

CHAPTER 9

The End of Regulation: 1984 to 1996

**"If You Want To Play In Our Revolution,
You Have To Live By Our Rules"**

Newt Gingrich

The Emergence of the Information Society

By the mid 1980s, the RBOCs found themselves dealing directly with the F. C. C., an organization that had, previously, been solely the responsibility of the national A. T. & T. headquarters. The MFJ divestiture required that all the local loops had to be open for interconnection to any long distance provider. The RBOCs were thus required to develop access charges to their local exchanges outside the traditional A. T. & T. accounting and costing procedures, and to submit the proposed charges to the F. C. C. for their approval.

Beginning in 1983, the F. C. C. notified all the long distance providers that it was the agency's intention to approve a gradual phase-in of residential access charges, starting with a modest \$2.00 per residential line, which would eventually rise to \$7.00 per line (F. C. C., "ENFIA", 1983). The F. C. C.'s announcement of local access charges confirmed Congress's worst nightmare, namely that local telephone rates would rise after divestiture.

While the approval for local access charges was pending in the F. C. C., A. T. & T. filed, with the F. C. C., a request for a substantial increase in their long distance rates. The request for increases in long distance rates further confirmed Congress's fears that telephone rates would substantially increase after the MFJ divestiture ("Washington Post", 1983: A 27).

The other long distance providers objected to both increases, claiming that the local access charges would be biased in favor of A. T. & T. Since A. T. & T. could negotiate greater discounts with the local Bells due to its large volume of use, the proposed long distance charge increases for A. T. & T. would be offset by a low access charge. The end result of the negotiation between A. T. & T. and the local Bells, it was charged, would be a form of rate subsidy for long distance charges that would only benefit A. T. & T.. The other long distance providers claimed that since they would be unable to negotiate the same levels of local discounts, they would be left with higher local access charges, which would be reflected in higher long distance charges than A. T. & T., or lower profits. In the end, it was claimed, the benefits of true market competition would be denied the average consumer (F. C. C., "Fowler";, 1983).

In order to stop the increase in rates, especially in the local exchanges, Congress attempted to pass two bills to deal with the issue.

In 1983, Representative Al Gore of Tennessee introduced a Bill targeted at capping residential rates. Congress approved the Gore measure, which capped both residential and rural telephone rates. But the Gore Bill did nothing in terms of addressing the necessity of developing full-costing procedures for setting either local or long distance rates. Rather than resolving the issue of cross-subsidy, the bill further complicated the process of deregulation by artificially blocking the process of rate increases in order to reflect true operating costs rather than the traditional methods of cross subsidy support.

Two years later, in 1985, Representative John W. Bryant, Democrat from Texas, introduced a bill in Congress that would have required that the RBOCs charge new long distance carriers lower local access charges than A. T. & T. The F. C. C. opposed the bill, claiming that it favored one commercial group over another, and, ultimately, would not lead to equal access. Bryant's Bill, eventually, failed.

Even before the introduction of the Gore and Bryant Bills, the F. C. C. had decided to try to clarify the distinctions between separate monopoly services versus competitive services. Several years before the MFJ, the F. C. C. had held a Computer Inquiry that examined the conditions under

which A. T. & T. could enter the newly emerging data processing line of business. The MFJ, and its subsequent separation of the Bell affiliates, made the older Inquiry rulings irrelevant.

Starting in 1982, the F. C. C. began to examine the new telecommunications landscape, and determined that A. T. & T. should be allowed to enter the computer services markets. The reasoning behind the F. C. C.'s ruling was that the MFJ separation was hurting A. T. & T., and its customers, by restricting access to advanced telecommunications services. Since the market was now competitive, according to the F. C. C. reasoning, there were no structural reasons why A. T. & T. should be prohibited from entry into advanced telecommunications services (F. C. C., "Brief", 1982: 29 - 52)..

The RBOCs, and the other long distance carriers, objected to the F. C. C. position. The other long distance carriers felt that A. T. & T.'s sheer size gave them an unfair advantage in competition with these new types of services. The RBOCs' objection, on the other hand, was based on the position that the lifting of restrictions on A. T. & T. should only be allowed if the various restrictions on the RBOCs services were also relinquished (Telecommunications Report, 1985: 40).

While the F. C. C. did not give a great deal of credence to the other long distance carriers positions, it did support the RBOCs position. The F. C. C. had filed an amicus curiae brief with Judge Greene, arguing that since competition now existed within the long distance market, the restrictions against the RBOCs entry into long distance should be removed.

Judge Greene refused to endorse the F. C. C. position, claiming that the RBOCs continued control of local exchanges would result in a return to the old monopoly if they were allowed entry into long distance service. Thus the restrictions against the RBOCs entry into long distance remained in place (Telecommunications Report, 1985: 40).

By 1986, Senator Bob Dole, Republican from Kansas, had grown weary of the amateur regulatory process being exercised by both Judge Greene and the Justice Department. With the support of the RBOCs and A. T. & T., Dole introduced a Bill into Congress that sought to incorporate the MFJ provisions into the F. C. C. 's rules (Telecommunications Report, 1986: 1 - 3).

To Dole, and Congress's, surprise, the lobbyist for the American Newspaper Publishers Association (ANPA) organized a massive campaign against the Dole Bill. ANPA had achieved its primary goal under Judge Greene's MFJ, namely a prohibition on A. T. & T.'s entry into electronic publishing. The previous F. C. C. position concerning lifting the prohibition on both A. T. & T. and the RBOCs "line-of-business" services, meant, to ANPA, that the prohibition against electronic publishing would probably be rescinded by the F. C. C. if the agency had authority over the MFJ conditions.

ANPA was not prepared to face competition in electronic publishing from the telephone companies, and argued, in Congress, that A. T. & T.'s size and national network would give it an unfair advantage. ANPA was successful in killing the Dole Bill (Telecommunications Report, 1986: 2).

After 1986, Congress found itself unable to effectively mount an effort to reform the telecommunications industry. The continuing oversight, and rulings, by Judge Greene's court, coupled to the expanding network of commercial interest groups involved in the debate over telecommunications reform, drove the debate into a confusing labyrinth of technical and economic positions based upon different sets of values and legal principles, plus economic models that seemed to have no relationship with each others findings.

Trying to locate a common ground for a new regulatory structure, Congress began the long process of gathering information from the wide variety of groups interested in telecommunications reform. Hearings were held, extensive analysis were conducted by O. T. A. and the Commerce Department, and Bills were introduced that often failed to be passed out of committee. Every major and minor group, with any level of interest in the policy area, had an opportunity to present their views. In the end, though, there did not appear to exist a consensus as to what should be done, or what values should undergird a new form of telecommunications policy. Telecommunications appeared to be an area that contained no clear direction for the future.

But as a consequence of the failure to develop a new policy, telecommunications development in the United States slowed, and the 580 million dollar trade surplus the United States had in 1981 in the international telecommunications market, turned into a 2.6 billion dollar trade deficit (O. T. A., 1990: 361 - 380).

The main area of contention in reaching a new policy continued to revolve around the restructuring proposal enacted under Judge Greene's MFJ. Greene had opened all long distance service to competition, but maintained local access monopolies under the seven RBOCs. This had resulted in a situation where A. T. & T. found itself in conflict with the entities it formally controlled, the local Bell divisions.

In essence, the RBOCs, regulated by the PUCs, controlled all call routing within their local areas. Long distance carriers had to originate and terminate calls through the local telephone lines. At the same time, the RBOCs were prohibited from offering any long distance service, and required to allow their local business and residential customers a choice as to which long distance provider they would use for long distance calls. Thus there was established a symbiotic relationship, similar to the original arrangement established by Hubbard when the company was founded in the 1870s, between local and long distance providers, each dependent on the other for what historically had been seen as a total telephone package (both local and long distance access). But while the network relationship was still maintained, each of the network's members realized that in the near future the very real possibility existed that they would become competitors in each other's respective market. Each of the future competitors, realizing the potential that awaited them when, eventually, the line-of-business restrictions were lifted, used their respective positions to block each other's potential openings.

To the long distance providers and the RBOCs, any concession to the other group might prove harmful for their future position. Thus neither future competitor would agree to any concessions, and rather attacked each other's proposals, as a general policy, rather than attempting to develop future agreements between themselves. In general, the conflict between the two opponents centered on costs, and who should pay for the cost of access to each other's markets.

In the world of United States telephone regulation, the costing of services had always been based on two levels. Business use of the system has always been priced at full cost plus, in other words business service has always been profitable since it has been allowed to be billed at the full cost of the service plus an additional level of profit. Residential service, on the other hand, had always been priced at below cost, in other words residential service in the United States has always been priced at less than the actual cost of operation, and thus had no level of profit. The difference between the two levels of costs was recaptured under the business rate, thus businesses subsidized residential access. Greene's decision insured that local residential and business access would be maintained as a total bundled package, thus maintaining the lower residential rate charge. It was

exactly over this area where the telecommunications debate become mired down in conflict and disagreement.

The Regional Bell companies believed that they should be allowed to offer both local and long distance service, and, in essence, recreate the combined corporate structure in place before Judge Greene's MFJ. The long distance providers such as A. T. & T., M. C. I., and Sprint, argued that this would give the RBOCs an unfair economic advantage since they already had all the local business and residential customers. The argument continued that since the local Bells had the local customer base to begin with, allowing them to offer long distance service would mean that people would drop the long distance providers, and stay with the single package offered by the Bell companies, thus driving the long distance companies out of business. The long distance companies believed the only way that deregulation could be accomplished was if they were also allowed to offer local service, thus leveling the playing field.

The Bell companies countered this argument by claiming that all the long distance providers wanted was access to their local business customers, since that was the only potential area of profit, and, if the long distance companies were allowed into the local markets, the Bell companies would be left with only the residential customers. The end result would be lower rates for business, higher rates for residential, and the Bell companies would lose their only source of profit. In both cases, local and long distance providers were reluctant to invest in a major capital upgrade of the total system until the issue of access was resolved (Stowe, 1995).

Compounding the problem was the fact that the available economic data tended to be inconclusive and vague in its implications.

Long term long distance rates had historically fallen rather than rising, and this was the case before the MFJ, and since Judge Greene's ruling. Consumer use of the local systems, especially by low income groups, did not decrease after the MFJ, and actually increased. (Schroeder, 1994) Additional studies showed that increases in local rates were offset by decreases in long distance charges, resulting in a total lower bill, and an increase in telephone use. (Perl and Taylor, 1991; Belifante and Tarcliff, 1993).

The end result was that policy makers were left with little or no guidance in determining the potential impact that would occur if the local exchanges were open to competition. At the same time, political lines had been drawn between those groups favoring the maintenance of low residential rates plus universal access, and other groups favoring a free competitive market approach which would accelerate the capitalization needed to upgrade the entire infrastructure and lead to an advanced telecommunications network. Faced with inconclusive data, and a potentially volatile political issue, the policy machinery of the federal government found itself also polarized, and offering contradictory approaches to resolving the issue. ⁶⁶

⁶⁶ Adding to the Congressional frustration over the industry's contradictory messages concerning telecommunications reform, was the generally negative experience of both legislative and executive department's related to telecommunications and automation, within their own bodies, during the 70s and 80s. Many of the Congressional leaders had personal experience dealing with the entrenched computer and telecommunications specialists within the Federal government. Often Congressional and Executive attempts at developing a new Federal telecommunications network had resulted in conflicting and contradictory results. Their frustrations were voiced in 1984 with the release of the Grace Commissions recommendations. Peter Grace, who had handled the Commissions work, emphasized the increasing reliance of government on information technology.

"Over three quarters of the federal government's white-collar work force is involved in the processing of information--from mailing Social Security payments to processing tax returns.... The federal

While Congress was experiencing frustrations over developing a new telecommunications regime, other proponents of an improved telecommunications society were advocating an upgrade and expansion of telecommunications for a completely new agenda. The initial step in this new policy direction originated on the Republican side of the policy debate.

The growth of transborder data flows and international trade in information services, had touched politically sensitive nerves over the issues of national sovereignty and independence. As a result, International institutions and agreements, like the International Telecommunications Union (ITU), the Organization of Economic Cooperation and Development (OECD), and the General Agreement on Tariffs and Trade (GATT), were all being modified to deal with "a world economy that is more and more driven by flows of information." (Feketekuty and Aronson, 1984: 63.)

The United States' response to these international developments seemed woefully inadequate. While Europe was pursuing an extensive effort in the area of telecommunications development, and the Japanese were beginning to create a nationwide broadband network, the United States remained mired in court rulings, disputes between the Federal and State governments, and Congressional hearings that produced little consensus on the future.

While the telecommunication debate had been almost continuous since 1982, and full of futuristic visions coupled to corporate accusations of unfair advantage, the modernization of the telecommunications network within the United States continued at a very slow pace. It was estimated, by the early 1990s, that at the then current rate of deployment, it would take between forty and fifty years before the United States had a broadband fiber based network in place similar to the European system which was to be completed by the end of 1997, and the Japanese system scheduled to be operational by 2005 (Johnson, 1992).

government is the single largest user of data processing systems in the world." (Grace, November 22, 1984: 1B)

But the findings of the Commission were that the Federal government's computer and telecommunications systems were obsolete, incompatible, and duplications of other existing systems. As a result, the Grace Commission concluded, Federal managers were working with "woefully inadequate" systems, and often faulty information (Grace, January-March 1987: 70) The Commission's lists of problem agencies included the Internal Revenue Service, the Social Security Administration, the Census Bureau, the Immigration and Naturalization Service, the Patent Office, and offices in the Army and the Navy. Even the General Accounting Office officials, testifying to Congress in 1989, concurred with the Commission's conclusions:

"The government spends about \$20 billion each year on information technology and management, but I would be hard-pressed to identify a single ... systems development project that could be used as a model." (Purnell, 1989: B-5)

Both the Executive and Legislative Branches of government had experienced the problems associated with telecommunications. The Carter and Reagan White Houses had attempted to upgrade their systems, but the internal engineering culture of improving routine office procedures, rather than developing information support systems, led both Administrations to abandon their efforts (Hinckley, 1986:125-140). Congressional efforts were also not very effective, and had resulted in both the House and Senate installing separate networks to provide access to electronic mail and Congressional Research Services. (Heginbotham, 1987: 154). The end result was that the executive and legislative branches networks were kept separate from each other, and could not share information. (Frantzich, 1982: 234). The general Congressional perception that developed was that while high technology telecommunications systems were possible, and of obvious value, the development of such systems was being impeded by an engineering and technical culture more interested in protecting their own turf rather than improving access.

United States Secretary of State George Schultz, in the mid 1980s, had begun to advocate a newer understanding of the developing impact of technology on the emerging world order.

Shultz realized that the newly developing policies in Europe and Asia represented the potential for a new type of power to develop within the world order. To Schultz, telecommunications married to computer science was creating a smaller and more interconnected world. While this world might be more interdependent, it also could prove to be more turbulent. The technological base of nations and regions were beginning to change under the pressure of global economics, and these changes would challenge national sovereignty, while affecting the very roles of government within society. But to Schultz, this newly emerging world system offered an opportunity for the United States to advance capitalism coupled to a new sense of a democratic society.

"The more they (*the communists*) try to stifle these technologies, the more they are likely to fall behind in this movement from the industrial to the information age; but the more they permit these new technologies, the more they risk their monopoly of control over information and communication." (Shultz, 1986: 28).

Schultz's position on the development of international telecommunications had an ally in the Democratically controlled Congress. His name was Albert Gore.⁶⁷

After the Dole Bill defeat in 1986, Congress attempted to persuade the telecommunications industry to upgrade the system by use of financial incentives. One of the first such efforts was a bill introduced in 1988 by Senator Albert Gore of Tennessee, and Congressman Rick Boucher of Virginia ("Roanoke Times", 1996: A1). The joint bill sought to encourage telephone company efforts at rewiring the existing telecommunications grid. Under the terms of the Gore/Boucher bill, telephone companies would have been allowed to offer cable television services as a way of encouraging the companies to install both fiber-optic and coaxial cables into the existing telecommunications grid. While the bill itself did not pass, it was only a harbinger of what Gore had in mind for the future.

While in the House, Gore had been a member of the House Committees on science and technology, and on energy and commerce. In addition to his Committee appointments, he was also chairman of the Congressional Clearinghouse of the Future. Gore also chaired the Investigations and Oversight Subcommittee on the Science Committee, and led investigations into advance technology, especially the development of super-computer technology.

⁶⁷ Al Gore was elected to represent Tennessee's Fourth Congressional District when he was twenty-eight years old. His father, Albert Gore senior, had represented the Fourth District area for thirty-eight years, being first elected to serve in Congress in 1938, and in 1952 elected to the United States Senate. While the senior Gore had a distinguished record, in 1970 he was defeated for his reelection bid by Republican Bill Brock, who accused the senior Gore of being "too liberal for Tennessee". Deeply hurt by the election defeat, the Gores returned to their home in Smith County, Tennessee (Hillin, 1992: 11 - 23). Al Gore had grown up in Washington, D. C., and had been involved in politics since the earliest days of his youth. In 1976, Gore announced his candidacy for the Fourth District Congressional seat. A Vietnam Veteran, and a graduate of Harvard, he ran a successful race, and reclaimed the seat originally held by his father (Hillin, 1992: 100 - 103). Gore's entrance into Congress was aided by his name and his father's close connections, and he was generally seen as one of the Democratic Party's most promising young leaders. But Gore also had a personal agenda, and that related to his father. The senior Gore had been involved in the development of the 1955 legislation that created the United States Interstate Highway system. It was a landmark piece of national legislation, and the younger Gore sought to recreate the national impact that his father's work had on the nation (Hillin, 1992: 173). Gore was a man in search of an issue.

In 1984 he was elected to the United States Senate, and took the seat formerly held by his father for eighteen years. In the Senate he served on the Governmental Affairs Committee, the Commerce, Science and Transportation Committee, and the Rules Committee (Hillin, 1992: 115 - 119).

Gore's interest in high technology, especially communications technology, had led to several investigations into satellite technology. In January, 1989, recognizing his expertise in high technology, he was appointed as Chairman of the Senate's Science Space and Technology Subcommittee of the Commerce, Science and Transportation Committee. He immediately stated his intentions as Chairman:

"I plan to focus the sub-committee on new technologies that will benefit U. S. competitors throughout the world" (Hillin, 1992: 159).

He translated his priorities into focusing on America's leadership in super computer technology, and developing a concept for marrying computer technology and telecommunications. He called his new vision the "Information Superhighway".

The Information Superhighway that Gore envisioned was an open, seamless network, that connected individuals, across the country, through an advanced, government subsidized system. It was a form of public "common space", that would encourage dialogue and research, and would be open to everyone who had access to a telephone line.

In order to create the "Information Superhighway" Gore concentrated on the development of the Internet. The Internet was the successor to ARPnet, a Department of Defense developed broadband telecommunications network that linked both research centers and universities across the United States, and was under the coordination of the National Science Foundation.

In 1991, Congress approved a bill, sponsored by Gore, called the High Performance Computing Act of 1991. The Act was aimed at upgrading the Internet lines with fiber-optic capacity to 3 gigabits per second, a sixty fold increase in the systems existing capacity (Karraker, 1991: 4-9). The act also sought to improve the usage of the network by creating the National Research and Education Network (N. R. E. N.)

The following year, 1992, Gore introduced the "Information Infrastructure and Technology Act of 1992," which promoted the development of Internet access in K-12 schools, libraries, health care facilities, and industries - specifically manufacturing. But Gore's vision of a new information society built around an electronic public commons, was not the only vision being advanced within the telecommunications arena at the Federal level (Hillin, 1992: 157 - 175).

While the Internet had been originally designed for public, and non-commercial purposes, increasing pressure from the telecommunications industry was directed toward it's commercial possibilities. In 1990, I. B. M., M. C. I., and Merit Network formed a joint venture to work with the National Science Foundation in developing Internet use for commercial purposes. Under the agreement, the new company, Advanced Network and Services, ANS, would install new upgraded lines in key target commercial areas, and provide upgrade connections to commercial groups seeking to use the Internet. It was the first step toward creating a "Commercial Internet". The end goal of the effort was to construct an end-to-end Integrated Services Digital Network, ISDN, based on worldwide standards and protocols.

This commercial development of the Internet occurred while policy makers were beginning to hear warnings on the possible problems that might arise from such commercial development of the Internet and other advanced telecommunications systems. A particularly influential person in this area was Harvard political economist Robert Reich, who advanced a vision of a growing gap between the new information elites and the general masses.

"Of course, wealthier Americans have been withdrawing into their own neighborhoods and clubs for generations. But the new secession is more dramatic because the highest earners now inhabit a different economy from other Americans. The new elite is linked by jet, modem, fax, satellite and fiber-optic cable to the great commercial and recreational centers of the world, but it is not particularly connected to the rest of the nation. That is because the work this group does is becoming less tied to the activities of other Americans. Most of their jobs consist of analyzing and manipulating symbols--words, numbers or visual images. Among the most prominent of these "symbol analysts" are management consultants, lawyers, software and design engineers, research scientists, corporate executives, financial advisers, strategic planners, advertising executives, television and movie producers, and other workers whose jobs titles include terms like "strategy," "planning," "consultant," "policy," "resources" or "engineer." (Reich, 1991: 42)

Under Reich's vision, there was a growing gap between the people involved in "Symbol Analysis", and the local service workers, whose jobs were dependent on the analysts. He saw this segregation as presenting a fundamental challenge to America.

"The stark political challenge in the decades ahead will be to reaffirm that, even though America is no longer a separate and distinct economy [*from the rest of the world,*] it is still a society whose members have abiding obligations to one another." (Reich, 1991: 45)

By the early 1990s, the telecommunications debate within Congress was beginning to shift away from solely a discussion over competitive advantage between telecommunications companies. A new perspective seemed to be developing, one focused on the economic possibilities that a high technology society could achieve in the future, but also full of warnings about the creation of a two tiered society divided between the haves and the have nots.

This new focus offered Congress the opportunity of redirecting the issue into a new frame of reference, and a possible new set of options for resolving the issue. But before the policy debate in Congress could be brought to bear on this new vision, several problems in the domestic and international communities would have to be resolved.

THE POLITICAL ECONOMY OF THE INFORMATION SOCIETY

THE EXTERNAL POLITICAL FRAMEWORK

In 1992, William Jefferson Clinton, Democratic Governor of Arkansas, became the Democratic Candidate for President of the United States. Clinton selected Senator Albert Gore of Tennessee to be his Vice-Presidential running mate, and appointed Robert Reich as his chief economic advisor.

Almost immediately, the future "Information Superhighway" became a central part of Clinton's election campaign themes.⁶⁸

The 1992 Clinton/Bush Presidential Campaign offered the American public a true choice between two very distinct visions of national leadership.

On the one hand, George Bush failed to recognize the changes that had occurred in the political environment of the country during the four years that he had served as President. Standing on a platform that emphasized his foreign policy successes in the Gulf War and Panama, plus cuts in the nuclear arsenals of the United States and the defunct Soviet Union, Bush's domestic campaign policies and economic development programs were woefully underdeveloped.

The 1981 tax cut, and the subsequent decisions to not reduce domestic spending while increasing spending on national defense, had permanently unbalanced the national budget, leading to major deficits. By 1992 the United States debt had reached four trillion dollars. In addition, by 1992, the United States was in a recession, and unemployment, by April, had reached 7.5 percent - the highest unemployment rate since August, 1984 (Hitchings, 1992: 423).

The almost continuous news stories and political speeches concerning the deficit, coupled with dire predictions of future economic disaster for the United States because of the deficit, were compounded by news stories of major corporations downsizing their workforce. Acerbating the public perception of economic decline was the fact that many of the jobs that were being lost due to downsizing were white collar jobs, and the white collar job loss was attributed to a major structural change in the American economy. In general, the American public felt insecure about their financial future, and saw the national economy as failing (Gallup, 1992).

Bush's response to domestic issues was to concentrate on the moral values theme that had been so successful for him in his 1988 campaign. But in 1992 Americans were not interested in moral values, and they felt that Bush was failing in protecting their economic viability. In 1992, American voters would vote their pocketbooks, not their Christian values (Toner, 1991: A1)

Clinton, on the other hand, recognized that the economy was the central issue of the campaign. Focusing on Bush's weaknesses, Clinton criticized Bush's economic plans, and exploited general fears about the rising deficit. But unlike Bush, Clinton presented a vision of a newly emerging economic order for the United States.

Under the Clinton plan, the country's economic problems would be resolved as we developed a high technology based economy staffed by a highly educated workforce. Lifting, almost verbatim, from either the French or the Japanese technological development programs, Clinton proposed solving the American economic problems by coupling deregulation and economic opportunity to advanced science and technology. Where George Bush offered no solution for the citizen's economic concerns other than "toughing-it-out", Clinton offered a new country in the economic sunshine built on the wonders of scientific development (Pomper, 1993).

Both the Reagan and Bush Administrations had recognized the need to strengthen the United States position in international telecommunications competition, and had been encouraging this development through their programs of deregulation and GATT negotiations. But both

⁶⁸ Many of the issues related to information technology and the future American society were contained in Clinton's "New Covenant" theme in which he linked economic opportunity to personal responsibility as a new form of social contract.

Administrations were wary of the government intervening too much in this development, and in essence, creating a national industrial policy.

The Clinton campaign, along with the Democratically controlled Congress, were more willing to use the federal government to promote the domestic and international aspects of telecommunications competition. Clinton's group, especially Al Gore, proposed advancing federal funds for both the physical upgrade of the telecommunications network, and subsidized individual access to the advanced capabilities of the new technology (Congressional Quarterly, 12/12/93).

For the next twelve months, the media airwaves were saturated with the Clinton/Gore vision of a new information society, one in which the United States would gain an unprecedented position within the global economy by relying on a highly educated workforce interacting over an advanced computerized telecommunications network. The network would eventually merge all forms of communications into a single system, and would be accessible, through low rates, to every home and business in the United States. While broad on vision, the new policy was very short on details.

Eventually Clinton won the election, and after the election, and Clinton's ascendancy to the office of President, the "Information Superhighway" program became one of the priorities within the White House.

The Clinton administration's policy initiative in the area of information technology outlined five general goals:

- * Encourage private investment.
- * Provide and protect competition.
- * Provide open access to upgraded systems and networks.
- * Take action to avoid creating a society of information "haves" and "have nots".
- * Encourage flexible and responsive government action."

(Gore, 1994)

In order to accomplish the above goals, the Administration proposed that Congress pass several laws that would strengthen both Presidential authority, and the authority of the F. C. C. to regulate the telecommunications industry.

At the Presidential level, there would be created in the Executive Office of the President an Office of Telecommunication Policy. This office would not only advise the President on future policy, but also would be the designated arbitrator between the F. C. C. and the State PUCs, plus the various commercial groups.

In terms of the F. C. C., their authority would be substantially increased. The F. C. C. would be charged with reducing both federal and state regulations affecting long distance carrier's entry into the local exchanges. In order to ensure competition within the local exchanges, though, the F. C. C. could bar both the RBOCs and the long distance companies from any acquisition of a local cable television company, if, in the estimate of the F. C. C. staff, that acquisition would lead to the creation of a local exchange monopoly. In addition, the F. C. C. would set the technical standards for the interstate and intrastate systems, and all interconnections to the systems, plus police the required local system upgrades.

All the telecommunications companies would be offered a choice of continuing to operate within a split system of regulation controlled by both the Federal government and the PUCs, or a new regulatory framework called Title VII.

Under Title VII, the telecommunication providers would operate in both long distance and local exchanges under the exclusive control of the F. C. C. . The authority of the State PUCs, for companies choosing to operate under Title VII, would be nullified, and federal control would dominate. In return for being free of State control, the telecommunications providers operating under Title VII would be required to offer guaranteed access to all users on a non-discriminatory basis, and rate subsidization for local residential users. In addition, under Title VII, the restriction on foreign ownership of telecommunications systems would be repealed, and all public utility companies would be allowed entry into the telecommunications sector. (Digital Media, 1994)

The Title VII Program sought to balance traditional elements of public service liberalism in the telecommunications industry, such as residential rate subsidies and non-discriminatory access, against free market principles of reduced government regulation and organic industry competition. In essence, the Title VII proposal was a compromise between traditional consumer protection and public interest/safety concepts, and the promotion of traditional laissez faire capitalism concepts of industrial development.

Previous to the unveiling of the Clinton/Gore Title VII program, in 1994, both the House and Senate, during the 1993 Congressional session, held hearings to examine the issue of the RBOCs entry restrictions into the long distance markets, and the potential for cross-ownership of both telephone and local cable television companies. The various hearings led to the drafting of several pieces of legislation which were targeted for the 1994 Congressional session.

In the House, John Dingell, Chairman of the Energy and Commerce Committee, and Jack Brooks, Chairman of the Judiciary Committee, developed a bill that would gradually ease the long distance and manufacturing restrictions on the RBOCs (HR 3626). Under the Dingell/Brooks bill, the F. C. C. and the Justice Department would review the RBOCs requests for long distance service entry, and were given final, and exclusive, authority over certifying the RBOCs access to the long distance exchanges.

Also, in the House, Edward Markey of Massachusetts and Rick Boucher of Virginia, introduced a bill that would have repealed the cross-ownership restrictions on telephone and cable television companies, but would have placed restrictions on such ownership to prevent the RBOCs from becoming the sole providers of combined services in a local service area (HR 3636).

In the Senate, Daniel Inouye of Hawaii, and John Danforth, Chairman of the Energy and Commerce Committee, introduced legislation that would have required the RBOCs to provide the long distance companies with equal access to all local exchanges, and, at the same time, remove the prohibition against cross-ownership of cable television and telephone companies (S. 1086).

The Dingells/Brooks bill favored the RBOCs by allowing them into the long distance exchanges, while the Inouye/Danforth bill favored the long distance companies by allowing them into the local exchanges. The Markey/Boucher bill further complicated the issue by setting-up a series of checklist requirements, controlled by the F. C. C. and the Justice Department, which would have allowed for cross-ownership of telephone and cable television companies, while the Dingells/Brooks bill was less restrictive on allowing cross-ownership. Both the House and Senate bills, also, seemed to imply a direct reduction in the rights of State PUCs to regulate the industry within their home states.

While the various Committees were at work developing bills to deal with issues of local access and cross-ownership, Vice President Gore was advancing the Administration's Information Superhighway program in both Houses.

Under Gore's influence, the House introduced, and passed, a bill (HR 1757) that authorized one billion dollars, from 1994 to 1998, to be spent on completing the development of a national grid of broadband data networks. In addition, the bill approved funds for advanced research and development efforts, and subsidized costs for linking schools, libraries, health care facilities, and government agencies into the network. The House also passed another bill, HR 820, that authorized grants and loans from the Commerce Department and the National Science Foundation, to help small and medium-sized businesses to develop Internet access, thus encouraging competition in the global telecommunications markets.

In the Senate, the Senate began to draft a bill, S. 4, that combined the information access programs developed in the two House bills, into a single bill. The Senate Bill, called the "National Competitiveness Act", only authorized \$380 million dollars over two years for upgrading the communications grid, and limited the low cost business loan program to two billion dollars over two years

While Vice-President Gore was given the Administration's charge of overseeing the proposed legislative creation of the information initiative, the key point man on the telecommunications bills was actually Senator Fritz Hollings, Democrat from South Carolina.

Senator Hollings had been appointed, in 1993, Chairman of the Senate Commerce Committee, the Committee in which the differences in both the House and Senate initiatives would, eventually, have to be reconciled. Hollings, almost immediately after assuming the Chairmanship, expanded the scope of the information initiative, and opened hearings on a complete rewrite of the 1934 Communications Act.

For the next two years, the Hollings' effort led to a series of hearings in which both the vision of a new information society struggled for attention against the pragmatic problems of working under the existing MFJ limitations.

In what can only be considered a major managerial blunder, the Hollings hearings, under public interest principles, were opened to any group wishing to present their views on telecommunications reform. Immediately the Committee heard from not only the telephone interests, but also media giants, newspapers, cable companies, consumer groups, electronic visionaries, educators, public librarians, and a wide range of groups both formally and informally organized.

The Hearings expanded the nature of issues under consideration. What had previously been an area focused on the issues of the telephone industry and the development of an information access network, now became splintered. Groups, which previously had a marginal interest in the various proposals, now saw an opportunity to deal with both industrial issues of government regulation affecting other areas of telecommunications, and social welfare issues grounded on principles of economic equity and access. Foreign ownership of television stations, relaxation of cable television rate caps, limits on television and radio station ownership, mergers of different media formats and companies, were just a few of the issues that were raised in the hearings. In addition, the issue of Federal preemption over State's rights, in terms of regulation, came into play, and was coupled to consumer fears over the loss of rate subsidies and caps for both telephone and cable television

rates, and the consolidation of the telecommunications industry into a handful of dominant companies.

During the hearings it became obvious that Hollings, and the Democratic majority of the Senate Committee, were stressing concepts of universal access and equitable service over free market competition and commercialization. The Hollings position was further supported by the public interest groups and consumer groups, who argued that the need for an extensive broadband network into each home, subsidized for universal access, was the only way to avoid developing the two tiered information society outlined by Robert Reich (U. S. News and World Report, 1994)

"The Alliance for Public Technology urges you to include two new elements in telecommunications legislation: a goal and a checkpoint . . . The goal should be switched broadband to the home . . . The full benefits of the NII cannot be achieved if some people only have access in institutions while others have it in their homes. Our nation stands, with Robert Frost, at a diverging path. Down one road lies a nation divided by education, income, and social contact-that is, a nation divided according to who has and who does not have access to the NII in the home. Down the other lies a nation of greater equality and continuing economic growth. Establishing the right goal takes us one step down the second, more desirable road."

(Hadden, 1994)

Hollings indicated that it was his intention to use the Danforth/Inouye Bill as the vehicle for a complete rewrite of the 1934 Communications Act, and merging the provisions of both the Dingell/Brooks bill, and the Markey/Boucher bill into the rewrite.

The Hollings Committee majority tended to reduce the role of the State PUCs in order to curtail blocking of local exchange access by the RBOCs, and vested exclusive authority over telecommunications within the F. C. C., especially in determining the conditions for providing universal service and local access. While the Committee's recommendations tended to support the position of the long distance carriers in terms of setting strict requirements for the RBOCs entry into long distance exchanges, the recommendations did not directly address the underlying conflict between the RBOCs and the long distance carriers in terms of establishing the costing formulas for gaining access to the local exchanges. Rather, the Hollings recommendations tended to leave the ultimate decision over costs for access, and the traditional role of the State PUCs setting rate subsidies for local residential access, with the F. C. C. (Digital Media, 1994).

The Hollings Committee recommendations, in many ways, presented a similar balance to the deregulation process found in the Clinton/Gore Title VII proposal. The Committee's recommendations concerning universal access and service, plus its restrictions on the RBOCs entry into other lines of business, and the continuation of rate subsidies, mirrored the Administration's general policy philosophy in terms of telecommunications development. While the final authority over both rate caps and market entry restrictions were placed in the F. C. C., the restricting of State government influence ensured that the emerging market would follow a national process of transition in which equity of access would be maintained.

The final draft bill (S 1822) submitted for the Committee consideration, was over 350 pages long, and covered every aspect of the telecommunications industry. The Bill was heavily weighted toward the continuation of the concepts of universal service and access instead of free market competition.

The Bill received lukewarm support from the telecommunications industry. The cable television companies were concerned that the RBOCs would eventually control the local cable industry, while still being able to maintain their local exchange monopoly access. The RBOCs, on the other hand, felt that the Bill did not go far enough in opening competition for them into the long distance markets. The long distance providers welcomed the local exchange access, but wanted stricter restrictions on the RBOCs entry into long distance service, especially stiffer Department of Justice oversight on anti-trust issues.

While the telecommunications industry had its concerns, the consumer groups also expressed reservations over the media and cable television industry being consolidated into a handful of media giants, and reservations over increasing costs for both cable services and telephone access. (Digital Media, 1994).

The State PUCs and NARUC vehemently opposed the removal of their authority to oversee entry and rates in the local exchanges, and threatened to challenge the Bill, if it was passed into law, in the Federal Courts as a violation of their Tenth Amendment Rights. Inside the Senate, Bob Packwood, Republican from Oregon, and John McCain, Republican from Arizona, persuaded the Minority Leader, Bob Dole of Kansas, that the Bill was not encouraging competition, and placed too many restrictions on the RBOCs ability to enter the long distance markets. Dole informed the Committee that the Republican minority would oppose the Bill if it came to a floor vote in the Senate (Lightwave, April, 1995).

With consumer groups and the industry expressing reservations about the Bill, coupled to Republican Senate opposition and a threat of a Constitutional lawsuit from the States, Hollings was only able to obtain an 18 to 2 bipartisan vote in favor of opening telecommunications markets to competition. In the end, he was unable to gain enough support to have the proposed bill voted out of Committee and be considered by the whole Senate.

The failure to gain support for a Senate floor vote forced the Senate Democratic leadership to decide to table all further work on the Bill until after the 1994 Congressional elections, and to try to draft more acceptable legislation the next Congressional term, starting in January, 1995.

By the end of the 1994 Congressional session, the RBOCs realized that competition was going to eventually occur in the local exchanges, and that a continuing direct battle with the long distance providers would only make the final resolution more unacceptable. Taking a lesson from Theodore Vail, the RBOCs opted for flexibility in their position.

"As I see it, there are four unavoidable facts that will define the future of our industry:

-Fact: Public policy makers -- both state and federal -- are intent on opening the local loop for competition as fast as possible.

-Fact: Customer requirements don't fit neatly in today's industry definitions. Rather, customers are clamoring for the benefits that only an openly competitive marketplace can bring -- not just in telecommunications, but also in video.

-Fact: We have to remake our companies from the inside out to develop the qualities of speed, innovation, customer orientation, and a focus on growth that will be required in a competitive environment.

-Fact: This is a "rising tide" industry -- but only if we agree to work for a public policy framework that gives us access to new market opportunities and incentives for investing in the information superhighway.

It is now beyond dispute that policy makers -- from Congress to the federal regulatory agencies to the state commissions -- have concluded that the public interest will best be served by competition in every aspect of communications, including local exchange . . . Despite the superb value and quality of the service we provide our customers -- or maybe I should say because of it -- Americans do not understand the risks that industry restructuring poses to the pricing structures and universal service obligations that we operate by . . . But the fact is, "monopoly" is a word that Americans simply do not like -- and they don't have much patience with complicated explanations about "cream skimming" and "bypass." . . . I'm not suggesting we stop making these explanations just because they're hard. But I am suggesting that we as an industry accept the fact that the intent of public policy will not be satisfied until the average American can choose between two or more providers of local telephone service . . . If we are perceived to be standing in the way of competition just to maintain our monopoly franchises, we will be dismissed as obstructionist and forced to open our markets under the most disadvantageous conditions possible. But if we accept the inevitability of competition and act as responsible spokespersons for the American consumer, then we can establish conditions that will allow us to compete on a level playing field and have a shot at the new and emerging market opportunities that are absolutely essential to our future.

That said, let me offer a few principles as a starting point for 1995: . . . Therefore, barriers to entry in local telephone, long distance, and cable markets should be lifted simultaneously and competitors should operate on more or less equal terms and conditions. . . . We need a new definition of universal service that spreads the costs of providing subsidies across the whole spectrum of service providers. . . . New business opportunities must be codified by removing the constraints of the MFJ and the cable cross-ownership ban. . . . Regulation should be a competitively neutral framework that provides a safety net on such vital public issues as interoperability, quality, and universal service." (Smith, 1994)

The RBOCs were prepared "to deal", in the next Congress, and accept less if necessary. But the 1994 Congressional elections were developing into a complete surprise for both political parties, and the telecommunications industry.

Clinton's successful defeat of George Bush in the 1992 Presidential election was seen, inside the Republican Party, as a major political setback. ⁶⁹

The Republican Party had been able to gain control of the White House, since the end of World War II, seven times, and from 1968 on they controlled the Executive Branch of government continuously except for one term under President Jimmy Carter. But in spite of their domination of the Executive Branch, the Republican Party had failed to control Congress - only in the first term

⁶⁹ The following section is based on personal interviews, which were conducted over 1996, with current and past Republican Party leaders in North Carolina, South Carolina, Iowa, Florida, and Louisiana.

of Reagan's Administration had they been able to gain control of the Senate. The election of Clinton to the office of President, once again, placed them in a minority position at both the Executive and Legislative levels of the Federal government. In addition to the loss of control of the White House, Republican control of State Governor's offices had dropped to 19, and the national Republican Party was several million dollars in debt.

During the 1980s, the Republican Party had experienced a major increase in its membership from groups aligned with the far right of American politics. These new groups exhibited qualities of being both religiously oriented, and firm believers in principles of free market competition. This newly emerging faction exhibited traits similar to libertarianism rather than the fiscal conservative traditions generally associated with the Party, and saw the problems of American society directly linked to the expansion of the authority of the Federal government.

While, historically, traditional Republican economic positions had viewed Federal government involvement in the society directed toward the promotion of free market business as potentially positive, the new faction's position saw any government involvement in society and business as a negative influence. In the new paradigm, the government was the problem, and if the reach and power of government authority was eliminated, then society would naturally improve.

But the new faction's view of an emerging conservative political order in the United States, coupled to their sense of almost messianic religious invulnerability, were dashed in 1992 when the Democrat, Bill Clinton, defeated the Republican, George Bush. This was especially galling to the new faction as the Bush strategy of relying on a moral values based campaign, which the faction supported, failed in the face of traditional economic issue voting.

The Republican defeat was quickly turned into a blaming game inside the party where moderates were accused of causing the defeat by their unwillingness to adopt both the new party philosophy, and their failure to directly challenge the old process of politics. From 1992 to 1994, the party functions were increasingly taken over by the newly charged activists, and the moderates were forced out of the party or relegated to minor positions.

A new political strategy, targeted at gaining control of Congress, began to develop after the 1992 election defeat. Leading the new strategy was a Republican Congressman from Georgia who had a long standing record as being a "back bencher" harassing the Democratic liberals, and a visionary for a newly emerging Republican Party. His name was Newt Gingrich.

The Campaign that Gingrich developed was called "The Contract With America", and advanced a conservative, anti-government platform coupled to a high technology economic development program.

The concept of a Congressional Contract, within the Republican Party, had been advanced as early as 1980 by Republican National Chairman Bill Brock, and Charles McWhorter, a Vice President of A. T. & T. and a long standing Republican activists. Brock and McWhorter had proposed that all the Republican Federal candidates for office should gather on the Capital steps, and pledge to support a common platform. In October 1980, the entire Republican Congressional ticket assembled on the Capital steps, and pledged to support the Kemp-Roth proposed tax cuts. The tactic worked, and in the 1980 elections the Republicans picked-up thirty-three House Seats, and won majority control of the Senate.⁷⁰

⁷⁰ The 1980 pledge, eventually, created a situation in which the Republican members of Congress, committed to a major

After the bruising 1992 election defeat of George Bush for President, and the subsequent control of both Houses of Congress by Democrats, Republican strategists began to reassess their tactics to be used in the 1994 Congressional races. By 1993, the Clinton Administration had run into major difficulty over its health reform proposal, and Republican strategists, sensing a weakness in the public support for Clinton, began to formulate a campaign based on reviving the 1980 "Contract" method.

Two special elections, held in May, 1994, also singled that the Clinton and Democratic positions on social programs were in further trouble. Ron Lewis, a Republican candidate from Kentucky who was backed by the "religious right", won a Congressional seat that had not been held by a Republican since 1865. In Oklahoma, Frank Lucas, the Republican candidate, won an overwhelming 56 to 44 victory for a Congressional seat by attacking the Clinton Administration's health reform program. The Special Election results bolstered the Republican strategists.

At this time, May, 1994, Congressmen Dick Armey of Texas, Tom DeLay of Texas, John Boehner of Ohio, John Kasich of Ohio, Robert Walker of Pennsylvania, Bill Paxon of New York, and Newt Gingrich of Georgia, began to develop a national Congressional platform that was centered on conservative positions. Meeting with other House Republicans, they began to draft a "Contract" targeted at a major reduction in the power of the Federal government, and a return of legislative authority to the States. The plan also called for term limits, the line-item veto, litigation reform, regulatory reduction, tax cuts, prohibitions against pornography, and a balanced budget.

While the "Contract" was being developed, the Christian Coalition, which had gained increasing influence over local Republican party offices during the 1980s and 1990s, began to recruit candidates to run for the 1994 election under the Republican banner. The Coalition was able to turn out a large percentage of candidates committed to a strong anti-government position, and advancing the libertarian concepts of a free society unrestrained by the institutions of government. These new candidates quickly adopted the positions being developed by the "Contract" strategists.

Eventually, on September 27, the new Republican candidates gathered on the Capital steps, and pledged to support the "Contract With America" if they were elected to office. The November elections produced a landslide for the Republicans, and the end result was that a new, very conservative, Republican majority took control of both the House and the Senate, with an extremely conservative House group committed to a unified national platform. (Gingrich, 1995: 111 - 120).

The Congressional faction that controlled the House was far more radical than the Republican Senate majority, and, in addition, the majority of the newly elected House Republicans had also pledged to limit their terms in Congress. The new House majority felt that they needed to act quickly to pass legislation in order to change the Federal government. Newt Gingrich, chief architect for the Contract With America, was elected Speaker of the House by the new Republicans, and charged with quickly advancing the new revolutionary platform.

tax decrease, faced a Democratic majority in the House committed to maintaining the social welfare net. Since neither side could advance their positions without the support of members from the opposite coalitions, the end result was that a policy developed which cut taxes, but did not reduce spending on social programs. The increase in military spending under the Reagan Administration exacerbated the financial problem, and eventually led to a massive Federal deficit that continued to balloon during the 1980s.

While Gingrich was an excellent political strategists, he was also a self-styled "visionary", and he felt that America's future was linked to the development of a new information society.

As early as 1983, Gingrich had formed a Congressional discussion group called the "Conservative Opportunity Society". Advocating a break from traditional conservative views of economic development, the "Society" advocated removing government from the business sector by ending all regulations and tax breaks to industry. While only a general discussion group, the "Society" played a major role in developing Gingrich's future agenda (Drew, 1996: 26).

Several years before his election to the House Speaker's position, 1986, Gingrich had established GOPAC. While not registered as a political action committee until 1991, GOPAC was used by Gingrich to raise funds for his election campaigns in the late 1980s (New York Time, 12/18/94).

In 1991, after GOPAC registered as a political action committee, Gingrich established a front non-profit foundation, The Progress and Freedom Foundation, that raised funds to support various Gingrich causes. The primary use of the Foundation was to fund a course Gingrich taught in American history at Reinhardt College in Waleska, Georgia, and to sell videotapes of Gingrich's course to interested persons. Heading the Progress Foundation was Jeffrey Eisenach, former head of GOPAC.

Attached to the Progress Foundation, was a project called "Cyberspace and the American Dream". The "Cyberspace" project advocated deregulation of the telecommunications industry, and proposed an agenda for a futuristic American economic order. The "Cyberspace" project, and its platform, became the basis for Gingrich's view of the new economic order for American Society, and also a conduit for telecommunications contributions to Gingrich's foundation. ⁷¹ (Drew, 1996: 46 - 55).

Shortly after he assumed the position of Speaker of the House, Gingrich issued the "House Republican Plan For A Better American Future", (Gingrich, 1995).

"We are proposing the most significant change in American government since 1933. This change involves \$11.7 trillion in federal spending, the fundamental direction of American Society, and the lives of 260 million Americans. The significance of this opportunity requires an investment of time in order to understand what we're trying to do."

Couching his rhetoric in terms of a national revival, Gingrich proposed that the new Republican majority's charge was designed to revive America's future by doing what the average person considered to be "the Right Thing", and thus create "the potential for prosperity, safety, and a better life for virtually every American." The key to the Republican's success, according to Gingrich, was through the development of five strategic improvements:

"1. Being truly compassionate by replacing the Welfare State with an Opportunity Society

⁷¹ A key telecommunications company that was directly linked to GOPAC was the Madison, Wisconsin based TDS Telecom. One of the partners in the firm, Donald Jones, would play a major role in drafting Gingrich's position on various elements within the House version of the telecommunications bill that was eventually passed.

