CATO INSTITUTE BRIEFING PAPERS

A 10-Point Agenda for Comprehensive Telecom Reform

by Adam D. Thierer

No. 63 May 8, 2001

Changing committee chairmanships in Congress and a leadership shakeup at the Federal Communications Commission have once again opened a window of opportunity for comprehensive telecommunications policy reform. While new faces are taking over within Congress and at the FCC, however, old issues continue to dominate the telecom policy landscape.

This is largely due to the fact that, when Congress last attempted to address these matters five years ago by passing the historic Telecommunications Act of 1996, legislators intentionally avoided providing clear deregulatory objectives for the FCC and instead delegated broad and remarkably ambiguous authority to the agency. That left the most important deregulatory decisions to the FCC, and, not surprisingly, the agency did a very poor job of following through with a serious liberalization agenda.

The Telecom Act, with its backward-looking focus on correcting the market problems of a bygone era, has been a failure. Instead of thoroughly clearing out the regulatory deadwood of the past, legislators and regulators have engaged in an effort to rework regulatory paradigms that where outmoded decades ago. In short, it was an analog act for an increasingly digital world. The new leadership in Congress and the FCC should adopt a fresh approach based on deregulation and free markets.

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Introduction

Important personnel changes on Capitol Hill and at the Federal Communications Commission could significantly alter the telecommunications policy landscape in upcoming months and years. New chairmen of the House Commerce Committee, the House Judiciary Committee, and the House Telecommunications Subcommittee have opened the possibility of many old and new communications policy initiatives being acted upon. Meanwhile, the FCC is in the midst of a top-to-bottom leadership shakeup that has given rise to a deregulatory-minded new leader in Chairman Michael Powell. Three of the other five commissioners' seats will be filled shortly.

While new faces are taking over in Congress and at the FCC, however, old issues continue to dominate the telecom policy landscape. That is largely due to the fact that, when Congress last attempted to address these matters five years ago by passing the historic Telecommunications Act of 1996, legislators intentionally avoided providing clear deregulatory objectives for the FCC and instead delegated broad and remarkably ambiguous authority to the agency. That left the most important deregulatory decisions to the FCC, and, not surprisingly, the agency did a very poor job of following through with a serious liberalization agenda.

The Telecom Act was so fundamentally flawed that it is difficult to imagine how even the most deregulatory-minded FCC could have brought about substantive change. Among the statute's most notable flaws:

- The act's authors were *fixated on a local versus long-distance distinction* in the telephone market that is becoming increasingly irrelevant as the two are bundled together as one service.
- The act *placed an unrealistic amount of faith in "open-access" regulation to bring about increased competition*. This did little more, however, than encourage unproductive regulatory arbitrage as smaller resellers came to rely on massively discounted access to existing networks instead of building their own infrastructure to compete against incumbents. It did little to advance the cause of genuine, facilities-based communications competition.
- The act *mandated an unprecedented expansion of universal service subsidies* in an attempt to offer all Americans a growing grab bag of telecom and high-technology entitlements in addition to inexpensive local phone service.
- The act was primarily a wireline bill; it largely *ignored the wireless sector*.
- The act also *ignored the new business models and pricing structures* that were being developed by the wireless and satellite sectors; those models and structures could forever alter the way communications services are offered and priced in America.
- The act provided some broadcast and cable industry deregulation but *left in place many controls on ownership and operations of those sectors*.
- The act also did not significantly alter the manner in which the FCC micromanages the broadcast licensing process. And the act *did nothing to facilitate the more efficient allocation of spectrum* to meet the exploding market demand for wireless services.
- The act all but *ignored the significance of the emergence of the Internet*, except for a troubling effort to censor the Net through the Communications Decency Act, which was eventually found unconstitutional by the courts.
- The act *did not anticipate the blossoming of the broadband services marketplace* and the radical increase in demand for high-speed Internet access.
- Finally, and perhaps most important, the authors of the Telecom Act *failed to appreciate the reality and speed of both technological convergence and technological obsolescence*. The waves of creative destruction that have swept through this indus-

try in the wake of the act's passage have made much of the act irrelevant or counterproductive. Nonetheless, the act's outdated market distinctions and segregations remain firmly entrenched in law.

