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# A REVIEW OF TELECOMMUNICATIONS ACT HANDBOOK: A COMPLETE REFERENCE FOR BUSINESS BY LEON T. KNAUER, ET AL.

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The Telecommunications Act of 1996 ("Telecomm Act"),<sup>1</sup> the culmination of many years of intensive lobbying, debate and struggle among the various stakeholders of the telecommunications industry, stands as a remarkable and historic legislative achievement. The Telecomm Act is historically significant because it is the first comprehensive rewrite of America's communications laws in the six decades since the adoption of the Communications Act of 1934 ("1934 Act").<sup>2</sup> Additionally, it is the first substantial revision of federal communications laws in which telephony, rather than broadcast, issues have occupied the center stage. However, the real historical significance of the Telecomm Act lies in its fundamental redirection of American communications policy. In dramatic contrast to the stated purpose of the 1934 Act to "provide for the regulation" of wire and radio communications services in order to make communications services available with "adequate facilities" and at "reasonable charges,"<sup>3</sup> the Telecomm Act seeks to "promote competition," to "reduce regulation," and to secure "lower prices" and "higher quality" for existing communications services, while encouraging "rapid deployment of new telecommunications technologies."<sup>4</sup>

Such a complex and sweeping alteration of the public policy landscape necessarily implies that the Telecomm Act, when fully implemented, will alter, if not obliterate, many of the old routes of transit across that landscape. Clearly it would be

useful for managers of communications enterprises to have a concise reference that describes the new landscape and some suggested pathways for traversing it. In *Telecommunications Act Handbook: A Complete Reference for Business*,<sup>5</sup> Leon T. Knauer, Ronald K. Machtley and Thomas M. Lynch and their collaborators<sup>6</sup> attempt to provide precisely such a guidebook.

The *Handbook* undertakes a much needed practical exploration of the Telecomm Act, and therein lies its greatest strength. Using a direct, incisive narrative style, the *Handbook* provides a high-level, readable summary of major federal communications policies, as modified by the new law. Its eight chapters (each by a different author) each address a particular set of communications issues implicated by the changed communications policy environment. The authors lay out the key provisions of the Telecomm Act, explaining where changes have been made from prior policies and discussing in practical terms the likely impact of these changes.

The *Handbook* accomplishes its task with an admirable degree of clarity. This clarity did not happen by accident. As Knauer, the work's lead editor, states in its Preface, the *Handbook* was not written to serve as "a highly technical, heavily cited legal treatise."<sup>7</sup> Rather, the *Handbook* seeks "to provide business executives and non-legal scholars with an understanding of the new framework that will govern telecommunications activi-

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<sup>1</sup> Telecommunications Act of 1996, P. L. No. 104-104, 110 Stat. 56 (to be codified at 47 U.S.C. § 151 (1994)).

<sup>2</sup> Communications Act of 1934, 47 U.S.C. §§ 151 (1994).

<sup>3</sup> *Id.* at 1064.

<sup>4</sup> Telecommunications Act of 1996, P. L. No. 104-104,

110 Stat. 56 (to be codified at 47 U.S.C. § 151 (1994)).

<sup>5</sup> LEON T. KNAUER, ET AL., TELECOMMUNICATIONS ACT HANDBOOK: A COMPLETE REFERENCE FOR BUSINESS (1996) [hereinafter *Handbook*].

<sup>6</sup> The collaborators are all members of the law firm of Wilkinson, Barker, Knauer & Quinn, with the exception of Dr. Klaus W. Grewlich, former Director General for International Business Development, Deutsche Telekom.

<sup>7</sup> *Id.* at xv.

ties for years to come.”<sup>8</sup> In furtherance of these goals, the authors, he writes, “have undertaken this analysis of the Telecommunications Act of 1996 from an historical and practical perspective so that the challenges, risks and benefits confronting this new telecommunications age will become apparent to the reader.”<sup>9</sup> Thus, the *Handbook* consciously avoids the use of technical and legal jargon wherever possible. Moreover, notwithstanding the multiple authorship of its chapters, very skillful editing has brought a high degree of conformity to the work.

The *Handbook's* organizing principle, like its expository style, is also very straightforward. Chapter One recounts, in summary fashion, the legislative history of the Telecomm Act during the 103d and 104th Congresses. Of course, the legislative efforts that culminated in the Telecomm Act span more than these two Congresses; however, the *Handbook's* decision to limit its coverage to this time frame is not a major drawback, since the purpose of this chapter is not to provide a detailed, citable, recitation of all the proposals, committee drafts and conference reports that led up to the passage of the legislation, but to introduce the reader to the major issues and themes that dominated the debate leading to enactment of the Telecomm Act. It also serves as an aid to understanding each of the next four chapters of the *Handbook*, which lay out the important issues and compromises made in each of the policy areas addressed in the Telecomm Act. Accordingly, the somewhat truncated approach to the Telecomm Act's legislative history of Chapter One is both appropriate and adequate to its purpose.