2. Restoring freedom by ending centralized bureaucratic micromanagement
3. Promoting prosperity, economic growth, and take home pay by reducing taxes, litigation and regulation
4. Creating opportunity for every American by leading the transformation to a Third Wave, Information Age Society
5. Creating a safe future for our children and our retirement years by balancing the budget and solving the financial crises in funding Medicare and Social Security."

Echoing the past reform movements, Gingrich proposed developing a "planning model" which relied heavily on the popular management strategy of "Visioning". The new vision of the 21st century America would lead the country to:

"Every American safe from violence and drugs

Every willing person will be integrated into the world of work, property, and achievement

A health environment will be managed through sound science and a commonsense, effective and economical approach

New technologies and new approaches will extend opportunities in learning, health and jobs to the poorest rural and inner-city neighborhoods

Government will be lean, customer-responsive and effective

A renewed American civilization, with a renewed understanding of "Our Creator," our traditions and our institutions, will have created a renaissance in civic responsibility and in voluntary and non-profit charities and activities

The best system of health in the world

Effective lifetime learning

New technologies and approaches to create the fullest possible participation of every American with disabilities

A pro-entrepreneur, pro-science, and technology, pro-savings and investment America that is inventing the best products with the highest values in the world

Job opportunities for every American with the greatest value added, highest productivity, largest incomes, and best job security in the world as the best exporting country that creates American jobs through world sales.

Low taxes so incomes translate into take-home pay and the family budget has precedence over the government budget

A regularly balanced budget with declining national debt so money will maintain honest value without inflation, taxes to pay interest will be declining and interest rates will be low."

And how would America achieve this new vision of life in the 21st century? The answer, according to Gingrich, was in the traditional American faith in the beneficent hand of the Free Market, and the unending cornucopia of benefits always available to the nation through scientific knowledge.

"We have living proof America can succeed in the 21st Century. All around us scientists and entrepreneurs are inventing a better future. All around us corporations are re-thinking and re-engineering to produce more, better and faster, with fewer resources. All around us the private sector and private citizens are changing, adapting and improving."

To Gingrich, and his libertarian supporters, the American Welfare State was a major factor in the decline of America's international economic competitiveness.

"The non-working, non-productive part of our society is a factor in the deficit and declining American competitiveness in the world market."

The new social order that needed to be created, according to the House Republican majority, ". . . begins with replacing the welfare state with an opportunity society." To achieve this new "opportunity society", decentralization of government was needed, and authority returned to the State and Local governments rather than residing in the Federal government. The United States would return to the Jeffersonian model of limited government.

We would create "Four Zones of a Free Society" in which culture and society would set the rules we live by, not legislatures, and we would thus return to the America society of mutualism presented by Tocqueville in the 1830s. This new social order would protect private property rights, free markets, and unfettered entrepreneurship, and, as classically defined by Locke, would thus define our economic order. Further reinforcing this new economic order, we would rely on Hume's and Madison's concepts of limited government, and thus mitigate the effects of interests groups on the development of our nation. In essence, we would return to the philosophy of government manifested in an earlier age of our country, the 1830s, before industrialization.

But in classical American political rhetoric, Gingrich also sought to achieve the economic benefits of industrialization, while still returning the society to the spirit of the Federalist's values of mutualism. This, according to the new prophet, would be achieved by "Leading the Transformation to a Third Wave, Information Age Society".

Basing his economic development policy on pop-culture icons Alvin and Heidi Toffler, Gingrich laid out a questionable chronology of human development in which society first moved through a period of hunting and gathering, the first wave, into an agricultural and industrial society, second wave, and now was entering a period were we moved from an industrial society to an information society, the third wave.

According to the new blueprint, if America led the world into the emerging "Third Wave Information Revolution" we would ". . . create opportunities in a wide range of areas: Computers, Worldwide Electronics, Molecular Medicine, Breakthroughs in Material Technology, Exploring and Manufacturing in Space, Microminiaturization, Virtual Reality".

"In the Third Wave Information Age, we can do far more with less. The advance from the vacuum tube to the transistor to the computer chip has resulted in a one-

million-fold improvement in productivity over 40 years. The power of computer chips will multiply one-million-fold over a ten-year period. This means a one-trillion-fold increase in productivity after the year 2000."

Gingrich and the new Republican majority promised the people of the United States that their fears concerning unemployment, and a reduced quality of future life, could be avoided if we just adopted the new vision of their "Third Wave Information Society". But in order to accomplish this new age, we needed to abandon the concepts of public management that had developed in the twentieth century United States. Instead, new ideas, and prophets, needed to be heard.

"New breakthroughs require bold thinking based on the principles of Peter Drucker, Edward Deming, and others. We must apply these new breakthroughs as part of replacing the welfare state with an opportunity society."

A "Brave New World", full of biblical promises of prosperity, awaited the American nation if we would only turn away from our idolatrous belief in the "Mammon"⁷² of the Federal government and public administration, and instead embraced the "Holy Grail" of new age decentralization of government, coupled to Christen values that were linked to a belief in the salvation of science. (Gingrich, 1995).

The Country was now presented with two visions of the future. The Clinton/Gore "New Covenant" vision's emphasis on government guided industrial development policy reaching for a new and equitable society, was now counter-weighted by the Gingrich "Opportunity Society" vision of a mutualistic society created through the freedom of unfettered capitalism. But in both visions, the avenue to the future was routed down the telephone lines of the United States.

THE EXTERNAL ECONOMIC FRAMEWORK

Somewhere on the floor, and in the air above, the middle of the Atlantic and Pacific Oceans is a territorial boundary between the United States and the rest of the nations of the world. You will not find this boundary on any map or globe, but it is as real a boundary as any border between two countries.

At this point on the surface of the earth telecommunications traffic between nations is passed from the national jurisdiction of one nation to the national jurisdiction of another nation. Up to the mid-point, a sender, and their message, is under the jurisdiction of the laws and regulations of their home country. After the message passes the mid-point, though, the sender, and their message, are under the jurisdiction of the receiving nation's laws and regulations.

The entire structure of trans-national communication has been held together for over 130 years by an international group known as the International Telecommunications Union (I. T. U.).⁷³ The I. T. U. has been a remarkably stable organization over the 130 years of its existence. In spite of intense periods of international economic competition, imperialistic moves toward colonialism,

⁷² Mammon: a personification of riches as an evil spirit or entity. See: Matthew 6:24 and Luke 16: 9, 11, 13.

⁷³ The International Telecommunications Union (I. T. U.) was founded in 1865 as the International Telegraph Union, and became the International Telecommunications Union in 1934.

major world wars, and intense regional armed conflicts, the I. T. U. has remained, ensuring that the communications traffic between nations continues to be provided.

A great deal of the explanation as to why the I. T. U. has remained so stable is due to the fact that the I. T. U. has always recognized the internal rights of nations to regulate communications within their national boundaries. Rather than functioning as a policy arm of various nations, the I. T. U. has concentrated on the functional requirements of communications systems, and has done this within an atmosphere of cooperation that ignores various levels of power and self-interest that are manifested in its member nation's foreign policies. This has been accomplished by focusing on standardization of interconnections between various communications systems, and regulating only the cross-border traffic between nations (Aronson and Cowhey, 1988: 8 - 9).

I. T. U. was aided in their efforts by the member nations. Since all of the member nations, except for the United States, had publicly owned communications systems, and since none of the member nations, including the United States, wanted foreign competition within either their national borders or equipment manufacturing sectors, the I. T. U. offered an effective mechanism to promote international communication, but at the same time protect the internal monopolies within each country (Cowhey, 1990: 180).

Thus the policy regime that was established within the I. T. U. limited itself strictly to international telecommunications, and did not interfere with the organization of domestic telecommunications. In many ways, I. T. U. 's operational level was similar to A. T. & T.'s board-to-board method of cost calculation, with the international long distance board strictly segregated from the national domestic board.

As a consequence, though, of this method of protecting domestic telecommunications, there did not develop an international set of telecommunications principles within the industry. Rather each nation's domestic telecommunications system was based on differing national values, cultures, and objectives. In itself this presented no major problem. Methods and costs for international communications were segregated from domestic costs, and each nation controlled both the access to its domestic network, and the costs charged for access to the domestic networks.

But the unintended consequence of this segregation was that while each nation had created a telecommunications network that could be interfaced with other networks, thus forming a global system of communications, the underlying purpose and use of each communications network varied from nation to nation. Over time, as each domestic network's use became integrated within the fabric of each nation's public and private life, there developed a patchwork quilt of differing concepts of telecommunications use and purposes, and the network's pragmatic utility to each nation's domestic and foreign policy.

Again, the differing levels of uses, in themselves, presented no problem, as long as the boundaries between the various systems could be maintained. But if a need developed to open access to the domestic networks from foreign nations, then the differing levels of values and concepts between the nations could possibly come into conflict, depending on the degree of difference that existed between the nations and their differing overall goals.

In the 1980s this breaching of domestic telecommunications boundaries came to the forefront of international trade, and threatened not only the stability of the I. T. U., but also the economic competitive policies of various nations. To understand this development it is necessary that we examine two examples of how such conflict developed, and the implications it presented to policy makers within the United States. While these issues, and responses, affected all nations, for

purposes of illustration we will limit our examination to two key international competitor nations, France and Japan.

France

The development of the telegraph in France was initially limited to government communications, especially communications to the various arms of the French military - it was not until 1850 that the system was actually opened to public use. From the very beginning of the telegraph in France, the network was always considered to be part of the national defense arm, and thus was strictly owned and operated by the government rather than the private sector. In addition, to the French, written communications, whether by correspondence or electrical means, was basically the same, and thus was under the control of the public side of society through the government operated postal service. The French telephone system, on the other hand, had its foundations in partisan politics.

The defeat of France by Prussia in 1870 had caused the downfall of the French Second Empire. Napoleon III had fled the country, leaving no government in place to negotiate a peace. A hurriedly created government, the Third Republic, oversaw the signing of the treaty and the national defeat.

Questions over the government's legitimacy plagued its first years of existence. Forces supporting a return of the monarchy were soon in conflict with forces supporting a Republican system of government. Eventually, though, in 1879, the Republicans won the national elections, and gained control of both the Presidency and the National Assembly.

But the Republican majority was also divided into two groups. Radicals, seeking to support the original revolutionary ideals of the first French revolution, were opposed by the Opportunists, who were seeking to placate the middle class by the development of a strong economic expansion policy. The Opportunists, initially, were able to gain control, and began to encourage a form of laissez faire capitalism. They sought to create this new system by relying on the private sector to share in the burden of investment and risk in new industries. The telephone was one of the industries marked for this new type of government sponsored economic development (Noam, 1992: 135).

In 1879 the government announced that it was planning on having the telephone system developed by the private sector, and licenses were granted to Edison, Gower, and Blake-Bell. Before the construction of lines began the three companies merged into a single company called *Societe Generale de Telephone* (S. G. T.).

The elimination of competition by the forming of a single cartel sped the deployment of the initial lines, and, by 1881, the first exchange was opened in Paris. But expansion outside Paris, in the more marginal areas of potential profit, was slow. In addition, exchanges in the individual cities were not linked over long distance lines. In 1884 the government renewed S. G. T. 's license, but against strong opposition from business users, small towns, and leftist republicans, who felt government ownership of the system was required in order to achieve equity of access across the entire country.

While S. G. T. moved to build long distance lines between Paris and the other cities, the forces for nationalization were becoming stronger. The press's perception of a morass helped drive public sentiment away from private ownership. Finally, in 1889, a coalition of Radicals, small town representatives, and large business supporters, convinced the National Assembly to approve the nationalization of the telephone system. S. G. T. refused to surrender its equipment, and the

French police seized their offices and lines. At this time there were only 8500 telephone subscribers in all of France, with only 2000 subscribers outside of Paris (Noam, 1992: 135 - 137).

After the nationalization, the new system was placed under the *Ministere des Postes, Telegraph, et Telephone* (P. T. T.). The Ministry saw the telephone as a minor supplement to the mail and telegraph, and gave telephone development a low priority within the Ministry's budgeting process. In addition to the low priority within P. T. T., the French government had a high debt burden from the Prussian War, and was reluctant to increase the burden by expanding the telephone system.

A system of telephone expansion was developed where by municipalities and subscribers extended interest free loans to the government to build the local systems. In addition, the subscribers and municipalities had to purchase their own equipment from the state owned manufacturers. Long distance lines were built using a method of cooperatives where by the subscribers paid for the construction of the network in advance of actually receiving the service.

By the early 1900s, France's telephone system was congested, unreliable, and expensive. Only 30,000 telephones were active on the network, and over 200 interruptions of service, lasting for an average of 14 hours, occurred annually between Paris and Marseilles. Even local calls took up to two minutes to make a connection. World War I set development of the network back even further. Large segments of the long distance system were destroyed in the fighting, and the local exchanges, in the cities under attack, were completely destroyed.

After the First World War, France began to rebuild the system, but the cost of the rebuilding sparked a national debate over the ownership of the system. In 1921 a bill was passed to study the possibility of denationalizing the system. The study bill resulted in a major labor movement against privatization led by the P. T. T. employee's unions and associations. The opposition was so great that in 1923 the study bill was rescinded, and the P. T. T. was directed to operate as a government owned industry covering its total costs of operations through subscriber charges (Noam, 1992: 138 - 140).

In the years between the two World Wars France gradually expanded the telephone system, but it was still given a very low priority by the national government and the P. T. T. This low priority led to a situation where France was ranked one of the poorer telephone service countries in the Western world. Just previous to World War II telephone penetration in the United States had reached 15.1 persons per 100, and in Germany it was 15 per 100, but France's penetration rate was only 3.7 telephones per 100 persons (Noam, 1992: 140).

The Second World War, again, exacerbated France's telephone problems. Large segments of the system were, once again, destroyed, and by the end The War France was operating a marginal telephone system over obsolete equipment.

After the Second World War France's economy began to expand, but the telecommunications industry was still relegated to a minor status. Telecommunications was not considered by the government ministries as a key industry, and thus was not included in the government planning activities that marked the era of *Le Plan*. The postal service still dominated the P. T. T., and the telephone continued to be seen as only a supplement to the mail (Thimm, 1992: 87 - 89)

Telecommunications issues in France came to the forefront as the impact of computers began to be felt in France in the 1960s. In the mid-1960s the French government sought to purchase a large mainframe computer from I. B. M. United States law required that a permit be issued before exportation of one of the mainframe systems to a foreign country. The United States Congress

interceded and blocked the export permit. This was a direct reflection of the deteriorating international relations between France and the United States caused by De Gaulle's decision to withdraw from N. A. T. O.

For the French the export restriction was a blow not only to their plans for developing advanced military applications, but was also seen as an example of the growing threat of American technological and cultural influence. Commentators began to voice opposition to American domination of international culture and technology, viewing it as a threat to both France's economic independence and cultural purity.

It was also becoming evident that in order for France to develop a technologically advanced society, a modern telecommunications systems was needed that could handle advanced digital transmissions. France's telecommunications system, at this time - late 1960s early 1970s - was the brunt of humor around the world. The nation of 47 million people had only 7 million telephone lines, equivalent to the penetration rate in communist controlled Czechoslovakia, and the average wait time for a new telephone line was four years. Average long distance calls had to be placed three times before a clear circuit was found, and only one out of every four local calls was completed on a first try. In addition, a caller could wait from 30 minutes to an hour and half for a dial tone, and be prepared to try for two days before a long distance telephone call actually made connection with the person being dialed. The bitter joke was that half the country was waiting for a telephone to be installed, and the other half was waiting for a dial tone (Thimm, 1992: 124).

It was at this critical point that one individual played a crucial role in moving France forward in terms of telecommunications; Valery Giscard d'Estaing.

Giscard d'Estaing had always shown an interest in telephone issues. As early as 1967, when he was a deputy in the National Assembly, he had introduced legislation that would have established the telephone administration as a separate entity from the P. T. T. As the years passed, he became convinced that telecommunications was critical for France's future. In 1974, when he ran for President of the French Republic, he advanced a major campaign platform based on the development of telecommunications within a new high technology industrial policy. After he won the election he moved to implement the new policy (France, 1991: 5)

For the first time in the history of France telecommunications became a major goal, and this was reflected in the VIIth five year plan developed in 1975. The plan established the following telecommunications goals:

To reach parity in density with West Germany and the United Kingdom by 1982.

Reduction of the wait time for telephone installation from 16.4 months in 1974 to 0.5 months by 1982.

Acceleration of the conversion from analog to packet switching networks, with a complete conversion by the year 2000.

Development of an export base for French telecommunications services and products.

Promotion of computer literacy within the entire French population.

Replacement of the out-dated paper telephone directory with an on-line system of access.

Assurance that the quality of service would be uniform across all provinces of France.

This ambitious plan was billed as "*Le Telephone Pour Tous*" - "A Telephone For Everyone" (Hall and Terren, 1987: 23)⁷⁴

The transformation results were startling. From 1976 to 1980 D. G. T. was the largest investor in France, averaging four percent of the total investment in the country, and annually spending over 120 billion francs. An average of 2.5 million new lines annually were added to the telecommunications grid of the country. By the late 1980s France had achieved over a 95 percent penetration rate for telephone service, one of the highest penetration rates in the industrial world, and equal to the United States.

In 1979/1980 the paper telephone directory was replaced by a videotext system, and computer terminals, called Minitels, were distributed free-of-charge across the country. The world's largest packet-switched network, Transpac, was installed in 1978, and by 1992 70 percent of all services in the country were being handled by digital switches. Cellular and mobile communications were introduced in the early 1980s, and satellite communications, covering all of Europe, was introduced in 1984 with the launch of Telecom-1. (Thimm, 1992: 125 - 146).

By the late 1980s France was considered to have the most advanced telecommunications network in the world. D. G. T., now renamed *France Telecom*, had over 155,000 employees, and annual revenues in excess of 166.6 billion United States dollars. D. G. T. owned over 27 million access lines, with an average of 45 main lines per 100 persons. It had also established international partnerships with Germany, Spain, Italy, the United Kingdom, Japan, and Singapore. A 600 million dollar fiber optic cable ran from France, through the Middle East to Singapore, and connected to a Pacific cable covering the Pacific Rim region (Noam, 1992: 162).

As impressive as the transformation plan was, and its eventual success, D. G. T. 's metamorphoses was not complete. One final step was needed to complete the process.

While initially a reformist, over the years Giscard d'Estaing had gradually become isolated in the *Elysees*. His technocratic proposals, and cool public image, aggravated the general public mood of frustration and anger over France's increasing unemployment, and the state-owned industries failure to experience growth in the increasingly important international market sector. It was in this atmosphere of economic decline that Francois Mitterand, leader of the Socialist, advanced a platform of reform and economic expansion based on job creation through increased government

⁷⁴ While the development of a national priority was a major factor in the eventual improvement of telecommunications within France, an equally important factor was the support that the technocratic Giscard d'Estaing gave to telecommunications engineers. Traditionally the director of the ministry controlling the P. T. T. was a graduate of the prestigious *Ecole Nationale d'Administration* (E. N. A.). Graduates of the E. N. A. represent a social and administrative elite within French society. The graduates are generalists in terms of public administration, and during their careers may head several different ministries or departments. Within the *Direction Generales des Telecommunications* (D. G. T.), which actually operated the telecommunications services of France, the majority of the next level of management and administration were graduates of the *Centre National d'Etudes des Telecommunications* (C. N. E. T.), an advanced institute covering all technical aspects of telecommunications engineering. The E. N. A. graduates and C. N. E. T. graduates constantly disagreed on the direction and scope of telecommunications development. Giscard d'Estaing appointed Gerald They as director of D. G. T., and They placed responsibility for the implementation of the plan into the hands of the C. N. E. T. engineers. The C. N. E. T. engineers seized the opportunity to be free of the E. N. A. directors, and focused all their technical powers and innovations on the project (Thimm, 1992: 125).

spending. The Presidential elections of May, 1981 saw Mitterand elected President, and the end of twenty-three years of political control by the right in France.

Shortly after Mitterand became President, he instructed the *General Commissariat of Planning* to examine the effects of D. G. T. 's national investment on employment, internal trade, and economic growth. The *Commissariat's* report was favorable to D. G. T. 's plan for telecommunications upgrades and international competition, and recommended no major changes in the approach or management of the transformation. (Noam, 1992: 162).

Mitterand's ambitious government spending program, though, ran counter to the restrictive fiscal and monetary policies in the rest of the E. C. nations. The central government began to experience major deficits at the same time that the consumer credit market experienced an excessive expansion. The net result was a major deterioration in the balance of payments, which, eventually, in June, 1982, resulted in a 5.7 percent devaluation of the French franc.

The government responded by instituting a major austerity package. While effective in stopping the economic hemorrhage, the austerity program created an economic drag that slowed GDP growth to 1.3 percent annually, and increased unemployment to 4.5 percent (Noam, 1992: 135).

The cumulative effect of the expansion program, and economic failure, reached a peak in the 1986 elections. In the March, 1986 National Assembly elections, the Socialist lost their majority. Mitterand turned to the old Gaullist party, now renamed the *Rassemblement pour la Republique* (R. P. R.), and its leader Jacques Chirac. Mitterand offered a coalition government based on the concept of himself as a Socialist President, and Chirac as a Conservative Prime Minister. Chirac accepted the agreement, and the period of "*Cohabitation*" was established (France, 1991: 8).

Chirac immediately introduced legislation to privatize more than sixty state-owned companies. On the list of companies was D. G. T..

Chirac appointed Marcel Roulet, a P. T. T. veteran and E. N. A. graduate, as Director of D. G. T.. Roulet recommended that D. G. T. be transformed from a state administration into a state-owned enterprise. The proposal would have allowed D. G. T. to continue to receive a state subsidy, but free it to enter joint ventures with private companies. The proposal also allowed D. G. T. to purchase equipment from any source rather than its past practice of only purchasing French manufactured equipment. Labor union opposition to the proposal, especially the possible loss of government employment status, coupled to C. N. E. T. technical objections, slowed consideration of the proposal (Noam, 1992: 165).

During this time of discussion, a new round of Presidential elections were scheduled. Mitterand, sensing an opportunity to end the "*Cohabitation*", mounted a campaign based on a commitment to the integration of all internal markets within the E. C. nations by 1992. Mitterand's move to the center was successful, and the Socialist, minus Chirac, gained back control of the National Assembly and the *Elysees*. (France, 1991: 8 - 9).

In spite of the return of the Socialist to power, the movement toward the privatization of D. G. T. continued. Mitterand's commitment to E. C. integration by 1992 required that privatization of the telecommunications field be maintained in order to comply with the E. C. 's "Green Paper" standards. In particular, France, under the agreement, was required, by 1992, to meet two specific requirements:

Complete separation of regulation and operation functions of all telecommunications services.

Total open competition for all E. C. members in offering computer terminal access over value-added services.

Neither standard could be met under the existing D. G. T. structure. In 1988 D. G. T. was split into two separate entities. The *Direction de la Reglementation Generale* (D. R. G.) was created to oversee approval of all value-added digital services, and the allocation of wave lengths on the electromagnetic spectrum. The remaining operational functions were retained by D. G. T., which was renamed *France Telecom*.

For the next two years a privatization plan was developed in cooperation with the national labor unions, members of the National Assembly and Senate, representatives of the telecommunications industry, and representatives from both the C. N. E. T. core of technical administrators and the E. N. A. core of general administrators. The plan was finally submitted, and approved, by the National Assembly in May, 1990. From May to December 1990 a series of additional decrees were passed to clarify final portions of the plan. On January 1, 1991 the newly reorganized *France Telecom* came into existence (Noam, 1992: 165).

The new organizational structure of *France Telecom* reflected a mix of political compromise, adherence to E. C. technical standards, and traditional French state control.

The position of labor was protected by the recognition of civil service status for all employees of *France Telecom*. In addition to civil service status, the communist, socialist, and social democratic unions each had representation on the *Conseil d'Administration* which oversaw the operation of *France Telecom*.⁷⁵ (Thimm, 1992: 125 - 146)

The traditional P. T. T. administration was also a factor in the transformation compromise. Within the newly established Ministry of Post, Telecommunications, and Space, a Supervisory Directorate (D. S. P.) was established to monitor *France Telecom's* operations, and to report to the government on *France Telecom's* efforts to meet both approved objectives and schedules of implementation. It was, in essence, a watchdog agency over *France Telecom*, and a recognition of the historical power and influence of the postal tradition within the national structure of French government.⁷⁶

⁷⁵ Without the support of the left-wing trade unions, the transformation of D. G. T. into *France Telecom* would never have been accomplished. Trade Union objections played a major role in maintaining the original state monopoly, and was a critical factor in the defeat of previous attempts at privatization

⁷⁶ While it has never been publicly advanced that the postal tradition played a role in the sorrow state of telephone development within France, an examination of the history of the telephone does show a consistent pattern of postal domination, and a refusal to promote either telephone or telegraph technology. One can only conclude that the postal administrators blocked any development which would undermine their position within the P. T. T. structure, and were a major factor in France's failure to create advanced telecommunications systems. Only when the postal tradition was finally broken under Giscard d'Estaing, where the technical engineers able to gain the support and prominence within the French bureaucracy to advance the necessary upgrades to the system infrastructure. D. S. P. 's position is a recognition of this past tradition, but it is also a recognition of past failures on the part of the old P. T. T.. While it can report to the national government on its perceptions of the operation of *France Telecom*, it has no authority to interfere in any aspects of the operation of *France Telecom*.

The traditional conflicts between the E. N. A. and the C. N. E. T. graduates was also recognized within the new *France Telecom* structure. The *Conseil d' Administration* was composed of 21 members. 7 of the members were senior civil servants (*Representants de Etat*), all E. N. A. graduates. 7 other members were telecommunications experts and engineers (*Personnel's Qualifees*), all C. N. E. T. graduates. The inclusion of both E. N. A. and C. N. E. T. on the Council was a recognition that this highly critical area of national development required a blending of both public administrative skills and advanced engineering knowledge. At the same time, though, it is also a public recognition of the long and proud traditions and foundations of these two distinct cultural views of the world.⁷⁷

In order to ensure that gridlock would not develop, the other 7 members of the *Conseil* were the representatives of the left-wing trade unions: 3 from the communist C. G. T., 3 from the socialist F. D., and 1 from the social democratic *Force Ouvriere*. The President of the *Conseil* was nominated by the *Conseil* members, and appointed by the French President. (Thimm, 1992: 126 - 146).

To use a bit of metaphor, the French created a prison, within the *Conseil d' Administration*, in which the potential internal forces of dissent were collectively interned; the labor unions, E. N. A., and C. N. E. T.. Their ever watchful guard dog was the old enemy, the Postal administration. The inmates would have to learn to work together for the betterment of France, and if they did not, the guard would inform the warden, the President of the French Republic. It is truly a classical French solution to a bureaucratic problem.

As for "privatization" of the French telephone system, we once again face a very unique French definition of the concept.

As stated earlier, in 1988 D. G. T. was split into two entities: D. R. G. and *France Telecom*. D. R. G. was created in order to comply with E. C. "Green Book" standards for European telecommunications. Under the new standard, a state monopoly could not regulate and operate, at the same time, telecommunications within the same country. D. R. G. became a regulatory body similar to the American F. C. C.. It oversees the licensing and use of the public airwaves, and the allocation of spectrums for use by various companies. This includes radio communications, cable broadcasting, and data transmission services. All of these areas are open to competition by any company within the E. U. group.

On the other hand, the actual delivery of domestic telephone services within France, and international service from France to the outside world, was left under the exclusive monopoly of *France Telecom*. *France Telecom* was designated as a Service Public Enterprise, a profit seeking organization, but operating within broad government policy objectives.

In general it can be said that the policy pursued by the French government seeks to open the telecommunications market to competition and investment by private groups, but at the same time maintains quality of public access and traditional economies of scale within local and national exchanges. *France Telecom* is thus able to enter into the international market, and form

⁷⁷ The concept of a "Hybrid Manager", an individual possessing both administrative and scientific technical knowledge, has been advanced, for the last twenty years, in European countries, as the next step in the evolution of administration. The balancing of the two cultures within the *Conseil* provides a mechanism for France to move toward this new direction within administrative science, and balances, at the same time, potentially explosive political forces within the French bureaucracy that could undermine France's efforts to achieve dominance in world telecommunications.

partnerships with other telephone systems, while maintaining a close relationship to the National Government and its economic development policies (Thimm, 1992: 126 - 146).

While, in their own unique way, the French may have changed the way that they handle the telecommunications business, underneath the change remains the spirit of French nationalism and cultural pride that have always been the cornerstone of French life. The decision to move into the advanced telecommunications market is not simply a matter of a nation seeking a competitive edge, but also contains the hope and determination to maintain France as an international power. It is a commitment to both the past and the future; to the future of a greater and more glorious nation, and to the nation's long and proud history.

Japan

On July 8, 1853, four black ships, belching clouds of white smoke and running against the wind, rounded the tip of the Izu Peninsula and entered Edo Bay in Japan. The ships furled their sails, and then trained the largest cannons that had ever been seen in Japan on the Japanese shore batteries. At the same time, almost as an omen for the future, the Summer rain clouds broke, and the snowcapped peak of Mount Fuji appeared in the sunlight. United States Commodore Matthew Calbraith Perry had arrived, along with the rest of the Western world, unwelcome, to Japan.

Within three years of Perry's initial landing in Japan, Japan had been forced to sign treaties with the United States, Britain, Russia, and Holland, and had opened their ports to international commerce, thus abruptly ending over two hundred and fifty years of self-imposed isolation from the Western nations.

The opening of Japan to the West was facilitated by the arrival of Perry's, and the Russian's, ships and guns, but it was not the exclusive, or primary, reason for Japan's decision.

The 250 year reign of the *Tokugawa* regime had seen the quality of life within Japan disintegrate. The failure of the Regime to deal with the social changes in the society had led to a situation where peasants were bitterly discontented with their life, the proud *samurai* warriors were unemployed and wandering aimlessly, sometimes brutally, across the nation, the upper elites of the regime were hopelessly in debt to the rich merchants, and the merchants, because of the flaunting of their wealth, violated the traditional class structure of the society.⁷⁸ Perry's arrival signaled that it was time for a social change within Japan.

Also facilitating this change was the death, at the same time as the arrival of Perry, of the twelfth *Tokugawa Shogun*. The ensuing struggle over the accession to the throne saw an emperor appointed who, while unable to directly oppose the West, advanced a campaign of assassination of foreigners. The internal power factions that developed between closing Japan to the West versus opening Japan to the World, coupled to Western reactions against the assassinations, led to a period of intermittent civil wars, and foreign occupation and attacks against Japanese cities.

Eventually, in 1866, the factions aligned against the sitting emperor forced his abdication, thus ending the *Tokugawa* regime. A new emperor was installed which supported the faction seeking to open Japan, and the *Meiji* dynasty assumed control of the nation.⁷⁹

⁷⁸ Merchants were considered the lowest form of class within the society, and were ranked even below the peasants.

⁷⁹ In Japanese, Meiji means "Enlightened Rule".

The new group that ascended to power realized that it would be impossible to expel the foreigners from Japan by the use of force - the foreigners had more weapons and men - and thus a strategy developed to modernize Japan. Japan would tolerate the West, and learn from it, but would ultimately control its own destiny (Busch, 1972: 101 - 108).

In order to man the new industrialization of Japan, the unemployed *samurai*, the educated warrior elites of the society, were recruited to serve in the newly created centralized government bureaucracy. The newly created warrior bureaucrats became servants of the Emperor, and in order to raise their prestige within the society, the Japanese reinstated the ancient Confucian moral order - which they had imported from China - that assigned the highest status in society to public administrators serving the state. These new government leaders thus achieved the status of being both politically and socially superior to all other members of the society other than the Emperor (Ward, 1978: 163).

The new government leaders were sent out into the Western world to study both the political and economic institutions of the Western nations. This new knowledge was then brought back to Japan, where it was adopted and placed within both public and private institutions within the society. During this time the operational motto was "Eastern ethics and Western Science" (Akira, 1981: 53).

Quickly, the new governmental elite were held in awe and respect within the society, and they were seen as manifesting both the highest levels of intellectual knowledge, coupled with the pragmatic skills to implement the state's wishes. All of this occurred before Japan had developed political parties, constitutions, or parliaments.

In 1881 the *Meiji* oligarchy established the Ministry of Agriculture and Commerce, and placed oversight on agriculture, commerce, and the postal service within the Ministry. Four years later, in 1885, Japan reorganized its government into a cabinet form of government, and created the Ministry of Communications, and gave it authority over both the postal service and the telegraph system. ⁸⁰

But the Ministry was not limited to just mail and telegraph, and by 1909 it controlled the mail, telegraph, telephone, maritime shipping, lighthouses, railroads, and hydroelectric power generation. Its reach did not stop, though, in 1909. In 1916 was added postal life insurance, 1925 civil aviation and aircraft manufacturing, and in 1926 the postal annuity plan. By the 1930s, the Ministry of Communications was one of Japan's superministries of development, and also a home for the growing ultranationalism and militarism that fed Japan's ambitions for War.

During the 1920s, the Ministry also forged close ties with various Japanese manufacturers of telecommunications equipment, in particular the NEC Corporation (Nippon Electric formed in 1899 as a joint venture with Western Electric), the Fujitsu, (which was formed in 1916 from the Furukawa Electric Company which was a joint venture with the Siemens Company of Germany), the Oki Electric Company, (a company formed in 1912 with British Electric), and Hitachi, (which

⁸⁰ The new term for the Ministry of Communication, *teishin*, explained the nature of this new agency. *Tei* came from the word *ejitei* meaning postal service, and *shin* came from the word *denshin*, meaning telegraph.

was founded in 1910, and was completely independent of foreign investors) (Johnson, 1989: 187 - 188).

While the Ministry of Communications exceeded in its national efforts of developing communications, the Second World War virtually destroyed the telecommunications system within Japan. After the War, the allied occupation, recognizing the Ministry's involvement in the nationalism movement of the 1930s, forced a dismemberment of the Ministry. Two Ministries were created. The Ministry of Postal Affairs was placed in charge of mail and postal savings. A new Ministry of Telecommunications was created which was charged with rebuilding the telegraph and telephone systems that had been destroyed during the War.

Three years later the Telecommunications Ministry was transformed into a wholly-government owned public corporation and renamed Nippon Telephone and Telegraph, N. T. T.. N. T. T. was placed under the supervision of the Ministry of Postal Affairs (M. P. T.), and given an absolute monopoly over all telephone and telegraph communications within Japan. The Japanese Parliament, Diet, was given authority over both N. T. T.'s budget, and the setting of telephone rates (Johnson, 1989: 188).

The relationship between N. T. T. and M. P. T. was based on two very different organizational cultures. When N. T. T. was created from the old Ministry of Communications, the staff within the old Ministry were divided based on the type of service they were engaged in. The M. P. T. became the largest agency of the central government, employing over 310,000 persons, but the majority of these workers were all engaged in postal service. On the other hand, N. T. T. took all the engineers and highly trained technicians, plus the majority of the advanced technical knowledge held collectively within the organization. While M. P. T., in theory, supervised N. T. T., in fact the M. P. T.'s supervision was limited, and the agency actually only served as a liaison between N. T. T. and the Diet. N. T. T. had virtually out-classed M. P. T. inside the hierarchy of Japanese government.

N. T. T. also strengthened its position by building on the old corporate relations that had existed between the Ministry of Communications and the equipment manufacturers. N. T. T. provided research and development funds for these various manufacturing firms, and also established equipment standards that weighted sales to these domestic firms. Considering the fact that N. T. T. was engaged in a complete rebuilding of the Japanese Communications system, the volume of sales was highly lucrative (Kawakita, 1985)

But while N. T. T. had more status within the bureaucracy, M. P. T. was not without its own levels of political and business support. The M. P. T. was always a favorite agency with Japanese politicians. The reasons why are three fold. First, the M. P. T. controls a large number of votes in terms of the number of employees that work for the Ministry. Two, the M. P. T. places large annual orders for equipment, such as uniforms and bicycles, all of which are manufactured by a large, and wide range, of medium to small size business. And the third reason is that the M. P. T. controls the postal savings systems, the world's largest financial institution which pays higher rates of interest than any other bank in Japan.

In addition to the above matters, directly controlled by M. P. T., there is a fourth indirect factor. Of the 23,000 post offices in Japan, 17,980 are considered "special post offices", which means that they are locally owned, family businesses operating in rural areas. These postal franchises are passed on from one generation to the next. M. P. T. pays these private postmasters a commission on their sales of stamps, and a bounty on savings accounts that exceed a set annual quota. The Special Post Offices represent, thus, a powerful financial and political force which can be used to

mobilize rural voters, and thus puts an average of 80,000 votes under the influence of each rural postmaster. The end result is that M. P. T. has many friends in both high and low places within Japanese society.

Until the 1980s, M. P. T., while "beloved" by the Diet politicians, was generally seen as a somewhat old fashioned organization, behind the times, and not "with it" in terms of Japan's developing technological society. While politically influential, M. P. T. badly needed a new, more modern public image to fit into Japan's high-technology society of the coming 21st century. But just as political scandals in the United States can change the status and image of a government agency, so also, in Japan, can the same thing happen (Kawakita, 1985).

Kokusai Denshin Denwa Company, K. D. D., is Japan's overseas equivalent of N. T. T. It was established in 1953 as another wholly government-owned public corporation, and placed under the supervision of M. P. T. Its primary purpose is to staff overseas offices, and supply international operators for N. T. T.'s overseas circuits.

In 1979, two K. D. D. employees were arrested while trying to smuggle jewelry and other luxury items into Japan. In the subsequent investigation it was discovered that the President of K. D. D., Itano Manabu, had, for four years, been smuggling such items into the country to be used as corporate gifts to K. D. D. board members and Southeast Asian clients. The subsequent investigation alerted the Diet to the possibility of corruption in the public corporations. M. P. T. argued that it needed more direct authority over these affiliated public corporations if it was going to be effective in stopping such corruption.

At the same time that the investigation was occurring, N. T. T. created an international incident with the United States. Japan and the United States had been involved in negotiations over balance of trade agreements. One of the areas that the United States sought liberalization in was the opportunity to bid on N. T. T.'s requests for the purchase of telecommunications equipment. The United States argued that Japan's public equipment bid access should be at the same level as was allowed in the United States. While the negotiations were going on, N. T. T. President Akikusa was quoted in the press as saying ". . . the only thing N. T. T. would buy from the United States was mops and buckets." The comment immediately hurt the negotiating process, and many members of the Japanese Diet concluded that while N. T. T.'s engineers might be effective at creating a modern telecommunications network, they had no skills in handling international trade negotiations. Once again, M. P. T. took advantage of the problem, and requested greater authority over the public corporations.

The final aid to M. P. T.'s rise was the creation, in 1981, of the Second Provisional Commission for Administrative Reform, abbreviated as *Rincho*.⁸¹ The first reform commission had been established in 1960, but had failed to stem the tide in the growth of government, or increase the levels of efficiency within government.

The second reform effort was the result of several problems that were developing with the Japanese bureaucracy. The first was the almost bankrupt status of the Japanese railroad system, another public corporation. The second was that the growing number of special corporations were fast becoming retirement havens for government bureaucrats. Corruption was also becoming a problem not only with the revelations about K. D. D., but also within the Railroad Construction

⁸¹ The Japanese spelling of Second Provisional Commission for Administrative Reform is *Rinji Gyosei Chosa Kai*, which, when abbreviated is *Rin* for *Rinji Gyosei*, and *cho* for *Chosa Kai*, or *Rincho*.

Public Corporation. Also, Japan was facing an increasing debt load in terms of government bond sales, which by 1980 accounted for one third of Japan's governmental expenditures (Johnson, 1989).

The net result of all of this action, for M. P. T., was that in 1984 M. P. T. was reorganized, and charged with developing both policy and implementation of areas related to new media, an advanced information society, research and development for telecommunications, space communications, and international technical exchanges and cooperation. But M. P. T.'s move into a leadership role within advanced telecommunications brought it into direct conflict with the most prestigious and powerful of all the Japanese Ministries, the Ministry of International Trade and Industry, M. I. T. I.

After the Second World War, the Allied Occupation forces intended to reform Japanese government and society, and create a true Democratic form of government. In the process of rebuilding Japan, the Occupation reestablished the Parliament, Diet, made the cabinet responsible to the Diet, and made cabinet appointments subject to approval by the Diet. Ironically, though, very few changes were made in the actual structure of the Japanese government bureaucracy.

The Occupation was highly dependent on the Japanese bureaucracy to rebuild the country, and with a developing, and weak, political leadership in place, fell back on the Ministries to implement the newly emerging programs. The bureaucracy also faced a major need to rebuild Japan's physical infrastructure, and fell back on the use of scientific management principles and engineering methods to organize the national effort. The net result was that the bureaucracy emerged, at the end of the Occupation, as the strongest and most technically advanced group within the Japanese governmental and political order, and thus perpetuated the pre-World War II order of government administration with its strong centralized Ministries.

In addition, the Ministries, because of their direct involvement with Japanese industries, developed a symbiotic relationship between the Ministries and the powerful business interests of the country. Since the political system was weak in terms of leadership, and grounded in a Parliamentary system with a weak Executive level of government, the policy development for the nation fell to the Ministries. The end result was that the Ministries, in consultation with Japanese industry, developed and initiated policy, and forwarded such policies to the Diet for their perfunctory approval (Vogel, 1975)

One of the premier agencies that developed from this process of reindustrialization was the Ministry of International Trade and Industry, M. I. T. I.. In 1949 industrial development and trade administration were united under the control of M. I. T. I.. M. I. T. I. 's charge was to use government sponsorship and coordination to promote high speed economic growth in industries that had the greatest potential for Japan to compete in international markets. National economic growth was given the highest level of priority within the Japanese society and government, and M. I. T. I. was charged with fulfilling this priority. M. I. T. I. 's reach was extended to cover trade policy, resources, manufacturing, commercial technology, small businesses, and even aspects of research and development. In the end, M. I. T. I. was given the total responsibility of nurturing and protecting Japan's developing industries, and assuring their viability until they could effectively compete in international markets.

M. I. T. I. 's success became almost legendary, and M. I. T. I. was known as *cho-ichiryu kancho*, "ultra-first class bureaucracy". The best and the brightest of Japan's government officials worked for M. I. T. I., and it was viewed as Japan's elite. In addition, M. I. T. I. 's strong links to the business community, coupled to its central position in Japan's economic development

policy, gave it a great deal of autonomy and freedom from political pressure. Its position as overall coordinator of Japan's economic policy gave it a freedom of action unrivaled in the Western World's governmental structures.

M. I. T. I. 's overall strategy for economic development was unusual in terms of traditional economic development policy followed either in Europe or the United States. The primary emphasis was on supporting critical business sectors to be competitive, and at the same time adapting to changing economic circumstances. It accomplished this task by first aiding industries to be competitive, and thus facilitating the growth of the economy. It was future oriented in the sense that it sought to anticipate future market and trade demands. It did not discriminate against specific businesses, but rather against specific industrial sectors, selecting those sectors which had the greatest future potential for development.

In the process of promotion, though, it did not completely abandon its older less competitive industries. Rather, M. I. T. I. intervened to help declining industries make an orderly transition to newer products and services, and adapt its output to new market demands that were rising in the national and international markets. While its primary support was directed toward emerging markets and industries, its support for transitions helped older declining industries to change, and ultimately remain viable, but on a reduced scale, within the older market areas. If a market, though, appeared to be completely in decline, then M. I. T. I. attempted to help the older industry re-platform its capacity to meet newer emerging markets, thus abandoning completely the older industrial paradigm.

During the 1950s and 1960s M. I. T. I. used a wide range of tools to promote its policy charge. During the 50s and 60s M. I. T. I. used such devices as the foreign exchange rates and tariffs to protect industry. It also selectively influenced the use of capital for retooling and industrial development.

In the late 1960s, international trade liberalization treaties forced M. I. T. I. to resort to the use of personal persuasion and the issuance of regulations to guide development. M. I. T. I. also began to be more directed on future technology development. Planning and analysis based on future growth in economics were used to target new industries and products, thus promotion of research and development became a major effort. As part of this process, M. I. T. I. resorted to the use of standards to protect its industries, and to block entry into Japanese markets of competing products in these newly emerging industries.

Tax incentives, credits, and loans were also used to promote the emerging industries. Public procurement of domestic products also was used to support the emerging domestic industries. The end result of this process was the development of a strategy within M. I. T. I. that sought to "push" high technology development into the society and the industrial base of Japan, while blocking the importation of foreign competitive products through closed purchase policies and restrictive technical standards (Okimoto, 1989)

By the early 1980s M. I. T. I. had fulfilled its original charge given to it in 1949. Japanese industry was competing in every market within the world, and the majority of Western nations were sending delegations to Japan to study and learn from the "M. I. T. I. Miracle". But Japan also faced a new problem in terms of economic strategies.

The older methods of protecting home markets, preferential use of capital investment for domestic firms, development of domestic technology, and the use of cartelization to form domestic industrial capacity, were no longer effective. The oil embargo of the 1970s had slowed domestic economic

growth, and Japan needed to expand its share of international economic markets if it wanted to sustain a growing and expanding economy. M. I. T. I. thus needed to rethink its future role in Japanese economic development - which up to that point had been focused on domestic protection coupled to international exportation.

M. I. T. I. 's economists and theorists began to examine the nature of postindustrial society, and specifically the way that organizations would be structured, in the future, to create new products and services. The most obvious point that quickly became evident was that there was a disconnection between manufacturing and the supply of raw materials and labor.

The newly emerging products, primarily based on computer technology, were composed of raw materials that had virtually no value. The raw material of modern technology was sand and oil, both of which were transformed into silicon and plastic by the use of human knowledge. In addition, rather than a horizontal and vertical integration of an industry, industries tended to farm out component production across the globe, utilizing cheap labor in developing countries, and then bringing the components together in a series of assembly operations at different geographical locations. The end result was that the old distinction between a resource rich versus a resource poor nation no longer was valid. Any nation, no matter how resource poor it was, such as Japan, could be competitive if it had the human knowledge within its society to utilize the newly emerging organizational and manufacturing system - and got there first.

The new concept was termed *joho-ka shakai*, or the "informationized society". This new society was highly dependent on a well educated and skilled work force who would be able to package and communicate information. Under the new theory, knowledge niche specialization, especially at it related to the early stages of technological development, created an economic advantage for a society.

Older free market trade concepts of economics saw production specialization in one country offset by other production specialization in another country. Thus if England made machinery, and Portugal made wine, they would export to each other their products, and neither would be less well-off under the process of free trade.

But the new economic theory took a somewhat dimmer view of economic free trade. Under the newly emerging economic theory it was not production specialization that fueled international trade, but rather knowledge specialization. Emerging, and potentially valuable technologies, were the result of human collective knowledge. Countries that were able to gain a foothold in the knowledge of a new technology had a long term economic advantage over other countries. Because of their "monopoly" on the newly developing technological knowledge, these countries tended to draw more technical knowledge, in the area of development, toward themselves. In the end, the nation that gained the initial level of knowledge in an emerging technological area tended to ultimately control both the knowledge and the economic base in that technology, and thus dominated the future industry and economy based on the technology.

When M. I. T. I. 's economists examined the possible growth in newly emerging technological areas it found that the potential for the fastest growing industries, anywhere on the earth, was telecommunications. The models that were developed showed that telecommunications had a virtually unlimited growth potential for at least the next two decades, and also offered the single most critical factor for increasing productivity in any area of industrial development.

The key was, to M. I. T. I., the combination of computers and telephones. By itself the computer is limited to what ever functions may be programmed at the local level, but once a computer was

merged with a telephone line it was transformed into a telecommunications network which could oversee this newly emerging industrial order. To M. I. T. I., telecommunications was the future not only for Japanese society, but also for itself (Shumpei, 1984: 143 - 165).

The only problem, though, was that telecommunications, in Japan, was controlled by the M. P. T. Thus, if M. I. T. I. wanted to stay in the forefront of Japan's economic development it needed to wrestle control of telecommunications out of the hands of the M. P. T. The ensuing struggle between M. I. T. I. and M. P. T. became known as the "Telecom Wars."⁸²

The Telecom Wars actually started with a small scrimmage between M. I. T. I. and M. P. T. in 1981 when M. I. T. I. successfully blocked an M. P. T. bill that would have given M. P. T. regulatory authority over computer-connected telecommunications circuits. In 1982 and 1983 two other scrimmages were encountered over the issue of value added networks (VANs), and copyright protection for computer programs. But the real war came to the forefront in 1984 and 1985. The first full conflict was over value added networks (VANs).⁸³

By 1981, M. P. T. realized that it did not have enough capacity in its telephone lines to handle the increasing demand for VAN services. It introduced a bill in the Diet that would allow it to enhance its capacity, and at the same time impose strict licensing and standard requirements that would limit the ability of foreign firms to either offer such domestic services, or use foreign computers.

