Missed Connections: One Failed Attempt to Ease Restrictions on Bell Operating Companies

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Introduction

The American public is being tantalized by the promise of being able to use the television to call up movies and other forms of entertainment on demand in the near future. Through the television, the consumer will also be able to access a spectrum of on-line information or benefit from consumer services, all without ever leaving home.(note 1) Government officials have heralded communications advances as an opportunity to foster economic development, create jobs, improve health care, advance educational goals, and enhance quality of life.(note 2) Businesses are scrambling to diversify and merge with communications entities to secure a share in the developing multimedia market.(note 3)

Everyone seems to want a piece of the evolving information superhighway, but many observers wonder what part competition will play in the new communications structure. Many critics already disagree on what role government should play in promoting and regulating competition among developing and expanding telecommunications industries.(note 4) President Bill Clinton's administration has pushed for legislation to ease regulations which currently restrict telecommunications-service providers, allowing them to participate in further development of an information superhighway.(note 5)

Technological advances and changes in the marketplace, coupled with an outdated regulatory scheme based on restrictions laid down with the divestiture of AT&T, are hindering local telephone companies' opportunities to participate in the telecommunications revolution and compete with other communication-service providers. Lifting regulations will help ensure that local telephone-service providers can competitively participate in advances and remain market players. One piece of legislation overwhelmingly passed by the House of Representatives in the 103d Congress, House Bill 3626, would have eased such restrictions on local telephone companies.(note 6)

Part I of this Note will review how local telephone companies have been regulated since the AT&T divestiture and subsequent judicial actions. Part II will discuss the advantages of a competitive communications marketplace. Part III will examine House Bill 3626 (the Antitrust Reform Act of 1993), which would gradually lift regulations that currently prevent local telephone-service providers from competing in many communications markets. Part IV will look at the benefits of allowing local telephone companies to compete free of current restrictions. This Note concludes that enactment of House Bill 3626 or a significantly similar measure in the next Congress would further the development of the national telecommunications infrastructure, benefit consumers, and allow Bell Operating Companies to protect their business interests by expanding into developing markets.

I.Regulation of Local Telephone Companies Since Divestiture of AT&T

Many analysts mark the AT&T divestiture as the beginning of the current telecommunications revolution. According to telecommunications analyst Blake Bath, "The divestiture has to get a lot of credit for creating the pre-eminent telecommunications market in the world."(note 7) The Supreme Court has recognized the "revolution in telecommunications occasioned by the federal policy of increasing competition in the industry."(note 8) Therefore, any examination of current local and long-distance telephone service regulation must start with at least a surface understanding of the divestiture of AT&T.(note 9)

A.Effect of the Modification of Final Judgment

In *United States v. AT&T*, the United States District Court for the District of Columbia (decree court) ended an antitrust action suit brought by the Department of Justice against AT&T, Western Electric, and Bell Telephone Laboratories by approving a consent decree reached by the parties.(note 10) The consent decree mandated the divestiture of AT&T and the reorganization of local telephone service into Regional Bell Operating Companies (BOCs or Baby Bells) which oversee local operating companies.(note 11) This decision and subsequent actions have become commonly known as the Modification of Final Judgment (MFJ).(note 12) Before the breakup, AT&T, which had built a nationwide telecommunications network as a regulated monopoly, was restricted to offering common carrier telephone services.(note 13) In *AT&T*, the court found that divestiture was necessary because AT&T had used its monopoly control over local markets to preclude competition in those markets.(note 14)

The MFJ granted a monopoly over local service areas to the newly-formed operating companies, provided they gave equal access to all telephone service carriers, especially AT&T's competitors.(note 15) Other terms of the MFJ imposed line-of-business restrictions, which limited the range of services the Baby Bells could provide, specifically prohibiting the operating companies from engaging in "(1) the provision of interexchange [or *inter*LATA] services;(note 16) (2) the provision of information services; (3) the manufacture of telecommunications products and customer premises equipment; (4) the marketing of such equipment and (5) directory advertising."(note 17) The court justified the restrictions as necessary to prevent the newly formed operating companies from subsidizing prices in competitive markets with profits earned in monopoly markets and from hindering competitors by restricting access.(note 18)