Each of the next four chapters of the *Handbook* discusses the implications of the Telecomm Act for one of the four major communications modalities addressed by the Act: wired telephony, broadcast, cable and wireless telephony. Roughly a third of the content of each of these chapters is spent discussing the historical development of the particular service. The remaining two-thirds of each chapter's content consists of a concise, straight-forward summation of the key provisions of the Telecomm Act. These chapters provide

clear, “no-nonsense” summations of the legislation; by design (and appropriately so), they contain almost nothing by way of commentary on the interaction between the Act's provisions and current events taking place in the wake of its passage.<sup>10</sup>

The chapters discussing specific communications services are followed by Chapter Six, entitled “Regulatory Reform,” which summarizes the provisions of Title IV of the Telecomm Act. The chapter provides a synopsis of Title IV's provisions, and relates them to provisions contained in other Titles of the Act. Chapters Seven and Eight address international issues. The first of these discusses the German experience with telecommunications reform, and structurally it follows the historical approach used in Chapters Two through Five. Chapter Eight, on the other hand, is a general discussion of global communications issues and the need for global communications policy. In addition, the *Handbook* includes appendices, a glossary of communications terms and a bibliography.

The *Handbook's* very strong emphasis upon an historical and practical approach to explaining the Telecomm Act clearly distinguishes this work from the ordinary volume written with a business audience in mind. The presentation of material against an historical backdrop is consistent with the desire to make the volume accessible and understandable to those without intimate familiarity with the intricacies and history of communications issues. Moreover, from a structural standpoint, the somewhat formulaic approach taken in the volume's substantive heart (*i.e.*, Chapters Two through Five) — a seeming “one-third history, two thirds description of the law” — brings a sense of uniformity and coherency to a work created by a mix of different authors.

The use of historical material is extensive for a work of this type. For example, in Chapter Two, “Telephony,”<sup>11</sup> the historical narrative begins literally with “Mr. Watson, come here, I want you” and proceeds to chronicle the industry's history over the next 125 years. It traces the rise of AT&T early in the 20th century, the seeming “love-hate”

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> One exception to this rule, however, is Chapter Two. That chapter, unlike Chapters Three, Four and Five, does include a significant measure of commentary on contemporary events related to the development of competition in the in-

dustry in addition to its summation of the Act's provisions. KNAUER, *supra* note 6, at 9-53. While this approach distinguishes it from its parallel chapters, the distinction created by this stylistic departure is not so obtrusive as to be jarring.

<sup>11</sup> *Id.*

relationship between AT&T and the federal government that so characterized much of the industry's historical development through its first eighty-five years, and the FCC's runaway "experiment" with competition that culminated with the breakup of the Bell System. This approach, used in each of the chapters, helps to provide a contextual framework for understanding the Telecomm Act that will be especially helpful for those who are not practitioners of communications law.

Nowhere is this more true than in the *Handbook's* chapters addressing the policy changes wrought by the Telecomm Act applicable to telephony — both wired and wireless (Chapters Two and Five). In the context of these services, an understanding of their historical development is helpful to gain an understanding of some of the complex issues involved and the policy compromises implicit in the Telecomm Act's resolution of issues such as interconnection and universal service. Similarly, in connection with the Telecomm Act's cable provisions, Congress' twisting and turning over the decades with respect to cable policy do provide beneficial grounding for an understanding of Title III of the Telecomm Act. It may be that this approach is somewhat less crucial in the broadcast area; nonetheless, the historical approach is helpful to the reader.

In a few instances, indeed, the *Handbook's* editors might have used this historical approach to even greater effect had they included even *more* historical detail. An understanding of the telephony-related technological innovations from World War II to the opening of the microwave spectrum in 1959 — and the policy decisions that occurred in their wake — are particularly important to understanding the issues around subsidies and universal service that are central to the Telecomm Act's telephony provisions. The *Handbook* could have included in Chapter Two an even more extensive discussion of that history, as an aid to explaining the reforms made by the Telecomm Act, to wit, the shift in the pattern of subsidies between the state and the federal jurisdictions.

On balance, however, the historical approach used by the editors works reasonably well. Although in some places the discussion might have been a bit less extensive, and in others more, this historical approach should prove helpful to many readers attempting to understand the myriad policy choices made by the Telecomm Act.

The volume's inclusion of historical material is not sufficient for those seeking a detailed understanding of historical development of the communications industries addressed; however, it well serves both the volume's purpose and its intended audience.

The second, immediately obvious characteristic of the *Handbook* is its editors' decision to eschew the use of footnotes. This device has some substantial strengths for this type of book. The absence of footnote clutter renders the *Handbook* immediately less intimidating and more accessible to the lay reader. Thus, it serves admirably the purposes set out in the Preface of providing a readable, practical introduction to the intricacies of the Telecomm Act. This, coupled with the clear, concise narrative style used throughout the work, render the book eminently readable and provides helpful grounding in the new law for the non-lawyer.