M. I. T. I. opposed M. P. T.'s bill because, it claimed, regulation of computer based communications was under its jurisdiction, as well as the regulation of foreign commerce. M. P. T. countered M. I. T. I.'s argument by claiming that if it, M. P. T., was not given authority, both I. B. M. and A. T. & T. would invade Japan's domestic markets, taking over Japan's computer industry and destroying Japan's telecommunications network. M. I. T. I. countered M. P. T.'s argument by stating that all VAN business should be liberalized and open to competition. It argued that foreign markets for Japan's developing telecommunications industry would remain closed to Japan unless Japan opened up its markets.

The American government, which had been negotiating with Japan since December of 1980 over the issue of opening Japanese markets to American telecommunications, saw the M. P. T. bill as another attempt by Japan to restrict Japanese markets to American competition, and a clear violation of the Organization for Economic Cooperation and Development (OECD) code. It protested M. P. T.'s bill, and publicly supported M. I. T. I.'s position. M. P. T. quickly seized on the American endorsement, and accused M. I. T. I. of selling out to the Americans, and, in essence, accusing M. I. T. I. of being the agents of *Kokujoku mono*, "National Dishonor".

In the end, the Diet settled the issue by opening VANs to foreign companies, but only VANs that were to be used by large businesses operating over special leased lines made available from N. T.

⁸² The section on the "Telecom Wars" relays on the extensive analysis conducted by Chalmers Johnson in Politics and Productivity: How Japan's Development Strategy Works. New York: Ballinger. 1989.

⁸³ A VAN is a network in which information from one computer is sent to another computer. In the process of sending data, the information that is transmitted between the computers is processed, and thus the value of the information that has been transmitted has experienced an additional value over its original format. An example of a VAN would be a travel agency computer connected to several different types of computers, such as hotel reservations and train and airline reservation systems. Until 1982, it was illegal in Japan to connect any computer to a telephone line without the permission of N. T. T.

T. Total access to the local telephone network was prohibited. M. P. T. was given authority over the licensing, but restrictions on foreign access were liberalized.

The next war developed over the "privatization" of N. T. T. American trade negotiators had been advancing the position that Japan needed to privatize its telephone system in order to promote competition, and to allow Americans the opportunity to sell both telecommunications products and services to Japan's domestic market. Once again, M. I. T. I. supported the American position, claiming that an open market in Japan was the only way to ensure Japanese industries of access to the American market.

M. P. T. rather than objecting to the privatization proposal, saw in the proposal a way to expand its authority. M. P. T. felt that a new law could be written in such a way that N. T. T. would still be under its jurisdiction, and at the same time it could increase its authority over any new telephone companies that might arise. It also felt that the new law could be developed in such a way that M. P. T. would gain control of setting telephone rates, determine the standards for equipment, and oversee all research in telecommunications.

The bill advanced by M. P. T. would have made N. T. T. a private company effective April 1, 1985, but with two thirds of the stock in the company owned by Japanese residents. The remaining one third of the stock sale would be set aside in a research fund for telecommunications that would be under the direct control of M. P. T. In December, 1984 the law was passed, but the research and development fund set the next stage for the conflict with M. I. T. I.

The new law required that M. P. T. set up a not-for-profit foundation that would certify and approve all equipment utilized in the telephone system. In order to ensure that Japan still had control over foreign equipment, M. P. T. set-up, in collaboration with NEC, Fujitsu, Hitachi, and Oki, the Telecommunications Terminal Equipment Inspection Association, and designated it as the approval agency for all equipment. The American trade negotiators immediately objected to what was obviously an attempt to indirectly block American imports into Japan, and charged that Japan was violating the GATT code on standards which states:

" . . . parties shall ensure that technical regulations and standards are not prepared, adopted or applied with a view to creating obstacles to international trade."

M. I. T. I., seeing an opportunity to embarrass M. P. T., also objected to the new standards board, once again claiming it would hurt Japan's export of telecommunications services.

Faced with a possible trade sanctions being imposed by the Americans, and M. I. T. I.'s public criticism, M. P. T. relented, and allowed two foreign representatives, with business connections to Japan, to be appointed to the foundation.

The final battle of the Telecom War involved computer software. Until 1986, Japan did not protect computer software. Foreign computer programs were generally pirated, and either rented or sold to computer users. In early 1983 the Copyright Deliberation Council proposed that Japan protect computer software through the use of copyright laws, and that the copyright be awarded for a fifty year period. In general, the Council was recommending the same approach that was used in the United States and Europe for the protection of computer programs.

M. I. T. I., which had always seen computers as part of its area of authority, responded to the Council's recommendation by recommending that computer software be covered by patent law rather than copyright law. The difference between the two approaches is very distinct. Copyright

protects the specific work, but a patent not only protects the work, but also the form and concepts within the work. Under patent rights, not only is the work itself proprietary, but also the format in which it is created, and any of the underlying computer codes that are part of its inner workings. Patents thus are more comprehensive in nature, and more restrictive in terms of others utilizing the product and the knowledge within the item.

In addition to the patent suggestion, M. I. T. I. also proposed that anyone could use a computer program as long as a fee for use was paid, rather than an out-right purchase. In the case that the software developer would not assign a fee, M. I. T. I. would have been given authority to arbitrate and set a binding fee schedule.

The United States government, and I. B. M., objected to M. I. T. I.'s proposal, and backed the Copyright Council's recommendation. M. P. T., seeing an opportunity to weaken M. I. T. I., also backed the copyright recommendation. To back up America's position, the United States Congress passed a bill that would have stopped the sale in the American markets of any products from a country that failed to protect American intellectual property rights.

Faced with the opposition from Copyright Council and M. P. T., plus the possibility of a trade war with the United States, the Diet rejected M. I. T. I.'s plans, and adopted the copyright requirement.

The end result of the Telecom Wars was that by the mid to late 1980s telecommunications development within Japan had moved to the forefront of Japan's future economic development. But while telecommunications had become a national economic priority, the area of development was split between two centers of power within the Japanese bureaucracies, both with a deep and personal animosity toward each other. While a form of stalemate existed between the two agencies, the overall plan of reaching into the new "informationized Society" remained at the forefront of development.

Over the next six years both M. I. T. I. and M. P. T. tried to advance their own prestige within the government by pursuing two very different approaches to telecommunications competition.

M. I. T. I.'s approach emphasized reliance on private sector development, and the opening of Japanese telecommunications markets to foreigners in return for an opening of foreign markets to Japanese companies.

"The driving forces behind the advanced information infrastructure will be users and suppliers of products and services. The government's role should be to supplement and reinforce initiatives by introducing information systems in the public sector, and by creating an environment which vitalizes the private sector."
("Program", M. I. T. I., 1994)

The M. I. T. I. program recommended liberalization of standards for equipment to allow foreign equipment to enter Japanese markets, but at the same time provide for Japanese equipment entry into American, European, and Asian markets.

M. I. T. I. also advanced the concept of upgrading the Japanese telecommunications network grid in order to develop high speed networks that would allow the Japanese manufacturing industry to evolve into a distributed system.

"Utilizing the networks described above, the entire manufacturing system ranging from order processing, product development and design to production and distribution will be integrated into an intelligent manufacturing system (IMS). As production lines and process equipment are integrated under a single system, a flexible manufacturing system capable of responding to changes in demand and other factors will be established, and the global sharing of development and production resources will be attained. This will enable efficient manufacturing and management for the entire company." ("Program", M. I. T. I., 1994)

In order to create this new telecommunications infrastructure, M. I. T. I. proposed a complete rewiring of the Japanese telecommunications grid to handle high speed and broadband capacity, especially in terms of developing multimedia technology that merged telephones, computers, and television into a single format. Rather than relying, though, on the government to develop the new communications grid, M. I. T. I. suggested that it be developed by the private sector which would rely on market demand to determine the rate that the various services would be introduced into Japanese society and business.

"Future development of telecommunications infrastructures In the areas mentioned above, it is necessary to build telecommunications infrastructures which can handle the two-way transmission of high- volume data at high speeds, and which allow data of various speeds (image data, text data, etc.) to be transmitted. At present, broadband ISDN using the subscriber optical fiber network and ATM switching devices is the most feasible technology in terms of providing both the features of broadband and scalability of transmission volume. However, private leased line services can also take advantage of such an infrastructure depending on the scale of transmission and user charges. Therefore, private operators should take the initiative in the competitive development of broadband ISDN on the basis of a wide range of considerations, such as changes in demand, technical advancements, and competition with other telecommunications infrastructures." ("Program", M. I. T. I., 1994)

Overall, the thrust of M. I. T. I. 's program relied on the use of the market to determine the level of telecommunications development, and the deregulation of all aspects of telecommunications development in order to encourage the highest levels of competition both domestically and internationally.

As mentioned earlier, it is desirable that a compound telecommunications infrastructure environment be materialized where a variety of telecommunications infrastructures making maximum use of the fruits of technical innovation are provided to users, in a situation of constant competition over functions and costs in response to diverse needs in each area of the industrial and household sectors. For this purpose, it is considered to be of the greatest importance that the government, through deregulation in telecommunications, broadcasting, and other areas, create an environment in which private enterprises improve telecommunications infrastructures in a competitive situation. ("Program", M. I. T. I., 1994)

M. P. T., reflecting somewhat its organizational history as a centralized coordinating and direct service agency, plus its nationalistic pre-World War II heritage, advanced a more cautious and conservative program.

"Japan confronts a range of problems as it stands on the verge of the 21st century. To resolve these problems and build an intellectually creative society based on info-communications leading to the next century, it is imperative that Japan now take an approach that emphasizes new trends toward the growing role of info-communications and incorporates past experience." ("Transition", M. P. T., 1994)

To the M. P. T., the development of international competition offered Japan opportunities for expansion, but also threatened basic core industries within the country.

"The international competitive environment is changing in step with the progress of yen appreciation and the growth of the newly industrializing countries, and Japan is increasingly shifting its production facilities overseas, especially in the manufacturing industries where competitiveness has been declining. . . . Nonetheless, the shift of production overseas is continuing at a fast pace, giving rise to fears of a hollowing-out of industry. For this reason too, it is imperative that Japan switch to a new highly productive framework for industry and employment, a framework centered on areas with high intellectual added value." (Transition", M. P. T., 1994)

M. P. T. also saw the developing competitive environment as affecting the quality of life in Japan. The opening of Japanese markets to foreign goods threatened domestic industries because of the price difference in goods. Japanese products, which for years had been protected by standards and tariffs walls, now would be forced to compete domestically based on a competitive price with outside goods. In such an environment, M. P. T. felt, Japanese goods would lose.

"According to a study by the OECD (Organization for Economic Cooperation and Development), if consumer price levels in the U.S. as of 1990 are indexed at 100, then consumer prices in Japan are at 143, clearly underscoring the fact that a great difference in price levels exists. It is thus necessary to bring about structural changes in industries, especially the distribution industry, in order to correct such differentials between domestic and overseas price levels and to enhance the living standard of the Japanese people." ("Transition", M. P. T., 1994)

But even M. P. T. was willing to admit that the old methods of tariffs, capitalization and cartelization would no longer protect Japanese society from international competition within its domestic markets.

"Japan has up to the present sought to obtain material fulfillment by means of tailoring industrialization based on large-volume consumption of goods and energy. However, in the face of the wide range of intensifying problems described above, conventional methods, from which these problems are derived, are likely to be of no avail." ("transition", M. P. T., 1994)

M. P. T. concluded, like M. I. T. I., that Japan needed to develop an "informationized society".

"The approach of capitalizing on info-communications means a change from the 20th century's dependence on goods and energy to the 21st century's focus on creativity born of information and knowledge. In the intellectually creative society based on high-performance info-communications expected in the 21st century,

information and knowledge will necessarily become the most important social and economic resources, and the free creation, circulation, and sharing of these will become the very cornerstones of society." ("Transition", M. P. T., 1994)

While M. P. T. agreed that Japan needed to develop a new information industry based on telecommunications, it felt that the transition to this new society required that many of the older models of industry protection needed to be exercised during the transition period.

"Level 1. . . (*The actual rewiring of the communications grid, and its use by outside common carriers*). . . which comprises physical transmission media, is the basic underlying social infrastructure that enables the social utilization of info-communications capabilities. This level is subject to certain social requirements such as stable supply, fair use, and affordable tariffs." ("Transition", M. P. T., 1994).

Under M. P. T.'s plan, the opening of Japanese markets should be carefully monitored, and only allowed after extensive agreements were reached that respected not only Japan's cultural differences, but also its existing business/government relationships.

"It is imperative that individuals, companies, and other organizations should conduct activities and achieve a balance between competition and coexistence in Japan as well as on the international stage." ("transition", M. P. T., 1994)

In order to ensure that this occurred, M. P. T. recommended that Japan maintain its existing set of both legal and cultural principles, and rather than conforming to Western standards, have the West accept Japanese standards as both a fair and sound basis for trade with Japan.

"Level 4, where technologically feasible applications and services will be introduced to play essential roles in society, embraces personal values and an adequate legal framework, as well as an efficient and effective socio-economic system that decisively influences human activities." ("Transition", M. P. T., 1994)

M. P. T. supported its argument, by stating that such a position was necessary to ensure that each Japanese citizen's continued quality of life, and cultural identity, would be maintained.

"Anyone, regardless of where she/he is in Japan, should be able to enjoy their life, be able to secure employment, and have access to culture and cultural events at the same exceptional high level as anywhere else in the world" ("Transition", M. P. T., 1994)

M. P. T. felt that the use of strong government policies and regulations would eventually lead to the development of the new "informationized Society", but without the loss of Japan's unique cultural and social structure.

"Although the development of info-communications infrastructure would generate new markets, it would also affect existing jobs and industries, reducing their scale or forcing them to change or endangering their existence. These potentially adverse effects imply a shift to higher productivity in industry and changes in the structure of employment, which will help to invigorate the economy as a whole. However, policies formulated to ensure smooth transitions will be essential." ("Transition", M. P. T., 1994)

To M. P. T., the best method to select to achieve both the new informationized society and the retention of existing social values and structures, was the use of the traditional methods of standard setting, especially in terms of access and use of the new telecommunications network grid.

"The widespread application of info-communications functions will lead to a more streamlined, open economic system. However, if steps are not taken to ensure the openness of the network infrastructure and the application system, this could essentially generate new barriers to participation and have the effect of impeding the streamlining of industry at large." ("Transition", M. P. T., 1994)

M. P. T., thus, recommended the continuation of regulation, and implied that such continued regulation and oversight should be maintained within the M. P. T. offices.

M. P. T. also offered a highly ambitious plan to rewire the entire telecommunications grid, and push technological development into Japanese society.

The basic goal of the M. P. T. plan was to create a fiber-optic network for broadband, interactive communications that would be available nationwide by 2005. M. P. T.'s analysis promised that such a network would have an immense economic impact on Japan, and lead to the creation of new businesses and industries. It estimated that such a network would lead to over 56 trillion yen in new markets for Japanese services and goods, and also expanded existing markets by over 67 trillion yen. In addition, by focusing on the multimedia market, Japan could create an additional 123 trillion yen in new services and products by 2005 - this was in addition to the 56 trillion in other new markets, and 67 trillion in existing markets. The net result of the economic expansion would be the creation of 2.43 million new jobs in Japan, and mean that by 2010 telecommunications would surpass automobiles and electronics as the major industry in Japan. All of this, M. P. T. promised, would be possible if the nation followed its advice. ("Transition", M. P. T., 1994)

While Japan had been debating its future in telecommunications, other nations and international groups had also been examining the same issue. In June, 1994 the United States Council of Economic Advisors had issued a report estimating that an upgrade of the United States telecommunications grid would lead to an additional 1.4 million new jobs in the country, and fuel a shift from older industries to the new communications industries ("Task Force", 1994).

In October, 1994 France issued its "Information Highway" Report (They Report), which concluded that France's new fiber-optic network would lead to the creation of 300,000 new jobs by 2005 ("Task Force", 1994)

Both of these reports had followed a report issued by the G-7 Jobs Conference held in Detroit in March, 1994, which concluded that the future development of jobs in the G-7 nations was directly linked to the development of advanced telecommunications systems.

Adding to Japan's concerns was the aggressive development policy being pursued by the Clinton Administration. The National Information Infrastructure (N. I. I.) had shifted its emphasis toward developing policies that advanced a wide range of socio-economic benefits directly linked to high-performance telecommunications. This was especially evident in N. I. I. 's emphasis on the advantages that such a system would have in international trade.

The development of the Internet in the United States also concerned Japan. By 1994, the Internet had linked over 100 countries, including Japan, and was advancing a wide range of applications including research information, e-mail, database access, and shared computer resources.

The National Research and Education Network (N. R. E. N.) was also engaged in linking a broad range of research and educational institutions together to promote advanced research, especially in the areas of applied research directed at product development.

Such strong international developments made it imperative that Japan develop a coordinated national response, but rather than coming together the policy arena in Japan was fragmenting even more ("Task Force", 1994).

In May, 1994, M. I. T. I. announced its program for an advanced information infrastructure. That same month, the Ministry of Health and Welfare established an information promotion headquarters. In June, M. P. T. released its program for the establishment of a high-performance information and communications infrastructure. In July, the Ministry of Education, Culture and Science formed a Multimedia Policy Planning Office. And finally, in August, the Ministry of Construction announced plans to lay a nationwide fiber-optic cable system ("Task Force, 1994).

With so much at stake, and an obvious scrambling for bureaucratic prestige and turf, the Japanese President and Cabinet took the unusual step of actually intervening between the various Ministries. On August 2, 1994 the Headquarters for Promotion of Advanced Information and Communications Society was created in the cabinet, and given the charge to promote comprehensive information and communications measures, and to cooperate with the related global projects. The headquarters consists of all of the cabinet members, and is headed by the prime minister and sub-headed by the chief cabinet secretary and M. P. T. and M. I. T. I. ministers.

But rather than developing a coordinated policy, the new Headquarters is actually a forum in which the various competing Ministries discuss the issues they face, and seek to negotiate settlements between themselves. Nothing within the structure of the Headquarters prevents any of the Ministries from pursuing their individual goals, and thus Japan's telecommunications policy remains fragmented and uncoordinated ("Task Force, 1994).

In spite of this fragmentation, Japan is in the process of trying to develop a high-speed, multimedia network across the nation, and attempting at the same time to enter into international negotiations over access to foreign markets. But of the three major actors in the new area of international telecommunications competition, the United States, the European Union, and Japan, Japan remains the weakest in terms of developing a comprehensive approach to international access. At this point in time, Japan remains a competitor in the newly emerging field, but it is still up in the air as to how successful it will be against the economic and technological strength of both the United States and the European Union.

International Telecommunications Competition

If the world of international telecommunications competition were simply a matter of the United States versus another country, such as France or Japan, the United States, by the sheer size of our market, would ultimately win. But international trade competition is no longer a battle of individual nations. Rather it is now a battle of trade areas.

There are three dominant trade areas now in existence: The North American area composed of the United States, Mexico, and Canada; the European trade area composed of the E. U. nations; and

the Japanese/Pacific Trade area which is dominated by Japan, but which China is beginning to emerge as a major competitor. The rest of the world trade market, for all practical purposes, is open, for the present, to penetration by the Northern Hemisphere nations - how long this will remain so is a matter of speculation as third world nations are beginning the process of forming their own trading blocs.

The basic economic principle at work in each trade area are as old as Mercantilism, namely maximize your exports and minimize your imports; keep your trade balance to your favor at the expense of your competition. To compete in this international market, a trade area must have a large enough base to not only provide for its own internal demands, but also produce a surplus which is available for export. This is the world of international telecommunications markets.

Statistics should always be viewed cautiously, often they present a case that may be only partially correct. In this case, though, a few statistics can measure rough equivalency of the three trade areas in terms of their capacities to produce export services. Main line penetration rate is often used to measure coverage and availability of telephone service within a defined market area. As of the early 1990s, the penetration rates for the three trade areas was:

MAIN LINE PENETRATION RATE PER 100 INHABITANTS

E. U.	39.85
US	49.33
JAPAN	40.73

OECD. Communications
Outlook. 1992.

While the United States has the highest penetration rate, E. U. and Japan are equivalent, and when the three E. U. nations which compose the technological core of E. U. 's system, England, France and Germany, are measured, the penetration rate rises to 43.6; competitive proximity to the United States penetration rate.

In terms of market revenues, OECD figures show that the United States market, in 1992, still remained the largest single market with the highest revenue base, and thus the continuing main target for international competition:

TELECOMMUNICATIONS REVENUE MARKETS 1992

US	\$861 BILLION
E. U.	\$609 BILLION
JAPAN	\$ 44 BILLION

OECD. Communications
Outlook. 1992

While revenues for service markets remained dominated by the United States, OECD figures paint a bleaker picture in terms of equipment sales, which in 1992 exceeded \$77 billion internationally. By 1992, E. U. had gained the largest single sales share in the international equipment market:

TELECOMMUNICATIONS EQUIPMENT SALES REVENUES INTERNATIONAL MARKETS, 1992

Trade Area	Sales	Percentage
E. U.	\$22 Billion	28
US	\$17 Billion	22
Japan	\$ 8 Billion	11

OECD. Communications
Outlook. 1992

The MFJ requirement of open interconnection of all equipment to AT&T lines is the main reason why the United States international telecommunications equipment surplus of \$500 million dollars in 1981, turned into a \$2.6 Billion trade deficit by 1988. It allowed for the immediate penetration of United States markets by foreign firms.

The MFJ also had an effect on the levels of capital investments in the telephone infrastructure in the United States. Again, OECD figures give a clear picture of what has occurred:

TELECOMMUNICATIONS CAPITAL INVESTMENTS, 1992

E. U.	\$30 Billion
US	\$21 Billion
Japan	\$ 9 Billion

OECD. Communications Outlook.
1992

The capitalization of upgraded digital switching systems and fiber optics within the E. U., has caused the per kilometer penetration rate in Europe to exceed by 100 percent the level in the United States:

MAIN LINE PER KILOMETER PENETRATION RATE, 1992

E. U.	51.31
US	25.60
JAPAN	7.56

OECD. Communications
Outlook. 1992

This means that the availability of upgraded lines and systems for potential digitally service based companies is higher within the E. U. group than any of the other two competing trade areas.

When you compare the above figures, what you see emerging is a picture of competitive advantage or disadvantage. The most obvious conclusion is that only the United States and E. U., at the present time, have a sufficiently large enough internal market structure and capacity of production, combined with an advanced communications grid, to effectively dominate the world's telecommunications arena. While Japan has the capacity to produce the equipment, but not the advanced services, its 1994 decision to completely rewire its communications grid to a broadband base by 2005 could quickly place it in the number two position. But, currently we face Europe, and that means examining the French strategy.

The French, by themselves, would never be able to dominate the international telecommunications market. France would face the same structural problem as Japan, namely too small of a revenue and capacity base to take on the monolithic United States. But France, as a critical member of an E. U. coalition, could become a major influence in an E. U. cartel which does have enough revenue and capacity base to challenge the United States position. And this is exactly what is occurring.

France is pursuing its policy within the structure of the E. U. "Green Book" standards. The purpose of the standards are very clear:

"The development in the Community (E. U.) of a strong telecommunications infrastructure and of efficient services: providing the European user with a broad variety of telecommunications services on the most favorable terms, ensuring coherence of development between member states, and creating an open competitive environment, taking full account of the dynamic technological developments under way. ("Green Book", 1987, Chapter X, Section 3.)

In order to implement the "Green Book" standards, which were mandatory for all member nations, including France, the E. U. community created two research and development programs to guide the transformation: RACE, Research and Development in Advanced Communications Technologies for Europe, and ESPRIT, European Strategic Program for Research and Development on Information Technology. Twelve specialization subunits were created to deal with technical specifications and administrative interface. The subunits are:

EIES	Esprit Information Exchange System
INSIS	Institutional Information Systems
BRITE	Basic Research in Industrial Technology in Europe
CREST	Committee for Research in Science and Technology
COST	European Cooperative for Excellence in Science and Technology Research
FAST	Forecasting and Assessment on Science and Technology
APOLLO	Article Procurement with Online Local Ordering
CEPT	Conference of European Post and Telecommunication Administrators
TDCC	Transportation Data Coordinating Committee
EDI	Electronic Data Interchange Standards
SPAG	Standards Promotion and Application Group
ITSTC	Steering Committee for Information Technology

The goal of this massive Research and Development program was to have in place, across Europe, what is known as Integrated Broadband Communications (IBC). The process for achieving this goal was formulated into a strategic development plan which has remained on schedule since its inception in 1986.

IBC is the next step in the development of telecommunications and computer science. It is actually the technical convergence of the two fields into a single system. IBC is the process of digitalization of computer networks, telecommunications networks, television and radio networks, and satellite linkages into a single all embracing interactive communications medium that handles voice, video, and data simultaneously. In 1995, the E. U. nations started the final two year process in its ten year plan that will see IBC available across Europe by the end of 1997. A key component in this

advanced telecommunications system is the transformed France Telecom. Giscard d'Estaing's industrial policy is about to blossom.

While the United States continued to maneuver around the issue of profit and rates of return in local and long distance telephone exchanges, the European Union advanced a policy of telecommunications linked to economic competition.

“This sector... (telecommunications)... is in rapid evolution. The market will drive, it will decide winners and losers. Given the power and pervasiveness of the technology, this market is global. The prime task of government is to safeguard competitive forces and ensure a strong and lasting political welcome for the information society, so that demand-pull can finance growth, here as elsewhere. By sharing our vision, and appreciating its urgency, Europe's decision-makers can make the prospects for our renewed economic and social development infinitely brighter.” (“Bangemann”, 1994)

In 1993 France Telecom and Germany's D. B. P. Telekom signed an agreement for a strategic alliance between the two telecommunications companies. The alliance was aimed at creating a global business employing over 4,000 people, and aimed at expanding services into international markets. The following year the alliance paid four billion dollars to acquire a fifteen percent operating share of U.S. Sprint, thus penetrating the United States long distance market (and potentially the local exchanges in the near future). This move had been preceded by a move on the part of British Telecommunications, in 1993, in which it also acquired a fifteen percent share of MCI. Thus by the end of 1994, the three largest telephone systems in Europe had established themselves into the United States long distance markets.

The response from the United States operators was negative:

“It's another example where there's going to be a major player going to the U.S. market and we at Bell Atlantic and regional companies are shut out.” (“Sprint”, 1994)

Eunetcom, the name of the company formed between France Telecom and Deutsche Telekom, has become a major competitor in the global communications service sector. By the end of 1994 it had signed up thirty multinational companies, and generated over one hundred million dollars in sales during its first year of operation. At stake is the twelve billion dollars spent each year for telecommunications by the five hundred largest multinational corporations.

“Our goal is to be the main player and position Deutsche Telekom and France Telecom as the number one in the market” (“Olier”, 1994)

Behind this aggressive market strategy of the European telephone operators is a coordinated government system that recognizes the vested interests that the entire European Union has in the international telecommunications market. The major investment in the telecommunications upgrade, started in Europe in the 1970s and 1980s, continues, and is scheduled to reach full capacity by the year 2015. What is startling about the European development is the fact that just twenty-five years ago every telecommunications grid in Europe was publicly owned, and the level of penetration and sophistication of services was considered to be a full generation behind the United States system.

The movements by both Europe and Japan to physically build a new form of telecommunications economics by the construction of advanced networks, began to have an impact on the policy

making machinery of the United States. What drove the change in the regulatory attitude was the recognition that a new type of economic competition was emerging in the world, competition based on information. In order to be a competitor, the United States needed a modern and advanced telecommunications structure.

But in order for this new economic order to emerge, another issue had to be settled first, and that issue involved our old friend, the International Telecommunications Union.

The New International Telecommunications Order

The I. T. U. not only set the standards for equipment interfaces, it supported the position, commonly held among the I. T. U. members, that telecommunication services were not a form of trade. Rather, the I. T. U. norm saw international telecommunications as a joint investment on the part of various countries seeking to create a common infrastructure to promote communications.

Under the I. T. U. view of the world, telephone service everywhere was a "natural monopoly", and the interconnection efforts were only attempts to exercise economy of scale while extending the reach of the domestic networks to the international sector, thus the entire effort was grounded in the concept of extending "universal service" (Aronson and Cowhey, 1988: 8 - 9). As such, what was charged by an individual nation was a national concern, not an international issue.

Rates were established between countries to handle and process calls, but revenues exchanged between countries were based on a set formula, while charges to the customers were left to the individual countries. As a result, the cost of an international call included not only the actual costs associated with the call, but also the set fee for handling the call between nations - and any additional charges placed by the national telephone system receiving and sending the calls. The final result was that international costs for telephone services were highly profitable, and the profits were often used to subsidize other services, such as local access charges for each country's citizens.

As the process of liberalization, which started in the United States, began to enter international negotiations, the I. T. U. charge for overseeing rates and the standards for interconnection were challenged by the United States efforts to include telecommunications access into the General Agreement on Tariffs and Trade (G. A. T. T.) trade rules.

The break-up of A. T. & T., and the opening of the telecommunications equipment market in the United States, drove the United States interest in redefining the nature of international telecommunications. Fueling United States concerns was the increasing trade deficit the United States faced in the telecommunications equipment markets. By the early 1990s, the United States faced a 2.5 billion dollar trade deficit in this area. What was alarming, to the United States, was that in the late 1970s and early 1980s this area of market competition had seen the United States holding a 1.5 billion dollar trade surplus (Cowhey, 1990: 191 - 192).

Starting in the late 1970s, the United States had been arguing that international service exchanges, such as telephone service, did have trade like properties, and thus were eligible for inclusion under the GATT agreements. Where, previously, the international position had been that telecommunications did not exhibit trade properties, and actually were devices for extending universal service and a form of natural monopoly, now this position was suddenly under attack by the United States (NTIA, 1983).

At first, starting in 1983, most GATT and ITU members were hostile to the United States position. While United States trade delegates gave long, and impassioned, speeches about the "magic of the marketplace", they also accused their foreign counterparts of unfair trade practices, and even threatened to leave the I. T. U. The foreign trade representatives, though, viewed the United States move as an attempt to destroy the concept of a natural monopoly, and to assert undue influence over their sovereign rights to establish their own domestic policies. To the rest of the World, the United States position was only an attempt on the part of a major trading partner to use their might to the advantage of their own domestic industries (Drake, 1994: 170 - 171).

The threat to the I. T. U. and the international telecommunications sector was critical. If the United States, because of domestic policies, reduced its involvement in and compliance with the I. T. U. process, then it would increase the difficulty in developing new standards and systems required to produce the new platform for global telecommunications. Without a standardized platform, the goal of economic expansion within telecommunications would be sidetracked, and eventually would be thwarted because of the development of different, and possibly incompatible, systems.

On the other hand, though, if the international community ascended to the United States position, then the flood gates of competition within both the equipment and services markets would force open their domestic markets and industries to foreign companies, and possibly result in domestic reductions in their national businesses (Witt, 1987: 353 - 372).

For the next four years the issue of international deregulation was discussed and examined. But in the process of analyzing the issue, the E. U. nations discovered that America was not as great a threat as they had previously imagined. In fact, the reports that were issued tended to show that the E. U. nations could fare quite well in an internationally open market, provided that everyone had equal access to everyone else's networks. In addition, in 1986 the E. U. launched its program of market unification across Europe, which meant that eventually the national networks of Europe would be required to be open to all the E. U. countries anyway (Drake, 1994: 175 - 177).

While Japan objected to the change, the financial power of the United States and the E. U. forced the matter along. The eventual agreements that were established under the General Agreement for Trade and Services (GATS) set-up a bilateral relationship within international telecommunications. Access to one countries network is matched by equal access to another countries network. Thus an open border is maintained between the systems, and the concept of a "natural monopoly", whether in the international or domestic market, is rejected.

As for the costs of such services and the standards for interconnection, the United States pressure for open markets, coupled to the E. U. 's position in support of the United States position, completely undermined the basis for the I. T. U. 's legitimacy. Over the 1980s and early 1990s the I. T. U. was forced to relinquish its technical control over the international system. While the United States position split the I. T. U. membership, in the end power won, and the world of international telecommunications regulation moved away from I. T. U., and into the world of GATT and the bilateral trade agreements between the United States and the other nations of the world.

In the end, the I. T. U. 's position that network interconnection and services was the domain of the domestic telecommunications companies and their national governments, was replaced by a new set of standards which encouraged corporate competition and control within the international network. The I. T. U. had been forced to accept the concept of American competition and privatization of the telecommunications industry (Drake, 1994: 197 - 198).

By the early to mid 1990s the United States had achieved what it wanted, the beginning of the opening of international telecommunications markets. But the United States still had one issue it had to resolve before the new world of international telecommunications competition could actually emerge within the United States..

In the majority of the world, a domestic network means a national network. Since telephones and telegraphs were nationally owned and nationally supported, the only distinction made between a local versus a long distance network was administrative. When a telephone network was designated a natural monopoly, the designation covered both the long distance and the local networks. When the Europeans agreed to open up their networks, they included in their definition both the long distance and the local networks.

But in the United States, since the A. T. & T. corporate structure had created two levels of private ownership, the definition of a natural monopoly had two meanings. The first level, interstate, had been rejected by Judge Greene's MFJ, and thus was open to the newly emerging international competition. But the second meaning, the local level, had been defined by Judge Greene's MFJ as "natural monopolies".

If the United States wanted access to the Paris' market, it was going to have to let the French have access to the Omaha's market, and that meant that the United States was going to have to deal with the very politically difficult issue of local natural monopolies, and the 10th amendment rights of the States to regulate the local and intrastate industry through their PUCs.

THE INTERNAL POLITICAL FRAMEWORK

The post-1983/1984 structure of telecommunication regulation in the United States, was a combination of federal laws, state laws, court rulings, and regulatory reviews. It was a confused and evolving situation which contained no clear policy direction or purpose. Contributing to the policy confusion was the fact that the 1982 MFJ ruling by Judge Greene, which ordered the breakup of A. T. & T. / Bell, had been flawed in its perception of the mechanisms used to maintain the telephone monopoly.

By 1972, through the work of the F. C. C. staff and Commissioners, alternative systems for long distance telephone service had been approved and were being offered to the public. The combination of microwave and satellite transmission, plus previous court rulings concerning the Carterfone case, had broken the telephone monopoly at the Federal level of government authority over interstate communications. The remaining issues, which dealt with the interconnection of long distance services and equipment to the local exchanges, were regulated by the State PUCs.

Greene's Tunney Act hearings, which were held in the Spring and Summer of 1982, opened the settlement process to a wide range of interests and groups not previously part of the original lawsuit. Not only would A. T. & T. and the Justice Department present information concerning the effect of the break-up, but also newly emerging competitors, the Regional Bell Operating Companies (RBOCs), State regulators, labor unions, and consumer groups (Stone, 1989: 329).

The soon to be divested Bell Operating Companies advanced the case that the revenues that would be generated from the new local services would not be enough to cover their costs of operation. To the newly developing Bell companies, the antitrust settlement was a sell-out by A. T. & T., and left them in a very poor position. The local Bells felt that just as new high-technology services and products were being developed, A. T. & T. was leaving them and taking all the future potential with it. To the Bells, all A. T. & T. was leaving them were the old copper wire lines and telephone

poles, plus the outdated and failing switching and transmissions systems. The Bells thus saw themselves straddled with the local exchange upgrade problems and costs, while A. T. & T. deserted them to pursue the highly profitable future (Faulhaber, 1987: 93).

The State Public Utility Commissions, supporting the local Bell companies, also saw the settlement as an abandoning of the local exchanges. The loss of the separations and settlements dollars that had been used to keep local costs down, coupled to the need for capitol to improve and upgrade the local exchanges, caused them to turn against A. T. & T. Within days of the settlement announcement, the PUCs were stating that local telephone charges would have to increase by three-fold. The PUCs were joined in their fear of local rate increases by the consumer groups, who also opposed any changes that would undermine the long-standing rate subsidies, and thus poise a threat to increasing local telephone rates (Faulhaber, 1989: 93).

The newspaper and media industry sided with the RBOCs, PUCs and the consumer groups, pointing out that while A. T. & T. would keep only one third of the assets of the company, they would actually control two-thirds of the revenue. In the end, according to the media, the RBOCs would be left with all the costs and out-dated technology, while A. T. & T. retained the majority of the telephone revenue. (Faulhaber, 1989: 93).

The original settlement, which dealt with exclusively isolating those aspects of the industry that were considered to be monopoly markets, fell apart under Greene's direction. Greene, stepping beyond the original charge of the case, began a process of divestiture that had no relation to the actual economic structure of the industry. While, in theory, both A. T. & T. and the Justice Department could have appealed Greene's "suggestions", since the Consent Decree was between those two parties to the suit, they declined to exercise that option. Greene's ability to exercise the Tunney Act's provision concerning "the public interest", meant that if the two parties did not agree with Greene's suggestion, he could order the litigation to proceed. If that occurred, both A. T. & T. and the Justice Department would be forced to present their cases in front of a Judge who would have felt that his sense of equity and judicial authority had been undermined, and likely would have resulted in an even more unappealing decisions. Thus, both A. T. & T. and the Justice Department proceeded to accept Greene's "suggestions" (Coll, 1986: 357 - 364).

Greene's inability to understand the nature of the industry resulted in a process whereby the national monopoly was broken-up, and was replaced by seven regional monopolies. Greene's initial step was to transform the twenty Bell companies into seven regional bell operating companies (RBOCs). This was done by Greene in order to ensure that each Regional Bell would have sufficient market size to guarantee continuing financial viability.

He then negated the entire case over long distance service being a competitive enterprise, by awarding to each RBOC the right to provide long-distance service within their local access and transport area (LATA). The LATA's that were created were larger than the local exchange areas, and sometimes, such as the case of the Wyoming, covered an entire state. In addition, many of the LATA's crossed state-lines, especially in the high density areas of the Northeast and Mid-West, and thus were totally within the historical authority of interstate transmission. In essence, he took away from A. T. & T. a large portion of its most profitable long distance service area, and gave it back to the RBOCs as local monopolies.

Greene then proceeded to take something that had never been claimed as a monopoly service, namely the Yellow Pages, and declared that Yellow Pages were a part of a local natural monopoly, and thus should be exclusively in the hands of the RBOCs. He next undermined the equipment monopoly argument by allowing the RBOCs to provide equipment. While the RBOCs could not be

directly involved in the manufacturing of equipment, they could arrange with manufacturers to provide equipment to their customers.

To further strengthen the RBOCs economic position, Judge Greene provided that any of the RBOCs could petition the Court for a waiver from the "Line-of-business" restriction if they could show that competition in those types of markets would not be harmed, and that offering such business would not amount to more than ten percent of the RBOCs net annual revenue.

In two final blows to A. T. & T., Judge Greene required that the Bell copyright logo was the sole and exclusive property of the RBOCs, not A. T. & T., and A. T. & T. was forbidden to enter the electronic publishing market for seven years.

Then, to ensure that his suggestions would be followed, Judge Greene took the unusual step of informing everyone that he would indefinitely maintain jurisdiction over the enforcement of the decree. In essence, from now on whenever A. T. & T. and the RBOCs wished to develop new services or change the nature of their industry, they would have three bodies to deal with, the F. C. C., the PUCs, and Judge Greene's court ("Order", U.S. vs. A. T. & T., 1983).

Greene's ruling only required that AT&T's charges for long distance service would not include any cost factors relevant to service charges within the intrastate levels. The divestiture of the state and Regional Bell Operating Companies (RBOCs) from AT&T did not address the historical problem, though, of the PUCs restricting competition at the state or local levels.

AT&T, as originally envisioned by Forbes in the 1880s, and continued by the corporation through its one hundred plus years of existence, was actually a holding company for a series of state chartered monopolies, which, when aggregated together, formed a national monopoly. Greene's divestiture order broke the national monopoly, but could not address the issue of the state monopolies which were under the authority of the PUCs.

The net result of the Greene rulings was not only the break-up of AT&T/Bell, but also the shattering of the regulatory balance that had been in place between the states and the national government. In its wake, the ruling left the national regulatory structure balkanized with a fragmented national/state regulatory system competing against seven regional monopolies.

Historically, the PUCs had opposed F. C. C. restrictions on their authority. It had been a consistent policy of the PUCs to seek rate averaging across the entire national market in order to keep local service rates low and extend service into high costs areas, such as rural areas. The policy was successful in achieving both of these objectives, and did allow for the expansion of local telephone service across the country. The method used to achieve this level of penetration was restriction of the number of service providers within the communications market, and limiting consumer options for service. By consolidating the potential consumer market, and then offering the entire potential market to a handful of providers, capitalization costs and operating expenses could be averaged across a wide base. This allowed high cost/low revenue areas to be subsidized by low cost/high revenue areas.

The F. C. C. decisions to open the public airwaves to alternative telephone services, and the subsequent breakup of A. T. & T. / Bell, presented the PUCs with a major challenge to their historical policy of rate averaging. It was now possible to offer telephone service without the use of wired lines. Voice, video, and data traffic could be handled through the public airwaves regulated by the F. C. C., not the PUCs. In addition, such services could be targeted at high profit/low cost markets while bypassing low profit/high cost markets, especially within the

business community. Thus the potential existed to reduce the total number of consumers forming the base for rate averaging at the intrastate and interstate levels. Faced with this potential threat to the rate base, after the Greene settlement was approved in 1984, thirty-six state PUCs passed regulations prohibiting the licensing of new services, and blocking interconnection of new services to business groups (Noam, 1992: 136 - 137) Judge Greene's ruling in no way affected the intrastate war over maintaining the historical monopoly rate averaging policy.

The "Telephone Wars" between the State Public Utility Commissions and the Federal Communications Commission actually had its beginning almost ten years before Greene's final 1984 divestiture decision. The initial salvo originated in the State of North Carolina, and was a consequence of the Caterfone decision.

After the Caterfone decision, a debate developed between the PUCs and the F. C. C. over the issue of who should provide equipment to subscribers. In essence, the PUCs argued that equipment connected to the network should be provided by the line carrier, the telephone companies, and not by the subscriber. The PUCs position was that the attachment of non-carrier provided equipment to the intrastate network could be prohibited by the State's under their Tenth Amendment rights. The F. C. C., on the other hand, argued that subscriber connected equipment should be allowed since the entire network was national in nature. Finally the F. C. C. decided that equipment attachment was completely under the discretion of the subscribers ("Memorandum", 13 F. C. C. 2d 571: 1968).

In 1974 the North Carolina Public Utilities Commission (NCUC) announced that it was prohibiting the attachment of any subscriber equipment to the State network, unless the equipment was used exclusively for interstate calls. In addition, NCUC required that if subscriber equipment was attached for interstate purposes, the subscriber had to lease a separate line for that purpose. The F. C. C. immediately issued an order preempting the state's interconnection prohibition. ("Telerent", 45 F. C. C. 2d 204: 1974).

NCUC challenged the F. C. C. order in the Fourth Federal District Court, and argued that under the 1934 Communications Act the F. C. C. was specifically prohibited from jurisdiction over intrastate communications services or facilities.

The Fourth District Court did not agree with NCUC. In its ruling, the Court stated "... usually it is not feasible, as a matter of economics and practicality of operation, to limit the use of such equipment to either interstate or intrastate transmission." (NCUC I, 537 F. 2d, 791: 1976). In the Court's view, the intrastate prohibition against equipment attachment would prevent the subscriber from exercising their federal right to interstate interconnection. Since this was the case, the Court ruled, the F. C. C. had the authority to preempt the state regulation in order to "... exercise... plenary jurisdiction over the rendition of interstate and foreign communications services that the Act had conferred upon it." (NCUC I, 537 F. 2d, 793: 1976)

The initial North Carolina decision was followed by a series of Court rulings that further strengthened the F. C. C.'s authority to preempt State regulations.⁸⁴ The cumulative effect of the Court rulings between 1976 and 1984 seemed to affirm the F. C. C.'s right to preempt any state regulation related to the intrastate exchange if the state regulation affected, in anyway, even one telephone call over the exchange that became interstate in nature.

⁸⁴ California v. F. C. C., 567 F. 2d 84 (D.C. Cir. 1977); New York Tel. Co. v. F. C. C., 631 F. 2d 1059 (2d Cir. 1980); National Ass'n of Regulatory Util. Comm'rs, 746 F. 2d (D.C. Cir. 1984).

Emboldened by the Court rulings, the F. C. C. began to attack state regulatory authority, and specifically attacked equipment depreciation rates, inside wiring, and the emerging enhanced services.

From 1980 to 1983 the F. C.C. issued a series of orders that preempted the state regulations required to depreciate the intrastate elements of the equipment within the network. Under the F. C. C. rulings, the Federal schedule of depreciation was required for both interstate and intrastate equipment, and the level of depreciation was accelerated.⁸⁵

In 1986 the F. C.C. attacked the state's authority over inside wiring for telephone service. Historically, the inside wiring of local residences and businesses had been exclusively under the authority of the local exchanges, and thus under the State PUCs discretion. But the F. C. C., in its 1986 order, required that all inside wiring had to be unbundled from the common carriers other services, and the maintenance of such wiring had to be done under a private contract arrangement between the subscriber and an outside provider.⁸⁶ The F. C. C. stated that since inside wiring was not "common carriage", namely part of the actual system of transmission overseen by the telephone company, the 1934 prohibition against the F.C.C. being involved with intrastate "common carriage" did not apply to inside wiring. Thus, the F.C.C., according to the reasoning presented, could preempt state authority in this area.

Probably the F.C.C.'s most ambitious attempt to preempt state authority was centered around the development of "enhanced services". Under the MFJ Divestiture Order, the RBOCS were required, if they wanted to offer interstate enhanced services such as data transmission, to make such offerings available through "structurally" separate corporate affiliates. Greene's ruling in this matter was that separation would prevent the RBOCS from using their monopoly control over the local exchanges from obtaining a competitive advantage in these newly developing markets.

In 1986, the F.C.C. opened its "Third Computer Inquiry". The conclusion of the Inquiry was that the F.C.C. felt that the structural separation process limited the RBOCS ability to develop such services quickly. Since the benefits of such services were potentially high, the F.C.C. ruled, the separation process should be modified. While the potential risk of anti-competitive conduct was still possible, the benefits to customers in developing such services far outweighed the competitive issue. Thus the F.C.C. replaced the structural separation process with a non-structural process.

Under the new process, the RBOCS could offer enhanced services provided they gave six months notice to other competitors of their intentions, and fully disclosed all technical information necessary to interconnect to their networks for such service offerings. In the process of issuing its new rulings, the F.C.C. nullified all state structural and non-structural separation requirements, and all state tariffs that applied to enhanced services.⁸⁷

⁸⁵ First Report and Order, 85 F. C. C. 2d 818 (1981); Memorandum Opinion and Order, 89 F. C. C. 2d 1094 (1982); Memorandum Opinion and Order, 92 F.C.C. ed 864 (1983).

⁸⁶ "Detariffing the Installation and Maintenance of Inside Wiring", Final Rule 51 Fed. Reg. 8498, 59 Rad. Reg. 2d, 1 F.C.C. Rcd. 1190 (1986).

⁸⁷ Report and Order, 104 F.C.C. 2d 958 (1986); Reconsideration, 3 F.C.C. Rcd. 1150 (1988).

But Federal preemption was not the only telephone war being waged in the telecommunications systems of the United States at this time. Another war, and potentially more damaging war, was being waged over economic development.

Telecommunications is big business in the United States. By 1993 the United States was spending over \$500 billion annually in the telecommunications systems. It is estimated that by the year 1997 total United States telecommunications expenditures will exceed a Trillion dollars annually.

In response to this developing market, all 50 States developed some form of high technology economic development policy which was dependent upon advanced telecommunications infrastructures. As a consequence by the early 1990s there was developing a fragmented, and competitive, bidding situation at the state levels (OTA, 1995).

