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Telecommunications Statutes Are Due For Change

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I was in Washington, D.C. this week attending the American Bar Association's Section on Communications, Public Utility and Transportation Law continuing legal education seminar.

While time at the seminar was spent away from much of the usual subject matter, one thing is clear: in the world of American telecommunications, the statutory scheme that's in place doesn't match the technology that's currently in use. The statutes, rules and regs are ripe for change. From the perspective of both the speakers and the audience, the sooner the better.

When AT&T was divested 21 years ago, the hope of Judge Harold Green (who presided) and the many attorneys and participants (except those from AT&T, of course) was that by introducing competition into the long distance market, consumers — residential, commercial and governmental — would all benefit. In fact, that's largely what happened.

Although consumers were initially burdened by having to pay more than one phone bill, in fact, as they got used to the new processes, they recognized that significant savings was achieved. In fact, the price for long distance services dropped significantly — more so, perhaps, than anyone had predicted.

In 1996, when the Telecommunications Act of 1996 was written to update and enhance the original Communications Act of 1934, the drafters hoped the landmark act would create competition on the local level which would benefit consumers in the same way the divestiture had benefited consumers in long distance. By removing some of the previously enforced restrictions on where the Regional Bell Operating Companies (RBOCs) could operate, and opening the local market to new entrants, Congress believed that competition would heat up on the local level.

However, instead of the anticipated regional competition between RBOCs, the largest local carriers chose to acquire each other rather than going head to head. In so doing, the RBOCs became stronger and more powerful than their heretofore dominant long-distance siblings.

Over the past few years, the balance of power within the telecom industry has shifted dramatically from the long distance providers to the RBOCs and their successors (Qwest as the successor to original RBOC USWest). If you need further proof, consider that in the post-break-up period, the most plentiful and powerful lobbyists in Washington and at state capitols were those from AT&T. Now most legislators would be hard-pressed to find one.

Compounding this unanticipated result was the change in technology which enabled many users to migrate from traditional phone service to newer technologies including primarily wireless and voice over Internet or VoIP. As such, the traditional markets that existed at the time the Telecommunications Act was written have changed, and the market power that the large long distance providers like AT&T and MCI exercised with abandon has, to a great extent, vaporized. The recent consolidation in the telecommunications marketplace where RBOCs have acquired two of the long distance providers is further proof this shift.

In addition to the slow but steady migration away from wireline tele-

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phone service — at least in the residential sector — toward other technologies, regulations need to be drafted that both recognize the new innovations while continuing to provide necessary support mechanisms to keep such important programs in place as the Universal Service Fund, which is used to support, among other things, the provision of basic service to high cost areas, rural medical centers and schools and libraries.

Currently, the federal Universal Service Fund is supported by an assessment of 11.1 percent of all interstate and international toll calls (in some states there is a state USF which is based upon local call revenue).

A line item appears somewhere in the phone bill that says something like USF or Universal Connectivity Charge (in some states there is also a state assessment based upon revenue from local calls). The fee is based upon anticipated needs of those who benefit from the USF, and because it's based on traditional long distance services, those who are using some other method of communications have largely been exempt.

As the number of users of traditional wireline services decreases, in the short term, the fee will increase since the bottom line must be met. Ultimately, the USF mechanism must be revised so that its valuable purpose is supported by

all telecommunications users, not just those who make traditional wireline long distance calls.

USF is only one of the many reasons why a rewrite of the Telecommunications Act of 1996 is essential. Further legal distinctions between what services constitute "information services" versus "telecommunications services" which once seemed logical now no longer match the real world of practical applications, and further penalize traditional wired users, be they corporate, governmental or residential.

As such, for any number of reasons of which market consolidation, changing technologies and USF support mechanisms that are borne by some but not all users, the laws, rules and regulations of telecommunications are ripe for rewrite. Further, the presence of a new chairman of the FCC, Kevin Martin, a President Bush appointee who is known for his negotiating skills and sometimes pragmatic approach, a new telecom act is anticipated during this current session of Congress.

How these complex issues will be tackled and how the Act will be written to allow for innovations in technology that may be nothing more than a gleam in the eye of smart engineers at Microsoft, Intel, Comcast or General Mills (who knows — in five years you may get your phone in a box with your Cheerios) will be an interesting story to watch over the next few months.

As Bette Davis' character Margot Channing said in the classic 1950 movie *All About Eve*, "Fasten your seatbelts. It's going to be a bumpy ride."

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.