In short, the Telecommunications Act of 1996 was an analog act for an increasingly digital world. It reflected the backward-looking fears and concerns of policymakers obsessed with solving the market problems of a bygone era. Instead of thoroughly clearing out the regulatory deadwood of the past, legislators and regulators have engaged in an effort to rework regulatory paradigms that where outmoded decades ago.

Regardless of who is to blame for the current regulatory quagmire, congressional lawmakers and FCC officials must now be willing to admit that the Telecom Act was a failure and that fresh thinking is needed to break the current regulatory logjam. The following 10 policy objectives, ranked in priority order, should serve as their new roadmap to the long-standing goal of a more competitive and deregulated communications marketplace: priority 1: repeal marketplace quarantines, priority 2: end regulatory asymmetry, priority 3: contain the forced-access visrus, priority 4: pursue spectrum reform and privatization, priority 5: reform and devolve universal service and the "E-Rate," priority 6: eliminate the "public interest" standard, priority 7: end "regulatory extortion" and antitrust abuses, priority 8: end the broadcast and Internet censorship crusade, priority 9: clean up the telecom industry tax mess, and priority 10: undertake sweeping FCC reform and devise a closure plan.

As the Appendix to this paper makes clear, a surprisingly large body of academic evidence supports this blueprint for reform. Nonetheless, the outdated policies and priorities of the past remain firmly entrenched within Congress and at the FCC. To correct this, policymakers should undertake an ambitious reform agenda governed by this paper's 10 recommendations.

Priority 1: Repeal Marketplace Quarantines

Although the Telecommunications Act of 1996 took some limited steps toward market liberalization, the pace of deregulation remains much too timid. Regulators appear unwilling to let go of the reins of power and see what happens. Previous deregulatory initiatives were carried out in a "cold-turkey" fashion, with date-certain deregulatory timetables and a rapid sunsetting of agency rules and market restrictions. That worked to the advantage of consumers who were almost immediately provided more options, better service, and lower prices. In a similar vein, Congress and the FCC must take steps to speed up the process of deregulation of the communications sector.

To realize that objective, Congress and the FCC should begin by eliminating marketplace quarantines that continue to shackle industry players. For example, all remaining restrictions on local telephone exchange carriers should be phased out by a date certain, and antitrust laws can govern market power concerns in the near term. Wireless spectrum ownership caps and cable and broadcast industry ownership restrictions should also be eliminated. And the many remaining restrictions on foreign ownership of American telecommunications carriers should be lifted to encourage competition and investment from global players.

FCC officials should also make better use of the forbearance authority they were granted under section 401 of the Telecom Act, which allows them to refrain from applying old or new regulations to carriers if doing so does not benefit consumers. Regrettably, the activist-minded FCC of recent years has refused to use this deregulatory power in any meaningful way. Section 402 of the Telecom Act also commands the FCC to undertake a biennial review of all FCC regulations to determine what rules are no longer needed. Again, the FCC has chosen not to use this deregulatory tool constructively but rather to

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engage in pro forma reviews that have largely justified almost all ongoing FCC regulatory activities. The new FCC should use this tool to help conduct a thorough, top-to-bottom housecleaning of the agency's rulebooks.

To guide these efforts, congressional policymakers and FCC officials should start by adopting a new pro-deregulatory ethic that can be stated as follows: *Individuals and entities should be free to create and offer to the public any technological good or communications service they want, whenever they want, however they want, and on whatever terms they and their customers find mutually agreeable.* There is no longer any reason to govern the telecommunications marketplace differently from any other major American industry sector.

Priority 2: End Regulatory Asymmetry

Perhaps the most problematic policy issue now facing the FCC is the differing regulatory structures and standards that govern formerly distinct industry sectors. Within the market, few actors continue to refer to themselves as "cable companies," "telephone providers," "cellular firms," or "broadcasters." The increasing reality of technological convergence means that those formerly distinct industry sectors and companies are now integrating and searching for ways to offer consumers a bundled set of communications services under a single brand name.