This stylistic approach is not without certain drawbacks, however. For one, it leaves the reader with no "handle" by which to delve more deeply into the text of the Telecomm Act itself. This could prove problematical for the reader who wishes to correlate the summary statements made in the *Handbook* about the provisions of the Act with specific provisions of the Telecomm Act and/or the Communications Act of 1934. Moreover, few references in the text of the articles comprising the volume provide direct cites to the specific provisions under discussion. Thus, while the *Handbook* gives the reader a fairly clear understanding of the major changes made by the Telecomm Act, it might have been even more useful to a lay reader had it included citations for those seeking a "jumping off" point for deeper exploration of the Telecomm Act's intricacies.

The two chapters on international communications issues are an added bonus to this volume. Although the Telecomm Act makes no major substantive changes in policy that affect international issues, clearly, the global nature of communications services makes consideration of international issues an important aspect of any comprehensive examination of American communications policy. And the information provided in these chapters is interesting and enlightening, particularly to the extent it helps to contrast the direction and the impact of the American experi-

ence with policy approaches taken by other nations.

Much of the worth of this *Handbook*, as a reference document, is to be found in its extensive appendices and its other supplementary material. The appendices include: (1) the complete text of the Telecomm Act; (2) the complete text of the Communications Act of 1934, with the amendments of the Telecomm Act interpolated and highlighted; (3) a state-by-state exposition of the status of local switched competition as of April 1996; and (4) a Proposed Schedule of FCC Rulemakings relative to the Telecomm Act. In addition, a seven-page glossary provides helpful definitions to important communications terms.

Appendix One, containing the Telecomm Act, is clearly obligatory for any work of this sort. On the other hand, the editors have provided a unique service in the material that comprises Appendix Two. By placing the amendments made by the Telecomm Act directly into their framework inside the Communications Act of 1934, this document will provide any reader — lay as well as professional — with an invaluable tool to understanding the Telecomm Act and its impact.

Appendices Three and Four, on the other hand, are not as helpful as the first two. The dynamic pace of regulatory proceedings, and the competitive incentives unleashed by the Telecomm Act itself, are making much of this material outdated and, hence, of relatively less long-lasting usefulness than the material in the first two Appendices. The editors, instead, might have done well to include as an appendix the Conference Report on the 1996 Telecommunications Act — a document of much more temporal import and, in view of the complexities of the Act, of far greater substantive significance.

One small disappointment is the omission from the *Handbook* of any discussion of the Communications Decency Act of 1996. The CDA is one of the most controversial portions of the Telecomm Act, and it was also one of the provisions most bitterly challenged during the legislative process. Given the *Handbook's* stated purpose of providing businesses with a practical overview of the Act, however, it is understandable that the *Handbook*

does not concentrate on the CDA (which comprises Title V of the Telecomm Act).

Further, one wishes that the volume had included an integrated and coherent analysis of the forces of convergence that are rapidly reshaping the industry. Telecommunications today is an industry in the throes of dramatic change. Technological convergence, spurred on by the increased use of digital communications modalities, are rapidly erasing the traditional boundaries between services. In this sense, the *Handbook* takes a very traditional approach to presenting its subject matter. However, a chapter detailing, for example, the impact of the development of the Internet — and the provisions made *and not made* for it in the Telecomm Act — would have been an added plus for the volume. While, in the context of writing a practical guide, the “separate service” technique chosen by the editors to discuss the Telecomm Act's provisions well serves the purpose of presenting them in a straight-forward, accessible manner, the editors might have done well to discuss some of the *practical* implications of technological convergence and how they might be impacted by the passage of the Telecomm Act.

Finally, consistent with its historical and traditional approach, the *Handbook* might have provided a more concentrated discussion and analysis of the key federal/state jurisdictional issues and interactions that have played, and are going to play, such a pivotal role in the development of telecommunications policy as a result of the changes made by the Telecomm Act. Already these issues have begun to play themselves out at the administrative and the judicial level.<sup>12</sup> A cogent discussion of their implications for business would have been helpful for business readers.

These criticisms notwithstanding, the *Handbook* provides a very credible summary of many of the changes made by this new and complex legislation. In his Foreword to the *Handbook*, former Congressman Jack Fields wrote that it will serve as “a valuable resource for anyone working in the telecommunications industry.”<sup>13</sup> For its intended audience of non-lawyer business people, the *Handbook* does provide an admirably written, clear and cogent introduction to the complexities of a

<sup>12</sup> See, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, CC Docket No. 96-98 (Aug. 8, 1996); Iowa Util.

Bd. v. FCC, Docket No. 96-3321 (8th Cir. 1996), and consolidated cases.

<sup>13</sup> KNAUER, *supra* note 5, at xiii.

law that will reshape American communications policies for the remainder of this century and into the next. Even the practitioner of communications law will find valuable the useful summation of the major policy changes made to the Communications Act of 1934 by the Telecomm Act. Moreover, the "restatement" of the amended

Communications Act provided in an appendix is an extremely valuable, and unique, resource for anyone working in this area. In sum, the editors have crafted a volume that provides an exceptionally comprehensible overview of policy currents that will carry the American communications industry into the next century.

