

CHAPTER 8

The Regulatory Period: 1934 to 1984

**"I have plenty of money.
I can spend it on litigation,
or I can spend it on construction."**

William McGowen

The Collapse of a Corporation

The fall of the stock market in 1929, and the subsequent spreading of the Depression across the United States, had a peculiar impact on the telephone business. As stock prices fell, and investors scrambled to divest their holdings, telephone use went up. It seemed that everyone was on the telephone talking about what was personally happening to them. By the end of 1930 the number of telephones in service reached a record, for that time, of 15,193,000, and A. T. & T. was handling a daily average of over 1,000,000 telephone calls.

Investors scrambled to buy A. T. & T. stock in the uncertain market, and in 1930 over 98,000 new investors were added to A. T. & T.'s corporate rolls. The increase in use also resulted in a stock earning of \$10.44 to A. T. & T., of which \$9.00, the traditional stock dividend, was paid out to each stock holder.

But the booming performance could not be sustained. Beginning in mid-1930, A. T. & T. and the Bell affiliates laid off over 60,000 employees. The next year, 1931, over 292,000 telephones were disconnected. By 1932, telephone service was down by more than ten percent, and the annual dividend rate for A. T. & T. stock dropped to \$5.96 per share, the lowest return during the twentieth century. Things were even worse for Western Electric. With new service completely off, there was no market for new equipment. By 1933, Western Electric lost over \$13.8 million dollars, and was forced to lay-off eighty percent of its work force. Yet in spite of the loss in sales, and the massive lay-off of workers, A. T. & T. continued to pay its historical stock dividend of nine dollars per year in order to keep investors (Brooks, 1976: 187 - 192).

The continued payment of the stock dividend in spite of the downturn in business, and the lay-off of tens of thousands of workers in a market with no opportunities for re-employment, was negatively perceived by both organized labor and the national press. Suspicions were aroused concerning the public service motives and intentions of A. T. & T.'s management. This downturn in public perception of the firm also came at a time when other areas of American industrial intentions were being challenged.

Starting in 1929, Congressional attention had, once again, become focused on the telecommunications industry. In 1929, a bill was introduced in Congress to unify all telecommunications regulation under a single agency. The growth of independent radio broadcasters, plus the growth of national broadcasting networks, had created a situation in which the independent broadcasters feared that the national networks would deny them access to A. T. & T.'s long distance lines because of the existing contracts between A. T. & T. and the original members of the radio patent pool: these original patent owners, by now, were the major developers of national broadcast networks. During the hearings related to the bill, which extended over both 1929 and 1930, it was proposed that telephone and telegraph regulations also be contained within this single communication agency (Commission on Communications, 1929).

Although no action was taken on the proposal for a single communications agency, another development occurred which would also have an impact on future developments for A. T. & T. During the 1920s the other component of public utilities, namely the electric and gas power industries, adopted the use of a "holding company" model to expand their industries through consolidation, and to avoid state regulators procedures for accounting and auditing practices. In many ways, these holding companies were modeled after A. T. & T.'s structure with it's Bell affiliates.

After the stock market crashed in 1929, investigations into the causes of the stock market crash led Congressional investigators to unearth evidence of power utility companies manipulation of stocks within their holding company structure. The subsequent public scandals that were revealed, turned both public and Congressional anger toward public utilities, and especially toward any company structured along the same "holding company" lines (McDonald, 1962: 214 - 339).

In this mood of public anger and scandal, in 1933, the newly elected President and Congress both opened investigations into the communications industry. The two reports, that were eventually released in 1934, called for the creation of a single unified communications department.

The Congressional Report, known as the Spawn Report, condemned the use of A. T. & T.'s holding company format, and accused A. T. & T. of using their corporate power to avoid effective state public utility regulation (Spawn Report, 1934).

The Executive Branch report, known as the Roper Report, relied heavily on the Communications Bill Hearings of 1929 and 1930 to paint a similar type of possible collusion developing within the wireless communications sector (Roper Report, 1934).

Fueling the Congressional anger toward the communications sector, was also organized labor's anger at A. T. & T. for continuing to pay the annual stock dividend, while placing tens of thousands of workers in the growing bread lines of the unemployed (Brooks, 1976).

Although A. T. & T. tried to defend its position, and opposed the creation of the new commission, the general animosity was too strong. In 1934 the New Deal Congress created the Federal Communications Commission, and gave it charge of the I. C. C.'s regulation of telephones and telegraphs, and the F. R. C.'s regulation of wireless communications.

The F. C. C.'s powers were broad and general:

"To make available, so far as possible, to all the people of the United States, a rapid, efficient, nation-wide, and world wide wire and radio communication service with adequate facilities at reasonable charges." (Finkelstein, 1989: 157)

The only qualifier to the F. C. C.'s powers were assurances to the State Public Utility Commissions that it would not become involved in local telephone rate fixing or the intrastate telephone service. (Gabel, 1969: 356 - 357)

A Congressional resolution, passed at the same time as the F. C. C. bill, directed the F. C. C. to hold a Special Telephone Investigation, and to report to Congress on the operation of the telephone industry. The resolution also called for an examination of A. T. & T.'s ownership of Western Electric, and its control over telephone equipment manufacturing. Paul Atlee Walker was appointed as a Commissioner of the F. C. C., and placed in charge of the Telephone Division which oversaw the operation of wire-based communications and the Special Telephone Investigation. (Brooks, 1976: 196 - 197). ²²

²² Walker, like the previous Postmaster General Burleson, was a Western agrarian populist. A native Oklahomian, Walker had grown-up in the Quaker traditions of social idealism and social justice. He started his career as a high school principle in Shawnee, Oklahoma, but eventually obtained a law degree and became an instructor of Law at the University of Oklahoma. He specialized in transportation law. While an instructor at the University of Oklahoma, he came to the

Starting in November, 1934, the F. C. C., under the direction of Walker's Telephone Division, began a wide ranging investigation of the telephone industry. In March, 1935, Congress passed a joint resolution directing the F. C. C. investigation to concentrate specifically on A. T. & T., and appropriating \$750,000 for the investigation (United States vs. A. T. & T., 1974).

The investigation dragged-on until 1938. During that time accusations flew back and forth between the Special Telephone Investigation (S. T. I.) staff, and the officials of A. T. & T. The S. T. I. staff, under the direction of Walker, accused A. T. & T. of deliberately trying to obstruct and obfuscate the investigation by providing excessive, and irrelevant, information. The chief counsel for the S. T. I, Holmes Baldridge, a protégé of Walker, was convinced that A. T. & T. was practicing duplicity, and turned the hearings into confrontations between the investigators and the officials of A. T. & T (Stone, 1989: 61 - 63).

A. T. & T. officials, especially corporate President Gifford, complained that the investigation was one-sided, and deliberately set-up to discredit A. T. & T. The corporate officials issued complaints of not being notified of hearings, not being given the opportunity to cross-examine witnesses, and attempts to deliberately entrap them in the process of testifying in front of the investigative staff hearings ("Brief", 1938).

Eventually, in April, 1938, a proposed report was issued for general public review and comment. Called the "Walker Report", it was a broad attack on A. T. & T., and contained the following key recommendations: a 25% reduction in A. T. & T.'s rates for long distance service; a request that the F. C. C be given power to review A. T. & T. management policies and decisions in advance of implementation; designation of Western Electric as a public utility, and its separation from A. T. & T.; and a denouncement of A. T. & T.'s business practices as destroying competition within the wire-based communications industry. The report concluded with a quote that sent shivers down A. T. & T.'s corporate spine by reviving the ghost of nationalization:

"As a practical matter, government ownership would not be as difficult of attainment as the re-establishment of effective competition." (Gable, 1969: 356 - 357)

The "Walker Report" released a firestorm over the F. C. C; Commission members denounced each other in the press; charges of improper influence of commission members were heard by the House Rules Committee; accusations that the commissioners were involved in wild parties and drunken brawls were leveled from the House floor; and F. D. R. called for the abolishment of the Commission. The Senate began holding hearings on all the allegations and charges against the F. C. C., and A. T. & T. responded with a report calling for the end of the F. C. C. (Gabel, 1969: 356 - 357).

In an attempt to deflect the Congressional and Executive anger, the F. C. C. Commissioners met as a body in June, 1939, and withdrew the original "Walker Report". In its place was substituted a milder report which, while retaining the original Walker Report data, was less critical of A. T. &

attention of the State regulators overseeing railroad rates for the shipping of agricultural products. Eventually, he rose to the position of Special Counsel to the State of Oklahoma, and oversaw the State's efforts to regulate the railroad industry within the State. It was from this background of being forged in the agrarian populist movement of the West, coupled to its' fiercely directed opposition to corporate monopolies, that Walker assumed control over the national regulation of wire-based communications (Brooks, 1976: 196 - 197).

T., and withdrew the Western Electric recommendation ("Report", 1939). Luckily, for the F. C. C., War in Europe erupted two months later, and drew Congressional attention away from the Commission. (Lipartito, 1989: 331 - 332).

After the "Revised Report" was issued, the majority of the F. C. C. Commissioners voted to disband the Special Telephone Investigation group, and many of the individual S. T. I. staff members were assigned to other federal agencies. .

During the Second World War the F. C. C., in terms of wire-based regulation, did little other than coordinating war and post-war efforts. Commission members and staff spent the war years mending fences with Congress, the PUCs, and A. T. & T. Publicly the Commission endorsed the concept of the national monopoly, but privately staffers remained resentful of what they saw as unfounded criticism directed at them because of the "Walker Report". During this time, the F. C. C. undertook no major review of A. T. & T., and down played the politically sensitive area of telephone industry structure. (Lewin, 1990: 41). But another issue was arising that, in many ways, would have an even more long-term effect on the developing relationship between the public sector and the telephone industry. That issue involved rates for telephone service.²³

²³ In the Competitive Period, the process of rate subsidization had originally developed. At first the principles were fairly straightforward. Since commercial businesses benefited by a network that reached as many potential individual customers as was possible, commercial businesses paid higher rates than residential users. The higher commercial rates were used to subsidize residential rates, thus encouraging expansion of the network. This process of rate subsidy had been supported by the municipal levels of government seeking to expand service within their local communities. As A. T. & T. consolidated the geographical areas of its Bell affiliates, and reduced competition through acquisition, the use of rate subsidization was spread over a larger geographical area. Under this process, rates for urban users were higher than rates for rural users. The higher urban rates underwrote the costs for extending services into the higher cost rural areas. This process was supported by the State Public Utility Commissions who were seeking to extend telephone service across each state. The costs for long distance service were calculated separately, with the Federal regulators, first the I. C. C. and then the F. C. C., using a formula that attempted to keep cost for subsidized local and intrastate service separate from costs for long distance service. To accomplish this process of "Separation", as it was called, a method of cost calculation was developed that was known as Board-to-Board. Under the Board-to-Board theory of cost calculation, the Bell System was organized as a series of locally owned companies, while the long distance service was organized under a separate company, A. T. & T.'s Long Line Division. Telephone rates were computed by relegating all costs, including capital costs, involved in local and intrastate calls to local bills. This was accomplished by computing all costs related to services handled by the local telephone exchange plant, the local board, as local. All costs involved in long distance service, known as toll calls, were allocated to long distance bills by calculating only that portion that was handled by the long distance exchange, the long distance board. Long distance charges did not actually start until the call reached the long distance exchange, and only that portion of the call being handled between the long distance exchanges was charged as long distance. Everything involved in coming up to the long distance exchange was calculated as local. The problem, though, with the use of Board-to-Board methods of costing is that it is difficult, under the concept of a network, to distinguish where local and long distance both start and stop. This is due to the fact that long distance cannot be accomplished unless there is a local exchange to connect to, and since the entire network is interconnected, it becomes difficult, and somewhat arbitrary, to say where the capital and operating costs for one system ends and the other system begins. It is possible, though, to calculate this distinction by using another costing method known as Station-to-Station. A Station-to-Station approach focuses on the telephone set itself, and the costs for service are calculated from one telephone set to another telephone set. Under this method, the costs for long distance are calculated by including both the long distance board costs and the local board costs into the long distance bill. As long as the telephone is used within a local area, all costs for calls are considered local, including a portion of the capital costs. But when the telephone is used for long distance, then that portion of the local exchange that is being used to complete the long distance connection, including a portion of its capital costs, are computed in the charge for the long distance service board (Sichter, 1977: 77). Under a Board-to-Board method, all long distance and local costs are separated. But under a Station-to-Station method, a portion of local exchange costs are being underwritten by the long distance charge. The reason that this occurs is because the costs for establishing the local exchange are fixed. Whether the telephone is used for local or long distance service is irrelevant because the same amount of capital and operating funds are required in order to provide local service. Thus, it becomes arbitrary under a Station-to-Station method to determine how much of the local exchange costs should be charged to the long distance exchange. On the other hand, without the local exchange, long distance service would not be possible, thus part of the local exchange costs are directly related to the development and provision of long distance service (Temin and Peters, 1985: 199 - 223). Up to 1930, A. T. & T. and the

The advent of World War II saw long distance use reach record numbers, along with long distance profits. But the demands of the War were also straining the capacity of the long distance lines. A. T. & T. actually became involved in a campaign to discourage long distance use by civilians in order to maintain capacity for military needs. The F. C. C. Telephone Division Chairman, Paul A. Walker, opened negotiations with A. T. & T. to deal with the dual problem of increasing long distance profits and long distance capacity (F. C. C., 1942).

In 1943, A. T. & T. agreed to change its long distance costing method. The older method, which was known as Board-to-Board, kept both local and long distance charges separated. The new method that was adopted, known as Station-to-Station, included part of the local exchange's costs in the long distance charge. By including part of the local exchanges cost in the long distance charge, the level of profits for long distance would be reduced. In addition, long distance rates would remain high, and thus discourage civilian use of long distance lines (McHugh, 1943). Satisfied with A. T. & T.'s decision, the F. C. C., after 1943, held no further major investigations into long distance telephone rates until the 1950s.

After World War II ended, though, long distance use continued to rise. The increase in use led to an increase in profits for long distance service, but A. T. & T. did not reduce its long distance rates. In 1950 the F. C. C. announced that it would schedule a formal public investigation of A. T. & T.'s interstate rates (Henck and Strassburg, 1988: 225).

This decision to hold long distance hearings came at a time when postwar business for A. T. & T. had increased, but wages and operating costs were also increasing. As a result of the increases in cost, which affected the local Bell exchanges more than long distance lines, the local Bell Systems were also filing requests for rate increases within the intrastate levels. The Public Utility Commissions became fearful of the obvious trend that was developing, namely decreasing long distance rates, and increasing local and intrastate rates.

A. T. & T. and the National Association of Railroad and Utility Commissioners, NARUC, proposed a new process for computing the Station-to-Station costs for long distance rates. Under the new formula, a larger portion of the local operational and capital plant would be shifted into the long distance plant. The net result would be that long distance telephone rates would underwrite local and intrastate telephone rates, thus assuring the States that local exchange rates would remain low (NARUC - F. C. C., 1951).

While A. T. & T. and NARUC supported the new method, the F. C. C. objected. Under the F. C. C.'s view, the new proposal clearly violated the separation of powers between the Federal and

Bell affiliates used a Board-to-Board costing method. But in 1930 the United States Supreme Court ruled, in *Smith vs. Illinois Bell*, that excluding part of the local exchange costs from long distance rates would cause local rates for telephone service to be set too high.

"It is obvious that, unless an apportionment is made, the intrastate service to which the exchange property is allocated will bear an undue burden - to what extent is a matter of controversy." (*Smith vs. Illinois Bell Telephone Company*, 1930:151).

The Court ruled that the Station-to-Station method had to be used to calculate intrastate rates, although it was discretionary on the part of the State Public Utility Commissions as to which method they actually selected. But A. T. & T. continued to use the Board-to-Board method when calculating its long distance rate charges, since long distance was not covered under the 1930 Court ruling - only intrastate rates.

State governments. To the F. C. C. the proposed formula was a method of "cross-subsidization" in which the Federal level of government would be subsidizing services beyond its level of jurisdiction, namely to the state level of government. The F. C. C. rejected the proposed formula (Walker, 1950).

But A. T. & T. and NARUC had a powerful friend by the name of Ernest W. McFarland. A former Arizona public utility commissioner, McFarland, a conservative Southwestern Republican, was also a powerful member of the United States Senate. By 1950 the Republican Party held control of the United States Senate, and McFarland was chairman of the Senate subcommittee that oversaw the F. C. C. Writing to F. C. C. Commissioner Walker, McFarland supported the A. T. & T./NURAC formula, and expressed dismay that the F. C. C. would allow local rates to rise (McFarland, 1951a).

When Walker replied to McFarland, in a detailed letter outlining the history of rate review, he expressed the view that the increasing rate disparity was only a "Natural" economic process. Walker also stated the case that the F. C. C.'s jurisdiction stopped at the Federal line (Walker, 1951).

McFarland's response to Walker was angry and threatening. He condemned Walker and the F. C. C. staff for being too technical, and ignoring the public welfare. The underlying threat was that if the F. C. C. did not agree to the new formula, Congressional concern about the F. C. C. operation would become hostile and damaging to the agency (McFarland, 1951b).

The possibility of another "Walker Report" debacle was too much for the F. C. C. staff and Walker. The F. C. C. reversed itself, and allowed the new formula for long distance service to be implemented (Henck and Strassburg, 1988: 225).. Once again, A. T. & T. in cooperation with its friends at the State PUC level, and within Congress, had effectively manipulated the F. C. C. into defacto support for the continued centralized industrial structure.

But while A. T. & T. was experiencing one success after the other with it's Federal level "regulator", another governmental opponent was rising, and one that had a great deal more influence than the F. C. C.. The new challenger to A. T. & T. was the United States Justice Department, who, beginning in the early 1940s, began to attack the anti-trust issues that were manifested in the centralizing economic effects of World War II.

Fueling this anti-trust effort was an attack on the concept of corporate vertical integration, and the leverage of one monopoly position to create a secondary monopoly in an unrelated market. Basically the concept involved revolved around the corporate practice of first achieving a dominate position in one market, and then using its position of dominance to extend control over a secondary market through the use of either long-term contracts, or through the integration of production capacity within its own organizational structure. In either case, the net result was that the dominance in one area was now extended to the secondary area, effectively stopping competition in both areas. This issue of secondary market control had been brought to a head in 1943 in United States vs. Pullman Company (Livesay and Porter, 1969: 495 - 496).

The Pullman Company, since 1900, had been the dominate company in terms of providing sleeping and dining services on America's railroads. It had achieved this position by negotiating long-term contracts with all the major railroad companies within the United States. But rather than just stopping at providing services, the Pullman Company used its long-term contracts to set the actual physical standards for such railroad cars, and final approval on the use of any such car. With control over both the offering of services, and approval of standards, the Pullman Company then

established a subsidiary company to actually manufacture these railroad cars. The net result was that the Pullman Company attained a monopoly over both sleeping and dining services on American Railroads, and the actual rolling stock in which these services were offered.

In 1943, the United States Department of Justice's Antitrust Division brought an anti-trust lawsuit against the Pullman Company. A Federal District Court ruled against the Pullman Company, stating a violation of the Sherman Anti-Trust Acts prohibition against Secondary Monopolies, and the District Court ruling, on appeal, was upheld by the United States Supreme Court. The interesting point about the suit, though, involved the District Court's ruling in the area of intent. Previously, Court's had held that such actions had to show that there was intention on the part of the monopoly to create a secondary monopoly. But in the Pullman case the Court ruled that intention was irrelevant, the very fact that it could be shown that a monopoly had been created was sufficient evidence to rule in favor of the government against the business monopoly (United States vs. Pullman Company, 1943).

The ruling struck to the heart of the concept of vertical integration of industry. One of the lead attorney's for the Justice Department's action against the Pullman Company was Holmes Baldridge, the former chief counsel for the Special Telephone Investigation.

After the repudiation of the original "Walker Report" by the majority of the F. C. C. Commissioners, Baldridge left the F. C. C. and was employed by the United States Justice Department's Antitrust Division. He was placed in charge of the General Litigation Section, the section responsible for actually preparing various cases for trial. Baldridge never forgot the perceived defeat of the "Walker Report", and nurtured a private desire to continue to pursue A. T. & T. ("Consent Decree", 1958: 3564 - 3616). But the demands of World War II left little time for Baldridge to open an attack on A. T. & T. That changed, though, in 1947.

In late 1947, and early 1948, general counsels for the Tennessee Public Utilities Commission and the Minnesota Public Service Commission, visited Baldridge in Washington. Both lawyers voiced the same complaint, namely that it was impossible for the Commissions to determine if telephone subscribers in each state were paying fair rates for telephone service because it was difficult, if not impossible, for the Commissions to determine if Western Electric's prices for telephone equipment to the various Bell affiliates were reasonable or unreasonable. Both representatives felt that a possible solution was to open Bell affiliate purchases for telephone equipment to a competitive bid process, thereby assuring everyone the lowest possible price for the equipment (Goulden, 1968: 86 - 87).

Baldridge saw his opportunity, and immediately took the two Commission representatives suggestions to his boss, Assistant Attorney General Thomas C. Clark. While Clark, and other attorneys within the Antitrust Division, voiced reservations about the suit, Baldridge's past expertise with the Telephone Investigation seems to have carried a great deal of weight in these discussions. Eventually, Clark approved the filing of the suit, and Baldridge moved (Stone, 1989: 73 - 75).

While normal practice in such matters called for the next step to be an investigation of the complaint by the F. B. I., with a subsequent report being filed back to the Antitrust Division and the company being charged with the complaint, Baldridge took the unusual step of not requesting an F. B. I investigation. Instead Baldridge drafted a seventy-three page complaint relying exclusively on the original "Walker Report" that had been issued in 1938. In January, 1949 the United States Justice Department filed an antitrust suit against AT&T and Western Electric Company (Stone, 1989 73 - 74).

The government charged a violation of the Sherman Anti-trust act through A. T. & T.'s monopoly on the manufacturing, distribution, and sale of telephone equipment: in essence the same grounds that it had filed the antitrust suit against the Pullman Company. The suit called for the complete divestiture of Western Electric by A. T. & T., and Western Electric's divestiture of its partial ownership in Bell Telephone Laboratories. The Justice Department served interrogatories on A. T. & T. in 1951, and both parties began to prepare for what appeared to be the largest anti-trust lawsuit in the history of the United States. But before the case reached the courts, political and economic friends stepped in to change the course of events.

A. T. & T. had spent the war and post-war years forging a powerful link between itself and the Department of Defense. With one of the most advanced research laboratories in the world, and a record of successful collaboration with the war efforts during 1917 to 1919, A. T. & T. was once again selected by the Department of Defense to work on a wide range of research and development projects.

The research results were impressive. Wire-based communications was extended from the continental United States to military operations in Alaska, eighty-five percent of the production capacity of Western Electric was directed at military applications, both ground and air radar was perfected in a joint effort between Bell Labs and M. I. T., microwave radio relays were perfected, and the first primitive guidance systems for antiaircraft and missiles came into existence. A. T. & T.'s research efforts became so important to the Defense Department, that all employees of the Bell laboratories were exempted from the draft (Brooks, 1976: 208 - 213).

In the Spring of 1949, the Atomic Energy Commission opened negotiations with A. T. & T. to have the Bell Labs take over the operation of the Sandia Research Laboratory, the primary United States production facility for the construction of atomic bombs.²⁴ Since both A. T. & T. and Western Electric owned the Bell Labs, A. T. & T. used the negotiating position to try to bring pressure to bear to have the antitrust lawsuit rescinded. While the A. E. C. was unable to influence the Justice Department's decision concerning the lawsuit, it did agree with A. T. & T.'s position that the continued cross-ownership of Bell Labs by A. T. & T. and Western Electric was necessary for national security. In September, 1949 Bell Labs formed a subsidiary called the Sandia Corporation, and took over the production and stockpiling of the United States nuclear arsenal (Alexander, 1963).

