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THE TELECOMMUNICATIONS ACT OF 1982 (H.R. 5158, 97TH CONGRESS):
PROVISIONS AND CONTROVERSIES

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Angele A. Gilroy
Analyst in Industrial Organization
Economics Division
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THE TELECOMMUNICATIONS ACT OF 1982 (H.R. 5158, 97TH CONGRESS):
PROVISIONS AND CONTROVERSIES

I. INTRODUCTION

On March 25, 1982, the House Subcommittee on Telecommunications, Consumer Protection and Finance, unanimously passed a substitute version of H.R. 5158 which revises the common carrier provisions of the Communications Act of 1934. The legislation, which was substituted three days previously for the original working draft introduced in December 1981, received further revision during markup and now awaits full committee action.

The latest approved version of H.R. 5158, titled the "Telecommunications Act of 1982," not only continues to address the many issues necessary for the formulation of a comprehensive national telecommunications policy, but is also modified to reflect the terms and issues raised by the recently proposed American Telephone and Telegraph (AT&T)-Justice Department antitrust settlement. ^{1/} Although still subject to clarification, the basic terms of the January 8, 1982, settlement require the divestiture of the local exchange service and access functions of the 22 Bell operating companies, while permitting the entrance of the remaining AT&T network into unregulated markets. The newly divested local operating companies are restricted to providing only regulated monopoly tele-

^{1/} United States v. American Telephone and Telegraph Company, Western Electric Company, Inc., and Bell Telephone Laboratories, Inc. Civil action no.74-1698 (D.D.C.) filed November 20, 1974.

communications services, with the interexchange 2/ functions and unregulated activities, such as the sale of customer premises equipment and the publishing of yellow pages directories, reverting back to the remaining AT&T network. To ensure equal access and equipment procurement to all competitors, the newly formed local operating companies are also subject to additional behavioral requirements. According to Subcommittee Chairman Wirth, who introduced the substitute H.R. 5158 along with six other subcommittee members, the legislation incorporates five major themes: 1) consumer protection; 2) viability of the divested local operating companies; 3) competition; 4) information flow; and 5) regulatory reform and employee protection, which combine to formulate a national policy addressing our present and future telecommunications needs.

2/ Interexchange telecommunications functions refer to telecommunications between a point located in one exchange area and a point in one or more other exchange areas. Telecommunications areas are presently defined according to State boundaries. That is, transmissions within a State are defined as intrastate, while transmissions that cross State boundaries are defined as interstate. Under proposed new designations, transmissions within a newly defined local area will be defined as intraexchange transmissions and will remain with the local operating companies, while transmissions beyond these newly defined local exchange areas, regardless of whether they are within State boundaries or cross State boundaries, will be defined as interexchange transmissions (long distance) and will remain with the AT&T network.

II. PROVISIONS WHICH SET THE FRAMEWORK FOR A NATIONAL TELECOMMUNICATIONS POLICY

Although much of the controversy surrounding H.R. 5158 results from the provisions which modify terms of the AT&T-Justice Department settlement, there are many provisions which not only incorporate most of the settlement's terms, but go beyond its scope. The overall objective of the legislation is to modify our outdated communications law 3/ and develop a framework for a new, national telecommunications policy. The major guideline for this policy is to rely "to the maximum extent possible" on the forces of competition rather than regulation to provide reliable, efficient, and diverse telecommunications services and facilities at an affordable price. The legislation directs the FCC not only to deregulate markets where they are competitive, but also to take actions to promote competition where it is not present. The major framework of the legislation, according to the subcommittee, addresses the needs of users and ratepayers as our telecommunications industry changes from a monopoly to a competitive structure.

More specifically, some of the significant provisions in H.R. 5158 which set the foundation for a new telecommunications policy follow below.

A. Provisions Pertaining to Regulatory Authority and General Industry-Wide Issues

--Limits Federal Communications Commission (FCC) and State commission authority so that they may not regulate the resale of any transmission services, enhanced services, terminal equipment, or inside wiring.

--Prohibits FCC and State commissions from including revenues derived from unregulated products or services (except yellow pages) when determining revenue requirements of a common carrier's regulated service.

3/ Although government regulators originally determined that the best means of meeting the public's telecommunications needs was by permitting one firm under regulation to supply these needs, since the 1960s this philosophy has undergone change with FCC and court actions authorizing the entrance of competition in telecommunications markets. The rapid development of technological advances has also caused the melding of information and communications services as well as the growth of a variety of new transmission methods (e.g., microwave and satellite). Both the entrance of competition and the impact of technological advances have dramatically altered our telecommunications environment, necessitating the modification of our telecommunications laws.

