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LEGISLATIVE SUMMARY

The Telecommunications Act of 1996

On February 8, 1996, President Clinton signed into law the telecommunications bill passed by Congress. The passage of this bill officially launched a new era of telecommunications in the United States. The Telecommunications Act of 1996 proposes to increase competition and advance technology within the communications industry, and to lower prices and provide more choices for consumers. This Act, encompassing the first major change in the telecommunications industry since the Communications Act of 1934, addresses the new world of information technology and industry advancements.

The new law preempts many state and local regulations to create a more consistent set of rules nationwide. As stated in the introduction of the law, the Telecommunications Act attempts "[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunication consumers and encourage the rapid deployment of new telecommunications technologies." Telecommunications Act, Pub. L. No. 104-104, 110 Stat. 56 (1996).

The motivation for these new laws is deregulation. By increasing competition in the communications industry, the Telecommunications Act attempts to encourage low rates for the consumers and to promote creativity and innovation in the industry. The new telecommunications law virtually abandons all the federal regulations that have traditionally defined and directed the activity in the communications industry. Specifically, the Act provides "that the Commission shall forbear from applying any regulation or any provision of this Act to a telecommunication carrier or telecommunications service" so long as the activity is just and reasonable, the consumer is protected, and the public interest is maintained. § 401(a)(1)(2)(3). As a result of the deregulation of the communications industry, these new laws support the idea of a free market to foster competition.

One example of increased competition is that the local telephone companies will no longer have a monopoly in providing telephone services for their designated areas. Thus, cable companies, long distance phone companies, or any willing participant can enter into the local telephone market. The statute provides: "No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of *any entity* to provide any interstate or intrastate telecommunications service." § 253(a) (emphasis added). In exchange for losing control of their monopoly over local telephone customers, the local telephone companies will be able to participate in the long-distance market and compete against such established long distance companies as AT&T, MCI, and Sprint.

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Even though there will be increased competition between the various participants in the communications industry, the Act still requires a general duty to provide access and interconnection "with the facilities and equipment of other telecommunications carriers." § 251(a)(1). Thus, though the policy of the underlying Act is to facilitate and encourage competition between local and long-distance phone companies, cooperation is required. In addition, the Act also allows the telephone and communications companies to expand beyond their traditional businesses and begin to develop their own on-line information services.

The effect of the Telecommunications Act will also be felt in the cable industry with the Cable Reform Act provisions. § 301. Though faced with the prospect of new telephone company rivals, cable companies will be freed from any limit on how much they can charge for cable service. The federal caps on cable rates will be phased out in three years, and even sooner in smaller markets. In addition, there will be greater deregulation for smaller cable companies. § 301(c).

The new laws also ease restrictions on the number of television and radio stations that a company can own. Broadcasters have been constrained for years, limited most recently to owning just twelve television stations reaching no more than twenty-five percent of the country or, in radio, twenty AM and twenty FM stations with no more than two of each in the largest markets. Now, there will be no limit on how many television stations companies can own as long as the stations do not reach more than thirty-five percent of the United States. § 202(c). Radio owners also will no longer have national limits, and ownership restrictions in individual markets will be gradually relaxed. § 202(a). In addition, these provisions increase the length of broadcast licenses to eight years from the current five years for television stations and seven years for radio stations. § 203(c)(1).

Although the congressional intent behind the passage of the Telecommunication Act was to deregulate the telecommunications industry, the Act does retain some power to continue to regulate certain areas deemed important by Congress. In fact, one of the few areas where regulation actually increased is the protection of children from alleged harmful media exposure. These provisions, titled the Communications Decency Act of 1996, are concerned with obscene or harassing use of telecommunications facilities. § 501. As two examples, the Act attempts to prevent the dissemination of obscene and pornographic material over the Internet and to protect children from exposure to violence on television. For purposes of implementation, Congress found that "television influences children's perception of the values and behavior that are common and acceptable in society" and concluded that "there is a compelling governmental interest in empowering parents to limit negative influence of video programming that is harmful to children." § 555(a)(1)(8).

Amid growing public concern and political discontent over the amount of sex and violence on television, provisions of the new telecommunications laws require television sets to come equipped with an electronic device, the V-chip, that will allow viewers to block programs bearing codes indicating potentially offensive material. The V-chip will allow parents automatically to lock out programs they do want their children to see. Congress believed that "providing parents

with timely information about the nature of upcoming video programming and with the technological tools . . . to block violent, sexual, or other programming that they believe harmful to their children is a nonintrusive and narrowly tailored means of achieving that compelling interest." § 555(a)(9).

In addition, the new Act prohibits the distribution of pornographic material over the Internet where children would have access to such information. § 507. Criminal penalties now are established for the distribution of indecent material without ensuring that minors will not have access to it. § 508. These decency provisions make it a felony to knowingly transmit indecent or patently offensive sexual material over communications networks where children may see it.

There is concern, however, that the new telecommunications laws may have unintended consequences. For example, the restrictions on the Internet may threaten the freedom to exchange information on the world-wide web, and this may raise a number of First Amendment concerns. It is only a matter of time before the courts will experience the massive litigation that will ensue from the enactment of the telecommunications reform. *Enacted* S. 652, 104th Cong., 2d Sess. (1996).

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