²⁴ In 1945 the United States ushered in the atomic age by dropping atomic bombs on Hiroshima and Nagasaki. The bombs that were dropped had been produced, under the direction of General Leslie R. Groves, at the Los Alamos Scientific Laboratory near Albuquerque, New Mexico, which was owned and operated by the University of California. After the War, Groves ordered the construction of research laboratory, near Los Alamos, that would be charged with both the research and actual production and stockpiling of America's nuclear bomb arsenal. The new laboratory was constructed at Sandia Air Base outside of Albuquerque, and turned over to the University of California to operate. In 1947, control over the United States atomic activities was vested in the newly created Atomic Energy Commission, including the atomic bomb production and stockpiling program at Sandia. A year later, in 1948, the University of California notified the A. E. C. that it wished to divest itself of the operations of the Sandia laboratory. In the letter to the A. E. C., the University of California stated that it felt the production and stockpiling of atomic weapons was an inappropriate activity for an educational university. The A. E. C. began the process of finding a new partner for bomb production by first conducting an audit of the Sandia program. The results of the audit were alarming. While a tremendous amount of research and design had been conducted at Sandia, internal rivalry between the research scientist at the laboratory had resulted in few bombs actually being produced. Rather than a substantial stockpile of nuclear weapons, the entire United States nuclear deterrent was grounded in a handful of finished bombs. With the University of California prepared to leave Sandia within twelve months, and the Cold War verging on becoming a Hot War, the A. E. C. scrambled to find a new partner that could handle both research, and had experience with capacity for production. A natural fit seemed to be the Bell Telephone Laboratories (Alexander, 1963).

In the process of taking over Sandia, A. T. & T. had driven a wedge within the Truman Administration between the A. E. C.'s mission and the Justice Department's Antitrust Division. It now proceeded to widen the wedge by bringing in the generals.

In 1951, after the Justice Department had filed interrogatory requests on A. T. & T., Dr. M. J. Kelly, president of Bell Telephone Laboratories, appealed to the Secretary of Defense, Robert A. Lovett, to be taken off any defense research work involved in the now waging Korean War, and the operation of Sandia. Kelly's position was that a conflict of interest claim might be raised in the investigation, and until the investigation and court had ruled on the Justice Department request for divestiture, Bell Laboratories needed to disengage from any work with the Federal government. Lovett, working with A. T. & T.'s lawyers, drafted a letter to the Justice Department requesting a postponement in the investigation until the Korean War was ended (Goulden, 1968: 89 - 90).

The request from Lovett to Acting Attorney General Philip Perlman was rejected, but Lovett continued to pursue the matter. Lovett filed another request, asking for a two year postponement. While this request was also rejected, the letters did have the effect of slowing movement on the lawsuit (Goulden, 1968: 89 - 90).

By this time, 1952, the Presidential election was in full swing pitting Truman against Eisenhower. The aggressive Truman antitrust actions against major corporations were used against the Administration, with Eisenhower promising that if he was elected the anti-trust "persecution of business" would be ended.

The election results ended the era of the New Deal programs, and the antitrust aggression of the Truman Administration. Eisenhower won, and a new wind began to blow from Pennsylvania Avenue. Holmes Baldrige, seeing the handwriting on the wall, resigned, and moved to Chicago to practice private law (Goulden, 1968: 89 - 90).

In 1953, when the Eisenhower Administration assumed the Presidency, the new Attorney General, Herbert Brownell, Jr., notified A. T. & T. that the White House was not favorable to the lawsuit, and would consider a consent decree as an acceptable alternative. Brownell worked closely with A. T. & T.'s legal representative, Bayard Pope, to draft the "consent decree".²⁵ In 1956 the agreement was submitted to the Federal Court where it was accepted and filed as an ongoing consent decree.

Under the terms of the decree A. T. & T. agreed that no actions would be taken, in any area of service, which was not covered by either a Federal or State regulation or tariff. In essence, this restricted the company from offering services in any area not regulated by the PUCs or the F. C. C. In turn, A. T. & T. was allowed to keep Western Electric and its equipment manufacturing monopoly. (Lipartito, 1989: 331 - 336). Both the "natural monopoly" and the firm's corporate vertical integration were maintained.²⁶

²⁵ Both Brownell and Pope were long time friends and business associates, and drafted the decree in between rounds of golf while staying at the Greenbrier Resort in West Virginia. (Coll, 1986)

²⁶ After the decree had been accepted by the Federal District Court, public and Congressional outrage emerged. For seventeen days, the House Antitrust Subcommittee held investigative hearings, and condemned the actions of the Antitrust Division. The Justice Department lawyers, as a group, also firmly believed that A. T. & T. had used its political influence to circumvent the legal process. After 1960, when the Kennedy Democratic Administration assumed control of the President's Office, the Anti-Trust Division established surveillance files on A. T. & T.'s activities (Coll, 1986: 56 - 59).

By the mid-1950s, A. T. & T. seemed to have established an almost invulnerable position in terms of control over the telephone and wire based communications industry of the United States. The political coalition of A. T. & T., the independent telephone companies, the State Public Utility Commissions, powerful Congressional Chairmen, and a friendly Presidential Administration, seemed to fit the classical definition of an "iron triangle". But such a conclusion would have been only partially correct. Missing from the "triangle" was the regulator, namely the F. C. C..

While the F. C. C. had been forced to maintain the monopoly status quo through the "Walker Report" defeat and the cross-subsidization decision, a new opportunity arose, shortly after the cross-subsidization decision, that allowed the F. C. C. to reassert the broad concepts of its original mission, and to develop a series of new economic principles within the industry.

In the mid-1950s both Minute Maid Corporation and Central Freight Lines of Texas filed applications with the F. C. C. to build and operate a private microwave based telephone and dispatch system to handle the routing of trucks and deliveries (Henck and Strassburg, 1988: 84 - 86).

A. T. & T., NURAC, and the Public Utility Commissions filed objections with the F. C. C. The objections claimed that the establishment of the system would offer large volume corporate telephone users a cheaper method of long distance telephone service. These large volume corporate users would thus be able to pull their funds out of the existing telephone network. The loss of corporate funds would result in a decrease in business users subsidizing both residential and long distance rates, and thus force local telephone rates to rise. (F. C. C., 1959).

The issue of microwave transmission had been in the telecommunications background prior to World War II. A. T. & T. had conducted research using microwaves before the War, and during World War II A. T. & T.'s Department of Defense research had led to its perfection as an alternative to wire-based communications. The problem, though, with the use of microwave rested on the perception that it was a "scarce resource" (Stone, 1989: 125 - 132).²⁷

While A. T. & T. had been planning on using microwave since the early 1940s, other commercial interests were also anxious to tap this new resource. By the time that Minute Maid and Central Freight had filed their request, the F. C. C. had also received requests or reports from Philco Corporation, Motorola Corporation, the California Forestry Service, the Radio-Electronics Television Manufacturing Association, the major broadcasting networks, and a coalition of various industries banded together under a new group called the Microwave Users Council (Stone, 1989: 125 - 132).

The interesting point, though, about the entire issue was the fact that since the medium of communications was wireless based, the authority for allocating rights of ownership and obligations for use were completely within the Federal level of the telecommunications regime. The

²⁷ Like any broadcasting medium, successful microwave use requires the allocation of a frequency over which the communications signal is sent. But the number of frequencies available within any broadcasting spectrum does have a finite limit. Thus there are a limited number of frequencies available for use, and, as a consequence of this, a limited number of firms that can actually operate within the broadcast spectrum. The question then arises, that since the number of frequencies are "scarce", who should be given commercial rights to use each frequency, and who should be denied access.

State Public Utility Commission's authority in the issue was null, and as a consequence, its influence and wishes would be severely restricted.

The F. C. C. asserted its authority over the area, and in November, 1956 instructed the F. C. C. staff to schedule hearings over the matter of spectrum allocation. The hearings that were held between May and October, 1957, were known as the 890Mc Proceedings.

In what can only be described as the "Battle of the Titans", the hearings saw corporate America lined up in opposing camps. Seeking to oppose the allocation of microwave spectrum to private carriers and companies was A. T. & T., the independent telephone companies, the State Public Utility Commissions, and NARUC. The groups seeking access to the spectrum represented all of the groups which had previously filed reports and requests with the F. C. C., plus the National Retail Dry Goods Association representing the nation's department stores, the National Association of Manufacturers representing the major industrial manufacturers, the Automobile Manufacturers Association representing all of the automobile producers, and the American Petroleum Institute representing the entire petroleum industry of the United States (Stone, 1989: 128 - 132).

The telephone group advanced their argument that allocation of the spectrum to private companies would result in corporate America creating their own private communications systems. The net result would be that the "cream" of the telephone users, namely the high volume business users, would leave the public network. The loss of these high volume users, "cream-skimming" as it was called, would result in the loss of the structure of rate subsidization, and cause a rise in telephone rates. The rise in rates would further aggravate the process, causing even more businesses to leave the public network, and eventually destroy the cohesion and effectiveness of the national communications system (Stone, 1989: 128 - 132).

The opposition argued that the control and domination of communications by the public carriers had resulted in a dangerous philosophy to be developed. This philosophy, in essence public service liberalism, had resulted in a destruction of "free choice" in the communications market. The industrial monopoly granted the public common carriers had led them to a position where they had created a bottleneck on the entire industrial and commercial sector of the United States. Each of these industries and commercial sectors had unique communications needs that had to be developed if they were to stay competitive. But the development of these services and networks was not under their control, but rather was under the control of the common carriers. Rather than developing these new systems, it was charged, the common carriers delayed implementation in order to keep commercial users in existing communications systems. Without the choice of selecting lower cost channels of communications, commercial and industrial users were forced into higher cost alternatives. The allocation of microwave frequencies to commercial users would allow for a return to free choice, and enable industry to stay competitive (Stone, 1989: 128 - 132).

The final F. C. C. staff report, that was issued in 1959, was a complete rejection of A. T. & T. and its allies' arguments. Rather than addressing the new economics of cross-subsidization, the F. C. C. staff examined the economics of "resource scarcity", namely did the microwave spectrum exhibit a shortage of frequencies available for use. Their answer was "No".

The staff concluded that at that time there was no shortage of frequencies available for allocation, and so there was no need to ration the frequencies to a limited number of future carriers. As for future shortages, the staff found that future frequency shortages were not likely because the allocation of such frequencies were being limited to a few industries that were regulated, such as food processing and trucking. In addition, since the service would be limited by the prohibition on the inter-connection of non-Bell equipment to the regular telephone lines, the potential loss of

customers to the public telephone network was marginal, and would not affect the overall rates for local telephone services (F. C. C., 1959).

In 1959 the F. C. C. Commissioners approved the Minute Maid and Central requests, and in 1960 the first private microwave telephone systems were installed. The land-based wire line monopoly had finally been broken, and the first real threat to A. T. & T.'s horizontal integration within the communications industry had arisen.

The next step in the process of economic disintegration occurred over the issue of equipment. In 1959 Thomas F. Carter invented an acoustic coupling device that allowed both mobile radios and telephones to communicate directly. The device was called the Carterfone, and required no physical wiring into either the telephone set or the telephone lines (Hartigan, 1985).

When Carter offered his device for use by various petroleum companies, A. T. & T., Southwestern Bell, and General Telephone of the Southwest refused to allow the use of the device with their telephone networks. Claiming that the device violated the interconnection restriction standards on foreign, and unapproved, equipment being connected to the telephone network, all three carriers prohibited use of the Caterfone.

Cater, in 1965, wrote to F. C. C. Chairman E. William Henry demanding to know how the interconnection restriction on foreign equipment applied to his device since the device required no wiring interconnection to the telephone network or telephone sets. Chairman Henry replied that only devices specifically exempted from the prohibition were allowed to connect to the network, and that if Carter felt that his device should be exempted he should file a motion for a hearing with the F. C. C. . Instead, Carter filed a lawsuit against A. T. & T., Southwestern Bell, and General Telephone of the Southwest claiming a violation of the Sherman Antitrust Act. The Texas Federal District Court, in 1966, ruled that the court could not act on the case until the F. C. C. had either approved or disapproved the device's use within the telephone network. (Carter vs. A. T. & T., 1966).

In 1966, an F. C. C. hearing examiner held a meeting where Carter presented his device, and A. T. & T. presented its objections to the device. In addition to A. T. & T.'s objections, objections were presented from NARUC and the Public Service Commission of Mississippi. The arguments presented against the Caterfone had nothing to do with the technical impact of the device on the network. Rather, what was argued was that equipment manufacturing of telephone equipment by authorized companies, such as Western Electric, was an integral part of the entire rate structure of telephone service. By allowing the interconnection of equipment not manufactured within the vertically integrated structure of A. T. & T., the overall telephone monopoly would experience a loss of revenue, and thus have a negative impact on the telephone rate structure (F. C. C., 1968).

In August, 1967, the Hearing Examiner issued his decision. Since the Caterfone put "nothing into the system except the sound of a human voice into the mouthpiece of a handset", there would be no negative impact on the technical standards of the network. The examiner recommended approval of the Carterfone for use in the network. The issues of rates and revenue were completely ignored.

In June, 1968 the F. C. C. Commissioners approved the use of the Carterfone, but in the process they also extended their authority over both equipment and interconnection. They first dealt with the issue of equipment by stating:

"... that a customer desiring to use an interconnecting device to improve the utility to him of both the telephone system and a private radio system should be able to do

so, so long as the interconnection does not adversely affect the telephone company's operations or the telephone system's utility for others." (F. C. C., 1968).

But the F. C. C. Commissioners did not just stop at encouraging the interconnection of equipment. The Commissioners took the matter one step further by defining who within the policy regime had the right to prohibit the interconnection of equipment. In essence, the Commission ruled that A. T. & T.'s prohibition of any equipment for interconnection was illegal. Under the Commission's ruling, only the F. C. C. had the legal authority to approve or disapprove the interconnection of any device to the network, and in the future A. T. & T. and the other carriers, were prohibited from stopping interconnection of equipment without approval first from the F. C. C.

In a final parting shot, the F. C. C. directly attacked the heart of A. T. & T.'s vertical integration of equipment and services. The Commissioners stated that A. T. & T. and the other telephone companies were incapable of supplying the developing needs for communications equipment within the modern business world.

"No one entity need provide all interconnection equipment for our telephone system any more than a single source is needed to supply the parts for a space probe." (F. C. C., 1968).

In a single blow, the F. C. C.'s ruling completely undermined A. T. & T.'s equipment monopoly, and opened the door for competition in the telephone equipment market for the first time since the 1910s. Now A. T. & T.'s vertically integrated structure was under attack.

While the Carterfone case was progressing through the F. C. C., Jack Goeken founded a small microwave company called Microwave Communications Incorporated, M. C. I.. On December 31, 1963, Goeken petitioned the F. C. C. to be allowed to establish a series of microwave towers from St. Louis to Chicago that would be used by local businesses and farms to order equipment parts from dealers in the two cities. In the petition for the license, Goeken stated that only the F. C. C.'s authorization was required to establish the service (U. S. vs. A. T. & T., 1974: Episode 2, para 2 - 5).²⁸

²⁸ Jack Goeken, the founder of M. C. I., had started off his company with the intention of selling two-way radios to truck drivers. In the early 1960s, Goeken owned the General Electric mobile radio franchise in Springfield, Illinois. Route 66, the main road between Chicago and St. Louis, passed through Springfield, thus it was a natural market for a person seeking to sell mobile radio sets to truck drivers (Kahaner, 1986). Mobile radios, though, had a limit on the distance a signal could be received. Once a truck passed beyond fifteen miles from the source of the signal, the message was lost. To encourage sales, Goeken proposed to a small group of investors in his company that they erect a tower in which a repeater would be located. The repeater could then boost the signal, and extend the range for the signal to thirty miles. The group liked the idea, but thought it might have more potential than Jack realized. If one repeater could extend the distance to thirty miles, why not build a series of repeaters along Route 66, all the way from Chicago to St. Louis, that way the truckers could not only communicate along the entire route, but their dispatchers at both ends of the line could then forward them both pick-up and delivery orders while the trucks were still in route. The group, all close friends originally from Joliet, Illinois, liked the idea, and each agreed to contribute \$500 to start the new company. Microwave Communications, Incorporated, M. C. I., was born. Before building the network, though, Goeken and his friends began to ask businesses, along Route 66, if they would use the proposed network. They discovered, from their informal survey, that a wide range of businesses and farmers along Route 66 would be interested in a cheap communications connection between Chicago and St. Louis. The possibility of selling a service to promote the sale of radios seemed, after their survey, too narrow a focus for the new company. Instead of just selling radios and equipment, why not also sell access. Why not build an alternative long distance link from Chicago to St. Louis, and then have businesses subscribe to it, charging them only for the actual time they used the connection? It was this plan that Goeken took to the F. C. C. in 1963. Jack Goeken was literally a self-made man. His formal education stopped when he graduated from high school. What Goeken lacked in formal education, though, he made-up for with a native intelligence and understanding, especially when it came to radios. Working after school hours in a small radio repair shop,

Goeken's argument was that since the service link was between Chicago, in the state of Illinois, and St. Louis, in the state of Missouri, the service operated within the interstate area of service which was completely under the authority of the Federal government. In addition, since the service was also wireless based, another area of exclusive Federal jurisdiction, and involved no physical wire right-of-way corridor over the land of Illinois, there was no necessity to gain approval for the service from the Illinois Commerce Commission. Goeken further isolated the Illinois Commerce Commission by requiring that potential users within the State of Illinois were obligated to make their own physical connection to the system, and to maintain their local interconnection. Thus M. C. I. 's service was exclusively interstate, and the burden for local exchange interconnection, or intrastate oversight, was placed on the subscriber (U. S. vs. A. T. & T., 1974: Episode 2, para 6 - 7).

Once again, A. T. & T., NURAC, and the Public Utility Commissions objected to the F. C. C. Again the claim was advanced that the loss of business customers, "cream skimming", would increase local telephone rates. In addition, the M. C. I opponents argued that M. C. I was establishing a common carrier service within the State of Illinois, and thus was required to gain approval for such a service, first, from the Illinois Commerce Commission, not the F. C. C. (U. S. vs. A. T. & T., 1974: Episode 2, para. 8).

In August, 1964, the F. C. C. ruled on M. C. I. 's request. The F. C. C. ruling did not address the issue of "cream skimming", but did concur with the argument that M. C. I. was required by F. C. C. regulations to obtain authorization from the Illinois Commerce Commission before the F. C. C. could take action on the request for an interstate license. M. C. I. was given until November 6 to obtain the required Illinois authorization (U. S. vs. A. T. & T., 1974: Episode 2, para. 10 - 14).

Goeken immediately filed a request for a hearing with the Illinois Commerce Commission. Goeken argued, in front of the Illinois Commission, that since the service was interstate in nature, the Commission had no jurisdiction over his request. While the Commission disagreed with Goeken's position, it did little to resolve the matter. Rather than issuing an opinion, the Commission set-up a series of half day hearings each month in which M. C. I. could present its arguments. The obvious delay tactic, which was instigated by the legal staff of Illinois Bell, resulted in the Illinois Commission failing to issue an opinion by the November 6 deadline date set by the F. C. C. (Kahaner, 1986: 24 - 25).

M. C. I. requested that since the Illinois Commission refused to rule on the matter, the F. C. C. should reinstate M. C. I. 's application. The F. C. C., by now aware of the collusion occurring between Illinois Bell and the Illinois Commerce Commission, agreed to reinstate the application, but refused to process the request until after a ruling was issued by the Illinois Commission (Kahaner, 1986: 32 - 33).

he taught himself how to repair both radios and televisions. Later, he opened his own radio shop, and expanded his knowledge, and business, by branching into the aircraft radio business. Even though he did not have a college degree, a generally assumed requirement for taking the Federal Aviation Administration's aircraft radio repair test, Jack studied on his own, and eventually passed the test. He also became chief engineer for two local radio stations, and because of his work with the radio stations and the local municipal airport in Joliet, became familiar with microwave transmissions. While Goeken was not a formally trained engineer, he had enough practical knowledge to understand the basics of microwave transmission systems, and to design a crude, but effective, system for the Chicago to St. Louis corridor. Using prefabricated Sears and Roebuck sheds, low end antennas, pre-assembled towers, and renting farm land for each station, Goeken could erect each microwave repeating station for \$1,100, plus a \$560 per year land rental charge. A. T. & T.'s cost for building such a station, which were filed with the F. C. C., was over \$100,000. (Kahaner, 1986).

For the next two years, as everyone waited for the Illinois Commission's decision, M. C. I. refined its application. By this time, M. C. I. had obtained the services of legal specialists in the newly emerging field of telecommunications law. Recognizing that the problem within Illinois was only a precursor of the delay tactics it would encounter with every state public utility commission, M. C. I. modified and fine tuned its application so that its services would fall exclusively under the Federal jurisdiction.²⁹

Finally, on May 31, 1966, the F. C. C. was satisfied that the modified application was sufficiently defined to allow for complete Federal jurisdiction, and set a date for a hearing on the M. C. I. request, without the necessity of the Illinois Commission's ruling (Kahaner, 1986: 33 - 35).

Hearings were held between February and May of 1967. In October, 1967 the Hearing Officer, Herbert Sharfman, recommended that M. C. I. be granted an application for point-to-point service between Chicago and St. Louis with nine intermediate points along the route in the State of Illinois (F. C. C., 1969).

Once the Hearing Officer's recommendation was made, the staff of the Common Carrier Division of the F. C. C. examined the application to determine the potential economic impact that might occur from the development of this new type of microwave based public communications system.

At this time, the late 1960s, Bernard Strassburg was the chief of the Common Carrier Bureau of the F. C. C.. Strassburg was a career F. C. C. employee who had joined the Bureau as a staff lawyer shortly after his graduation from law school in 1942. He spent twenty-one years working as a lawyer within the Bureau, and in 1963 was promoted to the position of Director of the Bureau (Coll, 1986).³⁰

Contrary to the charges of the Bureau being captured by A. T. & T., Strassburg and the other staffers of the Bureau saw the F. C. C. as an independent agency charged to promote the development of advanced communications while encouraging reasonable competition.³¹ The final

²⁹ While Goeken might have the native intelligence to grasp microwave technology, he did not have the knowledge to master either law or financing. In those two areas he needed help, and he found it. He first found the legal knowledge on one of his trips to Washington, D. C., to discuss his problems of obtaining a ruling from the Illinois Commerce Commission, with the staff of the F. C. C. While in D. C. he met a young attorney by the name of Michael Bader. Bader was a specialist in the newly emerging field of communications law. In the past he had worked in the broadcast area, handling television and radio licenses, and had developed the first tariff for the first microwave company established to serve the cable television industry. When Goeken explained his reasoning for feeling that he did not have to obtain approval from the Illinois Commerce Commission, Bader agreed. But he warned Goeken that he had to develop his application in such a way that the actual system did not bridge the gap between the Federal and State jurisdictions. Goeken asked Bader to head his legal efforts, and help refine the application so that it would be completely within the Federal jurisdiction. Bader, who had been watching the ongoing problems of A. T. & T. with the microwave decisions, felt that an opportunity was arising in the communications industry, an opportunity for competition to once again be the driving force inside the telephone industry. To Bader, it seemed possible to break A. T. & T.'s position if one could combine the correct formulas of engineering, financial marketing, and law together. Goeken seemed to have the engineering knowledge, Bader felt that he had the legal knowledge, and maybe together the two of them could find the financial marketing knowledge. He agreed to join the M. C. I. team, and become the lead attorney for their legal efforts. (Kahaner, 1986).

³⁰ Strassburg was a New Deal liberal who firmly believed in the positive effect of government regulation over the private sector. Suspicious of any industrial monopoly's intentions, but still seeking to promote the public good through economic expansion, he represented the general culture values within the Bureau which was manifested in the policy known as "continuing surveillance". (Coll, 1986).

staff report, issued in 1969, concluded that technological changes were allowing for an increase in the means of communications, and that systems such as M. C. I. were actually adding new customers to the telephone base of the United States, rather than reducing the number of customers. The staff report recommended that M. C. I. should be given an opportunity to prove that such new services could become economically viable, and recommended that the M. C. I. application should be approved (F. C. C., 1969).³²

On August 13, 1969 the F. C. C. Commissioners, in a four to three decision, approved M. C. I.'s application. In approving the license, the F. C. C. order also mandated that the local Bell affiliates in both Illinois and Missouri were required to provide interconnection to the M. C. I. network (F. C. C., 1969).

By the time, though, that the F. C. C. approved the M. C. I. application, the corporate leadership of M. C. I. had changed, along with the corporate goals of the company. The new president of M. C. I., William McGowan, had decided to expand the network to the national level, and to directly challenge A. T. & T.'s long distance market position. While the F. C. C.'s intentions were to allow for experimentation in the development of competition in commercial long distance service, M. C. I. was prepared to use the opening being provided by the F. C. C. to develop a national alternative to A. T. & T.³³

³¹ While there was little that the agency could do about the de facto monopoly A. T. & T. had over the telephone industry, they could still monitor A. T. & T.'s operations for signs of potential abuses of its position and power. From its authority to review long distance rates, and issue licenses for emerging technologies, the Bureau felt that it had the tools necessary to intervene if A. T. & T.'s practices did become abusive, and, at the same time, encourage the development of competition within the communications industry. (Coll, 1986).