- Exempts smaller carriers (that is, those other than the Bell operating companies and the seven largest independent telephone companies) from most provisions in the Act. For those remaining provisions, enforcement authority is delegated to the States. 4/
- Streamlines the process by which regulated carriers gain FCC approval for the construction of new transmission facilities so that all needed authority is granted in no more than 120 days.
- Establishes a permanent interexchange board of three FCC and two State commissioners which, among other duties, will: review exchange area boundary disputes; establish the formula for and distribute the revenues of the National Telecommunications Fund; modify the present procedure used to distribute inter-carrier revenues in preparation for the new access charge system; determine long distance joint and common costs; and advise the FCC on equal exchange access.
- Contains provisions for the maintenance of telecommunications service for national defense. The President has veto power over any provisions in this bill in times of emergency or for national defense purposes.
- Bars exchange carriers from offering cable television or broadcasting services in their own exchange area, except in rural areas.
- Permits carriers to meet, under FCC guidance, on matters affecting network maintenance, design, management, coordination, and development. The FCC is to establish an all-carrier committee to advise the Commission on such matters.
- Requires the other largest telephone companies, that is, those which serve over two million customer access lines, to provide services and facilities to all information publishers including their own, on an equal and non-discriminatory basis upon request. No cross-subsidization between revenues from regulated services and information services is permitted.
- Requires FCC to prescribe rules to limit the consolidation or merger of transmission facilities to foster competition and promote the diversity of information sources. (Consolidation or mergers of exchange common carriers which individually serve not more than 50,000 customer access lines will be exempt.)

B. Exchange Service and Tariff Provisions

- Requires nondiscriminatory interconnection by local exchange carriers of any terminal equipment, inside wiring, or transmission services or facilities which meet Federal technical standards.

4/ Those smaller carriers are still subject to: technical standards for transmission facilities and terminal equipment, defense planning, diversity of information sources, concentration of ownership, access charges, payments from the National Telecommunications Fund, and interexchange services and interconnection requirements.

--Establishes an access fee system to compensate local exchange carriers for the use of their system and facilities by interexchange carriers. A system of fees which reflect direct costs of interconnection, a portion of joint and common costs and a subsidy factor, are submitted to the FCC by the local exchange carrier. The State commission will have authority over the access charges of any carrier with not more than 100,000 customer access lines in that State.

--Requires all interexchange carriers to contribute to a National Telecommunications Fund, to be paid to exchange carriers to keep the costs of exchange access in rural and small exchange areas to within 110 percent of the national average and to ease the transition to the new cost allocation system.

--Freezes present exchange access charges subject to Consumer Price Index adjustments for a transition period until the new system of access charges goes into effect.

--Gives State commissions the responsibility for establishing, within 60 days of enactment, the exchange area boundaries within their State. The authority over all facets of telephone service in these exchange areas remains with each State.

--Requires local exchange carriers to offer, by 1986, exchange access to all interexchange carriers which is equal in type, quality, and range of supporting functions. The FCC has the authority to postpone this requirement for rural carriers and those with less modern electromechanical switching equipment.

C. Interexchange Service and Tariff Provisions

--FCC classification of all carriers which own interexchange (long distance) transmission facilities as either dominant, common, or deregulated carriers (AT&T would be the only dominant carrier under the classification standards). The FCC is required to hold a hearing if a carrier wishes to contest its classification.

--FCC control over all interexchange transmissions, whether it be interstate or intrastate in nature, after a five-year transition period, except for intrastate toll transmission of exchange carriers serving no more than 500,000 customer access lines. Control of these transmissions offered by the smaller carriers will be under State regulation.

--FCC power to deregulate a carrier or transmission service only after it determines that there are alternatives to that carrier or service that provide comparable quality and geographic range at comparable cost, and that those alternatives have sufficient market power to provide effective competition in the absence of regulation.

--FCC authority to require all carriers to interconnect on nondiscriminatory terms with any transmission facility, service, or terminal equipment upon reasonable request.

--Every regulated carrier must furnish "regulated services" upon reasonable request and no tariffs for a regulated service may include any costs associated with the provision of any other service or product. No tariff may become effective until the carrier proves that it is just, reasonable, and nondiscriminatory.

--Tariff formulation of regulated services is limited to include only costs associated with the provision of that service. Facilities constructed for the provision of non-transmission services are prohibited from inclusion in the regulated rate base.

D. Telecommunications Equipment Provisions

--All installed terminal equipment and inside wiring must remain under regulation until fully depreciated. Thereafter inside wiring may be offered on an unregulated basis, while the local carrier continues to provide it on a regulated basis for five years or longer at the discretion of the State commissioners. Customers also have the option of purchasing installed equipment on their premises at a price determined by the State commissioners. The State commissions are granted the authority to auction fully-depreciated or returned installed equipment.

--Deregulation of new terminal equipment. The FCC continues to retain authority over technical standards. After a transition period of two years no exchange or common carrier may file a tariff that includes any cost associated with the provision of new terminal equipment. Deregulated inside wiring and terminal equipment must be offered on an unbundled basis.

--Common carriers affiliated with facilities manufacturers must procure such facilities on a nondiscriminatory basis and provide necessary information and specifications to allow equal competition by all manufacturers.

--Prohibition of centralized product evaluation and procurement by the divested local operating companies until after January 1, 1993.

