

GENE KIMMELMAN* & MARK COOPER†

The Telecommunications Act of 1996¹ resulted from almost a decade of political struggles between the increasingly powerful local telephone and cable television monopolies, versus long distance, satellite and the growing competitive electronics industry. It was based on the belief in a free market philosophy, which assumes that markets are always efficient and that competition will grow if government gets out of the way. This deregulatory experiment failed because market forces were far too weak to do the job. Consequently, the powerful transmission monopolies scored an enormous victory in 1996, gaining significant deregulation—but they also had to swallow updated consumer protections in the process.

Although proponents may have hoped transmission competition would somehow blossom from the Act, this was never economically plausible and instead consolidation of local telephone and cable companies exploded. The domination of the communications and media spaces by incumbents is as great, if not greater, today than it had been before the Act. The protection of consumers and competition has been weakened by the assault on Title II of the Communications Act and the effort to shift services to the other Titles of the Act that afford fewer protections. As a result, the updated FCC regulatory powers were called upon to police the exploding telecommunications sector dominated by transmission monopolies. Had the Act's proponents recognized the likelihood of massive consolidation, they may have provided antitrust enforcers or the FCC with stronger tools to prevent market abuse as the digital revolution unfolded. But they didn't.

The prematurely deregulated digital communications sector delivers more value to consumers, but that has nothing to do with deregulation; it is entirely a function of new technologies, which would have been deployed under all conditions. Today, the ongoing concentration of power in the hands of dominant cable and telephone based Internet service providers makes the nondiscrimination and consumer protection powers granted to the FCC under the Act critical to promoting fair competition, innovation and affordable access to essential services. So far, enforcement agencies have, at best, struggled to rein in transmission abuses and inflated prices resulting from market concentration in transmission of Internet and video services. Without strong antitrust enforcement and enhanced regulatory intervention,

* Gene Kimmelman is President and CEO of Public Knowledge. In 1996, he was Director of Consumers Union's Washington, DC Office.

† Mark Cooper is Director of Research at the Consumer Federation of America, as he was in 1996. He is also an Adjunct Fellow at Silicon Flatiron, University of Colorado, and a senior fellow at the Institute for Energy and the Environment of Vermont Law School, where he deals with many of these regulatory issues in the only network industry that rivals the telecommunications in importance, the electricity sector.

1. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 47 U.S.C.).

the 96 Telecommunications Act is unlikely to ever produce the economic and social opportunities promised by its proponents.