The judgment included a provision for removing restrictions on the BOCs "upon a showing by the petitioning BOC that there is no substantial possibility that it could use its monopoly power to impede competition in the market it seeks to enter,"(note 19) putting a substantial burden of proof on the BOC. The decision also included a provision for judicial review of the MFJ by the decree court every three years to consider lifting restrictions on BOCs.(note 20)

The AT&T reorganization plan divided the country into 164 exchange areas, or LATAs.(note 21) Each local operating company includes several LATAs, but is only allowed to provide transmissions within a single LATA, providing what is commonly known as local telephone service.(note 22) Local telephone companies derive their revenue by providing *intra*LATA services.(note 23) When a call is placed from one LATA to another, even if it is within the same BOC region, the call must be transmitted to an interexchange carrier, such as AT&T or one of its long-distance competitors, and be transmitted across LATA boundaries and picked up by the BOC serving that LATA.(note 24) Thus, the MFJ prevents Baby Bells from offering any interexchange transmissions across LATA boundaries-whether it is a telephone conversation or a stream of information-even within their own region.

B.Attempts to Lift Restrictions on BOCs

In 1987, as part of the first three-year review of the MFJ, the Department of Justice recommended that the court modify the *inter*LATA services restriction and remove other line-of-business restrictions. "[S]ubsequent technological, economic and regulatory changes have sufficiently reduced the competitive danger of BOC entry into any of these fields," said one report at the time.(note 25) The court maintained manufacturing and *inter*LATA restrictions, but lifted the catch-all restriction and modified the information-services ban.(note 26) The court of appeals reversed the decision to remove the information-services restriction, and maintained that the decree court should have analyzed the recommendation under a "public interest" standard implicit in Section VII of the decree,(note 27) rather than under the monopoly power test detailed in Section VIII(C).(note 28) In July 1991, the decree court issued an order staying the information-services ban, pending appeal.(note 29) The court of appeals affirmed the modification lifting the ban, explaining that the public interest standard included "probable effects of competition within the relevant market."(note 30)

The *AT&T* case and subsequent reviews, appeals, and modifications have created a mishmash of opinions, regulations, and standards for review. A search of the appellate history of the original case outlining the MFJ restrictions yields more than 100 subsequent actions. Trying to make any sense of current telecommunications and telephone service policy from these scattered sources is burdensome, if not impossible.

At present, BOCs are free to offer information services, but it is unclear whether they can transport those services across LATA lines. The bans on manufacturing and offering long-distance services still stand, with little clarity on which standards should be used to decide whether to lift these restrictions. For now, BOCs want a modification allowing them to seek entry into a new market. But they must wait for the next triennial review and then make their case for lifting a restriction.

II.Benefits of Competition in the Telecommunications Industry

There seems to be agreement that, for most industries, competition in some form is good for consumers and for furthering public policy.(note 31) The telecommunications industry is no different. Analysis of the effects of the AT&T divestiture shows that allowing BOCs to compete in telecommunications markets will help prevent any one entity from controlling too much of the market share, keep costs for communications services low, spur technological innovations, and further public policy.

A.Market Share

Competition helps prevent any one service from holding too much power over the telecommunications market. Immediately after divestiture in 1985, AT&T enjoyed 80 percent of the market share for long-distance services.(note 32) Eight years later, AT&T's share had dropped to 60 percent due to competition by some 400 competing interexchange carriers.(note 33) The number of carriers serving more than forty-five states has grown from only two to nine.(note 34)

As Baby Bells enter other markets, they bring additional competition to existing industries as the national information network is constructed. "[P]romoting competition . . . will prevent the kind of single-behemoth providers that the regulators are concerned about," says Suzanne Tichenor, a vice president of the Washington-based Council on Competitiveness.(note 35)

