

A Selected Bibliography on the Telecommunications Act of 1996*

This Index provides a compilation of articles about the Telecommunications Act of 1996 (1996 Act or the Act).

George J. Alexander, *Antitrust and the Telephone Industry After the Telecommunications Act of 1996*, 12 Santa Clara Computer & High Tech. L.J. 227 (1996).

The 1996 Act establishes a system in which competition sets price and quality standards for a broad industry including telephone services. There are many issues that might raise antitrust concerns under the Act, including size limitations for telephone-cable interchanges and local and state approval of acquisitions and joint ventures. The author asserts that monopolization claims seem likely and delineates how they might be resolved in the wake of the 1996 Act.

Berge Ayvazian, "The Telecommunications Act of 1996: A Legalized Free-For-All", *Yankeewatch*, Vol. 11, No. 2. February 1996. The Yankee Group, 440 PLI: Patents, Copyrights, Trademarks, and Literary Property Course Handbook Series 395 (May 6, 1996).

Noting the 1996 Act's ultimate objective in telephone and cable industries, to open markets to everyone and to ease cross-ownership restrictions, the author asserts an industrial "free-for-all" will develop. The timeline of this development, which is included in exhibit fashion, is: 1) interexchange carriers (IXCs) will enter the local market immediately; 2) regional bell operating companies (RBOCs) will immediately develop out of regional interLATA; 3) Some RBOCs will apply for in-region approvals to offer interLATA services; 4) competitive access providers (CAPs) and cable companies will enter the local exchange market immediately; and 5) telephone companies will quicken their entry into the cable TV market while concentrating on getting into long-distance markets. In the end, the telephone and cable industries will provide consumers and businesses with lower prices and innovative new services.

Loftus E. Becker, *Comments on "The Telecommunications Act of 1996," by Thomas G. Krattenmaker*, 29 Conn. L. Rev. 175 (1996).

Responding to Thomas Krattenmaker's article, *The Telecommunications of 1996, infra*, the author asserts that Krattenmaker's argument leaves open to debate the questions of what kind of telecommunications system we want to develop and what social functions we want to ultimately serve. Radio and television must be thought of as being more than mere entertainment media sources. Moreover, they serve as sources of news and information for all people. If the media source is flawed, the information that people possess will be flawed. Thus, the author disfavors an open-market-based approach to the telecommunications system; a system that would provide a "significant degree of common information and social understanding."

Charles Bierbauer, *The First Annual Symposium on Media & the Law: How Will the Telecommunications Bill and the Information Superhighway Affect America?*, 41 S.D. L. Rev. 502 (1996).

This article is a transcript of a panel discussion of the 1996 Act at the time the Act was in conference committee after separate versions were passed by each house of Congress. The panel, moderated by Charles Bierbauer, featured Senator Tom Daschle, Congressman Tim Johnson, Senator Larry Pressler, and then-FCC Commissioner Andrew Barrett. Each discussed the pending Act and areas of concern that were being considered by the conference committee.

Michael Botein, *Cable/Telco Mergers and Acquisitions: Antitrust vs. Telecommunications Act Approaches*, 440 PLI: Patents, Copyrights, Trademarks, and Literary Property Course Handbook Series 479 (May 6, 1996).

For years there has been a ban on telephone local exchange carriers' (LECs) ownership of cable services and vice-versa. Although the suspicion of such ownership and the fear of industry convergence may have some merit under antitrust and anti-competition rules, the author suggests that cable/telco mergers would have no or little effect on actual competition. As the technologies in both industries are so and the amount of unrelated businesses are so numerous, such mergers will fail to produce the lessening of competition that many industry watchers fear. Botein lucidly argues that "antitrust intervention simply would make no difference" in the mergers of LECs and large cable multiple systems operators.

Michael Botein, *The Telecom Reform Act: Who Needs It?*, 440 PLI: Patents, Copyrights, Trademarks, and Literary Property Course Handbook Series 473 (1996).

