

THE DAILY RECORD

LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Looking ahead ... to Telecom's future

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Last week, I spoke with someone who asked me to forecast the telecommunications future 20 years out. In exchange for my comments, there might be a pending invitation to speak at the University of Southern California. Somehow visions of palm trees and warm ocean breezes in January danced through my head, and thus, I've been contemplating this challenge all week.

Although I like a challenge, I think that rather than take the risk of prognosticating out that far, I'd be happier to take the lesser leap of forecasting/guessing the telecommunications regulatory future no more than a decade out. Given the universal acceptance of Moore's Law (computer horsepower doubling every 18 months), in the unlikely event that I'm right, my vision of the future 10 years down the road is likely to be proven right or wrong in fewer than five years.

With that kind of disclaimer, here's my response to my potential new best friend at USC who raised the issue in the first place.

When the Telecommunications Act of 1996 was being drafted, the intention of Congress was to guide the way from the age of a regulated monopoly (at least on the local level) into one that was largely unregulated. As I've said here previously, one of the goals of this act was to create real competition on the local level, something which had not been conceivable on the local level when the Bell system was divested in 1983.

While the hope was that by creating local competition, the surviving Baby Bells would compete with each other in their respective home territories, what happened instead was that rather than compete, they simply acquired each other, thus further reducing consumer options for local services.

This trend has continued through the present with only

TELECOM LAW



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two (from seven original) Baby Bells surviving — Verizon and SBC.

Even if we assume the drafters of the Telecommunications Act had the loftiest of intentions, the biggest problem with the decade-old legislation is that due to circumstances beyond the control of any legislative body or regulatory agency, telecommunications technology has morphed in directions that none of the act's drafters envisioned. The regulatory framework of telecommunications today simply doesn't match the technology.

It's the ultimate square peg in a round hole problem: Distinctions that are perfectly logical legally are nothing short of wildly arbitrary when applied to technology.

As a single example, the distinction between what is a telecommunications service versus what is an information service perhaps made sense at one time. But as technology converges, and as cable providers offer telephone service and telephone companies offer television-like programming, and both offer Internet, these distinctions move from the realm of the arbitrary to that of the ridiculous.

Further complicating the matter is the fact that how such services are classified determines how they are regulated and what additional taxes, fees, and surcharges are applicable. Given that taxes, fees and surcharges can have as much as a 20 percent impact on a monthly bill, this distinction has driven a great number of technology decisions across the enterprise sector.

As such, it is my hope that the next iteration of the Telecommunications Act (depending on the makeup of Congress, the FCC, the White House, and the size of lobbyists' coffers) will be drafted and signed in 2007. It is my hope that whenever it becomes the law of the land it will be structured with teeth to protect consumer interests while also having the regulatory flexibility to allow for imagined

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and unimaginable technological innovation and evolution. If this is so, the laws and the technologies can adapt to the ever changing world in the same direction in the future.

As many people have noticed over the past few months, with the advent of the mega-mergers in the telecommunications industry, the options for providers of services, whether they are local, long distance, wireless or Internet, have shrunk. It's an oft-repeated quip that almost 25 years after the divestiture of the Bell System, market forces, in combination with regulations — or lack thereof on the federal level — have essentially put Humpty Dumpty back together again.

It is my belief that without intervening governmental authority, in large measure, we'll be back to a single phone company with limited incentive to bring innovation and creativity to the market — particularly to the traditionally underserved in rural and economically disadvantaged areas.

Within the next decade, I think the distinctions between wired and wireless services will be blurred with calls automatically and seamlessly following the intended recipient from wired to wireless phone. I think the distinctions about who provides content and how it is delivered will also largely have dissolved. Essentially, anyone with a large enough pipe (and most entities and people will have them)

will be able to both deliver and receive content, whatever form it's in.

Additionally, and perhaps coolest of all, will be the widespread deployment of broadband over powerline (BPL) systems, not so much for service to rural and difficult-to-serve areas, but within the confines of buildings and homes. Devices that can be programmed remotely through the phone will include not only HVAC systems but also appliances, so that the right lights will be on when you get home or the temperature is just right after you return from a cold and soggy commute.

The technological advantages of BPL have incredible potential, which the FCC and the state public service commissions throughout the country are starting to recognize. Any forward-looking telecommunications plan **must** — at a minimum — consider how BPL technologies will change the way we manage our daily lives, both in the workplace and at home.

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.