³² The staff in the Bureau did not feel that M. C. I. actually was economically viable. It was generally felt that the fledgling company did not have the financial resources needed to compete in the long distance market against the corporate might of A. T. & T. On the other hand, the staff within the Bureau also felt that part of its legal charge was to encourage competition within the communications industry. While the odds were against M. C. I. being successful, it none-the-less represented an opportunity to promote competition in the industry, and the Bureau was charged with seeking to encourage competition (Temin and Galambos, 1987: 50 -51). Even though the staff felt that M. C. I. would not succeed, it also felt that it should at least be given the opportunity to try. So, reluctantly, Bernard Strassburg recommended that the M. C. I. license be granted by the F. C. C. Commissioners.

³³ Goeken and Bader found the financial marketing part of their equation in 1968. Its name was William McGowan. McGowan was born near Wilkes-Barre, Pennsylvania, and was the son of a railroad engineer employed by the Central Railroad of New Jersey. The area was a coal mining region, which was slowly sinking into poverty as the coal veins were mined out. During high school, McGowan worked on the railroad, taking any job that would help him and his family survive in the deteriorating economic environment. While the family was not well off, all the five McGowan children were taught that education was the way out of poverty, and their parents expected them to all go on to college. McGowan, after high school, enrolled at the University of Scranton. He majored in chemistry. He chose chemistry not because he was interested in the subject, but because he had a native ability to master math formulas, and could easily pass the courses. In addition, a future chemist would make a better than average salary, always an issue with McGowan. Shortly after entering college, he was drafted, and served in the United States Army. After the Army service, he returned to Wilkes-Barre, but enrolled in the newly formed Kings College, again majoring in chemistry. He was an excellent student, and eventually graduated from Kings College with a degree in chemistry and a high grade point average. After Kings College, though, McGowan decided to go on to graduate school and major in business administration. Over the years he had come to the conclusion that you made more money by running a company rather than just working as a scientist for a company.. He was accepted into Harvard. He worked nights to pay his way through Harvard, but still maintained his studies, and eventually graduated from Harvard in the top five percent of his class. He first went to work for the newly formed Magna-Theater Corporation, the proprietary owners of the Todd-AO film process. For three years he worked for Magna, and was considered one of their rising stars. But McGowan's temperament was not suited to the bureaucratic structure of corporations, especially if he was not the person in charge. He left Magna seeking challenges in the business world, and opened an office

The final regulatory blow to the monopoly came in 1972 when the F. C. C. issued its Domestic Satellite Policy, DOMSAT.³⁴ The F. C. C., recognizing the increasing importance of satellite use within all aspects of telecommunications, instituted a domestic satellite inquiry in 1970, and in 1972 the F. C. C. issued its Satellite Policy. The F. C. C. ruled that all satellite launchers had to provide space on their systems for handling transmissions from Independent telephone and

in New York as an independent consultant. He specialized in saving failing companies, and promoting newly created companies, through the use of marketing. Over the 50s and 60s McGowan's reputation grew as he pulled off one successful attempt after the other to either reinvigorate troubled companies or successfully develop newly emerging industries. During the process he became wealthy. But he was always looking for a new challenge, and a way to make more money. He seemed to have an insatiable appetite for both. By 1968, the M. C. I. partners had spent their initial investment and had accumulated \$35,000 in debts. They still did not have an application approved, and even when it would be approved they did not have any funds to actually construct the network. They approached McGowan, seeking to convince him to handle the financial backing required for the new company. McGowan, somewhat skeptical of the proposal, agreed to consider it. Having no background in communications, he contacted his old classmates from Harvard who worked with communications systems. A few of these former classmates now worked for I. B. M., and they explained to McGowan that their entire area of data communication between computers was underdeveloped by A. T. & T. . In essence, they explained to McGowan, a national long distance communications network handling computer to computer data transmission would be very attractive to anyone involved with data processing, and would probably succeed. McGowan agreed to become a partner in the M. C. I. development. The original partners now desperate for financial support, agreed to give McGowan fifty percent of the stock in the newly established company. (Kahaner, 1986).

³⁴ The roots of the development of the DOMSAT policy went back to the late 1950s, and the Soviet Union's challenge to America's space program. On October 4, 1957 the Soviet Union launched the first successfully orbited satellite, Sputnik I. It was a serious blow to America's prestige in science and technology, and unleashed a strong commitment by the Federal government and the Department of Defense to regain the lead in space technology. But both the Eisenhower and Kennedy Administrations encouraged the development of the space program within a framework that linked both government and private enterprise. One of these areas of public/private partnerships was satellites. The satellite program that was developed had two missions. The first was national defense. This program allowed for the development of reconnaissance satellites that could extend military intelligence, and communications satellites that could increase command and control functions over units stationed abroad. The second mission, private sector enterprise, was linked to the communications arm of the defense mission. At its most basic level, the idea was that a satellite communications industry would be developed that was world-wide in scope, and that America's communications industry would dominate this new industrial development. While the domestic program encouraged participation by such diverse groups as communications common carriers, television networks, and aerospace companies, there was no clearly defined end goal for the effort. While satellite communications could obviously increase the power of existing communications systems, it was still uncertain as to what other possible developments might emerge from this new technology (Galloway, 1972). During the early 1960s Congress wrestled with the matter, and held several hearings to try to clarify the issues that were beginning to emerge. The hearings quickly determined that the major issue facing the developing industry revolved around the older concept of "resource scarcity". Since the number of orbital slots for satellites was limited, and thus the number of physical satellites that could be orbited was limited, the old question of who should be given access to the use of the satellite, and who should be denied access, needed to be resolved (Communications Satellites, 1962: Staff Report). A. T. & T.'s position, which it had been trying to advance with the F. C. C., was that the concept of public service principles should be applied to all telecommunications, regardless of the type of transmission medium. As such, A. T. & T. felt that ownership and control of satellite communications should be restricted to domestic and international common carriers. On the other hand, television networks and the newly emerging aerospace equipment manufacturers felt that the development of such a common carrier based principle would restrict their options in terms of developing new commercial services, and actually launching and owning their own satellites. The problem was resolved by the passage of the Communications Satellite Act of 1962. The Act allowed for the creation of the Communications Satellite Corporation, COMSAT, a quasi-government agency that could offer public stock offerings for the development of commercial satellites. COMSAT, in essence, was given a monopoly over the allocation of orbital slots for commercial use, and charged with operating satellites for international communications. While common carrier companies could own stock in the corporation, they were limited to only six of the fifteen possible positions on the Board of Directors, thus ensuring that all commercial philosophies would be represented in the decision-making process, not solely the public service philosophy (Communications Satellites, 1962: Act.) In 1965, A. B. C. began to negotiate with COMSAT to launch a private satellite to link its television network. In addition to negotiating with COMSAT, A. B. C. also requested that the F. C. C. approve the expansion of its network through the use of its proposed satellite use.

microwave companies, and thus could not restrict access to only the traditional common carriers (DOMSAT, 1972).

By linking microwave signals and satellite connections, new companies were now able to handle long distance service by completely by-passing all of A. T. & T.'s long lines. In 1972, M. C. I. joined forces with Lockheed Aircraft Corporation, and formed the M. C. I. Lockheed Satellite Corporation, M. C. I. L. M. C. I. L. then filed an application with the F. C. C. to launch a domestic satellite program.³⁵ The application proposed the creation of a nationwide satellite and microwave communication system that would allow M. C. I. to carry transmissions into areas that it had not previously been reached by its sole microwave based systems. (Kahaner, 1986: 76 - 79).

³⁶

For the first time in the history of telecommunications in the United States, a nationwide competitor to A. T. & T.'s long lines division had emerged. The nationwide telephone service monopoly was beginning to shatter.

The F. C. C.'s opening of both the equipment and long distance markets to competition, quickly fueled an industrial expansion of alternative companies in the telecommunications industry. A. T. & T., seeking to maintain its dominant position, resorted to the use of technical delays to block the entry of competitors into both the interstate and intrastate markets.

From its position as "network manager", A. T. & T. began to require increasing equipment standards for interconnection to the local telephone exchanges. A. T. & T. justified the increased level of equipment standards because of the increasing technical problems the telephone network was experiencing due to the increasing level of access that had been achieved because of the A. T. & T./NARUC costing formula. The newly emerging competitors, though, charged that A. T. & T. was attempting to block their entry into the long distance markets by demanding increasing equipment standards. (Brooks, 1976)³⁷

³⁵ The newly developed company also went public, offering shares for sale on the major stock exchanges. COMSAT bought a third of the stock in M. C. I. L. COMSAT then changed its name to C. M. L., which stood for COMSAT, M. C. I., and Lockheed (Kahaner, 1986: 76 - 79).

³⁶ McGowan, seeing the potential for a nationwide long distance network, had embarked on a strategy to create a national competitor to A. T. & T. Taking a page out of A. T. & T.'s own corporate history, McGowan began to organize a series of regionally based M. C. I.'s across the United States. Each of the regionally based M. C. I.'s would serve a defined corridor between major cities, always staying within the interstate jurisdictions and thus avoiding the State Public Utility Commissions. In order to strengthen the regional structure, the investors in each of the companies would be located within the region that was being served. M. C. I. would own a portion of the stock in each of the regional companies, and process the F. C. C. applications and licenses, but the majority of the regional company would be owned and operated by the regional investors. Eventually, once all the regional systems had been created, they would be linked into a communications grid that could serve all the major cities within the United States, but still stay out of the State Public Utility Commission's authority. McGowan established a new company, Microwave Communications of America, as a subsidiary of M. C. I., and began to build the national network. On June 22, 1972 McGowan's M. C. I. issued a public stock offering of one hundred million dollars. The prospectus on the offering outlined the construction and development of a network of microwave towers that would link 165 cities together in a national long distance network. The network was to premier in October, 1973. (Kahaner, 1986: 76-79).

³⁷ The 1950 decision over the cross subsidization of local telephone rates with long distance revenues did achieve the State Public Utility Commission's goal of universal access. Telephone penetration into the homes and businesses of the United States was now, by 1970, over ninety percent. The unintended consequence, though, of the decision was that the communications system's capacity was reached, and as a result the system began to experience a decline in the quality of "plain old telephone service", POTS. Customers began to experience delays in obtaining new telephone service and equipment repairs. In addition to new service, callers began to experience delays in making connections to the system for

A. T. & T. also began to demand that the emerging competitive companies include in the costs for access to the local telephone exchanges, a portion of the capital costs involved in maintaining both the local and the long distance exchanges. A. T. & T. felt that the station-to-station method of costing that it had developed with NARUC should be maintained, and required that the new companies contribute to subsidizing the costs of operating the local exchanges. The new companies, on the other hand, sought to restrict costs to only those elements involved in the connection to the local exchanges, the older board-to-board method, and refused to accept A. T. & T.'s demand for increasing the level of support for local service. The negotiations over the local access charges delayed the opening of alternative services, and even increased the level of personal animosity between the corporate managers engaged in the costing process. (Stone, 1989: 182 - 184).³⁸

The stalemate over the equipment standards and interconnection charges led to a hardening of positions on the part of A. T. & T. and the new alternative service companies. Eventually, both sides decided to expand the conflict, and move the issue into the arenas of both Congress and the Courts. A. T. & T. revived the old coalition of State PUCs and NARUC, and directed it at Congress in an attempt to legally maintain the centralized industrial structure. The newly emerging companies responded by taking their case directly to Congress, and reviving the call for the break-up of A. T. & T. and its Bell affiliates. (Temin and Galambos, 1987: 85 - 99).³⁹

general calls, and overloads on the system resulted in occasional breakdowns of service within the grid, thus knocking out everyone's service on the local exchanges. This was especially the case in downtown Manhattan, the financial and media center of the United States, where, in July, 1969, the entire central downtown exchange collapsed knocking out both the national television and stock exchange grids. The large customers in both the media and financial community began to publicly criticize A. T. & T.'s service quality, which further reinforced the public perception that the network was beginning to fail under the stewardship of A. T. & T. Probably the most public examples of this growing view were first the film "Our Man Flint", in which A. T. & T. was portrayed as being run by robots intent on taking over the world, and Lily Tomlin's portrayal of an insolent and bureaucratic telephone operator on the television series "Laugh In". (Brooks, 1976: Chapter 12).

³⁸ In September, 1972, M. C. I. started to negotiate with A. T. & T. on the local exchange interconnections to the M. C. I. network. While the F. C. C. had required the interconnection, the questions of how, and at what cost, still needed to be formally worked-out. M. C. I. wanted to "rent" access to the local Bell networks, and pay for use on a monthly basis. The M. C. I. approach was basically the Board-to-Board costing method. M. C. I. would cover all the costs involved in its city-to-city link, and then "rent" only that portion of the local network costs related to connecting to its network. A. T. & T.'s position was that the station-to-station method should be used. Since the independent network was linked to the local network, and dependent on the entire network to be functional, the costs for local interconnection should include the entire costs associated with maintaining the local networks. Thus the formula should include actual use time and charges, maintenance and upgrade costs, and a portion of the capital investment costs. In other words, M. C. I.'s costs should include the costs of maintaining the entire national network (Stone, 1989: 182 - 184). The negotiations dragged on over several months, with A. T. & T. maintaining its position. Meanwhile, M. C. I. continued to build its network pushing for the October, 1973 start date. But as the start-up time came closer, and with no resolution in sight over the negotiations, M. C. I. decided that more drastic measure needed to be taken. A face-to-face negotiating meeting between McGowan and deButts was scheduled for March, 1973. On March 2, 1973 McGowan and deButts met at A. T. & T. headquarters in New York. The meeting of such different corporate cultures combined with the different personalities of both McGowan and deButts, quickly broke down into a meeting of accusations and threats. At one point in the meeting McGowan threatened deButts when he said: "I have plenty of money. I can spend it on litigation, or I can spend it on construction. I would prefer to spend it on construction." DeButts angrily replied: "I have heard threats like that before. I won't be coerced." In the end, the meeting was adjourned with no resolution of the interconnection problem (Coll, 1986: 22 - 27).

³⁹ After the March 2 meeting between A. T. & T. and M. C. I., both organizations developed new strategies to deal with each other. M. C. I. decided that the only way that they could succeed was to destroy completely the existing regulatory and industry structure of the telecommunications regime in the United States. A new regime needed to be created based on competition and decentralization of ownership. The local exchanges and equipment manufacturing had to be unbundled from A. T. & T.'s ownership and control. The strategy to do this would involve a political attack against A. T. & T. in Congress,

As the level of conflict increased between A. T. & T.'s coalition and the newly developing communications companies, the F. C. C. found itself increasingly caught between the two opposing camps. Rather than taking a position of neutrality, though, the internal staff of the F. C. C. favored the newly emerging companies, and began to publicly support the new companies efforts to expand into the national markets by issuing decisions favoring the newly emerging companies over A. T. & T.. (Coll, 1986: 43 - 47).⁴⁰ A. T. & T.'s attempts to override F. C. C.

a regulatory attack against A. T. & T. in the F. C. C., and a legal attack against A. T. & T. in the Federal Court System (Coll, 1986: 25 - 26). A. T. & T. decided to run M. C. I. out of business by attacking the new company on two levels. DeButts was convinced that part of the problem was a lack of education and understanding on the part of the public and elected officials of the harm that would come to the national network if competition were allowed in. A. T. & T. would go to Congress, explain the necessity of maintaining the existing regime, and the potential harm that would befall the United States by allowing in competition. Congress, so the strategy went, would recognize the errors of the F. C. C. decisions, and pass legislation to override the F. C. C. (Temin and Galambos, 1987: 85 - 99). But the passage of legislation on Capital Hill is a slow process, and something needed to be done immediately to slow M. C. I.'s entry into the market. To block M. C. I., DeButts developed a strategy whereby the Bell affiliates would fill tariffs with all the State Public Utility Commissions specifying the conditions that M. C. I. would have to meet for interconnection within the cities. Since the interconnection would have to occur on the land of each state, the old allies, the PUCs, could help A. T. & T. by developing specification standards that were outside the Federal authority, and so stringent that M. C. I. would either be bleed of money, or forced to raise even more funds on the stock market. In the end, A. T. & T. could effectively block M. C. I., and then slowly bleed it of its financial capacity to exist (Kahaner, 1986: 93 - 96). McGowan implemented his plan by first scheduling a hearing with Congress. On July 30, 1973 the Senate Subcommittee on Antitrust and Monopoly heard testimony from McGowan where he charged that A. T. & T. was attempting to stifle competition in the telecommunications industry by limiting access to the local and national networks, and thus violating the anti-trust laws of the United States. His speech impressed several of the committee members, Senator Philip Hart of Michigan, Senator John Tunney of California, and Senator Edward Kennedy of Massachusetts, all of who agreed to examine his charges further (Coll, 1986: 32 - 35). DeButts assault on A. T. & T. started on September 19, 1973 when M. C. I. was notified by A. T. & T. that formal negotiations would be suspended until new, and unspecified, arrangements could be developed. During the period of contract suspension, A. T. & T. would provide M. C. I. with temporary interconnection. The new unspecified arrangements were publicly presented the next day, September 20, in Seattle, Washington, by deButts in a speech to the annual convention of NARUC. In the speech, deButts resurrected the ghost of Theodore Vail and Gifford, claiming that the public network was being destroyed by the piecemeal licensing of competitors by the F. C. C. Accusing the new companies of "cream skinning", he charged the F. C. C. of seeking to destroy the unified network, and undermine the authority of the States. He called on NARUC and the State Public Utility Commissions to intercede in the process by challenging the F. C. C.'s decisions, informing the public of the damage that was occurring, and blocking any further attempts at opening the telecommunications industry to market competition (Temin and Galambos, 1987: 85 - 99).

⁴⁰ Standing in the back of the room at the Seattle NARUC Conference, listening to deButts attack on the F. C. C. was Bernard Strassburg, the Head of the F. C. C.'s Common Carrier Bureau. DeButts speech highly offended Strassburg's sense of professionalism and public service. To Strassburg's point of view, the changes that were occurring in the telecommunications field were not attempts by the F. C. C. to usurp State Constitutional authority, but rather were the result of the emergence of technology. A. T. & T., to Strassburg, had not moved their own technological developments into the market place, thus opening an opportunity for competitors to arise. The rise of competition in A. T. & T.'s own industry was actually the responsibility of A. T. & T.'s own inaction. As Strassburg saw it, A. T. & T. was losing the battle, and in an attempt to win the war had deliberately started a war between the Federal and State governments over constitutional authority within the telecommunications industry. In Strassburg's mind, deButts had just declared to the F. C. C. that A. T. & T. was above the rules of law, and would do everything in its power to stay in control of the industry. He left the conference, and caught the return flight to Washington that evening (Coll, 1986: 43 - 47). On Strassburg's desk was an application from M. C. I. to offer what was known as "FX" line service. This was the second part of McGowan's attack against A. T. & T. An FX line is basically a private line from two cities in which one part of the line is closed to a single source, but the other end of the line is open to all possible sources. With such a line, a company, such as an airline reservation center, would have an office in one city, and would be connected to another city. A person wishing to make an airline reservation in the other city could then pick-up any telephone in the city, dial a local telephone number, and be connected directly to the reservation center in the distant city without being charged for the long distance rate - that would be paid for by the reservation office. It was this type of line access that M. C. I. sought approval, from the F. C. C., to offer as part of its service package. The problem with an FX line, though, is that it is highly dependent on the local telephone exchange. Since one end of the line is available to all the telephones in a local area, in essence that part of the line is part of the local exchange access. M. C. I.'s application allowed for direct point to point connection between offices, but an FX

staff level decisions caused the conflict to escalate up to the level of the F. C. C. Commissioners, who upheld their staff decisions to open the markets further to competition, further alienating A. T. & T. from the Federal level of government.⁴¹

Eventually, the level of conflict reached the point, that the newly created companies decided to resort to the use of the courts to protect their rights to compete in the long distance markets. Rather than seeking an arrangement with A. T. & T., the new telecommunications companies resorted to filing lawsuits against A. T. & T. in the Federal District Courts.⁴²

As the communications industries conflict grew outside the regulatory structure, and the issue began to spill over into the Courts and the Legislative branch of the government, calls for breaking-up A. T. & T. once again surfaced. It was at this point that the Executive level of government became involved in the dispute through the United States Justice Department.

line service would allow M. C. I. to offer long distance service access from any subscriber's telephone in one city to all the telephones in another city. But it would be technically possible to convert an FX line service from a single point to all point system into an all point to all point system by using two FX lines to create a signal loop. If two separate lines were established in two separate cities, with each line open connection in the opposite city, then a person in one city could pick-up any local telephone, dial the designated closed end number plus the telephone number of any telephone in the other city, and have their call routed over first the closed line to a connection with the open line, and then from the connection on the open line to the other local telephone number in the other city. Thus with an FX service capability, M. C. I. could offer long distance service to any telephone in any city, public or private, office or home, to any other telephone in any other city. A. T. & T. had refused to provide M. C. I. with FX lines. McGowan had applied to the F. C. C. for authorization to access FX line service, stating that FX access was part of the original authorization granted by the F. C. C.. If the F. C. C. ruled in M. C. I. 's favor, then A. T. & T. would be required to lease FX line access to M. C. I. McGowan, after DeButts Seattle speech, realized that FX authorization would be necessary for corporate survival in the upcoming battle with A. T. & T. On October 1, 1973 Strassburg received a letter from McGowan requesting clarification from the F. C. C. on their authority to provide FX line access. Strassburg drafted a letter of clarification that approved M. C. I. 's FX request. On October 4 the F. C. C. Commissioners approved and signed the letter. On October 19, Strassburg received another letter from McGowan seeking to clarify that the October 4 letter actually had approved M. C. I. 's offering of FX line service. Strassburg wrote McGowan back, and affirmed that the service was approved. Copies of the correspondence were never sent to A. T. & T. (U. S. vs. A. T. & T., 1974: "Strassburg"). On November 1, 1973, after thirty-one years of consecutive service with the F. C. C. Bernard Strassburg retired, but in his leaving he had left a clear message as to his personal and professional opinion of A. T. & T. and John deButts.

⁴¹ When deButts discovered that Strassburg had authorized the FX service, he immediately notified all A. T. & T. and Bell offices not to provide M. C. I. with FX service. M. C. I. filed a suit in the Federal District Court of Philadelphia claiming that the F. C. C. order required A. T. & T. to connect M. C. I. to FX service. The judge agreed, and ordered A. T. & T. to connect. While A. T. & T. appealed the decision, it was still required under the order to connect M. C. I. to the FX service, and so M. C. I. customers began to use A. T. & T.'s FX lines (M. C. I. vs. A. T. & T., 1973). While A. T. & T. was appealing the Philadelphia decision, the F. C. C. opened an investigation to determine what services M. C. I. was authorized to offer. While the investigation was being conducted, the appeals court ruled that the Philadelphia decision was wrong because the legal authority to decide the issue was vested in the F. C. C. The court ruled that until the F. C. C. made their ruling, A. T. & T. was not required to offer M. C. I. FX service. That weekend, A. T. & T. engineers disconnected all of M. C. I. 's FX lines, enraging both McGowan and the new business customers of M. C. I. - whose long distance service, and businesses, were suddenly cut-off from the national network (M. C. I. vs. A. T. & T., 1974). The breach of M. C. I. 's service, and the stranding of its business customers, drove the issue into a crisis level. The investigation sped-up, and the F. C. C. Commissioners quickly ruled that M. C. I. was entitled to offer FX line access service. A. T. & T. was forced to reconnect the service to M. C. I. and its customers (F. C. C., 1974).

⁴² The FX dispute opened the door to McGowan to move on the last leg of his assault on A. T. & T. McGowan had been able to move his strategy into two arenas, first by involving Congress in hearings over the telecommunications industry, then by engaging the F. C. C. against A. T. & T. But the last leg of the strategy was legal, and on March 6, 1974 M. C. I. filed an antitrust lawsuit against A. T. & T. seeking hundreds of millions in dollars in damages resulting from the cut-off of FX service in Philadelphia. (coll, 1986: 43-47).

As a result of the 1956 consent decree, A. T. & T. had remained under constant scrutiny by the United States Justice Department. Unknown to A. T. & T., in 1974, the Antitrust Division of the Justice Department had already opened-up an internal investigation of A. T. & T., and in particular its relations with Western Electric. (Coll, 1986: 59).