With the advent of the 1996 Act came words of praise and excitement from politicians, lobbyists, industry executives, and observers. The author explains in this piece why he does not share in their excitement. He first proposes that many of the Act's goals were already accomplished by the courts and the FCC before the Act was signed into law. Second, the author contends that the Act contains an exorbitant amount of excruciating detail, which will ultimately haunt the industry. Finally, the author asserts that because Congress closed off the adoption process of the Act to all but a few telecom industry observers, it was adopted in a secretive fashion. In closing he writes, A[a]t worst, it [the Act] may be unnecessary. "t best, it may have some serious procedural problems."

J. Michael Brown, *Interconnection, Unbundling and Access: Creating Full Service Competition Under the Telecommunications Act of 1996, AT&T, MCI, LDDS, WORLDCOM and COMPTTEL*, 440 PLI: Patents, Copyrights, Trademarks, and Literary Property Course Handbook Series 457 (May 6, 1996).

Sections 251 and 252 of the 1996 Act, if correctly implemented, provide legal guidance to allow effective competition to develop in all sections-both local and long distance markets-of the telecommunications industry. Because the 1996 Act is self-executing, the author asserts that the FCC must take steps to ensure the local exchange carrier network is available at a cost-based price to all competing service providers. This article provides a roadmap for implementation of those steps.

J. Michael Brown, *Summary of Key Provisions of the Telecommunications Act of 1996*, 440 PLI: Patents, Copyrights, Trademarks, and Literary Property Course Handbook Series 335 (May 6, 1996).

This article covers the major provisions of the 1996 Act, from those dealing with the removal of state and local barriers to entry in telecommunications services, universal service, manufacturing by bell operating companies, cable services, broadcast spectrum flexibility and a number of other sections. This article also includes a timeline indicating the statutorily mandated deadlines for implementing provisions of the Act and news reports of AT&T Chairman Robert Allen announcing his company's reaction to the bill.

Angela J. Campbell, *Universal Service Provisions: The "Ugly Duckling" of the 1996 Act*, 29 Conn. L. Rev. 187 (1996).

In response to Thomas Krattenmaker's characterization of the service provisions of the 1996 Act as "ugly" (in his *The Telecommunications Act of 1996, infra*) the author posits that section 254 has the potential to benefit the public by providing a workable means to ensure that all Americans enjoy the benefits of the communication revolution.

Jonathan E. Canis & Enrico C. Soriano, *The Telecommunications Act of 1996: A Global Analysis*, 4 CommLaw Conspectus 147 (1996).

This piece provides a summary of the notable provisions of the 1996 Act regarding telecommunication services, BOCs, broadcast services, cable services, regulatory reform, and obscenity and violence. The article also looks at the Act's effect on consent decrees and other exciting laws. Finally, the article discusses the effects of miscellaneous provisions of the Act in areas such as customer privacy, radio frequency emission standards, and funding for small businesses involved in telecommunications.

Robert Cannon, *The Legislative History of Senator Exon's Communications Decency Act: Regulating Barbarians on the Information Superhighway*, 49 Fed. Comm. L.J. 51 (1996).

Among the most visible and controversial provisions of the 1996 Act has been an amendment to the larger act: the Communications Decency Act. This article critically examines the legislative history of this amendment and creates a record of both official and unofficial sources. The article also notes the relevance of the legislative history as demonstrating both the unconstitutionality and the practical inefficacy of the statute.

L. Frederik Cederqvist, *The Telecommunications Act of 1996: Restructuring the Law and Refining National Policy*, 440 PLI: Patents, Copyrights, Trademarks, and Literary Property Course Handbook Series 413 (May 6, 1996).

Although the 1996 Act establishes a framework decreasing regulatory oversight by relying on competition to discipline the telecommunications market from within, the Act also sets out one major exception to this type of deregulation. From a policy standpoint, the Act represents a greater willingness for government intervention in controlling the content of materials distributed over various mediums to children. This article traces provisions in the Act that ultimately serve to deregulate the market, as well as those that are in place to create tighter content control.

Jim Chen, *The Last Picture Show (On the Twilight of Federal Mass Communications Regulation)*, 80 Minn. L. Rev. 1415 (1996).