E. Provisions Specifically Pertaining to the AT&T Network

--Modification of the 1956 Consent Decree 5/ so that AT&T may enter unregulated markets such as data processing after the divestiture of its local

5/ This 1956 consent decree was agreed to by AT&T as a condition of settlement of a 1949 antitrust suit brought by the Justice Department against AT&T and its manufacturing affiliate, Western Electric Company, Inc. (United States v. Western Electric Company, Inc., and American Telephone and Telegraph Company, Civil action no. 17-49 (D.N.J.)) filed January 14, 1949. The Justice Department was seeking the divestiture of AT&T's manufacturing arm, Western Electric Company, Inc., on the basis that the defendants had monopolized and conspired to restrain trade and commerce in the telephone equipment and telephone supplies market. Among the provisions agreed to in the consent decree was a restriction that AT&T engage only in the provision of regulated communications services.

exchange functions. AT&T must also form a separate "carrier subsidiary" for the provision of all regulated services, and both the remaining AT&T network and its carrier subsidiary are subject to additional behavioral requirements (see p. 10, 11 for more detail)..

--Expansion of the range of business activities of the AT&T divested local operating companies and required post-divestiture asset valuation and debt distribution (see p. 12, 13 for more detail).

--Establishment of a five-year transitional joint board of two FCC and three State commissioners which will evaluate the transfer of assets from regulated to unregulated activities. When evaluating any transferred asset, the board is directed to choose the greater of fair market value or book value. In the case of any exchange carrier serving less than 500,000 customer access lines, the board may delegate its authority to State commissioners. The FCC has the power to review the board's decisions if they appear to be arbitrary or capricious in nature.

--Reorganization of the divested local operating companies into a minimum of at least seven regional operating companies. (This is consistent with a tentative "planning model" for divestiture announced by AT&T on February 19, 1982, which would group the divested local operating companies into seven independent regional corporations.)

--Implementation of the FCC's "Computer II" decision ^{6/} which requires AT&T to form a separate subsidiary to offer unregulated services, "at least until the carrier subsidiary for inter-exchange transmission services is established."

F. Other Provisions

--Labor protection provisions are provided which secure employee rights and benefits for all employers who may be required to establish a separate entity as a result of the revision of the Communications Act common carrier provisions or as a result of the settlement of the AT&T-Justice Department antitrust suit. The FCC is also required to establish rules to protect the privacy of business-related conversations between carrier employees and customers.

--The FCC is authorized to provide public participation funding to permit interested parties to bring suits to enforce certain provisions of the Act. The FCC, interexchange joint board, and the transitional joint board, may have actions brought against them for failure to perform certain specific actions.

^{6/} In the Matter of Amendment of Section 64.702 of the Commission's Rules and Regulations. 72, FCC 2d 358 (1979) tentative decision. 77, FCC 2d 384 (1980) final decision. Modified on reconsideration, 84, FCC 2d 50 (1980). Appealed sub. nom. Computer Communications Industries Association v. FCC no. 80-1471. D.C. Circuit Court of Appeals.

--The FCC is required to enter into a contract with an outside party unaffiliated with any common carrier to design a new Uniform System of Accounts for the industry and such a system must be prescribed by the FCC not later than January 1, 1985. (This accounting system which has been under FCC review since 1968, is the one which the FCC uses to review the operations of the regulated carriers under its jurisdiction.)

--The FCC's cellular mobile radio (mobile telephone) decision 7/ is modified to require that all applicants for the provision of such service compete on an equal basis. (An April 1981 decision by the FCC set aside half the frequencies for the provision of such service for the telephone company serving that area, leaving the other half open to competing firms. Final orders issued by the FCC in February 1982 keep the set-aside preference for local telephone companies for two years.)

The above provisions, according to the subcommittee, are designed to formulate a new national telecommunications policy which not only incorporates the restructuring of the Bell System, the entrance of competition, and the impact of rapidly changing technological advances, but accomplishes this in a framework which guarantees the availability of reliable, efficient, diverse telecommunications services at reasonable rates.

7/ Inquiry into the Use of Certain Frequency Bands for Cellular Communications Systems; and Amendment of Rules Relative to Cellular Communications Systems. Federal Register, v. 46, p. 27655 (May 21, 1981).

III. MAJOR PROVISIONS WHICH MODIFY THE TERMS OF THE PROPOSED AMERICAN TELEPHONE AND TELEGRAPH COMPANY-JUSTICE DEPARTMENT SETTLEMENT

Although H.R. 5158 incorporates many of the changes provided for in the proposed antitrust settlement, reflecting the reality of a restructured Bell System, the legislation also seeks to modify selected settlement terms in an attempt to alleviate concerns over its potential negative effects on both the industry's suppliers and users. Subcommittee members feel that the settlement's provisions fail to address some major issues surrounding its enactment and that the provisions contained in H.R. 5158 which modify its terms are necessary for the formulation of a sound and viable telecommunications industry.

Some of the deficiencies which the subcommittee feels are contained in the settlement but which their legislation addresses include: the prevention of AT&T's potential ability to use its dominant position in the long lines transmission market to cross-subsidize products and services and inhibit competitive access and information flow; the protection of the financial health and viability of the local exchange network; and the minimization of possible high increases in local telephone rates, particularly in rural and small exchange areas.

H.R. 5158 proposes to address the above issues by, among other provisions, imposing further structural and behavioral requirements on AT&T, assuring equitable asset valuation and debt allocation, expanding the range of activities of the divested local operating companies, and providing for additional transitional and subsidy mechanisms to help ease the possible negative impact of the divestiture on local telephone rates. Some of the more significant provisions in H.R. 5158 which modify the antitrust settlement's terms and according to subcommittee members address some of the deficiencies in the settlement's implementation follow below.