B.Infrastructure Development

Whatever the effects of the AT&T divestiture, the long-distance service market has grown under a competitive scheme, in both financial and technical terms. The total long-distance market has grown from $38.8 billion in 1984 to $59.4 billion in 1993.(note 36) Increased competition and rapid technological advances have forced AT&T to become more responsive to consumer demands.(note 37) Before the break-up, AT&T had little incentive to introduce products invented by its research division.(note 38) In 1985, for example, AT&T decided not to build a nationwide fiber-optic system. A competitor, Sprint, soon started running advertisements highlighting the clarity of Sprint's fiber-optic lines. Within a month, AT&T reevaluated its decision and, today, its fiber-optic network has grown from several hundred miles to more than 35,000 miles.(note 39) The variety of equipment and services available to customers has dramatically expanded since deregulation.(note 40) Many analysts cite the divestiture's effect on AT&T as an indication that more competition among all telecommunications providers will eventually lead to even better service and more innovations for consumers.(note 41)

C.Keeping Costs Low

The common wisdom is that extensive regulation keeps telephone rates low.(note 42) Yet, long-distance telephone rates have decreased by approximately 50 percent in real dollars since divestiture.(note 43) Before divestiture, the price of a ten-minute daytime call from Chicago to Atlanta, in 1993 dollars, was $6.28; after increased competition, the same call costs only $2.30.(note 44) These decreased costs to consumers occurred while the total long-distance market grew from $38.8 billion in 1984 to $59.4 billion in 1992 and while total traffic volume grew from 167 billion minutes to 212 billion minutes.(note 45) Increased competition in other telecommunications markets can be expected to achieve the same positive results as long-distance competition for all parties.(note 46) BOC-backed studies say competition in the long-distance market could save consumers $30 billion in phone rates over a decade.(note 47)

D.Furthering Public Policy

The Clinton administration has made the development of the National Information Infrastructure (NII) to provide widespread telecommunications services a top priority.(note 48) The administration has proposed administrative and legislative reform of telecommunications policy based on the following principles: (1) encouraging investment in the NII; (2) promoting and protecting competition; 3) providing open access to the NII by consumers and service providers; (4) ensuring universal service; and (5) ensuring a regulatory framework flexible enough to handle rapid market and technological changes within the telecommunications industry.(note 49)

The administration has acknowledged that current regulations may harm consumers by impeding competition and discouraging investment in the NII. To promote growth of the NII, the administration has supported legislation that would eliminate burdensome regulations and increase competition both by companies already in the telecommunications market and those seeking entry.(note 50)

III. H.R. 3626: A Proposal to Lift MFJ Restrictions

On November 22, 1993, Rep. Jack Brooks (D-Tex.) and Rep. John Dingell (D-Mich.) introduced H.R. 3626 (Brooks-Dingell bill or Antitrust Reform Act) in the House of Representatives, a move to supersede the Modification of Final Judgment in *AT&T*.(note 51) In introducing the bill, Rep. Dingell said enactment would allow Congress to "reclaim its rightful role in formulating telecommunications policy."(note 52) The bill sets forth a series of incremental dates after which BOCs may petition the Attorney General and the FCC for permission to provide services restricted by MFJ provisions.(note 53)

The Brooks-Dingell bill was not the only telecommunications legislation passed by the House of Representatives during the first session of 1993. House Telecommunication Subcommittee Chairman Ed Markey (D-Mass.) and Rep. Jack Fields (R-Tex.) sponsored House Bill 3636, which would have required that local phone companies allow competitors, such as cable companies, to have access to their telephone lines.(note 54) The Brooks-Dingell bill, by contrast, was focused on issues presented by MFJ restrictions.(note 55)

A. Time Frame for Review

The Brooks-Dingell bill allows BOCs to request authorization to provide services in noncompetitive markets, offer interexchange telecom-munications services incidental to another BOC service, and provide interstate, interexchange telecommunications services that originate and terminate within the BOC's service area immediately upon enactment.(note 56) The BOCs may request authorization to provide interexchange services by acquiring and reselling those services eighteen months after enactment.(note 57) Sixty months after enactment, the BOCs could ask permission to provide any interstate telecommunications services.(note 58)