Compounding the developing competitive market between States, was that the MFJ divestiture had also, initially, thrown the PUCs into a near total level of panic (Power, 1984: 190 - 191)

The State PUCs "mission" varied from state to state. In addition to telephones, State PUCs regulated railroads, electricity, natural gas, industrial wastes, and a wide range of other public service areas that were selected dependent on each state's individual history and culture. But while the mandate of the PUCs was broad, their resources and power were limited. In terms of staffs, the State PUCs averaged only 168 personnel at the time of the 1982 Divestiture Agreement (NARUC, 1982)

In addition to its low staff support, the State PUCs were generally limited in their authority, with either State Legislatures or Governors exercising a great deal of direct influence over the agency's priorities and decisions. The concept of an "independent" agency, such as the F. C. C., was not an operational factor in the majority of State levels of regulation (Stalon, 1984: 232).

While market competition was the position being taken by the F. C. C. and the Justice Department, the position being taken at the State level was continued support for universal service and access. Keeping basic telephone rates low, opposing local access charges, and keeping the local Bells focused on local and intrastate services, were the priorities of the State PUCs. The divestiture had resulted in requests for rate increases being filed with all the State PUCs, which, in the atmosphere of immediate panic following the MFJ, were generally approved (Powers, 1984: 190 - 191).

But as the level of issues involved in deregulation became more technical, the responses from each state began to vary. Access charge rates were set at varying levels, and ranged from a seven cent per minutes difference between the lowest state, New Jersey, and the highest state, Alabama. California ruled that long distance carriers had to block all calls within the LATA areas, while Indiana required all carriers to pay Indiana Bell for intra-LATA access. In other states, the PUCs saw no way to prevent intra-LATA competition, and opened the markets to all carriers, while other States made the intra-LATA an exclusive monopoly controlled by the RBOC (Noll, 1986).

The exercise of State discretionary authority began to come into conflict with the F. C. C.'s agenda for developing national competition through the application of Federal preemption. What before had been a carefully balanced separation between interstate versus intrastate authority, fell apart. The F. C. C. began to claim that the State's were blocking the development of a deregulated industry, and the State's claimed that the F. C. C. was seeking to circumvent and undermine the Tenth Amendment Rights of the States to regulate industry within their borders. Relations between the two levels of regulatory agencies began to deteriorate.

The State Public Utility Commissions mounted a counter-assault against the preemptive strategy of the F.C.C. In 1986, the Louisiana Public Service Commission appealed the Fourth Circuit Court's ruling which validated the F.C.C.'s decision to preempt the depreciation schedules for equipment. The Supreme Court granted certiorari to review the Fourth Circuit's ruling. (*Louisiana v F.C.C.*, 476 U.S. 355, 1986).

In a five to two decision, the Supreme Court ruled the F.C.C.'s preemption of the depreciation schedules violated the 1934 Communications Act. The Court declared that the Communications Act specifically "fences off from FCC reach or regulation intrastate matters." (*Louisiana v F.C.C.*, 476 U.S. 370, 1986). The Court affirmed that the F.C.C. did not have the right to stray into the areas of State authority, and thus the F.C.C. must allow different depreciation schedules and methods to be applied in the intrastate level of the network.

The State counter-attack continued, and in 1989 the State's attacked the F.C.C. rules over inside wiring. In *National Association of Regulatory Utility Commissioners versus the F.C.C.* (880 F. 2d 422, D.C. Cir. 1989), the Court of Appeals for the D.C. Circuit Court ruled that F.C.C. preemption over inside wiring was not valid. Calling the original F.C.C. justification concerning wiring not being part of the "common carriage" and thus not part of the intrastate prohibition, the court found that the F.C.C. reasoning was "circular", and if allowed to stand would allow the F.C.C. to preempt any aspect of intrastate service.

The final blow to the F.C.C.'s preemption strategy came the next year. In *California versus F.C.C.* (905 F. 2d 1217, 9th Cir. 1990) the Ninth Circuit Court ruled that the F.C.C.'s decision to replace structural safeguards with non-structural safeguards did not safely protect the public interest in terms of anticompetitive practices by the RBOCS. In addition, the Court ruled that the Communications Act specifically restricted the F.C.C.'s actions to the interstate level, and thus the F.C.C. could not preempt state regulations concerning enhanced services at the intrastate level.

By 1990 the regulatory boundaries between interstate and intrastate authority seemed unclear and fragmented. The F.C.C.'s attempt at the use of Federal preemption had been turned back by the Court system, but the F.C.C. continued to pursue a national policy in spite of the Court rulings and direct opposition to the State Public Utility Commissions.

The competitive state economic process was also beginning to lead to a fragmented pricing and regulatory structure that sought to undermine the competitive advantage of other states, and a non-standardized specification base for the telecommunications system. The F. C. C. had developed standards for Open Network Architecture (ONA) which allowed for the interconnection of all systems. California, Florida, Maryland, Minnesota, and New York rejected the F. C. C. 's ONA standards, and developed independent ONA standards for their individual states. North Carolina formed a partnership with Southeastern Bell, and built a state fiber optic network that was run exclusively by Southeastern Bell. Iowa built its own state-owned fiber optic network which was operated by the state, and beginning to offer access to commercial users. Vermont's PUC mandated that local access rates had to be price capped, but interstate rates and value added service rates would be unregulated. Nebraska removed all rate caps, and allowed all rates to be unregulated. California established price caps for low income users, while Illinois required that all end users must pay full costs. These are only a handful of examples of the on going process of fragmentation at the state level (OTA, 1990: 361 - 370).

While the states were following an independent direction, the F. C. C. continued its attempts to move into the area of federal preemption, and directly challenge the PUCs authority. Pursuing a policy of deregulation, the F. C. C. advanced policies in direct conflict with the PUCs, and in

some cases the MFJ of Judge Greene's rulings. In 1991 the F. C. C. authorized A. T. & T. 's entry into all data services offered to large business groups, this is in spite of the fact that Judge Greene had restricted A. T. & T. 's entry into other lines of business without previous court review and authorization.

In the same year, the F. C. C. directly challenged the authority of the PUCs by re-authorizing the RBOCs entry into enhanced services, and allowing the RBOCs to cost these new services by including costs of equipment, facilities, and personal at both the interstate and intrastate levels - rate averaging of costs within states and across state lines without approval of the PUCs. The next year, 1992, the F. C. C. authorized the RBOCs entry into the video dialtone service market by allowing them to form partnerships with the local cable television companies, and to use the television cables to offer services. This, in essence, allowed the RBOCs to provide direct home services without having any regulation by the PUCs, even though the service was being offered intrastate. In 1997 the F. C. C. planned on removing all barriers to satellite transmissions, and allowing all telephone companies to use international lines to route signals over public switched networks without regard as to whether the network was either long distance or intrastate. (OTA, 1995).

The F. C. C.'s decisions to liberalize both A. T. & T.'s and the RBOCs service offerings backfired on the F. C. C.. Judge Greene's MFJ applied to only A. T. & T. and the seven RBOCs that had been created under his ruling. All other telephone providers, M. C. I., Sprint, and the other five hundred long distance companies that emerged after the 1982 ruling, operated outside the MFJ. These companies, in essence, continued to operate under the old system of regulation split between the F. C. C. for interstate traffic, and the PUCs for intrastate traffic.

As a consequence, the PUCs had available to them a large and growing body of telecommunications companies eager to enter the local exchange markets, and to offer advanced services to both local residential and business customers. In addition, these new companies could not only offer local access, but because of the interstate interconnection requirements, could also offer related long distance service. Thus it would be possible for such companies to offer end-to-end service, namely local through interstate long distance service, if they were allowed access and interconnection to the local RBOC exchanges. While the RBOCs were prohibited by Court order from offering interstate long distance service in addition to local access, the newly emerging companies were not under the same restriction.

One other factor also was of consideration by the PUCs. The old local exchanges, which had been inherited by the RBOCs under the MFJ, were still in need of major upgrades. The RBOCs, after the MFJ, began to recapitalize the local exchanges and lines, but because of the reduced subsidies from long distance, and the enormity of the process, upgrades had continued at a marginal level. The RBOCs were reluctant to invest in a substantial upgrade unless future services could be developed that would produce higher earnings. Since the RBOCs continued to face restrictions under Judge Greene and the MFJ, they were reluctant to invest until the restrictions were lifted. The new competitors, on the other hand, were willing to create fiber-optic backbone networks within the states, and begin the process of providing upgraded lines into businesses and homes.

Starting in the mid 1990s, some of the State PUCs began to open the local exchanges to competition. Arizona completely deregulated the local exchanges and the intrastate service, and required that Southwestern Bell open all Arizona exchanges to interconnection by local competitors, including companies that offered long-distance service. New York regulators approved the "Rochester Plan" that opened all the NYNEX exchanges in Rochester, New York to local competitors. Illinois certified local competitors, and mandated interconnection. Both

Washington State and Maryland not only certified new local competitors, but issued orders on the terms of interconnection, and the prices that could be charged for unbundled services and access. California opened hearings on local competition, while Florida mandated that all local exchanges had to be open to competition by July 1, 1997 - in the case of Florida, sixteen companies applied for access, and ten were certified even before the actual interconnection bill was passed by the Florida State legislature.

Since the MFJ had been issued in 1984, both A. T. & T. and the RBOCs had been arguing that they should be allowed to compete in each others area of service. A. T. & T. sought interconnection, once again, to the RBOCs local exchanges in order to offer end-to-end service, while the RBOCs sought access to long distance exchanges to offer the same type of end-to-end service. While both groups had made strong arguments for such access, they had been blocked by the Justice Department and Judge Greene's rulings based on the perception that such access would, ultimately, lead to the creation of the "strategic bottleneck" problem which had been resolved by the MFJ.

The problem though was that the State PUCs decisions to open the local exchanges to end-to-end competition put both A. T. & T. and the RBOCs at a disadvantage. It would not be long before competitors would arise that could offer consumers the old convenience of one-stop shopping in telecommunications services. The new competitors, though, would be able to also offer a wide variety of services from regular voice access, to computer access, video access, and multi-media services. Unless A. T. & T. and the RBOCs responded soon to this development they would find themselves in the uncomfortable position of facing domestic competitors eating away at their national and local markets, coupled to international competitors undermining their position with newly emerging international arenas. Both companies desperately needed Congress to act.

In addition to the problems facing both A. T. & T. and the RBOCs, the United States international agreements developed under the GATT negotiations were beginning to influence the process. Liberalization of telecommunications was beginning to occur in both Europe and Japan with the privatization of the various state owned telephone companies. As the process of liberalization spread, pressure on the United States, from the international telecommunications groups, began to mount to have equal access to America's local telephone markets.

But the continuing conflict between the F. C. C. and the State PUCs was slowing the local exchange liberalization, and posing a potential problem for international negotiations. If the United States wanted to gain access to the European and Asian markets, the problem of the local exchange access needed to be resolved.

The Internal Economic Framework

Between November 1994 and January 1995, the newly elected Republican Congressional leadership moved to take charge of Congress.

At this point in time, the House Republican Congress was strongly influenced by the religious political right. Of the seventy-three newly elected Congressmen, over half had been endorsed by the Christian Coalition, which had a powerful influence over all fifty state Republican parties. In addition to the Christian Coalition members, fifty of the returning Congressmen also held positions endorsed by the Coalition. The majority of these Coalition endorsed representatives supported the election of Newt Gingrich, chief architect of the Contract With America, to the position of Speaker of the House.

While Gingrich was not supported for the position of Speaker of the House by the entire Republican Conference, the Republican moderates felt that he would give them a fair hearing, and was preferable to other possible contenders such as the more conservative Dick Armey. In the end, the moderates joined the conservatives, and backed Gingrich's election to the Speaker's position (Drew, 1996: 27).

After his election as Speaker, one of Gingrich's first steps toward taking control of the House was the abolishment of the seniority system as the means of appointment for Committee Chairs. In making decisions about appointment to Committee Chairs, Gingrich passed over senior members, and instead appointed individuals that he personally felt were more able to handle the passage of the "Contract" program. Key tests for appointment became responsiveness to leadership, and personal loyalty to Gingrich. By breaking the old seniority system, and placing trusted aides and followers in key positions, Gingrich quickly gained control over all the functions of the House. (Drew, 1996: 35 - 36).

In the Senate things were slightly different. Bob Dole was now the Senate majority leader. While Dole was planning on running for President in 1996, and, since he was the Senate majority leader, was the traditional political head of the Republican Party in Congress, Gingrich's "Contract" overshadowed his position. Dole had a strong distrust of Gingrich personally, and especially his "Contract" program. But Dole also knew that if he wanted to run for President he needed Gingrich's support within the Party for the nomination, and thus could not publicly challenge him. (Congressional Quarterly Weekly Report, 11/19/1994)

In addition to Gingrich, Dole also faced a problem in terms of loyalty within the Senate. Of the eleven newly elected Republican Senators, seven had served in the House, and tended to be of the newly emerging libertarian faction within the Republican Party. With only a six vote majority in the Senate, Dole needed to keep the support of the newly elected freshmen Senators.

Alan Simpson, Republican from Wyoming, was the person in line for the position of Majority Whip, the second in command in the Senate. But Simpson was challenged by Trent Lott of Mississippi, a former House member, and a representative of the new conservative Republican faction. While Dole supported Simpson, Phil Gramm, a potential Dole challenger for the Republican Presidential nomination, supported Lott. (Congressional Quarterly Weekly Report, 11/19/1994)

In the December election for majority whip, Lott beat Simpson by standing on a platform that he stood "for change", and that he would be able to work with the House leadership to advance the new Republican platform. The freshman Republican senators voted as a block for Lott, and now Dole found himself having to accommodate to Gingrich's position. Thus, by January, 1995, Gingrich had direct control over the House, and indirect control over key areas within the Senate. But Gingrich's influence did not stop inside the Republican Congressional Caucus.

During the 1980s, the Democratically controlled Congress had been very successful in extracting campaign contributions from industries that had not, historically, shared the Democratic Party's philosophy. In many ways, the fund raising efforts, which connected money, access, politicians, and legislation, was not considered unusual in Washington, and campaign contributions were seen as just one of the normal costs of doing business with Congress. But the new Republican Congress took the process of campaign contributions to an unprecedented height, and added a qualification test.

In October, 1994, Gingrich called a meeting with all the Executive Directors of the political action committees, and issued a veiled threat to the PACs to back the Republicans.

"For anybody who's not on board now it's going to be the two coldest years in Washington". (Drew, 1996: 113).

By January, 1995, the majority of paid lobbyists in Washington knew what the new Republican Congressional majority wanted from them. The Majority Whip in the House, Tom DeLay of Texas, nicknamed "The Hammer", had established a computer list which showed the amounts of money given by the 400 largest political action committees to both Republicans and Democrats over the last two years. Those that had given heavily to the Republicans were marked "Friendly", those that had given heavily to the Democrats were marked "Unfriendly". The message was clear, the pro-business deregulatory agenda of the House Republicans deserved the complete, and undivided, loyalty of the American business community and its political action committees. As Gingrich had said earlier, in October, to the PAC executives :

"If you want to play in our revolution, you have to live by our rules."

Elite Republican donation clubs such as the Capital Hill Club, the House Council, and the Congressional Forum experienced record memberships. A major reason for the increase in memberships was a new program opportunity, offered by all three clubs, which arranged private meetings and forums between the executive officers of all the Fortune 500 companies, and the new Republican leaders of Congress. Financial generosity, and the right type of social and political connections, would result in personal attention and access to decision-makers.

Money, it appeared, was the center of Gingrich's transformation of the House, and the creation of a new political alignment of ideological allies in both the business and political worlds. The new alignment offered unparalleled opportunities for both people who gave the money, and the people who received it, to create a quid pro quo relationship that was mutually beneficial. From the House Republicans would come measures that gratified various industrial desires such as weakening environmental standards, loosening workplace safety rules, and limiting the legal liability of corporations. From the industrial beneficiaries of the new legislative agenda would come millions of dollars in campaign contributions that would perpetuate the emerging free market regime. (Maraniss and Weisskopf. 1995)

The telecommunications industry was not exempted from the general atmosphere of influence buying. In many ways, the new process of financial support, in the eyes of the telecommunications industry, was only an extension of a process they had already been following.

From the issuance of the final MFJ in 1984 to the end of the 103rd Congress in 1994, the combined telecommunications industry PAC donations to Congress had totaled over fifty million dollars. ⁸⁸ Both Democratic Representative John Dingell and Democratic Senator Ernest Hollings, two of the most influential members of the Democratically controlled Congress, in the area of

⁸⁸ During the period from 1984 to the end of 1993, the telecommunications industries PACs contributed \$50 million dollars to Congressional members and candidates. In terms of the break-down of funds, the RBOCs and local telephone companies contributed \$13.5 million; long distance telephone companies, \$7.5 million; cable television, \$4.4 million; the entertainment industry, \$2.8 million dollars; computer industries, \$2.8 million; satellite companies, \$2.5 million; broadcasting, \$1.6 million; newspapers and electronic publishing, \$0.9 million. (McAvoy, May 2, 1994:47).

telecommunications, had received substantial PAC support from telecommunications.⁸⁹ During the same period of time, 1984 to 1994, though, both Bob Dole and Newt Gingrich also received substantial support from the telecommunications PACs.⁹⁰ In addition, John Clendenin, Chairman of Bell South, was a longtime personal friend of Gingrich's, and had held regular meetings with Gingrich to discuss the development of the telecommunications industry.⁹¹

But the telecommunications industry had also sensed the possible shift in the Congressional winds of the 1994 elections. Hedging their bets, two key Republican candidates up for reelection, Representatives Thomas Biley of Virginia and Representative Jack Fields of Texas, were targeted by the telecommunications PAC donations to support their 1994 reelection efforts.⁹² Both Biley and Fields, because of their seniority in the Republican Caucus, and their positions on the Commerce Committee and Subcommittees, were possible candidates for important positions if the Republicans gained control of the Congress.

Thus by the time the 104th Congress opened session, the telecommunications industry had liberally "salted the mine" with PAC money and personal influence, and had supporters across both Houses and in both political parties. But influence peddling in a large body such as Congress also means that there are many avenues of influence open to competing groups. While Gingrich's control over the House was fairly extensive, and even had an extension into the Senate through Trent Lott, the telecommunications industry had a diverse group of different supporters in both bodies. Thus the long distance telephone companies might be contributing to Biley, but the RBOCs might be giving to Gingrich. No one actually knew who had received what, and what levels of commitments there were to what positions. In the end, the potential for confusion, over the specific elements of a new Bill, were great, and the possibility of receiving mixed signals was very real.

Within the telephone industry group, the main area of contention revolved around competitive access to both the long distance and local exchanges. The RBOCs favored the concept of a completely open and fully competitive long distance market. At a simultaneous point in time, all telecommunications providers would have equal and unrestricted access to any aspect of the long distance market. It would be equivalent to the Oklahoma Land Rush for the long distance telecommunications industry. All current and potential providers, both domestic and foreign, would be given a specific date when all the restrictions would be lifted in the long distance exchanges. At that point a free-for-all would occur, and the most competitive would win.

Local market access, though, would be gained over time. Each RBOC would begin the process of local market access through a series of negotiations between itself and potential local market competitors. Government, both Federal and State, would allow the two or more companies to negotiate access between themselves. In the event that they could not agree on the terms of access,

⁸⁹ From 1984 to the end of 1994, telecommunications PAC donations to John Dingell were \$336,640, and Ernest Hollings received \$329,411. (McAvoy, May 2, 1994: 47).

⁹⁰ During the same period of time, 1984 to 1994, Bob Dole received \$196,700 in telecommunication's PAC money, and Newt Gingrich received \$114,280. (McAvoy, November 28, 1994: 84).

⁹¹ Personal Interview, Atlanta telecommunications industry, Summer, 1996. Also, Atlanta Journal, August 3, 1995. A7. "Baby Bells Call for Help."

⁹² Biley received \$170,725, and Fields received \$223,128. (McAvoy, November 28, 1994: 84).

the State PUCs could be invited in to help arbitrate the access, and the conditions and costs of access. Under this process, the State PUCs influence on the level of local market access would dominate. In the end the RBOCs, working with the State PUCs, could determine to whom and when such local exchanges were opened, and the conditions under which the local exchange were opened. The RBOCs also wanted the State PUCs to set various levels of charges and subsidies, and to determine the percentage of charges that would be used to underwrite universal access. The RBOCs favored this approach for it would allow them to maintain their existing customer base, while expanding into the long distance market.

AT&T, along with MCI and Sprint, opposed the RBOC approach. The long distance providers sought to restrict the RBOCs from entry into long distance exchanges by requiring that the RBOCs meet a set of "Checklist" requirements related to local competition. Under the "checklist", RBOCs would have to actually face equivalent corporate competition in their local exchanges before the F. C. C. would authorize their entry into long distance service. The RBOCs local exchanges would have to be open to allow the long distance companies in to offer local service, but until the competitor's customer base was large enough to match the RBOCs customer's base, the RBOCs could not offer long distance service.

In terms of the telephone industry, the RBOCs seemed more willing to compromise than the long distance providers, but they would not negotiate unless the long distance providers also were willing to compromise their position..

At the beginning of the 104th Congress the State Public Utility Commissions were also determined that the new law would not undermine either their long standing commitment to universal access, or their authority to regulate within the local and intrastate exchanges. Although NARUC had been engaged in a prolonged dialogue with Congress over the balance between federal and state authority within the new telecommunications order, it felt that previous Bills tended toward a centralization of authority at the Federal level. To NARUC key issues related to both universal service and federalism needed to be resolved before they could endorse any new regime.

In terms of universal service, NARUC felt that before the current cross-subsidy structure was dismantled, a universal service board should be established to examine alternative methods of recovering the non-traffic sensitive costs that were currently recovered by the interstate carrier common line charge, and to recommend a new method that would not increase the subscriber line charge. In addition, NARUC wanted the funds and the mechanisms necessary to support a universal service requirement funded through the contributions of all providers of interstate telecommunications services

In terms of the issues of Federalism, NARUC felt that part of the process of restoring the federal/state balance was to preserve state authority over intrastate communications, including the state's flexibility to implement pricing policies, including alternative forms of regulation, that the states felt were most appropriate to individual markets and companies. The Association proposed that a Federal/State joint board be created, and that the Board's recommendations would be used to establish a Federal universal service policy and the conditions for interconnection requirements to the local exchanges. NARUC also proposed that the States be given the additional authority to develop intrastate universal service policies and funds which would be supported by contributions from the intrastate carriers.

NARUC also sought to have a requirement placed in any new law that the FCC must consult with the State commissions to verify that a Regional Bell Operating company had complied with the legislative requirements to open its local markets to competition prior to being allowed to enter the

long distance markets. The State PUCs also wanted the authority to establish the terms and conditions of entry into the local exchanges, and to have the flexibility of establishing procedural and economic safeguards of entry conditions that included the concepts of consumer rights and public interest.

In reaffirming the importance of federalism, NARUC wanted to preserve the State's authority to prescribe local competition policies based on local market conditions. While NARUC was willing to concede that the FCC had a legitimate role to prescribe policies that might affect the local exchanges, it wanted guidelines established that allowed the States the flexibility to implement local competition and pricing policies consistent with each PUCs assessment of local market conditions. To NARUC, a set of general national principles should be articulated, but the FCC would be prohibited from creating a form of one-size-fits-all policy. The general policies that NARUC sought would complement the State efforts to foster local competition, and the movement toward a market-based industry, but contain enough uniformity and compatibility between states that the industry would be stopped from "venue" shopping for the best regulatory environment.

Once again stressing the importance of federalism, NARUC sought to further preserve State's rights to prescribe local market competition policies by allowing the PUCs, in arbitration cases, to decide if the local exchange could be entered under the principle of either bundled or unbundled service access to incumbent local exchange companies. Once again, NARUC wished to define regulation based upon a diverse market situation rather than a national economic model. To NARUC, the FCC should only adopt broad guidelines that would not restrict the PUCs flexibility of setting different conditions for different locations.

NARUC also wanted clear and specific language within the law that clarified that the FCC's decision to forbear did not restrict a State's ability to operate under authority given in State statute or regulations. In the end, the State's Right to regulate industries within its own border were at stake, and as of January the States wanted concessions from the F. C. C. that would guarantee those Rights. (Resolutions, 107th: 1995).

NARUC's positions directly challenged the preemption policy that the F. C. C. had been pursuing since the middle 1970s. Historically, the F. C. C. would have strongly opposed the NARUC positions, but instead the F. C. C. seemed more conciliatory in its response to the NARUC proposals. The reason for this was that at this time, January, 1995, the F. C. C.'s star seemed to be descending.

Prior to the beginning of the 104th Congress, the F. C. C. had been suffering from sagging morale, and had taken on a "bunker" mentality as it prepared for a conservative attack on its very existence. "Dump the FCC!" was the cry from the newly emerging conservative majority, and was being egged on by Gingrich. Gingrich's "opportunity society" was to be fueled by free market forces that were let loose on the converging computer, communications and cable industries. In the new gospel of free market regulation, a downsized F. C. C. composed of 200 accountants and engineers, and housed in one of the wings of the Old Executive Office Building, was all the government that was required to oversee the new regime.

The Progress and Freedom Foundation, a conservative think tank closely aligned with Gingrich, was leading the charge against the F. C. C. George Keyworth, a former Reagan Administration science advisor, and Chairman of the Progress and Freedom Foundation, was advancing the anti-F. C. C. campaign.

"To seize future opportunities and economic growth, we must abandon failed concepts of the past. Existing regulatory bodies must be replaced, including the Federal Communications Commission."

In the view of Keyworth, and the other free market economists associated with the new deregulatory zealots, the government should foster competition only through vigorous enforcement of antitrust laws directed at industrial monopolies.

Keyworth had called for a three year transition period in which the telecommunications industry would be deregulated, and the F. C. C. would be replaced by a small technical agency charged only with assuring network technical standards, and monitoring the profits of each company.(Leopold, 1995: 26).

Caught between the hostility of the State Public Utility Commissions, the conservative advocates of free market expansion, and a powerful House Speaker openly advocating its' abolishment, the future of the F. C. C. seemed doubtful. Compounding the problem of lack of support for the agency, was the fact that the signals the F. C. C. was receiving from the White House also seemed confusing.

By the time that the 104th Congress opened, the Clinton Administration was beginning to realize how little money would be forthcoming from Congress to achieve their ambitious "Information Superhighway" agenda.

Both the House and the Senate were prepared to reduce the \$64 million dollars previously allocated for the Commerce Department's Telecommunications and Information Infrastructure Assistance Program (TIAP). In addition, the \$100 million dollar budget request for the National Telecommunications and Information Administration's program, the key developer of the "information superhighway", seemed destined to be sliced under the Republican budget knife.

Faced with a reduced Federal presence in developing the Information Superhighway program, and the very evident fact that the local exchange telecommunications upgrade costs would have to be born by the private sector without substantial support from the Federal government, the Clinton Administration was left with no other option but to endorse the newly emerging free market paradigm. The economics involved in upgrading the local telecommunication exchanges to handle advanced levels of service, would require that the private sector's financial markets would have to advance the RBOCs sufficient capital to handle the improvements. Without a loosening of the regulatory functions, and an opening of the markets to potentially increased profits, the financial backing would not be forth coming from the national and international investors. In the end, the Administration was faced with the fact that the private sector was the only viable source of funds for creating the new information society infrastructure. (Blau, 1995).

One other issue was pressuring the Clinton Administration in terms of telecommunications reform. In the late Spring of 1996, a new round of negotiations over telecommunications access and charges was scheduled by the World Trade Organization. High on the list of items to be considered under a new General Agreement on Tariffs and Trade (GATT) was the issue of foreign ownership of telecommunications companies, and the process for access to the exchanges of various countries. Of concern both to the White House and Congress was that the proper signal be sent to foreign countries that ownership access to American markets was linked to similar access by American firms to foreign markets. The linkage would also be used to negotiate further liberalization of foreign markets for both services and equipment, and was a critical area for developing a future agreement. Unless a bill freeing-up the domestic ownership requirements was

passed by the time that negotiations opened, America's negotiating position would be weakened in all of the areas of negotiation.

The stage was now set for attempting to resolve the multitude of conflicting agendas that had plagued telecommunications reform since the 1970s. Since the last session had closed with work still progressing in the Senate, the Senate Commerce Committee's bill would become the initial attempt for resolving the issues.

The Senate Bill

Starting in November, 1994, the Republican Senate Majority Leadership began the process of appointing new Chairmen for the various Committees. The Commerce Committee Chairmanship went to Senator Larry Pressler from South Dakota.

While voters in South Dakota generally liked Pressler, and had a favorable image of him, in Washington Pressler had spent much of his Senate career trying to change an image of himself as a politically ambitious, overly eager young man.⁹³ Over the years, Pressler, himself, had not helped his inside Senate image, and instead seemed bent on actually making it worse.⁹⁴ In general, Pressler had a long standing reputation for paying special attention to parochial interests rather than national interests, and was considered by both the Democratic and Republican Senatorial leadership as a "weak" member of the body - not of the caliber to Chair the more important Senate Committees, such as the Commerce Committee.

But Pressler, who was aware of his colleagues opinion of him, felt that he should have the opportunity to prove his "worth". As a member of the Senate's Commerce Committee, he had wanted a chance to ascend to the Chairmanship of the Committee if the Republicans were once again in charge of the Senate. (Pressler Profile, 1995).

⁹³ Larry Pressler's South Dakota persona was that of a good-natured, unassuming, farm boy from Humboldt, who had risen to success by his own talents. This local image was reinforced by the fact that he was Rhodes Scholar, and held a law degree from Harvard. In 1974, South Dakota voters had embraced the young man, and elected him to the United States Congress. Four years later, in 1978, they elected him to the United States Senate. A few months after he entered his first term as a Senator, Pressler announced that he was running for the Republican nomination for the office of President of the United States. Pressler was running for President in a Republican field that included such established Party leaders as Ronald Reagan, George Bush, former Treasury Secretary John B. Connally, and veteran Senators Bob Dole and Howard Baker Jr. In this field of "heavyweights", Pressler was seen as a brash upstart. Only 37 years old, Pressler argued that his youth was an advantage, and that he was the only candidate that understood the needs of rural America. But Pressler was unable to raise enough money to sustain his candidacy until the Iowa and New Hampshire primaries, and, after 105 days he was forced out of the race. When he returned to the Senate, his reputation was marred, and he was considered, by his Senate peers, to be a little "flaky".* (Progressive, 1995: 29 - 33)

⁹⁴ Once, in the middle of a Committee meeting, he got up to leave, and walked into an empty closet. Several minutes elapsed before he opened the door, and then, in front of the entire Committee, turned around and waved good-by to the empty closet. In addition to the "closet" incident, Pressler's staff members would often hand him memos to read during Committee hearings so that observers would think he was paying attention to the proceeding's documentation, and when pressed by other Committee members with questions, Pressler would often protest "I don't think it's proper to ask hard questions of members." His reputation continued to be hurt by his long standing Senatorial strategy of trying to "bring the pork home". When a local college was closed in Yankton, South Dakota, Pressler traded various votes on key Democratic measures, which were opposed by the Republican minority, in order to have the Bureau of Prisons turn the college into a minimum security prison. In another incident, he used his position on the Environment and Public Works Committee to divert several millions of dollars worth of highway and water pollution projects to South Dakota, and, as a member of the Banking Committee, he helped gain passage of a law to mint a coin commemorating the 50th anniversary of Mount Rushmore. (Time, 1995).

While Pressler was the Senior Republican on the Committee ⁹⁵ , and a long term ally of Senate Majority Leader Bob Dole, Senator Ted Stevens of Alaska had been lobbying the Republican Party leadership to allow him to control the Committee rather than Pressler. Stevens had been in the Senate longer than Pressler, and was considered by his colleagues to be a "expert" in terms of policy development. But Stevens also had a temper, which had made it difficult for others to work with him over the years. While the new Republican majority leadership was reluctant to give the Chairmanship to Pressler, they also had their reservations about Stevens' ability to work within the directions of the Party leadership.

Pressler, sensing both the challenge from Stevens and the shifting ideological winds, started his bid for Chairmanship by attacking the perceived home of liberal influence in Washington, the Corporation for Public Broadcasting. He argued that due to the expansion of satellite and cable companies, there no longer existed any justification to warrant the continuation of CPB's existence. He also attacked the perceived liberalized bias in reporting that conservative Republicans felt existed within the CPB's editorial offices. ⁹⁶

"We have reached a time when the Corporation for Public Broadcasting must rethink its role. It can get along without a federal subsidy, and it would be operated much better if it were privatized." (Pressler Profile, 1995)

Pressler's attack gained him much needed national press exposure, thus lifting his public profile within the Senate, and also reassured the new ideological guardians of the party that he was loyal to the "new order".

In the end, in spite of the Stevens challenge, Pressler's hard-line position against CPB convinced the majority Republican leadership that Pressler might be able to handle the complex political issues within the Commerce Committee, and he was appointed to the Chairmanship. But Bob Dole took the unusual step of assigning Senator Larry Craig of Idaho as the Republican Amendment Coordinator, a job usually reserved for the Committee Chair. One of the lobbyist for the telephone industry, remarking of the Pressler/ Craig relationship, said , "There will be a lot of assistance to make sure this thing gets shepherded through." (Time, 1995).

Pressler also faced a personal challenge back home in South Dakota. Pressler was scheduled for reelection in 1996, and he was considered one of the most vulnerable Republican candidates in the Senate. ⁹⁷ To aid him in his reelection efforts, after he became Commerce Chairman, Pressler

⁹⁵ John Danforth, Republican from Missouri, had been the Senior Republican member on the Committee, but he had decided to not run for office in 1994, thus Pressler moved-up in the line of seniority.

⁹⁶ t seems likely that Pressler's attack against PBS was based on an August, 1993 South Dakota Public Television broadcast where Representative Tim Johnson, Democrat from South Dakota, revealed that Pressler was held in low esteem by the members of both the House and Senate.

⁹⁷ A few years before, the G. O. P. Governor of South Dakota, Bill Janklow, had considered challenging Pressler's position. While Janklow had backed off from the election challenge, Democratic Congressman Tim Johnson was committed to run against Pressler in 1996, and was attacking Pressler on his Washington reputation.

"I just get more and more people coming up to me, complete strangers, frankly, in Washington, saying 'What's wrong with your senior Senator? Is he sick, or is he just kind of a bizarre person?' I don't know."

For the first time, South Dakota voters were getting to see their Senior Senator from the viewpoint of Washington's eyes,

arranged several fund raisers, for himself, at which all the major companies affected by the telecommunications bill attended, and advanced their personal positions while writing checks directly to his campaign. ⁹⁸

The major issue for Pressler, going into the 104th Congress, was the telecommunications reform law. While the Hollings bill had died in the 103rd Congress, ⁹⁹ the issue was still on the agenda of the Committee, and both public and industry pressure was mounting for action.

Always the master of parochialism, during the 103rd Congress Pressler had been part of a group nicknamed the "Farm Team". Made-up of Senators from rural states, the "Farm Team" tried to restrict competition in telecommunications services within sparsely populated areas. The "Farm Team" felt that competition in telecommunications would severely undercut the ability of telephone companies to provide service in remote, high-cost areas. The "Farm Team" had been able to negotiate changes in the Hollings bill that would have allowed states to restrict telephone competition in rural areas, protecting those areas from price increases, while requiring that the telephone companies upgrade the lines into rural areas. Pressler's efforts to restrict local exchange access had been supported by the RBOCs (Pressler Profile, 1995)

But while Pressler personally leaned toward the RBOCs position, influential Republican members of the Committee, in particular McCain and Packwood, were long-time advocates of free competition, and favored positions more aligned with the long distance companies. If Pressler wished to keep his Chairmanship, he would have to accommodate both McCain and Packwood, in spite of his own parochial position.

Previous to Pressler, the crafting of the telecommunications bill had been a bipartisan effort, with the Democrat Hollings working closely with the former top Republican, Senator John C. Danforth, to develop joint recommendations on sections of the bill. But Pressler rejected the bipartisan approach, and, immediately after assuming the Chairmanship, drafted a proposed bill which relied on suggestions from Dole and the Republican members of the Committee (Congressional Quarterly, June 17, 1995)

Pressler claimed that his partisan approach was only an attempt to unify the Republican members of the Committee before presenting a draft to the Democrats, and was in no way intended to ignore the Democrats and Hollings, who now was the Ranking Minority Party member of the Committee. Even Pressler admitted, though, that he needed Democratic support to pass the eventual bill.

At this time, the Committee on Commerce, Science and Transportation was composed of:

Republicans

Larry Pressler, SD, Chairman
Bob Packwood, OR
Ted Stevens, AK

and it was beginning to hurt in the pre-election polls.

⁹⁸ By the end of February, 1996, Pressler's reelection campaign had received over \$1.7 million from the broadcast and communications industry. (Broadcasting and Cable, 2/26/96. Vol. 126. # 9, 22 - 23).

⁹⁹ The Hollings Bill had died because of the opposition from the RBOCs, and the support given the RBOCs by Bob Dole, John McCain, and Bob Packwood.

John McCain, AZ
Conrad Burns, MT
Slade Gorton, WA
Trent Lott, MS
Kay Bailey Hutchinson, TX
Olympia J. Snowe, ME
John Ashcroft, MO

Democrats

Ernest Hollings, SC, Ranking minority member
Daniel Inouye, HI
Wendell Ford, KY
James Exon, NE
Jay Rockefeller, WV
John Kerry, MA
John Breaux, LA
Richard Bryan, NV
Byron Dorgan, ND

Compounding Pressler's problems with the Democrats was the fact that he faced a Republican Committee majority who were divided on the approaches that should be used for telecommunications reform. Some of the Republican members wanted an aggressive deregulation that would quickly unleash the local exchanges. This was especially the position of Packwood and McCain. Other Republican members, such as Hutchinson, Snowe, and Ashcroft, favored restraining competition within the local exchanges until there actually existed reciprocal competition in the long distance exchanges.

In spite of the various levels of disagreement within the Republican majority, Pressler forged ahead with his partisan effort, and at the end of January introduced into the committee a discussion draft bill whose ultimate objective was:

"To provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes."

Pressler's initial bill tended to support the long distance provider's position. Under Pressler's concept, both the F. C. C. and the PUCs authority in the area of telecommunications regulation was greatly reduced, and the telecommunications markets, both interstate and intrastate, would be open to full competition. Pressler's plan gave the RBOCs authority to offer long distance service beginning in 1998, while A. T. & T. and other long distance providers were given a slight head start in the race for the local market by allowing them to enter the local exchanges in 1997.

Pressler argued that there needed to be this one year difference in order for the long distance companies to become situated in the local markets to effectively compete against the bundled package that the local Bell companies would be able to offer when they entered both the local and long distance market. Pressler's bill also effectively removed both the F. C. C. and the State PUCs from having any major regulatory role in the newly open telecommunications "land rush". ("Draft", Telecommunications Competition..., January 13, 1995)

Under Pressler's plan, the conservative Free Marketers, McCain and Packwood, had won the war for telecommunications deregulation by completely nullifying the concept of both public service liberalism, and the theory of a natural monopoly. In essence, the plan allowed for a one year transition period during which consumers and companies would prepare for the ending of government regulation of the telecommunications industry. Once the date of entry was reached, everyone, consumers and industry providers, would be thrown into the maelstrom of unfettered market competition. In the end, the last person standing would win the new game of market domination.

Pressler did not have to wait very long for a response to his proposal. The first response came from the RBOCs:

"We support opening all markets, ours, long-distance, cable and manufacturing to competitors, so long as those markets are open to us at the same time and under the same terms and conditions. Release of Senator Pressler's legislative draft is an important first step in what we hope will be a speedy process toward bringing competition for all communications services to the American public. But, true competition will come only when all players are allowed into all markets at the same time and under the same terms and conditions. This proposal does not yet accomplish that. It opens the local telephone market but denies the American public the right to choose to receive long-distance and cable services from their local phone company at the same time or allow consumers to do business with us in the same way. This draft provides certainty for others, but does not provide certainty of timely entry for Bell companies. Over the weeks ahead we will seek clarification on the terms and conditions we must meet and try to assure that the test for compliance is one that leads to a quick "yes" or "no" with no further possibility of delay." (McBee, February 1, 1995)

The RBOCs had not turned a total thumbs down on Pressler's Bill, but they had notified Congress that they wanted further concessions in their fight for equal access, especially in terms of the one year time difference given the long distance companies entry into the local exchanges.. The next round of conflict for Pressler came within the Senate Committee itself.

Hollings, whose carefully worked bi-partisan approach had fallen apart under Pressler's partisan effort, retaliated against Pressler, and the Republicans, by introducing his own partisan bill. On February 15, Hollings issued a statement, along with a copy of his proposed draft legislation, and, in essence, challenged Pressler's Chairmanship:

"Our plan takes strong steps to protect and advance universal service, which is a consumer's ability to get quality accessible and affordable local phone service. Universal service should be the foundation of any communications reform. You can't build a bigger house if you don't have a strong foundation. This proposal strengthens universal service provisions because it ensures that all Americans, including disabled and rural consumers, can get access to our telecommunications technologies, which are the best in the world. We can't preserve anyone's monopoly . Rather, we should deregulate once competition has come to the markets and then let everyone compete for the business of all consumers." (Hollings Press Release, February 15, 1995)

Senator Hollings bill attempted to support the Clinton Administration's position concerning universal access and a regulated period of transition, and also sought to centralize the regulatory

functions of the telecommunications industry at the Federal level. Under Hollings concept, the F. C. C. would become the final authority over all telecommunications matters within the United States. The F. C. C. would have the authority to nullify any act of a State PUC, and to set rates of return for all levels of service. A joint Federal-State Board would be established within the F. C. C. which would review all telecommunications regulations every six years, and recommend changes which the F. C. C. could then adopt, and require implementation steps by all telecommunication providers. In addition, the F. C. C. could require any provider to offer service within any area, and review and approve all rates set at both the business and residential level.

To support universal access, Congress would also authorize funds that would underwrite the difference between the residential rate of charge and the actual cost of providing service. Hollings act, in essence, removed the State's authority in the local exchanges, but still maintained a very tightly regulated service structure directed at universal access, and traditional public service concepts of a public utility.

Hollings Bill also restricted the RBOCs from entry into long distance exchanges by requiring that the RBOCs meet a set of "Checklist" requirements related to local competition. Under the "checklist", RBOCs would have to actually face equivalent corporate competition in their local exchanges before the F. C. C. would authorize their entry into long distance service. The RBOCs local exchanges would have to be open to allow the long distance companies in to offer local service, but until the competitor's customer base was large enough to match the RBOCs customer's base, the RBOCs could not offer long distance service.

The Hollings bill was supported by the majority of consumer groups, the Clinton Administration, and key Committee Democrats such as James Exon of Nebraska, Jay Rockefeller of West Virginia, John Kerry of Massachusetts, and Dorgan of North Dakota. ("Universal Service Act", 1995). Hollings bill was opposed by the RBOCs, and strongly supported by the long distance providers.

By the end of February, the Committee was effectively divided between two politically partisan positions, and two very different views of the development of the telecommunications industry. The Pressler position advocated an unregulated development of a newly emerging decentralized, free market approach, and rejected the classical definitions of public service liberalism and a natural monopoly. The Hollings approach retained the concepts of public service liberalism and a local natural monopoly, and centralized regulatory authority within the Federal level of government, rejecting any State oversight on the industry. A. T. & T. and the long distance providers supported both Pressler's and Hollings position because they would penalize the RBOCs potential to compete in the long distance markets, and the RBOCs felt that both Hollings and Pressler's bill's would continue the restraints they operated under within the MFJ restrictions on the line-of-business offerings..

Pressler, himself, was now faced with the very real possibility of the reform legislation, once again, being stalled in Committee. Where the Republican minority's objections, in the 103rd Congress, had caused a stalemate to develop, now the opposite was occurring with the Democratic minority, in the 104th Congress, blocking passage.

Pressler was also receiving criticism from the Democrats, who claimed that his failure to work in a bi-partisan manner had led to a breach in trust within the Committee. Coupled to the Democrats criticism, the combined RBOCs, united under the banner of Alliance for Competitive Communications, were releasing daily news releases criticizing the Hollings and Pressler bills, and charging that theirs, and the State's, legitimate concerns were being ignored in both Bills. Publicly it appeared as if Pressler was losing charge of his Committee and the Bill.

But while Pressler was having troubles with his public and Senatorial image, the RBOCs found a champion for their cause in one of the Democratic Committee members, John Breaux from Louisiana.

Breaux was a member of a newly emerging group of Southern Democrats known as "Blue Dog Democrats".¹⁰⁰ In an attempt to stop the shifting party realignment occurring in the Southern States, The Blue Dogs advanced a combination of traditional Democratic Party social welfare issues, but linked to conservative fiscal and free market principles. The "Blue Dogs", it was hoped, would be seen as responsive to issues involving social welfare, but conservative in matters of fiscal policy. As such, "Blue Dog Democrats" represented a position somewhere in the middle between the prevailing fiscal conservatism of the right, and the social welfare liberalism of the left.

The South had become a hot-bed of changing political loyalties in which conservative Republicans had gained strong voter support. The State of Louisiana was one of the areas of contention, with the majority of the Congressional delegation Republican. While the Democratic Party in Louisiana had retained both Senate Seats, the 1996 Senate race for the retiring seat of Bennett Johnson was shaping up to be a classic confrontation between conservative Republicans and liberal Democrats. Breaux, recognizing the changing nature of Louisiana politics, had attempted to move to the middle, seeking to gain support from both sides of the political spectrum.¹⁰¹ (Redman, 1994)

¹⁰⁰ The term originated from a local New Orleans artist who was well known for painting quasi - abstract pictures featuring a very prominent blue dog. While the "dog" connection was rather loose, in essence, "Blue Dog Democrat" was an attempt, by some Democrats, to disassociate themselves from the older term "Yellow Dog Democrat", which had originated from the older Southern political saying "I'll vote for a yellow dog before I'll vote for a Republican."

¹⁰¹ By the end of the 1994 Congressional session Breaux was becoming concerned about the impact that the increasing partisan and polarized Congressional process was having on local Louisiana politics.

"Things have become much more polarized, much more political, much more difficult. Everything we do somebody can find one thing that makes it not to their liking - whether it's NAFTA (*North American Free Trade Agreement*), whether it's a crime bill, whether it's a health bill. You name it. And I'm concerned that it seems like the government has a tremendous amount of mistrust there and is reaching a polarization point which will make it more and more difficult to get anything done. "

Breaux felt that the Members of Congress were more inclined to have their votes on a bill swayed by a single point, losing sight of the bigger issues and broader context. Breaux saw the sweeping changes in telecommunication technology as a key factor contributing to the declining situation.

"When I first got to the Congress, we dealt with a hot issue and then, after the issue was over, we started getting the letters on it. Today, when something controversial is introduced, that afternoon the fax machines start getting cranked up and all the special interest groups just inundate us. The next day the 1-800 numbers are published nationwide C-Span has gavel to gavel coverage of the House and the Senate. And the interest groups really use all these tools now to inundate Congress. It makes it much more difficult for Congress to do something that I always felt was the bulwark of legislating - and that is the art of compromise. "

But old-fashioned politics, both personal and party, also contributed to the increasing polarization. The conflict over the Clinton health care proposal had been a classic example of the ideology and political party conflict.

"Republicans are trying to stop it. I think they don't want to give Clinton credit for getting something done. They see it as a big issue that they can run their campaigns on. Democrats, on the other hand, are looking at ways to blame the Republicans for stopping it, for not allowing it to happen. And, as old Sam Rayburn used to say, 'It's easier to kick down a barn than to build one.' And it's much more difficult when you're in charge to do things affirmatively or to change the status quo than it is to just be against anything. It's easy to be against. I can find a thousand reasons to be against anything. But the real

In addition to the changing nature of local politics within the State, Louisiana also had a severe problem in terms of economic competition. The State, highly dependent on the oil industry, had been in a series of economic slumps since the fall of the oil market in the 1980s. The State desperately needed to attract new business and industry, and had the potential in terms of the export and import industry due to the New Orleans seaport. But Louisiana's economic development efforts were held back by its telecommunications grid. In terms of advanced telecommunications access, New Orleans, and the State of Louisiana, were ranked the second from the bottom of all urban and commercial markets in the United States.