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Despite that, FCC regulations are stuck in a regulatory time warp that lags behind current market realities by several decades. For example, the agency is structured along rigid sectoral lines with different bureaus overseeing specific industries. Those bureaus include the Common Carrier Bureau, the Cable Bureau, the Wireless Bureau, the Mass Media bureau, and the International Bureau. Those bureaus were spawned by the Communications Act of 1934 and subsequent statutes and regulations, which carved the telecom world into administratively neat legal "titles," such as Title II (for telephony) and Title VI (for cable services) even though telephone and cable carriers are both striving to provide essentially the same service today. Regrettably, the Telecommunications Act of 1996 did nothing to alter the fundamental nature of those increasingly irrelevant and artificial legal distinctions.

That means that the FCC is currently regulating apples as apples, oranges as oranges, and bananas as bananas, when everyone is trying to provide consumers a mixed fruit salad of communications services. Again, the ultimate goal from the industry's perspective is to provide a bundled, branded commodity. In other words, provide the consumer with the full range of communications services including voice telephony, wireless cellular, data communications, and Internet access. Asymmetrical FCC regulations and bureau structures retard this development.

The current regulatory arrangement is indefensible since it means that firms attempting to offer comparable services are being regulated under dissimilar legal standards. It betrays a cardinal tenet of American jurisprudence—equal treatment under the law—and, from an economic point of view, could produce distorted market outcomes.

Therefore, the agency must end this asymmetry, not by "regulating up" to put everyone on equal footing, but rather by "deregulating down." To the extent the agency continues to subject the industry to ground rules, it should consider borrowing a page from trade law by adopting the equivalent of a most-favored-nation clause for telecommunications. In a nutshell, this policy would state that "any communications carrier seeking to offer a new service or entering a new line of business should be regulated no more stringently than its least regulated competitor."

Most-favored-nation status for telecommunications firms would ensure that regulatory parity existed within the telecommunications market as the lines between existing technologies and industry sectors continue to blur. Placing everyone on the same deregulated level playing field should be at the heart of telecommunications policy to ensure that all

levels of government accord nondiscriminatory regulatory treatment to competing providers and technologies.

It is important to realize, however, that if policymakers can successfully achieve the first priority of more comprehensively deregulating this market, then the parity problem will go away naturally over time. To the extent any rules and regulations must remain on the books, however, an effort should be made to equalize treatment of carriers and technologies to achieve the proverbial "level playing field."

Priority 3: Contain the Forced-Access Virus

Worse than the lack of deregulation in recent years has been the imposition of a new regulatory regime: open access. In a nutshell, open-access mandates require that a company or specific industry sector be required to share its facilities with rival companies so that those rivals may have access to a broader array of consumers or citizens.

Open access, therefore, is really forced access, since it is a government-mandated policy, albeit one that is purportedly intended to create a more competitive marketplace. Although a forced-access regime was envisioned by the framers of the Telecom Act as a way to help open up markets, two important restrictions applied: (1) forced access would apply only to the local telephone exchange carrier's existing local wireline network, *not other segments of its network or other carriers' networks or other carriers' technologies,* and (2) forced access was generally viewed as a transitional regulatory regime that would last only until such time as greater *facilities-based* competition developed within the local telephone marketplace.

Regrettably, those two guidelines have been essentially tossed aside by regulators, who have exhibited an overzealous desire to apply forced-access regulations to almost any industry sector or technology. Today forced access is being proposed for cable systems and other broadband networks, wireless networks, instant messaging services via the Net, and communications systems within multitenant buildings, just to name a few.

But while infrastructure sharing appears to be all the rage, it is hardly the path to true telecommunications freedom. In fact, it is really just communications socialism: collective control of the underlying means of production. Genuine head-to-head, facilities-based competition will not develop so long as regulators are proposing technology and network sharing as the universal cure-all for America's communications woes. Worse yet, forced access demands the continuation of a regime of price controls within the communications sector since someone must set the interconnection or lease price and that someone will end up being regulatory officials.

If forced access has a future in the communications industry, then industry competition, innovation, and investment do not. The new Congress and FCC must reject the use of this insidious industrial policy technique as a means of bringing about a more competitive marketplace.

Priority 4: Pursue Spectrum Reform and Privatization

Most communications industry policy issues provoke intense academic debate and disagreement. Electromagnetic spectrum reform, however, is the exception to that rule. There exists today overwhelming intellectual support on both the political left and right for the concept of comprehensive spectrum reform.