B.Standards for Review

Before a BOC could offer expanded services, the Attorney General and the FCC would publish an application for authorization in the *Federal Register* within ten days of receipt. Interested parties could then comment within forty-five days.(note 59) The bill requires the Attorney General and the FCC to consult with each other before issuing separate written determinations, based on clear and convincing evidence of their decision to grant, or not grant, interstate service.(note 60) The Attorney General is to approve applications only upon finding "that there is no substantial possibility that such company or its affiliates could use monopoly power to impede competition in the market such company seeks to enter."(note 61) This is the standard currently used, at least in part, by the decree court.(note 62)

The bill allows the FCC to approve the BOC's proposals to the extent that granting permission to enter new communications markets would be consistent with public interest, convenience, and necessity.(note 63) In making such a determination, the FCC would consider whether approval would: (1) reduce rates in the market the BOC seeks to enter; (2) increase rates for exchange service; (3) further delivery of new products and services to consumers; (4) permit collusion between BOCs; (5) result in concentration among service providers to the detriment of consumers; and (6) whether regulations will preclude the applicant from engaging in coercive practices in the market that the applicant seeks to enter.(note 64) Authorization would be granted to the extent that the FCC and the Attorney General both approve.(note 65) The bill requires that final opinions must be published in the *Federal Register*, which would remain final unless vacated or reversed by judicial review.(note 66)

Within forty-five days of a determination on the authorization request, the BOC or "any person who might be injured in its business or its property as a result of the determination" could institute a civil action in the Court of Appeals for the D.C. Circuit against the FCC or the Department of Justice for review of the determination.(note 67) The bill also includes a provision precluding a BOC with a monopoly in any exchange-service market from bundling services to lessen competition in any market.(note 68)

C. Reaction to the Bill

The Clinton administration announced its support for the bill,(note 69) and urged Congress to enact it quickly and with few changes.(note 70) FCC Chairman Reed Hundt also endorsed the measure, saying, "[C]ompetition in this market can be expected to produce the same positive results for consumers that we have seen in other markets for telecommunications services that have undergone the transformation from monopoly to competition: technological and service innovation, lower prices, and responsiveness to consumer tastes."(note 71)

Long-distance carriers lobbied against the effort and placed advertisements with the slogan "Tell the Bells to mind their own business" in newspapers and magazines.(note 72) Several consumer groups also voiced concerns about whether the measure would adequately protect consumers from anticompetitive practices by BOCs.(note 73)

The House of Representatives passed House Bill 3626 on June 28, 1994, by a lopsided vote of 423-5.(note 74) Assistant Secretary of Commerce Larry Irving said support for the bill "crossed every possible ideological and party line, indicating that it's pretty good legislation."(note 75)

Telecommunications reform did not fare as well in the Senate. The Senate Commerce, Science, and Transportation Committee less enthusiastically approved a telecommunications reform bill (Senate Bill 1822), sponsored by Sen. Ernest Hollings (D-S.C.) on August 11, 1994.(note 76) The BOCs were displeased that the Senate bill set a higher standard for their entry into the long-distance market by requiring that they face substantial competition in their local telephone market before they can offer long-distance services.(note 77) Sen. Hollings pronounced the measure dead on September 24, saying opposition by the BOCs and other factors would have made it impossible to pass the bill before Congress adjourned.(note 78)

IV.Benefits of Easing Interexchange Restrictions on Local Exchange Companies

Local telephone service has been described as a "natural monopoly" or an industry where "it is less costly for a single firm to serve the market than it is for two or more firms [to compete]."(note 79) Some observers have concluded that local telephone service is not a natural monopoly but a regulated one, and that government should remove the artificial legal barriers that perpetuate it.(note 80) In addition, technological changes now make it desirable for local telephone companies to provide interexchange services not contemplated when the MFJ restrictions were put into place.