Bringing an advanced telecommunications network to New Orleans had turned into a quagmire of conflict for both the business and governmental communities of Louisiana. The conflicting interests of the telephone, cable television, and electric utility companies, had slowed New Orleans' development of its share of the information superhighway's economic future.

Locally based Entergy Corporation., the largest energy utility company in the State, and an economic power in the neighboring states of Texas, Mississippi, and Arkansas, had already submitted a proposal to the city of New Orleans which could have led to the first independent telephone network owned by an electric utility company in the United States. In order to implement the Entergy proposal, though, the Federal prohibition on utility and telephone cross-ownership would have to be lifted in the new telecommunications law. ¹⁰²

trick, the real challenge is to find ways to make it work and in fact to do something out of it. "

Adding to the increasing use of technology to influence Congress, and the partisan party split, was also a tendency for members of Congress to cluster around opposite ends of the political spectrum.

"There's no passion for being in the middle. The people on the left who want to do everything and do it all at once are very passionate about it. And those who say we shouldn't do anything are very passionate in that regard. For those of us who are trying to make government work in the middle it's very difficult. If I'm in the middle, I'm going to get hit from both sides. "

To Breaux, the Washington political polarization was beginning to spread into legislative bodies at almost every level of Louisiana life - from the local school board and city council to the state Legislature. Increasingly, these local and state legislative bodies were also being influenced by the same special interests at work in Washington. This was especially the case when it came to any legislation that linked national policy with local economics. (Redman, 1994)

¹⁰² Entergy wanted to string fiber optic cables to its electric utility customers in New Orleans in order to remotely read electric meters. The proposal would have allowed Entergy, eventually, to abolish all of the meter reader positions within the company, and result in a major savings in terms of labor costs for the firm. In order to advance their plan, though, Entergy needed to obtain city approval for right-of-way clearances to string the new fiber optic network. To gain support within the New Orleans City Council, Entergy promised that it would pass part of the labor cost savings onto consumers, within the City limits, who were willing to install energy saving devices within their homes. The cost savings proposal was appealing to the City Council since it would be directed at lower income residents, a large percentage of the Democratically controlled voting block which dominated the City's election process. But Entergy also proposed that, once the fiber cable was strung, the system would also be used to provide telephone service, cable television access, and other advanced services, such as home alarm systems, into each of the residential addresses. Entergy demanded that before it laid one strand of cable within the city, the prohibition, by the State Public Utility Commission, on cross-ownership of telecommunications and electric utility services had to be eliminated - it was assumed by Entergy executives that the Federal prohibition on utility cross-ownership would eventually be lifted in the new telecommunications law. But Entergy was not the only company seeking an advantage in the New Orleans market, and Bell South, Cox Cable Television, and A. T. & T. were advancing alternative proposals that favored their individual companies. In the case of Bell South, the company argued that allowing an alternative company into the local telephone market would jeopardize universal access by eroding the customer base needed to cross-subsidize the costs for residential service, and lead to a major increase in telephone rates for residents within New Orleans. Bell South was willing, though, to open the local exchanges, and keep local telephone rates low, if it was allowed entry into other lines of business, especially the cable television service. Cox Cable, though,

objected to the concept of either Bell South competing with it in its area of business, and to the possibility of two large competitors, electric utility companies and local telephone companies, offering services directly to their own customer base. But to Bell South and Entergy, the question of offering different types of services was one of fair market competition, and they were prepared to open their lines of business if all other lines of business were available also to them.

"We are in favor of any and all bills that favor free and equitable competition." (Poree, Bell South, 1994).

Defining what was "free and equitable" was a task that could only be handled by the public side of our existence, and the public arena, in Louisiana, has many layers of self-interests at work. In the Louisiana State Capital, Baton Rouge, the governor, Edmund Edwards, had established a task force on telecommunications. The Task Force, composed of 26 members representing a cross section of Louisiana's telecommunications business interests, developed a "wish list" of services desired from different sectors of Louisiana's society. A series of working groups were established to examine development needs, especially in the areas of education, business development, and health care. But the Task force had already decided that telecommunications development should be directed by a free market principle rather than public interests concepts.

"The main object of our task force is to stress that the state doesn't want to get into the telecommunications business. Most states that have tried it have failed miserably. So it is important to work with all of the companies which can offer these services, and you have to understand that if a company can't make money on providing a service, they won't do it. What we want to do is go to the providers with our needs and have them tell us if they can and will do it." (Keller, 1994)

Guiding the decision to work with free market principles, was also a Committee resentment over the proposed concepts within the Pressler Bill that would have, eventually, eliminated the cross-subsidy payments for universal access. Without those continued cross-subsidies, and the stressing of a natural monopoly to guarantee a high profit margin, the State would have a difficult time encouraging companies to invest in the communications network upgrade.

"The federal government has almost spoken with two tongues on this thing. They talk about this great information superhighway but don't tell us how to do it or how to pay for it." (Keller, 1994).

In New Orleans, both the City Council and Mayor's office had advocated greater competition among telecommunications providers. In both the Council and Mayor's office the message seemed to be the same, while providing some protection for consumers, let the market decide.

"The bottom line for us is, how do we set up the playing field so that the city and our people are properly taken care of?" (Wilson, New Orleans City Council, 1994).

But concerns over eventual Federal preemption of City Council decisions had slowed the decision making process within the New Orleans City Council.

"We don't want to be preempted by the federal government. We feel that we ought to be able to make our own decisions on this subject. It seems to me that if you are going to build a superhighway that runs from Maine to Florida, you don't do it by building each little piece separately. We need to figure out what the city's role is in all of this and how to fit ourselves in with the state's plan and the federal plan." (Wilson, New Orleans City Council, 1994).

The City Council, like the Governor's office, established a subcommittee on telecommunications. The subcommittee, while favoring open competition, wanted to develop some guarantees that the citizens of New Orleans would not face increasing local rates without comparable increases in the quality and number of services offered. But the subcommittee's work on developing a proposal for laying fiber-optic cable had also become bogged down into issues over access and fair market competition. In order to break the log-jam, the city hired a consultant to advise them, and requested position papers from any interested group. The various reports, eventually, made it clear that there was no standardized procedure for granting city rights-of-ways to telecommunications companies, and that chaos, in fact, ruled the evolving regulation of telecommunications technology. The lines of authority separating the Federal government, state government, and city council's authority were blurred, and in essence, no one was sure who had authority to grant licenses for new services.

"We just need to make sure we all know who has which job." (Wilson, New Orleans City Council, 1994).

While Entergy had been advancing its proposal, the Louisiana State Public Service Commission had also been negotiating with Bell South on improved upgrades to the telecommunications grid, and had reached a tentative agreement that would have allowed Bell South to maintain its dominance in Louisiana's telecommunications market, while opening the State to some limited commercial competition. The key, though, to the upgrade was a slow opening of the Louisiana market to competition from the dominate long distance companies, specifically A. T. & T., while Bell South invested in the communications grid upgrade.¹⁰³

The Pressler/Hollings bills would have jeopardized the Bell South agreement and the Entergy proposal, and would not have offered Louisiana a viable option for the desperately needed local upgrade.¹⁰⁴ For Breaux, the conflict presented a potential for a political disaster. Entergy, a major business faction within the state, and Bell South, an equally powerful business interest, would express their gratitude or anger toward Louisiana Democratic candidates based on the outcome of the new law.¹⁰⁵

Frustrated in their efforts, some city council members advocated rebellion against the Federal and State regulators.

"I don't want to be a part of anything that is just taking more time to decide how we are going to work together. I think we should bring together all of the parties ... Let's get some direction we want to go in and *just do it*." (Roy Glapion, New Orleans City Council, 1994)

In addition, the communications sector was also beginning to become impatient with the delays and confusion.

"I am astounded that the city of New Orleans isn't prepared to enter the 20th century. Far smaller cities have dealt with this and decided that competition is the way to go. They say, let's get this thing built and then worry about putting in all of the other regulations." (Rick Kosak, American Communications Services, 1994).

In general, the telecommunications companies were beginning to feel that any provisions for universal service and access were acceptable as long as they could move on developing new services into the local exchanges.

¹⁰³ The Louisiana State Public Service Commission had also been negotiating with Bell South on improved upgrades to the telecommunications grid, and had reached a tentative agreement that would have allowed Bell South to maintain its dominance in Louisiana's telecommunications market, while opening the State to some limited commercial competition. The key, though, to the upgrade was a slow opening of the Louisiana market to competition from the dominate long distance companies, specifically A. T. & T., while Bell South invested in the communications grid upgrade. But the Bell South plan was also based on the assumption that Bell South would be able to offer both long distance and international exchange access to various businesses located within Louisiana, especially the import/export businesses in New Orleans. If, and when, Bell South could enter the long distance exchanges, then Bell South would be able to offer complete "door-to-door" bundled service packages to hold its existing customer base, and expand into new customers entering the market. On the other hand, though, if a major firm, such as A. T. & T., entered the market prematurely, and offered a more extensive network access, then Bell South would be at a disadvantage. The "old" laws of network access to business customers still were true, even after one hundred years of market control by the "network manager". Thus the strategy that was agreed upon between Bell South and the Louisiana Public Service Commission would have the Louisiana PSC protect Bell South's local flank markets, while Bell South extended its customer base in long distance, thus generating enough total revenue to underwrite the capitalization costs for the network upgrade.

¹⁰⁴ On January 16, 1997, the Public Service Commission of Louisiana issued a binding arbitration ruling between Bell South and A. T. & T. that required A. T. & T. to purchase access to Bell South's network at full cost, and in a bundled package. The ruling, in essence, leaves Bell South controlling both costs and standards for access into the New Orleans local exchange

¹⁰⁵ Personal Interview, Louisiana Telecommunications Industry, Fall, 1996.

Working with the RBOCs, Breaux developed a third draft bill that would have allowed the RBOCs to enter the long distance markets, and seek to open the New Orleans market to lower end competitors, such as Entergy, who would not threaten Bell South's dominate position in the local Louisiana Exchanges. In early March, Breaux introduced his version of a new bill.

"Mr. President, for more than 10 years the Congress has deferred to Federal courts on making and shaping telecommunications policy. Antitrust law intended to remedy anticompetitive practices when AT&T dominated all facets of America's telecommunications services is the basis of court controlled communications policy. The resulting breakup of AT&T in 1983-84 under Judge Greene's modified final judgment is still the policy basis for keeping the brakes on the future development of this critical industry: Telecommunications is the engine of America's continuing race into the information age. Technical complexities and the massive scale of economic returns for potential competitors in the industry have made it difficult to arrive at any industry-led agreement on fair and just terms for bringing full competition to reality. Certainly such an agreement would simplify congressional efforts to unleash the industry from Federal court edicts so that the benefits of open competition will bring new and lower cost services, increased employment, and a continually improved telecommunications infrastructure. Mr. President, I believe that we can supercharge and sustain this potential growth if we fashion communications laws that will assure all telecommunications competitors that each of them will have a fair chance to thrive in fully competitive markets. We have a situation now in which each competitor is fearful of a law that will give an unfair advantage to equally powerful competitors. As I see it, Mr. President, the key to establishing open competition in telecommunications is to deliver a fair process for freeing the grip that Bell operating companies now have on the local exchange system. Ideally, Mr. President, if any telecom carrier can have interference-free, open access to the local exchange to fully compete for the delivery of telecommunications, video, and information services to homes and businesses and at the same time allow for the regional Bells to have access to and the ability to provide long distance service for their customers, we would have created the stimulus for maximum growth in this industry." (Breux News Release, 1995)

Senator Breaux's approach supported the position of the RBOCs. Under Breaux's approach, both the F. C. C. and the PUCs would have a substantial role in regulating any aspect of the telecommunications market, but working within a concept of a completely open and fully competitive market. At a simultaneous point in time, all telecommunications providers would have equal and unrestricted access to any aspect of the long distance market. All current and potential providers, both domestic and foreign, would be given a specific date in 1997 when all the restrictions would be lifted in the long distance exchanges.

Local market access, though, would be gained over time. Each RBOC would begin the process of local market access through a series of negotiations between itself and potential local market competitors. Government, both Federal and State, would allow the two or more companies to negotiate access between themselves. In the event that they could not agree on the terms of access, the State PUCs could be invited in to help arbitrate the access, and the conditions and costs of access. Under this process, the State PUCs influence on the level of local market access would dominate. In addition, a checklist would be provided to certify that the local market was open, but the local exchange could be certified as open if a single company existed, anywhere in a state, offered alternative "facilities based" local access. - such as Entergy's fiber optic network.

In the end the RBOCs, working with the State PUCs, could determine to whom and when such local exchanges were opened, and the conditions under which the local exchange were opened. The bill also allowed the State PUCs to set various levels of charges and subsidies, and to determine the percentage of charges that would be used to underwrite universal access. (S 3693, "Breux Bill", 1995)

The RBOCs favored this approach for it would allow them to maintain their existing customer base, while expanding into the long distance market. AT&T, along with MCI and Sprint, opposed Breux's bill.

Breux's bill now offered the Committee three different factions and approaches to the issue of telecommunications reform. The Pressler Bill was supported by Pressler, McCain, Packwood, and Stevens. Hollings bill had the support of Hollings, Exon, Rockefeller, Kerry, and Dorgan. Breux's bill was supported by Breux, Bryon, and Ford. The remaining six Republican members of the Committee, and one Democrat, were split between the three different approaches. In either case, though, no one version of the proposed solution had a majority of the Committee votes.

As if Pressler's leadership problems within the Committee were not enough, the House Committee on Foreign Affairs had also requested a full study on the impact of deregulation on the United States telecommunications policy in both the domestic and foreign markets, and the report was scheduled for release in late Spring of that year. The upcoming Foreign Affairs Report would mean that a fourth alternative to the issue of deregulation would also be offered in the near future.

Faced with losing control of the Bill, and eventually achieving another stalemate, Pressler decided to abandon McCain and Packwood's free market position, and sought a compromise with the Democrats and the moderate Republicans on the Committee. But in order to gain the support of Bob Dole for a compromise bill, Pressler needed the backing of Trent Lott, the second ranking Republican member of the Senate, and a key conservative faction member of the Committee. By this time, though, Lott had already decided what his position would be in support of the three bills.

Trent Lott had a reputation as a pragmatic, pro-business conservative, with a wide circle of friends in both the professional lobbyist offices on K Street, and in the corporate suites of various business interests spread-out over the metro D. C. area. Former lobbyists, advocates for Mississippi's special business interests, and corporate financial backers, all had helped Lott build one of Washington's most ambitious political networks, and a highly lucrative political action committee. Just like many successful Congressional leaders before him, Lott had gained allies in the corporate community - some of whom wore multiple hats as advisers, lobbyists and fund raisers - and who played key roles in his rise to power.

Throughout his long Congressional career, Lott had forged strong ties with various Mississippi special interests. His work with lobbyists on measures that benefited Mississippi interests had yielded increasing political influence for him. But in the process of learning the game of special interest legislation, Lott had also learned how to deftly balance support for the special interests in his state with the broader and more ambitious legislative agendas of the GOP leadership.¹⁰⁶

¹⁰⁶ In the late 1980s, when Lott was the House Minority Whip, he had created the New Republican Majority Fund. The "Majority Fund", was one of the top Congressional fund raising PACs, and was used by Lott to boost the fortunes of like-minded Congressional Republicans. The PAC generously subsidized the campaigns of various Republican House members, and in the process, increased Lott's political influence. Shortly after Lott was elected the Majority Whip in the Senate, he

Lott's influence was also extended through the outside advice and fund-raising help from former aides who had become lobbyists. These former aides, along with other K Street lobbyists whom Lott had gotten to know well when he was House whip and they had served in the Reagan White House, met with Lott every few weeks to provide him with their counsel. During the 104th Congress, Lott met with this elite group over morning coffee in his office, and was advised by them on pending legislation.¹⁰⁷

Lott's talent for striking deals with people inside and outside Congress was used by Bob Dole to provide a discrete handle on the actions of Pressler within the Committee. Lott was tasked by Bob Dole to help steer the legislation through the difficult political waters of the committee's party partisanship. In the process of brokering compromises, Lott earned high marks from both side for his role as a facilitator between the competing corporate interests in the legislation.

But in the intricate negotiations on the bill, Lott was also able to help long-time Mississippi contributor, John Kluge, President of LDDS WorldCom. LDDS WorldCom, a Jackson, Mississippi based company, ranked right behind A. T. & T., M. C. I., and Sprint, as a major carrier of long distance service. Lott sought an amendment to the bill that would benefit LDDS.

The Lott amendment sought to stipulate that only companies with five per cent or less of the long-distance market would be allowed to enter into joint marketing agreements with the RBOCs. The five per cent ceiling allowed LDDS--which controlled 4 per cent of the long distance market--to effectively have an edge in seeking new joint marketing programs in the local exchanges. In essence, the amendment would give smaller companies, beginning with LDDS, an opportunity to gain a competitive advantage over their larger long distance competitors in obtaining joint marketing agreements with the RBOCs, by allowing LDDS in, but prohibiting the larger long distance companies from entry.

revived the "Majority Fund" to support Senatorial Candidates running in the upcoming 1996 election. The aggressive fund raising of Lott paid off, and in the next twelve months he raised over \$1.7 million dollars in corporate donations to the Fund - by comparison, the House PAC directly controlled by Newt Gingrich only raised \$1.3 million over the same time period. Lott's "Fund" boosted his political fortunes and influence in the Senate, and placed him at a critical intersection between Republican Senatorial candidates and large corporate campaign donors. James Johnson, a veteran Lott aide who had been associated with Lott since Lott's attendance at the University of Mississippi in the 1960s, became, in late 1994, the PAC's executive director. Johnson was the key to Lott's PAC organization. Johnson, in addition to being a Lott aide, was also an established Washington lobbyist, with strong connections to the firm of Griffith & Rogers, one of Washington's largest lobbying firms. In addition to Johnson, one of the partners in the firm was Edward M. Rogers Jr., Lott's largest personal campaign fund raisers. Republican National Committee Chairman, Haley Barbour, another Mississippian close to Lott, was also associated with the firm. Through Griffith & Rogers corporate and Republican Party contacts, Johnson was able to reach the largest corporate campaign donors in the United States. Using the Firm's connections, the Lott PAC was soon hosting dozens of dinners at exclusive Washington restaurants, at which prestigious Washington firms, associated with various corporate lobbying groups, attended. Such political notables as Cassidy & Associates, one of Washington's oldest lobbying firms, along with Atlantic Richfield Co., General Dynamics Corporation, Ingalls Shipbuilding of Pascagoula, Mayer, Brown & Platt, a Chicago-based law firm, who was the chief lobbying organization for the National Accounting Association, KPMG Peat Marwick, the National Restaurant Association, Domino's Pizza - Lott was the director of the largest Domino franchise in the United States - and American Home Products Corp., were only a few of the corporate groups that paid up to \$10,000 each to attend the evening dinners. (Stone, 1996)

¹⁰⁷ Michael Boland, a partner at Boland & Madigan Inc.; Henry Gandy, a vice president of the Duberstein Group Inc.; and John F. Scruggs, the chief operating officer at Black, Kelly, Scruggs & Healey, all employed as lobbyists for various RBOCS.

Lott's efforts on LDDS's telecommunications, though, would benefit other Mississippi interests too. In particular, Lott's proposal for LDDS were linked to amendments to the 1935 Public Utility Holding Company Act (PUHCA) that helped selected Mississippi energy companies get a potential foothold in the telecommunications business. (Stone, 1996)

Entergy Company, the Louisiana based public utility giant which, through Mississippi affiliates, owned the majority of the Mississippi utility market, had been a long term financial backer of Lott. The negotiations over entry into the New Orleans telecommunications market, and the need for Breaux to develop a bill that would placate both Entergy and Southern Bell, aligned perfectly with Lott's and LDDS's interests.

Since Entergy was a new entrant into telecommunications, the four percent or less market share factor used for LDDS would also be relevant to Entergy. In all cases, Bell South, Entergy, and LDDS, the big "problem", A. T. & T. would be delayed from local competition by the four percent factor. By the time that Pressler approached Lott, both Breaux and Lott had agreed to support each other's plans, and to form a middle ground between the Democratic and Republican positions.

Lott joined forces with Pressler to build a consensus on a compromise bill based on the Hollings and Breaux drafts. Lott agreed to work with Pressler to draft the compromise bill, and to also persuade Bob Dole to accept the Committee's recommendations. Lott's offer was especially useful to Pressler, at this time, because Bob Packwood, previously, had a great deal of influence with Bob Dole. Packwood, however, was under increasing pressure over charges of sexual misconduct, and his influence with Dole was decreasing. Thus with Lott backing Pressler, and Packwood's influence minimized, only McCain would be left as the sole credible supporter, within the Committee, advocating a total deregulation approach. (Congressional Quarterly, June 17, 1995).

For the next two weeks the new coalition worked on a revised draft, and on March 21 released a compromise bill.

Under the new bill draft, the State PUCs were prohibited from opening competition within the local exchanges until a RBOC was given permission to enter the long distance markets by the F. C. C.. In addition, the long distance providers were prohibited from reselling any of the RBOCs local services until the RBOC was permitted into the long distance service and exchanges. The F. C. C. was also given oversight authority to delay any RBOCs entry into long distance service if it felt that true competition had not developed within a local exchange area.

To promote universal access, all telecommunications providers were required to contribute to a central financial fund, and the proceeds of the fund would be used to underwrite subsidies for local access. But, in order to assure that local rates would remain stable, the RBOCs local and intrastate rates were capped by Congress, not the State PUCs. In a bow, though, to State's Rights, State PUCs were allowed to take into account "profitability" as a factor in setting local rates.

The final vote on the Committee bill was 17 to 2, with both Packwood and McCain voting against the proposal. The RBOCs were elated over the new bill, especially the sections that protected their local exchanges until they could enter the long distance exchanges.

"The latest draft of telecommunications reform legislation released by Senator Pressler represents a substantial improvement. We believe this draft positions the Senate Commerce Committee to report the bill out." (McBee, 1995)

The delay in the opening of the local exchanges to competition meant that the RBOCs would be able to gain the transition time needed to prepare for the inevitable. In addition, they were assured that when such an opening did occur, they would be given equal access to the competition's long distance market, and would be able to offer a competitive "end-to-end" package of services to their local customers.

One other area of the bill, which involved financial considerations, was also appealing to the RBOCs. Where previously the RBOCs had to cover, within their various customer rates, the additional burden of maintaining local "universal access" costs, now, under the new bill, these costs would be shared by all telecommunication providers. This sharing of "universal access" costs meant that local rates could be set at a more competitive level, since the burden of providing for "universal access" would be spread across the national markets rather than isolated within the intrastate exchanges. The additional provision of "universal access" costs on other telecommunications providers, would result in the lifting of a major financial burden, which had, historically, been placed exclusively on the RBOCs.

While A. T. & T., and the other long distance providers, could not openly object to the concept of free market competition, which the Bill advocated, they did voice their concerns and reservations about the opening of their long distance markets to RBOC access. Fearful of the potential market control that the RBOCs had in their local exchanges, the long distance providers felt that the oversight authority of the F. C. C. was not sufficient to ensure that "true" competition would occur at the local level.

"The Senate Commerce Committee today took one step down a long road that AT&T hopes will ultimately give consumers greater choice in all aspects of the communications industry. As critical as it is to update public policies that will serve the nation's and consumers' best interests well into the next century, it is even more important to get things right rather than make matters worse . . . There is a lot more to be done before a final Senate vote. For example, the involvement of the Federal Communications Commission in deciding public interest standards is important but we are convinced that a strengthened role for the Department of Justice, as enforcer of the nation's antitrust laws, is fundamental in guarding against potential monopoly abuses. AT&T will be vigilant and vigorous as the Congress continues to debate these issues with enormous implications for the country's economy, and the access that people and businesses will have, and the prices they will pay, for all kinds of future communications services." (Myers, 1995)

In general, while supportive of the Bill's protection of the long distance markets until the local exchanges were competitive, the long distance providers felt that continued oversight by the Justice Department was required to ensure that the monopoly local exchanges did not, eventually, recreate the old local "bottleneck" strategy that A. T. & T. had used, successfully, to maintain its original monopoly. The F. C. C.'s historical preference for competition, it was felt by the long distance providers, would encourage opening long distance markets prematurely. To the long distance providers, the Justice Department's antitrust authority was the only real safeguard, eventually, for their competitive position.

Ultimately, the Senate bill provided for direct head-to-head competition between the RBOCs and the long distance providers, but only after the RBOCs had opened the local exchanges to competition to not only the long distance providers, but also the cable television companies and the electric utility companies.

In order to win support from committee Democrats, Pressler's Republican coalition dropped the idea of simply unleashing competition between the long-distance carriers and the RBOCs. Instead, the Committee voted to allow the RBOCs, initially, to offer long distance service only in markets where they were not the dominate local carrier, and they were prohibited from offering long distance service in their own local markets until they faced local competition. In order to ensure that competition would come to the local exchanges, each RBOC was required to take specific steps to develop local competition.

In terms of Universal Service, the Committee was split over what the new definition of universal service should be, especially if it should include new and advanced telecommunications services. Rather than directly facing the issue, the Committee voted to establish a Federal-State Joint Board, under the F. C. C., which would recommend to the F. C. C. how to define and achieve universal service in the newly emerging telecommunication structure. But even here, the free market played a critical role in making the determination by using consumer choice as the criteria for a final decision.

" . . . telecommunications services that the commission determines have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers."

Customer market preference would be the major factor defining the new concept of universal service.

The new bill also pleased the State PUCs for it gave them a role in terms of developing competition within the local markets. The bill emphasized that local access was to be developed in negotiations between the various potential competitors. In the event that the competitors could not agree upon access, the State PUCs could be invited into the negotiations in order to reach a settlement.

The States were also pleased that they were given a role in defining universal service, and developing methods to achieve the new service standard. Under the proposed Federal-State Joint Regulatory Board concept advanced in the Bill, the state regulators held four seats, while the F. C. C. members held only three seats. This new Board would, through F. C. C. and State PUC negotiations, set the parameters for access to local exchanges. In addition, the bill also allowed the States to go beyond the F. C. C. orders in defining universal service and cost support methods, thus allowing for the creation of additional financial mechanisms needed to maintain universal service cost subsidies.

On June 7 the Bill was considered by the full Senate, and floor debate on the proposal proceeded. During the debate over eighty amendments were offered to the bill, covering everything from obscenity and rate subsidies to the auction of radio spectrums and wireless communications. The debate lasted for over one week, and in the end, on June 15, the bill was passed by a vote of 81 to 18.

In spite of its breath, the Bill received very little substantive change from the proposal voted out of the Commerce Committee. Both Hollings and Pressler, with the support of Dole, successfully turned back every major challenge to the Bill's contents.¹⁰⁸

¹⁰⁸ McCain attempted to strike all the clauses to provide for forms of subsidies for universal service and essential providers, but in the end his efforts at modification failed. The Clinton Administration, with the support of Leahy of Vermont and Kerry of Nebraska, unsuccessfully tried to increase the Justice Department's oversight on RBOC entry into long distance service. Again the effort failed. Kerry tried to restrict price increases for cable television, and address

While the final bill, that was passed on June 15, contained all of the previous Committee recommendations, it also left certain areas open for future decisions. In general, S. 652, allowed the RBOCs to enter long distance phone markets within their local service areas after they had satisfied the criteria established to assure that local competition actually did exist within the local exchange. Until the time that their local exchange was open, each RBOC could offer long distance service in any market outside of their existing local exchange. The bill also eliminated the prohibitions on cable and telephone company cross-ownership, and mandated industry cooperation in the development of local exchange interconnection.

The issue of Universal Service was side-stepped, and forwarded to the Federal-State Joint Board's recommendations to the F. C. C. The Joint Board, composed of the four to three split originally proposed in the Committee Bill, would define the baseline of services that should be universally available, and the support mechanisms that should be created to adequately fund the provisions of universal service. The F. C. C. was required to complete the proceeding that would allow for implementation of the Joint Board's recommendations within 18 months of the Bill's passage.

In addition, the F. C. C. was required to reconvene the Joint Board every four years to review the implementation of the universal service provisions, and to make recommendations and modifications on both the definition of universal service, and the mechanisms used to fund universal service.

The final legislation, though, enumerated seven principles of universal service which the F. C. C. and the Joint Board should base their policies. These principles included reasonably comparable rates for services between rural and urban areas, access to advanced telecommunications services in all regions of the United States, and access to advanced services for health care, education, economic development, and public purposes.

Every telecommunications carrier was required to contribute to a universal service fund established to underwrite universal service.. Payments out of the fund for providing universal service support were to be made to those carriers designated as "essential telecommunications carriers" - this being a carrier that offered service to "everyone" in a designated area rather than just a selected market group. States were also allowed to expand the federal definition of universal service, as well as create additional support mechanisms to fund the service.

By mid June, the Senate felt that it had achieved a consensus on the direction of telecommunications reform. While the final Senate bill did not directly address all the issues involved with deregulation, at least a framework had been devised that assured both the State's, and the various industry factions, that an ultimate resolution would be developed within the near future.

While the Senate felt, generally, that the bill was a good compromise between total deregulation versus continued Judicial oversight and government regulation, the House was not of the same mind.

The House Bill

consumer fears over media consolidation, but his efforts also suffered defeat.

To House Republicans, the Senate telecommunications bill reflected nothing more than "politics as usual". The bill's emphasis on delaying competition in the local exchange markets, in the minds of many House delegates, would only result in a further weakening of America's future economic position. To this group, complete deregulation and unimpeded competition was absolutely essential for America's economic survival. The Senate bill, in their view, did not go far enough toward deregulation of the telecommunications market.

While the House, in general, was more "pro-competition" than the Senate, there had been a reluctance on the part of the new majority leadership in the House to take the lead in developing a new telecommunications act. Part of the reluctance was related to protocol between the two Houses. Since the Bill had been in Committee in the Senate at the close of the 103rd Congress, protocol would have the Senate initiate the next round of legislation. But another issue also revolved around House action on the bill, and that was the possible charge of a conflict of interests.

In early December, accusations had been made in Congress, by various Democrats, that Gingrich's large advance payment for a new book, that was to be published by a company owned by the English media giant Rupert Murdoch, was in fact a financial pay-off for changing the foreign ownership requirements for telecommunications companies in the proposed Telecommunications law. While Gingrich eventually accepted a smaller advance for his proposed book, which dampened some of the charges, the issue of Gingrich's ethics overshadowed any attempts to initiate telecommunication changes in the House.

As the chief architect of the downfall of Jim Wright from the position as the Democratic Speaker of the House, based on charges of ethics violations related to personal financial gain from lobbyists, Gingrich was particularly vulnerable, and sensitive, to similar charges directed toward him. The Democrats pressed Gingrich on his relationship with business interests, and began to demand that the House Ethics Committee open inquiries into Gingrich's publishing contract and bulk sale of copies of his upcoming book "To Renew America".

In an atmosphere of partisan charges of ethical conduct violations being leveled against Gingrich by the Democrats, the Republicans counter-attacked with charges of violations, by the Clintons, of both ethical and personal conduct. What seemed to be a difficult Congressional session to begin with, slowly decayed into a community of hate and suspicion. (Eilperin, 1995).

Compounding Gingrich's problem with his book contract was also the public knowledge that Gingrich had, over the years, courted the telecommunications money. Bell South, an Atlanta based RBOC, had been a long term financial backer of Gingrich. John Clendenin, Chairman of Bell South, was a longtime personal friend of Gingrich's, and held regular meetings with Gingrich to discuss the movement of the telecommunications bill. But more disturbing were rumors that began to circulate that Gingrich might have a personal financial interest in the outcome of the new law, and in particular to possible corporate connections to GOPAC, Gingrich's personal Political Action Committee.

New accusations arose that Gingrich had allowed a lobbyist for TDS Telecom, Donald Jones, to use Gingrich's office in order to advance his personal business by influencing the foreign ownership requirements of the new law, and, indirectly, benefit Gingrich's GOPAC affiliates.

Both Arney and DeLay were also accused of using their offices to benefit both Jones's agenda, and their own personal fortunes. (Norton, 1996) ¹⁰⁹

In terms of telecommunications, the conflict of interest charge was also directed at the newly appointed House Chairman of the Commerce Committee, Thomas Bliley of Virginia. Bliley, personally, held major stock holdings in the majority of industries overseen by the Commerce Committee, including the telecommunications industry. ¹¹⁰ A review of Bliley's actions since 1990, showed that he often intervened with federal and state regulators in behalf of companies in which he owned stock, and he often voted for bills directly benefiting his own portfolio. (Congressional Quarterly, May 27, 1995)

Bliley had also contributed to the air of suspicion by an earlier event. In late November, after the announcement that Bliley was to be Chairman of the Commerce Committee. Bliley had scheduled several closed door meetings with telecommunications corporate executives who had contributed to his election campaigns, specifically executives of G. T. E., a company in which he held an extensive holding of stocks. The meetings angered John Dingell, former Democratic Chair of the Commerce Committee, who issued a public statement condemning the meetings, and charging Bliley with attempting to develop private deals over the new bill. (Billboard, February 4, 1995).

In order to avoid censure from the House on ethics charges, Bliley, in March, announced that he was giving control of his investments to a group of "independent advisors". By this action, Bliley hoped to put aside the conflict of interest charges, and beginning serious work on the telecommunications bill. ¹¹¹

During the first few months of the 104th Congress, Bliley was responsible for overseeing the passage of key areas of the "Contract With America". He worked on increasing the use of risk assessment attached to proposed regulations, reduction in litigation awards, and reduction of hazardous waste requirements on industries. His position as Chairman of the overall Commerce

¹⁰⁹ Donald Jones was a Fond du Lac, Wisconsin businessman who was connected to the Wisconsin based TDS Telecom. Headquartered in Middleton, Wisconsin, TDS Telecom provided an array of communications services nationwide, and also owned several rural telephone companies. Jones solicited business for a TDS subsidiary, Answer Madison, which was the hub for 800-number calls linked to a venture called Earning by Learning. The company, Earning By Learning, was founded by Gingrich in 1990 to pay "at-risk" children for learning to read, and was affiliated with Gingrich's GOPAC. Jones was the president of Earning by Learning. Jones also owned a company called U.S. Cyber. U.S. Cyber had a contract with TDS Telecom to promote INTERNET long distance telephone services. U. S. Cyber also owned an affiliate company, Cyberstar, which installed fiber optic networks and cable television networks. Cyberstar had been negotiating a \$13 million cable network contract with the government of New Zealand. Gingrich, along with Arney and DeLay, had held discussions with New Zealand officials concerning New Zealand's efforts to privatize their television systems, and the possible impact that the lifting of the foreign ownership ban would have on future investments and markets in both countries. New accusations arose that Gingrich had allowed Jones to use his access to Gingrich's office in order to advance his personal business with New Zealand, and, indirectly, to benefit Gingrich's GOPAC affiliate. Compounding the problem of self-interest conflict was the fact that Jones regularly advised Gingrich on rules to relax foreign ownership requirements on television and telephone companies, publicly, and actually had an office established in Gingrich's leadership suite in the Capital.(Norton, 1996)

¹¹⁰ At the time that Bliley assumed his Chairmanship, his stock portfolio was worth \$1.1 million. His own financial records showed that he owned \$50,000 worth of stock in GTE, the largest independent telephone company in the United States offering local exchange service. (Congressional Quarterly Weekly Report. May 27, 1995. Vol. 53, # 2. pp., 1475 - 1479.)

¹¹¹ But suspicions of possible influence dogged Bliley's trail, and eventually, in June, he announced that he was putting his holdings into a "Blind Trust".(Congressional Quarterly, June 10, 1995)

Committee assured House leadership that the eventual compromise telecommunications legislation would follow the plan as outlined in the Gingrich manifesto.

A key telecommunications person in the House was Representative Jack Fields, Republican from Texas. Fields had been the ranking Republican on the House Merchant Marine and Fisheries Committee, and expected, after the new Republican majority took control of Congress in 1995, to assume the Chairmanship of the Marine and Fisheries Committee. But Fields ambitions were sidetracked by an early decision from Gingrich to abolish the Marine Committee. As a form of consolation prize, though, Gingrich awarded Fields the Chairmanship of the newly created Commerce Committee's Telecommunications and Finance Subcommittee.

Fields, an ardent party loyalists, greeted the new majority position, and his Chairmanship, with a determination to make a change. For years, as a member of the minority party in Congress, he had chaffed at the bit, and now he saw the opportunity to become a force within the House. ¹¹²

"I'm not afraid. I'm absolutely ecstatic. For the first time I feel that I'm out on the field." ("Field's Profile", 1995)

During the 103rd Congress, Fields had a hand in trying to develop a House version of telecommunications reform. ¹¹³ Fields had proposed an amendment to the House Bill, which he wrote in cooperation with Democratic Representative Edward Markey of Massachusetts, which sought to encourage the RBOCs to support competition in the local exchanges by loosening the entry requirements of the RBOCs into long distance service. Past record, thus, seemed to have Fields in support of the equal competition in both exchanges.

When Fields assumed the Chairmanship, he developed a strategy that relied on support from various conservative Democrats on the Committee. Noting that Democrats, in particular Markey, had helped him with his 103rd efforts, Fields felt that the mood of the Congress was definitely aimed at total deregulation.

"You now have a very strong deregulatory and pro-competitive sentiment ... almost a supermajority of people who believe that less government is best." ("Field's Profile", 1995)

¹¹² Fields was a fifth generation Houstonian, and a graduate of Baylor University's law school. He started his political career in 1980 when he announced his candidacy for Congress against the Democratic Representative, Bob Eckhardt. Eckhardt's district, at this time, was typical of many of the traditional Southern Democratic districts in the 1970s and 1980s. While the district had been historically a strong Democratic stronghold, its voting pattern had begun to change in the late 1970s, and many blue-collar workers began to lean toward conservative Republican positions. Eckhardt was a staunch anti-corporate populist, and had a reputation for being the most liberal of all of the Texas Democratic delegation. Fields, sensing Eckhardt's weakness, mounted a campaign, supported by Republican New Right activists, and challenged Eckhardt's position as being anti-business and too liberal for Texas voters. The campaign worked, and in 1980 the district went overwhelmingly for Reagan and Fields. Fields position was further strengthened in 1982 when redistricting made his new district solidly Republican. Although, in the 1984 campaign, his Democratic opponent tried to defeat Fields based on ethics charges related to franking privileges, Fields beat back the challenge and won. After 1984, Fields position seemed very secure, and unbeatable in his home district.

¹¹³ The bill, which eventually passed in the House, died in the Senate in the fighting over the Hollings Committee draft bill.

While Fields controlled the Republican majority of the Committee, he knew that he had a critical Democratic ally in Markey. ¹¹⁴

Over the years, Markey had served in several critical positions within the Democratically controlled House. During the 100th Congress, Markey had been appointed Chairman of the Energy and Commerce Subcommittee on Telecommunications and Finance. He generally was known as a consensus builder, and had a habit of consulting, individually, with each Committee member. In general, he was also known as a person able to work with both Republicans and Democrats in the process of gaining support for legislation.

Markey had concentrated on becoming knowledgeable in both telecommunications and cable matters. His efforts with Fields during the 103rd Congress had gained him a reputation as a serious legislator, and somewhat an expert on the labyrinth of issues involved in the industry. His bipartisan efforts had gained him many Republican friends, who felt that he was one of a handful of Democrats that could understand the new Republican majority's position on various deregulatory issues. One other area also made Markey appealing to the new Republican majority.

Markey had been a strong advocate for children's programming on television. He had introduced bills limiting advertising on children's programs, and encouraging quality programming by linking programming to station license renewal. During the 103rd Congress Markey introduced legislation that required television manufacturers to install "V Chips" into television sets to block offensive programs. ¹¹⁵ While the bill was criticized by broadcasters, and eventually blocked, it enjoyed wide-spread support in Congress, especially by Congressmen supporting a more conservative family values platform.

While generally seen as a "liberal", and a friend of "regulation" Markey's work with Fields in the 103rd Congress, his support for the V-chip, and his reputation as an expert, made him a critical member of the Committee team trying to develop a House version of the telecommunications reform bill. ("Markey Profile", 1995)

But Fields also had to take into account the wishes of the newly dominate Republican members, and in the case of the Telecommunications Reform Bill that especially meant the wishes of Representative Michael Oxley from Ohio. ¹¹⁶

¹¹⁴ Markey had first run for Congress in 1976. Up to that time, Markey had been a Massachusetts State Legislator, and had developed a reputation for bucking the Democratic leadership in the State House - at one point he had so antagonized the leadership that they closed his office, and banished him to a desk in one of the Capital hallways. In 1976, Tobert H. MacDonald, who had served 21 years as a Democratic Congressman from Massachusetts, announced his retirement. Every prominent Democrat announced for the race to succeed him, but Markey, because of the press exposure over his conflicts with State leaders, easily won the nomination, and captured the seat by a 21 percent margin. From 1976 on Markey was returned every two years the Congress, and had strong support within his home district. But Markey had faced serious challenges in both the 1992 and 1994 races. In 1992, Markey had a serious challenge for the Democratic nomination. During the nomination campaign, charges were made that Markey had accepted contributions from the nuclear power industry. While he won the nomination, and the 1992 election, he again faced problems in 1994. In the 1994 election he was painted as being too liberal, and supportive of harmful government regulation of business. While overcoming the 1994 challenge, he returned to Congress more inclined to favor a deregulated business environment. ("Markey Profile", 1995)

¹¹⁵ A "V-Chip" is a computer chips installed in a television set, which enables parents to block shows that cable and broadcast programmers rate as "violent.

¹¹⁶ When GOP Rep. Tennyson Guyer died in April 1981, Oxley, a four-term state House member, was an early favorite in the special election to succeed him. But Oxley faced stiff primary competition. Running in the early days of the Reagan's presidency, the Republican candidates tried to out-Reagan one another. Robert J. Huffman, a Reagan backer in the 1976

Cut from the Reagan anti-regulatory mold, Oxley was a frequent critic of government involvement in the television and telephone industries. He opposed the cable television reregulation bill, which became law when Congress overrode a presidential veto in 1992. As the 102nd Congress drew to a close, Oxley fumed that the cable law, which required the Federal Communications Commission to oversee cable prices and service, was costing taxpayers more money and would not increase competition.

In the 103rd Congress he sponsored a bill that would have repealed the law barring foreign ownership of telecommunications companies, arguing that the restriction was prompting foreign countries to keep U.S. telecommunications firms out of their markets.

As a senior member of the Telecommunications and Finance Subcommittee on Commerce, Oxley was a well-established backer of telephone companies' move into cable television. Oxley had also resisted efforts to require that the Bells buy 60 percent of their equipment parts from domestic U.S. makers. Oxley would definitely be favoring equal competition in both the local and long distance exchanges. (Oxley Profile, 1995)

The turmoil in the House, which dominated the first three months of the new Congress's life, delayed Committee action on telecommunications reform until April. But after the release of the tentative Senate bill in March, which many in the House saw as not competitive enough, the atmosphere changed.

Hearings were quickly held, and serious legislation development was undertaken by the Committee. A. T. & T., and the other long distance providers, argued that the Senate Bill favored the RBOCs, and would result in recreating the old monopoly that had been broken by the MFJ. The Committee leaned toward the long distance carriers position, viewing the RBOCs as the major impediment to opening the local exchanges.

Fields drafted a Bill that favored the long distance providers, and seemed to penalize the RBOCs for seeking equal access to the long distance markets. By June, a draft version had been presented to the Committee, and approved by the majority of the Committee members. (Lightwave, 1995)

The Bill, introduced into the House on May 3, H.R. 1555, was called the "Communications Act of 1995" and was sponsored by Bliley, Dingell, Fields, Moorhead, Oxley, Bilirakis, Schaefer, Barton of Texas, Hastert, Stearns, Paxon, Gillmor, Klug, Greenwood, Crapo, Frisa, White, Coburn, Tauzin, Hall of Texas, Boucher, Manton, Towns, Eshoo, and Lincoln:

presidential race, branded Oxley a latecomer because he had supported Bush for president in 1980. In spite of the Bush charge, Oxley narrowly won the nomination. Winning the Republican nomination had traditionally been tantamount to election in the 4th district. But the Democrats fielded their best possible candidate, State Representative Dale Locker. Locker was a farmer and chairman of the State House Agriculture and Natural Resources Committee, an ideal candidate for the 4th District. Oxley out-spent Locker, raising \$275,000, and flooding the media with advertisements in the closing days of the campaign. But his efforts nearly failed because he was unable to develop the personal rapport with voters that had made the 4th District safe for Guyer. Carrying only six of the district's 12 counties, Oxley struggled to a 341-vote victory. A recount delayed his swearing-in for nearly a month. But after 1981, Oxley had no difficulty holding his House seat. Until 1995 Oxley had to remain content in the role of a minority representative, but he often won perfect ratings from the U.S. Chamber of Commerce for his voting record, while his rating from the AFL-CIO rarely rose into the double digits. Now and then, though, Oxley would cast a vote with Democrats. As a former FBI agent, he sometimes had been sensitive to the arguments of law enforcement on firearm issues. In the 103rd Congress, for example, he was one of the few Republican members in the House who voted in favor of the Brady bill requiring a five-day waiting period for handgun purchases. ("Oxley Profile", 1995)

The Bill's purpose was clearly stated in the introduction of the proposed Act:

"To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."

Deregulation of the industry, in order to encourage lower prices through market competition, coupled to the rapid capitalization of a new telecommunications grid, was the goal of the Act.

The proposed Bill then briefly stated the duty of all common carriers to sustain an integrated network.

"The duty of a common carrier . . . includes the duty to interconnect with the facilities and equipment of other providers of telecommunications services and information services."

After this brief statement concerning the duty of all common carriers to provide an interconnected system of telecommunications, the Act focused exclusively on the RBOCs, and the conditions under which they alone would be required to function.

It first defined what the RBOCs duties were as common carriers:

The duty . . . of a local exchange carrier includes . . . The duty to provide . . . equal access to and interconnection with the facilities of the carrier's networks to any other carrier or person offering (or seeking to offer) telecommunications services . . . The duty to offer unbundled services, elements, features, functions, and capabilities . . . The duty not to prohibit . . . the resale, on a bundled or unbundled basis, of services . . ."

Once the Bill had defined the duties of the RBOCs, it then specified exactly what those duties entailed when a long distance provider, or any other company, requested access to their local exchanges.

"A local exchange carrier shall provide access to and interconnection with the facilities of the carrier's network at any technically feasible and economically reasonable point within the carrier's network on just and reasonable terms and conditions, to any other carrier or person offering (or seeking to offer) telecommunications services or information services requesting such access."

Under the terms of the Bill, the RBOCs were required to open their exchanges to competition without regard for their concerns over offering comparable long distance service. But the Bill went even further by stating when the RBOCs had to provide access to the other carriers.

"Within 18 months after the date of enactment . . . a local exchange carrier shall prepare and file with a State commission statements of the terms and conditions that such carrier generally offers within that State with respect to the services or elements provided to comply with the equal access and interconnection requirements . . ."

Within 18 months of passage of the Bill, the RBOCs would face competition within their local exchanges, but still would be restricted from competing in long distance.

But the conditions for the RBOCs opening of their local exchanges became even more punitive. Not only would they face competition, but they also would be prohibited from entering the equipment manufacturing business until the F. C. C. ruled that they were in compliance with the interconnection requirements of the Bill, even though no such prohibition would apply to the long distance, cable, or utility providers.

"It shall be unlawful for a Bell operating company, directly or through an affiliate, to manufacture or provide telecommunications equipment, or to manufacture customer premises equipment, until the Commission has approved under section 245(c) verifications that such Bell operating company, and each Bell operating company with which it is affiliated, are in compliance with the access and interconnection requirements . . . "

While the equipment prohibition was a major blow, the restrictions on electronic publishing were even harsher. While, eventually, they would be able to enter the manufacturing arena, the Bill permanently prohibited the RBOCs from direct entry into electronic publishing.

"No Bell operating company or any affiliate may engage in the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service . . . "

The long sought access to the long distance markets also did not seem attractive from the RBOCs position. Under the Bills terms, the RBOCs could request from the F. C. C. access to provide long distance service, but they would have to wait 18 months before making application. In addition, their application would have to meet two tests before they were allowed entry into long distance.