A. Provisions which Impose Structural and Behavioral Requirements on AT&T

A further restructuring of the AT&T network is required through the formation of a separate "carrier subsidiary" for the provision of long distance transmission services. This subsidiary would be separated from the remaining AT&T network by requiring that:

--Not more than 50 percent of the subsidiary's board of directors may be employees, officers, or directors of AT&T.

--Transactions between the subsidiary and the remaining AT&T network must be conducted on an "arms length basis." Such transactions must be reported to the FCC in advance and made available to the public.

--Domestic joint ventures, shared employees, or financial structures, or common ownership of property by AT&T and the subsidiary are prohibited. (Joint ventures are permitted if related to international operations.)

--Marketing, sales, advertising, accounting, hiring, and training of personnel, purchasing, maintenance, preparation of tariffs, and operations related to transmission services must be conducted separately. (Joint institutional advertising is permitted; the subsidiary, however, must share the costs in proportion to their annual earnings and such advertising may not relate to a specific service.)

--The carrier subsidiary must maintain its own accounts, records, and books separately from the remaining AT&T network and according to criteria set by the FCC. Such records shall be audited annually by an independent certified public accountant and submitted to the FCC for public inspection.

--The carrier subsidiary must file all reports and statements with the Securities and Exchange Commission which any issuer of securities is required to file. (A provision included in the March 22, 1982, substitute, which required 10 percent outside ownership of the common carrier subsidiary was deleted during subcommittee markup.)

--The carrier subsidiary must procure equipment on an independent and competitive basis and disclose any necessary technical requirements so that all products and services may function equally when interconnected.

--The FCC is granted blanket authority to take any actions necessary to prevent anticompetitive practices between the carrier subsidiary and the remaining AT&T network and to assure that no other costs but those associated with the activities of the carrier subsidiary are charged users of that service.

In addition to the above structural and reporting requirements the following behavioral limitations are also imposed on the AT&T network:

--AT&T is limited to offering transmission facilities and services through its carrier subsidiary and then only on a regulated basis. AT&T cannot construct, own, or operate duplicate, unregulated transmission facilities until there is effective competition in the long distance transmission market.

--AT&T must file with the FCC technical and other necessary information for connection with, or use of, its long distance (interexchange) network. All such information must be disclosed to the public at the same time and on equal terms as to the carrier subsidiary.

--AT&T is restricted to providing only limited directories and directory assistance, time, weather, and audio information services over its own transmission facilities. Although AT&T may provide information services but not via its own transmission facilities, it is totally prohibited from providing intrusion and fire alarm services.

--AT&T is also prohibited from bypassing the local exchange network when providing interexchange services until 1988, with a possible two-year extension at the discretion of the FCC.

--AT&T is required to license on a non-exclusive basis all patents for products manufactured in the United States until January 1, 1985, and distribute a percentage of the royalties to the divested local operating companies.

These structural and behavioral requirements were developed, according to subcommittee statements, because of AT&T's unique position as the dominant carrier in the domestic long distance, or interexchange transmission market. Although there is some competitive entry in the market from such companies as MCI Communications Corporation and Southern Pacific Communications, AT&T currently controls over 80 percent of the domestic long distance market share. This market dominance, subcommittee members claim, not only provides AT&T with the ability to use revenues from its regulated long distance services to cross-subsidize its unregulated, competitive activities, but also enables it to use its dominant market position to inhibit long distance competitive access, equipment procurement, and information flow. Additional restrictions against AT&T's operation and ownership of unregulated transmission facilities are proposed to assure that it will not neglect the regulated transmission facility which could

result in the deterioration of the regulated network on which most users are dependent.

Provisions in H.R. 5158 are written such that most of the structural and behavioral requirements would be phased out once AT&T's dominance in the long distance transmission market no longer exists. 8/ An amendment introduced during markup and approved by the subcommittee requires the FCC to report to Congress on a three-year basis to evaluate the necessity for the further continuation of these structures and behavioral requirements.

B. Provisions which Address the Financial Health and Viability of the Divested Local Operating Companies

Provisions which are designed to strengthen the financial health and viability of the local operating companies through the modification of the settlement's terms of divestiture and the expansion of business activities are incorporated into H.R. 5158. Such provisions contained in the subcommittee's legislation include:

—Post divestiture asset valuation and debt distribution. The valuation would entail a multi-step process by which both AT&T and the divested local operating companies would make separate presentations to a transitional joint board regarding the value of assets and debt allocation. The joint board would then make a recommendation to the Justice Department, which in turn would make the final decision on such valuation.

—The retention by the divested local operating companies of the right to operate pay telephones and publish yellow pages directories. 9/

8/ According to provisions in H.R. 5158, structural restrictions only applicable to AT&T would be phased out once AT&T no longer owns a majority of the long distance transmission facilities nation-wide or once adequate alternative long distance transmission facilities exist nationally from unaffiliated carriers.

9/ According to the Justice Department's competitive impact statement which appeared in the February 17, 1982, Federal Register, v. 47, no. 32, p. 7169-7184, although not explicitly stated in the settlement, the provision of pay telephone service would remain with the local operating companies.

--The retention by the divested local operating companies of all installed terminal equipment and the revenue derived from it, until fully depreciated or by January 1, 1990, whichever occurs first.