A. Local Exchange Is Becoming More Competitive

While BOCs currently hold virtually the entire market share for local-exchange services,(note 81) technological advances are introducing formidable competition into these services. Capital costs to enter the local telephone service business would drop as telecommunications providers expand their operating bases after the bill is passed.(note 82)

Most cable television companies are already installing fiber-optic transmission networks to enable their systems to carry new services, including high-definition television and computer linkages.(note 83) Such fiber-optic networks-which are capable of carrying voice transmissions-give cable companies an opportunity to offer *inter*LATA competition, either by leasing facilities or by providing direct services.(note 84) Major cable companies, including TCI and Time Warner, have jointly invested in Teleport Communications Group, a communications provider that will let cable operators use their combined eighty million coaxial cables to offer local telephone service.(note 85) Other alternative local service providers have introduced fiber-optic systems in highly populated areas to create metropolitan area networks (MANs) intended to bypass Baby Bell local access systems.(note 86)

Improving digital technology is enabling cellular phone systems to greatly expand their capacity, which will eventually allow them to offer local telephone services on a much larger scale.(note 87) Cellular telephone systems already have approximately fourteen million customers,(note 88) and industry estimates predict that number could grow to sixty million by the year 2000.(note 89) Development of a radio-based personal communications system (PCS), for which the federal government will auction two licenses, will enlarge local telephone service competition even further.(note 90) Even current long-distance-service providers are investigating ways to move into the *inter*LATA market. In January 1994, MCI announced plans to spend $20 billion over a six-year period to develop an electronic information network that will include local exchange service.(note 91) AT&T is the only long-distance provider prohibited by the MFJ from entering the local service market,(note 92) leaving open the opportunity for entry in local telephone service by any other long-distance provider.

While local exchange service may not yet be completely competitive, it appears that technological advances will continue to draw business away from the Baby Bells' monopoly. BOCs have already lost up to half the revenues they once received from *intra*LATA service now carried by competitors.(note 93) House Bill 3626 contemplates the time when technological advances cause local service companies to lose their predominant share of the local exchange market and provides a mechanism for lifting regulations when that happens.

B. BOCs Should Protect Their Financial Position

Increased competition from alternative local service providers and regulated rate cuts have reduced the Baby Bells' average annual revenue growth to 2.6 percent in the last 4 years, compared with 6.5 percent from 1984 through 1988.(note 94) To finance expansion efforts, some local operating companies have cut payrolls.(note 95) Stephen Gutkowski of Moody's Investors Service says, "there is a concern that the Baby Bells' financial position could be impacted by the need to finance . . . [expansion] with debt capital."(note 96)

Lifting MFJ restrictions would allow BOCs to seek entry into potentially profitable markets as telecommunications technology develops. By doing so, they can realize a fair profit, which enables them to reinvest in research and development without paring employees or borrowing capital.

C. Eased Restrictions Would Facilitate Agency Review

Since the divestiture of AT&T, national telephone system policy has been under the exclusive control of the decree court, with Judge Harold H. Greene guiding decisions about how to interpret the MFJ. Congress never intended the decree court to usurp power over determining communications policy.(note 97) The Clinton administration wants "to create a stable regulatory environment" for telecommunications, not one subject to change by a new court ruling every three years.(note 98)

The companies affected by the MFJ restrictions apparently would welcome freedom from court jurisdiction.(note 99) The reform called for in House Bill 3626 would, in the words of Assistant Attorney General Anne K. Bingaman, "move telecommunications policy out of the courtroom and into the hands of the two expert agencies charged with protecting the public interest in telecommunications [the FCC] and competition [the Department of Justice]."(note 100) The bill would also allow a more consolidated and timely approach for handling rapidly changing market conditions. The review process set forth in House Bill 3626 ensures that regulations would preclude local exchange companies from improperly entering restricted markets. Because BOCs will not have to wait out a judicial review process, they will not be excluded from evolving telecommunications opportunities any longer than is beneficial or necessary.