"At any time after 18 months after the date of enactment of this part, a Bell operating company may provide to the Commission (F. C. C.) verification by such company with respect to one or more States that such company is in compliance with the requirements of this part. Such verification shall contain the following:

(A) Presence of a facilities-based competitor: An agreement that has been approved under section 243 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network in accordance with section 242 for the network of a competing provider of telephone exchange service.

(B) Failure to request access: If no such provider has requested such access and interconnection before the date which is 3 months before the date the company makes its submission under this subsection, a statement of the terms and conditions that the carrier generally offers to provide such access and interconnection that has been approved or permitted to take effect by the State commission under section 243."

In essence, the RBOCs would have to show the F. C. C. that either no one else wished to serve the local market, or that there existed a competitor within the market who had, within 18 months, constructed a comparable wire based system within the local area.

In order to ensure that the wishes of Congress were complied with, the Bill went on to prohibit the States or local governments from impeding access to competition in either the interstate or intrastate markets.

" . . . no State or local statute regulation, or other legal requirement shall . . . effectively prohibit any carrier or other person from entering the business of providing interstate or intrastate telecommunications services or information services; or . . . effectively prohibit any carrier or other person providing interstate or intrastate telecommunications services or information services from exercising the access and interconnection rights . . . "

While the House Bill penalized the RBOCs, and favored the long distance providers, it failed to address the general consumers needs. Like the Senate Bill, the House Bill allowed for the establishment of a Federal-State Joint Board to deal with the issue of Universal Service.

"Within 30 days after the date of enactment . . . the Commission (F. C. C.) shall convene a Federal-State Joint Board . . . for the purpose of recommending actions to the Commission and State commissions for the preservation of universal service"

Like the Senate Bill, the joint board's definition of Universal Service would have to be based on consumer preference.

"In recommending a definition of the nature and extent of the services encompassed within carriers' universal service obligations under subsection (b)(2), the Joint Board shall consider the extent to which--(1) a telecommunications service has, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; . . . "

But unlike the Senate Bill, the definition of Universal Service had a time limit, and at the end of five years the requirement for a universal service board would expire.

"Sunset: The Joint Board established by this section shall cease to exist 5 years after the date of enactment of this part."

But, in an act of kindness, the Committee required that there would be a three year transition period, during which basic voice-grade telephone rates would be capped.

". . . each State commission shall permit residential subscribers to continue to receive only basic voice-grade local telephone service equivalent to the service generally available to residential subscribers on the date of enactment of this part, at just, reasonable, and affordable rates. Determinations concerning the affordability of rates for such services shall, for a period of 3 years after the effective date of any flexible pricing procedure established under this section, be based on the rates generally available to residential subscribers on such date of enactment and the pricing rules established by the State commission.

After three years the sky was the limit as to what could be charged.

In one final act at showing consumer protection concern, the Committee decided that individual privacy was an issue to be addressed by the Senate legislation, and authorized a study and recommendation concerning protecting consumer telecommunications privacy.

"Within one year after the date of enactment of this Act, the Commission shall commence a proceeding-- (A) to examine the impact of the integration into interconnected communications networks of wireless telephone, cable, satellite, and other technologies on the privacy rights and remedies of the consumers of those technologies; (B) to examine the impact that the globalization of such integrated communications networks has on the international dissemination of consumer information and the privacy rights and remedies to protect consumers; (C) to propose changes in the Commission's regulations to ensure that the effect on consumer privacy rights is considered in the introduction of new telecommunications services and that the protection of such privacy rights is incorporated as necessary in the design of such services or the rules regulating such services"

Notable, by its absence, was the complete lack of any mention concerning Markey's proposed V-Chip, or a role for the Justice Department in overseeing local access competition - apparently A. T. & T. felt that the Bill's provisions were sufficient in themselves to protect against the antitrust issues it had raised in the Senate.

Opposition to the House Bill quickly surfaced from the RBOCs, consumer groups that had already expressed concern over the Senate version, the Clinton Administration, and NARUC.

The issue raised by the consumer level involved the perceived concentration of power in the hands of a few large broadcast media companies.

"We believe that Congress is moving the law in the wrong direction, toward greater concentration and fewer choices for consumers, all under the guise of "greater competition." Laws and rules that limit cross-ownership and concentration not only enhance competition, a putative goal of the new legislation, but they also serve important non-economic goals, by promoting a greater diversity of programming, and enhancing opportunities for local ownership. In a sense, this is a move toward a Brazilian Globo-lization of the media, placing ever greater power in the hands of fewer giant media moguls . . . These are gratuitous assaults on competition, diversity and political pluralism. The far reaching changes that would occur under S. 652 or H.R. 1555 have been widely criticized by virtually all of the active public interest groups engaged in the current debate. The Consumer Federation of America, Consumers Union, the Media Access Project and the Center for Media Education have all issued strong criticisms of the provisions of the bills which would allow for greater concentrations of power . . . Congress, at the least, should retain existing limits on concentration of ownership of broadcast radio and television licenses, and rules prohibiting same-market joint ownership of newspapers and broadcast radio and television licenses. Local exchange telephone companies should not be allowed to buy cable operators in their own service area. Moreover, Congress should bolster existing restrictions on concentration and cross-ownership with provisions that address the new technologies and new regulatory environment . . . And, given the new and very different role of the local exchange telephone companies in providing information services and video programming, we

believe that it is important to establish limits on the range of media outlets that these large companies can control. In particular, we believe it is important to prevent local exchange telephone companies from acquiring newspapers and broadcast radio or television licenses in their own service areas. (Taxpayer Assets Project, 1995)

While consumer groups were unhappy with the proposed bill, the RBOCs made it clear that they would not accept the conditions of entry being proposed by the House.

The RBOCs position against the House Bill was bolstered by a wide range of industry representatives. Pointing out the complexity involved in unbundling the billions of dollars of subsidies that existed in the local telephone charges, and the time required to make the transition to a profit level in local telephone service, the RBOCs argued that the Bill would only make the transition period more difficult.

". . . there is no money in local calls. As the market evolves and subsidies are eliminated, then it will become possible for people to make money on local calls." (Bauman, 1995)

To support their case, the RBOCs pointed to industry developments concerning expansion of services. SBC Communications, Inc., a Texas based Bell Company, had decided to delay adding telephone service to the cable systems it owned in Arlington, Virginia and Montgomery County, Maryland.

"The technology isn't ready and the cost is going to be more than the vendors originally said, which kind of puts a damper on things for awhile." (Dimmitt, 1995)

A. T. & T.'s plans for reselling Ameritech services in Grand Rapid, Michigan had been delayed because of contract negotiations. A. T. & T. had asked for a forty percent discount on local access charges from Ameritech, while Ameritech required A. T. & T. to pay full retail price. The problem with the A. T. & T./Ameritech negotiations, the RBOCs claimed, would be played out across the country in every local telephone market. Only time, it was argued, would allow for a smooth transition. The alternative, it was proposed, would be further court litigation, and further types of Judicial oversight problems.

The RBOCs argued that the process of transition would require a more careful approach than the blanket formula being presented by the House. The RBOCs were also supported in their position by NARUC, who agreed with the RBOCs case concerning court litigation.

The Bill also faced a threat from the Clinton Administration, which vowed to veto the measure if it came to President Clinton's desk in the format proposed by the House.

"My administration is committed to enactment of a telecommunications reform bill in this Congress. Such legislation is needed to stimulate investment, promote competition, provide open access to information networks, strengthen and improve universal service and provide for flexible regulations for this important industry. Consumers should receive the benefits of lower prices, better quality and greater choices in their telephone and cable services, and they should continue to benefit from a diversity of voices and viewpoints in radio, television and the print media. Unfortunately, HR1555 . . . Instead of promoting investment and competition, it promotes mergers and concentration of power. Instead of promoting open access

and diversity of content and viewpoints, it would allow fewer people to control greater numbers of television, radio and newspaper outlets in every community . . . The cumulative effect of these provisions would be to harm competition and to weaken the benefits to the public. If HR1555 with the managers' amendment is sent to me without deletion or revision of a significant number of these provisions I will be compelled to veto it in the best interests of the public and our national economic well-being. (Clinton, August 1, 1995)

NARUC, and the State PUCs, had also decided that a good offense was better than a good defense, and, by the time the House Bill was voted out of Committee, had opened a second front at the State Legislative level. By June, telecommunications legislation was pending in State legislatures in Texas, Virginia, Georgia, Florida, Tennessee, North Carolina, Washington, Colorado, California, Illinois, New York, and Massachusetts. While the various proposals being considered by the State legislatures had different emphasis, the bottom line was that the State PUCs would be in control of determining when, and how, the local exchanges would be opened to competition.

Georgia's bill placed the complete authority for opening local exchanges in the hands of the Public Utility Commission. Tennessee's plan gave the PUC complete authority over establishing local rates for interconnection. The Texas bill required that potential competitors would be required to build their own systems rather than interconnecting to the existing network. The end result was the building of a series of state "firewalls" against the future federal bill, and a direct challenge to the authority of the Federal government to negate the utility authority of the State governments. (Lightwave, 1995)

One other problem facing the proposed draft was that both Bliley and Fields had missed Gingrich's signal about which way to lean the final bill's corporate advantage.

During the time that the House Bill was being drafted, former Senator Howard Baker had been meeting with Bliley and Fields. Baker, at this time, was Chairman of the Competitive Long Distance Coalition, which was political action committee for the long distance providers. The draft that was released by the Committee, in May, showed Baker's influence, and gave the competitive advantage to the long distance companies. (Lightwave, 1995)

When the RBOCs learned of the corporate slant of the Bill, they mounted a campaign directed at Gingrich, and used the Bell South connections to inform him of their objections. Gingrich called a meeting in late July between himself, Bliley, and Fields. In the meeting a 66 page amendment was drafted, and ordered attached to the Bill. The amendment, called a "Manager's Amendment", sought to overcome the opposition of the RBOCs, and the threatened veto by the Clinton Administration.

The Manager's Amendment changed certain key provisions, especially those areas of greatest conflict with the President and the seven RBOCs. The changes in the amendment allowed for: making it easier for the RBOCs and the Bell telephone companies to enter the long-distance market, and requiring F. C. C. consultation with the Justice Department before allowing the long distance companies entry into the local markets. The Bill also required the installation of the "V-chip" in televisions to permit parents the right to block programs rated as violent or otherwise unacceptable for children.

The initial bill had permitted local Bell operating companies and RBOCs to apply to the F. C. C. to offer long distance service 18 months after enactment of the law. But, the Bell company or RBOC

had to first obtain a state certification that the company had met the local network openness "checklist" requirement, and had to demonstrate that actual competition for service existed in the local exchanges. Under this section of the Bill, there was no provision made for the Justice Department to review of either the RBOC or Bell company requests to provide long-distance services. In addition, the section did not require that the F. C. C. conduct a public interest review on the request. Rather, the bill simply had the F. C. C. verify whether or not the company had met the required checklist conditions concerning sufficient competition, and if the company met the checklist, then automatically approve the long distance application.

But the Manager's Amendment shortened from 18 months to six months the time that the RBOCs had to wait before applying to offer long-distance services. The amendment required the RBOCs to open their markets to competition during that time, and they would have to be subject to an additional requirement that competition for local phone service was being provided from a "facility-based" competitor before being allowed to provide long-distance services. But, the amendment struck the provisions of the bill which would have required that such local competition be "comparable in price, features, and scope" to service provided by the RBOC. Instead, the amendment allowed the competition to be offered "predominantly" over the competitor's own facilities "in combination with the resale of the services of another carrier."

The amendment also shortened from three years to 18 months the period after enactment during which the RBOCs would gain approval to offer long-distance services, provided that such services were through a separate subsidiary, and it allowed the RBOCs, once each individual local Bell company within the RBOCs region had opened its network to competition, to begin offering long-distance telephone service from outside of its own region.

The amendment also amended the initial bill's access checklist (which the RBOCs had to meet before being allowed to offer long-distance services) to require that the RBOCs offer services and features to telephone service resellers at "wholesale rates," rather than at "economically feasible rates" for the reseller, and it prohibited resellers from diverting purchased residential services for business use.

The Manager's Amendment also required the F. C. C. to consult with the Justice Department concerning the RBOCs applications to offer long-distance service or to manufacture equipment. Under the amendment, the Justice Department would be allowed to submit to the F. C. C. a written evaluation of whether permitting a RBOC into long-distance or manufacturing presented "a dangerous probability that the Bell company or its affiliates would successfully use market power to substantially impede competition" in the manufacturing or long-distance market it sought to enter. But, the amendment did not grant the Justice Department any authority to prevent the RBOCs entry into new businesses.

To be eligible to provide long-distance services, the modified bill required that the local Bell companies and RBOCs had to actually face competition by an unaffiliated company, which provided telephone service to both residential and business subscribers over the competitor's own physical network. In order to discourage a potential competitor from targeting only a high profit area within a State, the RBOCs were allowed to offer long distance service within an entire State if a competitor offered services within any one part of a State. The measure also provided for interim approval of the RBOCs long-distance services earlier than 18 months after enactment, if local competition developed rapidly, or if no competition arose, or seemed unlikely to arise.

The bill required Bell companies that gained approval to offer long-distance services to provide such services through a separate subsidiary until three years after enactment of the law. Under the measure, financial transactions between a Bell and its long-distance subsidiary must be done on an arm's length basis, with the subsidiary maintaining fully separate operations and property, including books, records, and accounts. The measure included provisions to prevent Bell subsidization of long-distance services using its local phone service revenues, and it required such long-distance subsidiaries to pay to the parent Bell the same long-distance access fees and charges paid by other long-distance carriers.

The altered bill permitted Bell companies, immediately upon enactment of the bill, to provide a range of long-distance services that were incidental to the provision of other lawful services - including services related to the provision of cable services; cellular telephone services; telephone network signaling; and information services from a centralized computer (such as services for stock market quotes, sports scores, and voice mail).

Under the new terms of the bill, RBOCs were allowed to manufacture equipment once each individual local Bell company within the RBOC had opened its local network to competition, and had complied with the bill's access and connection checklist. Under the measure, such manufacturing activities could be conducted by either the Bell company itself, or by an affiliate. However, the Bell Communications Research Corporation ("Bellcore") was not permitted to engage in manufacturing as long as it remained partly owned by one or more Bell companies, or as long as it was involved in establishing standards for telecommunications equipment and services. The bill also required the Bell companies to file with the F. C. C. detailed information concerning technical requirements for connecting to the local networks, so that this information would remain available to other equipment manufacturers, and to sell equipment they manufactured to other local telephone companies so that innovation within the industry was shared.

The measure also established certain rules under which the RBOCs could provide electronic publishing services.¹¹⁷ Under the measure, Bell companies would be permitted to provide electronic publishing services over their own telephone lines only if such services were provided through a separate affiliate or a joint venture with an electronic publisher. Such separate affiliates or joint ventures would be required to maintain their own books, records, and accounts, and would be prohibited from employing certain Bell employees. Separate subsidiaries would not be permitted to engage in any joint sales, advertising, or marketing activities with affiliated Bell companies, but such activities would be permitted for joint ventures, however, provided the Bell company had no more than a 50% direct or indirect equity in the publishing venture (80% for small publishers).

The new bill repealed the cross-ownership restrictions of the 1984 Cable Act which prohibited telephone companies from providing cable services within their own telephone service areas. Under the bill, telephone companies would be permitted to provide cable services either through a separate cable system, or through their own network. If a telephone company built and operated a separate "stand alone" cable system, the new system would be subject to the same franchise requirements and "must carry" requirements as applied to existing cable systems.

The modified bill generally prohibited telephone companies from buying existing cable systems in its service area, But to the extent that a telephone company used its own local telephone network to

¹¹⁷ The dissemination, publication, or sale over telephone lines of news, business and financial reports, editorials, columns, sports reporting, features, advertising, photos or images, research material, legal notices and public records, and other such information.

provide cable services, the bill also required it to establish a "video platform" _ a system over which other video carriers and programmers also would be permitted to provide services to consumers in that telephone service area. Until July 1, 2000, all video programming provided by a telephone company over a video platform would have to be provided through a separate affiliate which maintains separate books, records, and accounts. After the 2000 date expired, services could be provided through an integrated department within the local company.

The new measure permitted increased foreign ownership of U.S. telephone companies if the President determined that the foreign ownership interest was held by a citizen of a nation that is party to an international agreement with the United States that provided for reciprocity in the ownership of common carrier licenses, or if the F. C. C. determined it to be in the public interest. The existing limitation of 25% ownership by foreign companies was lifted.

The attachment of the Manager's Amendment, with its relaxation on the RBOCs entry into long distance, caused the long distance providers, who had been supporting the original draft, to do an about face, and oppose the Bill. Joining the long distance providers were the consumer groups such as the Consumer Federation of America, Consumers Union, and People for the American Way, all objecting to other sections in the bill that would have deregulated the cable television market.

But the Manager's Amendment did produce support for the Bill from the MFJ Task Force (the RBOCs), U.S. Telephone Association (local telephone companies), Cable Telecommunications Association, and the Motion Picture Association.

Even with the Manager's amendment, though, the proposed bill still faced a veto threat by President Clinton, especially since the consumer group's opposition came from key areas of traditional Democratic Party support.

In order to control the Bill's passage, and to deflect public consumer criticism from being aired on C-SPAN, Gingrich scheduled the Bill for debate under a set of very strict guidelines. The Bill, which was considered initially on August 2, was restricted to only eight amendments from the floor. Debate on each amendment was limited to thirty minutes. Debate on amendments was not scheduled until after 10:30 p.m.. The Democrats were able to gain enough votes to reschedule the amendment debates to 8 a.m. on August 4, but the restrictions on time, and the number of amendments considered, was maintained. Finally, on August 4, 1995, at eight a. m., the Bill was debated and voted on in the House - it passed by a vote of 305 to 177. (Congressional Quarterly, August 5, 1995)

The differences in the House and Senate Bills would now have to be reconciled. While the specific issues within both bills were sufficient in themselves to require a great deal of dedicated labor, the process would be further complicated by an atmosphere of partisan conflict that had been developing within Congress over the last eight months.

The Constitutional "Rights of Place"

The Republican House's position toward the Clinton Administration had been hardening over the Summer. Early in the Congressional Session, the Clinton Administration had recognized that the "Contract's" proposal for a Balanced Budget Amendment was a popular concept with the average American. Administration opposition to the concept of a balanced budget was not considered a viable option. As such, the Clinton Administration gradually began to endorse the general concept of balancing the Federal budget, and the eventual elimination of the deficit.

While both the Clinton Administration and the Republican Congress agreed on the concept of balancing the Federal budget, both parties disagreed on the time frame that should be developed for balancing the budget, and the basic numbers and assumptions that should be used to develop a plan for bringing the budget into a balanced situation. The actual difference in the number of years proposed by the two parties was only three years, and the base dollar figures between the two parties was only forty billion dollars. But the methods chosen to balance the budget were very different.

The Clinton program attempted to maintain the existing structure of social welfare programs by a series of targeted government reductions in defense spending and government downsizing. The Republican program sought to achieve the balance by major cuts in total spending in social welfare programs, and the shifting of long term growth demand in the social welfare programs from the Federal government to the discretionary authority of the State governments. In addition, the Republicans advanced a program of tax cuts targeted at upper income citizens in order to spur capital investment, while the Clinton Administration targeted tax cuts to middle income families, especially in the areas of educational tax credits.

Repeated attempts at achieving a balanced budget through negotiations between the White House and Congress had become stalled over the issue of the number of years to use, and the underlying budget number assumptions that should be used to forecast the budget. As the process of budget reconciliation dragged on, accusations from Democrats of the Republicans being "mean spirited" and "cruel" to children receiving the benefits of the targeted welfare programs further inflamed Republican resentment toward the White House and the Democratic minority within both Houses.

The new Republican members of the House resented the public portrayal of them as heartless individuals seeking to balance the Federal budget on the backs of the impoverished children and poor families of the country. The Republican House members, especially, had an impression that Clinton was morally and ethically bankrupt, and held no personal beliefs in terms of the issues that he raised concerning American families. Rather, to the House leadership and the new Congressional Freshmen, Clinton was seen as a deal cutting politician, who had no internal courage to stand-up for any ethical principle. To the Republicans, Clinton's portrayal of them as mean spirited was only political maneuvering, and in the end, they felt, he would cave in to their unified show of determination.

But what the Republican leadership did not realize was that they had run into the "new" Bill Clinton, a man determined to win the 1996 Presidential race, and quite prepared to exercise the constitutional rights of his office in order to advance his political ambitions.

Clinton Administration staffer's assessment of the 1994 Republican Congressional race, especially polling data results, showed that American voters, generally, supported the overall Republican position concerning a reduced size and scope of government, and fiscal conservatism. The polling data indicated a strong shift away from the traditional Democratic activist position toward a position emphasizing more personal responsibility. But the data also indicated that voters were not prepared to see the political pendulum swing as far to the right as was being proposed by the new Republican Congress. All polling data seemed to indicate that movement toward a center position between the two concepts was where the average voter was most comfortable.

Working from the various data, the Clinton Administration crafted a new "centrist" position which Clinton embraced on June the 13th with a nationally televised speech in which he outlined his commitment to a balanced budget.

In the speech Clinton rejected the concept of deficit spending, and embraced the concept of a reduced role for government in our social existence. But while he accepted the basic philosophical position being advanced by the Republicans, he did not accept the notion of complete government removal from our lives. Rather Clinton presented a view of government as a positive institution which had an affirmative role to play in the citizen's life. The new Clinton proposal saw a government based on a fiscally prudent policy, but still committed to providing each citizen with the necessities of health care, advanced education, and a healthy environment.

The new Clinton strategy rejected the historical platform of the Democrat's Progressive and New Deal heritage, namely the belief that government action would lead to both a resolution of society's problems, and an eventual redistribution or leveling of wealth within the society. The new program also rejected the historical Democratic platform of politics based on class division, and instead focused on creating consensus and common ground between various factions and groups. The new approach emphasized a shift away from government policies created to serve individual interests, and refocused policy development on the creation of community-wide interests. And finally, the new Clinton strategy fell back on traditional American values and concepts of hard work, equal access to opportunity, personal responsibility, and mutual respect and accommodation to each other interests. (Penn and Schoen, 1996)

By the Summer, the Republican agenda for a balanced budget had become a major flashpoint between the House Republicans and the White House. Both sides positions over the budget were hardening as the talks progressed, and the level of conflict over the numbers to be used to forecast the budget increased.

Fueling the conflict was the polling data that the Republicans were receiving back on their performance. Clinton's rejection of traditional class based attacks against the Republicans, coupled to his community oriented values approach, was beginning to pay off in the minds of the American public. Polling data seemed to confirm that the Clinton charge that a major tax cut would only fuel the deficit was supported by the majority of voters. The Clinton proposal for tax cuts targeted toward families to help pay for education, child care, home ownership was the preferred approach. In addition, support for Medicaid and Medicare, and protection of the environment, were overwhelmingly supported by American voters.

In addition to public support being squarely behind Clinton's positions, the charge that the Republicans were mean spirited seemed to have been effectively hung on the Republicans. By the middle Summer, Gingrich's popularity had fallen into the 30 percent range, and other data seemed to indicate that the American voters, in general, felt that the Republican program was too harsh, and benefited only the wealthy. Clinton's strategy had paid off, and now the Republicans faced a major public relations problem while Clinton's ratings, in the polls, were increasing.

The Clinton position in the public polls, coupled to the disagreement over budget numbers, produced in the Republican leadership a defensive attitude. Rather than being prepared to compromise with the White House, the Republicans became more adamant that the final budget would be based on their program proposals and base assumptions. The White House was as equally determined to not bow to Congressional pressure. Finally, on September 28, with a budget agreement still unresolved, the Congress passed a continuing resolution which kept the government operating only until November 13.

Previous to October, Clinton had vetoed several rescission bills that had been passed by Congress. While the rescission vetoes had warned the Republicans of Clinton's hardening resolve, the

Republican leadership felt that Clinton would never take the final step and actually allow the Federal government to shut down for a lack of money. But Gingrich had misread the new Clinton strategy, and as the budget talks remained stalled, and the November 13 deadline approached, it became clear to the Republicans that an actual governmental shut down might occur.

Reconciliation

While the atmosphere between the White House and the Republican Congress deteriorated, movement continued on reconciling the differences within the telecommunications reform community.

The two bills that were sent to a Conference Committee for reconciliation, S. 652 and HR 1555, were each over 175 pages long. In terms of the telephone industry, the two bills had much in agreement. Both Bills sought the same goal, to allow all telecommunications companies to compete directly with each other in their respective markets. In terms of their methods of creating the new competitive market, both bills had a similar approach. Their actual differences resided in the extensive details, spelled-out in each bill, concerning the limits on both Federal and State regulatory discretion, and the constraints placed on the RBOCs as they attempted to enter the forbidden markets of long distance service and equipment manufacturing.

Compounding the two bill's complexity was the breadth of coverage contained within each bill. Seeing, literally, a "once-in-a-lifetime" opportunity, every segment of the telecommunications industry had rushed into the telephone debate, seeking to advance other political and economic agendas that had little relevance to the issue of telephone service. The final bills were loaded down with unrelated items such as the pirating of video signals from satellite services, allowances to broadcasters to carry gambling casino advertising, and foreign government owned television station's access to remote transmissions from the United States.

In terms of reconciling the differences in each bill, for the telephone industry, the issues boiled down to a handful of critical matters.

The first area of dispute was over the Universal Service principle. The Senate Bill required that a new system of subsidies be created that were targeted at keeping telephone service affordable in high-cost urban areas and rural areas. The fund that would be established would be contributed to by all telecommunications providers, and would be used to subsidize the difference in consumer rates versus the full cost for providing the service. The House Bill made no specific provision for the financing of Universal Service, and instead allowed the decision to rest exclusively with the F. C. C..

The Senate Bill also set, as a universal standard, that only telecommunications companies that provided service to every customer within their market area would be eligible to receive the subsidized payment, while the House Bill made no provision concerning eligibility for payments.

In terms of Interconnection Requirements, the Senate Bill provided for binding arbitration in the case of a competitor finding it difficult to obtain terms for interconnection from one of the RBOCs or their Bell affiliates. Either party to the negotiations could ask the State PUC to arbitrate the interconnection agreement, and the other party would be bound to abide by the arbitration decision. The House Bill contained no provision for arbitration.

While both Bills required that the RBOCs sell their services in an unbundled package, and offer those services for resell, the House Bill contained a provision that would have required the RBOCs

to sell their services to competitors at wholesale rates. The Senate version would have allowed the selling of such services at the retail rate.

As for long distance service, both Bills provided a "checklist" that each RBOC would have to meet before they were authorized to enter the long distance market, but the Bills differed on the degree of competition that needed to be exhibited, first, and the discretion given the F. C. C. in approving the long distance service offering.

The Senate Bill required that the RBOC must face a competitor in each market in which it wanted to offer long-distance service. The competitor, though, under the Senate Bill, could be of any type, including a reseller of local Bell access services or an actual wired system, and could also be a service that only offered service to business customers. The House Bill, on the other hand, allowed a RBOC to offer long distance service within an entire State if it had at least one competitor within any area of the State. The competitor, though, would have to offer services through a separate wired facility, and had to offer service to both business and residential customers.

While the House allowed the RBOC to enter long distance once they had met the Checklist requirements, the Senate version of the Bill had an additional requirement. Under the Senate version, the F. C. C. would review the request using the Tunney Act public interest provisions, and consult with the Justice Department before allowing the approval of the long distance service.

The Public Interest clause of the Senate Bill also was in conflict with a long distance exemption clause that was contained within the House Bill. Under the House version, the RBOC could be given an exception to the Checklist requirement for long distance service if no competitor emerged in a state three months prior to the RBOCs application for entry into long distance service. Also, if a RBOC could show that a potential competitor had not negotiated in good faith, then, for the designated State under previous negotiation, the Checklist requirement could be lifted, and the RBOC could offer long distance service.

The House and Senate Bills also differed on when a RBOC could offer long distance service outside of its region. The Senate version would have allowed the RBOCs to offer long distance service in other regions the day the Bill was passed. The House version prohibited the RBOCs from offering long distance service outside their own region until the day that they had been authorized to offer long distance service within every State within their home region.

In terms of equipment manufacturing, the Senate and House versions also differed. Under the House version, the RBOC could not enter equipment manufacturing until it had been authorized to offer long distance service in every state within its home region. Under the Senate Bill, the RBOCs could enter manufacturing as soon as a RBOC was authorized to offer long distance service within any one part of its home region.

As for cross ownership of telephone and cable companies, the House version allowed the RBOCs and Bells to own up to fifty percent of a local cable company, while the Senate version limited their ownership to only ten percent. Although both Bills opened the door to foreign ownership and investment in telephone companies, the Senate version only allowed such cross-ownership to occur in the case of countries with reciprocal ownership rights to United States firms.

The Senate version also contained some additional provisions not found in the House Bill. Under the Senate Bill, public utility companies were allowed to enter the telecommunications industry. The Senate proposal also contained a provision that prohibited the use of "redlining", a process whereby service was withheld from poor and rural areas. A final difference was also in the Senate

version which required that telecommunications companies provide advanced services at reduced rates to schools, libraries, and rural hospitals.

The major problem facing the Conference Committee was the continued veto threat from the Clinton White House. The Clinton Administration's concern over the Bills was focused on three areas. The first dealt with cable television, and the abolishing of price controls on cable television rates. The second area was on the ownership of television stations, and the possibility of media monopoly consolidation within the television and entertainment industry. In terms of the telephone industry, though, the Clinton Administration felt that the requirements on the RBOCs entry into new line-of-business services were too loose, and poised a potential for recreating the monopoly abolished under the MFJ. The Clinton Administration sought a larger role for the Justice Department, and a less deregulated approach to entry than was proposed in either Bill. The threat of a Presidential veto hung over the Conference.

The veto threat made it imperative that the conferees develop a proposal that would be supported by the Senate Democrats. While the majority of the Republican House was squarely behind the leadership of Gingrich, the two thirds override requirement of a Presidential veto could not be achieved in the Senate without the support of the Democrats, and specifically Hollings and Breaux. It would be difficult, especially in an upcoming Presidential year, 1996, for the Senate Democrats to override a veto coming from the Party's Presidential Banner Bearer.

The Conferees were not helped by the continued opposition of consumer groups, especially against the House version of the Bill. Even the old war horse of consumer protection, Ralph Nader, was urging the President to veto the Bill if it retained the House sections in the final Compromise Bill.

"Dear Mr. President:

Today's passage of HR 1555, the telecommunications measure, is a major blow to consumers. In passing HR 1555, the House of Representatives has: 1. stripped state governments of many of their traditional powers to regulate telephone rates, even when consumers are served by monopolies; 2. deregulated cable television rates, even when consumers are served by monopolies; 3. provided for much greater concentration in the ownership of telecommunications and media outlets, by - raising or eliminating many existing national and local ownership limits for broadcast radio and television, - eliminating many existing limits on cross-ownership of broadcast licensees and non-broadcast telecommunications or media businesses, - allowing telephone companies to acquire a huge chunk of the cable systems in their own service areas, and - allowing incumbent broadcast television license owners to control up to 6 new digital broadcast television channels in the same market; 4. turned its back on more open access to telecommunications networks by: - limiting the FCC's ability to require interoperability or open architecture for the new broadband networks, - failing to include last year's "open platform," which would have required telephone companies to provide a low cost switched digital service over the existing telephone infrastructure, and - allowing telephone companies to offer video services as a closed "cable system" rather than under the common carrier video dialtone concept. I urge you to hold fast to your commitment to veto this anti- consumer legislation.

Sincerely,

Ralph Nader

One positive development, though, appeared to be occurring for the F. C. C. The Spring offensive against the F. C. C. led by the Progress & Freedom Foundation had a surprising reaction from the telecommunications industry. Rather than supporting the attack on the F. C. C., the telecommunications industry rose to the defense of the agency.

In June, the firm of Delotte and Touche released a survey that it had conducted of 280 telephone and cable executives. Overwhelmingly the telecommunications executives endorsed the F. C. C. as the regulatory body best qualified to oversee the convergence of the telecommunications and cable industries. The primary reason for the preference was that the telecommunications executives faced an increasingly risky future in terms of competition. To the executives, uniform federal regulation on issues, such as market entry and rate structures, was preferable to the alternative of dealing with 50 separate state public-utility commission's regulations on these same complex points.

"You need federal uniformity and that's what the industry wants, our study found,"
(Robert Mayer, Delotte & Touche's Washington analyst).

The telecommunications companies, worried about local market delays originating within the State PUC's rule making process and intrastate political agendas, wanted the Federal government to police the requirements for market entry, and to have the power to preempt any efforts by the States to delay opening the local markets. The F. C. C., in the minds of the executives, was the best qualified agency to handle the new policing role. Even A. T. & T., the old nemesis of the F. C. C., was supportive of the agency.

"I'm not begging for more regulations, but sometimes we need facilitators, we need interim rules, we need stimulators that help create a competitive environment."
(AT&T Chairman Robert Allen).

During the previous Congress's efforts at telecommunications reform, both Democrats and Republicans had sought to preserve an oversight role for local market entry for the Justice Department. While the RBOCs had led the fight against further involvement by the Justice Department in the industry, they were willing to support an expansion of the oversight duties of the more familiar F. C. C. While the RBOCs were not thrilled by the idea of oversight, and eventually hoped the F. C. C.'s role would become unnecessary, they still recognized that some government agency was needed to work out the details of telecommunications reform - at least for the short term.

"There will be a big role for the FCC to play in marshaling in the new telecommunications bill and the regulations and facets of that bill. Long term, as the telecommunications marketplace opens up to competition, then there will probably be a diminished role for the FCC and other telecommunications regulatory bodies."
(Bell Atlantic spokesman Michael Daley).

Since the RBOCs, long distance carriers, cable companies, public utility companies, and the commercial broadcasters were all planning on aggressively entering video, interactive-TV and wireless-communications markets simultaneously, some type of regulatory traffic policeman was needed to at least enforce the "rules of the road". A single, uniform source at the Federal level, as compared to fifty state levels and hundreds of local community levels, was preferable to the industry. The industry, in essence, was telling Congress "Don't tell us how to compete against each other in terms of potential customers, but rather police our business actions in our dealings

with each other in the new competitive arena." The new role for the F. C. C. was to no longer be a regulator, but instead become a referee. (Leopold, 1995).

The conflicting values of deregulation and continued government involvement in the industry had become evident in the two bills that had been passed by both Houses of Congress. On the one hand the bills sought to create a competitive market environment for telecommunications, but, on the other hand, expanded the role of the F. C. C. in setting and monitoring the conditions for market entry. Faced with the conflicting message from the industry itself, "set us free, but not too free", Congress, in classical government decision making theory, threw the technical issues into the hands of the F. C. C., and said "You figure it out!"

While the F. C. C. had been saved from extinction by the intervention of the telecommunications industry, and many within the F. C. C. felt that the biggest winner in the telecommunications bills was the agency itself, the agency also faced the uncomfortable future of being the key referee in the market free-for-all that would follow deregulation. Past experience from the sports arena showed that referees were not liked by the players on either team.

The legion of industry lobbyists who were laying siege to Capitol Hill during the bill's debate, would, once the bill was passed, descend on the FCC, and attempt to restrict new competitors from entering their markets.

"We're in for some pretty adversarial proceedings. The FCC is going to be in the awkward position of being the referee." (Robert Mayer, Delotte & Touche's Washington analyst).

Rather than being caught between opposing forces, neither of which would be pleased with the decisions against their positions, the F. C. C. had been trying to develop a new mission and method for decision making.

"There needs to be an FCC to define fair rules of competition and to enforce fair rules of competition. That's what the (telecommunications) legislation is about." (Pepper, FCC)

But rather than simply being a rule maker, the F. C. C. had begun to move toward the position that the market should be the primary force for determining the shape of the future industry. In one case the telecommunications industry had been pressuring the agency to impose standards for personal communications services (PCS). Instead of selecting a single standard, the agency decided to let the industry offer different standards for the multiple-access technology, and let the market ultimately decide which of the formats would prevail. Three different types of wireless standards were allowed, code-division multiple access, time-division multiple access, and a U.S. variant of the European Global System for Mobile Communications standard. The PCS decision gave the F. C. C. the opportunity to show both the industry and Congress that it was serious about letting the market decide which technology would ultimately prevailing in the telecommunications sector.

"The role of the government should be to address any health and safety issues that may arise and try to accommodate local zoning issues, but make sure we have national policies or coordination. Where possible, standards setting should be done by competitive markets." (Hundt, FCC, 1995).

Both the House and Senate versions of the law gave the F. C. C. varying degrees of responsibility in resolving standards for network compatibility. Even before the bills passage, the agency had

created an agency wide task force that sought to establish a market driven method of selecting compatibility standards for varying levels of digital platforms. The task, which was both highly technical in nature, and manpower dependent, was consuming more and more of the agency's budget. While the agency felt that this approach was the best method to achieve what was being requested by both Congress and the industry, it faced a major problem in terms of getting the financial support it needed for the effort from Congress.

While Congress might be willing to concede to the industry's wishes for a new role for the F. C. C., the anti-government attitude in Congress was still being felt by the agency in terms of its \$200 million annual budget. The agency's budget request for 1996 appeared to be "heading South".

By 1995, the agency had grown from its original staff in 1934 of a few hundred generalists into an agency with over 2,000 attorneys, economists and engineers charged with overseeing a host of multi-billion-dollar industries.

Looking for budget savings in discretionary spending accounts, especially within the endangered regulatory agencies, the Republican controlled House appropriated only \$186 million for the FCC in 1996, \$38 million less than the agency had requested. The budget picture in the Senate was even worse, with the Senate appropriations subcommittee voting, in early September, to give the FCC only \$148 million in fiscal 1996.

In response to budget pressures and government wide efforts to streamline operations, Commission Chairman Reed Hundt proposed to reduce the agency's payroll from the authorized level of 2,271 employees to 2,050. He also proposed closing some field offices, and shifting resources from older bureaus within the agency. Recognizing the increasing demands that wire based and wireless based telephone services would have on the agency, Hundt proposed adding 50 new employees to the Common Carrier Bureau, and six to the increasingly important Wireless Bureau, which had been created in 1994 to handle the growing mobile communications market.

But at the same time that the F. C. C. was faced with a budget cut, it was also being expected by Congress to pick-up new duties within the emerging telecommunications regime. F. C. C. officials estimated that they would need an additional 200 staffers to implement the various sections of the final telecommunications bills.

Along with taking the lead on various areas such as the compatibility issues, the agency was also to conduct spectrum auctions that would be used to defray the federal budget deficit. Hundt warned that more auctions would require more staff, especially economists, who would have to analyze market conditions in broadcast, wireless and other industries in order to set a fair market value for the potential broadcasting slots.

While Congress might want the F. C. C. to be the telecommunications industry's "federal traffic cop" and competition "umpire.", the convergence of deregulation and policing of market forces would require ". . . that we change the FCC's organization and its mix of personnel."

At this time, late 1995, the F. C. C. staff mix was 28 percent involved in regulation and standards enforcement, 19.8 percent in authorizing various types of services, 18.3 percent in policy and rule making, 13.9 percent in administrative support, 12.7 percent providing public information, 4.4 within legal services and 2.9 percent handling international programs.

Hundt estimated that proposed cable deregulation would cut the FCC's authorized staffing by as many as 75 employees. But this staff cut in cable would be offset by a need to increase staff by 270 to handle the new responsibilities spawned by local telephone competition.

"We (need) to change the skill mix of our employees in response to the changing industry environment and our changing tasks. To pursue the holy grail of communications competition, we have hired economists, MBAs, computer-industry experts and experienced technical people and managers from the telecommunications industry." (Hundt, FCC, 1995)

Further complicating things for the F. C. C. was the stiff resistance to even modest staff cuts from the union representing the rank-and-file workers within the agency.

While Congress and the Industry were willing to let the F. C. C. continue to exist, the process of meeting the new industrial demands, coupled to the reduction of the agency's budget, assured both the industry and the Congressional leaders that the F. C. C. would be limited in any attempt to assert control over the developing market.

The Conference Bill

While the House version of the Bill had been approved in early August, and the Senate version in June, it was not until mid-October that the first Conference Committee group met to discuss reconciliation. The delay in the establishment of the Committee was exclusively the fault of the House leadership.

In early October, the House adjourned without naming the members of the Conference Committee who would work with the Senate to iron out differences in the two bills. Jurisdictional questions between Commerce and Judiciary committees had appeared since passage of the House Bill. The Republican Commerce Committee leaders objected to Judiciary members participating in deliberations on the entire bill, and wanted their role limited to discussions about the development of competitive telecom markets. But the Judiciary Committee members were as equally concerned about the removal of the Justice Department role in overseeing local and long distance exchange entry.

Gingrich, leery of another mis-reading of signals as had occurred under Bliley's initial draft bill, directed that the Commerce Committee should have lead jurisdiction over the bill for the House, but that the Conference Committee should also have representatives from the House and Judiciary Committees. (Washington Telecom Newswire, October 5, 1995).

On October 16 the final conference committee members for both houses were announced.

The House committee members were Commerce Committee Chairman Thomas Bliley (R-VA), Telecommunications Subcommittee Chairman Jack Fields (R-TX), ranking minority member John Dingell (D-MI) and Representatives Michael Oxley (R-OH), Dan Schaefer (R-CO), Joe Barton (R-TX), Dennis Hastert (R-IL), Bill Paxon (R-NY), Scott Klug (R-WI), Daniel Frisa (R-NY), Rick White (R-WA), Edward Markey (D-MA), Rick Boucher (D-VA), Anna Eshoo (D-CA), Bobby Rush (D-IL), Blanche Lambert Lincoln, (D-AR) Bart Gordon, (D-TN), and Sherrod Brown, (D-OH) . Representing the House Judiciary Committee were Chairman Henry Hyde (R-IL), and Representatives Carlos Moorhead (R-CA), Elton Gallegly (R-CA), Robert Goodlatte (R-VA), Steve Buyer (R-IN), Martin Hoke (R-OH), Michael Patrick Flanigan (R-IL), Bob Barr (R-GA),

John Conyers (D-MI), Patricia Schroeder (D-CO), Howard Berman (D-CA), John Bryant (D-TX) Bobby Scott (D-VA), and Sheila Jackson-Lee, (D-TX).

The Senate committee members were Commerce Committee Chairman Larry Pressler (R-SD), ranking minority member Ernest Hollings (D-SC) and Senators Ted Stevens (R-AK), John McCain (R-AZ), Conrad Burns (R-MT), Slade Gorton (R-WA), Trent Lott (R-MS), Daniel Inouye (D-HI), Wendell Ford (D-KY), Jim Exon (D-NE) and John Rockefeller (D-WV).

The final shape of the legislation now rested in the hands of 45 conferees, 34 from the House and 11 from the Senate. Eleven Senators, six Republicans and five Democrats, and nine House members, four Republican and five Democrats, made up the core group of conferees, but an additional 25 House members were appointed to participate in specific portions of the negotiations. Of the core group, all had been involved in past attempts at creating a new framework for telecommunications deregulation.

While Bliley, Fields, and Pressler were to lead the discussions, the imprint of Gingrich was evident in the deregulatory agenda that formed the House position. Gingrich had predicted that Clinton would sign into law whatever bill emerged from the conference committee. Gingrich was confident that the reconciliation process would move quickly, and that within a month the bill would become law. He also predicted that Clinton would sign into law whatever bill emerged from the committee. Asked, at a Republican Party sponsored conference on high technology, if Clinton would follow through on his veto threat against the House version, Gingrich dismissed objections.

"This is the biggest jobs bill in modern times. I don't see how he (*Clinton*) could campaign in California if he vetoes it".

But real issues and division existed within the Committee members, and the resolution of those differences would not be as easy as Gingrich predicted.

McCain, still angry over Pressler's compromise with the Democrats, focused his support behind the more deregulatory House version of the Bill. McCain's negotiating position had been weakened in the Senate by the September resignation of Packwood. Still seeking a "date certain" approach to opening both local and long distance markets, McCain realized that his position would only be supported by the more deregulatory House members.

Opposing McCain's position was Hollings, who strongly advocated for strict requirements on the RBOCs entry into the long distance exchanges until there was "actual and demonstrable" competition in the local exchanges. Hollings was determined that the Senate Bill's requirement that RBOCs entry into long distance markets had to be certified by the F. C. C. would be retained in the final joint bill. Hollings also opposed the House Bill's language that would have allowed the RBOCs entry into either manufacturing or long distance markets, through a separate subsidiary, to "sunset" after eighteen months. In this area of entry requirements, Lott also sought to protect LDDS's and Entergy's interests.

Further adding to the conflict was Hollings insistence on retaining language in the law that would allow RBOCs entry only if it was "consistent with the public interest, convenience, and necessity." The Majority of the House conferees found the "public interest" language a major sticking point. McCain also wanted to scrap the "public interest" language, but Hollings made it clear that he would fight any attempt to take out the public interest definition from the final conference bill.

The area of universal service was also a major point of contention. McCain had been very vocal about limiting the scope of universal service, and, on the Senate floor had offered a failed amendment that would have replaced the universal service system with a need-based voucher system. McCain also opposed the Snowe-Rockefeller amendment, which would extend universal service concepts to schools, libraries and rural hospitals.

On the other side of the universal service issue was Senator John Rockefeller, Democrat from West Virginia and co-sponsor of the Snowe-Rockefeller amendment, Senator Ted Stevens, Republican from Alaska who was determined to protect rural telephone customers through retention of the universal service concept, and Representative Edward Markey, Democrat from Massachusetts, who vehemently opposed efforts in the House Commerce Committee to prohibit an "evolving" definition of universal service.

The other areas of disagreement related to provisions dealing with resale, unbundling, the "costs to telephone companies" when they offer other services. cable rate deregulation, the "V-chip" television blocking device, blocking of objectionable material on the Internet, and media concentration.

Although efforts to give the Justice Department an expanded role in overseeing competitive transition failed in both the House and Senate Bills, the twelve House Judiciary Committee members were appointed to seek to deal with the anti-trust aspects of the new regulatory system. (Washington Telecom Newswire, October 23, 1995)

While both Fields and Pressler predicted that the Conference Committee would quickly resolve the differences between the two bills, the process became more complicated than either Chair could have fore-seen.

The first conference committee meeting got off to a bumpy start when the conferees could not agree on whether to use the House or the Senate bill as the starting point for their negotiations.

Meeting at an early morning session, the Conferees each gave statements stressing the importance of reforming telecommunications laws, and instructing their staff aides to begin resolving differences in the versions of the bills.

As their first action, the conferees appointed as their chairman the Senate Commerce Committee chair Larry Pressler. Privately telecommunications executives had been urging members to select someone other than Pressler, and they pointed as an example of their reasoning to his unsteady leadership of the Senate panel. While Pressler's election did not please the telecom lobbyist, the telecommunications industry was in for even more uneasy news by the next action of the Committee.

Controversy started when Senator Stevens suggested that conferees use the Senate bill as the starting point for negotiating their differences. The House members were offended by Stevens suggestion, and felt that it reflected a lack of respect for the work done in the House. The House members began to demand that the House version, instead of the Senate version, be used as the base for negotiations.

The Senate members were angered by the House member's actions. The traditional protocol in a conference is to work off the bill that was passed first. Since the Senate had passed its version of the Bill before the House, the accepted tradition was to work from the Senate Bill. But Representative Fields, who had spent months crafting the House bill, felt that the House bill, with

its stronger deregulatory emphasis, was the proper philosophical position to work from. The older Senate members had suddenly met their more ideologically driven counterparts in the House.

Unable to agree on which version to work from, Pressler adjourned the meeting for one week, and directed the House and Senate staffers to meet three times a week to resolve differences in the two bills. Pressler also warned the conferees that he might call evening sessions to hammer out an agreement.

But to the amazement of the industry lobbyists, the House staffers, later in the day, declined to meet with their Senate counterparts. (Wharton, 1995) The lobbyists were left dumbfounded by the House staffers actions. In the hallways, one lobbyist remarked

"Here we have the future of the telecommunications industry at stake, while congressional staffers can't decide if the world is flat or round."

While Pressler intended to move the process quickly, the divisions in Congress and between the two bills had stalled discussions. Pressler canceled additional meetings until Mid-November, and personally directed the staffer's work on various details of the bill. The key to Pressler's efforts was to accommodate Hollings, Breaux's, and Dingles positions within both the House and Senate versions of the bill. The possibility of a White House veto still hung over the discussions, and Pressler felt that a bill backed by Hollings/Breaux and Dingell would leave Clinton with little choice but to sign the final bill. (Congressional Quarterly, November 11, 1995).