Shortly before the beginning of the F. C. C. DOMSAT hearings, the F. C. C. had released a long investigative report it had conducted on Western Electric. The report concluded that the F. C. C. did not have the internal ability to determine exactly the fairness of Western's pricing policy, and requested additional authority from Congress in terms of obtaining internal corporate information from Western Electric. (F. C. C., 1971).

The Justice Department staff attorneys who had been involved with the 1956 consent decree, took the F. C. C. report to the Assistant Attorney General, Thomas Kauper, and argued that the F. C. C., by its own admission, was unable to regulate the telephone equipment market as it was required to under the 1956 decree. The attorney's felt that since the decree's conditions could now be violated by A. T. & T., it was time for the Justice Department to once again consider suing A. T. & T. over its relations with Western Electric.

Kauper opened an internal investigation on A. T. & T., and worked with both the White House staff of the Office of Telecommunications Policy and the Senate staff of the Antitrust Subcommittee, to gather information on the operation of A. T. & T., and the emerging competition within the telecommunications industry (Antitrust Order, 1973). An internal task force within the Antitrust Division was created to examine the possibility of reopening the anti-trust lawsuit against A. T. & T., and by the Spring of 1974 the Antitrust division was preparing a recommendation to bring an antitrust lawsuit against A. T. & T. ⁴³ When the final A. T. & T. Task Force report was forwarded to the newly appointed Attorney General, William Saxbe, for his review and approval, a staff recommendation was attached suggesting that an anti-trust action be opened against A. T. & T. (Coll, 1986: 64). In November, 1974 Attorney General Saxbe approved the opening of an anti-trust lawsuit against A. T. & T. ⁴⁴

Saxbe's decision was supported within the Ford Administration by William Seidman, both President Ford's chief legal counsel and personal advisor. Seidman argued that A. T. & T.'s control over both long distance and local telephone exchanges, plus equipment manufacturing and

⁴³ While all of this was occurring, the Watergate scandal was worsening. After John Mitchell had resigned in disgrace, Elliot Richardson had been appointed Attorney General. But when Nixon fired Watergate Special Prosecutor Archibald Cox, Richardson resigned in protest over the firing.

⁴⁴ Nixon's political position continued to deteriorate during the Summer of 1974, and demands that he appoint a new Attorney General, one who had the confidence of Congress that he would not impede the Watergate investigation, mounted. Finally, in July, 1974, Nixon appointed William Saxbe as the new Attorney General. Shortly after that, on August 9, 1974, Nixon resigned from the Office of President. When Saxbe took over the Justice Department morale was a major issue within the agency. Saxbe, a former senator from Ohio who preferred spending time on the golf course shooting balls and chewing tobacco, was not immediately accepted by the staff attorneys. Many did not agree with his Republican politics, and disdained his "good Old Boy" stories about golf games, and politics in the Ohio legislature. In addition, many questioned his political effectiveness. His connections to the Nixon White House were gone after the resignation of Nixon, and as a hold-over from the former administration, he was not in the inner circle of the new Ford Administration. But Saxbe was a competent political strategists, and he realized that a policy vacuum existed. Nixon's policy's were now gone, and the Ford Administration had not yet developed it's policy. In this atmosphere of no policy was freedom, freedom to define your own policy. Saxbe saw a way to reverse public opinion about the Justice Department, and to reinstall within the Department a sense of mission and integrity. Taking on the largest corporation in the world was just the right medicine to revive the ailing Department (Coll, 1986: 64).

interconnection, was thwarting the development of a whole new area of industrial growth for the country. It was Seidman's position that the centralized industrial structure of telecommunications was stifling the growth of advanced telecommunications services, and the emergence of a new industrial area within the United States. Only by breaking the centralized structure of A. T. & T., Seidman argued, could such a new market force emerge.⁴⁵ His strong lobbying, inside the Administration, to pursue the suit, blocked A. T. & T.'s backdoor efforts, after they had discovered that an investigation had been conducted, to have the suit squashed by the Office of the President. (Henck and Strassburg, 1988: 40 - 50).

The lawsuit charged A. T. & T., once again, with a secondary monopoly over the manufacture of telephone equipment and the interconnection of non-Western Electric equipment to Bell and A. T. & T. lines. In addition, the suit charged that the F. C. C., by its own admission, was not able to effectively regulate the newly developing telecommunications industry of the United States (U. S. vs. A. T. & T., 1974: Complaint).

The specifics within the lawsuit charged that A. T. & T. had obstructed the interconnection of equipment from other common carriers, especially interconnection to satellite and microwave services, with A. T. & T. and local Bell lines, and had refused to sell equipment from other manufactures to Bell subscribers, thus perpetuating a manufacturing and purchase monopoly for Western Electric. The suit charged that this was in fact a violation of the 1956 Consent Decree, and was occurring due to the inadequacies of the F. C. C. to successfully monitor the equipment manufacturing of Western Electric. Since there was no effective method of assuring monitoring of the equipment production and standards for equipment interconnection, the only effective mechanism to assure that the public welfare was maintained would be to require A. T. & T. to divest itself of its ownership in Western Electric, and thus allow telephone equipment manufacturing to fall completely under the principles of free market competition. The suit was filed in the United States District Court of Washington, D. C., and assigned to Judge Joseph C. Waddy (U. S. vs. A. T. & T., 1974: Complaint). The first hearing date was set for February 20, 1975. But what very few people knew at this time was that Judge Waddy was dying of cancer (Henck and Strassburg, 1988: 217).

A. T. & T.'s legal strategy, developed to respond to the suit, was to create a series of delays that would enable A. T. & T.'s President, John deButts, to gain the time necessary to rally public and political opinion against competition within the telephone industry, and to pass laws restricting both national and state level competition. In order to do this, at the February 20 hearing with Judge Waddy, A. T. & T. argued that jurisdiction for the matter was first in the F. C. C. Only after the F. C. C. had investigated the charges, it was claimed, would the Federal District Court jurisdiction apply (U. S. vs. A. T. & T., 1974: Answer).⁴⁶

⁴⁵ Seidman had previously been legal counsel to both the North American Telephone Association and the Independent Telephone Equipment Manufacture's group, both intensively involved in the development of the microwave based services. He had been involved in several unsuccessful suits in Michigan concerning the issue of microwave equipment and interconnection. (Henck and Strassburg, 1988: 40 - 50).

⁴⁶ A. T. & T.'s argument in support of their position was that it was impossible for A. T. & T. to violate the antitrust laws since every aspect of its business was regulated and overseen by both the F. C. C. and the State Public Utility Commissions. In essence, A. T. & T. claimed, the Federal government was suing the company over violations of the antitrust laws that had been both legally sanctioned and ordered by the Federal government. They further argued that the F. C. C. had jurisdiction in the matter because the legal authority for this area of law had been vested, by Congress, in the F. C. C. The F. C. C., it was argued, had been given this legal authority by Congress because, in Congress's view, the technical issues and knowledge involved in the industry were beyond the general bodies of knowledge within the general principles of law (U. S. vs. A. T. & T., 1974: Answer).

At this point in time, the Justice Department sought to proceed with the next phase of the case which is known as discovery. During this phase additional evidence would be sought from each party to the suit, and the internal operations of A. T. & T. would be opened by Court order to Justice Department investigators. But Judge Waddy felt that A. T. & T.'s argument over jurisdiction had merit, and needed to be considered by the Court. He ordered that he was taking the jurisdictional issue under advisement, and until he ruled on that matter, no further discovery work would be allowed in the case.

Waddy next contacted the F. C. C. to determine what the F. C. C.'s position was in terms of A. T. & T.'s jurisdictional arguments. On the last day of 1975, the F. C. C. filed an amicus curiae brief with the court. In the reply, the F. C. C. outlined the basic differences between the statutes establishing a framework in which to regulate communications, versus the basic antitrust standards established by the courts. Its conclusion was that common carriers were not exempted from antitrust acts, but that such violations were outside the Congressional authority of the communications regulatory framework, and should be resolved in the standards established by courts. In other words, the Court had jurisdiction over the issue of anti-trust (F. C. C., 1975).

Waddy's illness prevented him from immediately ruling on the matter, and it was not until November 24, 1976 that Waddy ruled that the court did indeed have jurisdiction over the case (U. S. vs. A. T. & T., 1974: Memorandum).

A. T. & T. immediately appealed Waddy's decision, claiming, once again, that regulation exempted A. T. & T. from antitrust action. Once again, all discovery work stopped. No one knew, at that time, that it would take another two years before the jurisdictional question was finally answered, and actually expanded.

A. T. & T.'s lawyers had succeeded in delaying the case, but now it was up to John deButts to convince the American public that competition was not in their own best interest. DeButts was ready to embark on his crusade, but he needed a public reason for presenting his case. The F. C. C., inadvertently, gave him that reason.

In late 1974 M. C. I. presented a request to the F. C. C. staff for a new type of tariff called a "modular tariff". The new proposal and application seemed rather vague to the Bureau staff. M. C. I. argued that the new tariff was vague because it was an innovative marketing technique that had never been attempted before.

M. C. I. claimed that they were putting consumer choice back into the telephone market place by allowing M. C. I. customers to select services from any of the services offered by M. C. I., rather than just designated packages of services. In this way, customers could pick from existing services, combine them together in any manner they wished, and actually create all new services. M. C. I. further stated that the new tariff, called Execunet, would further promote the company by promoting consumer choice.

The F. C. C. staff, seeking to encourage more areas of consumer choice in the industry, agreed with M. C. I. that Execunet was an innovative service. The F. C. C. staff also assumed that Execunet service would be offered within the existing limits of the old authorizations for commercial long distance service. But the final staff recommendation, which was approved by the

F. C. C. Commissioners, did not specifically state that the service was limited to only commercial long distance access. (Coll, 1986: 86 - 87).⁴⁷

Without their realizing it, though, the F. C. C. had just approved M. C. I. 's development of a form of communications technology called "Loop FX Service" between cities, and had technically authorized the opening of all the local Bell telephone exchanges to competition in long distance service for both local residential and local business customers.⁴⁸ In the Summer of 1975 M. C. I. premiered the new Execunet service to all the local residential and local business customers of the United States.⁴⁹

In March, 1976 a bill was introduced into Congress called the Consumer Communications Reform Act (CCRA) of 1976. It's common name was the "Bell Bill" (H. R. 12323, 1976).

It was an interesting bill because it was not sponsored by A. T. & T.'s representatives, but rather by the 1,600 member United States Independent Telephone Association, USITA. An obscure Congressman from Wyoming by the name of Teno Roncalio had filed the bill for USITA without obtaining cosponsors for the bill. While officially the product of USITA, everyone on Capital Hill knew that the real sponsor was A. T. & T., and specifically A. T. & T.'s President John deButts (Temin and Galambos, 1987: 118).

The bill made no attempt to hide what it was seeking. Under the conditions of the bill, long distance service in the United States would become legally defined as a "utility", and would function within a single, unified, and integrated system. The bill went on to state that since A. T. & T. already had such a system, it should be selected as the country's legally recognized monopoly in this area. All other long distance providers in existence were prohibited from existing, and would be stopped from filing antitrust suits against A. T. & T. In addition, A. T. & T. would be authorized to buy the other competitors at fair market value. To also ensure that A. T. & T.'s equipment monopoly was maintained, authority for the regulation of telephones and telephone equipment would revert from the F. C. C. to the State Public Utility Commissions, and the PUCs, individually, would decide what equipment, manufactured by whom, would be allowed to interconnect to the network (H. R. 12323, 1976).

In one fell swoop, all the changes brought about by F. C. C. rulings and the rise of competitive companies would be erased. The Bell Bill was a blatant grab for power backed up by money and

⁴⁷ The F. C. C. order concerning the access to FX line service had not specifically authorized McGowan to offer two way FX line service. Rather the order limited him to the original proposed use, namely one distant business office line accessible to all local telephones in a distant city. The intention was fairly clear that this service was to be offered to businesses engaged in long distance commerce, not local individuals or local business services. (Coll, 1986: 86-87).

⁴⁸ "Loop FX Service" allows two FX lines, each opened to different city exchanges, to be used to route long distance calls around a closed communications loop. By routing calls in this manner, any local telephone exchange subscriber can access, from any local telephone, the long distance lines between the two cities.

⁴⁹ The Common Carrier Bureau staff felt betrayed by McGowan. During the fledgling years, the staff had protected and nurtured the new company, guarding it against the treacherous attacks of A. T. & T. Their efforts had been returned with scorn and duplicity, and a growing sense of anger toward M. C. I. began to emerge within the agency. An investigation was opened to determine exactly what services M. C. I. could offer, but the FX order was left standing, and M. C. I. continued to offer Execunet. McGowan, on the other hand, felt that subterfuge was just part of doing business, and that free market competition was a hard ball game not meant for governmental bureaucrats or gentlemen. What McGowan forgot was that John deButts also had the potential for not being a gentleman (Coll, 1986: 89).

threats, and no one in Congress had any doubts as to what was being said, and by whom. The A. T. & T. coalition with the State Public Utility Commissions and the Independent Telephone Companies had declared war on everyone, including the American consumers.⁵⁰

For six months A. T. & T. poured millions of dollars into lobbying Congress for the bill. A. T. & T. employees from each of the Congressional districts were, by the hundreds, flown into Washington, and spent their days cornering and badgering both Representatives and Senators to pass the bill. The House Committee hearings were often filled to overflowing with A. T. & T. employees (Coll, 1986: 92 - 100).

Reminiscent of a World War I ground attack, wave after wave of people washed over Congress, leaving in their wake money, threats, and hard feelings. But the tactics of warfare had radically changed since World War I, and the tactics of Congressional lobbying had also changed over that same period of time. In another day and age, such as the earlier assault by Western Union against the Sherman Telegraph bill, the massive charge might have worked. But just as military tactics over 100 years had changed, so had political lobbying tactics in Congress changed. It was no longer considered acceptable to use a club on a Congressman.

At first, the tactic convinced over 200 Congressmen to sign on as cosponsors of the bill, but as the levels of political blackmail mounted, the powerful Chairmen of the Committees in both Houses began to oppose the Bill. Since the Chairmanships were based on seniority, the Chairs represented the most politically safe seats in both Houses. In addition, the Chairs controlled the order of business, and set the hearing schedules for other bills. Junior Congressmen might be intimidated by A. T. & T.'s tactics, and support the Bell Bill, but if they wanted to be effective in Congress they needed the support of the various Committee Chairs, and that meant voting with the Chair on crucial matters, such as against the Bell Bill.

The Chairman of the House Communications Sub-committee delayed hearings on the Bell Bill until September 28, 1976, a day before Congress recessed for a month while the Congressional elections were held. When the next Congress, the 95th, convened again, the number of bill sponsors had dropped to 115. The Bill remained in Committee with no action during the first half of the 95th Congress. By this time everyone, including A. T. & T., knew it was dead, and when Congress reconvened the next Session, sponsorship for the Bill had dropped to one person, Teno Roncalio, the original sponsor from Wyoming. John DeButts last stand had ended in defeat on the political battlefield of Washington, D. C. But the telecommunications war was not over yet.

The defeat of the "Bell Bill" was only one aspect of an increasing level of conflict that seemed to be engulfing the telecommunications industry. The Justice Department's decision to file the antitrust lawsuit in 1974 had unleashed a series of anti-trust lawsuits brought by the newly forming microwave telephone companies. By 1978 over forty private antitrust lawsuits were under consideration by various United States District Courts and State Courts. Further escalating the courts involvement in the process was the 1977 decision by the United States Supreme Court to decline a hearing of A. T. & T.'s appeal over the F. C. C./United States District Court jurisdictional question. The Supreme Court's refusal to hear the appeal, in essence, affirmed Judge Waddy's District Court's jurisdiction over the A. T. & T. case. (Henck and Strassburg, 1988: 217 - 225).

⁵⁰ McGowan, whose political credibility in both the F. C. C. and Congress had disappeared because of the Execunet move, was forced to sit on the sidelines and watch De Butts' steamroller move toward Congress. (Coll, 1986: 92-100).

But before further action could be taken by A. T. & T., in July, 1978 Judge Waddy died of cancer. After the death of Judge Waddy the A. T. & T. case was remanded to the court of Judge Harold H. Greene (Henck and Strassburg, 1988: 217). ⁵¹ By 1978, when Judge Greene took over for Judge Waddy, seven private Federal antitrust suits and several regulatory cases were under consideration by various United States District Courts. Judge Greene asserted jurisdiction over all the Justice Department complaints and the related Federal District Courts cases, and declared that both parties should be completed with discovery and ready for trial by 1980. Later he extended his time frame to January 15, 1981 (Henck and Strassburg, 1988: 220 - 221).

Harold Greene had a reputation for being a judicial activist, and had publicly stated that he felt that the development of government policy did not reside exclusively within the hands of Congress, but also entailed an obligation on the part of the Federal Courts to intercede in matters which were in the public interest (Coll, 1986: 123 - 131). His position had been reinforced by the earlier actions of Congress, which, in 1974, had passed the Tunney Act.

Prior to 1974, an antitrust lawsuit could be settled quite easily. All that was required was that the two parties engaged in the lawsuit reach a mutual level of agreement over the issue, and an agreement over the types of remedies that would be acceptable to both parties. The agreement was then submitted to the Court, where it was entered as an on-going consent decree. But in 1974 the Antitrust Procedures and Penalties Act, commonly known as the Tunney Act, was passed by Congress, and the process of settlement became more difficult.

During the Nixon Administration an antitrust lawsuit against the International Telephone and Telegraph Company (I. T. T.) had been settled out-of-court. The I. T. T. had been under a Justice Department investigation over possible violations of antitrust acts. Recognizing the possible harm that could be done to the Company, I. T. T.'s chief lobbyist, Dita Beard, arranged with the Nixon White House to underwrite the entire cost of the 1972 Republican Convention in exchange for a Consent Decree allowing the company to continue to exist in its then current format. The Nixon White House agreed, and Attorney General John Mitchell submitted a Decree over the opposition of the Justice Department Attorneys (Sullivan, 1977: 758 - 759). The later Watergate Investigations of the Nixon Administration revealed the I. T. T. payoff, and led to the resignation of John Mitchell.

The accusations raised in the A. T. & T. antitrust lawsuit concerning the 1956 Consent Decree, plus the public revelations concerning the I. T. T. payoff, caused Congress to become suspicious about the possibility of industrial influence over the decisions reached by the various offices of the Federal government. The passage of the Tunney Act by Congress was the direct result of the Justice Department's filing of the antitrust lawsuit against A. T. & T, and the previous I. T. T. scandal of the Nixon Administration.

In order to open the settlement process to public view, the Tunney Act required that the Justice Department submit any proposed anti-trust settlement to both industry and public comment. In addition, the Justice Department was also required to develop an impact analysis of the effect of any settlement on both the industry and the consumer. Public comments would then be scheduled

⁵¹ Harold Greene, in the early 1960s, had been a staff attorney with the Justice Department. While at the Justice Department, he had been involved with civil rights actions, and had a major hand in drafting both the 1964 Civil Rights Act and the 1965 Voting Rights Act. In 1965 Greene was appointed as Chief Judge of the District of Columbia's Court of General Sessions. His work in the Court of General Sessions had gained him a reputation for being an excellent judicial administrator, one who was able to handle complex cases with both speed and accuracy (Temin and Galambos, 1987: 202).

for a hearing, by the Federal District Court having jurisdiction over the case, and a determination would be made, by the Court, if the proposed settlement was in the public interest. The Court could then either accept the settlement or reject it. If the Court rejected the settlement, on the grounds that the settlement was not in the public interest, then the Court would be required to let the lawsuit go to trial, even though both parties wished to settle the matter out of court. (Sullivan, 1977: 758 - 759).

While the initial lawsuit involving A. T. & T. was confined to two parties, namely the Justice Department and A. T. & T., Judge Greene could open the matter to other interested parties by invoking the Tunney Act provisions. It was this possibility of further escalating the process through public interest hearings, coupled to Greene's record of judicial activism, that fueled the next responses from both the Legislative and Executive arms of government (Coll, 1986: 212).

In 1979, Congress attempted to deal with the pending lawsuit, and the issue of the national telephone monopoly. Three bills were introduced into Congress to deal with the matter - two in the Senate, and one in the House.

In the Senate, Fritz Hollings, Democrat from South Carolina and Chairman of the Senate Subcommittee on Communications, introduced a bill that advocated the complete separation of A. T. & T. and its subsidiaries (S. 611, 1979).⁵² Senator Barry Goldwater, ranking minority member of the Subcommittee on Communications, and a conservative Republican from Arizona, introduced another bill that directed the F. C. C. to completely deregulate the telecommunications industry within six years. (S. 622, 1979).⁵³ Neither Senate bill received a great deal of attention, at that time, because the Senate was waiting to see what type of final legislation would be introduced within the House.

The House Committee on Communications had, since the 1976 "Bell Bill" fiasco, been examining the 1934 Communications Act, and was considering a complete rewrite of the Communications Act. In 1979 Lionel Van Deerlin, Chairman of the Communications and Power Subcommittee of the House Commerce Committee, introduced his own bill which was a revision of the 1934 Communications Act. (H. R. 3333, 1979). Van Deerlin's bill would have completely abolished the F. C. C., and replaced it with a new agency with a narrow charter. Instead of a public service philosophy driving the new agency, anti-trust concepts would form the basis for regulating the telecommunications industry, and anti-trust lawsuits, such as the one being pursued against A. T. & T., would be encouraged. The bill further required that A. T. & T. divest itself of Western Electric, establish separate funds to subsidize local telephone rates, and mandated compulsory interconnection for all common carriers. In turn, the 1956 Consent Decree, which prohibited A. T. & T. from entering new lines of business, would be voided, and A. T. & T. would be allowed to compete in any market or type of business.

⁵² Under the Hollings bill, A. T. & T. would have been required to place all the local Bell Companies into a separate company which would operate the local and intrastate exchanges. While A. T. & T. could continue to own the Bell affiliates, all operations and management control would be strictly segregated from A. T. & T., and the local companies would operate as independent firms. (S. 611, 1979).

⁵³ Under Goldwater's bill, the goal of total competition within the telecommunications industry was to be achieved within six years, and was to be directed by the F. C. C.. While the bill was not specific as to how this competitive environment was to be introduced, it did state that the policy of the Federal government was complete competition within the telecommunications industry, and a rejection of the use of cross-subsidies to support various levels of services. (S. 622, 1979).

Opposition to the Van Deerlin bill was immediate, and widespread. In addition to opposition by A. T. & T., the Bell affiliates, and Western Electric, the broadcasting industry also objected to opening its market to potential competition from A. T. & T., and NARUC objected to the loss of local rate subsidization under the existing rate-of-return formula. The bill was quickly stalled in Committee (Temin and Galambos, 1987: 180 - 181).

The combination of Senate inaction while waiting for clarification from the House, and the subsequent stalling of Van Deerlin's bill in Committee, led to a stalemate, by the end of 1979, over a Congressional resolution of the A. T. & T. problem.

In addition to the Congressional stalemate, 1979 was a Presidential election year. That year saw a conflict arise between the previous philosophy of industrial regulation by the government, and a newly emerging philosophy of deregulation of industries through the encouragement of market competition. While President Jimmy Carter represented the heritage of the Progressive Reform and New Deal industrial regulatory approach, Ronald Reagan represented a return to the pre-progressive era philosophy of laissez - faire industrial market competition. Eventually, Reagan's free market philosophy won, and a new era for the Federal regulatory government emerged.

The newly elected Reagan Administration, at first, did not focus on antitrust issues or the telecommunications industry. The initial agenda of Reagan was directed toward reshaping the Federal government, dispersing decision making authority to the State governments, promoting national tax reduction, and a build-up of military defense. With a full plate already on the table, antitrust action took a back seat.

But the Reagan emphasis on National Defense offered A. T. & T. an opportunity to advance its own case within the new Administration, especially within the Department of Defense. The newly appointed Secretary of Defense, Casper Weinberger, quickly adopted the conventional wisdom of the Defense Department, namely that A. T. & T.'s current structure was an integral part of the national defense program.⁵⁴ Weinberger testified, in front of the Senate Defense Committees, that A. T. & T.'s centralized system must be maintained, and urged that the lawsuit against A. T. & T. be dropped ("Weinberger", March 23, 1981: 21 - 29).

