

Congress Sweeps It All Under One Big Top

■ **Telecommunications:** The new act mainly validates state actions; it's not the deregulatory revolution hailed by many.

By ELI M. NOAM

Politics is the art of the possible. By that standard, Congress deserves a pat on the back for passing the telecommunications act after many years of trying. The new law is a step in the right direction. But it is not the deregulatory revolution that the victory bulletins emanating from Washington proclaim. This view is steeped in the belief that reality in the information sector is shaped by Washington legislation rather than the other way around.

Much of what the law claims to accomplish has been happening anyway. Take competition in local telephone service, the keystone of the act. Local telephone competition already has been instituted around the country by most important states, with many of the others well on the way to doing so. The new act merely extends this kind of

competition to the slower-paced states.

With local phone competition already on its way, the end of the restrictions of the AT&T divestiture decree on the Baby Bell companies also was in sight. Without a monopoly bottleneck and with safeguards similar to those now set by the act, these phone companies would have been allowed to compete in long distance, video and full-service provision, act or no act. The Baby Bell companies like to believe that the new laws provide for greater speed and certainty by setting deadlines. But they will find themselves disappointed: Their rivals may well tie them up for years in courts and regulatory commissions, arguing that they have not met the elaborate checklist of pro-competitive steps. And because each state must certify that its Bell company has met all conditions, the companies could face another long list of state preconditions in return for that critical green light.

Thus, while there were some instances where it was necessary for Congress to speak, in most cases the same job could have been accomplished by the Federal Communications Commission, the state commissions and the antitrust courts. For

that is the strength of the American system of telecommunications regulation: Its decentralization got the job of transforming monopoly into competition done much faster than the centralized European telecommunications systems, where every

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change becomes an affair of state. In America, by contrast, telecommunications reform was a struggle with many small skirmishes rather than a central all-consuming battle.

Until this act, that is. Now Congress has taken the omnibus approach of dealing with virtually everything. Small wonder that it took years to draft a passable bill because so many interest groups had to fit under the

tent in one grand but lengthy bargain. The result is a law that adds more than 100 new and densely packed pages of interlocking rules and conditions. Many of the most complex issues require further elaborate rule-making. For example: how to reform the financing of universal service under competition while still protecting rural phone users and companies; how to price the interconnection of carriers where currently the long distance companies help subsidize the local phone rates of their rivals; how to price the discounts for the resellers of local phone service; how to deal with the convergence of telephone and cable companies that still are treated quite differently even as they compete; how to deal constitutionally and practically with the Internet as it becomes a major mass medium and platform for financial transactions; how to deal with local media concentration; how to charge for broadcast licenses; how to provide schools with access to advanced services; what to do if phone and cable competition are slow to spread. Once one adds up all of these new provisions, the act, while pro-competition, cannot be described as deregulatory. What it does is

replace one form of regulation, of industry structure, with another, of conduct.

Even if most of the act's provisions make a lot of sense today, even if they accelerate existing trends, and release some pent-up TV merger frenzy, they soon will be obsolete and a drag to change in this dynamic field. An example is the already inadequate treatment in the new law of the Internet and its applications. In theory, laws can be altered. In practice, changing an act of Congress will be extremely difficult because each clause will be protected by the entrenched interests that will have grown around it.

The Telecommunications Act of 1996 is useful in cleaning up many accumulated problems of yesterday. It is far from revolutionary today. And its overspecificity will be a problem tomorrow. In the meantime, most of the promised jobs that will be created will be for lawyers.

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