--The right of the divested local operating companies to sell, but not manufacture, new terminal equipment through a separate subsidiary five years after divestiture.

The subcommittee's concern over the proposed settlement's possible negative impact on the viability of the divested local operating companies prompted the inclusion of the above provisions. Concern over the valuation of assets and distribution of debt during the divestiture process, decrease of the local exchange revenue base and possible by-pass of the local exchange network are addressed. Post divestiture asset valuation and debt distribution is proposed to ensure that the local exchange companies' interests will be protected and that fair compensation for transferred assets and distribution of debt between AT&T and the divested companies will occur.

The subcommittee's concern over the local operating companies' declining revenue base due to their confinement to only regulated local exchange functions and access, has prompted the incorporation of provisions into H.R. 5158 which expand the local exchange companies' services to include yellow pages directories, pay telephones, embedded terminal equipment and eventually the sale of new terminal equipment. A previously mentioned provision (see p. 11) which prohibits the AT&T network from by-passing the local exchange network was included to ensure that AT&T would not "cream skim" the more lucrative, high-volume users from the local exchange network, leaving the local operating companies with the less profitable, low-volume users. The above provisions have been proposed by the subcommittee to enhance the financial health and viability of the divested local operating companies with the expectation that this will have a positive impact on both the quality of service offered and the stability of rates charged.

C. Provisions which Attempt to Minimize the Impact on Local Telephone Rates

In addition to the previously mentioned provisions which were designed to enhance local operating company viability, therefore indirectly affecting local telephone rates, H.R. 5158 also contains the following additional provisions which specifically address the impact on local rate structures.

--All interexchange (long distance) carriers are required to contribute to a National Telecommunications Fund. These revenues will be used to help subsidize the cost of local telephone service of small and rural carriers to keep their costs within 110 percent of the national average.

--Installed terminal equipment and inside wiring provided by the local operating company will be gradually removed from the local rate base.

--Present exchange access charge agreements are frozen except for inflation adjustment, for a three-year interim period until newly designed access charges go into effect.

--For two years after divestiture royalties derived from the required licensing of patents by AT&T must be returned to the divested local operating companies based on the proportion of monopoly revenues used in their development.

The subcommittee's goal in including the above provisions is to minimize the possible negative impact that the divestiture and the transition to a more restrictive rate base could have on local telephone rates. Although there are numerous uncontrollable factors--such as inflation--affecting the level of local telephone charges, the subcommittee has tried to incorporate mechanisms to ease the transition to a newly formulated rate base. Among such provisions is the development of a National Telecommunications Fund to assure affordable universal telephone service in rural and small exchange areas. Since telephone rate structures are presently formulated so as to help subsidize service in high cost rural and small exchange areas, the subcommittee feels that the National Telecommunications Fund is necessary to prevent any sudden dramatic rate increases which could remove telephone service from the reach of customers in high cost areas.

The gradual removal of installed terminal equipment and inside wiring from the local rate base will help to minimize any sudden losses from the local rate structure as will the maintenance for a three-year period of present exchange access charge levels. The distribution of royalties for licensed patents for a two-year period after divestiture was developed to ensure that ratepayers derive the benefits from the research which was supported through monopoly telephone rates.

IV. CONTROVERSIES SURROUNDING THE LEGISLATION

Although the need to revise the 1934 Communications Act and set the framework for a new national telecommunications policy incorporating technological change and the entrance of competition is not disputed, the manner in which this should be accomplished has been a subject of significant controversy. The controversies presently surrounding such a revision focus on two major issues:

1) the scope and extent of the legislation needed at this time; and 2) the necessity for, and the content of, specific structural and behavioral provisions and their impact on the suppliers and users in the industry.

A. The Scope and Extent of the Legislation

In the past there has been little disagreement over the need for Congress to develop some form of comprehensive legislation to revise the outdated 1934 Communications Act. The recently announced proposed settlement of the AT&T/-Justice Department antitrust suit, however, has brought into question the present necessity for the enactment of a major legislative initiative. Due to the settlement's required major restructuring of the Bell System and its potential impact on the telecommunications industry's structure, some seem to question the desirability of the enactment of a major legislative proposal at this time, while others feel that such a restructuring makes the enactment of an immediate legislative vehicle more imperative.

1. Proponents for the Enactment of a Major Legislative Initiative

The Communications Subcommittee as well as various State regulatory officials, consumer groups, and numerous computer, information, and equipment companies, feel that the proposed settlement does not pre-empt the need for legislation and to the contrary makes it imperative that Congress enact comprehensive legislation to address the many issues facing telecommunications law

reform. According to subcommittee members it is the role of Congress to revise the outdated Communications Act of 1934 and set the foundation for a new national telecommunications policy and the settlement does not accomplish this task. Subcommittee Chairman Wirth feels that the proposed settlement does not eliminate many of the issues surrounding telecommunications reform and that the best way to address the issues surrounding the settlement's implementation is in the context of a new industry-wide telecommunications policy. Such issues as the impact on local rates, viability, and financial health of the divested local operating companies, the continued universal availability of high quality telephone service, the integrity of the telephone network, and employee protection are some of the issues which the subcommittee feels the settlement does not address.