For the next month, Pressler directed the Senate and House staffer's work at locating a common ground for the new law. Rejecting past precedence, Pressler directed that both bills be used to form a reconciliation. Under Pressler's approach, if one bill contained sections not found in the other bill the unique items were immediately included in the staffers report. Areas that had a similar view or wording were also included as agreed upon by both House. By including the unique items, and the common areas, Pressler was able to isolate the issues under conflict, and focus legislative discussions on reconciling specific points.

Pressler also deliberately avoided having individuals who were in conflict over the budget and legislative War between the parties, engage in direct discussions over reconciling the issues. Rather, Pressler himself would move between the parties, acting as a facilitator, and seeking agreement on specific points.

Pressler's strategy worked, and discussions advanced within the Conference. By December 6 the majority of the differences had been agreed to by the Conference Committee members, and an initial Conference Report was approved by the Conference Committee.

The Final Conference agreement focused on five major areas of conflict, Telecommunications Access, Regulatory Reform, Broadcasting, Obscenity and Violence, and Appropriations. The report chose to deal with the areas as they affected, directly, specific elements of the telecommunications industry and methods of communications.

Coordination for Interconnectivity

The Senate Bill "required" interconnection of telecommunications networks to ensure that a there would exist a seamless and transparent transmission of voice, data, and information. The House Bill, instead, ordered the F. C. C. to establish procedures to "coordinate" future network planning by telephone companies and telecommunications providers. The Final Agreement accepted the

House "coordination" emphasis, but added a "savings clause" which retained the current F. C. C. standards authority. In other words, only future network development would be coordinated. The existing network, and its technical standards, would remain in place until the network was physically replaced with the future network.

Removal of Market Entry Barriers

The Senate Bill contained no provision related to removing barriers to market entry, but the House Bill did. The House required that the F. C. C. conduct a fact finding proceedings that would identify, and then eliminate, any market entry barriers, for entrepreneurs and other small businesses, in the provision or ownership of telecommunications and information services. The final Conference Bill contained the House clause.

Pricing Flexibility and Abolition of Rate of Return Regulation

The Senate Bill required that an alternative to rate of return pricing be developed by the F. C. C. within one year of the passage of the Bill - whether or not the local or long distance markets were open. The Senate allowed the F. C. C. to consider profitability when developing the alternative pricing structure.

The House Bill established a process so that a local exchange carrier could apply for pricing flexibility from either the Federal or State authorities, as long as the local market either was or was certain to become competitive. The F. C. C. would establish criteria, and a list of acceptable alternative pricing procedures for determining when and what type of pricing flexibility was appropriate. The States, under the House bill, could choose and utilize any pricing flexibility method from the approved list developed by the F. C. C.. Applications for pricing flexibility had to be approved or rejected within 180 days of being applied for by the local carrier. The House bill also required that both the F. C. C. and the State PUCs had to abolish rate of return regulation in any market in which a RBOC had complied with access and interconnection requirements. But the House bill also required that when a local market had reached a level of competition that assured consumers against "unjust and unreasonable rates" all price regulation would end.

In the end, both versions of rate of return abolishment were dropped, and the matter was referred to the F. C. C./State Joint Board for a future decision.

Infrastructure Sharing

The Senate Bill Directed the FCC to prescribe regulations requiring local exchange carriers to make available, to any qualifying carrier, the public switched network infrastructure, technology, information, telecommunications facilities, and functions that were requested by the carrier who was seeking to provide telecommunications services in the service area where they were designated as an eligible carrier. Since the House Bill had no similar type of provision, the Senate section was included.

Universal Service

Hollings had played a major role in developing the Universal Service Fund accounts within the Senate Bill. While the House also had a clause that allowed for the provision of support to maintain universal service principles, there was a major difference in the two bills that needed to be resolved.

The Senate had not established a time limit for providing funds to support universal service to low income/high cost areas, schools, libraries, rural health care providers, and disabled person. But the House bill required that the F. C. C. conduct a study within three years to determine if free market competition had removed the necessity of retaining the support, and reporting their findings to Congress. Hollings opposition to removal of the clause eventually forced the removal of the Study clause from the final Conference Report. Instead of a study clause, the universal fund principle was authorized for five years after the passage of the bill, and then subject to reauthorization by the Congress.

Electronic Publishing and Information Services

The Senate restricted the RBOCs from offering information services except through a separate subsidiary. In addition, the RBOC and the subsidiary were prohibited from offering local services through joint marketing arrangements until a competitor, within the same market, was also allowed to participate in joint marketing. Both the subsidiary and the competing firm had to be given equal access to the local services on the same cost-based formula.

The House Bill allowed the RBOCs to also provide electronic publishing through a separate subsidiary, but went further to require that the subsidiary kept separate accounting books, arranged for independent financing of the company, and prohibited cross-subsidies from the RBOC to the subsidiary firm. But the House version had a major clause in this section that automatically "sunset" all the restrictions on the RBOCs in the year 2000.

The final version adopted the House language, but removed the "sunset" provision, and instead referred the matter to the F. C. C. for reevaluation five years after the Bill became law.

Wireless

The wireless issue had three elements that needed to be resolved. The first was over the siting of mobile service facilities. The second issue dealt with mobile service access to long distance service. The final issue related to Federal versus State authority over direct satellite transmissions and service.

In terms of the siting of mobile service facilities, the Senate had not addressed the issue within their Bill. Because of the lack of a Senate section on the matter, the House Bill became the base for setting the new regulations. The final act clarified that cities had the authority to determine the placement of mobile services and wireless common carrier sites, but that such requirements must be set "in a reasonable and nondiscriminatory manner". In addition, the FCC was to establish a national policy on the regulation of the location of commercial mobile service facilities by State and local governments through a negotiated agreement between the cities and the mobile services industry. Also, the Bill required Federal government departments to make available, at a fair, reasonable and non-discriminatory rate, property, rights-of-way and easements for the construction of private commercial mobile service facilities - when such construction would not directly obstruct the mission of the agency or department.

In terms of mobile services having direct access to long distance services, both the Senate and House bills were similar. The final version did not allow cellular telephone subscribers to have "equal access" to long distance providers. In essence, cellular customers access would have to pay access charges at the "free market" rate. But the bill went on to mandate that while access and costs were based on the market, cellular companies still had a right to obtain access codes from long distance companies. In addition, the F. C. C. was given the authority, if it became necessary, to

set rules to provide cellular customers with long distance access if the long distance companies established "unreasonable" charges or conditions.

Both the House and the Senate affirmed that the F. C. C., and the Federal government, had exclusive constitutional jurisdiction over the provision of direct satellite based services. But this section seemed to give a bow to State's rights by defining such service jurisdiction as being limited to services which did not involve the use of ground receiving or distribution equipment.

Forbearance

The Senate Bill empowered the F. C. C. to forbear from applying any regulations or provisions of the 1934 Act to a telecommunications carrier or service, if the FCC made certain determinations. They included determinations that: (1) enforcement was not needed to ensure the charges, practices, classifications or regulations of the carrier or carriers were just and reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement was not needed to protect consumers or the provision of universal service; and (3) forbearance was in the public interest. The Senate Bill also directed the FCC, in making its determination, to consider whether forbearance would promote competitive market conditions -- including the extent it would enhance competition among providers of telecommunications services. If the FCC determined that forbearance would promote competition among carriers, that finding, alone, might form the basis of a finding that forbearance was in the public interest.

The House Bill directed the FCC to forbear from applying regulations based on either existing common carrier regulations or concepts, or principles of the "public interest. Rather, in place of the classic theories of regulation was placed the authority to intercede in order to ensure consumer protection. In addition, the Commission was required to take into account whether forbearance from regulations would promote market competitiveness and enhance competition, and if it would, then weight the decision toward the market, not the consumer.

Once again, Hollings and his Senate supporters stood firm for inclusion of the "public interest" clause. But while the final agreement receded to the Senate version, it modified the public interest clause by including the market language " that enforcement of a regulation or provision is not necessary for the protection of consumers".

Regulatory Reform

The Senate sped - up F. C. C. action for setting telephone rates by making any revised charge that reduced rates effective 7 days after it was filed with the Commission. Rate increases, on the other hand, became effective 15 days after their submission to the F. C. C. Any decision by the F. C. C. to block the rate changes, either up or down, required that the F. C. C. provide a detailed analysis of the justification for blocking the charge, and a process whereby the Agency decision could be immediately appealed to the Federal District Courts. Since the House Bill contained no similar provision, the Senate condition on rate review was adopted.

But the Senate Bill also went even further than the House in eliminating Commission regulations and functions. The Senate bill repealed FCC requirements for setting depreciation rates for telecommunications carriers' assets; allowed the FCC to hire independent auditors to audit telecommunications carriers; directed the FCC to speed and simplify its work with State regulators; and allowed the FCC to waive requirements that broadcasters obtain construction permits before being issued a license. The Senate proposal also eliminated FCC hearings prior to changing broadcaster's frequency, power or hours of operation, and removed the 30 day waiting period for

the FCC to license fixed microwave communications. Since the House Bill contained no similar section, the Senate section was adopted, but with a modification that allowed the FCC to "carry-over" auction revenues gained from the broadcast spectrum sales.

Relationship to Other Laws

Both the Senate and the House Bills overturned the 1982 Consent Decree. The Senate Bill, though, only overturned the MFJ ruling to the extent that it was inconsistent with the bill. Any remaining issues, under the 1982 agreement, would be administered by the FCC, which was authorized to modify them in order to promote market competition. The House Bill went even further than the Senate, and overturned the seven specific sections covered by the 1983 agreement. The House bill specifically repealed access by both the long distance carriers and the RBOCs to entry into either long distance or local exchanges, and opened the door to equipment manufacturing and electronic publishing. Under the House version, the F. C. C. and the State PUCs would have no authority to modify or alter the rights of the companies to compete in any of the designated areas which had been previously prohibited. The House version, with its more open approach, was supported by the RBOCs, and was included within the Bill.

Both Bills also contained "savings clauses" which affirmed that the new law did not affect either the anti-trust laws, or State and local laws. But once again the House Bill, with its deregulatory approach, contained a clause that modified the "savings Clause" section as it related to State and local laws. While State and local laws were recognized as legitimate, their legitimacy was only recognized as far as the exercise of State or local authority did not impair or prevent the operation of the new Federal law, or the newly created telecommunications regime. In the event that the F. C. C. found that a State or local law impeded either the provisions of the Act, or the creation of a competitive market, the F. C. C. could over rule the State or local ordinance. The only avenue left to a State or local government objecting to an F. C. C. over-ride was legal action within the Federal Court System. Once again, the more aggressive House version was adopted by the Conference in spite of the objections from NARUC.

Biennial Review of Regulations

But the House emphasis on Federal preemption was somewhat softened by another section within the Senate Bill. The Senate bill established a Federal-State Joint Board for State regulations. The Joint Board was to review, in odd-numbered years beginning with 1997, all regulations issued under either the 1934 Act or State laws applicable to telecommunications services. If the Joint Board determined that competition had made a regulation, either Federal or State, unnecessary to protect the public interest then the F. C. C. was required to repeal the regulation. The Joint Board was also to notify the Governor of any State of State regulations it determined were no longer needed to protect the public interest. Since the House had no similar provision for a Federal - State Joint Board on Regulation, the Senate clause was adopted.

Broadcaster Spectrum Flexibility

The House Bill became the bases for defining the new broadcasting regime, especially in terms of the newly emerging high definition television technology. Initially, only existing broadcasters would be eligible to receive the new spectrum licenses, and they were allowed to offer both television services and ancillary services over the new spectrums. But the use of the frequency for ancillary or supplementary services had to be consistent with the technology or method designated by the Commission for the provision of advanced television services, and the new services could not deteriorate the potential for offering the advanced television services. Also, the new services

had to be done in such a way that they did not end access to the existing analog technology. The new broadcasters were required to operate under the "public interest" standards for broadcasting, and the Commission was to evaluate the acceptance of ATV services by the public within 10 years.

The existing broadcasters, on one hand, had been given the advantage in terms of access to the new technology, but the final bill also placed new standards on the broadcasters, especially as it related to violent program content.

Incumbent broadcasters were given the right to apply for license renewal without completing applications. But the FCC would grant such a renewal only if, during the preceding term of its license, the station had served the public interest. In determining the public interest, the FCC could not consider the personal qualifications of a person, but, as part of renewal process, the incumbent licensee had to summarize any complaints it had received with respect to violent programming. The FCC could take these complaints into account in determining if there had been a pattern of abuse of the public interest, and a finding of abuse of the public interest would result in a refusal to renew the broadcasters license.

Competition from Cable Systems

The final agreement restricted the definition of a "cable system" to a system that serves subscribers by using any public right of way - basically a system held together by land based wires. While it limited cable to wires, it expanded the definition of cable services to include interactive services, video dialtone, home alarm service, and telephone service. Cable operators, though, had the complete discretion to determine what "basic service" included, and to change the service mix with a 30 day notice to the subscriber. Cable rates were also allowed to rise or fall with the market, but rate increases were limited to once every 6 months. Rate complaint proceedings by the F. C. C. could only be triggered if filed by a local franchising authority, city officials or state regulators. The ability of consumers to initiate rate complaints was prohibited.

The report eliminated the ban on telephone companies providing video programming and cable services, but it did place two restrictions on the telephone companies entering the "new line of business".

The first provision was that the method of regulating the telephone company offering of video programming would be based on the system and the service that was used - wireless, cable wires, common carrier telephone wires, or the newly emerging "video platforms" such as high definition technology. Telephone companies that used their existing networks to transmit video programs would be regulated on a common-carrier basis. Telephone companies that provide video to subscribers through a cable system, would be regulated as cable operators.

The second restriction related to buy-outs of cable television stations. The second provision barred telephone companies, and their affiliates, from acquiring more than 10 percent of, or any "manageable interest" in, a cable operator in the same market as their local exchange. The same restriction also applied to cable companies' investments in local telephone phone companies. The bill also prohibited joint ventures between telephone companies and cable companies within their markets.

The bill, though, provided for an exception to the ten percent prohibition in rural areas, and areas located outside the top 25 commercial markets. The FCC could grant a waiver upon a showing of undue economic distress for the local telephone company or cable company, or if the system or facilities would not be economically viable, or the anti-competitive effects were clearly outweighed,

in the public interest, by the probable effect of the exception meeting the convenience and needs of the community to be served.

Obscenity and Violence

The Senate Bill, of the two bills, had the strongest language in terms of restrictions on obscenity and violence in the telecommunications area. As such, the final report included all of the Senate clauses, and developed a new standard for broadcasting restrictions. The bill increased the maximum fine under for transmitting obscene programming on cable television from \$10,000 to \$100,000. Likewise, it amended the existing radio broadcasting laws, and increasing the fine for broadcasting obscene language on radio from \$10,000 to \$100,000 - Howard Stern was definitely a consideration in the discussion over the fine increase. The Report required that cable television operators fully scramble, or otherwise block, upon a subscriber's request, and at no charge to the subscriber, the audio and video portions of programming which the subscriber deemed unsuitable for children. It also required that cable operators fully scramble or block all adult programming so that non-subscribers do not receive the signals. Cable operators were given the discretionary authority to refuse to transmit any public access or leased access program, or portion of a public access program, which contained obscenity, indecency, or nudity.

The "V-Chip"

The final report gave both the cable and broadcast industries one year to voluntarily develop ratings for video programming containing violence, sex and other indecent materials, and to agree to voluntarily broadcast signals containing such ratings. If the industry failed to come up with an acceptable plan within one year, the FCC would develop guidelines for rating programs based on recommendations from an advisory committee. Once a program was rated, the broadcasters were required to transmit the signal of the rating.

The bill also required TV manufacturers to equip 13 inch or greater sets with circuitry that would enable the set to block out all programs with a common rating. To encourage broadcast, cable, satellite, syndication, and other video programming distributors to enact the requirements, a technology fund was established to encourage TV and electronics equipment manufacturers in their development of the blocking technology. To promote compliance with the new requirements, all program distributors were required to report to the F. C. C., within twelve months, their progress in developing the new ratings. The General Accounting Office (GAO) was also ordered to conduct an audit on blocking technology within 18 months, and to report their findings to Congress.

Appropriations

The final Report also supported the F. C. C. by agreeing to hold special budget hearings to determine how much should be appropriated to implement the new law, and to authorize the sums necessary to carry out the provisions of the bill. (Telecommunications Conference, Staff Recommendations, December 12, 1995)

Hollings immediately supported the Conference Report, and affirmed his commitment to gain Administration backing for the final bill.

"The law to open up the information superhighway is now ready for enactment. We've been struggling for years with all the side roads and various issues but now we've put together a comprehensive plan for competition in technology. This is an historic rewrite of the law that has guided the communications industry since before

television was invented. With this historic legislation, I hope technology and the communications industry will blossom beyond our wildest dreams so that consumers will have more choice and better services." (Hollings, December 6, 1995)

The RBOCs also endorsed the Committee's work.

"We are pleased with the increased momentum as demonstrated by this morning's approval of staff recommendations on a number of key issues. We are encouraged that this bill can be on the President's desk before Congress adjourns for the holidays thanks in no small way to the marathon efforts of staff in reconciling these two bills. We continue to support communications policy that's flexible, and less regulatory." (Gary McBee, December 6, 1995).

The deletion of the Pricing Flexibility sections from both the House and Senate bills was hailed by NARUC as a victory. By deleting the section, and referring the matter to a Joint Federal/State Board, the PUCs felt that they had retained the flexibility to set local rates by including the profitability factor of the local market and carrier into their calculations. While the House members felt that a profitability factor was a step back to the old rate-of-return regulation, they were also not ready to face a charge of violating both State's Rights and industry agreement, and such had relented. The pricing flexibility issue was not important enough to the RBOCs, either, to warrant their opposition. After all, the factor would be included in all local exchange competitors, and ultimately would not affect the bottom line of profit.

The inclusion of the Department of Justice in consultations before the RBOCs were allowed into the long distance exchanges, even though the Department would have no authority over monitoring the entry requirements, seemed to satisfy one of the White House's concerns about opening markets to competition. President Clinton also seemed satisfied with the media concentration and cable regulation provisions that had emerged from the conference, and therefore, did not seem inclined to veto the measure. The final media concentration language said that the Federal Communications Commission could assess any proposed media mergers in light of how the merger would affect the "diversity of voices" ¹¹⁸ in a market. The final language also stipulated a minimum number of media owners that were required in each local market.

While the details of the RBOCs entry requirements into long distance markets was not completely resolved, the Senate Checklist method seemed to be acceptable, and staffers were finishing the final language for the next Conference Committee meeting scheduled for December 12.

The deadline pressure on the Conferees was also increasing. If the debate on the bill continued into 1996, it would become easier to delay the bill, and run the risk that the entire legislative effort would become bogged down in election politics. Rather than seeing their efforts flounder in the world of Presidential Election politics, the Conferees seemed ready to resolve their final differences.

"I think the prospects are very good that in the next week of two we can complete the process." (Boucher, December 11, 1995).

¹¹⁸ No one on the Committee seemed to know what, exactly, "diversity of voices" meant, but they were willing to include the vague concept, which had originated from White House staffers, if it would gain Presidential approval.

The Conferees reconvened at 2 p.m. on December 12. The Conference quickly agreed on a tentative deal allowing the RBOCs into the long-distance market. The agreement stated that the RBOCs would comply with the Senate's checklist of conditions, and required the Federal Communications Commission to determine that a RBOCs entry into long distance served the public interest. But the House's "facilities-based" condition was also included as a "checklist" item, the existence of which would prove that competition did exist within the RBOCs local exchange. Once the RBOC met the test of competition through either the Senate checklist or the House "facilities based" condition, the RBOC would be certified to offer long distance service within its own local market. In addition, the Justice Department would be consulted by the F. C. C. before the entry was approved.

Thus, by December 12, the Conferees had agreed on most of the provisions of the reconciliation. At this point in time, it appeared, that only two further points needed resolution.

One point involved whether or not to allow electric utilities into the telecommunications business. In general, the conference seemed prepared to allow the utility companies to compete in the telecommunications industry, and only required some minor technical language correction to reach agreement. The other point involved the ownership and concentration of broadcast stations and media outlets within a single company. While the House members wanted a complete lifting of any restriction, the members were willing to accept a lower level of ownership in order to avoid a direct veto confrontation with the White House. While both points had strong advocates for and against the issues, settlement seemed possible, and would only require one more meeting. (Congressional Quarterly, December 12, 1995)

But at the last minute, both lawmakers and lobbyists pulled back from a tentative agreement, leaving the bill's passage uncertain. The trouble erupted after Vice President Gore signaled the White House's approval on the tentative Bill's format, but before the various groups had seen the specific language for the 200-page bill draft. While the Gore announcement was a minor infraction of protocol, its importance was exaggerated in the Congressional atmosphere, which, by the middle of December, had deteriorated to outright warfare between both political parties and between Congress and the White House.

The Winter of Our Discontent

On November 13 when the first continuing budget resolution expired, the Federal government was shut down. The polling data immediately showed that the American public blamed the Republican leadership, especially Gingrich, for the Federal shut down (Drew, 1996: 334). With the polls turning against them, the Republicans retreated, and agreed to a second budget continuing resolution, which was passed on November 20, that would keep the government operating until December 15.

By now, the polling data showed a definite negative impression of the Republicans, and a rise in Clinton's ratings. The Republicans, trying to turn the polls around, attempted to gain concessions on the budget from the White House in order to save face. But the Clinton Administration's standing in the polls bolstered their position, and they refused to compromise on their positions. Slowly, but surely, the Republican leadership found its back to the wall. The only way out of another government shut down on December 15 was a major concession to the White House on the budget. But such a concession would be seen as a sell-out by the new freshmen Congressmen and Senators, and a splitting of their unified front, with a subsequent loss of control over the Congress. Rather than dealing with their internal split, the Republican leaderships position hardened toward the White House. (Drew, 1996: 300 - 340).

Starting on November 28, 1995, the White House and Congress opened talks on the balanced budget.

The resolution that had reopened the government until December 15, and which had been signed by Clinton, stated that both the White House and Congress would work to create a balanced budget. The resolution also stated, in broad terms, that while the final budget would be in balance within seven years, both the Medicare and Medicaid programs would be protected, and tax policies would be changed to "help working families and to stimulate future economic growth".

The White House Chief of Staff, Leon Panetta, found that the Democrats in Congress were of two different opinions about the balanced budget effort. The Senate Democratic leadership, Tom Daschle of South Dakota and James Exon of Nebraska, were supportive of a possible bipartisan compromise. But the Democratic House members, especially Minority Leader Dick Gephardt of Missouri, were skeptical of efforts to reach a budget compromise with the Republicans.

Panetta also found that the Senate Majority leader Bob Dole, and House Speaker Gingrich, would only initially agree to a discussion of the mechanics of negotiations between Panetta and the budget committee chairmen, Senator Peter Domenici of New York and Representative John Kasich of Ohio.

In addition to the White House and Congress, the Federal Reserve Chairman, Alan Greenspan, was warning both sides that the continued budget deadlock might have a damaging effect on Wall Street. Speaking to the Senate Banking Committee, Greenspan, when asked what the stock market's reaction would be to a budget impasse, warned Congress of the unintended consequences of their conflict.

"I think the reaction would be quite negative in the financial markets, where stock prices have gone up and interest rates have gone down in anticipation of an agreement."

By this time, the end of November, grid-lock had fallen over Washington and Capital Hill.

The Balanced Budget Act, which was intended to achieve a deficit-free budget by 2002 and raise the federal debt ceiling, had died because of the Presidential veto, and Gingrich did not have enough votes in the House to override the veto. In two weeks, by December 15, Congress and the White House would have to agree to completing one large seven year budget bill, and seven individual one year appropriations bills. If they did not complete their work by December 15 the only two options would be another budget extension, or another government shutdown. While the White House budget officials and the Congressional negotiators started discussions on the budget impasse on November 28, movement in other areas of Congressional work slowed and came to a stand still.

Clinton was threatening additional vetoes of the Defense budget for appropriating more than he had requested. He was also threatening to veto the Veterans Affairs, Housing and Urban Development, and Environmental Protection Agency budgets for not appropriating the levels of funds he had originally requested.

In addition to the Presidential vetoes, the Commerce, Justice, and State Department budgets were deadlocked in Conference Committees, and the House refused to pass the Interior and Labor, Health, and Human Services budgets which had been approved by the Senate.

The gridlock was also falling over into the non-budgetary bills, with little staff progress appearing in areas such as peacekeeping restrictions, line item veto, lobbying disclosure, anti-terrorism measures, late-term abortion ban, military and intelligence authorizations, flag desecration, immigration, product liability, banking reform, the farm bill, the Superfund, and general regulatory overhaul. The Republican Revolution seemed to be dead in the water. (Mollison, 1995).

The on-going budget battle had sensitized the members of both parties, and the motives of all the Congressional members were now being questioned. In the atmosphere of suspicion, any political act, no matter how minor, was immediately cause for retaliation by the perceived offended party. While Pressler and the other members of the Conference Committee had carefully crafted a working strategy to move around the partisan land mines, and to build a consensus, their efforts failed at the last minute by the untimely insertion of the Vice-President into the Conference's work.

While Vice President Gore had lavished praise and credit on President Clinton's promotion of a high technology economic program, Gore's more personal agenda was only barely beneath the surface of his public praise. The Clinton Administration's high technology program was, in fact, an adaptation of Gore's agenda, which he had been promoting since the late 1980s. But rather than taking credit for the initiative himself, Gore, loyally, gave Clinton the credit for the initiative. To Gore, giving your boss credit for your own ideas might have some long term personal benefit; after all, if you closed one eye, and slightly tilted your head, the great seal of the office of the Vice-president of the United States would suddenly appear to read President of the United States. (Drew, 1996)

By this time, late 1995, a future "Gore for President" campaign appeared to be inevitable. For four years, the Clinton Administration had carefully crafted an image of Gore as America's most influential Vice President. The positioning of Gore within the Administration as an activist Vice-President had given Gore the legitimacy of being, within the Democratic Party, the recognized "heir apparent". Even a reelection defeat would have still left Gore as the odds-on favorite for the Democratic presidential nomination in 2000--a spot he had sought once before in 1988. ¹¹⁹

Fortune had also smiled on Gore on another Clinton Administration issue: health care reform. When the First Lady, Hillary Rodham Clinton, was assigned the task of overseeing the President's goal of revamping the national health care system, many people within the Administration and the Democratic Party saw it as a setback for Gore - especially as he received the less publicly visible "reinventing government" initiative as a consolation.

But the political debacle that ensued over health care reform, which was to be the Clinton Administration's crowning achievement, had become a liability for both the White House, and all the Administration members who were directly involved in the effort. While Gore had been involved in the discussions within the Administration over the initiative, his lack of direct connection with the defeat had left him with increased standing within the Administration, Congress, and the public opinion polls.

¹¹⁹ While Gore was promoting the reelection of the Clinton - Gore ticket in 1996, he had also begun his bid for the White House in 2000. Top Gore loyalists were already being deployed throughout the Clinton Administration, and the national Democratic Party apparatus. While the Gore loyalist were working for the reelection of the current ticket, they were also beginning to work at preempting any potential rivals for the 2000 nomination for President.

Increasingly, the Clinton Administration began to push ideas directly out of Gore's previous legislative agenda, and issues such as the environment and family values, which Gore had been advocating while still a Senator from Tennessee, began to surface in the Administration's dealings with the Republican Congress. Gore was particularly situated to perform the role of Administration spokesman over these issues because of the exemplary history of his personal legislative conduct and his family life - which presented a sharp contrast to the endless accusations of scandal and improprieties that were swirling around the Clintons.

While the Administration welcomed the public image that Gore presented, they were also sensitive to the potential harmful impact such an image might present if compared too closely with Clinton's own personal reputation. In order to effectively use Gore's public image, but avoid indirect comparisons to the White House, the Administration decided to utilize Gore as the Administration's political "attack dog", thus using Gore's positive public image to bolster the Administration's political position, but to present it in a public context that would have no direct link to the personal behavior of the President.

Gore embraced the role of political attack with a relish. He seemed ready, at a minutes notice, to confront any and all critics of the Administration. While the Republican Congress, earlier in the session, had tried to paint Gore as an environmental extremist because of his 1992 book "Earth in the Balance", the environmental attack had backfired on the Republicans, driving down their ratings in the public opinion polls. The end result was that Gore stood in an attack position as the youthful, concerned public official warding off the damaging environmental agenda of the aging, lackluster Senate Republican leader Bob Dole, and the equally infamous Republican House Speaker Gingrich. The net end product of Gore's successful counter - attack against the Republican moves to remove environmental regulations was that the Republicans, instead of Gore, found themselves trying to fend off the public opinion label of being environmental extremists.

The Republican leadership had made a major mistake in underestimating Gore's political skills in terms of the environmental agenda, and were wary of a future confrontation with him over other issues. In addition, his exemplary personal and legislative record made it difficult for the Republican leadership to mount an attack against him over secondary lifestyle issues.

But Gore's "clean" demeanor stood, also, in stark contrast to the mounting ethics charges against the Speaker of the House. The Republican's attempts to deflect the ethics charges against the Speaker by mounting a public relations campaign based on personal behavior violation charges against the Clintons, was met by Gore. Gore strongly defended the Clintons and the Administration, and charged the Republican leadership with attempting to obfuscate the Speaker's own misactions. As the level of acrimony increased within the White House and Congressional relations, the Republican House leadership came to see Gore as another political opportunist seeking to defend Clinton's for his own personal ambitions in four years. To the Republicans, Gore's public persona was a hypocritical display, and, in their minds, Gore was as equally at fault as Clinton for producing the worsening public opinion polls for the Republican Congressional leadership.

Gore's Congressional leadership, in terms of the telecommunications issue, had ranged over a wide area of concerns. In addition to his earlier interests in promoting an information superhighway, and advancing regulation of cable television access, he, and his wife Tipper, had long championed a campaign to rid violence and other offensive content from children's entertainment programming. Their position on children's programming access was linked to a strong emphasis on family development, and the impact of media broadcasting on the promotion of family values. Their efforts in this area had resulted in the development of the v-chip initiative,

which had been advanced, originally, by Markey in the House. Now that the final Bill appeared to be ready to be passed, Gore, who had spent eight years working on "the Deal", wanted to gain some credit for his pass efforts. Stepping into the limelight, Gore, not Hollings, announced the tentative agreement over the Conference bill. (Chen, 1996).

The attempt by Gore, at the last minute, to steal credit for achieving a compromise, was more than the Republican leadership could tolerate. Past Gore attacks on the Republican leadership, coupled to their anger over having agreed to inclusion of public interest principles and checklist requirements in the conference report, and the increasing party hostility created by the impending Federal government shutdown on December 15, resulted in a pulling back from the final agreement.

"The VP was premature, there is no deal yet." (Rep. Jack Fields, R-Texas.)

The Congressional Republicans, smiting over their failure to force the Clinton White House into budget submission, and Gore's attempt to steal credit for the bill, began to protest restrictions on media ownership. The bill compromise would have let television broadcasters own stations that reached 35 percent of the nation's TV viewers, up from the then limit of 25 percent. But in order to gain the Clinton support, which sought to limit media empires, the bill prohibited a media company from owning more than one TV station in a market. Congressional Republicans, seeking White House concessions in the contentious budget negotiations, balked at the limit, and proposed lifting the media restriction completely. Once again, the threat of a Presidential veto arose.

The Budget negotiations, by now, had devolved into a war of words over minor details concerning the base figures to "score" the budget negotiations, and a jockeying for political position between the Republicans and the Democrats. On December 6 Clinton had vetoed a budget reconciliation bill, claiming that the resolution would undermine Medicare and Medicaid. Standing on the position that the Republican budget plan would only benefit the wealthy at the expense of the poor, Clinton declared that he would not be "blackmailed" into agreeing to the Congressional budget by the Republican threat to shutdown the Federal government on December 15.

The Republican Congress had fired back at the White House, declaring that Clinton did not want a balanced budget, and would not submit "real" figures to form the base for budget calculations. Publicly, the Republican Congressional majority warned the White House that failure to reach a budget agreement would lead to another government shutdown on December 15. But the Republicans were divided over the issue of passing or not passing another continuing resolution while budget negotiations continued.

Dole, while skeptical of Clinton's sincerity, still favored the extension of discussions, and the continued funding of the government while talks were held. To Dole, the budget conflict was beginning to affect his Presidential election efforts. His public alignment with Gingrich, and the public perception that the November government shutdown had been caused by the Republican's intransigence, had placed Dole nineteen points behind Clinton in the public opinion polls. But Dole also needed the support of Gingrich to gain the party's nomination, and thus had to accommodate Gingrich.

Gingrich, on the other hand, faced the necessity of maintaining the House coalition, especially the more conservative members of the freshmen group. To the freshmen, only a hard position and resolve would force Clinton to relent on his position. A large number of the House Republican Freshmen also thought that Gingrich had been too accommodating to Clinton. If Gingrich wanted

to hold the House coalition together, he had no choice but to harden his public stance against the White House.

The net result of the budget impasse was that no continuing resolution was passed, and on December 15 the Federal government officially closed the office doors.

The House Republicans felt that Clinton would eventually relent on the balanced budget proposal because, they thought, the public would blame the government shutdown on the President. But the Republicans had miscalculated the public, and instead the polling data began to show that the public felt the government shutdown was the fault of the Republicans. As the days passed, Dole, Gingrich, and the Republicans position in the polls fell even further, especially as the media coverage reminded the public of the plight of furloughed federal workers over the Christmas and New Year's holidays. The ground swell of public outrage at the White House, which the Republicans had been counting on, never materialized, and instead outrage seemed to be mounting at the Republicans.

The linking of the Budget to concessions in the telecommunications bill completely halted further work on reconciliation of the two telecommunications bill. The freeze in Conference work continued as the budget battle hardened into a siege mentality between the White House and the Congress. Congressional staffers, who had been working on the reconciliation bill every day from Thanksgiving on, stopped even informal discussions, and left town to visit relatives and friends for the holidays. (Congressional Quarterly Weekly Report, January 6, 1996.)

Taking advantage of the deteriorating feelings between the Congress and the White House, the long distance providers renewed their lobbying attack over rules in the bill that defined the conditions for entry into either the local or long distance exchanges.¹²⁰

The RBOCs were not prepared to watch the long distance providers play a game of delay and obstruction. The RBOCs turned up the pressure on petulant Republican House, where the majority of the Congressional blocking was concentrated. The worsening confrontation between the Clinton Administration and the Gingrich Congress was undermining an agreement, and the RBOCs were not prepared to have their industry's future held captive by political ideology. To make their point very clear, on December 21, U. S. West Chairman, Richard McCormick, sent a letter, supporting the RBOCs position, to every Congressional Representatives in U. S. West's 14-state region. The RBOCs message was very clear, put politics aside and attend to the Bill, or else.

¹²⁰ But in the pressures of intense political lobbying, sometimes mistakes are made, and that was the case with the long distance carriers. The long-distance companies were trying to protect their industry against competition from the RBOCs. But the RBOCs, with offices in every Congressional district, had been able to muster locally based support for their position. In an attempt to increase their local support base, AT&T, MCI, and Sprint hired a telemarketing company to help stimulate a grassroots campaign. The firm was charged to locate local individuals who supported the long distance carriers position, and to have those individuals contact their Congressmen by either telephone or telegraph. But the telemarketing company decided to take a short-cut, and using the telephone subscriber lists from the long distance companies, sent telegrams to Congressmen without gaining the permission of the individuals whose names appeared on the telegrams. In addition, in a unique take-off on voting the graveyard, some of the persons sending the telegrams were dead. Congressional staffers learned of the deception, and while the long distance carriers disavowed any knowledge of what the telemarketing firm had done, the damage was done - on Capital Hill you might be able to buy a vote, but the person who owns the vote must be the person who cast it. Congress knew that the long distance companies had no one back in their home districts that cared what happened to them. (Kupper, Andrew. 1995. "Telecom Reformers Area Getting A Busy Signal". Fortune. December 25. Section: Special. 44.)

Consumer advocates, meanwhile, warned that big business concerns were taking precedence over issues of universal service and affordability. The consumer groups argued that higher cable television and telephone rates would follow if either version of the telecommunication bill was passed.

"If you have neither competition nor regulation, the consumer suffers," (Bradley Stillman, Consumer Federation of America, 1995)

But to the long distance providers, competition and media concentration were already a reality, and if they were to survive as thriving businesses, they needed to be able to engage in the head-to-head conflict of modern economics.

"It's a battle for survival. Within five or 10 years, you'll have three or four major companies trying to get you sign up for everything from cable TV to wireless." (John Tuck, 1995)

To the long distance providers, time was running out, and unless something was done, within twelve months, they thought, consumers in any state would be able to choose which company provided both their local and long distance telephone service.

The cable television companies, envisioning a future that integrated television, telephones, and the Internet, turned their lobbying efforts against the long distance providers. To the cable companies, the future was in the local exchanges and their agreements with the RBOCs.

"They (*the cable companies*) want to be end-to-end companies. The caution is that we don't give a few companies the power to impede competition." (Binz, 1995)

Finally, the broadcasters began to pressure Congress for action on the bill. The Chief Executive Officers from all of the major networks began to personally call Congressmen, urging them to resolve the differences and move the bill to a vote.

Over the Christmas week, the Conference slowly began work on ironing out their final differences. AT&T, and the other long-distance providers, tried to attach a clause that would have forced the RBOCs to charge discounted rates for use of their lines, and continue to delay the RBOCs entry into long-distance.

The RBOCs, pointing to the three States that had already authorized local competition, argued that the long-distance providers were already starting to offer local service, and that the delay and costing provisions would give the long-distance companies a year's head-start, over the RBOCs, before they could be attacked on their own long distance turf. The tactic worked, and the final twist in the negotiation process gave the apparent advantage to the RBOCs by speeding up their entry into long distance. The committee also eliminated a provision that would have blocked the RBOCs from offering long-distance until they met a numerical percentage test proving that their local telephone business had become competitive. But the RBOCs were still required to pass review by the F. C. C., with Justice Department consultation, before offering long distance service.

Other issues also began to be resolved. Hollings, who had originally insisted on removing sections of the new law that would have barred foreign companies from owning American telecommunications companies, dropped his opposition and agreed to inclusion of the foreign

ownership allowance. In return, Republicans agreed to the 35 percent market ownership limit on telecommunications broadcasting companies being advocated by the White House.

By December 27, the passage of Bill seemed assured. But two days later, December 29, two key House and Senate Republican leaders expressed unhappiness with the proposed rewrite.

``There are a number of problems in the bill that could have been resolved in a different way." (Senate Majority Leader Robert Dole)

Appearing with House Speaker Gingrich, Dole expressed concerns about what he described as a "giveaway" of key parts of the broadcasting spectrum. Then, on January 3, Gingrich announced that a final vote on the bill would not happen until a budget bill had been worked out between Congress and the White House. Once again, telecommunications reform had been grounded on the rocky shoals of a balanced budget.

But while the Bill appeared to be stalled by the Congressional leadership, other issues were now at work, indirectly related to the Bill, that would force the issue into a final resolution.

The Convergence

By early January, 1996, Bob Dole was considered to be the leading candidate for the Republican Party's Presidential nomination slot. But while Dole appeared to have the nomination assured within the party, he still faced strong challenges from other potential candidates such as Steve Forbes, Pat Buchanan, and Lamar Alexander. The primaries Dole faced in New Hampshire, Iowa, New York, and Florida were especially critical, and seemed to be shaping-up to be slug-fests in which the various ideological factions inside the Republican Party would attack each other's loyalties in front of the entire nation.

Gingrich, along with other GOP strategists, were also developing a new Congressional campaign strategy based on the slogan "Promises Made and Promises Kept.". The promises alluded to in the new campaign would be the original "Contract With America" program, and the legislative accomplishments of the Gingrich Congress.

Dole, though, was uncomfortable with the Congressional Campaign theme. The reliance on the Contract With America program, and its comparison with the accomplishments of the Republican House, would have the result of publicly aligning Dole with Gingrich. By this time, though, Gingrich's public opinion poll ratings were in the twenty percent range, and public alignment with Gingrich might have an adverse impact on Dole's own public poll ratings. (Marquez 1996)

Further complicating the nomination process for Dole was that the only major piece of legislation pending in the Congress, the Telecommunications Bill, was threatening to become entangled in the 1996 Presidential election campaign issues.

While the White House had been supportive of many of the provisions of the Conference Committee report, Clinton and Gore continued to express concerns over the issues of media concentration, and premature market liberation of the local exchanges for the dominant RBOCs. The threat of a Presidential veto, while somewhat softened, still was a potential threat to the successful passage of the law.

The President's claim that the proposed bill would let the RBOCs into the long-distance business before they themselves faced real competition in the local exchanges, coupled to his charge that the

bill would result in the cable television companies raising rates, was a perfect position to stand on to advance a veto. By standing on the issue of consumer protection in terms of cable rates, plus advancing lower telephone rates within local markets based on true competition, Clinton could appeal to both the economic left and right simultaneously - on the one hand advocating consumer protection, and on the other hand advocating free market competition. It was a very appealing political position to take, and one that worried the potential Presidential challenger, Dole.

Adding to Dole's concern was a move by Clinton, on January 23, when, in his State of the Union Speech, Clinton made passage of the bill an Administration priority, and called for public support of the inclusion of the V-chip legislation in the final law. With this single move, Clinton now stood center stage in support of the telecommunications industry's position toward deregulation, plus in support of the family value issue of parental control. Once again, Clinton had stolen another key election position from the Republicans, and successfully moved to eventually take credit for passage of the Bill.

The lack of movement on the bill was also a public embarrassment for both Dole and Gingrich. Both men had promised the telecommunications industry that they would get a new law on the President's desk by Christmas. But as the budget impasse and government shutdown continued, efforts in other Congressional areas had also slowed. The Congressional staffers began to estimate that a final version of the bill would not be ready until late February or March.

While Dole was becoming impatient over the legislative logjam, he also needed to remain on good terms with both the RBOCs and the long distance carriers in order to raise funds for his campaign. The longer the legislation remained stalled in Committee, the more likely the bill would become a public campaign issue, especially over charges of vote buying through campaign contributions.

With its major stipulations supporting industry consolidation, the White House's expressed concerns over the issue of consolidation, and the funneling of campaign contributions by the industry into the Republican war chest, the Bill had all the potential, if further delayed, to become involved in the Presidential Primary and Election issues. The primary season was beginning, and once it was in full swing, politics and political advantage would take precedence over political compromises. The bill had to be moved, and moved quickly, before the primary clock started in February in New Hampshire. (Kupper, 1995)

The Bill had also become involved in another highly charged issue, namely the Balanced Budget. Under the terms of the Conference Report, the new law would give broadcasters new frequencies, free of charge, in order to encourage the development of television programming using digital signals. The use of advanced digital technology in broadcasting would provide clearer pictures and better sound than the existing analog technology offered, and also could become a conduit for data transmission and Internet access. The frequencies that were allocated would allow existing broadcasters to transmit either four or five different programs on the same frequency, or a single program of high-resolution known as high-definition television. In addition, the frequencies could be used for computer access, personal electronic paging, home alarm, and other types of digitally based services. But the language of the bill did not require that broadcasters would immediately implement the new technology, and also allowed the broadcasters to use the new frequencies for the other profitable purposes at their own discretion. It was estimated that the new broadcast spectrums, on the commercial market, were worth over \$70 billion to the firms receiving them free from the Federal government.

The spectrum giveaway was being advanced at the same time that Congress was about to cut money for welfare, education and worker training. Sensitive to the Democratic charge of being

pro-business and anti-consumer, Dole sought to avoid a charge being leveled against him that he was giving away the public resources to private business, while, at the same time, cutting domestic spending on social welfare. Dole threatened to hold up the telecommunications deregulation bill in conference unless the spectrum giveaway to broadcasters was eliminated. Dole also demanded that the spectrum allocation had to be auctioned off to potential bidders, and that the funds gained from the auction would be used to reduce the Federal deficit. But the Dole position ran counter to the media broadcasters, especially Murdoch, who had been major contributors to the Gingrich House. (New York Times, January 19, 1996)

One other issue was pressuring Dole concerning the passage of the bill. In the late Spring of 1996, a new round of negotiations over telecommunications access and charges was scheduled by the World Trade Organization. High on the list of items to be considered under a new General Agreement on Tariffs and Trade (GATT) was the issue of foreign ownership of telecommunications companies. Unless the bill freeing-up the domestic ownership requirements was passed by the time that negotiations opened, America's negotiating position would be weakened. Dole, a long-term patriot, felt that weakening America's negotiating position was unacceptable.

While Dole had his own concerns over the development of legislation, and the potential it might have on his election campaign, the Gingrich Congressional leadership was also beginning to worry about the upcoming elections.

While it was true that the House had passed all of the Contract items within the first 100 days in which the Republicans controlled Congress, none of the major Contract items had become law. Every major item in the Gingrich Contract had either been defeated by a Republican Senate unwilling to support the radical agenda, or a Presidential veto by a President who publicly portrayed the Congress as being mean spirited and cruel. The proposed campaign slogan "promises made, promises kept", had a nice sound to it, but also had little substantive support for a claim of success.

Compounding the Congressional reelection problems over the legislative record was also the emerging fact that the Balanced Budget War between the Congress and the White House had turned into a public relations debacle for the Republicans. The original strategy of using the Balanced Budget as a means of weakening the Democrats and Clinton in the 1996 elections had backfired on the Republicans. Each day that passed with the government shutdown seemed to direct the opinion polls against the Republicans. By early January it was becoming evident to the Republican leadership that they would have to abandon the budget weapon in their war with the White House.

Facing the real possibility of having to relent on the budget fight and reopening the government, and a failure of continued budget talks through the 1996 election season, the House Republicans decided to design a legislative agenda for the upcoming months that would provide some much-needed victories, and highlight key election issues.

While the battle over the budget would continue, instead of direct confrontation the new leadership would resort to debate and hearings. Hearings over flat tax plans and school prayer amendments would replace the rhetoric of revolution. In spite of the opposition of the Freshmen Representatives, Gingrich and the House and Senate leadership decided to end the Budget War. On January 6 the House and Senate passed a continuing resolution, and the 21 day government shutdown was ended. (Kirchhoff, 1996)

With the budget battle now on hold, attention could now be refocused on passage of the telecommunications bill, and that meant dealing with the Dole issue over the spectrum allocation without alienating the broadcast media donors needed to finance the upcoming election effort.

Gingrich, working with Bliley, was able to persuade all five of the F. C. C. Commissioners to send a letter to Dole promising that they would not issue the new spectrum licenses until after they had received additional legislation from Congress. In addition, Bliley promised Dole that he would hold hearings on the new licenses, and Pressler scheduled March hearings on a "grand spectrum" bill.

With the assurances from the F. C. C., Gingrich, and Pressler, Bliley approached Dole about relenting on his opposition to the Bill. Gingrich and Bliley argued that the bill would unravel if Dole forced its return to the conference committee. Dole relented, based on the assurances in the F. C. C. letter, and agreed to allow the bill to come to a vote in the Senate. But Dole also issued a clear threat to the F. C. C. to not move on the spectrum issue until Congress had passed further legislation.

"I am determined to turn the F. C. C.'s commitment to us into a victory for the American taxpayer. For those who think this is an idle threat, guess gain. (Dole, 2/1/96).

Not everyone, though, was pleased with Dole's decision to allow the bill to come to a vote. The consumer's groups warned of major rate increases.

"Cable rates are going to go up in small towns immediately, and could rise significantly in three years across the country." (Kimmelman, Consumer's Union, 1996).

Civil liberty groups vowed a war against the violence and obscenity clauses within the law.

"The Internet has been given second-class speech rights, and we are going to take them to court over it." (Berman, Center for Democracies and Technology, 1996).

And some Democrats continued to charge that business, not consumers, had won under the new law.

"It is a huge charitable corporate gift . . . consumer protection must take a back seat to industry demand." (Representative John Conyers, Democrat, Michigan, 1996).

