarily cable modems and DSL lines – serve over 4 million Americans, a number that continues to grow by leaps and bounds every year.

These successes did not occur by accident. They were aided by deliberate policies and legislation pursued by the Clinton-Gore Administration, sometimes with the support and sometimes over the objections of the Congress. Consider a few examples:

- The 1996 Act's "E-Rate" connects classrooms to the Internet
- The 1993 Budget Act's spectrum auctions and spectrum clearing ended high-priced duopoly cellular service
- The 1996 Act and the Federal Communications Commission's (FCC's) and state commissions' vigorous implementation of it opened the door for local telephone competition
- The 1997 World Trade Organization Agreement on Basic Telecommunications spread deregulation and competition worldwide, lowering international calling prices and creating U.S. jobs
- The FCC's general "hands-off" policy with respect to the Internet and the 1996 Act's cable rate deregulation fueled broadband growth.

So what will allow the next Administration to proclaim as good a record? The real test of the new Congress and Administration will be whether they can resist the temptation to rearrange the spoils of past wars, and focus on taking positive steps into the future. The Communications Act itself is out-of-date and needs fundamental overhaul.

But legislation should not simply revisit the 1996 Act and its implementation. Instead, fundamental statutory changes are needed to end "regulation-by-pigeonhole," which today lies at the core of U.S. communications laws.

The Communications Act of 1934, and every amendment to it since, set up a set of categories – "common carrier," "telecommunications," "information service," "cable service," "broadcast," "commercial mobile radio service," etc. Regulatory obligations and benefits are assigned by pigeonhole. But Internet technology, delivered both by wire and over the air, obliterates the pigeonholes. Drawing clear lines between pigeonholes is impossible. Yet our laws routinely rely on these distinctions - even to determine who must design equipment to be compatible with wiretaps and who is not required to do so. Cable open access and voice-over-Internet-protocol are just two of the policy issues battering the regulatory pigeonholes.

Another aspect of "regulation-by-pigeonhole" is the Communications Act's jurisdictional chaos. The FCC regulates "interstate" communications and spectrum, the states regulate "intrastate," and localities regulate the use of critical rights-of-way – and all levels of government regulate taxes. Convergence makes it imperative to

fundamentally reexamine the assignment of regulatory responsibilities between the federal government, states and localities. In a world in which all networks are interconnected to deliver worldwide service, today we have a confusing "rats' nest" of rules that adds even more regulatory pigeonholes.

The result drives capital away from building competing networks and creating consumer choice. For example, companies that will never use tariffs must spend money to create and file them with state regulators in order to be licensed. The state-licensing regime itself is archaic: there is simply no reason why every state must license every telephone company. A single, nationwide license that is nothing more than simple registration should suffice. And these nationwide licensees should be entitled the same rights as state-chartered carriers, including the right to obtain and use rights-of-way.

Unlike the EU, the United States has done little to examine this next phase for regulatory reform. While it is convenient to pillory the Federal Communications Commission for this state of affairs, the real job for tackling this problem lies first in the Congress. Change the statute and the FCC will follow.

We have come a long way in the past eight years. We lead the world in creating the New Economy. And we can stay there, if Congress and the new Administration build on the accomplishments of the last eight years, and keep their eye on future-looking reforms.