The author asks and seeks to answer some of the many questions contemplated by the 1996 Act concerning the future of mass media markets; specifically which medium will dominate. Tracing federal communications law from its inception to the modern day, the author concludes with the premise that the ultimate winners of the communication wars are the now-independent BOCs, not broadcast television or the cable broadcasting companies.

Catherine Cook, *The Telecommunications Act of 1996*, 6 DePaul-LCA J. Art & Ent. L. 237 (1996).

The article summarizes the 1996 Act's attempt to deregulate the communications industry by increasing competition between local and long-distance phone companies. Further, the article discusses the effect of the Act on the cable industry by the Cable Reform Act provisions promulgated in section 301. However, Cook acknowledges that not all areas of the Act are attempts at deregulation. The provisions of section 501-the Communications Decency Act of 1996 provisions-increase regulation in communication vehicles, such as the Internet, to prevent the dissemination of obscene and pornographic materials to children.

Henry Geller, *The 1996 Telecom Act: Cutting the Competitive Gordian Knot*, 29 Conn. L. rev. 205 (1996).

Although the author agrees with Thomas Krattenmaker's overall analysis of the 1996 Act in *The Telecommunications Act of 1996, infra*, he disagrees with Krattenmaker's belief that cable service providers and local exchange carriers will remain monopolistic unless there is congressional promotion of wireless competition. Further, the author writes that Krattenmaker's analysis is overly critical of the broadcasting sector and ignores the main thrust of the Commission's goals to diversify the sources of information coming to the American people. In regards to the area of spectrum reform, the author asserts that the area is worthy of serious consideration, however, Krattenmaker's article may be a premature-and thus unfair-critique Congress's legislative strategy. Finally, the author notes that the content regulation provisions of the Act are unconstitutional, but there is little likelihood of a court challenge.

Arthur H. Harding & Matthew D. Emmer, *Cable Television Provisions of the Telecommunications Act of 1996*, 14 Comm. Law 11 (Summer 1996).

As part of the 1996 Act, Congress enacted several reforms to the regulatory framework applicable to the operation of cable television systems. This article enumerates the major components of the changes.

W. Scott Hastings, Note, *Foreign Ownership of Broadcasting: The Telecommunications Act of 1996*, 29 Vand. J. Transnat'l L. 817 (1996).

The reforms presented by the 1996 Act have done little to breakdown the barriers traditionally encountered by foreign investors. The author asserts that reformers need to eliminate some or most of these restrictions in order for the telecommunications industry to keep pace with an increasingly global market. The note examines the restrictions, as well as the major policies underlying such restrictions, and weighs the various approaches currently used. Hastings also proposes what he believes is the ideal system of regulation for the global broadcasting industry.

Thomas W. Hazlett, *Explaining the Telecommunications Act of 1996: Comment on Thomas G. Krattenmaker*, 29 Conn. L. Rev. 217 (1996).

The author agrees with Thomas Krattenmaker's belief, expressed in *The Telecommunications Act of 1996, infra*, that

legal balkanization is one of the primary factors behind the promulgation of the new Act. However, he dissents from Krattenmaker's argument regarding how that motivation has affected the "emergence of telecommunications regulation and the genesis of its reform" in the new Act. Contrary to Krattenmaker, the author bases his theories of the Act's motivating factors on the political self-interest of both policy makers and interest groups.

Reed Hundt, *Antitrust and Interconnection: Old Wine in New Bottles* (Telecommunications Act of 1996), Address before the Antitrust Conference for Corporate General Counsels (Oct. 22, 1996), *available in* 1996 WL 646783.

Chairman Hundt emphasizes that the Telecommunications Act of 1996 breaks down the old monopolistic barriers in the local exchange market and ushers in an era of competition. Further, disagreeing with the Seventh Circuit's stay of the operation of the Commission's Interconnection Order, Chairman Hundt asserts that this is judicial activism and contrary to a national policy requiring forward-looking pricing. Such a policy will further competition, not particular competitors, thus it is necessary and appropriate. Chairman Hundt calls on all states to voluntarily adopt such a pricing methodology with an eye towards competition.