Luckily, the FCC has gradually come to accept the logic of a free market in spectrum allocation and management. The use of auctions was a major step forward in this regard. And the agency has recently signaled its interest in allowing spectrum license holders greater flexibility to ensure that this valuable resource can be put to its most efficient use. Artificial operational restraints must also be eliminated. For example, spectrum caps currently exist that restrict the overall amount of

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spectrum that companies can use in the marketplace. This discourages investment and innovation, and, therefore, the FCC should allow wireless providers the flexibility to aggregate spectrum in any way and in any combination they wish to provide better service to the public.

But auctions and flexible use, while important steps, are not enough. The task of spectrum reform will be complete only when policymakers grant full property rights in spectrum. Just as America has a full-fledged private property rights regime for real estate, so too should wireless spectrum properties be accorded the full protection of the law. As long as spectrum is parceled out by federal regulators under a licensing system, the process will be a politicized mess. The alternative—a pure free market for the ownership, control, and trade of spectrum properties—should be a top priority for the new administration.

Just as America has a full-fledged private property rights regime for real estate, so too should wireless spectrum properties be accorded the full protection of the law.

To accomplish this task, the FCC should grant spectrum holders a property right in their existing or future allocations. This means spectrum holders would no longer lease their allocations from the federal government but instead would own them outright and be able to use them (or sell them) as they saw fit. This also means that all arbitrary federal regulatory oversight, including content or speech controls on broadcasters, of the spectrum would end. Federal regulators would be responsible only for addressing technical trespass violations and resolving disputes that arose between holders of adjoining spectrum.

Spectrum for all potential uses should be allocated by auction. Firms would file their bidding proposals with the FCC and then post bonds proving they had enough capital to bid credibly for the given allocation. The commission also could establish competitive bidding rules (as it did in previous auctions) to ensure that bidding collusion does not take place. These auctions would not be one-time events; they would be ongoing as spectrum claims developed and multiplied.

It is important that policymakers not rig the auctions in any way, either to favor certain demographic groups or to artificially boost the amount of money raised for the federal Treasury by such auctions. The primary goal of spectrum auctions is to allocate spectrum to its most highly valued use by offering it up for competitive bidding, not to funnel money into the federal coffers.

Priority 5: Reform and Devolve UniversalService and the "E-Rate"

The extensive body of academic literature on universal service mechanisms within the telecommunications marketplace points to a single conclusion: the system is a relic of a bygone age that continues to distort market pricing and competitive entry. The system has been riddled with inefficient cross-subsidies, artificially inflated prices, geographic rate averaging, and hidden phone bill charges for average Americans. While some reform efforts have been entertained in recent years, they have been quite limited and mostly cosmetic in nature.

To make matters worse, section 254 of the Telecommunications Act mandated that the FCC take steps to expand the future definition of universal service. It did not take the agency long to follow up on this request. In May 1997 the agency created the "E-Rate" program (known among its critics as the "Gore tax" since it was heavily promoted by then–vice president Al Gore), which unilaterally established a new government bureaucracy to help wire schools and libraries to the Internet. The FCC then dictated that the American people would pick up the $2.25 billion annual tab for the program through a hidden tax on everyone's phone bill.

Although the constitutionality of the E-Rate program was questioned initially, the program withstood court challenges and early legislative reform efforts. Consequently, the E-Rate threatens to become yet another entrenched Washington entitlement program and further set back needed reform efforts.

The new FCC should abolish the current system of federal entitlements and devolve to

the states responsibility for any subsidy programs that are deemed necessary in the future. A federal telecommunications welfare state is no longer justified. If schools desire specific technologies or communications connections, they can petition their state or local leaders for funding the same way they would for textbooks or chalkboards: through an accountable, on-budget state appropriation. There is nothing unique or special about communications or computing technologies that justifies a federal entitlement program while other tools of learning are paid for through state and local budgets.

Priority 6: Eliminate the "Public Interest" Standard

At a minimum, if nothing else is accomplished in the next four years at the FCC, something must be done to address the grotesque abuse of the so-called public interest standard by the agency. The agency has a long and distressing history of using its ambiguous public interest authority to justify sweeping industrial policies for multiple industry sectors.