D. Reform Would Allow BOCs to Contribute to Infrastructure Development

The Administration maintains that the NII should be developed by the private sector and driven by increased competition following eased government regulations. The BOCs are uniquely suited to contribute to this development. The local telephone companies have already built an infrastructure that reaches into nearly every home in the United States. By gaining the ability to compete in other markets, Baby Bells could eventually reduce the total costs of constructing the NII by building on the existing infrastructure.(note 101) Preventing telephone companies from cooperating or competing with other NII participants could slow the process of building a system.

E.Competitive Concerns Are Protected

In upholding the lower court ruling allowing BOCs to own information services, the Court of Appeals for the D.C. Circuit noted the types of companies against which Baby Bells would compete. "They include GE, AT&T, . . . IBM, and Sears with their Prodigy service, Merrill-Lynch, ITT, Mead Corporation, American Express, Citicorp, Chase Manhattan Bank, and a variety of foreign and independent telephone companies. . . . These firms are not pushovers."(note 102) When entering any new telecommunications market, Baby Bells are going to have to compete with large, well-financed corporations. The likelihood that a BOC could drive such a competitor out of the market is slim.

In addition, the Brooks-Dingell bill would have adequately protected competitive concerns by setting forth standards for review. The Attorney General is charged with approving only those applications where there is "no substantial possibility `the BOC' could use monopoly power to impede competition."(note 103) Any party who, as a result of the ruling, suffers an injury to its business or property, has an opportunity for judicial review.(note 104) By including such safeguards, the Brooks-Dingell bill ensures that BOCs cannot enter markets where they would have an opportunity to use their local telephone monopoly to a detrimental, anticompetitive effect.

Conclusion

Provisions in House Bill 3626 to lift MFJ restrictions on BOCs would have allowed local telephone companies to effectively compete in the growing telecommunications industry without compromising concerns about protecting American consumers from anticompetitive behavior. Enactment of a similar measure in the next Congress would further the development of the NII and increase competition for communications services, resulting in lower prices and better service for consumers.

House Bill 3626 would have given the FCC and the Attorney General the power to review any authorizations for antitrust and public policy concerns, fully empowering them to deny authorization to requests that do not satisfy these standards. Further, the bill would have taken control of telecommunications policy away from the decree court's triennial review and appeal process, and replaced it with a more efficient and immediate review by agencies qualified to consider antitrust and communications policy issues. Congress should use House Bill 3626 as a model when proposing telecommunications reform legislation in the next session.

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Notes

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1. *See generally* Joshua Quittner, *Online to a Revolution*, Newsday, July 18, 1993, at 4; Jolie Solomon, *Big Brother's Holding Company*, Newsweek, Oct. 25, 1993, at 38; *The New Communications Era*, S.F. Chron., Oct. 14, 1993, at B1; Mortimer B. Zuckerman, *Welcome to Communicopia*, U.S. News & World Rep., Nov. 1, 1993, at 116. Return to text

2. *See* National Telecomm. and Info. Admin., U.S. Dep't of Commerce, The NTIA Infrastructure Report: Telecommunications in the Age of Information 34 (1991) [hereinafter Infrastructure Report]. Return to text

3. Kent Gibbons, *A War on Hold: Newspapers, Phone Companies Edge Closer to Info-Truce*, Wash. Times, June 6, 1993, at A12; William Glaberson, *The Baby Bells Are Finding an Unlikely Ally in the Information-Services War: Newspapers*, N.Y. Times, July 5, 1993, 1, at 41. For a detailed discussion of recent mergers and alliances, see Andrew C. Barrett, *Shifting Foundations: The Regulation of Telecommunications in an Era of Change*, 46 Fed. Comm. L.J. 39 (1993). Return to text

4. *See* Ronald E. Yates, *Regulation Clogs Information Superhighway*, Chi. Trib., Jan. 3, 1994, 4, at 1. Return to text