To A. T. & T. it appeared that a similar atmosphere to the 1956 Consent Decree settlement was developing within the Reagan Administration, namely a friendly Presidential Administration that was pro-business and anti-regulation, coupled to a Defense Department which supported A. T. & T.'s continued existence in terms of national defense. All that was required, now, was for a friendly Attorney General to step forward to negotiate a new Decree. But A. T. & T. was misreading the environment of 1980 and 1981, and matters would not be that simply resolved (Temin and Galambos, 1987: 225).

The 1980 elections had resulted in two changes in Congress which were to have an impact on the lawsuit and future Congressional action. In the House, Lionel Van Deerlin lost his reelection bid for Congress, and the Chairmanship of the Communications Subcommittee passed to Timothy Wirth.⁵⁵ After Wirth assumed the Chairmanship of the subcommittee, he immediately stopped all

⁵⁴ The build up in Defense required an integrated national telecommunications network, one that would allow the Defense Department to rely on A. T. & T. to fulfill a wide range of rapidly developing telecommunications needs. ("Weinberger", March 23, 1981: 21-29).

⁵⁵ Wirth had been a subcommittee member under Van Deerlin, and had objected to the Van Deerlin bill. Under Wirth's view, the fruits of research belonged in the public dominion, not the private domain, and he had sought to have A. T. & T.

action on the Van Deerlin bill, and instructed the subcommittee staff to initiate a thorough investigation of the entire area of telecommunications policy. (Temin and Galambos, 1987: 235 - 236).⁵⁶

While Wirth was taking charge of the House subcommittee, the leadership in the Senate was also changing. The 1980 election saw the Republican Party take control of the Senate for the first time since the Eisenhower administration. The new Republican majority appointed Senator Robert Packwood of Oregon to be Chairman of the Senate Commerce Committee. Packwood, a vocal supporter of industrial deregulation, quickly moved to open the telecommunications industry to competition.

In April, 1981, Packwood introduced "The Telecommunications Competition and Deregulation Act of 1981" (S. 898, 1981). Packwood's bill was modeled directly after the Van Deerlin House bill, but also adopted the Goldwater Bill's philosophy by advocating the replacement of regulation with market competition to ensure the nation's future telecommunications needs. But A. T. & T., under the bill, would not be dissolved. Rather than dissolving A. T. & T., the bill broke the company into two main parts, long distance service becoming an unregulated competitive industry and local service remaining a regulated monopoly, which would be formally connected through common ownership. The separate entities would operate under different principles. The unregulated entities would operate as completely competitive units, while the regulated entities would continue to be under the control of the F. C. C. and the State Public Utility Commissions. There also would be a prohibition against mandated divestiture, and, in essence, a continuation of A. T. & T. as the "network manager".

While the Packwood bill was supported by the Reagan Administration, especially the Department of Defense, the Justice Department had reservations.⁵⁷ The Assistant Attorney General for the Antitrust Division, William F. Baxter, took the position that A. T. & T. and the Bell affiliates needed to be completely separated from each other. Long Distance service would enter the unregulated competitive market, while local service would still be retained within the regulated areas as a natural monopoly. In the end the company would be broken into two separate organizations, with no common ownership between the two companies. Baxter informed A. T. & T. that the Justice Department's new position was that all Bell operating companies would need to be divested, leaving A. T. & T. with only its research and manufacturing components, all of which would be outside the control of regulatory authorities (Temin and Galambos, 1987: 219 - 221).⁵⁸

divested of its research arm, Bell Labs.. The conflict between Wirth and Van Deerlin had been resolved with a compromise in which A. T. & T. was required to divide its research and development efforts between areas that were regulated versus areas that were unregulated. (Temin and Galambos, 1987: 235-236).

⁵⁶ Wirth also directed letters to the White House encouraging continuation of the lawsuit, and supporting increasing competition within the telecommunications industry. (Temin and Galambos, 1987: 235-236).

⁵⁷ At this time the Justice Department found itself in a rather unusual situation in terms of the A. T. & T. case. Normally a case of such importance would have been closely overseen by either the Attorney General or the Deputy Attorney General, but in the case of the A. T. & T. lawsuit this could not happen because of the possibility of a conflict of interest charge. The Attorney General at his time, William French Smith, had been a previous director of Pacific Telephone, one of the Bell Affiliates, and the Deputy Attorney General's, Edward Schmults, former law firm had been asked to file an opinion on A. T. & T.'s pension plan in the A. T. & T. case. As such, both Smith and Schmults withdrew from the case, and the case fell under the authority of the Assistant Attorney General for the Antitrust Division, William F. Baxter ("Washington Post", 2/6/81: D1).

⁵⁸ William F. Baxter was a well known law professor at Stanford University. He had a reputation for opposing

Baxter's position split the Reagan Administration over the A. T. & T. issue. By this time, the Packwood Bill's approach and the Defense Department position against the complete break-up of A. T. & T., had become the majority opinion within the Reagan Cabinet and Administration. (Coll, 1986: 211 - 229).⁵⁹ Edwin Meese, President Reagan's chief domestic advisor, tried to persuade Baxter to drop the case. But the ghost of Dita Beard, and the I. T. T. scandal, haunted the background. While persuasion could be used against Baxter, any direct order to drop the case would open a political firestorm over the Administration, and a charge of collusion would once again haunt a Republican President. The case, now under consideration in Congress, coupled to the increasing number of private lawsuits filed against A. T. & T. by the newly emerging long distance companies, made such a public move of quashing the suit too politically damning for the Reagan Administration.

Baxter, realizing the degree of autonomy now held by his office, and convinced of the rightness of his position, refused to drop the case without the divestiture agreement. The Administration found itself unable to stop Baxter without taking serious political damage. Baxter's move, against A. T. & T., thus continued, in spite of the majority of the Administration's desire to drop the case (Coll, 1986: 211 - 229).

A. T. & T. now realized that the case was moving against them, and, that without an out-of-court settlement, the Court ruling would probably result in the complete break-up of all the A. T. & T. holdings, including manufacturing and the local exchanges. By this time, though, A. T. & T.'s upper management began to shift their view of the nature of the company.

The long distance service had always been profitable, along with the manufacturing end of the company. The biggest money drain had actually been the local exchanges, and the requirement to cross-subsidize local rates with long distance revenue. In addition to the cross-subsidy burden, A.

government regulation of industry, and supporting the use of free market competition in all industries. Baxter was also publicly on record as supporting the Justice Department's decision to bring an action against A. T. & T. While Baxter was supportive of Justice's antitrust action, he was also suspicious of bureaucracy. He tended to work independently within the antitrust division, and often made his own decisions as to what course of action to take, rather than relying on the Justice Department's staff recommendations. At first he tended to not interfere with the case. He would attend staff briefings, examine case materials, and then return the matter to the staff attorneys. But over several months Baxter came to the conclusion that divesting A. T. & T. of its Western Electric Company would in no way encourage true competition within the telecommunications industry. Gradually Baxter's position hardened, and became one that advocated the complete divestiture of A. T. & T. and its Bell affiliates. The final position that Baxter took saw complete divestiture as the only way that would allow true competition to enter the telecommunications market. (Temin and Galambos, 1987: 219-221).

⁵⁹ In order to bridge the split in the Administration, Edwin Meese, President Reagan's chief domestic advisor, organized a Task Force to exam the issue of A. T. & T. The Task Force, composed of representatives from both the Department of Defense, Department of Commerce, and the Justice Department, began to draft position papers on the matter. The Defense Department elicited the aid of A. T. & T. in preparing its draft, and A. T. & T.'s attorneys provided briefings to Defense Department staff on the issues within the case. At the beginning of June, 1981, meetings were held between the members of the Task Force and President Reagan. In the meetings both the Department of Defense and the Commerce Department argued for dropping the lawsuit. Defense argued that the break-up would jeopardize national defense, and Commerce argued that the break up would lead to Japanese equipment flooding the domestic market, worsening the increasing trade balance between the United States and Japan. The Justice Department, on the other hand, argued that continuation of the case was within the stated philosophy of the Administration, namely the development of an unregulated business climate which encouraged competition. Baxter argued that divestiture was an alternative to more regulation, which, if continued (regulation), eventually would only hurt both national and international competition for American services and products. President Reagan, who heard the arguments both pro and con, was definitely of the opinion that the case should be dropped. But Reagan never specifically stated his position, thus leaving the issue hanging. (Coll, 1986: 211 - 229).

T. & T. faced an even more expensive problem in terms of the local physical wire network that connected every home and business into the national network.

The decision to use the cross-subsidy formula to underwrite local telephone rates had been successful in spreading telephone use across the nation. By the early 1970s, telephones could be found in over ninety percent of all the homes and businesses in the United States. But the increase in telephone penetration occurred at the same time that the actual wires and transmission systems in the network required either replacement or upgrading due to their age. The combination of increased use and an aging system had led to a decline in the performance of the network. While A. T. & T. had borrowed to upgrade the national long distance lines, it was still faced with the even more expensive process of upgrading the lines and equipment in all the local exchanges across the country. The option of divesting itself of the burden of the local exchanges, in light of the increasing capital costs, seemed to offer A. T. & T. a way to maintain the company without the long term debt obligation that seemed to be looming on the corporate horizon.

Long distance communication also offered A. T. & T. openings in markets within international communications and data processing services - areas that it had previously been restricted from entering by the 1956 Consent Decree. By divesting itself of the burden of the local exchanges, and being able to enter the emerging data processing and international long distance markets, with its equipment manufacturing arm still in place, A. T. & T. saw the possibility of not only increasing its profits, but also riding itself of an increasing burden caused by service in the local exchanges (Temin and Galambos, 1987: 249 - 263).

Recognizing that the Justice Department was not changing its position, and that the Administration's pressure was having little effect on the Justice Department's position, A. T. & T. decided to enter into negotiations with the Justice Department.

In October, 1981 the Justice Department and A. T. & T. 's legal staffs met to begin the process of negotiating a settlement. A. T. & T. tried to use the proposed Packwood Bill as the grounds for developing a settlement, but the Justice Department refused to be bound by either the Packwood Bill or any previous negotiations. For the next month negotiations dragged on with little forward movement. But in December a shot was fired from Congress that changed the whole basis for negotiations (Stone, 1989: 320 -323).

Since January, Congressmen Wirth's staff had been examining the necessity of breaking-up A. T. & T. Finally, on December 10, 1981 Congressman Wirth introduced his version of a Bill to deal with the telephone problem - "The Telecommunications Act of 1982" (H. R. 5158, 1982).

Wirth's Bill took the Packwood Bill's provisions, and extended them even further. In addition to everything within the Packwood Bill, Wirth's bill gave the F. C. C. the authority to regulate both the A. T. & T. system's competitive and monopolistic practices. A. T. & T. would also be required to buy thirty percent of its equipment from outside vendors and manufacturers, and give users of terminal equipment exclusive rights as to what equipment, and from whom, they would purchase. In the end, under Wirth's proposal, A. T. & T. would lose the Bell affiliates, have its manufacturing arm restricted, and still be under government regulation in all aspects of its business, including the competitive sector.

Realizing that a final Congressional decision would likely be a compromise between the Packwood and Wirth bills, A. T. & T. dropped all objections to negotiating with the Justice Department. In essence what Baxter sought, complete divestiture, was now acceptable to A. T. & T. (Temin and Galambos, 1987: 264 - 265).

But now that A. T. & T. and the Justice Department had reached a mutual agreement as to what to do, the next step was to ensure that Judge Greene would abide by their agreement, and not enact the Tunney Act provisions concerning the public interest hearings and reviews. It was here that a fatal mistake was made on the part of both A. T. & T. and the Reagan Administration.

The 1974 lawsuit had been brought based on the Justice Department's claim that the agreements reached under the 1956 Consent Decree were being violated by A. T. & T. The 1956 Decree was not under the jurisdiction of the Washington Federal District Court, but rather was under the jurisdiction of the New Jersey Federal District Court. In order to give Greene jurisdiction over the matter, but to restrict his options in terms of the final settlement agreement, it was decided by A. T. & T. and the Justice Department to follow a complicated trail of judicial venue shopping. (Coll, 1986: 324 - 335).

The game plan that was developed called for the Justice Department's attorneys to fly to Trenton, New Jersey, and to request of the New Jersey Federal Court, which had jurisdiction over the 1956 agreement, to void the 1956 Consent Decree. The voiding of the 1956 Decree would then reopen the original 1949 case, which would then take precedence over the 1974 antitrust filing, which had been based on the agreements reached to settle the 1949 case. The lawyers would then have the New Jersey District Court remand the 1949 case to Greene's Washington District Court. This move, in essence, would mean that Greene would be required to operate under the terms of settlement laws that were in existence before the passage of the Tunney Act's public interest requirements.

At the same time that the motion was being granted in New Jersey, Attorneys for the Justice Department would file with the Philadelphia District Court a request that additional Consent Decree Appeals, that had been filed in the Philadelphia Courts as a result of the 1956 decree, would also be voided since the 1956 Decree was no longer in effect.

While the revocation of the 1956 Decrees in New Jersey and Philadelphia were occurring, attorneys for both A. T. & T. and the Justice Department would file with Judge Greene's Court a request to dismiss the 1974 lawsuit, and instead reopen the 1949 case with the new settlement agreement attached.

The end product of the venue shifting would be that the original 1949 case would be filed within Judge Greene's court, rather than the 1974 case, and thus would be subject to a Consent Decree outside the grounds of the 1974 Tunney Act, and the public interest requirements stated within the Tunney Act. Thus Judge Greene would retain control over the case, but be restricted in his actions in terms of acceptance of the final settlement agreement reached between A. T. & T. and the Justice Department.

But the key to the entire process was that the New Jersey Court would comply with the strategy. Instead, though, the New Jersey Court, rather than vacating the 1956 Decree, transferred the 1956 Consent Decree, with the new proposed settlement, to Judge Greene's Court. Thus, technically, the 1974 lawsuit was still active, and subject to the Tunney Act.

Judge Greene was not in Washington on January 11, 1982 when all the legal maneuvers happened. When he was informed of the various actions by the Justice Department and A. T. & T., his anger at both the Justice Department and A. T. & T. reached a fever pitch. To Greene, it appeared that both parties had negotiated a settlement in a totally unrelated proceeding, namely the 1949 case, and were now attempting to either flee his jurisdiction, or obstruct his Court's

authority. Both A. T. & T. and the Justice Department had made a strategic blunder (Coll, 1986: 342 - 344). ⁶⁰

On January 14, 1982 the Justice Department and A. T. & T. announced that they had reached a final agreement, and were submitting it to Greene for his review. The agreement contained the following provisions:

1. Complete separation of Bell Systems and A. T. & T.. A. T. & T. long lines would enter the competitive arena, but the Regional Bell companies would retain their local monopolies.
2. All subscribers to long distance service would be able to select a long distance company of their choice by September, 1984.
3. Cost of long distance service would be based on actual charges and overhead without the inclusion of local or state subsidized rates or costs.
4. All equipment sold by all manufacturers would be connected to both Bell and A. T. & T. lines without exception.

When the Justice Department presented the settlement agreement to Judge Greene on January 21, 1982, the Justice Department argued that the Court's discretion in the settlement was very limited, and that the final agreement reached between A. T. & T. and the Justice Department could not be modified without the concurrence of both A. T. & T. and the Justice Department. Justice also argued that the Court did not have the authority to modify the agreement to ensure the public interest requirements of the Tunney Act.

But Greene shot back at both the Justice Department and A. T. & T., stating that while the New Jersey Court could accept the modification of the 1956 Consent Decree, they had not vacated the 1956 Decree. Thus the 1974 case was still active. Greene then stated that he would be willing to accept the agreement, and not change the basic terms within it, but only if the Justice Department and A. T. & T. would accept modifications to the decree ordered by the Court. These modifications, he informed both parties, would occur after Greene instituted the Tunney Act requirements for public comment.

Faced with the possibility of a continued trial, and the fact that Greene was willing to accept the overall terms of the agreement, the Justice Department and A. T. & T. relented, and agreed to allow Greene to enact the Tunney Act requirements and to modify the final agreement after receiving public comment (Coll, 1986: 357 - 364).

Judge Greene took the agreement under advisement, and opened the agreement to public comment for the next eight months. In August, 1982 Judge Greene issued his order accepting the basic

⁶⁰ In another strategy error, the Reagan Administration's news release, concerning the settlement, almost immediately took the wind out of both the Packwood and Wirth bills. The press announcements, and information supplied to Congress by the Justice Department, made it appear that the settlement contained the basic clauses found in both bills, and therefore Congressional action was unnecessary. Relieved of not having to deal with the politically charged issue of divestiture, Congress quickly dropped consideration of both Bills. But Congressional dropping of the Bills also meant that the Greene Court would be the only viable avenue available for settling the lawsuit. In essence, the Reagan Administration had burned their bridges, and now had only one option open to them, Judge Greene.

agreement, but modified it to allow the Bell Systems to continue to distribute yellow page directories while prohibiting A. T. & T. from any type of electronic publishing of its telephone customer base for seven years. Both A. T. & T. and the Justice Department accepted Greene's order (Henck and Strassburg, 1988: 227 - 236).

The State Public Utility Commissions, fearing the impact of Greene's order on local and intrastate rates, objected to the ruling. Thirteen of the States requested that the Supreme Court review Greene's authority in this area. In March, 1983 the Court ruled. Justices William Rehnquist, Warren Burger, and Byron White stated that they believed that Judge Greene had inappropriately invoked the Supremacy Clause powers of the Constitution by allowing the Federal government to preempt State Regulatory laws (a result of the breakup of A. T. & T., and the order concerning costing of long distance charges). The majority of the Court did not agree, and in a six to three decision the Court upheld Greene's decision, and his authority to oversee compliance.

Thus by 1983, the long distance and equipment monopoly had been destroyed, and the only area of the original corporate monopoly that was left was in the local and intrastate exchanges.

The Political Economy of a Corporate Collapse ⁶¹

The External Political Framework

The depression of the late 1920s and early 1930s led to the election of Franklin D. Roosevelt as President of the United States. The 1932 election of Roosevelt to the Presidency, and with him the Democratic Party's control of Congress, was actually the rejection of an existing view of government involvement in the economic development of society, and the replacement of that prevailing view with a new vision of a more active and centralized government administration and oversight.

Herbert Hoover, the Republican President from 1928 to 1932, was an engineer actively involved in the scientific management movement. In terms of a political philosophy, Hoover tended to believe in the Cartesian Dualist position of discovering the ultimate nature of human actions through rationality. Hoover perceived the problems of society as emanating from the area of waste and inefficiency rather than Hume's view of amoral human desires.

To Hoover, the normal human characteristics described by Hobbs, namely selfishness and greed, had ample opportunity to be exercised within the modern corporate systems that had been created within the United States during the late 1800s and early 1900s. Businessmen tended to use the existing economy as an opportunity to grab wealth for their short-term gain, and often ignored the long-term waste and inefficiency in the use of resources such an attitude created. The final result of this predatory selfishness, was the lowering of overall societal productivity, and the creation of conflict between management and labor.

⁶¹ The Political Economy sections, in terms of describing the various organizational cultures in existence, rely on several sources. Brooks, 1976 has the most extensive sections on the Presidential culture of A. T. & T.. Kahaner, 1986, is a very thorough analysis of the corporate culture of M. C. I., and the specific personalities that dominated the organization. Coll, 1986, contains extensive sections on F. C. C. staff, and various members of the United States Justice Department during this time. In addition, the author has used personal experiences and memories of the culture inside the United States Antitrust Division in the 1970s where he was employed as a librarian. At that time he worked on background research for United States vs. A. T. & T.

To solve the problems of American society, the elimination of waste was essential, and could be accomplished by an active government that assisted business in developing its functional efficiency. Through the use of voluntarism and mutualism, inefficiency in business would be eliminated, and productivity would rise, along with overall societal wealth. The issue of centralization of wealth and control within the society would ultimately be resolved by focusing on total societal efficiency. As efficiency increased, excess wealth would spread across the society, and eventually benefit all the members of the social order. (Burner, 1979: Haber, 1964).

In many ways, Hoover's view of economic problems, and the solutions within the American society, hearken back to the mutualistic era of business in the early to mid 1800s, before the rise of industrialization. In a sense, like many of the followers of the scientific management movement in both the private and public sectors during this time, the use of rationalism and science was seen as a way to offset the negative aspects of increased industrialization, while still retaining the economic benefits that were achieved through large scale production and industrial consolidation.

In such an atmosphere, the public sector sought to recreate the government-business mutualism that had existed during the Jacksonian period of government, but also rejected the Jacksonian call for a decentralized economic order within the society. Thus the Hooverian and Scientific Management models of the public/private distinction sought to couple the Anti-federalists emphasis on relationships and mutual self-interest with the Federalists emphasis on national industrial development.

The Rooseveltian position, on the other hand, did not see the problem of social economic conflict emanating from inefficiency of processes. To Roosevelt, and his New Deal supporters, the problem of economic conflict resided in the growing concentration of economic power within a few hands within the society.

Echoing the earlier Wilsonian - Progressive Reform position, and the much earlier Jacksonian/Anti-federalist position, the New Dealers saw greater and greater concentrations of wealth in the hands of either the owners or managers of American industry as the process whereby the true free economic market was destroyed. In their view, the spread of industrialization did not lead to the expanding free market of Hoover, but rather the opposite, the destruction of the free market.

Under the Rooseveltian view, as wealth became concentrated, business was able to effectively move beyond the power of the market. This was due to the fact that in all advanced industrial societies, the forces of production tended to move toward consolidation, and eventually resulted in the creation of monopolies. Ultimately, the power of corporate owners and managers reaches the point that they are able to set the terms of exchanges with other corporate interests to their advantage rather than the consumer or worker's advantage.

Once monopolies were achieved, the average consumer and worker no longer was able to take advantage of the free market's exchange opportunities, and would be forced into a form of economic servitude. Under this view, the only protection for the majority, who are actually the workers and consumers, is for government to intercede and institute economic oversight, and, if necessary, industrial planning. (Johnson, 1935: Lyon, 1935: Tugwell, 1933).

The position taken, thus, by the New Deal Reformers recognizes the Hobbsian position in terms of man's nature to acquisitively take other's "lawful" property, and Hume's position in terms of man's motivation emanating from levels of passion (greed) rather than reason.

But reason is not totally abandoned. Rather reason, in the form of scientific principles of management and economics, is utilized to redirect the flow of wealth away from concentration, and drive the social process toward decentralization of wealth and increased economic opportunity for all members of the society. In essence, science becomes the means for exercising Hume's concept of calm passions.

It is interesting to note, though, that in either case, Hoover's mutualism or Roosevelt's majoritarianism, the use of science and rationalism is advanced as the method of solution. The only difference actually between the two concepts is who will use the tools of science, the public or the private sphere of society.

A. T. & T.'s corporate strategy and culture, which promoted the use of engineering principles for decision making, high efficiency in industrial resource allocation, and a corporate policy of public/private mutualism and adjustment, fitted well with the Hooverian era's philosophy. The Forbes and Morgan legacy of industrial consolidation and concentration to achieve economic efficiency, modified by Vail's legacy of responsible societal efficiency and network rationality based on system standards, were completely in equilibrium with the prevailing governmental position of the dominate power groups within the society at the time.

The perception of private ownership involving a form of public trust and service coupled to fiduciary efficiency in terms of stock holders returns, seemed to have also been achieved within both the corporate headquarters of A. T. & T. and the physical telephone network under their management. The view that rationalism and reason would offset the negative influences of a deeper and darker side of human nature was shared by both the government officials designated to oversee the public interest, and the corporate managers designated to actually run the industry. Thus there was created, within both the corporate culture of A. T. & T. and the various government regulatory agencies of that time, a bases of legitimacy for both mutually reinforcing public and private actions in terms of the industry and the network.

But the new Rooseveltian model of national planning, and public majoritarianism achieved through national oversight and control of industry, was destined to come into conflict with the legacy of A. T. & T.'s corporate culture.

The newly forming governmental position, premised on a view of capitalism's negative influence on the nature of the public service obligations of the private sector, saw corporate ownership and management, naturally, engaged in a process of societal exploitation. The new position contained within it an inherent distrust of the intentions of capitalists. Under this view, the primary force underlying all capitalistic exchanges was a movement toward concentration and consolidation of wealth. within any area of market exchanges. While the original intentions of individuals may be toward competition and opportunity, eventually the "system" would force the individuals to modify their intentions and seek industrial control. The view of industrial competition that is presented is thus Hobbs world of "every man's hand turned toward every man". Unfettered industrial competition must ultimately lead to the "jungle", and in turn the debasement of the humanity of the individuals engaged in the competitive process.