Supporters of a wide-range legislative initiative claim that the settlement does not set policy for all the companies involved in the industry and that only a comprehensive legislative measure encompassing all facets of the industry will end the uncertainty and confusion surrounding out national telecommunications policy.

2. Opponents to the Enactment of a Major Legislative Initiative

Various opponents to the enactment of a major legislative initiative have expressed the belief that the provisions contained in the AT&T-Justice Department settlement will so modify the relationships between, and the structure of, our domestic telecommunications industry that only limited legislation which is narrow in scope should be pursued at this time. Views have been aired which suggest that a more appropriate course of action for Congress would be to permit the settlement process to proceed unencumbered until the settlement's provisions are clarified and implemented before enacting major legislation. Supporters of such a viewpoint feel that congressional action which would address

still undefined structural and behavioral relationships in the telecommunications industry may prove to be ill conceived or inappropriate since much of the perceived structural and competitive problems facing our present telecommunications industry may no longer be relevant.

William G. McGowan, Chairman of MCI Communications Corporation, one of a number of competitors of AT&T in the long distance transmission market, is one of the supporters of this viewpoint. In a letter sent to the House Energy and Commerce Committee, he urged Members not to act on legislation which will modify the terms of the settlement and formulate a national telecommunications policy until the details of the AT&T reorganization are clarified, and a thorough understanding of the changes occurring in the industry is assured. Limited legislation is needed, however, he said, and proposed four matters for attention:

"(1)--Establish FCC jurisdiction over all long distance services, to end a 50-State crazy-quilt that has thwarted regulation and competition alike, and affirm FCC jurisdiction over access fees and interconnection; (2) provide the FCC with a pro-competitive mandate which will permit it to deregulate, subject to a sound effective-competition test; (3) require that all exchange carriers provide cost-justified access to interexchange carriers, without discrimination, for the type and quality of interconnection they request; and (4) if Congress determines that subsidies are required to prevent the loss of telephone service among those who cannot afford what it really costs, establish a government fund to provide subsidies to truly needy persons."

AT&T has also expressed the viewpoint that Congress delay passing any major legislation until the details of the settlement have been finalized. Although there are many structural and behavioral provisions which AT&T specifically objects to, they also object to the legislation on general terms, stating that there should be only one plan to reorganize and restructure the industry and

that the introduction of significant legislative initiatives to modify the proposed settlement's terms will only lead to confusion and disruption of the telephone system.

The Communications Workers of America (CWA) support the passage of a shorter, more limited bill on the basis that the proposed divestiture and behavioral requirements included in the AT&T-Justice Department settlement make major legislative initiatives unnecessary and the introduction of extensive legislative proposals would only impede the progress of needed more specific reform. According to CWA President Glenn E. Watts, Congress should either pass a narrow bill which would cover five major issues: (1) employee protection; (2) trade reciprocity; (3) guaranteed subscriber access to equipment and wiring; (4) implementation of toll access charges to subsidize local rates; and (5) full and equal competition of all entrants in the industry; or it should not pass any legislation until the settlement is implemented and then only what is necessary to address remaining problems.

Bernard Wunder, Assistant Commerce Secretary for Communications and Information, has stated that the Administration advocates the "narrow initiative" view and believes that any domestic telecommunications legislation considered at this time should not include any structural issues, but should be limited to four areas: 1) access charge and rate stability; 2) national defense and emergency preparedness; 3) jurisdictional questions regarding the division of State and Federal regulatory authority; and 4) clarification and extension of FCC authority to deregulate effectively competitive offerings. It is these issues, the Administration feels, which are in need of present congressional review.

B. The Content of, and the Necessity for, Selected Provisions

In addition to the basic controversy over the scope of the legislation, a considerable amount of controversy has been generated regarding the need for,

and the impact of, specific provisions contained in H.R. 5158. Although there are many provisions contained in the legislation which address various telecommunications concerns, perhaps those which seek to modify the terms of the proposed AT&T-Justice Department settlement have attracted the most attention. Although the settlement's terms have been subject to a significant amount of criticism, agreement on the manner in which the terms should be modified and the desired goals to be accomplished have been open to debate.

As previously discussed in Section III, some of the major ways in which H.R. 5158 seeks to modify the antitrust settlement's terms include: imposing additional structural and behavioral requirements on the "dominant carrier" AT&T, modifying the terms of divestiture, expanding the divested local operating companies' range of business activities, and providing for additional transitional and subsidy mechanisms to ease sudden potential increases in local telephone rates (see p. 9-15). By incorporating these modifications the subcommittee feels that some of the major deficiencies in the settlement will be addressed.

