

THE DAILY RECORD

LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

What Has Changed After A Decade Under The Telecom Act?

BY MARTHA BUYER
DAILY RECORD COLUMNIST

The first week in February marked the 10th anniversary of the landmark Telecommunications Act of 1996. While this legislation has changed the telecommunications landscape, so too have the myriad technological changes which have created markets (and caused others to be abandoned) that may not have been anticipated by the drafters of the Act.

In any case, a rewrite is pending, and in that light, it seemed that this would be a good time to evaluate where the 1996 Act has taken us in the past 10 years and then look to the future as we await the completed revised bill. As a side note, because the issues are so contentious, at the moment, there are two drafts of this bill currently circulating through Congress.

Recognizing the significant changes in the telecommunications marketplace since the divestiture of the Bell System in 1983, the drafters of the 1996 Act had several goals in mind from a traditional telephone perspective. The original Act also addressed some issues regarding cable television and content (remember the "Communications Decency Act" which sought to place restrictions on library and other activities related to the gathering of information?) It was included in the Act as well. While this provision drew a good deal of attention at the outset, for most telecom cognoscenti, interest in this issue has diminished to the point of non-existence.

From a "telephone" or voice perspective, the drafters believed that they could force competition on the local level by forcing the Regional Bell Operating Companies (RBOCs) to lease facilities to start-up competitive local exchange carriers. It was also believed that by removing some of the regulatory hurdles that had prevented the existing Bell Operating Companies from competing in each others' territories, consumers would have more options for local service.

This didn't work, because rather than compete with each other, they merely devoured each other. Of the seven original RBOCs, only Verizon/MCI, Qwest and SBC/AT&T remain. And those survivors are the conglomeration of many smaller companies. Remember when New York Telephone became NYNEX became Bell Atlantic became Verizon?

In addition, the 1996 Act codified, for the first time, the provisions of the Universal Service Fund, a vehicle used to fund worthy causes such as schools and library Internet access, as well as the offset of some costs incurred in the provision of services to otherwise high cost areas including rural areas. This section of the act created the "e-rate" program which enables schools and libraries to have access to broadband Internet at a discounted rate.

While the 1996 Act acknowledged the Internet, according to the *National Journal's Technology Daily*, there are 11 references to the word "Internet" within the Act. Ten of them refer to issues of indecency and one to e-rate wiring for classrooms (a Universal Service subcategory). In addition, the only reference to "dig-

TELECOM LAW



MARTHA BUYER

ital" anything is to digital television.

What wasn't considered was the incredible impact that Moore's law (the exponential increase in computing power over a very short time). Improvements in technology have created opportunities between types of providers, as well as driving the migration from traditional voice wireline services to Internet-based telephony.

In a word, the Internet is driving much of communication development. While the word "convergence" has been around for a long time, its meaning has changed. As far back in the mid 1980s, vendors were selling products (T1 circuits and multiplexers) which could support voice and data communications traffic over a single pipe. Now, however, "convergence" can mean the union of multiple technologies into a single pipe, most often a data-based pipe which uses the Internet as a means of transport.

Add to the mix the fact that the traditional cable companies and communications companies are now treading on each others' turf, and it's apparent that the law written 10 years ago simply doesn't fit the way communications works (from the perspective of both technology and business). One component of

the rewrite will have to include a new funding mechanism for the Universal Service Fund because in its current form, only traditional voice customers are paying to support these essential services.

As more people migrate away from the traditional voice model, the burden of funding the USF becomes heavier on those who continue to use traditional long distance services. In addition, there are other federal and state mandates as well (fees, surcharges and taxes on a traditional voice bill can be as high as 20 percent of the total) which apply to voice usage and not to data.

The subsidy system which enabled the competitive local exchange carriers to get off the ground (and then largely fall flat) has also evolved away. The entire model of telecommunications competition has changed, and will continue to change, as technology creates more opportunities for technological innovations and market efficiencies.

The issues raised by this anniversary tie in nicely with a personal experience that I had this week. My parents needed a new phone. Nothing fancy, just a plain old telephone. My mother, who is among the technology-resistant, asked me to find her a heavy black phone — "you know, the ones they used to make that were indestructible." I offered to do my best, but thus far, the plain heavy black phones that existed when there was no competition, are extremely hard — if not impossible — to find. At least I found a black one. ...

Martha Buyer is an attorney concentrating in the practice of telecommunications law. Her clients range from Fortune 500 companies to small family-owned businesses where she has provided a range of telecommunications consulting and legal services, primarily geared to support corporate end-users working with carriers and equipment providers. Buyer can be contacted at martha@marthabuyer.com.