In order to protect the "weak", namely the citizen's and consumers, from this predatory debasement of human nature, government must intercede to offset the process of human degradation occurring within the individuals engaged in competition. Constraints must be imposed on the various industries in order to control their acquisitive nature, and to ensure that the market place remains truly free to be influenced only by the principles of exchange and price, not by the principles of consolidation and monopoly.

But such controls must also allow for economic competition and opportunity, and not become so controlling that ultimately another form of monopoly, total governmental control, replaces the older negative aspects of capitalistic competition. This can be achieved, though, through the application of scientifically rational principles of economics and management that seek to establish constraints on the "system", but also allow for free exchanges and economic opportunity.

Balance is achieved through the development of a specialized governmental agency knowledgeable in the area of industrial competition. These new agencies, empowered with authority to curtail negative aspects, but also charged to promote market competition, thus form a rational system of oversight that allows for guiding the development of the industry rather than totally controlling its operation. Once again, science has allowed for the creation of a balance between the older Federalist's position of national industrial development and growth, and the Anti-federalist's position concerning economic opportunity.

But to A. T. & T. the new position called into question two fundamental cornerstones of the company's organizational culture. The first issue would revolve around the actual management and operation of the network. The new view held that consolidation, rather than being a scientifically and technically sound approach, was in fact only an extension of the capitalistic tendency toward market consolidation. While initially A. T. & T.'s setting of standards had involved both technical considerations and market entry control issues, by the 1920s the culture of A. T. & T. viewed the issue exclusively from the technical standards position. The view that the horizontal and vertical construction of the company was a form of monopolistic control was rejected by the corporation, and instead the position was that the "system" required both equipment and access control in order to maintain the "efficiency" of communication. A charge that the "system" had within it a purpose other than technical standards, such as market control, would be rejected as both untrue and irrational.

The second issue would revolve around management's "intentions". To the employees and managers of A. T. & T. the corporate culture's view of "rationalism" and science as a basis for decisions was viewed as the primary motivation for the firm. A charge that the capitalistic process had in fact "debased" their scientifically rational nature would be seen as an affront to the public service philosophy and stewardship legacy left in the organization by Vail and his successors. This would be especially the case when the largest employer of engineers in the world, A. T. & T., would be faced with an expanding level of federal employees who were versed more in law and philosophy than in hard science.

In this atmosphere of changing perceptions of the public/private relationship, conflict was inevitable. Faced with an immediate crisis, and evidence that corporate managerial manipulation of stocks had formed the basis for the crisis, the public side of social existence, government, enacted laws that constrained industries. Underlying these new laws, and regulatory bodies that they created, was a deep distrust of the honorable intentions of corporate management.

On the other hand, private industries and managers who had not engaged in the questionable activities that had led to the crisis, felt that they were being unfairly singled-out for control and punishment. Behaving in what they perceived as a responsible manner, and upholding the public service concepts of business, these corporate officials felt that their technical knowledge and personal motivations were being imputed. Rather than seeing capitalism as "debasing" their human nature, they saw "government" as debasing their personal value and worth.

The developments within the telephone industry were as equally affected as other industries by the changing social perceptions. The Spawn and Roper reports had little factual data to support the position that A. T. & T. was engaged in either creating another monopoly in the broadcasting industry, or trying to circumvent the regulatory control of the State Public Utility Commissions. None-the-less, A. T. & T. found itself, along with the rest of American industry, caught in the new social relationship that was established between the public and private spheres.

Adding to A. T. & T.'s "angst" was the resolution passed by Congress directing, and funding, the Special Telephone Investigation, and the confrontational attitude it encountered with both Commissioner Walker and the investigative staff of the Telephone Bureau. Within the F. C. C. staff was the perception that the charge to promote communications also contained the power to investigate anti-trust issues related to the industry. The initial charge for the agency, coupled to the Congressional investigation resolution, generated within the agency a sense of "mission" that exemplified the prevailing "distrust" of corporate and managerial "intentions". The aggressive style of Holmes Baldrige, which was encouraged by Commissioner Walker, further reinforced the "pursuit" mentality that pervaded the agency.

Thus from the very beginning of modern telephone regulation in the United States, a confrontational position was taken by both sides of the Federal regulatory relationship. On the one side, corporate, were the principles and assumptions of network consolidation and efficiency grounded in the "laws" of science, and on the other side, the F. C. C., were the principles of decentralization and the "public interest". grounded in the older progressive reform theories.

But the logic within the F. C. C. was flawed in its perception of the "system" that composed the policy regime. The aggressive pursuit of A. T. & T. was mounted as almost a form of Executive branch function, when in fact the agency was accountable to the Congressional Branch of government. As long as Congressional support was maintained in the pursuit of A. T. & T., the Special Investigation was able to operate within a confrontational and investigative framework. But the minute that Congressional opposition arose to the S.T.I., the F. C. C. had no other option but to curtail its efforts, and seek an accommodation with A. T. & T..

The F. C. C.'s Telephone Bureau's first, and only, foray into anti-trust issues within the telephone industry ended in a complete defeat for the agency in the area of regulation of the industry structure, and the issues of decentralization versus centralization of the industry. While the issue remained within the agency's culture, its avenue for expression would have to be over areas that did not directly challenge A. T. & T.'s industrial position.

With the F. C. C. effectively removed from the issue of centralization versus decentralization of the industry, the decisions relating to the industrial structure fell to either the Executive or Congressional branch of government. From 1938 on, the overall issue of whether the industry should or should not remain as a monopoly could only be decided by the policy making arms of government, not the administrative or regulatory agencies. Since A. T. & T. was in fact a holding company for a series of locally based and connected service units, it was able to utilize its local access, coupled to support from the State PUCs, to defuse any Congressional attempt to change the overall industrial structure.

But while A. T. & T. had effectively "defanged" the F. C. C. in the area of industry control over structure, it was not able to silence the agency in terms of its position related to increased competition within the industry. As the F. C. C., using its limited authority over the areas of equipment and wireless access, promoted more competition in the industry, potential competitors began to also lobby the Executive and Legislative branches of the government to pass legislation

that would move the industry from a centralized position to a market competitive decentralized position.

Once again, A. T. & T. was effective in blunting such suggestions at the Congressional level, where its localized lobbying structure was most influential. The company was also effective, at first, at influencing the structure at the Executive level, thus the Eisenhower Administration effectively curtailed the development and pursuit of anti-trust action against the company.

But the issue of decentralization and economic opportunity moved into the arena of Presidential politics in the 1970s, and allowed for action on the industrial level to be opened from the Executive level of government. While the initial opening was only directed at elements of the industry's structure, the escalating position over deregulation of society increased the level of conflict. Eventually, when the Executive Branch sought to reign in the effort, and pass the ultimate decision over industry structure to Congress, the process had been moved too far out of the policy arena, and had become captured by the Judicial arm of the government.

Once the issue was captured by the Court system, the nature of the debate over centralization versus decentralization of the industry structure was replaced by legal issues over anti-trust laws and the public interest. At that point in time, the external political issues fell, and in their place arose issues related to the internal economics of the firm.

The External Economic Framework

James Madison, in Federalist 51, spoke of the essential element in any political regime established within the United States when he said, "The interest of the man must be connected with the constitutional rights of the place." What he was expressing was a basic fact within our political order, namely that within a system of fragmented power and authority, the Constitutionally designated interests and rights of individuals and groups will be jealously guarded against encroachments by other groups. By the beginning of the United States active involvement in the Second World War, the regulatory regime of wire-based telecommunications in the United States reflected this underlying Madisonian principle.

On the one hand, authority for regulation of interstate communications resided within the Federal government. On the other hand, authority for intrastate communications resided within the State governments. As long as the two spheres could be clearly separated, conflict would be either eliminated, or at least reduced. But if the boundary between the two spheres became vague, or the interest of one sphere encroached on the other sphere, then the potential for conflict would be high.

The separation of both authority and interests had resulted in the development of an economic and political agenda between the two bodies that had very different motivations. The Federal level of regulation sought to promote the development of an advanced system of communications to serve the commercial and personal life of society, one that would, eventually, be accessible to all citizens. Thus there needed to be a balance between technological development and increasing public access. In order to achieve this balance, some forms of competition were required within the industry to promote technological innovation while, at the same time, placing economic market constraints on the cost for such services.

The State level of regulation also sought to achieve advanced communications, but its first priority was the extension of service to all the citizens - universal access. The State level saw the development of the network as a process for extending access rather than fostering competition. Through the limitation of the number of companies offering service, the State's were able to

control costs by setting a lower rate of return on investment through a guarantee on long term rates of returns to A. T. & T. The issue of technological innovation and market competition were relegated to a secondary and minor issue for the State Public Utility Commissions.

The two goals, universal service and technological innovation, were not mutually exclusive, and could have been developed in tandem, provided that a form of mutualism was fostered between the levels of regulatory authority.

In order to accomplish either goal, though, required the continuing improvement of equipment, and the continuing extension of wire lines, both very expensive undertakings. The costs for such developments would have to be reflected in the rates charged for services, but if rates were too high then both commercial and individual use would be discouraged, and the state's primary goal of universal access would be delayed. Thus how to pay for expansion and improvement of services was always a factor in the consideration of both the Federal and State regulators.

Eventually, the two economic agendas clashed over the 1950s issue of rate subsidization, and the forceful co-option of the F. C. C. 's agenda. The end result of the F. C. C. reversal was that by the early 1950s the cost for telephone services in the United States was being shifted from various users to other users. Business users subsidized residential users, urban residents subsidized rural residents, and long distance users subsidized local users.

The gap between cost and price for service was widening. The true Board-to-Board costs for long distance service was now artificially inflated by the Station-to-Station method that was adopted, while the true Board-to Board costs for local services was artificially dropped below the line of true cost recovery. Whatever principles of the economics of the market place that had been in existence before then in the wire-based communications industry, were now completely gone. In place of economic principles undergirding an industry, there now were political principles.

But in the process of destroying economics within the industry, the political and legal boundary between Federal and State authority had also been breached, and with that had occurred a violation of Madison's concept of "the constitutional rights of place." The State government's agenda for "Universal Access" now dominated the wire-based telecommunications regime, while the Federal agenda of developing a balance between access and a technologically advanced communications network was relegated to a secondary role. The basis for the legitimacy of Federal oversight had been compromised by a coalition of telecommunications industry companies, state government public utility commissions, and Congressional actors. The combination of threats and hostility generated against the F. C. C. by the Walker Report fight in 1939, plus the 1950 "cross-subsidization" decision, severely undermined the F. C. C.'s authority, and the legal rights it had to regulate the economics of the wire-based communications industry.

The interesting fact, though, was that this process of economic destruction occurred at a time when technology was emerging into the market place that could actually reduce the costs for telephone service. It was this technological development, especially as its nature could be defined by the F. C. C., that offered the F. C. C. the opportunity to reestablish its authority within the policy "regime", and eventually return market place principles to the telecommunications industry.

Within the F. C. C., which had its periods of conflict with A. T. & T., it was grudgingly admitted that "Ma Bell" did have a few good points. Although always suspicious of A. T. & T.'s monopoly intentions, the Common Carrier Bureau had been able to work out, by the 1950s, an arrangement for negotiations over equipment prices and rates that allowed such negotiations to be dealt with at the staff level, and usually negotiated in an atmosphere of persuasion and compromise. Prices were

falling, and it was obvious to the F. C. C. staffers that A. T. & T. was one of the most efficient utilities in the world. While not always agreeing with A. T. & T.'s position about competition in a free market, the Common Carrier staff did admit that A. T. & T.'s corporate strategy of slow, steady growth coupled to phased in technological upgrades, did work (Henck and Strassburg, 1988).

There was also a recognition within the Bureau that communications authority was divided between the Federal and State governments, and that this line of division had to be respected. The Bureau sought to achieve positive government regulation through a process of monitoring and fact finding, coupled to a strategy of negotiation and compromise between themselves, A. T. & T., and the State Public Utility Commissions. It was this dedication to public service that was manifested within the Bureau, and especially promoted by Bernard Strassburg.

But Strassburg had been offended, also, by what he felt were unfair charges that the Bureau was in fact A. T. & T.'s servant. In order to improve its regulatory image, Strassburg ended all informal negotiating sessions, and began to open investigations into other areas of A. T. & T.'s operations. Still, these investigations were conducted within an acceptance of the concept that the telephone network was, in many ways, still a form of natural monopoly.

While it was recognized within the Bureau that A. T. & T. could and would resort to the use of political influence to maintain its de facto monopoly, it was generally agreed that A. T. & T. actions were within the general rules of law and civil conduct. Its attempts to restrict competition were within the rules of the game, and while A. T. & T. would play "hard ball", they would not cross the lines of law.

Eventually, though, the atmosphere of accommodation was breached by the issue of wireless communications. The development of microwave transmissions as an alternative to the wire network presented the major customers of the industry, namely the large national corporations, an alternative system of communications that was more reflective of the true cost to price principles of the market. The new system also offered the possibility of acquiring new forms of technology in communications equipment outside the monopoly control of A. T. & T. and Western Electric.

The argument presented by the telecommunications industry and its political supporters, namely the loss of revenue needed to cross-subsidize local telephone rates, was a position which could not be supported by the F. C. C. The original decision over the cross-subsidization of local rates with long distance revenue was the primary factor that had undermined the F. C. C.'s "Constitutional Rights of Place", and allowed the PUCs universal service agenda to dominate the policy regime. The F. C. C. acquiescence with the revenue argument would have meant a further deterioration of its authority within the policy subsystem, and a complete repudiation of its charge to develop both technological advancement and competition within the industry. As such, the F. C. C. rejected completely the revenue argument, and instead advanced the entry of new competitors within the industry.

The decision by the F. C. C. to use the new technology to promote competition within the industry occurred at a time, though, when A. T. & T. and the PUCs were facing major problems over the network's transmission quality. The demands for increased capitalization and higher rates of returns on investment were fueling increased local rates for service. Faced with the pressures for increased revenues, and a Federal regulator obviously oriented toward promotion of even more market competition, the telephone coalition resorted to a direct attack on the newly emerging competitors, and drove the issue into the internal political framework of the industry.

The Internal Political Framework

In October, 1927, two years after he had become President of A. T. & T., Walter Gifford addressed the National Association of Railroad and Utilities Commissioners at their annual meeting in Dallas, Texas. In the speech, Gifford presented his view of A. T. & T.'s relationship with the American society.

"... the fact that the responsibility for such a large part of the entire telephone service of the country rests solely upon this Company and its Associated Companies ... imposes on the management an unusual obligation to the public to see to it that the service shall at all times be adequate, dependable, and satisfactory to the user. Obviously, the only sound policy that will meet these obligations is ... to furnish the best possible telephone service at the lowest cost consistent with financial safety." (Gifford, 1927).

The Dallas speech, publicly, placed service as the first priority within A. T. & T. and its Bell Affiliates, with profit becoming a secondary objective.

In many ways, Gifford's speech was a public reaffirmation of the continuation of Theodore Vail's vision of a national network operated with a high level of engineering quality and advanced management techniques. But for its time, the "Roaring 20s America" with its get rich quick attitude, it was a remarkable speech coming as it did from the President of the largest corporation in the country. The speech, which outlined the basic principles, for the first time, of a public service corporation, was also an extension of the principles of management that had been evolving under the Scientific Management Movement, and the earlier economic concepts of business management as public stewardship and trust coupled to Christian tolerance and leadership that had been advanced by the Progressive Reform theorists of earlier years. It was this concept of management that became the internal corporate culture of A. T. & T.

The speech was also remarkable because it showed the world where the real authority for A. T. & T. actually resided inside the company. Stock holders might vote on certain matters, but management held the ultimate control, and would decide the mission and goals of the firm.

During the next forty-six years, through a series of Presidents of A. T. & T., the Gifford public service corporation philosophy grounded the decision-making process within the firm. A. T. & T.'s decision to concentrate on the telephone industry rather than expanding into other areas, its opposition to the findings of the Walker Report, its development of a new costing formula with the Public Utility Commissions, and its objection to the development of outside microwave networks and equipment suppliers, were all affected by this internalized view of the organization's mission.

To a great extent, public perception of A. T. & T. reinforced this internal culture. During the same time period, telephone service was extended to the point that it had become almost total universal access. Service quality continued to improve, while long distance rates slowly fell. Local rates were modest, and often remained fixed for a decade. The general public view was that A. T. & T. might be a monopoly, but operating under its corporate philosophy it behaved in a manner appropriate for a public steward.

But the corporate culture of M. C. I. was very different than the scientifically grounded philosophy of A. T. & T. The M. C. I. corporate structure had been created grounded in the combination of engineering principles, legal jurisdictions, and technological marketing. The primary motivation of the management team was classical Hobbs and Locke, namely personal self-interest and the desire

to get rich. While A. T. & T.'s corporate culture placed service first and profits second, M. C. I.'s corporate culture was just the opposite, placing profits first and service second.

In between these diametrically different views of the communications world was placed the organizational mission and culture of the F. C. C.'s Common Carrier Bureau. The original founders of M. C. I. had in mind a limited communications network. The F. C. C., when reviewing the license request, viewed the system as experimental, and thus not a challenge to the national telephone network. The Commissioners thus approved the M. C. I. request. But what Bernard Strassburg and the F. C. C. Commissioners did not realize was that the original intentions of M. C. I., namely the limited Chicago to St. Louis corridor, had changed once William McGowan became President of the company. (Kahaner, 1986).

McGowan's plan called for the development of a nation-wide alternative network, one that would directly challenge A. T. & T.'s position in long distance service. While McGowan's plan was feasible, it did have one area of conflict, and that was in the area of the old board-to-board versus station-to-station debate. While McGowan's system of communication was definitely within the board-to-board area of straight city to city communications, the offices in each city using the M. C. I. services would have to reach the M. C. I. communications nodes by using the local telephone networks lines. While the F. C. C. approval of M. C. I.'s application had required local interconnection to the network, that interconnection still had to meet the A. T. & T. equipment standards in order to ensure the technical integrity of the total communications network. A. T. & T. could not stop McGowan from building his national network, but they could use their technical standards to block his ability to sell his services to local subscribers by focusing on the station-to-station issues of technical integrity.

But A. T. & T.'s ability to block M. C. I. through the issue of the technical integrity of the station-to-station interconnection was not just an economic strategy for A. T. & T., it was also a very real national technical problem by 1970. (Brooks, 1976: Chapter 12).

The expansion of service due to the adoption of the NARUC costing formula, coupled to the aging of the physical network, had resulted in a loss of transmission quality within the system. As the system performance began to degrade, public criticism against A. T. & T.'s performance began to appear in the national media. The dilemma facing A. T. & T. was that its public image as a technically competent organization was beginning to fade, and instead a new image was emerging which portrayed the organization as technically incompetent and rigidly bureaucratic. This was not only a direct offense to the internal corporate culture's view of itself, but also a potential problem in the financial markets.

One of the strengths in A. T. & T.'s stock and bond offerings was the perception of guaranteed return coupled to wise management stewardship. In order to resolve the technical problems within the network, A. T. & T. was going to have to go out on the bond market to raise funds for a major system's upgrade and expansion. Part of the success of the upcoming bond sales would be the financial market's confidence in A. T. & T.'s management. The public image problem that was developing would thus have a direct impact on the bond sales, and in turn, on the level and quality of the system upgrade.

In addition, the sale would also be occurring during a time when an upstart competitor would be opening up a national network, and "cream skimming" its best and most lucrative customers. This would affect the financial market's confidence in A. T. & T.'s historically guaranteed level of return on investment.

By the early 1970s A. T. & T. was trying to raise over one billion dollars per year in the financial markets for system upgrade needs. The deteriorating image was beginning to have an impact on the offerings of their bonds and stocks. Stock offerings in the company declined, dropping from 75 in 1964 to 40 3/8 by 1970.

But debt financing also added to A. T. & T.'s problems, and total capital debt in the company rose from thirty-five percent in 1967 to over forty-seven percent by 1972. The pressure for capitalization, coupled to rising interest rates, caused its annual earnings to drop to \$4.00 per share in 1969, and then to remain at this base for both 1970 and 1971. The financial problems were so acute, that even the State Public Utility Commissions became concerned, and authorized local rate increases, often the first in over a decade.⁶²

The aggressive marketing strategy of M. C. I., and its direct challenge to A. T. & T.'s control of national long distance service, further aggravated A. T. & T.'s financial and capital problems. In order to respond to the emerging competition, A. T. & T.'s President, John de Butts, resorted to delay tactics in terms of providing M. C. I. access to the local Bell networks.⁶³ At first, the delay strategy seemed, to M. C. I., as only a form of "hard ball" corporate negotiations, which eventually would be resolved in the final rate structure agreed to by both parties. But as negotiations dragged on, it became obvious to M. C. I. and McGowan that DeButts and A. T. & T. were determined to drive M. C. I. out of the telecommunications business.

⁶² During this time of developing crisis, A. T. & T.'s President was Haakon Ingolf Romnes. Romnes had become president in 1965, succeeding Frederick Kappel. Romnes was born in Wisconsin, of Norwegian parents, and had acquired an engineering degree from the University of Wisconsin. In the traditional model of A. T. & T. development, Romnes first job out of the University of Wisconsin was a low level field operation with Wisconsin Bell. He worked his way up the corporate ladder, and eventually, in 1959, became president of Western Electric. Romnes came to the office of President of A. T. & T. not because Frederick Kappel had groomed him for succession, but because the stockholders and upper management of A. T. & T. wanted a personality the complete opposite of Frederick Kappel (Brooks, 1976: 280 - 286). During the Kappel years, 1956 to 1967, Frederick Kappel was able to effectively alienate almost everyone within A. T. & T. and the major stockholders in the company. Kappel had a rude, sarcastic, arrogant attitude, and generally treated employees and stockholders in a condescending and patronizing manner. To Kappel there was only one thing that mattered, and that was the fact that he ran A. T. & T., and he made all the decisions. While no one particularly liked Kappel, he was an effective manager, and the company profits continued to grow. But when Kappel decided to retire in 1967, a decade of his tyranny within the organization was ended. Both employees inside the organization, and major stockholders, lobbied the Board of Directors to select someone with a personality that would promote a more cooperative organizational atmosphere. Thus Romnes was selected to bring a form of wound healing to the organization. Romnes was an engineer and he believed in the engineering principles of the organization. But he was also a humanist who felt that the engineering culture had deficiencies in terms of traditional humanistic principles and values. Romnes was also an individual with a social conscious, and felt that corporations had a responsibility to society to not only promote quality services, but also help in resolving differences within economic and racial distinctions. He was a basically good man. The problem though was that Romnes was not a very effective leader, especially in a crisis. He tended to delay decisions, allow too much discussion of options, and was always seeking to uncover every aspect of a problem before selecting a course of action. As a result of his ineffective leadership, the problems within the network and the financial markets continued to deteriorate. He finally retired in 1972, and was succeeded by John deButts. (Brooks, 1976).

⁶³ DeButts was very different than Romnes. DeButts, in many ways, saw the deterioration of the network quality, and the falling image of the company, as a personal failure. DeButts was a Southerner, from a background of wealth based on the railroad industry. Over six feet, two inches tall, and carrying two hundred pounds of weight on a broad-shouldered figure, he was a physically imposing figure. In addition, he was a graduate from the Virginia Military Institute, and seemed to exude a sense of military leadership and power coupled with wealth (Coll, 1986: Chapter 1). During his career with A. T. & T. he had held over twenty-two different positions, and had worked in every division of its sprawling organization. He had also been involved in research at the Bell Labs, and had headed A. T. & T.'s Government Relations Office, the lobbying arm of A. T. & T. He was, in every way, an A. T. & T. corporate director, and took personal and professional pride in the organization. Whatever public crisis A. T. & T. faced was a personal matter to deButts. It was this attitude of determination that assumed the office of President of A. T. & T. in March, 1972.

Once it became clear to M. C. I. what A. T. & T.'s ultimate intentions were, M. C. I. resolved to fight back, and to not only directly challenge A. T. & T.'s long distance service, but to also seek the complete dismemberment of the company. In order to accomplish the goal of breaking-up A. T. & T., M. C. I. and the other emerging companies resorted to challenging the company within the Federal Court system under the concepts of anti-trust law.

By challenging A. T. & T. under the concept of anti-trust, the focus of the conflict shifted away from the internal politics of corporate competition to the internal economics of A. T. & T. The anti-trust challenge directly assaulted A. T. & T. at its most vulnerable point.