But what truly is "in the public interest"? How is that term defined? In a nutshell, it is whatever FCC regulators say it is. Since passage of the Radio Act of 1927 and the Communications Act of 1934, FCC officials have lived under the paradoxical fiction that the standard is indeed knowable, but only they know what it is! The rank hubris of this completely arbitrary position is inexcusable. What five commissioners think in their own minds is "in the public interest" is, in reality, just their own political judgments and philosophical predispositions.

What then is "the public interest"? It is whatever the public says it is. How is that determined? By the interaction of millions of diverse interests and actors in a free marketplace. Asking the FCC to define the public interest for the communications sector is akin to asking a hypothetical Federal Automobile Commission to define what types of cars consumers will demand next year and then determine which firms should be able to supply them and on what terms. Just as the forces of supply and demand are spontaneously calibrated by a free market in cars, computers, corn, or coffee, so too can the public interest in communications be discovered by the voluntary interactions of companies and consumers in a free market. The FCC's public interest standard should be abandoned immediately.

If, however, lawmakers insist on continuing to rely on public interest FCC oversight, the standard should be defined clearly in law. The second-best alternative would be to define the public interest standard as a "consumer welfare" standard until such time as Congress wisely sees fit to abandon its use entirely. This new consumer welfare standard should focus on

1. maximization of consumer welfare via the broadening of the general scope of individual decisionmaking within telecommunications markets;
2. use of market processes instead of regulatory proceedings whenever possible; and
3. full protection of First Amendment rights and equal First Amendment treatment of all communications media, whether print or electronic.

Although many other FCC rules or policies need to be reformed or abandoned entirely, no other reform effort will have as much immediate and lasting impact on the industry or its consumers.

Priority 7: End "Regulatory Extortion" and Antitrust Abuses

In the wake of the Telecommunications Act of 1996, the industry has witnessed a steady rise in merger and acquisition activity. That was to be expected. Every deregulatory experiment has been followed by a wave of industry consolidation as well as numerous business failures.

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However, the FCC is playing a much more active role in reviewing industry merger and acquisition activity than it did during previous deregulations. In fact, the agency now subjects proposed industry combinations to rigorous antitrust review even though the FCC has no clear statutory mandate or authority to do so. Once again, agency officials are loosely construing the public interest standard, in this case to grant themselves sweeping powers to micromanage business combinations.

As a result, merging companies are now subjected to what might be best referred to as a "death by a thousand cuts" regulatory process at the FCC. The agency requires that merging firms enter into a multitude of "voluntary" agreements, which govern their long-term business operations. For example, the mergers of SBC and Ameritech, MCI and WorldCom, AOL and Time Warner, and AT&T and its cable partners were all subjected to detailed consent decrees that set out the terms under which those companies would provide service in future years.

The result has been the creation of a new de facto regulatory bureau at the FCC for antitrust review. Through this gradual mission creep, the FCC has been able to impose on communications carriers added regulatory burdens that the agency might not have been able to apply through more routine regulatory methods. As a result, almost no proposed business combination makes it through the agency today without a lengthy list of operational conditions attached. Agency officials have discovered that this sort of back-door regulation is an easy way to exact favors and promises from companies in exchange for final agency approval of the proposed combination.

Some critics of this process have rightly labeled this phenomenon "regulatory extortion" or "political blackmail" since most companies have no choice but to agree to the regulatory conditions in order to ensure merger approval. Worse yet, these concessions come in addition to the routine antitrust reviews that merging companies can expect from the Department of Justice, the Federal Trade Commission, state public utility commissions, and international antitrust authorities. The combined effect of this increasing and overlapping merger meddling has been lengthy delays in merger approval, which slow marketplace investment and innovation.

The new administration and Congress must end the FCC's regulatory extortion racket and force the agency to cease all merger review activities since they are tantamount to yet another attempt to artificially order the marketplace and engage in regulatory crystal ball gazing.

Priority 8: End the Broadcast and Internet Censorship Crusade

Legislators of all political stripes are increasingly prone to call publicly for an "end to political partisanship" and a "spirit of cooperation" as way out of particularly contentious public policy logjams. But one example of an issue that has a long and rather lamentable history of remarkable political bipartisanship and cooperation is broadcast industry and Internet-sector censorship.

Democrats and Republicans seem to have little problem agreeing that speech controls on radio, television, or the Internet are "in the public interest." In fact, the endless crusade to "protect children" and "clean up" radio, television, and now the Net has resulted in a string of censorship efforts throughout the past century.

