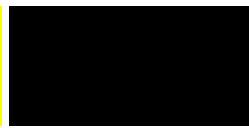


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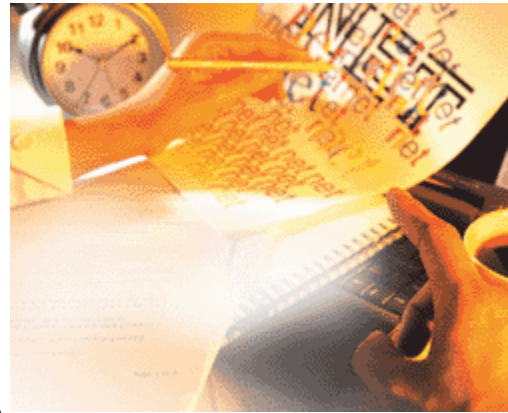
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## Rewriting the Telecom Act Congress Primed to Examine Communications Reform

By Josh Long


Washington is buzzing that beginning next year Congress may attempt to write a comprehensive telecommunications act. The explosion of Internet-based phone service, some insiders say, has prompted the congressional discourse as regulators, academics and other observers hold to the philosophy that federal law has not kept pace with technology.



"I think for the first time in more than eight years there is both serious talk and serious possibility Congress will take some legislative action on telecommunications," says former FCC commissioner Harold Furchtgott-Roth, who now owns a consulting firm, Furchtgott-Roth Economic Enterprises. "It won't be an easy legislative process but there is a lot of discontent with various parts of communications law right now."

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YOU'RE GONNA NEED



*Rep. Fred Upton (R-Mich.), chairman of the House Subcommittee on Telecommunications and the Internet.*

Influential congressmen have expressed their desire to reform federal law in recent months. Chief among them is Sen. Ted Stevens (R-Ala.), who is expected to replace Arizona Republican Sen. John McCain next year as the chairman of the Senate Committee on Commerce, Science & Transportation. Washington sources say Stevens has discussed reform during a few speeches. His spokeswoman did not respond to numerous requests for comment, but a United States Telecom Association executive paraphrased what the senator said Jan. 26 during a USTA luncheon with media representatives. "The substance of what he said [is] there have been tremendous changes in the telecom world since the 1996 act passed and that he intends to examine these changes with an eye having the law reflect the world in which we now live," says Ed Merlis, USTA senior vice president for law and policy. As part of the examination, the senator noted the importance of preserving the Universal Service Fund, Merlis says. The giant pot of money is used to subsidize telecom service in rural areas, schools, libraries and health care facilities.

USTA, which represents the regional Bells and other incumbent local phone companies across the country, is among those entities advocating federal reform. "It is extremely [difficult] for people ... to invest lots of money in job creation and in physical plant if you don't know how you are going to be regulated ... six months from now," Merlis says. "People are holding back on investment, which is not good for our economy."

Rep. Joe Barton (R-Texas), who replaced Rep. Billy Tauzin (R-La.) as the chairman of the House Committee on Energy and Commerce, told USTA members at a convention last fall in Las Vegas he was holding out hope Congress may revisit the telecom act. "We've not had the best implementation of the Telecom Act from the FCC," said Barton, who is more versed in energy acronyms than telecom jargon. "We wanted to have facilities-based competition, but as most of you know, it didn't work out that way."



*Sen. Ted Stevens (R-Ala.) likely will play a key role in working to reform telecom law beginning next year. He is expected to replace Arizona Republican John McCain as the Chairman of the Senate Committee on Commerce, Science & Transportation.*




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Rep. Fred Upton (R-Mich.), chairman of the House Subcommittee on Telecommunications and the Internet, also has expressed his desire to reform the act. Upton, who has backed the position of FCC Chairman Michael Powell on phone policies, says facilities-based competition has spread. However, presumably referring to regulations requiring BellSouth Corp. and other regional Bells to lease their networks to competitors at governmentmandated rates, Upton says some rules are out of date. "However, all of this robust competition is a by-product of the free-market forces that have been allowed to flourish where government, by and large, has kept its hands off,"

Upton said during a congressional hearing in February on the state of competition. "In stark contrast, certain elements of so-called 'competition' are government managed based on a nowdated notion of the telecommunications marketplace. "I suspect we knew no better in 1996," Upton continued in a statement. "But we know better now, and now is the time for Congress to begin the process of retooling the '96 act to bring it up to speed to today's and tomorrow's marketplace and technology."

## **A LONG ROAD**

Don't hold your breath waiting for the president to sign the next telecom act into law. Judging by history, it could take years for Congress to reach a consensus. Billions of dollars are at stake, politicians have divergent views on telecom policies, and such issues as intercarrier compensation and universal service are not only byzantine, they call into question chief social goals the government aims to achieve.

The 1996 act "is the culmination of roughly 20 years of work," says Furchtgott-Roth. "I don't mean to suggest the next rewrite will take" five, 10 or 20 years, but on the other hand, "there is no certainty just because a lot of folks in Congress want to look at rewriting it [that] it will actually take place."

USTA's Merlis, staff director of the Senate Commerce Committee in 1977, says major reform doesn't always take eternity on the Hill. He says Congress held hearings in 1976 to deregulate the airlines. The Senate continued

hearings the following year, Merlis says, and got a bill onto the floor. A year later, President Jimmy Carter signed the Airline Deregulation Act of 1978 into law.

Gregg Rothschild, senior minority counsel to the House Committee on Energy and Commerce, recently told state regulators at a convention in Washington D.C. he predicts Congress won't become involved in a great debate over telecom reform until next year. His opinion is shared by many people. This is a presidential election year, and there are far fewer working days in Congress than normal. "I think much of the critical decisionmaking will take place at the FCC in 2004," Rothschild said. "I'll be an optimist. Maybe we can get this done by 2007," he added, referring to a new telecom law.