1. AT&T Structural and Behavioral Requirements

- a. Proponents' Viewpoint

According to the subcommittee, H.R. 5158 imposes specific structural and behavioral requirements solely on AT&T because of its unique position as the dominant carrier controlling 80 percent of the Nation's long distance transmission facilities (see p. 10-12). Sponsors of H.R. 5158 feel that it is necessary to impose those restrictions to assure that AT&T does not: 1) use the revenues it derives from its dominant market position in the regulated long distance transmission markets to cross subsidize its activities in unregulated markets to the detriment of competitors; 2) inhibit long distance competitive access or equipment procurement; and 3) control the flow or content of information which would largely be dependent on AT&T's transmission facilities for

distribution. Prohibition against AT&T's establishment of an unregulated long distance transmission facility is also proposed to assure the viability of AT&T's regulated network, the long distance network on which most users are dependent. Since AT&T cannot develop an alternative unregulated facility to meet its long distance transmission needs, this provision will encourage AT&T to continue to expand and enhance its regulated network for the benefit of all users as well as itself. The subcommittee also points out that provisions are contained in the bill so that these restrictions can be eliminated once AT&T no longer holds its present dominant position in the long distance transmission market. Therefore, they feel, H.R. 5158 requires regulation only for the minimum amount of time necessary to ensure that the public benefit is protected and anticompetitive practices do not occur.

b. Opponents' Viewpoint

Those opposed to the implementation of such structural and behavioral provisions state that AT&T should be free to compete on the same basis as other participants in the industry. AT&T's present dominance of the long distance transmission market, in their judgment, is not significant since they claim that competitors are rapidly expanding their market share with long distance competition expected to be fully competitive in approximately five years. ^{10/} They note that even though AT&T controls a dominant market share, it does not have significant market power, in that any attempt by AT&T to subsidize unregulated activities through increased long distance transmission rates will result in users

^{10/} The proposed timeframe for the increase of significant nationwide alternatives in the long distance transmission market is subject to debate. AT&T has projected that it will receive less than 50 percent of the revenues from the U.S. long distance market by 1986. The accuracy of the assumptions on which this projection is based remains under question, however, and appears to some to be overly optimistic regarding both the application of technological advances and the growth rate of competitors.

turning to competitor's services. It is also pointed out that separate subsidiary and bookkeeping requirements are unnecessary since AT&T's long distance service is a regulated common carrier service already subject to FCC oversight.

Opponents also state that there are implicit costs to the implementation and operation of such requirements both in the increase in operational costs which must ultimately be borne by consumers, as well as the costs associated with the loss of possible research and manufacturing efficiencies and benefits which may be gained by a fully integrated system. In addition, the increase in FCC oversight required to monitor these requirements, opponents maintain, will not only result in an unnecessary increase in government regulatory costs and burdens, but will also negatively affect the time FCC regulators will have to monitor other necessary regulatory matters.

2. Viability of the Divested Local Operating Companies and the Impact on Local Telephone Rates

Concern expressed over the settlement's effect on the financial health and viability of the divested local operating companies and the impact on local telephone rates has caused the subcommittee to include selected provisions which expand the range of permitted local operating company activities, modify the divestiture procedure, and provide for local rate subsidy mechanisms (see p. 12-15). In contrast to settlement terms which restrict the local operating companies to the provision of regulated local exchange access and functions, H.R. 5158 expands the operating companies' range of activities to include a number of traditional revenue sources and implements additional transitional and subsidy mechanisms to help ease potential local rate increases.

a. Proponents' Viewpoint

Those in favor of such provisions cite the need to assure that the local exchange revenue base is comprised of elements which offer growth potential,

leading to an expanding, viable local rate base structure. Through these provisions, supporters claim, the quality of service offered and the stability of local exchange service, as well as the investment earning potential of the divested local operating companies will be assured. Additional provisions which require that the valuation of assets and distribution of debt occur after the divestiture of the local operating companies are included to ensure that all the parties will have an equal voice in the process. Proponents state that post-divestiture asset and debt allocation ensures that the asset and debt transfer process is done in an equitable manner with parties receiving a fair value for their assets and an equal distribution of the debt. Supporters of this provision point out that a balanced financial condition is of vital importance to assure that the divested local operating companies remain attractive investments and can continue to offer reliable, efficient service at reasonable rates.

Proponents also feel that the impact of both a sudden restriction on the revenue generating elements of the local rate base and the sudden loss of the long distance subsidy generated by the present settlements/division of revenues process would result in a dramatic increase in the charges for local telephone service. 11/ The gradual deregulation of terminal equipment and wiring from the rate base, as well as the continuation of present exchange access charge agreements for a three-year period, are both implemented to ease the impact that the loss of such revenues will have on the local rate base. Special attention is

11/ The shifting of cost allocations from intrastate to interstate services has led some to claim that interstate services are providing a subsidy to intrastate services. Others have responded that, over the years, much of local exchange plant has been designed to accommodate long distance service; therefore, shifts in the cost burden are not only necessary, but may still be inadequate. Whether there is a subsidy between interstate and intrastate services and in what direction it flows remains a contested issue; however, most will agree that there appears to be a subsidy to rural telephone companies generated through such a payment system.

also given to users in particularly vulnerable high-cost areas, those who depend on service provided by rural and small exchanges, by the implementation of a National Telecommunications Fund, the revenues of which will be used to keep costs within 110 percent of the national average. All of these provisions, supporters claim, have been incorporated into H.R. 5158 to protect rate payers from any sudden undue financial hardships, and to preserve the integrity and viability of the local exchange network, concerns which the subcommittee feels are not properly addressed in the settlement.

b. Opponents' Viewpoint

Opponents to the inclusion of the above provisions state that the expansion of the divested local operating companies' service offerings to encompass both regulated and unregulated services goes against the underlying principles of the settlement's philosophy. The major principle behind the settlement lies in the separation of the offering of regulated and unregulated services to ensure that the potential abuses which could occur through the joint offering of both types of services cannot occur. By permitting the divested local operating companies to offer both related competitive services such as customer premises equipment, as well as regulated monopoly local telephone service, only encourages the development of possible anticompetitive practices. Such a situation, opponents state, also leaves the local operating companies open to antitrust action, making them vulnerable to numerous lengthy and expensive law suits.