The Internal Economic Framework

The outbreak of World War II temporarily called a halt to the historical debate over centralization versus decentralization of both the public and private spheres of social and commercial existence. Administrative hearings and anti-trust actions against business were put aside, and the government and industry concentrated on winning the War. But as it became more evident that the War was beginning to end, especially after 1944, the old issue began to resurface.

While the outbreak of World War II had fueled an economic boom in the United States, and ended the depression of the 1930s, fear still existed that depression remained just around the corner. Many individuals within the economic community felt that the end of the War would result in a reduction in the output of industry, and eventually widespread unemployment. The reduction in demand, at the same time as there was a ballooning of workers due to the return of the soldiers and sailors, would cause a widespread depression, and a return of the economic problems of the 1930s. To some, the use of anti-trust policies could be used to either prevent the economic depression, or, at the least, soften the economic landing by increasing industrial competition. (Stone, 1989: 67 - 68).⁶⁴ Thus anti-trust actions were used to both correct the problems associated with industrial consolidation, and to promote economic development through the opening of competition within various markets.

But the aggressive anti-trust actions that were instituted under the Roosevelt and Truman administrations suddenly ended when the Eisenhower Administration took over the Executive branch of the Federal government. As part of the return to a philosophy of industrial promotion and accommodation, the anti-trust action against A. T. & T. was halted, and an obvious political solution was created that maintained A. T. & T.'s dominate position. While the action against A. T. & T. was halted, inside the Justice Department and Congress the legacy of the "political solution" remained. The "political solution" legacy of the 1956 decree fueled a general distrust of A. T. & T.'s corporate intentions within both the staff attorney level of the Anti-trust Division, and

⁶⁴ Into this atmosphere of economic fear stepped Harry Truman. Truman's ascendancy to the Presidency of the United States after the death of F. D. R. in 1945, unleashed the most aggressive period of anti-trust actions since the passage of the Sherman Anti-Trust Act in 1890. Truman, a no-nonsense Western populist with a deep, and long term, distrust of big business and monopolies, used his position as President to unleash the Executive Branch's Departments against the largest companies in the United States. By 1949, the Justice Department's Antitrust Division, and the Federal Trade Commission, had filed anti-trust actions against General Electric, the Great Atlantic and Pacific Tea Company, Du Pont, General Motors, United States Rubber, the American Can Company, Bausch and Lomb Optical Company, Eastman Kodak, Timken Roller Bearing Company, United Shoe Machinery Corporation, United States Alkali Export Association, and the Yellow Cab Company. In addition to the above specific companies, suits were also pursued against the largest tobacco firms, meat packers, the largest dairy producers, the farm machinery industry, investment banking, steel manufacturers, and cement producers (Stone, 1989: 68 - 69).

the Congressional oversight committees. During the 1960s, as competition within the industry began to emerge, both the Executive Branch Departments and the Legislative Branch Committees continuously watched A. T. & T.'s actions for any signs of either violations of anti-trust laws or questionable competitive practices.

By the early 1970s, morale inside the United States Justice Department's Antitrust Division was at a record low. The Watergate scandal had touched the Justice Department's sense of professional integrity when the Attorney General under Richard Nixon, John Mitchell, had been forced to resign for his part in the Watergate cover-up. The Mitchell resignation had tarnished the Department's reputation for independence and legal integrity, and its legacy was a sense of professional embarrassment within the Department's staff attorneys (Temin and Galambos, 1987: 108).

The career attorneys, the ones who had been with the Department since the 1940s and 1950s, were used to politics entering the Department through the side door of political appointees. One very famous case that they still personally remembered was the 1956 Consent Decree that had stopped the Justice Department's Antitrust action against A. T. & T. Over the years the story had reached almost mythical levels within the Department, and was used, with the younger attorneys, to explain how the political power of corporations would be used to interfere with the Department's attempts to enforce the antitrust laws.

The younger lawyers in the Division listened respectfully to the elder's stories, but they were from a different generation with a different type of agenda. The majority of them were politically liberal, and had been involved in the student activism of 1960s. The spirit of the turbulent 1960s of change and social activism was linked to their professional training in law. They were diligent, dedicated, and determined to bring the force of law to work against the social and economic problems that faced American society (Baughcum and Faulhaber, 1984: 86).

In many ways, the two generations reinvigorated the Department. The older career attorneys were influenced by their younger colleagues optimistic passions and energies, while the younger attorneys acquired the political skills that reside in law, and learned patience through the historical legacy that was passed on to them within the agency.

Part of M. C. I.'s legal strategy was to engage A. T. & T. in a series of lawsuits that would eventually erode its position as a natural monopoly. While there were many types of actions available to M. C. I., there still remained the legal fact that the only agency that could actually bring a lawsuit in a Federal Court to destroy any monopoly was the United States Justice Department. If M. C. I. eventually wanted to destroy the monopoly concept it needed to involve the Justice Department in the attack against A. T. & T.

Starting in 1973, attorneys for M. C. I. began to meet with a group of younger attorneys within the Antitrust Division, informing them of M. C. I.'s various court challenges, and seeking to build a case that antitrust action should be initiated against A. T. & T. M. C. I.'s argument was that since A. T. & T. owned the long distance exchanges, local exchanges, and equipment manufacturing, in other words its horizontal and vertical corporate structure, it had created a "Strategic bottleneck" in the industry. This had resulted in a violation of the Sherman Antitrust Act's prohibition against secondary monopolies (Baughcum and Faulhaber, 1984: 86).

While M. C. I. was advancing its case with the younger attorneys, the senior staff attorneys were reexamining the 1956 Consent Decree, and the implications that seemed to arise from the F. C. C.'s admission that it was unable to effectively monitor the equipment side of the telephone

industry. Eventually, the two streams of agency investigations merged into the telephone task force, and brought with them both the new issues of economic competition within the industry, and the legacy of past political solutions to avoid prosecution. Fueling the convergence was the agency's desire to rehabilitate its public image, and to clearly define its independence from corporate influence.

Further activating the anti-trust movement within the agency was the Executive and Congressional agenda of promoting industrial competition through the process of deregulation, and the opening of decision making processes through the use of the public interest concepts within the Tunney Act. The combination of forces eventually resulted in the reopening of anti-trust action against A. T. & T.

But the reopening of anti-trust actions against A. T. & T. coincided with an increase in the authority of the Federal Court systems to intervene in the oversight of the final judgment in order to ensure the continuing public interest, and an increase in the level of judicial activism that could be independently exercised by the Federal Courts. In the case of the United States vs. A. T. & T., Judge Greene's concept of judicial activism was activated by the back stage movements of the Reagan Administration, and the Administration's attempts to settle the A. T. & T. lawsuit outside the authority of the Tunney Act's public interest clause.

The net result of the Reagan Administration's back door maneuvering was that the Tenth Federal District Court in Washington, under the authority of Judge Greene, asserted policy control over the development of the telecommunications industry in the United States, and the internal economics that influenced the structuring of the industry.

In what can only be seen as a major policy failure, by the early 1980s both the Executive and Legislative branches of the Federal government had effectively relinquished their authority over the telecommunications industry to the Federal Court system. Greene's ability to exercise the Tunney Act provisions allowed not only the hearings to be expanded to other parties and industries, but also positioned Greene in the center of all decisions related to the implementation of the agreement.

Greene's framework, in essence, made every telecommunications act related to either A. T. & T. or the Bell Companies - eighty-five percent of the national telephone service - from either the F. C. C. or Congress, subject to review by his court. A type of "Council of Revision" ⁶⁵ had been created at the Federal level of government in terms of telecommunications policy and law.

Over the next thirteen years, Presidents, Congressmen, F. C. C. regulators, State PUC officials, and political columnists would complain about the Judicial dictatorship of Greene, and rail at what was perceived as the Federal Court's usurpation of the powers of the Legislative and Executive branches of Government.

⁶⁵ Madison originally proposed, in the Constitutional Convention, that a Council of Revision be created. Under Madison's concept, the President and a number of the Federal Justices would review all laws before they were actually implemented. The council could declare that a law was illegal, and return it either to Congress or the agency of government which enacted the regulation. Eventually, the Constitutional Convention rejected Madison's proposal, and instead implied that the Senate was to fulfill this function in consultation with the President. (Kelly, Harbison, Belz, 1991: 89, 123). But Greene's assertion of authority over telecommunications, in essence, created a de facto Council of Revision, and restricted the legislative process of both Congress and the F. C. C.

In the middle of the evolving conflict between the various arms of the Federal government, Congress continued to try to develop a national telecommunications policy, and a new regulatory framework in which a new policy might operate. But a resolution of the problems created by the Modified Final Judgment, MFJ, of Judge Greene seemed to grow more elusive as each year passed.

Where previously the telecommunications policy had dealt with one dominate monopoly and firm, after the MFJ the policy landscape was littered with several long distance carriers, seven major regional telephone companies, and a wide range of independent telephone and telecommunications companies, all of which had separate political and economic agendas. The complexity of the landscape, and the on-going rulings of the Greene Court under the MFJ, presented the policy makers with an ever shifting area of issues, interests, and industrial structures. This was especially the case in terms of the new economic relationship between A. T. & T. and its former Bell affiliates, and the continued retention of the concept of a natural monopoly in terms of the local telephone exchanges.

Structurating Principles

During the fifth stage of the development of the telephone policy subsystem we see the reassertion of an expansive role for government within society. Once again, crisis has generated a sense of social uneasiness, and an assertion of public control over private existence through an increase in governmental authority and scope. Initially the Great Depression of the 1930s fosters the sense of crisis. The general perception develops that the crisis is the direct result of the American business community's lack of a sense of public welfare, and a failure on the business community's part to uphold older concepts of business as a public service.

Governmental fact finding investigations into the crisis seem to uncover a pattern of business management's actions forming the basis for the failure of the system. The failure of owners to be able to effectively oversee the manager's actions of national corporations, and these manager's subsequent actions to manipulate the process of economic exchanges to their personal advantage, appear to be the underlying causes of the market's failure. The revelations cause an swelling in sentiment to bring greater control and accountability over the operation of national industries.

The telephone industry is also affected by the growing sense of crisis, and the national call for greater control. Previous investigations of problems developing within the broadcasting industry are linked to investigations over public utility companies use of holdings companies to circumvent state regulatory body's authority. While there is no direct evidence of a similar pattern of action within the telephone industry, the general suspicion of the intentions of telephone management, and the need to maintain the public interest, once again surface within the political and collective side of society.

The historical belief concerning the division of centralized and decentralized political and commercial authority has also been undermined due to the crisis. While the society has sought to promote the underlying beliefs in the constitutional divisions of political and commercial authority, and thus achieve a balance between the Hamiltonian concept of industrial development and the Jeffersonian principles of economic opportunity, the subsequent investigations into the causes of the economic crisis reveal a structural failure on the part of the designated institutions to maintain the underlying beliefs and principles.

The perception emerges that the State level of control, the Public Utilities Commissions, have failed to exercise sufficient local oversight to control the predatory nature of public utility

industrialization. At the same time, the Federal level of authority perceives the possibility of the same type of structural failure occurring at the Federal level by the I. C. C.'s lack of oversight on interstate telephone service, and the F. R. C.'s failure to control the expanding influence of the national broadcast network systems. In an attempt to reestablish the balance between industrial development and economic opportunity, and to achieve the benefits of technological advancement while still maintaining equity of access, the Federal level of government recalibrates the authoritative system.

But while the new system expands and consolidates the Federal level of authority into a single institutional system, the underlying belief in the separation of political and economic authority is maintained. The national, centralized, level of authority is maintained within the newly created F. C. C., but the local, decentralized, aspects of political and economic development are retained by the continued recognition of the State Public Utility Commission's authority at the local and intrastate level. Thus the original belief in split authority is maintained, and reified within the new policy regime that is created.

But in the general mood of distrust of business intentions, the perception is created that the new Federal agency that has been created has also been given oversight on another aspect of societal beliefs: namely the authority to intervene to curtail private property rights through the exercise of anti-trust concepts and laws. As the newly created agency moves on the issue of anti-trust, though, it discovers that the perceived charge concerning anti-trust was political in nature rather than constitutionally grounded. This revelation, which appears with the release of the Walker Report, sets a hard boundary between the Federal centralized and State decentralized authorities, and once again reifies the underlying belief in constitutional fragmentation of power.

Once the boundary between the two authorities has been set, the Federal level of authority is constrained within its mission to promote technological advancement and public access. While able to exercise oversight on rates and technical standards for the national network, it is constrained from interference at the local or state levels of the network. But since the network is interconnected, the corporate side of the relationship is able to avoid control by redefining what within the network is national and what is local in nature. This strategy allows it to form a coalition with the State decentralized level's agenda of universal access through the application of rate subsidization, and thus further constrains the national level of oversight.

But the underlying belief in economic opportunity is once again reasserted through the expansion of technological developments within the wireless spectrum of communications. The earlier F. R. C. charter of national authority over wireless communications, which was passed to the newly created F. C. C., allows the agency to once again assert the Jeffersonian principles of economic opportunity and access through the redefining of the nature of communications, and the expansion of alternative competitors within the telecommunications industry. Once again, the constitutional belief in split authority is maintained, but since it was earlier agreed that Federal authority over wireless spectrum allocation was total, the Federal level of oversight is not shared with the States.

The Federal exercise over wireless, coupled to its decision to open the system to national competition, completely undermines the corporate ability to define what aspects of the network are local versus national, and destroys the basis for equilibrium that has been established within the policy regime. The subsequent corporate response to the opening of the industry to economic competition, and its use of obstruction to provide interconnection to the local exchanges, causes the charges of anti-trust violations to surface.

The surfacing of the anti-trust charges causes the issues of the abuse of private property rights to emerge. The assertion that there has been a violation of the public interest through the abuse of private property right causes the debate over centralization versus decentralization of the industry to move from the Legislative and Regulatory side of government to the Judicial arm of government. Once the issue moves into the judicial arm, the debate no longer centers on the older Federalist versus Anti-Federalist concepts of industrial development, but rather the issue is now centered on another set of beliefs within the society which are grounded on the historical beliefs and principles involved in the rights and limitations over the ownership of private property.

Once the issue moved into the Federal Court System, Judge Greene was able to completely circumvent the older Hamiltonian versus Jeffersonian principles by asserting an even higher level of societal belief: namely the assertion of the public interest concept reified under the Tunney Act, and the Supremacy Clause of the Constitution. By grounding his decisions on both underlying beliefs, Greene was able to effectively assert that the national interest in the issue was of such a magnitude that State authority was thus nullified. The subsequent Supreme Court decision upholding his ruling in effect shifted the policy regime toward the national level, and undermined the decentralized authority of the States.

While Judge Greene was thus able to move the issue completely under the control of the Judicial arm of government, and to redefine the industrial structure at both the national and local levels, his move also further destabilized the policy regime by pitting basic social beliefs and principles against each other. The end result was that the older belief in a balance between centralized versus decentralized political and commercial authority, was now in conflict with beliefs over the rights of private ownership and the defining of such rights by the Federal level of government under the principles of the national public interest.

Process Model

The Depression of the 1930s completely undermined the sense of mutualism and cooperation that had been established between the Federal level of government and the national industries that dominated the corporate landscape of the 1920s. While the causes of the Depression were complex and multi-faceted, the general societal impression that emerged was that the crisis was the direct result of the failure of the American business community to exercise any sense of social responsibility.

The subsequent investigations into the Fall of the Stock Market, and the revelations of stock manipulation and "watering" lead to the search for a new form of public and private relationship. The solution that emerged, regulation of industrial development through specialized Congressional chartered agencies, seemed to offer society a combination of reasonable safeguards against future abuses, and the retention of a reasonable amount of corporate freedom to pursue profitability.

The F. C. C. was the creature of this new form of governmental - private relationship, and thus was an attempt to encourage technological development while still retaining a degree of societal oversight over the workings of the telecommunications industry. But the F. C. C., like the other agencies that were also created at this time, faced the task of first defining what the exact nature of it's mission was, and then establishing a formal relationship with the industries it was charged to oversee.

The private sector, which had previously experienced the limited regulatory oversight of the Coolidge, Harding, and Hoover Administrations, were also engaged in determining the exact nature of this new type of governmental oversight. The earlier anti-trust actions by the Progressive

Reformers had made it clear that direct ownership and monopolization would be challenged by the government, but, at the same time, there had been no internal interference in the actual operation and administration of the various industries. This new type of regulation, though, once again poised the question as to what degree could the government actually interfere in the operation of industries.

As both sides, the public and private, sought to determine the nature of the new relationship that had been established, conflict arose. This was especially the case between the F. C. C. and A. T. & T.

A. T. & T. had achieved a balance within its corporate structure between the demands for profit, and the fulfillment of its social responsibility. The regime it had created rested on promoting the agenda of access through the State levels of government, while still maintaining a national network. While accusations of possible abuses had arisen during Congressional and Executive Hearings, nothing had surfaced to validate a charge of corporate abuse.

But the two Congressional resolutions passed in conjunction with the creation of the F. C. C. seemed to charge the corporation with malicious intent. The F. C. C. telephone bureau, under Walker's control, assumed that the Congressional intention was to investigate corporate abuses on the part of A. T. & T., and to unearth evidence of such abuses. Thus the Congressional resolutions, from the very beginning of the F. C. C. existence, established a confrontational position between the designated regulator and the industry that was to be regulated. Rather than fostering a balance between the public interest and corporate freedom to maintain profits, the F. C. C. charge sought to pursue, A. T. & T. and to show conclusively that it was engaged in illegal activities.

The eventual confrontation between A. T. & T. and the F. C. C. over the original Walker Report severely restricted the authority of the Federal agency to exercise any influence over the structure or practice of the industry. But as a consequence of the Congressional repudiation of the F. C. C.'s efforts to influence the structure of the industry, the only avenues available for altering the industrial structure would be within either the Congressional or Judicial arms of governments.

At the same time, the relationship between A. T. & T. and the State PUCs was reinforced through A. T. & T.'s active support of the State's PUCs agenda to foster universal access. Over the next thirty years, A. T. & T. was able to use its coalition with the State PUCs to deflect any Congressional or Executive attempts to alter its corporate structure.

But the F. C. C.'s decision to open the industry to competition through its regulatory authority to define the nature of the national network through the introduction of new technology, undermined the dominate position of A. T. & T. within the industry.

As the level of competition and conflict increased between the existing industrial coalition and the newly emerging competitors, both the Executive and Legislative branches of government were unable to achieve an acceptable level of compromise in terms of the industrial structure. The failure of the policy making arm of government to reach a new working relationship within the industry, and the lack of authority of the designated regulator to reshape the industry, ultimately lead to the issue falling into the domain of the Judicial arm of government.

When the final issue fell into the arena of the Courts, the existing policy regime's ability to influence or direct the decision making process became nullified, and the entire policy regime dissolved.

In terms of the process of development of a policy system, we find that, initially, the crisis within American society caused by the Depression affects the telephone policy arena by bringing back into the system the active involvement of the Federal government in the industry's development and operations. The "iron triangle" that had dominated the 1920s is now replaced, and an activist government agency, the F. C. C., is charged to investigate and recommend to Congress changes in the corporate operation and structure of A. T. & T.

At this time, 1934, the policy arena has moved back to a policy subsystem configuration. The subsystem is composed of the F. C. C., representing the Federal interests, the State PUCs, representing the State governments interests, and A. T. & T., representing the telephone industry's interests. Surrounding the subsystem are the Executive and Legislative levels of both the Federal and State governments.

An element of tension exists within the subsystem in the perceived confrontation between two of the subsystem's members, namely the F. C. C. and A. T. & T. This tension is predicated upon the Congressional charge to the F. C. C. to investigate possible anti-trust violations in the operations of A. T. & T., and to make recommendations to Congress on means to assure that the public interests are served by the corporation. Instability within the subsystem is created when the F. C. C. not only reports findings of anti-trust violations within the corporation, but extends its charge by recommending a major restructuring of both the corporation and the telephone industry.

The aggressive response by A. T. & T., coupled to Congressional and Executive rejection of the restructuring suggestions, forces the F. C. C. to retreat in its attempt to advance a new industrial configuration. The organizational retreat by the F. C. C. returns stability to the subsystem, and a continuation of the three group configuration within the subsystem.

Shortly after the confrontation over the "Walker Report", the Second World War breaks into the society's consciousness. Under the national mobilization effort that develops, a fourth member enters into the policy subsystem. The use by the Department of Defense of A. T. & T.'s research capacity and national communications infrastructure, brings national defense issues into the policy subsystem. The subsystem thus expands during this period of time and now includes the Department of Defense as an active member within the system.

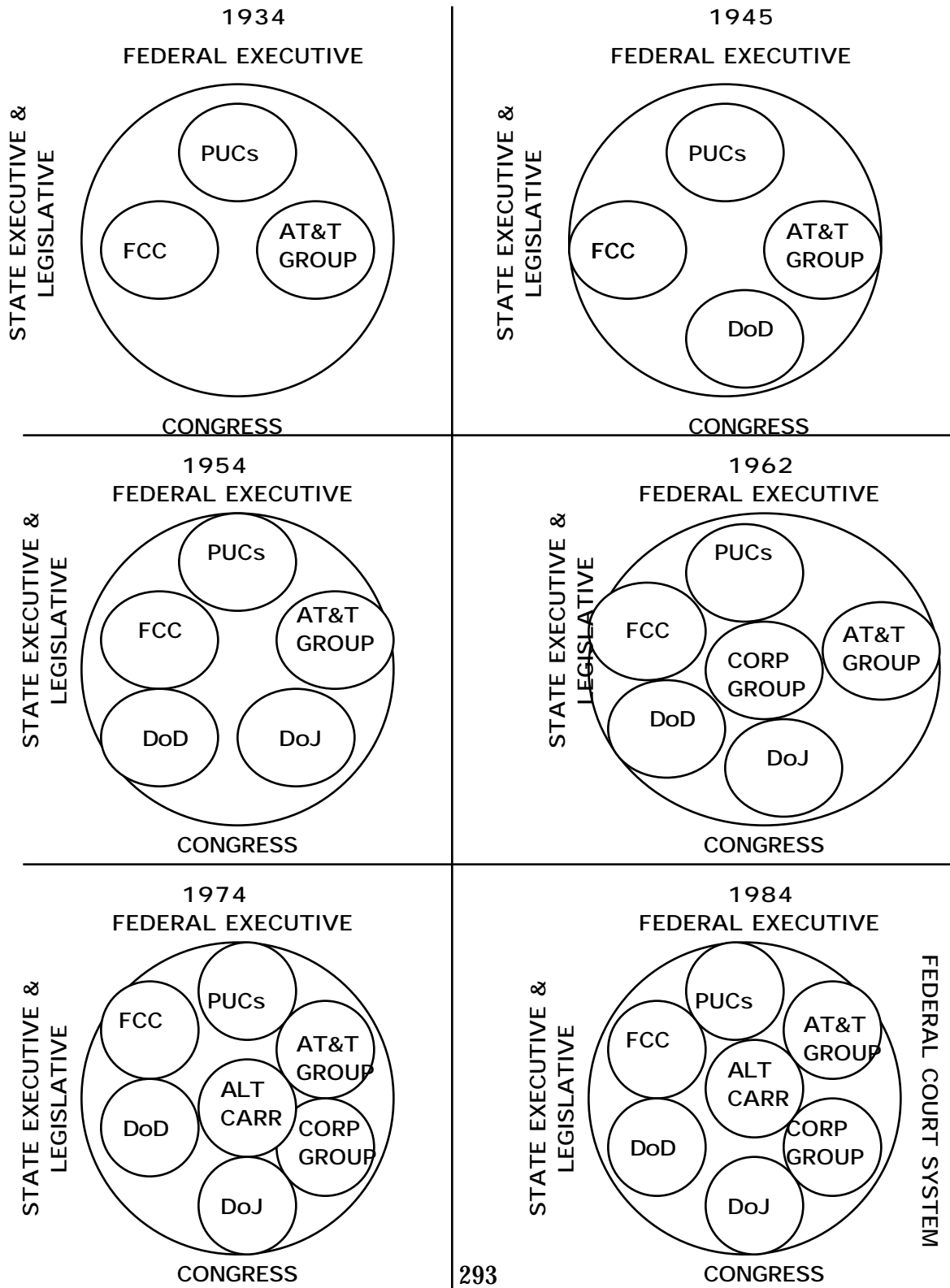
The eventual return of peace in 1945, and the subsequent concern over a post-war depression, sees the subsystem membership once again expanding. In this case the system's expansion is due to activists agenda set by individuals within the United States Department of Justice who seek to assume the anti-trust mantel abandoned by the F. C. C. during the Walker Report confrontation. While, eventually, the industry is able to defeat the anti-trust movement, the final agreement that is reached leaves the Department of Justice within the subsystem membership as both a monitor of corporate actions, and a potential agent of conflict in future areas of contention. Thus by the end of 1954, the subsystem membership has expanded from the original three group model to a five group model.