Larry Spiwak, director of the Phoenix Center for Advanced Legal and Economic Policy Studies, says the telecommunications industry worked together to help craft 1996 Telecom Act, and there was a quid pro quo: If the regional Bells opened their local phone networks to competition, they would be allowed to compete in the long-distance market. Spiwak says he doesn't anticipate such a cozy compromise this time. "I think the fight will be much more bloody," says the former FCC attorney.

Where does Congress begin this arduous journey?

According to a source on Capitol Hill, Sen. McCain last fall said he wanted to hold a series of hearings to begin examining the Telecom Act. Congress held a hearing on VoIP over the winter. A McCain spokeswoman did not respond to a request for comment.

### **UNBUNDLING LIMBO**

Many telecom executives pushing for reform argue the 1996 act hasn't promoted all the core objectives Congress envisioned, an assertion some trade organizations and consumer watchdog groups vociferously refute. Others say there is nothing wrong with the law; it just has been poorly implemented.

Some, for instance, note the FCC has written unbundling rules in 1996, 1999 and 2003, and those regulations have yet to survive a legal challenge.

Most recently, the federal appeals court in the District of Columbia held the FCC was not authorized to delegate rulemaking authority to state public service commissions that would allow the states to decide what parts of the local network BellSouth, SBC Communications Inc., Verizon Communications Inc. and Qwest Communications International Inc. must lease to competitors at regulated rates. The Supreme Court may be asked to hear the case. Furchtgott-Roth says the FCC has been struggling for years to interpret one word in federal law:

impair. The word is the subject of endless debate over the ability of telecom providers to compete with the regional Bells. He says the FCC has worked to write rules to interpret part of a sentence in the 1996 Act, not pages and pages of the law. "The courts have never been happy with the FCC's interpretation of the word impair," he says.

The solution to the problem seems rather straightforward. Congress must be more specific when it drafts the next telecom law. However, academics say that would raise a new issue: The more specific Congress gets, the more likely the language will face opposition. "You cannot enact legislation that answers controversial questions," says Gregory Sidak, a resident scholar at the Competitive Enterprise Institute, who was deputy general counsel of the FCC from 1987 to 1989. "We have been down this road before trying to pass some telecom act and it's difficult to be specific in law." Adds Furchtgott-Roth, "There isn't a single vision in Congress about unbundled network elements. There wasn't in 1996; I don't think there is today."

## **VOIP TRIGGERS**

The sudden rise of Internet-based phone service, or VoIP — and the media frenzy surrounding the technology — has accelerated a call for reform. The FCC has opened a notice of proposed rulemaking to begin the long road to regulating the technology, but the agency can only work within the confines of a law that was passed eight years ago.

VoIP holds consequences for all things telecom, from the fees long-distance carriers pay local phone companies to access their networks to the amount of money companies

contribute to support a multibillion-dollar fund designed to provide affordable telecom access to all Americans. Furthermore, public safety interests are at stake, such as guarantees law enforcement can wiretap calls and emergency dispatchers can locate a 911 caller.

"I do think it is time" to examine telecom reform "in large part because technology has outpaced existing laws," says Bob Nelson, a commissioner with the Michigan Public Service Commission and Chair of the Committee on Telecommunications with the National Association of Regulatory Utility Commissioners. "No better example of that is VoIP. I think that threatens to undermine the existing support for the network, and I think Congress needs to step in."

VoIP aside, Nelson says there is a need to reform intercarrier compensation, the complicated web of rules governing how phone companies pay one another to interconnect their networks. "There is a convergence of local, long distance. There is a convergence of service and the federal-state jurisdiction lines are blurred," Nelson says, "and I think it would be nice to have a unified process."

Adam Thierer, director of telecom studies with the Cato Institute and an advocate of deregulation, agrees it is time for change. "The relentless march of technological progress is forcing the hand of public policy makers on telecommunications regulation," Thierer says. "Numero uno is VoIP. The old rules just don't quite mesh with the new technological realities."

## **WHITE HOUSE ROLE**

How will the White House — either led by President Bush or the presumptive Democratic presidential nominee John Kerry (D-Mass.) — play a role next year in setting the telecom agenda?

Thierer contends the Bush Administration "has been asleep at the wheel." "I do [not] think there would be much of a difference between a Bush and a Kerry administration on telecom or broadband policy especially since it's tough to be worse than the Bush administration who hasn't bothered adopting any position on any of these issues,"

Thierer says.

Spiwak of the Phoenix Center says the administration will have to get involved at some point. "I think they are going to play some [role]. You can't have a law that affects one-sixth of the economy and not have input in that process."

CEI's Sidak says there will be intense lobbying at the White House, adding the administration should be worried about the economic consequences of telecom policies. Still, he finds it "truly remarkable and bizarre" the White House is being pressed on such obscure matters as unbundled network elements.

"That's why we created administrative agencies like the FCC to decide really arcane technical questions. The president of the United States should not be wasting his time deciding [the] issue of unbundled network pricing," Sidak says.

"This is green-eyeshade stuff. This is really obscure. The people who honestly understand these regulations can sit in a large phone booth. To think (Bush's chief strategist) Karl Rove is discussing the intricacies of UNE-P I think is hysterically funny."

Come next year and beyond, however — if Bush is re-elected and Congress is determined to reform the 1996 act — part of the Bush team may be assigned the not-so-funny task of mastering the telecom lexicon.

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