5. National Information Infrastructure: Agenda for Action, 58 Fed. Reg. 49,025 (1993) [hereinafter Agenda for Action]. Agenda for Action describes the administration's intended role for government in promoting and developing a telecommunications and information infrastructure. *See also* Debra Gersh Hernandez, *Telecommunications and the Clinton Administration*, Editor & Publisher, Jan. 15, 1994, at 11. Return to text

6. H.R. 3626, 103d Cong., 1st Ses. (1993); *see* William J. Eaton & Leslie Helm, *House Rewrites Phone, Cable Rules*, L.A. Times, June 29, 1994, at A1; Carolyn Lochhead, *Historic Reform of Telephone, Cable OKd; House Votes by Landslide to Boost Telecommunications Competition*, S.F. Chron., June 29, 1994, at A1; *Vote Shows Wide Support*, Comm. Daily, June 29, 1994, at 1. Return to text

7. Paul Carranza & Colleen M. McElroy, *A Decade of Revolution in Telecommunications; Breakup of AT&T Brought Lower Prices, New Services, Vast Potential*, Buff. News, Jan. 1, 1994, at A13. Return to text

8. Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 358 (1986). Return to text

9. For more detailed sources concerning the history of the divestiture action, see generally Steve Coll, The Deal of the Century: The Breakup of AT&T (1986); Peter Temin, The Fall of the Bell System (1987). Return to text

10. *AT&T*, 552 F. Supp. 131, 178-79 (D.D.C. 1982), *aff'd sub nom.*, Maryland v. United States, 460 U.S. 1001 (1983). Return to text

11. *Id.* at 141. Seven BOCs manage the individual local telephone systems. The regional companies and their geographical areas include: NYNEX Corp. (New York and New England), Bell Atlantic Corp. (Mid-Atlantic), BellSouth Corp. (South), Ameritech (Midwest), Southwestern Bell Corp. (Southwest), and PacTel (California and Nevada). Return to text

12. Richard A. Hindman, *The Diversity Principle and the MFJ Information Services Restriction: Applying Time-Worn First Amendment Assumptions to New Technologies*, 38 Cath. U. L. Rev. 471, 472 n.3 (1989). Return to text

13. *Id.* at 497. A common carrier "means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio." 47 U.S.C. 153(h) (1988). Return to text

14. *AT&T*, 552 F. Supp. at 161-62. Return to text

15. *Id.* at 142-43, 227. Return to text

16. To avoid confusion, the court adopted the term LATA, or "local access transport area," in place of "exchange"

when referring to the MFJ. Return to text

17. *AT&T*, 552 F. Supp. at 186 (footnote added). Return to text

18. *Id.* at 187. Return to text

19. *Id.* at 231. Return to text

20. *Id.* at 195. Return to text

21. Christy Cornell Kunin, *Unilateral Exculpation in the Era of Competitive Telecommunications*, 41 Cath. U. L. Rev. 907, 917 (1993). Return to text

22. United States v. Western Elec. Co., 569 F. Supp. 990, 994-95 (D.D.C. 1983). Return to text

23. Kunin, *supra* note 21, at 917. Return to text

24. *Id.* Return to text

25. *See* Report and Recommendations of the United States Concerning the Line of Business Restrictions Imposed on the Bell Operating Companies by the Modification of Final Judgment at 6-7, United States v. Western Elec. Co., 673 F. Supp. 525 (D.D.C. 1987) (No. 81-0192), *aff'd in part and rev'd and remanded in part*, 900 F.2d 283 (D.C. Cir.) (per curiam), *cert. denied sub nom.*, MCI Comm. Corp. v. United States, 498 U.S. 911 (1990). Return to text

26. *Id.* at 540-562. Return to text

27. United States v. AT&T, 552 F. Supp. 131, 186 (D.D.C. 1982) (describing the "public interest" standard applied by the court), *aff'd sub nom.*, Maryland v. United States, 460 U.S. 1001 (1983). Return to text