The policy subsystem is further expanded in the late 1950s and 1960s. Initially the expansion occurs as private corporations are licensed by the F. C. C. to operate separate corporate based communications systems outside the national communications network structure. While limited, at first, to only certain types of companies engaged in interstate commerce, the corporate systems begin to move into other forms of industries, and eventually enter the national broadcasting networks.

While still seeking to respond to this new level of network development and competition, the subsystem is further expanded in the late 1960s and early 1970s by the development of alternative wireless commercial networks which seek, initially, to serve to developing business market demand for alternative services. As the number of alternative networks are developed, and alternative service structures emerge in the industry, tension and conflict rise within the policy subsystem. By 1974 the subsystem membership has expanded from the original three group configuration to a seven group configuration. Eventually, tension is translated into outright industrial conflict when the F. C. C. authorizes the alternative access carriers entry into direct home and business access to the local city exchanges.

The subsequent conflict over local interconnection access and rate charges rekindles the anti-trust charge, and the conflict expands outside of the policy subsystem and into the courts. Under the principle of asserting the public interests, the courts eventually dismember the industry, and assert oversight authority on the operations and future development of the industrial sector. In the process of dismembering the network, the courts also destroy the policy subsystem configuration. Thus by 1984, the telephone policy subsystem members have been decoupled from the policy subsystem, and the system has evolved back into an issue network.

TELEPHONE POLICY SUBSYSTEM EVOLUTION 1934 TO 1984



The Duality of Structure

The period from 1934 to 1984 shows the ongoing influence of the belief within the American political and economic system of achieving a balance between centralization versus decentralization of both political and economic authority. Once again, the issue is played out at two levels within the society.

At the political level it is manifested in the continued reification of the belief within the political authority grounded at both the Federal and State levels. National interests are clearly defined in the regulatory regime within the arenas of long distance rates and control over wireless access. State interests are continued in the area of rate subsidization, and advancement of the principle of universal access.

On the industrial level the centralization belief is manifested within the consolidation of the industry within the corporate structure of A. T. & T., and its use of vertical and horizontal incorporation for both services and equipment, plus the company's continued recognition as the "network manager". The decentralization belief is manifested in the initial development by corporate America of alternative wireless systems, and the eventual entry of commercial wireless access providers into the national long distance markets.

As in the original constitutional debates over the issue of centralization versus decentralization, various supporters for both positions arise. But unlike the original debate, the forum for a "calm" resolution of the issue is missing. Rather the level of conflict over the concept escalates, and eventually spills into all levels of the policy regime, plus the private and public sides of social existence.

Eventually the level of conflict reaches a peak of action, and becomes so intense that it falls into the final arbitrator of beliefs within the American social and political structure, namely the courts. Once in the realm of the courts, though, the belief in private property rights and obligations surfaces and is linked to the principle of the "public interest, thus further destabilizing the policy regime.

Eventually the matter is resolved by the courts, but in the process the old belief in a balance between centralization versus decentralization is once again reified. Rather than selecting either side of the issue as the dominate position and belief, the Court, in a Soloman like judicial move, "cuts the baby in half". Thus the national network is placed within the realm of decentralization, while the local network is placed within the realm of centralization. The end result is that the actual physical network is thus divided into two separate spheres, with the national network allowed to be open to economic opportunity and competition, and the local network remaining closed to competition and centralized, but on a regional level.

Underlying the entire time period is a process of structuration which is centered around a societal search to achieve a workable combination of methods and meanings that will resolve the obvious contradictions that appear in regard to scientific theory versus scientific practice. Scientific rationalism has come to be accepted as the method to be used to resolve societal problems. While it is generally believed that science will produce solutions to structural problems within the society, the solutions that are offered and attempted often lead to a series of unintended consequences that nullify the proposed solutions. Rather than recognizing that the methodology selected to resolve the problems is inappropriate, the belief in scientific rationalism is retained and reified in continuing attempts to apply the methodology by developing new explanations for the problems, and new proposals to solve the problems. Thus the entire time period is one in which the discursive levels

of consciousness are continuously redefined, but the practical level of consciousness remains static in its continuing belief in science as the proper method of solving societal issues and problems.

In terms of the telephone policy subsystem, we see that this process of reification and redefinition goes through five distinct stages of structuration. Driving these processes of redefinition are basic societal and industrial fears related to the ontological security of both the society and the principles of the proper relationship between private business actions and the rights of the public interest.

The first stage of structuration occurs between 1930 and 1939. Society's ontological security has been undermined by the onset of the Great Depression. The patterns of conduct and routinization are disrupted through both property and employment loss. The uneasiness within the society is translated into a redefinition of the discursive level of consciousness by a belief that the crisis is the result of unethical business practices. In terms of the telephone industry, the normative and semantic levels of knowledge are altered within the society. A general level of knowledge emerges that places the failure at both the lack of regulatory oversight by the designated agencies of government, and a failure of the principles of laissez faire scientific engineering within the industrial sector.

This redefinition results in a reallocation of both authoritative and allocative resources. The F. C. C. is created to extend the regulatory oversight function, and the new agency is charged to discover the duplicitous conduct within the A. T. & T. corporation. The social systems and social practices are redefined also with the agency's belief that it has received an anti-trust charge from Congress, and its subsequent investigation and release of the Walker Report. The proposed solution that is presented by the agency, industrial dismemberment, is not compatible, though, with the existing institutional structure of the industry and its relationship to the government. The proposal is thus rejected, and the system of belief is reified in its perpetuation of the existing social relationships.

First Stage of Disintegration - 1930 to 1939

Institutional Level

Duality of Structure

(Agency Dissolution Threat and Maintenance of "Natural Monopoly")

Social Systems and Social Practices

(FCC Anti-trust Belief and "Walker Report")

Authoritative and Allocative Resources

(FCC Oversight / Congressional Anti-trust Investigative Charge)

Normative and Semantic Knowledge

(Regulatory / Scientific Failure of the "Public Interest")

Practical and Discursive Consciousness

(Industrial / Managerial Manipulation and Economic Crisis)

Patterns of Conduct / Routinization

(Employment and Property Loss)

Ontological Insecurity

(National Economic Depression)

Return to

Equilibrium - 1939

Beginning of First Stage - 1930

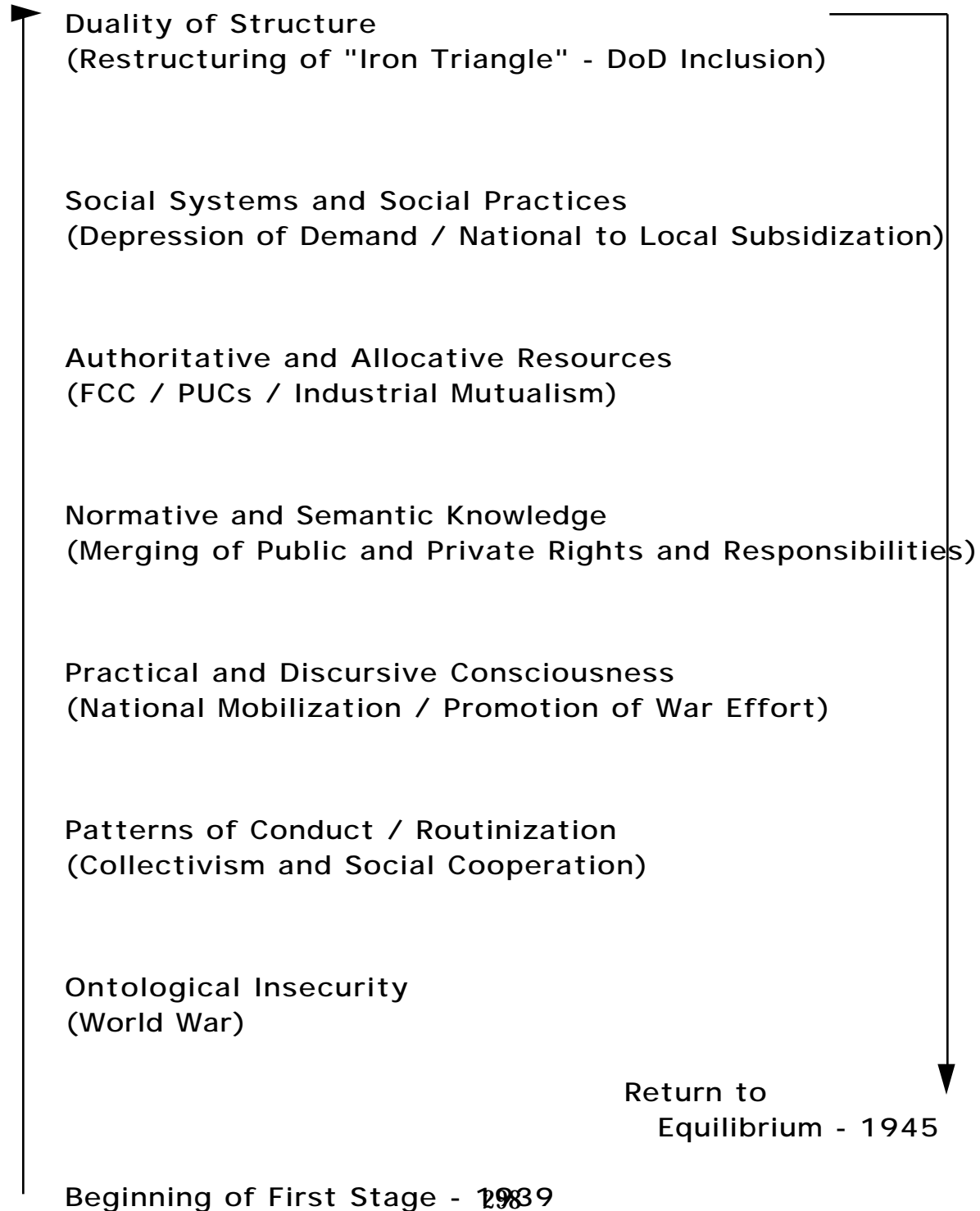
Human / Social Level

The second stage of structuration occurs between 1939 and 1946. Once again, society's ontological security is threatened by the outbreak of World War II. The patterns of conduct and routinization within the society are altered in face of the war threat, and a system of collectivism and social cooperation arise within the society. This sense of collectivism is translated at the discursive level of consciousness into a belief in a total national mobilization in order to promote the war effort. The normative and semantic levels of knowledge are redefined, and the boundaries between public and private interests and rights are merged.

The telephone policy subsystem responds at the authoritative and allocative resource levels by reinstituting the mutualistic relationship between the F. C. C., State PUCs, and the telephone industry. The structure of social systems and practices are changed by the decision to suppress demand for services through the maintenance of high long distance charges, and the use of national revenues to subsidize local operating costs. The structure of the institutional level is also altered by the war threat, and the Department of Defense, and the Defense paradigm, are accepted into the regulatory and industry order.

Second Stage of Disintegration - 1939 to 1946

Institutional Level



Human / Social Level

The end of the war threat leaves the policy subsystem in a classical "iron triangle" structure. But the structure that emerged during World War II was only a temporary solution to the inherent tension within the system. While the F. C. C. and other government agencies return to their pre-war position in terms of industrial oversight and regulation, the industry itself misreads the environment and assumes that the war relationship is a permanent arrangement. Within this misreading of the environment are laid the seeds for the next stage of structuration to occur.

Once again, societal security is threatened by the perceived possibility of a post-war depression and the onset of the Cold War. Further complicating the process of structuration for the telephone subsystem is a change in the patterns of conduct and routinization by the members of society. The use of rate subsidization speeds the deployment of telephone access within the society, and the incorporation of the telephone into individual patterns of conduct. This also occurs at the same time that expanding development of telecommunications sees both radio and television enter the daily patterns of individual conduct.

The discursive levels of consciousness within the industry and regulatory regimes see the expanding increase in use being translated into possible increases in local telephone rates, and the possible dampening of the agenda of developing universal access. At the Federal governmental level the normative and semantic levels of knowledge begin to be affected, and are translated into a suspicion on the part of the F. C. C. that long distance rates are too high, and at the Department of Justice level that A. T. & T. is using its position as network manager to violate anti-trust laws in relation to secondary equipment monopolies. These changes at the governmental level of knowledge result in an authoritative change through the introduction of both rate review hearings, and the filing of an anti-trust lawsuit.

The proposed solutions, namely rate reduction and corporate dismemberment, challenge the agenda of both the Corporate and State government members of the subsystem structure. The response from this level of the structure is to defeat the Federal regulatory and enforcement level's attempt to redefine both the levels of knowledge and location of resources within the overall institutional structure. The reassertion of the national defense nature of the network coupled to the rate subsidization to promote universal access successfully stops the movement of redefinition, and once again returns the system to its War configuration. While the existing structural arrangements have been reified, tension still exists within the system and leads to the next level of structuration.

Third Stage of Disintegration - 1946 to 1954

Institutional Level

Duality of Structure

(National Defense Nature of Network and Long Distance/
Local Rate Subsidization)

Social Systems and Social Practices

(Corporate Dismemberment and Rate Reduction)

Authoritative and Allocative Resources

(Anti-trust Lawsuit and Rate Review Hearings)

Normative and Semantic Knowledge

(Rate Violation and Anti-Trust Violation)

Practical and Discursive Consciousness

(Rising Telephone Rates)

Patterns of Conduct / Routinization

(Expanding Personal and Social Use of Telecommunications)

Ontological Insecurity

(Post-War Depression / Cold War Fear)

Return to
Equilibrium - 1954

Beginning of Third Stage - 1946

Human / Social Level

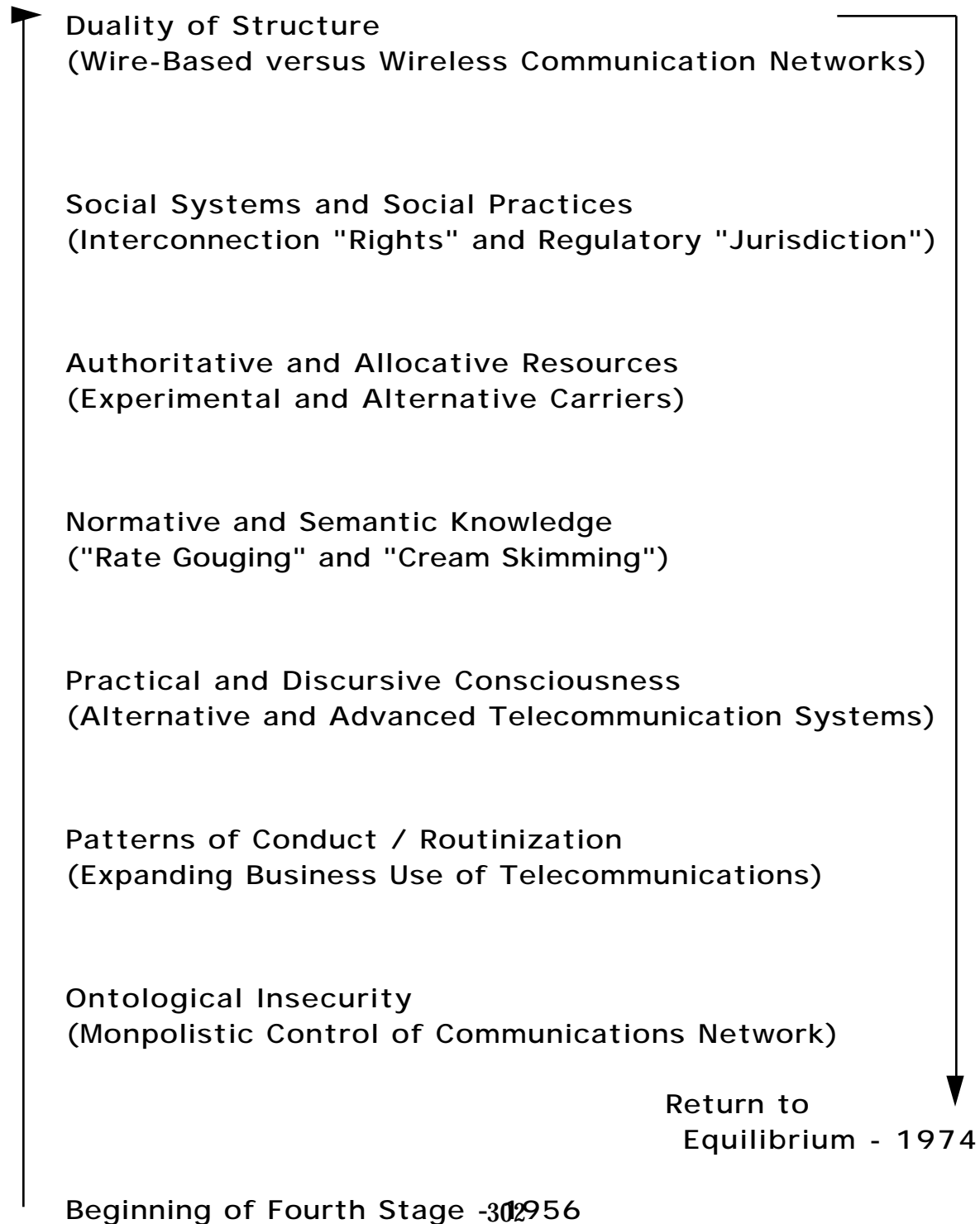
The fourth stage of structuration runs from 1956 to 1974. During this time the basic threat to ontological security within the telephone policy subsystem is the continuing suspicion that A. T. & T.'s control of the communication network is violating social and industrial principles of fair access and fair rates. Adding to this sense of uneasiness over A. T. & T.'s role in the network are changes in both the patterns of conduct and routinization at the industrial and business level of society. The expansion of network access has seen an increase in the use of the network by the business community. Driving this expanded use is the development of new systems of transmission, and the growing use of computer data lines within the business community. This technological innovation begins to redefine the discursive levels of consciousness, and is translated into pressure to develop alternative systems of communications and to introduce new levels of technology within the network.

On the levels of normative and semantic knowledge within the business community a new tension arises. The business community develops the underlying normative frame that A. T. & T. is rate gouging the business community by the use of rate subsidization to underwrite the costs of local access. On A. T. & T.'s side, along with the State PUCs, is the normative frame of cream skimming, namely that these new alternative systems will only be directed at the high volume business users, thus denying the telephone industry of the revenue required to maintain universal access.

The F. C. C., seeing the opportunity to advance the technological innovation concept, uses its authoritative position to license alternative carriers, and thus changes the allocative resources within the industry. In the process of changing the forms of allocative resources within the industry, the F. C. C. also alters the social system and social practice. Asserting Federal authority in the area of wireless communications, the F. C. C. over-rides the State PUCs' regulatory jurisdiction, and requires interconnection of wireless systems to wire based systems. Thus, by 1974, the network structure is divided into two spheres, wire based and wireless based, and the institutional structure of the policy subsystem is divided in half.

Fourth Stage of Disintegration - 1956 to 1974

Institutional Level



Human / Social Level

The fifth stage of structuration occurs between 1974 and 1984. A. T. & T.'s response to the interconnection requirement leads to a complete undermining of a sense of security within the institutional and social structures of the policy regime. The legal conflict that erupts between A. T. & T. and the newly emerging alternative carriers occurs at the same time that expanding business and personal use of the network is leading to the expansion of technological innovation. New forms of equipment and computer transmissions enter the network, and alter the patterns of conduct and routinization at both the industrial and personal levels of society.

The discursive level of consciousness is once again altered by the perception that technological innovation is opening new personal and commercial uses for telecommunications. This change at the discursive consciousness level eventually is translated into a change at the normative and semantic levels of knowledge. The change at this level is the development of the concept of market driven choice in the network rather than the older concept of a natural monopoly overseen by a network manager. This change at the normative level of knowledge threatens A. T. & T.'s position, and leads to a further escalation of the conflict by A. T. & T. The expanding level of industrial conflict eventually leads to the intercession of the Department of Justice into the conflict, and the assertion of anti-trust principles.

The Justice Department's move to redefine both the authoritative and allocative resources within the industry pushes the conflict into the Federal court system. Once the conflict moves into the Federal Court, the Court effectively changes both the social system and the social practices by asserting its authority over the network under the public interest principle. The Court's decision to further split the network between the national and local exchanges completely alters the institutional arrangement of the system. But in the process of altering the network, the court once again reifies the older principle of a natural monopoly, but isolates the principle to only that area covered by the local network.

Fifth Stage of Disintegration - 1974 to 1984

Institutional Level

Duality of Structure

(National versus Local Communication Networks:
Market Competition versus Natural Monopoly)

Social Systems and Social Practices

(Public Interest "Rights" and Court "Jurisdiction")

Authoritative and Allocative Resources

(Judicial "Anti-Trust" versus Regulatory "Public Service"
Authority)

Normative and Semantic Knowledge

("Market Driven Choice" versus "Natural Monopoly")

Practical and Discursive Consciousness

(Alternative and Advanced Telecommunication Systems)

Patterns of Conduct / Routinization

(Expanding Business and Personal Use of Telecommunications)

Ontological Insecurity

(Monopolistic Control of Communications Network /
Interconnection Dispute / Technological Suppression)

Network Dismemberment - 1984

Examined as a total process, we can see that the period from 1934 to 1984 has a definite pattern of structuration occurring within the telephone regime. Ontological insecurity is the primary motivation for action during this time. Economic insecurity is followed first by "Hot" war insecurity, and then "Cold" war insecurity. This period of social instability is further destabilized in the regime by the monopolistic practices of A. T. & T., especially in its relations with other industrial and business sectors, plus the expanding development of technological innovation within the telecommunications industry.

This sense of insecurity occurs while the patterns of conduct and routinization within both society and business begin to change through the use of telecommunications. Both the business and social development of communications within the society lead to changes at the discursive level of consciousness. The emerging normative frame begins to see telecommunications in relation to the overall social welfare of the society, and the expansion of commercial and business development through its use. This change at the level of discursive consciousness leads, eventually, to a change at both the normative and semantic levels of knowledge within the society and the telecommunications regime. The dominance of A. T. & T. as the network manager within the system is now seen as a possible threat to the entire society, and fuels the demand for governmental protection and oversight of the rights of personal and corporate property, and opportunity to exploit the new technology.

This change at the Normative level eventually leads to a change in the authoritative and allocative resources within the society through the promotion of market choice mechanisms rather than the concept of a natural monopoly. Social systems and practices are altered to fit this new reconfiguration of resources. Eventually the institutional structure of the regime is altered by expanding personal and corporate choice for network access, and placing judicial oversight over the public interest within the new system of structural definition.

Patterns of Structuring - 1930 to 1984

Institutional Level

Duality of Structure

(Network Access - Personal and Corporate, National Security, Public Oversight - Regulatory and Judicial)

Social Systems and Social Practices

(Universal Access, Anti-trust Protection, Industrial Development, Access to Markets)

Authoritative and Allocative Resources

(Regulatory, Judicial, Industrial Authority and Responsibility)

Normative and Semantic Knowledge

(Government Oversight Protection of Public and Personal Property and Opportunity Rights)

Practical and Discursive Consciousness

(Distrust of "Big Business", Collective Effort for General Social Welfare, "Fair" Charges, Alternative System Choices)

Patterns of Conduct / Routinization

(Property / Employment Loss, Collectivism, Personal, Business, Social Communication, Social Development of Telecommunications)

Ontological Insecurity

(Economy, "Hot" War, "Cold" War, Monopoly, Technology)

System Failure - 1984

Beginning of First Stage - 1930

Human / Social Level

Unintended Consequences

As a result of Judge Greene's decision, the telecommunications industry of the United States was left in a fragmented and balkanized situation. The long distance network was now completely open to competition, and no distinction was made between either wire based or wireless based communications in the long distance exchanges.

The local exchanges, though, remained closed to competition, and continued to exist as natural monopolies. In terms, though, of the modes of communications, the local exchanges natural monopoly was limited to only wire-based communications. Wireless communications at a local level were still within the Federal realm of authority, and thus were not part of the local exchange's natural monopoly.

The difficulty in the decision reached by Judge Greene to divide the industry into two separate spheres of influence, was that in fact none of the exchanges, either local or long distance, were of any value to each other unless they were interconnected. While Judge Greene had thus divided the industry into two separate spheres of law, the actual network still remained a single unified system. How to resolve the contradiction thus presented would be the next problem facing the telecommunications policy subsystem.

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