Financial viability is not in question, opponents claim, since the terms of the settlement require that the local operating companies be divested in a manner which assures their financial viability and ability to perform their role as the provider of local exchange service. The Justice Department is given the responsibility of assuring that the local operating companies' and ultimately the public's interests are protected before any divestiture can occur.

It is also claimed that there would be no incentive to sacrifice the operating companies' financial well-being in favor of AT&T's, since the present stockholders will be owners of both AT&T and local operating company stock after divestiture. Opponents also point out that the financial future of local exchange service is secure since technological advances will increase efficiencies and with their role as the "gateway to the information age" the use of local exchange service will be rapidly increasing with the proliferation of new computer and information services.

Concern has also been expressed over the tax implications of H.R. 5158's requirement that asset valuation and debt distribution occur after divestiture. According to Alfred Partoll, AT&T's vice-president of State regulatory matters, if AT&T is required to divest the local operating companies with assets intact and then buy back designated assets the transaction, according to Federal tax laws, would be classified as a sale not a divestiture. This would result in AT&T having to pay Federal and State taxes on these assets of almost \$6 billion, since it would be taxed as ordinary income.

Opponents do not see the necessity for the implementation of additional transitional and subsidy mechanisms to alleviate potential local rate increases. The settlement, they claim, already calls for the implementation of an access charge which interexchange (long distance) carriers will pay for connection to the local exchange networks and this will provide any necessary support which the settlement's implementation may remove from local service. Since these access charges will remain under regulation, the appropriate regulatory body may set such charges at any level they deem appropriate. Revenues gained from the publishing of "yellow pages" directories (an estimated \$2.6 billion annually) will not be lost from the rate base according to Assistant Attorney General Baxter, since the local operating companies will be able to generate revenues

from the sale of the machine-readable listings which form the basis of such directories. Mr. Baxter also notes that the settlement's terms will have a positive effect on the costs entailed in the provision of local telephone service since AT&T/local operating company negotiated supply and license contracts will be terminated. The local operating companies will now feel free to purchase equipment from any supplier on a fully competitive basis and will no longer be involved in any costs directly associated with research and development.

V. CONCLUDING OBSERVATIONS

The consensus is that the incorporation of competition into our telecommunications industry structure as well as the melding of information and communications due to technological advances have necessitated the revision of the 1934 Communications Act and the formulation of a new, national telecommunications policy. The manner in which this should be accomplished and the framework around which this policy should be developed, however, continues to be a subject of considerable debate. The complexity of the issues, as well as the simultaneous actions by the courts, the FCC, and the Congress to revise our telecommunications policy, have added further controversy to the task.

Although congressional activity in the first session of the 97th Congress was largely focused in the Senate with the passage of its telecommunications policy reform measure, S. 898, in October 1981, the House is now actively addressing the issue with its legislative measure, H.R. 5158. A significantly revised H.R. 5158 unanimously passed the House Subcommittee on Telecommunications, Consumer Protection, and Finance in March 1982, and now awaits full committee action. Although the proposed settlement of the AT&T-Justice Department antitrust suit caused considerable modification of the House measure, significant controversy continues over both the present need for major legislative reform and the content of specific provisions which, among other actions, would modify the settlement's terms. The earliest the full committee is expected to consider H.R. 5158 is the end of May, and House Commerce Committee Chairman Dingell

appears to be interested in offering further amendments during Committee mark-up. ^{12/} Representative Rinaldo reportedly is also considering possible amendments which would eliminate, after five years, numerous structural and behavioral restrictions imposed on the "dominant carrier," AT&T.

The likelihood of passage of any significant telecommunications legislation in this Congress is still unclear. What effect AT&T's \$2 million lobbying campaign against H.R. 5158, as well as additional opposition to specific provisions expressed by other groups, will have on House approval remains a significant question. The farreaching impact of such legislative reform, as well as the inability to gain a consensus among communications specialists regarding the best legislative approach, have resulted in further controversy. Additional hurdles to be overcome before legislation is enacted include the possible sequential referral of any legislative initiative, the strong opposition to H.R. 5158 expressed by Senate Communications Subcommittee Chairman Goldwater, and Administration opposition to any legislation which would at this time attempt to modify the structural provisions contained in the proposed AT&T-Justice Department antitrust settlement.

^{12/} Draft versions of some of the possible amendments to H.R. 5158 include: the elimination of the five-year waiting period for divested local operating company sale of new terminal equipment and expansion of divested local operating company entrance into any competitive ventures; the prohibition of all interexchange common carriers from the bypassing of the local loop until 1988; modification of the access charge amendment so that it may include other factors besides relative use when charges are set; expanding State regulatory authority over access charges to all carriers not just small ones; an as of yet unformulated provision which would guarantee that certain groups such as the elderly or rural residents are assured easy access to telephone equipment ("the supplier of last resort" provision).