Thomas G. Krattenmaker, *The Telecommunications Act of 1996*, 49 Fed. Comm. L.J. 1 (1996).¹

The author discusses the primary motivating factors behind the 1996 Act and how these factors influenced the final law. Further, the author examines whether the Act is likely to advance public interest goals. Congress designed the Act to address two problems: "technological convergence" and "legal balkanization". The Act attempts to remedy these problems by: (1) tearing down entry barriers so that legal balkanization no longer stands in the path of technological convergence; (2) changing the mandate of the FCC from deciding who should enter the market to monitoring conditions under which entry takes place in order to control predators; and (3) protecting the most vulnerable from harmful competition. The Author asserts that to the extent the Act destroys entry barriers, it will be deemed a success while, to the extent that it creates or strengthens entry barriers, it will be deemed a failure.

Donna N. Lampert et al., *An Overview of Video Competition Under the Telecommunications Act of 1996: Questions and Answers*, 465 PLI: Patents, Copyrights, Trademarks, and Literary Property Course Handbook Series 49 (presented Dec. 12-13, 1996).

The article provides an interesting guide to understanding some distinct effects of the 1996 Act on video programming laws. Posing a number of rhetorical questions, the authors explain the options video providers have in the multichannel video marketplace, as well as the public policy issues that affect those options. Part II of the article analyzes ancillary issues that affect the entire spectrum of multichannel video services.

Lili Levi, *Not With a Bang But a Whimper: Broadcast License Renewal and the Telecommunications Act of 1996*, 29 Conn. L. Rev. 243 (1996).

In 1969, the big controversy in the realm of telecommunications law was a bill providing that the FCC could not consider competing applications for broadcast licenses unless it first found that the renewal of the incumbent's license would not be in the public interest. Twenty-seven years later, the 1996 Act requires the FCC to consider competing applications for broadcast licenses only after finding that the incumbent's license should not be renewed due to abuses against the public good. Sound familiar? According to the author, it most definitely should. Why then was there no fanfare surrounding the virtual identical provision in the 1996 Act? The author explores this and other issues in this commentary using her own explanations as well as those set forth by Thomas Krattenmaker in his article, *The Telecommunications Act of 1996, supra*.

Andrew D. Lipman & Lawrence R. Freedman, *The Telecommunications Act's ADR Approach*, 14 Alternatives to High Cost Litig. 123 (1996).

In passing the 1996 Act, Congress intended to increase competition among participants in the telecommunications industry. Consequently, such competition requires the development of comprehensive agreements to interconnect relationships between competitors who otherwise have little or no incentive to agree. The authors suggest that alternative dispute resolution (ADR) is well-suited to handle conflicts that might arise as a result of reforms. The article traces the history of the 1996 Act, gives a brief summary of the Act and lists the lessons learned to date when

ADR has been utilized as the primary means of negotiation in issues regarding the 1996 Act.

James E. Meadows, *The Telecommunications Act of 1996: Rules of the Road for the New Highways*, 13 No. 3 Computer Law. 1 (Mar. 1996).

Congress repaved old roads, turning them into contemporary highways, with the enactment of the 1996 Act. The author examines each of the major provisions of the Act, from the local telephone market to the Communications Decency Act. Mindful of the ever-changing technologies that affect the way people communicate, does the world face an uncertain future?

Michael I. Meyerson, *Ideas of the Marketplace: A Guide to the 1996 Telecommunications Act*, 49 Fed. Comm. L.J. 251 (1997).

The 1996 Act has forever transformed the regulatory landscape. The Act contemplates the creation of competition across the full telecommunications field, even in areas such as local telephone service and cable television service that had previously been monopoly-controlled. The author asserts that the main combatants in this new marketplace will tend to be even larger companies than those currently dominating the scene. However, there are numerous dangers that will have to be averted in order for the Act to be successful. The first is that existing monopolies, such as the BOCs or cable operators, will leverage their current power either to gain an unfair advantage in the competitive market, or to retain their advantage in the local arena. The second danger is that the cure to the first is worse than the disease. Even if there is such competition among large communications companies, the FCC will have one more critical task: to ensure that there is a place for the smaller player.

