

PREFACE

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In the wake of the Telecommunications Act of 1996,¹ it is clear that the work of government in breaking down historic monopolies and promulgating rules that crack open telecommunications markets to competition is not for sprinters. We are in a marathon-length struggle to see that robust, ruthless, Darwinian competition fully takes root and prospers and that the attendant benefits of lower prices, higher quality services and additional choices flow to American consumers. Although some incumbent telephone monopolies are employing a litigation strategy to block or slow down the advent of competition in their markets, the march of digital technology and the progression toward competition are inexorable. There is a rear-guard action that is ultimately doomed to fail.

The Telecommunications Act of 1996 was not designed to bring about a radical change in our telecommunications landscape within a mere 18 months. In fact, some important tasks, such as recalibrating universal service subsidies, were not required of the Federal Communications Commission ("FCC" or the "Commission") until 15 months after the date of enactment of the Act.²

Yet it is inevitable, in my opinion, that local phone monopolies open up to competition. The Congressional mandates requiring such market opening are not likely to be overturned legislatively anytime soon. In addition, incumbent cable monopolies will also see many consumers eventually migrate to alternatives in the emerging video marketplace. By allowing telephone companies to compete in the video marketplace, the Telecommunications Act of 1996 wisely continues the

competition policy that began in the Cable Act of 1992,³ where Congress imposed program access requirements on programming owned and distributed by incumbent cable operators. This is the provision of law that helped to spawn the Direct Broadcast Satellite Industry.

Much progress has already occurred, however, and the FCC has done an admirable job in implementing the will of Congress. The Commission has completed the 'mother of all rulemakings' – the local interconnection order of August, 1996⁴ – as well as the historic universal service proceeding. The television industry has embraced a content-based ratings system to work with the so-called 'V-chip' technology. The Commission has granted licenses for the future of television, digital television, and the broadcast industry is well on its way to reinvent and reinvigorate that medium. The Commission has also implemented a provision for which I have fought for many years and that is absolutely vital in mitigating against an 'informational apartheid' in America: establishing important 'learning links' to schools and libraries across the country through huge discounts to such educational entities out of universal service funds.⁵ The repercussions of these actions will effect society for years to come.

It is clear, irrespective of the pace of marketplace change compelled by implementation of the Telecommunications Act of 1996, that society is both excited and threatened by the rapidity of the technological change already underway.

And what is the character of this change? Danish physicist Niels Bohr once said, ". . . profound truths [are] recognized by the fact that the oppo-

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¹ See generally Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C.A. § 151 (West Supp. 1996).

² See Telecommunications Act of 1996 § 254(a)(2).

³ See generally Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁴ See generally *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, *First Report and Order*, 11 FCC Rcd. 15499 (1996).

⁵ See generally Federal-State Joint Board on Universal Service, *Report and Order*, CC Dkt. No. 96-45, FCC 97-157 (rel. May 8, 1997).

site is also a profound truth[.]”⁶

In my opinion, the great truth of the Information Age is that the wondrous wire that brings new services to homes, businesses and schools will have a certain Dickensian quality to it: it will be the best of wires and the worst of wires.

It can uplift society as well as debase it. It can promote electronic commerce, democratize mass media, allow people to telecommute to work and to educate themselves. New digital technologies and other innovations allow corporations to become more efficient, workers more productive, and businesses to conduct commerce almost effortlessly in digital dollars.

This same technology, however, may simultaneously avail corporations of the opportunity to track the clickstream of a citizen of the Net, to sneak company hands into a personal information ‘cookie jar’ and to use this database, along with other lists, to compile sophisticated, highly personal consumer profiles of people’s hobbies, buying habits, financial information, health information, who they contact or converse with, when and for how long.

In short, that wondrous wire may also allow digital desperados to roam the electronic frontier unchecked by any high tech sheriff or adherence to any code of electronic ethics.

Congress did not fully address electronic privacy issues in the Telecommunications Act and it remains an issue that must be addressed. The fact is that technology itself is neither good nor bad. It only becomes so when it is animated through human interaction and imbued with our values as a society.

For our overall competition policy to work for consumers and for electronic commerce to flourish, Congress must enact a Privacy Bill of Rights for the Information Age in order to facilitate trust in the multimedia milieu.

Without trust, I am concerned that the Web will wither into some lawless labyrinth of wires and switches. Electronic commerce will never truly take off in a Wild West-like environment because people will not have confidence in it. We cannot expect everyone to be cyberspace versions of John Wayne or Annie Oakley. It simply won’t work.

My privacy position is premised on the belief that regardless of the technology that consumers use, their privacy rights and expectations remain a constant. Whether they are using a telephone, a television remote control, a satellite dish, or modem, every consumer should enjoy three core privacy protections. These core rights are embodied in a proposal I have advocated for many years and I call it “Knowledge, Notice and No.”

In short, consumers and parents should get the following 3 basic rights:

1) KNOWLEDGE that information is being collected about them. This is very important because digital technologies increasingly allow people to electronically glean personal information about users surreptitiously. I would note here that many Internet companies, for example, use “cookies” – unbeknownst to the user – and keep track of what Web sites a person visits.

2) Adequate and conspicuous NOTICE that any personal information collected is intended by the recipient for reuse or sale.

3) The right of a consumer to say “NO” and to curtail or prohibit such reuse or sale of their personal information.

My legislation (H.R. 1964)⁷ asks the FCC and the Federal Trade Commission to look at how these three privacy rights can be exercised by consumers through industry standards and self-regulation, technological tools that empower consumers directly, and finally, a legally-binding regulatory ‘backstop’ where the marketplace and technology fail to adequately protect the public interest.

Irish poet William Butler Yeats wrote in 1914 that “[i]n dreams begins responsibility.”⁸ I think it is our responsibility to act to improve consumer privacy and parental empowerment while the Net is in its relative commercial infancy. I plan to continue my battle to make these consumer privacy protections the law of the land.

This edition of the *CommLaw Conspectus* highlights a number of issues across the broad spectrum of communications law and policy. I trust readers will prize the intellectual rigor with which these articles present issues for discussion and reflection. I hope as well, that readers will note the

⁶ NIELS BOHR: HIS LIFE AND WORK AS SEEN BY HIS FRIENDS AND COLLEAGUES 328 (Rozental, S. ed., Elsevier Science Ltd. 1986).

⁷ See generally Communications Privacy and Consumer

Empowerment Act, H.R. 1964, 105th Cong. (1997).

⁸ Yeats, William Butler, *Responsibilities*, in THE COLLECTED WORKS OF W.B. YEATS, VOL. 1: THE POEMS 100 (Richard A. Finneran ed., MacMillan Publ’g Co. 1989).

creativity and care with which they have been edited. For my part, I wish to thank the editors for

the honor of including my thoughts herein as a preface to this wonderful compilation.