28. *See id.* at 231. Return to text

29. United States v. Western Elec. Co., 767 F. Supp. 308 (D.D.C. 1991). Return to text

30. United States v. Western Elec. Co., 993 F.2d 1572, 1579 (D.C. Cir. 1993). Return to text

31. *See* Temin, *supra* note 9, at 344. Return to text

32. *Hearings on H.R. 3626 Before the Subcomm. on Telecommunications and Finance Comm. on Energy and Commerce*, 103d Cong., 2nd Sess. 184 (1994) [hereinafter Hundt testimony] (testimony of Reed Hundt, Chairman, FCC). Return to text

33. *Id.* Other major long-distance service providers include MCI, with a 20% share of the market, and Sprint, which holds a 10% share. *See also* Carranza & McElroy, *supra* note 7, at A13. Return to text

34. Hundt testimony, *supra* note 32, at 184. Return to text

35. Yates, *supra* note 4, 4, at 1. Return to text

36. Hundt testimony, *supra* note 32, at 193. Return to text

37. Carranza & McElroy, *supra* note 7, at A13. Return to text

38. Aaron Zitner, *10 Years Later*, *Bell's Breakup Impact Grows*, Boston Globe, Dec. 27, 1993, at 38. Return to text

39. *Id.* Return to text

40. *Hearings on H.R. 3626 Before the Subcomm. on Telecommunications and Finance Comm. on Energy and Commerce*, 103d Cong., 2d Sess. 145 (1994) [hereinafter Irving testimony] (testimony of Larry Irving, Assistant Secretary for Communications and Information, U.S. Dep't of Commerce). Return to text

41. Guy Halverson, *Callers Win From Leaps in Telephone Technology*, Christian Sci. Monitor, Jan. 7, 1994, at 9. Return to text

42. *Id.* Return to text

43. *Hearings on H.R. 3626 Before the Subcomm. on Telecommunications and Finance Comm. on Energy and Commerce*, 103d Cong. 2d Sess. 135 (1994) [hereinafter Bingaman testimony] (testimony of Anne K. Bingaman, Assis't Attorney General, Antitrust Div., U.S. Dep't of Commerce). Return to text

44. Hundt testimony, *supra* note 32, at 193-94. Return to text

45. *Id.* at 194. Return to text

46. *Id.* Return to text

47. Eaton & Helm, *supra* note 6, at A16. Return to text

48. Laurent Belsie, *Gore Supports Move to End Information Monopolies*, Christian Sci. Monitor, Dec. 23, 1993, at 9. Return to text

49. Administration White Paper on Communications Act Reforms 1 (Jan. 27, 1994). Return to text

50. *Id.* Return to text

51. H.R. 3626, 103d Cong., 1st Sess. (1993). The bill has two titles. Title I, the Antitrust Reform Act of 1993, concerns the supersession of MFJ restrictions and is the subject of this Note. Title II, the Communications Reform Act of 1993, concerns the regulation of manufacturing, alarm services, and electronic publishing by BOCs. Return to text

52. 139 Cong. Rec. H10,911 (daily ed. Nov. 23, 1993) (statement of Rep. Dingell). Return to text

53. H.R. 3626, 103d Cong., 1st Sess. (1993). Rep. Dingell was involved in earlier congressional efforts to lift MFJ restrictions. *See Dingell Joins Bipartisan Group in Endorsing Free-RHC Effort*, Comm. Daily, July 15, 1988, at 4. One resolution suggested removing the line-of-business restrictions to promote development of a public transportation network and further public policy by improving the capacity of the United States to better compete in the global information and high technology marketplace. H.R. Con. Res. 339, 100th Cong., 2d Sess., 134 Cong. Rec. E2412-13 (1988). Return to text

54. H.R. 3636, 103d Cong., 1st Sess. (1993); *see also* Eaton & Helm, *supra* note 6, at A16. Return to text

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57. *Id.* Return to text

58. *Id.* Return to text

59. *Id.* Return to text

60. *Id.* Return to text

61. *Id.* Return to text

62. *Id.* Return to text

63. *Id.* Return to text

64. *Id.* Return to text

65. *Id.* Return to text

66. *Id.* Return to text

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