Vincent M. Paladini, Note, *Foreign Ownership Restrictions Under Section 310(B) of the Telecommunications Act of 1996*, 14 B.U. Int'l L.J. 341 (1996).

Section 310(B) of the 1996 Act prohibits significant foreign ownership interests in American communication companies. This note explores the evolution of the section from its roots to its current form. The author asserts that reciprocal removal of alien ownership restrictions can be used to facilitate the realization of a free and unencumbered global communications marketplace.

John D. Podesta, *Unplanned Obsolescence: The Telecommunications Act of 1996 Meets the Internet*, 45 DePaul L. Rev. 1093 (1996).

The author makes predictions regarding what the future holds as a result of the 1996 Act. He cites to recent history to show the roots of his predictions and then discusses why the Internet-with its phenomenal growth-will provide a paradigm which surpasses the current debate. In short, the Web will make the current legislation will become obsolete.

Glen O. Robinson, *The "New" Communications Act: A Second Opinion*, 29 Conn. L. Rev. 289 (1996).

Using Thomas Krattenmaker's article, *The Telecommunications Act of 1996, supra*, as a guide, the Author examines why the Act is the most comprehensive in scope, the most important and the most detailed in terms of policy direction of any statutory reform since the Communications Act of 1934. Ironically, the author concludes, the Act, though remarkable, is not revolutionary.

Phillip Rosario & Mark F. Kohler, *The Telecommunications Act of 1996: A State Perspective*, 29 Conn. L. Rev. 331 (1996).

This article supplements Thomas Krattenmaker's article, *The Telecommunications Act of 1996, supra*. The authors assert that Krattenmaker left many unanswered questions concerning the role states will play in the regulation of telecommunications and cable services. Moreover, the article discusses the role of states with regard to intrastate telephone services, the interconnection provisions, and universal service provisions. The article also examines the Act's cable rate regulations and how those regulations have placed the states in a more restrictive role.

Kenneth D. Salomon et al., *Implications of the Telecommunications Act of 1996 for Schools, Colleges, and*

Universities, 109 West's Educ. Law Rep. 1051 (1996).

The 1996 Act contains numerous provisions that will impact the educational use of telecommunications. The provisions will bring positive challenges and opportunities as well as negative effects. The article briefly summarizes the pertinent provisions affecting education and lays out the possible outcomes the new requirements may have upon lower and higher education.

Mark D. Schneider, *Renewal Procedures and Expectancy Before and After the Telecommunications Act of 1996*, 14 Comm. Law 9 (Summer 1996).

The author examines the 1996 Act with regard to FCC license renewals for television and radio stations. Prior to 1996, television and radio stations were required to seek renewal of their FCC licenses every five and seven years, respectively. The article briefly outlines the changes inherent in the Act, it also points out recent caselaw developments.

Matthew Spitzer, *Dean Krattenmaker's Road Not Taken: The Political Economy of Broadcasting in the Telecommunications Act of 1996*, 29 Conn. L. Rev. 353 (1996).

The author writes this article as a supplement to Thomas Krattenmaker's article, *The Telecommunications Act of 1996, supra*. Where Krattenmaker disregarded the Act as it relates to the political economy, this article provides an understanding of the broadcasting provisions of the Act in both political and economical terms.

Lawrence A. Sullivan, *Elusive Goals Under the Telecommunications Act: Preserving Long Distance Competition Upon Baby Bell Entry and Attaining Local Exchange Competition: We'll Not Preserve the One Unless We Attain the Other*, 25 Sw. U. L. Rev. 487 (1996).

The author discusses the risk of RBOCs' attainment of interexchange access while maintaining their local monopolies. The author emphasizes that while the AT&T antitrust consent decree recognized the risk that an integrated local long distance carrier can leverage its local power in the long distance market, the 1996 Act does not. Proper implementation of the goals of the new Act and protection of the public interest will require the FCC to be vigilant about unbundling the obligations of RBOCs and inhibiting RBOC entry into interexchange service until its local monopolies are effectively eroded.