In spite of the threats and warnings, on February 2, 1996, the Bill was voted on in the House, where it passed by a margin of 414 to 16. One hour later the Senate approved the same version by a vote of 91 to 5.¹²¹

Everyone cheered, and then began to take credit for the passage of the Bill. In what can only be considered an unusual, even by Washington's standards, gushing of praise, American citizens were assured that the "good life" was just around the corner due to the new law

¹²¹ The five Senators voting against the Bill were McCain (R/AZ), Leahy (D/VT), Feingold (D/WI), Simon (D/IL), Wellstone, D/MN).

"Today we have broken-up two of the biggest government monopolies left; the monopolies in local telephone service and in cable television. For the first time ever, Americans will be given choices. Besides lower rates and better service, the result will be innovative new products and services that will create thousands of new American jobs." (Bliley, February 2, 1996).

"This bill is a blueprint for the 21st century. It breaks down all the old models of one cable company and one telephone company. It is not perfect, but it is the best overall blueprint that any country in the world has ever come up with . . . Some companies will be winners, and some companies will be losers, but there will be more winners than losers. The country will be the big winner." (Markey, February 2, 1996)

Even the White House and Congress sought to capitalize on the cameras.

"It's a bipartisan victory, a textbook example of how the White House and Congress can work together. Creativity that has been bottled up for decades will be let out in a very constructive way." (Gore, February 2, 1996).

So, after eighteen years of Congressional efforts, the spending of over sixty million dollars in campaign contributions by the telecommunications industry, and the active engagement of over 3,000 full-time lobbyists, the 1934 Communications Act had finally been revised. A new telecommunications policy regime had arisen, and it was called "the free market".

Structuring Principles

The break-up of A. T. & T. under the final MFJ ruling led to the unleashing of competition within the telephone industry. The carefully crafted policy and economic regime that had been established under the Kingsbury Agreement of 1914, and the subsequent Willis-Graham Act of 1920, was suddenly ended, and the forces of both economic and technical competition which had been suppressed since the 1920s once again came into full play within the industry.

While both the Greene Court and the United States Justice Department sought to establish the development of new rules for the creation and maintenance of the industry, both were limited in their ability to influence the industrial structure due to the fragmentation of authority and resources in both the structure of government and the industry itself.

In terms of the governmental structure, judicial influence was limited to the Federal level of long distance service, and in particular to only one of the long distance companies actually under the control of the court, namely A. T. & T. The original fragmentation of political power within the Federalistic system left all decisions relevant to the local and intrastate exchanges solely under the authority of the State Public Utility Commissions. Both the Greene Court and the Justice Department's influence at the State level was limited to only those aspects of orders relevant to A. T. & T., and specifically in terms of the services and operations of the company. The ability of the Federal judicial system to extend its authority over other aspects of the industry within the state exchanges was curtailed by the constitutional border of authority defined within the tenth amendment.

In terms of the industry itself, the court's influence was limited exclusively to A. T. & T. Other long distance providers, who were not offending parties under the original lawsuit, were outside

the authority of either the Court or the Justice Department, and thus could not be constrained in their industrial development by the Federal Court system.

Once again, the original fragmentation of authority within the American system of Federalism limited the ability of the Centralized government to influence the development of both the legal and economic practices of the industry.

In addition to the limits set within the Federal system of authority, the industry itself experienced a further fragmentation as an unintended consequence of the MFJ ruling. The break-up of A. T. & T. not only created a new environment for economic competition, it also unleashed the forces of technological innovation.

The body of technical knowledge that had been suppressed since the 1920s, was suddenly available for developmental purposes by other potential industrial competitors, both domestic and foreign. The previous F. C. C. rulings concerning interconnection of foreign devices within the network, coupled to the MFJ ruling requiring full disclosure of technical standards for both long distance and local exchanges, provided the necessary information needed by equipment and service providers to develop new offerings within the industry. The freeing up of the technical information occurred at the same time that digitalization of transmission signals began to displace the older analog system of transmission. The development of a new transmission standard, coupled to the availability of technical standards information within the network, allowed for the development of newer services which merged different systems of media. Thus sound, data, and video transmission were now able to converge on a single transmission source, and the possibility of merging different industrial structures came into existence.

The problem facing policy makers in the late 1980s and early 1990s was that the MFJ had fragmented the industrial structure in order to encourage decentralization and competition. In a sense, the MFJ strengthened the traditional American value of equity of access in terms of economic opportunity by allowing for the development of alternative carriers within the industry. On the other hand, though, the freeing-up of technical information, coupled to advances in digital transmission, created a situation where the industrial forces were moving toward merger and consolidation, and thus advancing toward eventual centralization of all elements of the telecommunications industry.

These developments also coincided with the decline of the traditional industrial base of the American economy. The necessity of developing a new economic base for the society became linked to the development of telecommunications, and the requirement of advancing the American position in the industry in both the domestic and international markets. But development of a new industrial base for the society, and locating the balance between centralization versus decentralization, was blocked by two opposing forces, one within the nature of the industry itself, and one within the nature of the governmental order.

In terms of the nature of the industry, a fundamental blocking point revolved around the political and social order's respect for the concept of private property rights. Until the issuance of the final MFJ, both local and long distance exchanges were held in common ownership within a single corporate trust, A. T. & T. While state incorporation laws, and state utility laws, required that each local Bell company establish a individual set of both organizational and accounting entities, these separate incorporation's were held in common through stock ownership by the central office in New York City.

To a great extent, this common ownership of separate corporate entities reflected the nature of the technology within the network itself. While, technically speaking, the local exchanges were physically separate from the long distance exchange, in fact, though, both the local and long distance exchanges were integrated into a single network. Thus the legal and organizational separations conformed to various state and federal laws concerning private property ownership, but the actual operation and provision of services was within a single, integrated organizational and technical structure. Further clouding the issue of ownership was the fact that by the time of the final MFJ, A. T. & T. stock ownership of local Bell Operating Companies accounted for over eighty-five percent of the common stock issued in all the local Bell companies.

Since A. T. & T. owned the stock of the local Bell companies, access to the local exchanges, and the conditions for access, were defined within the corporate headquarters in New York, not within the local Bell Operating Company offices. In addition, since the exchanges were integrated into a single national network, there did not exist any economic incentive at either the national or local level to set conditions of access to the local exchanges within the total organization structure. This entire concept of private ownership rights and lack of economic incentives was completely destroyed by the final MFJ.

The MFJ took what was a single, unified network and corporate structure, and fragmented it into eight separate organizations: one long distance organization and seven regional local exchanges. In the process of creating the eight organizations, the court's rulings divided the single organization's property into eight separate parcels. In addition, the court ruling fragmented the single unified network into eight separate networks. Thus the ruling established property rights to not only the organizational assets, but also to various elements of the national network.

While the court ruling required that all long distance companies, including the now separate A. T. & T., had a right to interconnect to all local exchanges, the ruling could not establish the total conditions for access to the local and intrastate exchanges. Thus there was created in the network a new economic and competitive incentive to control the conditions and costs for access which had previously not existed in the single network.

In addition to the property right division created by the MFJ, and the subsequent issue over economic conditions for access, the ruling also created a new incentive in terms of future development. Now, in addition to the major long distance carriers in the national market, there existed seven potential competitors in terms of future long distance service.

Almost from the very first day of the MFJ, the seven newly created RBOCs began to seek access to long distance service, while at the same time, continuing to protect access to their local monopolies granted under the Greene ruling. Since the RBOCs now had proprietary rights to the local network, legally they were entitled to set access requirements and costs. Blocking their efforts, though, was the second aspect of fragmentation facing the policy makers, namely the fragmentation of regulatory authority under the Constitutional separation of powers grounded in the tenth amendment rights of the various State governments.

Prior to the MFJ ordered break-up of the national network, the Federal and State levels of government pursued separate, but compatible, policy agendas. At the Federal level, the F. C. C. pursued the expansion of competition within the national long distance network, and as such promoted a decentralized approach to the industrial development of telecommunications. At the State level, the PUCs pursued a policy of universal access grounded on the use of cross-subsidies to maintain local residential access rates. In order to sustain the national and state cross-subsidy

structure, the State PUCs pursued a policy to promote the maintenance and continuation of a centralized system and industrial structure.

The two levels of government had diametrically opposed policy agendas, but their actions were somewhat mitigated by the integration of the network into a unified system under the management and control of A. T. & T. While both levels of government attempted to advance their agendas, their actions were somewhat constrained by the corporate structure that existed in controlling the total national and local network.

But once the MFJ fragmented both the corporate structure and the national network, the internal constraints on both the F. C. C. and the State PUCs were destroyed. Since both levels of government had constitutionally defined "rights of place", each sought to protect their policy agenda by blocking the other level of government's actions. The aggressive preemption policy pursued by the F. C. C. against the State PUCs was met by an equally aggressive counter-attack by the State PUCs. The subsequent Court rulings restricting the F. C. C.'s authority, and the decision by the State PUCs to set varying access and technical standards, further aggravated the industrial competition which had become part of the world of telecommunications after the MFJ.

The RBOCs, attempting to protect their local exchanges, aligned their business strategy with the State PUCs, and blocked access to the local network exchanges. A. T. & T., in response, joined the other long distance carriers in seeking F. C. C. support for over-riding the State PUCs and thus opening the local exchanges. Since both levels of government had "constitutional rights of place", and since both network owners had "proprietary rights of place", the resolution of the issue of local access seemed destined to a protracted legal battle waged over every single ruling issued by either regulatory authority, and every attempt by the long distance companies to negotiate access to provide local exchange service.

Seeking to resolve the conflict, and promote the development of the American telecommunications industry, Congress attempted, at first, to bring a series of economic incentive packages into play directed at the RBOCs. Adopting a classical Hamiltonian policy of national industrial development, Congress attempted to create incentives for local exchange access and the underwriting of capitalization requirements for local and long distance exchange upgrades. The Clinton/Gore program of funding for the creation of a national information superhighway program, coupled to economic incentive programs for developing commercial use of the Internet, were used to encourage the opening of exchanges to competition.

While the Clinton/Gore programs received Congressional support, they were unable to convince the various factions within the telephone industry of the necessity for concessions. Instead, the lines of conflict hardened, and the industry fell back on various Congressional factions to advance their specific agendas against their competitors.

But the Clinton/Gore agenda for an information society did allow for the telephone problem to be re-conceptualized in a different format. What had previously been a discussion concerning competition and equity of access between the various telephone companies, now was redirected toward the concept of the development of a new information society. Rather than focusing exclusively on either economic or jurisdictional issues, the problem was reframed into the development of a new industrial and social basis for American life.

The reframing of the argument also allowed for the opponents of national industrial development to advance their case for a complete decentralization of the industry, and the creation of the new information society through the principles of pure free market competition. Advancing traditional

concepts of Lockean advancement of community wealth through the fruits of individual effort, the de-centralist were able to counter the centralization argument for industrial development.

The net result of the shift in the perspective from discussions over exchange access and competition to the development of a new information society, weakened the arguments of both the long distance carriers and the RBOCs. In addition, the constitutional separation issues between the F. C. C. and the State PUCs were placed in a secondary level of consideration. Thus, both the industrial competitors, and the constitutional regulators, were recast by the political leaders into the roles of blockers of the development of a new economic and social order for the American society. Suddenly, in terms of the issues being fought over, all the major combatants in the arena were placed into a defensive position.

Seeking to counter the effects of the new reframing of the argument, the industrial competitors sought to develop a sense of personally intertwined destiny between themselves and the public officials. Using campaign contributions, the industrial competitors sought to create a sense of mutualism between both the public officials and the private entrepreneurs, and in the process advance arguments that would ultimately position themselves for the up coming competition in both markets.

While the efforts at creating a sense of mutualism were effective, in the end they were counter productive. The level of funding used to influence the decision was so pervasive across the Congressional body, that in the end the Congress, itself, was divided in terms of its loyalties toward the various factions. In addition, the convergence of the political arguments in terms of centralization versus decentralization, became immersed in the ideological battle of wills between the political parties, and between the authority of the Congress versus the authority of the White House.

Faced with no single side, centralization or decentralization, able to muster a commanding majority, the political actors opted for a new policy regime which allowed for the development of an organic industrial structure based on the convergence of different types of medium, but still retained governmental oversight within a split system of regulatory control by both the federal and the state levels of government. Thus, in the end, the concepts of limited government linked to older values developed under the original theory of dual federalism were retained within Lockean concepts of community wealth created through individual efforts and the protection of private property rights. But in the process of reconciliation of the conflicting values a new form of organic industrial development had arisen through the mutualistic relationship established between both the public and private actors in the policy subsystem.

Process Model

In terms of pressure for change, during the deregulatory period of policy development the pressure originated from three levels, economic, technological, and ideological. While the three factors developed through separate channels, they eventually merged within the Halls of Congress, and became a single policy stream.

The economic pressure originated within the MFJ decision to break-up the national A. T. & T. network into eight separate entities and networks. The division of the network into eight separate parcels created an new level of economic incentives within the industry which had not previously existed. The new incentives involved two factors. The first factor was access to customer market bases, and the second factor involved maintenance of the physical structure of the network.

In terms of access to customer market bases, the MFJ divided the national customer base into seven regionally defined markets, and placed total access to these local markets in the hands of the seven newly created RBOCs under the older principle of a natural monopoly. Previous to the MFJ and the rise of alternative long distance carriers, access to either long distance exchanges or local exchanges was not hindered by either the physical network structure, or the corporate separation between A. T. & T. and the local Bell Operating Companies.

When alternative long distance companies were approved, initially, by the F. C. C., A. T. & T. used interconnection to the local exchanges as a means of blocking access to the new carriers, and to dampen their corporate growth. While the blocking tactic was challenged in the courts, its impact on the total number of local and long distance customers was limited. At that time, prior to 1984, the alternative long distance carriers only accounted for five percent of the total telephone customer base in the United States. But once the MFJ separated A. T. & T. from the local Bell companies, the potential impact for blocking radically increased.

After the MFJ, A. T. & T. combined with the other long distance carriers accounted for one hundred percent of the long distance customer base, while the seven newly created RBOCs accounted for almost eight-five percent of the local exchange customer base. What had previously been an almost total combined customer base for both local and long distance access was not separated into two distinct customer markets. In the newly created economics of the industry, blocking or restricting of access to local exchanges would radically affect all customers of long distance service within the United States.

In the new economics of the industry, the RBOCs had a commending position in terms of being able to set or influence the conditions and costs for access to their local markets. Since the long distance network was of no value to its potential customers unless interconnection could be made to the local exchange, the long distance providers were at a distinct disadvantage in terms of their relationship with the RBOCs. In essence, the RBOCs held direct "bottleneck" control over the local customer base, and indirect control over access to the national long distance exchanges. It was from this strategic economic position that the second economic factor came into play, namely the physical maintenance and costs of the network.

A. T. & T.'s decision to seek an agreement with the Justice Department on separation of long distance from local exchanges, contained within it the on-going problem of the costs of the network maintenance and upgrades. At the time of the final MFJ, capitalization costs for upgrade of the long distance segment of the network had been finalized, and was being implemented. But upgrade of the local network level still remained an issue, and very little upgrade work had actually been authorized or instituted. Further complicating the problem of local exchange upgrades was the extensive network of wires and equipment required within the local exchange network.

The division of the network under the final MFJ left the RBOCs in the uncomfortable position of both maintaining the existing local network, and locating capital funds for upgrading the lines and equipment. This problem was further exacerbated by the fact that the long distance cross subsidy funds were now removed from the revenue streams of the local Bell companies, and no alternative source of funds seemed available.

Seeking to offset the funds problem, both the F. C. C. and the State PUCs approved a new charge for long distance access to the local exchanges. These access charges were designated as funds to underwrite the maintenance and upgrade of the local exchanges, and were an alternative to the older long distance cross subsidy payments. But the development of access charges also created a new element of economic competition within the industry.

Since the access charges directly affected the long distance companies rates, there was an incentive on the part of the long distance companies to keep access charges as low as possible. On the other hand, though, since the higher the access charge the more money would be available for local maintenance and upgrades, there was an incentive on the part of the RBOCs to set the access charges as high as possible. In addition, since the access charges also helped subsidize the local rates charged for local customers, higher access charges supported the State PUCs long standing agenda of universal access, and thus would be supported within the utility commissions rulings.

The combination of strategic bottle neck control over access to the local exchanges, coupled to the incentive by both the RBOCs and the PUCs to set high access charges, placed the RBOCs in a controlling position in terms of competition within the telephone industry. After the final MFJ, the initial level of conflict within the telephone industry revolved around this interconnection access to the local exchanges, and the costs for such access. It was here that the initial Congressional efforts were directed in the late 1980s. But the issue of economic competition and access within the local exchanges became more complicated for policy makers, by the end of the 1980s, by technological developments that affected not only the telephone industry, but also all aspects of the telecommunications industries.

The final MFJ decision not only divided the national network into different segments of competition, it also unleashed the forces of competition and innovation within the technological research and development end of the telecommunications industry. Fueling this development was the adoption of technical knowledge from the rapidly expanding fields of computer science and data processing.

Starting in the 1950s with the Department of Defense's use of dedicated long distance telephone lines to transmit computer data between distant locations, the application of computer technology within the private and public sectors had rapidly expanded. While at first limited to the largest corporations, the new technology had begun, by the mid 1980s, to enter medium and small business use through the development of microcomputers and the creation of local area networks. During the late 1980s, these developments were further pushed into the society by the introduction of a new form of computer architecture called client/server based around intelligent stand alone work stations, and the use of a new form of data transmission known as packet switching which allowed for a major increase in the speed in which data could be transmitted between locations.

As the use of computer technology increased within the society, the telecommunications industry began to integrate the new technology into their service and product offerings. Digitalization, the primary base for data processing, began to move into other areas of telecommunications development.

Initially restricted to the transmission of data, the application began to move over into graphics, sound, and both motion pictures and video transmissions. Even the older forms of print medium began to become digitized as computer typesetting and fulltext database access began to be used between publishers. Where previously the telecommunications industry had been segmented based on different platforms of transmission constructed around separate bodies of scientific knowledge, they now began to merge as they moved toward a common platform of transmission.

The process of digitalization was also having a profound impact on the telephone industry. The application of computer technology into the physical network allowed for the development of advanced methods of transmission, and the application of new forms of communications conduits. The development of fiber optic cables allowed for transmissions at higher rates with little risk of

errors within the signals. The creation of ISDN as an alternative method of access to high speed lines began to enter the telephone field. And the linking of satellite and microwave transmissions into the network saw the development of cellular telephones and wireless data transmission. As with all the other industries within the telecommunications field, the telephone's analog based voice grade signal now also began to move toward the single transmission platform.

The movement toward a single transmission platform opened the possibility of industrial cross-merger. The convergence of the telecommunications industry onto a single transmission platform based on a unified body of scientific knowledge meant that all the separate services and products offered within the various telecommunications industries could be merged into a single grouping of products. In essence, from a technical standpoint, there no longer existed any form of separation between pictures, sound, voice, data, or print, and therefore industrial consolidation could occur based on the commonality of shared knowledge forming the base of the new technology.

The technological convergence began to be translated into pressure within the industries to be allowed to pursue both competition in other separate industries, and eventually consolidation of different industrial areas into a single corporate grouping. Within the telephone industry, the convergence process also offered the potential for both long distance carriers and the local RBOCs to penetrate each others respective market bases. "Bypass", the old fear of the A. T. & T. coalition, was now possible utilizing the new technological platform.

In addition, though, to the ability of penetrating each other's markets, both the RBOCs and the long distance carriers faced the very real possibility of other telecommunications industries seeking to compete within their existing customer bases. Cable television, energy utility companies, and other broadcast based industries were also seeking access to voice and data transmission within the local and long distance exchanges. On the other hand, though, the convergence was a two way street, and suddenly the possibility existed for the telephone companies to enter new lines of services such as pay-per-view movies and cable television which had previously not been possible.

But tapping the new industrial structure, for any of the industries involved in the telecommunications field, was solely dependent on gaining interconnection access to the network, and specifically to the local exchange network. Once again, the RBOCs held the strategic bottleneck, and from their position of dominance could set the conditions and costs for such access.

Policy makers, thus, by the early 1990s saw their decision process further complicated by the technological convergence occurring within the total telecommunications industry. Interconnection access between the two tiers of the telephone industry was now expanded, and began to take in all aspects of telecommunications. But the process of decision making was to be even further complicated by the introduction of a new element based on economic and political ideology and nationalism.

The technological convergence that was occurring within the domestic telecommunications industries of the United States, was also beginning to affect the global telecommunications industries. The same forces of industrial consolidation that were being experienced within the United States were also beginning to emerge in other countries, especially those that had advanced telecommunications platforms. As Western and Asian nations invested in upgrading their telecommunications platforms, and further pushed the digitalization process into a single technical area, the pressures for industrial consolidation and reconfiguration appeared in other nations.

This process of convergence pressure coincided with the decline of the traditional industrial base within all Western economies and Japan. The development of off-shore manufacturing, distributed manufacturing networks spread around the world, and the movement of labor intensive industries into lower labor costs markets, began to be translated in all Western nations into a new policy area that sought to create a new industrial base for various nations.

The growth potential for advanced telecommunications services and products became a major industrial development arena for all nations involved in the World Trade Organization, and the various international trade agreements. Long standing pressure from the United States in terms of market access and trade liberalization became involved in the newly emerging telecommunications industries. Seeking to exploit its competitive advantage in telecommunications, the United States advanced a platform of privatization of the various nationally owned telephone companies, and the opening of foreign markets to United States telecommunications industry members.

The American strategy was successful in opening the foreign markets, but required that, in turn, the United States telecommunications markets would also be opened to foreign competition. Now the telephone issue in the United States was further complicated by the inclusion of foreign trade access into the discussion.

But the movement of the policy discussion into the area of foreign competition also allowed for the development of a new view on the issue of local exchange access and interconnection. Democratic Party leadership in both Congress and the White House formulated a new policy area based on the concept of developing an information society, and creating a new information based economy in the United States. Using a combination of infrastructure underwriting, industrial incentives, and national regulatory authority, the Democratic leadership sought to create a national industrial development policy that incorporated all aspects of the telecommunications industry under a single program.

The attempt to move toward a national telecommunications industrial policy though was met by counter-force based on the concepts of a deregulated, competitive market driven policy. The Republican Congressional leadership formulated an information society policy based on their predisposition toward a reduced role for the national government, and a completely open competitive market that would allow for the telecommunications industry to organically consolidate based on market factors.

While the development of a new policy theory related to the telecommunications industry allowed the discussion to move off the issue of telephone exchange access, it also opened the doors to various industrial pressures being brought to bear against individual members of Congress. The ensuing conflict between the industrial political champions in Congress, coupled to the deteriorating ideological confrontation between the centralization policy of the Democrats versus the decentralization policy of the Republicans, ultimately resulted in a compromise development policy.

The eventual policy which combined some economic freeing of the telecommunications industries, but within a framework that retained limited Federal and State regulatory oversight, in fact, retained the original split authority levels that had previously existed within the industry. While the industry was allowed to move toward consolidation and competition, oversight authority over the industries development was still retained within the policy regime.

In terms of the development of a policy subsystem, the period from 1984 to 1996 sees the continued expansion of both issues and membership within what originally was defined as the telephone policy subsystem.

By 1984, the telephone policy subsystem had evolved into a combination of various governmental and industrial groups pursuing separate policy agendas and areas of interests. The configuration of the subsystem, after the MFJ ruling, appeared as follows.

The older A. T. & T. group had been dismembered, and in the process A. T. & T.'s policy issues became separated from both the independent telephone companies, and the former state incorporated Bell systems. In the process of dismemberment, A. T. & T.'s agenda was no longer linked to the issues within the various local exchanges. Instead of being aligned with the local exchange issues, A. T. & T. aligned its policy agenda with the other alternative national long distance providers. From the position of being a long distance provider, A. T. & T. began to attack the local exchange concerns related to the older issues of cross subsidy support, and local interconnection requirements.

The other members of the old A. T. & T. group, namely the independent telephone companies and the seven newly created RBOCs, remained aligned as a joint issue group. This group was focused on maintaining rights to set interconnection requirements, and continuing high access charges to offset the loss of the national long distance cross subsidy payments. In addition to access issues, the local network group was also concerned with recovering enough funds through the access charges to capitalize the local exchange network upgrade, and thus entering new forms of line of business services centered around data processing transmissions.

The Department of Defense group's concern over an integrated national network communications backbone to support national defense still remained a priority. While national defense access remained a high priority, the removal of A. T. & T. as the "network manager", and the failure to develop an equivalent "manager", added a degree of complexity to the national defense equation. Faced with an expanding network of providers, the Department of Defense shifted its priority to assuring that a national common standard of communication was maintained across all networks, and thus assuring that interconnection quality would be maintained through the backbone system. In the process of shifting toward the standards agenda, the Department of Defense abandoned championing any one company as the network manager

The Department of Justice's agenda also shifted after the MFJ. Previous to the MFJ, the DOJ attempted to be involved in all aspects of interconnection access, and equipment standards. After the MFJ, though, DOJ focused exclusively on A. T. & T. and the seven RBOCs. The new agenda of "constant surveillance" of both A. T. & T. and the RBOCs is seen as necessary to assure that the older configuration of the Bell and A. T. & T. structure is not recreated. In the process of monitoring, DOJ ignores developments that were occurring in other sectors of the industry.

The State PUCs agenda remains primarily focused on the maintenance of universal service, and the continuation of some form of cross subsidy payments to underwrite the costs of local access. In pursuit of this agenda, the State PUCs focus exclusively on supporting the RBOCs and the Independent telephone companies, and opposing the long distance providers attempts to achieve reduction in local exchange access charges. While the PUCs have agreement on the concept of universal service mechanisms and principles, there is also a degree of tension developing within the group. This tension is the result of various states developing independent economic policies focused around telecommunications, and seeking to advance their individual state's economic condition at the expense of other state members of the PUCs.

The F. C. C.'s agenda also became exclusively focused on the promotion of market competition within the industry and the overall network. While still trying to maintain network standards at the national level, the F. C. C. pursued a policy of encouraging competition within both the national and local exchanges. The encouragement of competition within the local exchanges, put the F. C. C. into direct confrontation with the State PUCs, and lead to a series of Federal Court Challenges by both the F. C. C. and the State PUCs..

Surrounding the entire policy subsystem, during the middle to late 1980s, are also the newly emerging issues over global competition and technological convergence.

On the global economic level, the opening of competition within the American telephone network immediately leads to a penetration of the equipment market by foreign firms. This equipment penetration is translated into a trade deficit within the telecommunications industry of the United States. Responding to the trade deficit, the United States Department of State begins to pressure other nations to open trade in both the equipment and transmission sectors of international telecommunications. Eventually, the pressure for market access is translated into a round of new treaty agreements to open the telecommunications borders. The new treaties put further pressure on the domestic industry to open access to both long distance and local exchanges.

Technological developments, during the same time period, also begin to impact across the spectrum of various types of telecommunication industries within both the United States and other nations. The process of technological convergence of the communication platform destroys the pre-existing industrial boundaries between the various members of the telecommunications industry. The possibility of cross industrial merger and consolidation suddenly becomes feasible. In the process of expanding the communications platform access, the technological convergence also expands membership and issues within the telephone policy subsystem.

The convergence of both domestic and international telecommunications economics, plus the convergence of the technological platform of the industry, eventually is translated into a new political and economic agenda dubbed "the information society". The political agenda that is developed seeks to offset the deteriorating industrial base of the nation which has been built on an older technological platform. The new economic development platform, though, requires that previous separations within the telecommunications industry be abolished.

The emerging members of the new industrial order do not, though, share mutual knowledge in terms of either economics, law, or science. While distinct in their social and legal development, they now share a common need in terms of access to the "network". But the concept of the "network" has now also changed, and rather than being exclusively a single type of network, the network now includes telephones, entertainment, data processing, international and national trade, defense, and wireless communications. The "network" has actually come to mean a "network of networks", and each member has become dependent on access to all the nodes of the various networks. Suddenly the older principle of network access by customers and locations has taken a quantum leap in meaning and scope.

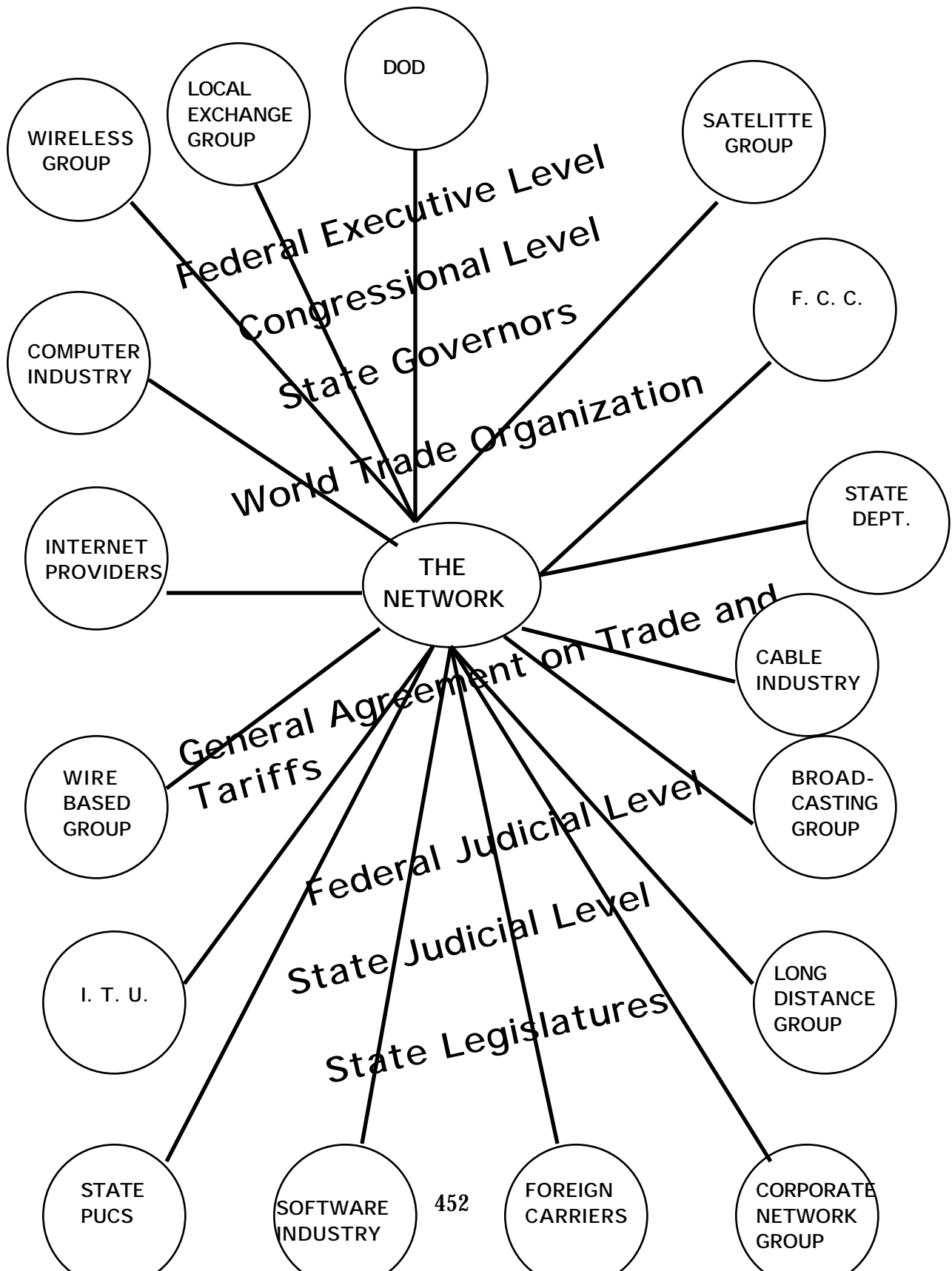
The newly developing members of the subsystem while not sharing a common body of knowledge or principles, now find that they are resource dependent on access to each other's network. At this point in time, the issue network that had been in existence falls, and in it's place a dissipative network made up of separate spheres of interests and knowledge, linked to each other by the resource exchange between the network, comes into existence.

Each of the groups of networks within the new dissipative field find themselves cycling around various ranges of resource exchange between other groups, and constantly adapting both their internal processes and organizational structures. Their very existence now depends on their ability to adapt and transform themselves as the network evolves, and new innovations and services enter the network. At this point in time all internal cohesion is lost within the membership, and the historical self-identity is discarded.

As for the authoritative shell that previously surrounded the telephone policy subsystem - the Judicial, Executive, Congressional, and State Executive and Legislative structures - their powers of supervision have been removed. Unable to conceptualize what this newly emerging technology may mean to society, the authoritative level of society decides to allow the technology to emerge within the arena of private competition. Placing their faith on the older principles of scientific determinism and belief in economic opportunity from scientific development, the leaders of the political order opt for a non-interference philosophy.

In the end, the government has been minimalized in its activities within the arena of industrial competition, and waits to see what social structure will emerge. Thus the new social order will be defined by the process of industrial competition rather than the exercise of Hume's "calm passions". Hobbs has triumphed !

TELECOM POLICY NETWORK



The Duality of Structure

The concept of an information society presents to the American mind a medium which is new and unfamiliar, and yet somehow also familiar.

On the one hand the information society is unfamiliar and unlike anything previously known to mankind. We are presented with a new form of human interaction which allows for forms of mediating technology to merge all of our separate communications mediums into a single unified format. In addition, the mediating technology allows us to individually transform the communications into new formats and new bodies of information and knowledge at will. This new concept is further enhanced by its linkage to a global communications network which, in essence, destroys our traditional concepts of both time and distance in terms of our personal interactions between senders and receivers of communications. We are thus faced with a new and powerful instrument for advancing human understanding and knowledge, and one which possess both personal and commercial potential.

At the same time, though, the new concept is still somewhat familiar. While the technology allows for the merging of media formats, and dramatically increases the access we have to information, the final medium we view resembles traditional formats that we have previously encountered. Sound, data, graphics, text, still retain their original representational values, and are interpreted through human symbolic structures we have formally developed within our social and commercial existence. In fact, it is this retention of previous representational values and structures which allows for the process of transformation to occur, and to be quickly adapted into our existing social order.

Political leaders, commercial developers, and general citizens are thus presented with a new potential for both personal and economic development which can be quickly adapted into our existing social structures, but one that also requires modifying preexisting frames of social, commercial, and legal knowledge to accommodate the new technological format.

Compounding the adaptation process for society is the fact that the technology itself is grounded in an economic development process that is by its very nature destabilizing. Information technology, at this point in its development, is highly dependent on innovation. In terms of the telephone industry, the concept of a value added network (VAN) is a good example of this innovation factor at work.

Under the concept of a VAN, data, voice, image are sent across a single transmission link. In and of itself, the content of transmission has no value within the link. But under the concept of a VAN, value is added to the transmission by it's ability to be manipulated and transformed into a new form of data. Thus, in the case of a business traveler, value is added to the initial transmission by linking the transmission to airline reservations, hotel reservations, automobile reservations, etc. Each time the transmission is linked to another commercial node, the value of the original transmission is increased. The same concept of value being added through increasing linkages can be replicated in banking transactions, commodity exchanges, stock purchases, group conference work, and so on. In fact, any human endeavor which requires group interaction and processing can become a potential commercial development area for the concept of a VAN.

But, since the value of the linkages is directly connected to the pervasiveness of the communications network which is open to all, and since the capitalization costs of such services are low - requiring only computers and high speed communications links - the potential for

competition among different VAN resellers is high. Any VAN reseller must stay competitive by increasing the value of the original transmission by increasing the potential number of applications the data can be subjected to while being processed. Thus, the competitive advantage goes to the reseller who can introduce innovation in the processing stream, thus continuing to increase the value of the data.

This innovation factor is critical in all elements of the telecommunications industry as it is presently evolving. The interesting point about this new innovation factor, though, is that corporate size does not, in itself, offer a competitive advantage. In fact, larger organizational size could become a liability in such an environment. Traditional organizational models that incorporate both vertical and horizontal integration within the service and product processes tend to produce internal stability within an organization, but at a cost of slowing the introduction of innovation into the organizational system. In a highly competitive environment such as is created with VANs, speed of innovation in the service and product development line is critical for success and to maintain competitive advantage.

The new economic factor for the information industry is thus the ability to quickly innovate new services and products, and to constantly be seeking newer and more advanced applications. Internal production and staff capacity, in the new economics, has little or no value to such newly developing companies.

Thus the new industrial format for telecommunications involves, first, dropping off the concept of vertical integration within the organization. Vertical integration within an organization produces side effects such as layering of processes, construction of hierarchies of authority and decision making, and freezing of resources to internal capacity which may be operating at below peak load, all of which block innovation in terms of product and service development time.

The new technology itself assists the industry in this process of dropping vertical integration because the equipment utilized in the system and networks is modular, and rather than being repaired as it fails it is instead completely replaced. Thus there does not exist the necessity of having repair or service integrated within the organization. In addition, equipment utilized within the network is now produced by an expanding group of suppliers, and based on industry standards that are commonly known. Thus the telecommunications organization of today, unlike the older A. T. & T. and Western Electric model, has no internal requirement for equipment production capacity.

Once the vertical integration is dropped from the organization, the new telecommunications organizations can concentrate on the horizontal integration of the firm. Once again, the new company is assisted in this effort by the very technology it is using.

Previously, horizontal organizational structures incorporated such components as market and distribution centers, retail outlets, customer service, and management into a single organization. The development of advanced telecommunications, though, allows the newly developing telecommunications companies to develop the horizontal integration, but without the necessity of having to own the elements involved in the horizontal structure. By using sub-contracting techniques, and monitoring horizontal services through communications networks, these new companies can create the distribution and retail outlets required to advance their services, but without the necessity of directly owning such companies. It is exactly this horizontal format which has produced such dominate telecommunications and computer firms such as M. C. I. and Microsoft Corporation.

By de-coupling ownership from horizontal structure, telecommunications firms can continue to pursue innovation within their product and service offerings by forming contractual relations with product developers, software creators, distribution networks, and other companies willing to form a long-term relationship with the core telecommunications company. It is also possible, under the new horizontal format, for various types of telecommunications providers to link their services and products, and expand their market and user base, both domestically and internationally.

Thus the end result is a new form of telecommunications organization that is able to quickly adopt innovation into its services, with minimal advanced capitalization investments, while also able to merge formats and media across different types of telecommunications producers. But it is exactly this new organizational capacity which runs directly into conflict with the traditional cultural values and knowledge of the American society.

Historically, the United States political and social order has tried to create a balance between centralization versus decentralization in both political and economic power. We have tried to achieve this balance in our political world by fragmenting authority and power between the various branches of government, and between the State and Federal governments. In terms of economic power, we have sought to curtail economic centralization through, first, reliance on State government powers over incorporation laws, and latter through the introduction of anti-trust concepts through the Sherman and Clayton Acts. In both the political and economic arenas, we have advanced this concept of balance through traditional social values which have held as an individual right the ability to have access to political decision making, and, in the economic arena, the individual right to have equitable access to economic opportunity.

In terms, though, of economic concentration we have not, though, created a prohibition against the development of an economic monopoly. Both the Sherman Act and the Clayton Act have always recognized that naturally occurring monopolies do exist, and that an economic monopoly is possible through equitable and fair competition within any market place. Thus, in the United States, it is possible for a monopoly to exist if the factors leading to its creation either were "natural", or were the result of economic efficiency in a competitive environment.

While we do allow for the possibility of some forms of monopolies, we do prohibit the use of Trusts to create a monopoly in any commercial sector. In essence, a trust is the formation of a cartel. It is an attempt by various suppliers within a commodity exchange to form a closed system of exchanges between themselves which ultimately lead to their control over the total capacity of production within the commodity chain. By gaining control over the capacity, they are able to block the offering of alternative goods, and thus can set the price for the commodity beyond the true market value.

The prohibition against the use of Trusts in the United States is based on two values. The first is that a trust violates the public interest by placing the citizen at an unfair advantage in the market place. The second value is that a trust violates the rights of a citizen to equitable access to economic opportunity by closing out the possibility of an individual developing as an alternative competitor to the members of the trust. But the traditional American values concerning the prohibition toward the use of forms of trusts and cartels is a major impediment to the development of a new telecommunications industry, and the emergence of the information society.

The new economics of the development of value within both information and innovation require the development of organizational structures which, in many ways, resemble the older forms of trusts and cartels. In addition, historically the telecommunications industry, due to both the increase of value of a network through customer access, and the costs associated with the

duplication of transmission systems, have generally driven the industry toward consolidation and merger. Thus any change in the existing telecommunications laws ran a great risk of violating the balance between centralization versus decentralization of economic development and access within traditional American values and laws.

When examining the development of the telephone policy subsystem from 1984 to 1996, we see a definite process of structuration occurring.

The first element of development relates to the area of ontological security. Historically, the telecommunications industry has tended toward centralization. Driving this tendency toward centralization has the combination of the high costs associated with capitalizing the network, and the perceived necessity of maintaining the overall technical standards within the network in order to promote transmission quality. While the industry has a natural tendency toward centralization and consolidation, this tendency has been opposed in the United States by a societal value which has generally manifested itself within the historical development of the nation.

In general, the American social order has viewed industrial concentration with suspicion. Attempts to move in this direction have generally been viewed as a means to concentrate both economic and political power in a small number of individual hands, and thus a direct threat to both individual rights of freedom and individual rights of equality of economic opportunity. When translated into the telecommunications industry, the tendency toward centralization and consolidation has been met by a broad based social opposition which is rooted in a belief in the threat to the ontological security of society. This threat is generally perceived as limiting one's right of choice, and reducing access to economic opportunity.

In order to offset this underlying principle within the overall society, the telecommunications industry, and its political supporters, needed to develop assurances that both the patterns of social conduct in terms of individual choice and economic opportunity were not disturbed. In addition, by 1996 the telecommunications system had become incorporated into the routinization patterns of the majority of citizens, and thus existing patterns of conduct could not be disturbed without creating broad based social opposition.

The industry, on the other hand, had to develop a strategy that would allow for it to maintain existing levels of service, and yet provide enough flexibility to evolve new structures for the industry through consolidation. To achieve the balance, the industry along with the political leadership, developed a strategy that would not allow for complete dismantling of the existing regime. Rather a strategy was developed that allowed for a slow dismemberment of the industry, and a new reconfiguration, but done in such a way that there would be a period of societal incorporation and adjustment. In this manner, it was hoped, a new form of social conduct and routinization would appear, and fit the new industrial order.

In order to move to these new patterns of conduct, it was necessary that changes be created at both the practical and discursive levels of consciousness. At the practical level of consciousness, the underlying belief within the American society and social level coming from the advancement of science, were tapped. The information society agenda was advanced as an extension of the historical belief in the economic and social benefits to be derived from scientific development. The shift in this direction allowed for the telephone policy subsystem's arguments concerning access and interconnection to be subsumed under the new information society banner. Cloaking the issues under this banner led to a more positive image, and the ability to shift arguments away from the practical level of consciousness and toward the discursive levels of consciousness.

At the discursive level of consciousness the concepts of regulatory and judicial oversight to protect the public interest were directly attacked by both the industrial and legislative members of the policy subsystem.

The basic principles of regulatory oversight and anti-trust action were attacked, and presented as blockages to achieving the new economic order available through the wonders of modern science. Assisting in this process of reframing was a general social uneasiness over the slow displacement of traditional industrial orders within the country, and the emergence of the global economic order. Thus government structures were reframed as forming blockages to the advancement of the economic well being of the average citizen, and an understanding of the perceived superiority of the new American economic order.

To implement this new level of discursive consciousness, the levels of normative and semantic knowledge were altered. At the normative level was an existing social knowledge related to the historical distrust of industrial consolidation and monopolies. In order to offset this "conventional wisdom", the new knowledge advanced stated that the freeing of the system from regulation would allow entrepreneurs access to the network, and thus create a system of decentralized competition.

This normative knowledge was translated into semantic knowledge by requiring that the network, at all levels, was open to access to any and all competitors. It was further advanced by opening access to multiple types of industrial members, thus assuring that a reasonable level of economic equals would enter the competitive arena simultaneously.

To promote this access, the authoritative and allocative levels of resources were also redefined. On the authoritative level, the rights of network ownership were reduced by requiring complete network access. On the allocative resource level, the separation based on transmission type was abolished, and the network was open to all communications mediums.

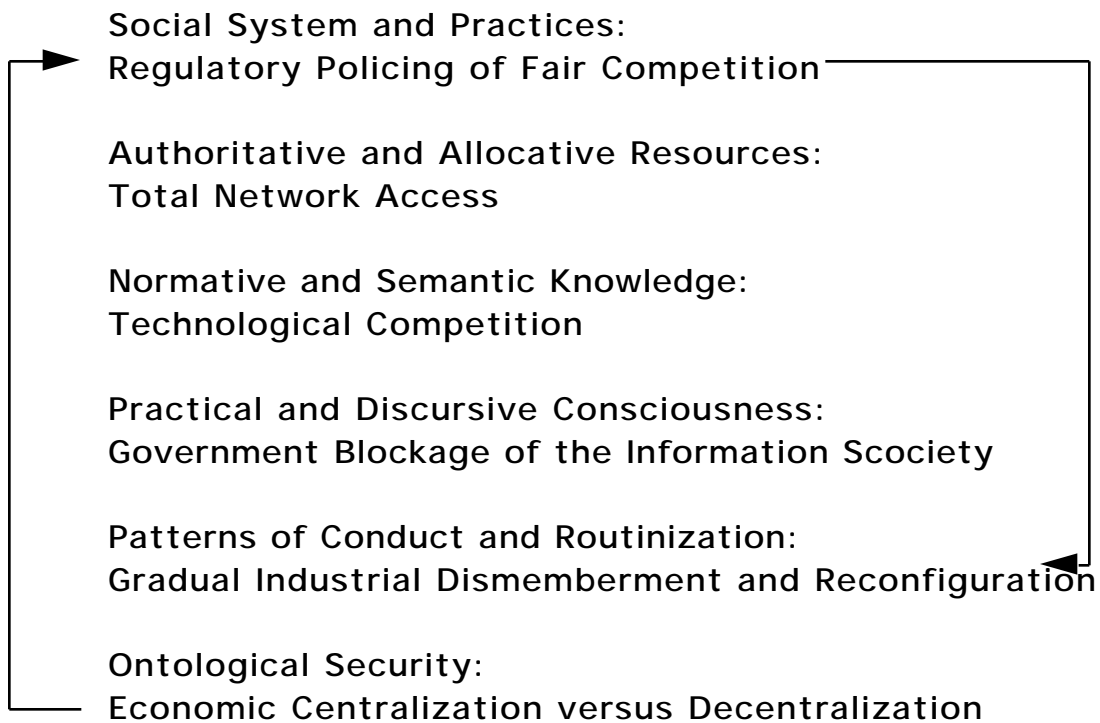
In order to reframe the social system and social practice, the regulatory system was changed. The F. C. C. and State PUCs oversight role was altered, and rather than acting as guardians of the public interest, they became policemen to assure that fair competition would occur between the industrial competitors.

On the social practice side, the combination of service expansion to appeal to consumer choice in the network, was reinforced, and thus looped back to speed the processes of routinization. By looping the process back to the applied level, the system would be able to continue to reify the underlying assumptions framing its inception.

The final bill that was passed by Congress, and signed into law by the President, seeks to retain the traditional belief in the balance between centralization and decentralization within both the political and economic arenas, while, at the same time, freeing up the telecommunications industry to move toward the new economics of competition. In terms of political power, we once again see the split of regulatory authority between the State and Federal governments, but with the attempt to mediate between the two levels through the use of Joint Review Boards. In terms of anti-trust, the concept of trust formation is somewhat liberalized, allowing for industrial consolidation and merger across mediums, and the formation of horizontal relationships through contracts and mergers. But, while the F. C. C. is given exclusive review authority over these mergers, the Justice Department must be consulted in terms of evaluating the potential development of an anti-competitive trust. In addition, both the regulatory and economic oversight controls must be done in a manner that encourages continuing growth of market competition.

In the end, the final law is an attempt to once again reconceptualize the traditional American values in terms of the diffusion of both political and economic power within the society, but in relationship to a newly emerging economic and technological base for the society. Once again, human values and institutional structures interact to reify the fundamental beliefs of the society, but how successful this attempt will be, though, is still in question.

Telecommunications Structuration Loop:1996



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