For example, for many decades, the FCC—under both Republican and Democratic leadership—attempted to enforce the unneeded and counterproductive Fairness Doctrine, which required licensed spectrum holders to provide equal time to diverse viewpoints. The doctrine backfired, however, and ended up discouraging vigorous debate on issues since many stations decided to forgo controversial programming rather than risk FCC fines or license revocation. The agency also enforced de facto radio and television speech codes through its license renewal process. The FCC has regulated the

content and placement of advertising in past decades. And there has been a litany of efforts aimed at improving the quality of programming for children on television, including the Children's Television Act of 1990.

While many of the older speech restrictions have been struck down as unconstitutional by the courts or abandoned by the FCC over time because of enforcement difficulties, Congress's appetite for censorship activities appears insatiable. Recent years have witnessed a slate of Net-related speech controls including the Communications Decency Act, "V-Chip" mandates, the Child Online Protection Act, and a long list of filtering mandates and anti-"Spam" bills.

The problem here is clear: neither party seems ready to take the First Amendment seriously. Free speech rights and the First Amendment are of paramount importance to individual liberty and should be fully honored and protected against government interference. Moreover, electronic media (radio, television, telephones, the Internet) should be accorded the same protections received by print media (newspapers, magazines, newsletters). There is no conceivable justification for subjecting electronic media to a different standard than their print counterparts.

There is nothing wrong, of course, with efforts by individual families or private entities to use screening technologies to filter the material accessible within their own households or organizations. It is an entirely different matter, however, for government officials to mandate the use of such technologies in an attempt to sanitize cyberspace.

Priority 9: Clean Up the Telecom Industry Tax Mess

America's increasingly competitive communications sector also remains one of its most heavily taxed. But the telecommunications industry is no longer being treated as a regulated monopoly, so policymakers should stop taxing it as though it were. That is, as competition comes to communications in America, tax policies based on the regulated monopoly model of the past must be comprehensively reformed.

Some of the current taxes are federal and can be addressed by Congress or the FCC. A good example is the federal 3 percent excise tax on telecommunications put in place in 1898 during the Spanish-American War. That anachronistic tax should be repealed immediately. And the hidden taxes associated with the E-Rate, or "Gore Tax," program should also be repealed or at least devolved to a lower level of government for administration.

Regrettably, however, the more problematic tax policy issues arise from burdensome state and local mandates. For example, many states impose discriminatory ad valorem taxes on interstate communications services by taxing telecommunications business property at rates higher than other property, driving up costs for consumers. Federal protections against such taxes—already in effect for railroads, airlines, and trucking—should be extended to telecommunications. Many governments are using consumer telephone bills as cash cows, imposing multiple and extremely high taxes on services. Such taxes should be slashed to a single tax per state and locality, and filing and auditing procedures should be radically streamlined. Finally, Internet access taxes and tolls should be permanently banned since those charges are a burdensome levy on the free flow of information and the construction of new interstate broadband networks.

Priority 10: Undertake Sweeping Agency Reform and Craft a Plan for Eventual Closure

The FCC is not operated by evil people with malevolent intentions. Indeed, quite the opposite is the case. The FCC is populated by well-intentioned individuals who honestly want to create a more competitive communications marketplace.

But therein lies the folly of their magnani-

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mous efforts. They harder they try, the more convoluted and counterproductive the regulatory process becomes. For example, the agency has issued numerous and remarkably voluminous rulemakings on spurring competition in the local telephone marketplace, which was mandated by the Telecom Act of 1996. The first rulemaking on this front was the agency's now-famous Interconnection Order of August 1996, a mammoth 737-page document with more than 3,200 footnotes. The edict, which ranks as one of the longest and most complicated rules in the history of regulatory policymaking in the United States, resulted in an endless flow of litigation and court battles. In fact, earlier this year, the Supreme Court decided to hear another round of cases dealing with ambiguous and controversial Telecom Act regulations.

What is sadly ironic about this example is that it is evident that FCC officials honestly hoped to bring about a more competitive telecommunications marketplace through their elaborate interconnection proceedings. This stands in stark contrast with the previous 100 years of telecommunications regulation, during which regulators sought to create powerful monopolies and shelter them from new entrants. So even the harshest FCC critic must admit that an important philosophical shift has taken place within the regulatory community.