Margaret L. Tobey and Phoung N. Pham, *The Broadcast Ownership Provisions of the Telecommunications Act of 1996*, 14 Comm. Law. 6 (Summer 1996).

With the promulgation of the 1996 Act, Congress directed the FCC to strike a balance between promoting diversity of ownership and permitting the consolidation of mass media interests. The authors provide a general overview of the Act's deregulatory provisions in broadcast ownership.

Thirteen Attorneys General Submit Comments to FCC Regarding Telecommunications Act of 1996, 23 Nat'l Ass'n of Att'ys Gen.: Antitrust Rep. 6 (1996).

This article delineates the comments submitted by thirteen attorneys general to the FCC concerning the 1996 Act. The state attorneys general who filed include those from: Connecticut, Delaware, Illinois, Iowa, Massachusetts, Michigan, Minnesota, Missouri, New York, North Dakota, Pennsylvania, West Virginia and Wisconsin. The Attorneys General specifically urged the FCC to: 1) establish clear standards governing the prerequisites for access to local telephone networks; 2) ensure that local networks are unbundled so that competitors have access at all technically feasible points of interconnection; 3) set minimum guidelines for good faith negotiation of agreements with competitors; and 4) establish concurrent state and federal enforcement jurisdiction.

R. Clark Wadlow, *Summary of the Key Provisions of the Telecommunications Act of 1996*, 440 PLI: Patents, Copyrights, Trademarks, and Literary Property Course Handbook Series 285 (May 6, 1996).

The article provides a comprehensive summary of the key provisions of the 1996 Act, *i.e.*, the areas of

telecommunications services, broadcasting services, cable services, regulatory reform, and the regulation of obscenity and violence in telecommunications. The article also summarizes the Act's miscellaneous provisions concerning customer privacy, pole attachment, and the Telecommunication Development Fund.

Dan Waggoner & Patricia Raskin, *The Telecommunications Act of 1996: Model for Federal-State Conflict or Cooperation*, 14 Comm. Law. 26 (Summer 1996).

Although Congress promulgated the 1996 Act with a vision towards creating separate, yet inevitably intermingled roles both for the FCC and State commissions, the authors of this selection note that questions of federalism and the scope of state and federal power arise from this piece of legislation. This brief article seeks to answer the most frequently-asked questions concerning the division of federal and state power vis-a-vis the Act.

Richard E. Wiley, *The Telecommunications Act of 1996*, 461 PLI: Patents, Copyrights, Trademarks, and Literary Property Course Handbook Series 7 (November 1996).²

The article guides the reader through the complex world of the Telecommunications Act of 1996. The author provides a comprehensive examination of the 1996 Act from its effect on eliminating barriers to new competitors in the long distance market, video servicing, and radio ownership. Further, the author discusses the Act's impact on the areas of broadcasting and spectrum flexibility, content regulation, and its effects on consumers.

Richard E. Wiley, *Summary of Broadcast Ownership Provisions of S.652 - The Telecommunications Act of 1996 - As Passed by Congress on February 1, 1996*, 440 PLI: Patents, Copyrights, Trademarks, and Literary Property Course Handbook Series 313 (1996).

The author provides a brief, yet concise, overview of the 1996 Act's broadcast ownership provisions (section 652). A table showing the provision's modifications of both national and local radio ownership restriction is also included.

Richard E. Wiley, *Cable Related Provisions of the Telecommunications Act of 1996*, 440 PLI: Patents, Copyrights, Trademarks, and Literary Property Course Handbook Series 319 (May 6, 1996).

The cable industry was significantly affected by the 1996 Act. Focusing on the cable-related provisions of the Act, the Author summarizes their deregulatory and restriction-easing effect on this industry.

* This Bibliography was compiled by Kenneth L. Parker, Senior Review Editor, and Tania A. Hricik, Review Editor, of the Federal Communications Law Journal.

1. Thomas Krattenmaker's article is also published in 29 Conn. L. Rev. 123 (1996).

2. For a brief summary of the new Act by Richard Wiley, see *The Telecommunications Act of 1996*, 440 PLI: Patents, Copyrights, Trademarks, and Literary Property Course Handbook Series 301 (May 6, 1996).