

Are You Better Off Today Than You Were Ten Years Ago? Residential Consumers and Telecommunications Reform

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I. INTRODUCTION

Five years ago I asked this question about the Telecommunications Act of 1996 (“1996 Act”) and concluded that most residential consumers would say: *“I am worse off, much worse off. My bills are higher, and the whole mess is a lot more confusing. And I don’t have all those choices that people talked so much about.”*¹

Today, another five years have passed, and it is now ten years after the passage of the 1996 Act. I think on balance that the answer for most consumers is going to be different, in part. They would still say, “The whole mess is totally confusing.” On the other hand, I think consumers are more likely to think that they do have real choices and that, while they may be buying more services, they do have more ways to save money.

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1. Samuel A. Simon, *Are You Better Off Today Than You Were Five Years Ago?*, NEW MILLENNIUM RESEARCH COUNCIL E-ZINE: REFLECTIONS ON THE FIFTH ANNIVERSARY OF THE TELECOMMUNICATIONS ACT, Feb. 2001, <http://newmillenniumresearch.org/archive/simon.pdf>.

The truth about the 1996 Act is that it was an analog bill. The zen of the 1996 Act is radio waves, not digital 1s and 0s. Its core codified the key provision and regiment of the 1984 divestiture order that broke up the original AT&T, known as the *Modification of Final Judgment* (“MFJ”). In other words, the 1996 Act cemented in place structures and rules designed to assure that the analog world of telephone as reorganized by the courts of antitrust remained in place during the transition to a more competitive marketplace.

The world is a very different place now. In 1996, seven Bell companies and GTE were the dominant providers of local service and 90% of all long distance traffic was carried by AT&T, MCI, and Sprint. Today, there are three Bell companies; there is no GTE; Verizon has acquired MCI; and the AT&T parent has been taken over by its SBC offspring. Cable companies are offering Internet and telephony services and local phone companies are offering long distance, Internet, and video services. In addition, the explosion of Wi-Fi and Wi-Max has revolutionized the traditional way of doing business. The Internet and wireless calling plans have made distance and geographic boundaries irrelevant. New and converging technologies have fostered the proliferation of communication options that were not even imagined ten years ago.

This progress in consumer choice and cost savings has been achieved in spite of the 1996 Act, not because of it. Nonetheless, critical gaps remain in areas that require forward thinking and decisive action. As the Chairman of TRAC,² a nonprofit membership organization devoted to promoting and advocating for the interests of residential telecommunications customers, I want to focus on three issues: broadband deployment, accessibility, and consumer protections.

II. BROADBAND DEPLOYMENT

The 1996 Act set a national goal of universal access to advanced telecommunications capability and directed the FCC and each state’s

2. TRAC was founded in 1983. Its mission is to promote and advocate for the interests of residential telecommunications customers. TRAC is a nonprofit, membership organization based in Washington, D.C. and has been conducting studies and publishing charts to aid consumers in choosing the correct and most efficient service for their calling needs for over twenty years. TRAC has advocated on behalf of consumers to such agencies as the Federal Communications Commission (“FCC”) and the Federal Trade Commission (“FTC”) on such issues as spam, broadband deployment, and universal service. Consistent with its role as a consumer advocacy organization, TRAC seeks to keep consumers informed about telephone service rates and industry practices. TRAC staff researches telecommunications issues and publishes *TRACNotes*, a weekly electronic newsletter, as well as rate comparisons to help consumers make informed decisions regarding their long-distance and local phone service options. See http://www.trac.org/about_us/.

telecommunications commission to encourage deployment on a reasonable and timely basis. Ten years later, we can see progress, but we are still a long way from the goal. Broadband—true broadband with speeds of a gigabit or more in *both* directions—can transform lives. For residential consumers, it can provide much more than shopping and entertainment. Broadband can bring better health care, open economic and educational opportunities, promote independent living, and increase democratic participation. If the benefits of true broadband communication are to be enjoyed by all Americans, policymakers must move from debate to reshaping our current policies. New legislation is needed that will factor in the dynamic nature of both technology and industry to promote ubiquitous broadband deployment on a neutral basis. We must learn from the short-sighted approach of 1996 and build in flexibility so that investment and innovation can thrive.

III. CONSUMER PROTECTION

Existing consumer protections should be safeguarded and extended to new technologies in response to the consumer confusion and vulnerability created by the complexity of today's marketplace. It is imperative that there be clear legislative mandates to prevent unfair and unreasonable marketing practices. Slamming and cramming, privacy and advance notification of change in, or termination of service are some of the areas that continue to plague consumers. Truth-in-billing is another good example. Consumers are being lured into plans based on artificially low advertised rates and then presented with inflated bills that include misleading line items and surcharges. Frequently, the surcharges are deceptively characterized as government imposed when in fact they are simply efforts by some companies to recover operating costs. It is widely recognized that recovering operating costs by passing them on to the consumer is a standard business practice. However, these costs should be transparent, accurately reflecting the rates that carriers advertise and the rates on the bills that customers receive, rather than being hidden in obscure and confusing fine print.

In addition, government agencies, like the FCC, and nonprofit consumer organizations, like TRAC, will always have a vital role to play in providing impartial and reliable information to help consumers navigate the increasing number of choices that confront them in this dynamic environment.

IV. ACCESSIBILITY

Groundbreaking as they were, the mandates of Section 255 of the 1996 Act, which make telecommunications services accessible and usable

for people with disabilities, did not go far enough. Those provisions must be extended to cover information services such as new forms of telecommunications relay services and “enhanced mainstream technologies, including paging, text messaging and Internet services [that] have had a liberating effect on the lives of people with disabilities and have opened up new opportunities in and access to employment, education, commerce, entertainment, and government.”³ As the boomer population continues to age, the need for extended coverage will increase. Only reform of our outdated policies can repair these inequities in access.

V. CONCLUSION

The 1996 Act represents the past, while we need to focus on the future. The provisions of the Act were crafted based on an analog telephone system and are not relevant to digital era issues and concerns.

There will always be a need for appropriate government oversight of what is a national strategic asset—the telecommunications infrastructure. However, if there is a lesson of the last ten years, it is that the government should adopt a national policy that will encourage investment in that infrastructure and ubiquitous access to its benefits at an affordable rate and in useable formats. Our nation’s future depends on it.

We also need governmental agencies to provide consumer protections that will ensure that the marketplace works for consumers as well as companies. By re-examining the 1996 Act and revising it based on what we have learned over the past ten years, we will not only accommodate present communications needs, but prepare for unforeseen communications challenges and opportunities. The telecommunications landscape is far too important to the public interest to settle for anything less.

3. *IP-Enabled Services: Impact on Video and Data Services: Hearing Before the Subcomm. on Telecommunications and the Internet of the H. Comm. on Energy and Commerce*, 109th Cong. (2005) (statement of Karen Peltz Strauss, Legal Advisor, Communication Service for the Deaf).