Good intentions, however, are no substitute for sound economics and a straightforward legal regime. Tinkering endlessly with market pricing standards as a carrot, or using selective entry rules as a stick, is hardly a sound way to bring about a more competitive marketplace. Instead, it simply breeds a self-perpetuating vicious circle of politicized rulemaking. Each regulatory proceeding gives rise to several additional proceedings to answer questions not satisfactorily resolved during the first go-round. In the legal battles that inevitably ensue, armies of lawyers, economists, and industry consultants are called in to provide their "expert" interpretations of the rules in question. But in the end, this process only results in more confusion and ambiguity and a growing regulatory bureaucracy.

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In fact, in the wake of the passage of the Telecom Act, FCC spending and staffing have grown to all-time highs. Last year the FCC requested a gross budget of almost $280 million and total staffing equivalent to 1,975 full-time employees. By comparison, 10 years ago, FCC spending stood at $108 million and staffing was 1,734 full-time employees. In other words, the FCC's budget has essentially doubled over the past decade, and the agency has hired roughly 250 additional bureaucrats over the same period. It is unclear how anyone can claim this represents "deregulation."

Competition is a process, not an endpoint. Competition cannot be "created" by merely implementing and enforcing one regulatory edict after another. An unbounded regulatory hubris exists at the agency today, however, which argues that this is exactly the course the FCC should continue to follow if full-fledged telecommunications competition is to become a reality. But that can never be the case.

There is no optimal number of competitors in a given market. There is no way to even adequately define what a "market" is anymore. There are no "perfectly competitive" industry sectors. Every market suffers from short-term setbacks and suboptimal scenarios now and then. There are no "fair prices." There are only the terms to which producers and consumers can agree. And, most important, there is no single standard that can adequately define what truly lies "in the public interest." Again, the public interest is whatever millions of consuming Americans say it is.

Still, this is the game the FCC wants to play: defining markets, establishing the proper number of competitors, setting the terms of service, gauging fair prices, and pretending it has the godlike ability to gauge what lies in the public interest. That is sheer folly. And it has done very little to bring about a more competitive state of affairs in the telecommunications marketplace. It's time for the FCC to simply give up, declare its mission accomplished, throw a big party, and retire to the country.

Conclusion: Ending the "Chicken Little Complex"

A few general words of advice about governance in the Information Age are in order. The telecommunications industry is full of doomsayers and naysayers. The "Chicken Little complex" runs rampant throughout this sector.

Many so-called consumer groups—which really don't represent consumer interests at all—ritualistically proclaim that the proverbial sky is ready to fall in the communications sector at any moment. It is not surprising though to hear such rhetoric espoused by those groups since their not-so-hidden agenda is really to expand the parameters and responsibilities of the regulatory Leviathan.

What is shocking and quite sad, however, is the pervasiveness of this pessimistic attitude and Chicken Little rhetoric within the industry itself. In fact, many industry leaders reject proposals to comprehensively liberalize their own marketplace, either in a pathetic attempt to placate regulators or because they honestly fear what a deregulated marketplace might mean for them and their companies.

One can only imagine what goes through the head of the average telecom CEO when he goes to bed at night: Who is going to invade my turf? Will someone else be able to serve his customers better? What's going to happen if my competitors raise prices to reflect the actual cost of providing service? How will they survive without the subsidies they have been living off of for so long? And so on.

But this paranoia is a normal and quite healthy part of countless other American industry sectors. A free market should not be rejected just because it poses risks. In another sense, the industry's Chicken Little attitude can be viewed as nothing more than the repackaging of its unremitting pleas for special protection and regulatory favoritism.

Regardless, the new leaders in Congress and at the FCC need to understand that, while change is difficult, it should not be resisted or rejected. There is no need to pander to the Chicken Little community. The sky will not fall. Indeed, it only promises to grow brighter as the regulatory walls around the telecommunications sector come down.

Appendix: Supporting Evidence for the Proposed Reform Agenda

Priority 1: Repeal Marketplace Quarantines

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The new leaders in Congress and at the FCC need to understand that, while change is difficult, it should not be resisted or rejected.

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