



## **Democracy in Crisis: The Telecommunications Act of 1996**

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### **Abstract:**

*This article focuses on the Telecommunications Act of 1996 that was passed under the Clinton administration. The Telecommunications Act of 1996 was the first dramatic change in 62 years to the 1934 Communications Act. This legislation was approved by the 104<sup>th</sup> Congress and signed by the Clinton administration. The purpose of the Act was to improve the quality of life of Americans by introducing new, modern age flexibility to the old 1934 Communications Act. However, during this period private lobbies became incredibly invasive in their penetration into policies that threaten the vitality of the American Democratic System. The Article explores the dangers in the civic, political, and day to day lives of American citizens.*

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**Introduction:** This article focuses on the Telecommunications Act of 1996 that was passed under the Clinton administration. The Telecommunications Act of 1996 was the first dramatic change in 62 years to the 1934 Communications Act. This legislation was approved by the 104<sup>th</sup> Congress and signed by the Clinton administration. The purpose of the Act was to improve the quality of life of Americans by introducing a new, modern age flexibility to the old 1934 Communications Act. The industry lobby was eager to have a fairer playing ground upon which it could further certain private interests. The telecommunications bill was a highly debated issue during Clinton's presidency, especially near the end of 1995. There was a GOP-led ideological war that brewed in early spring with the goal of lessening the control of the FCC, or possibly even abolishing it. The main focus was to do away with the old, archaic rules of the 1934 Act which at the time of its passing seemed to fit into the future of the country as it went forward. There was bipartisan support for the Act; it was passed because it touted the benefits of jobs, improving education, making communications easier, and helping to bridge certain gaps in the country's socio-economic status. It was under these conditions that the bill became highly politicized by the administration. I concluded from these conditions that the main concern was the health of the American democracy. A study of this bill forces the question: can a healthy, vibrant democracy exist in the absence of any truly free public spaces, with no place designated for free public exchanges, or for the dissemination of credible information about the goings on in the world? Without access to these types of spaces, are Americans truly free? Such a situation makes us question the vitality and openness of our democracy, and is why it is important to examine the Telecommunications Act of 1996 and its impact on public space.

This paper is divided into sections, including a substantive summary of the policy background, the goals, problems, and solutions (including both general and specific solutions), and a conclusion. The first section gives a detailed summary of the policy background and the main players, their aims, what happened, and the basic details of the policy initiative. The second section relates the goals of the paper, and deals with high concepts such as "Liberty," since there are two groups of particular interest in such an inquiry: the industry lobby, and those who are concerned about a monopoly control over of our airwaves (which are supposed to be a commonly-held public good). The third section discusses problems the paper elaborates upon, such as the different competing "interests" that served as the dominant factor in this policy initiative; here we see that politics is affected by different interests, especially in policy making. The fourth section of the paper lists solutions and puts forward answers regarding where "inducements" played a major role in this initiative, as well as how certain "rules"

were either flexible or inflexible. The last section of the paper includes a conclusion that summarizes the paper, taking into account certain difficulties in explaining the political activities surrounding the policy initiatives, the roles of the key actors, and the ways in which the discussion of the policy initiatives could be better, more precise, and generally improved.

**Substantive Summary of Policy Background:** The Telecommunications Act of 1996 was signed into law by the Clinton administration. The bill enjoyed much popular bipartisan support. The FCC was once thought of as vanguard for protecting the rights of the individual to have access to free public space. The 1934 Communications Act replaced the older Federal Radio Commission with the Federal Communications Commission. According to Chester, the “FCC at one time was seen [as] a Lone Ranger, which fought to protect the rights of American Citizens,” but now it has “lost its luster and mystique.”<sup>xi</sup> The FCC’s intent was to create a level of checks and balances. It was supposed to bring about a greater level of integration among people of diverse backgrounds and interests. By law, it cannot discriminate against any race, religion, sexual orientation, or socio-economic background. At one time, the FCC was a truly independent group that watched over high quality educational documentaries and programs. However, the industry lobby looked for opportunities to expand and take advantage of lucrative deals, and thus took more and more free public spaces away. According to Chester, “the Industry had lobbyists and lawyers all over Washington D.C., and many eager ears willing to listen to them [;] some prominent names included GOP leader Newt Gingrich and Bill Frist.”<sup>xii</sup> Even the Clinton Administration sold this as a win-win, because it helped improve the economy and would help with education and healthcare.

In the 1960s, there were opportunities to learn about the world. For example, Chester states that “Newton Minow, chair of the commission from 1961 to 1963 during the Kennedy administration, is justly remembered for his ‘Vast Wasteland’ speech when he excoriated the three TV networks for their lack of quality programming.” This highlights how drastically things have changed since then.<sup>xiii</sup> There has been a major drop off in the quality of television programming, and with more of the airwaves now owned by fewer owners, there is not a diverse representation of American society. If anything has resulted from passage of the Act, it is the collusion of powerful groups who - rather than compete against each other - actually make compromises with themselves. This underscores the logic of those crying out for market rule and less government regulation.<sup>xiv</sup> NBC and ABC have realized that there really is no need to compete against each other. They do not have to put out quality programming if there are so few options that people are forced to choose from whatever the owners want to put out. Since legally these organizations cannot charge for things like quality of programming, the major trick for cable companies is to charge for access. Sadly, much of the space made available by the government for internet access should be free, but instead is controlled by major corporations like Verizon.<sup>v</sup>

They put out more and more generic news programming; stations adhere to a corporate model, and many news stations have had to cut their staff. Newspaper staffs have also been decimated. McChesney states that “there is an appalling schlock journalism for the masses, based upon lurid tabloid type stories. For the occasional serious story there is mindless regurgitation of press releases from one source to another, with the range of debate mostly limited to what is being debated among the elites.”<sup>vi</sup> It is dangerous for those who attempt to provide provocative and edgy reporting, because now that people have become so accustomed to tabloid news reporting, they tend not to value anything that makes them think or ask questions. For example, Chester states that “many promising careers have ended when reporters and journalists produced work that their producers and directors did not approve of[;] because of this type of climate now in the news industry most people choose not to go against the grain and jeopardize their job security.” This type of thinking is very dangerous because it provides a vehicle for creating approval for a war without so much as a debate, or even asking if alternatives are possible. With this type of “rubber stamp” thinking and the FCC no longer running a tight ship, it is no surprise that our society is so apathetic politically, especially with regards to issues located beyond our own borders.

The FCC has become a target for an industry that looks less for regulations and more for favorable terms for private interests, even if those terms come at the expense of the American people’s right to access public space. One of the most successful assaults on the FCC was during the Reagan administration; Reagan saw the FCC as an old dinosaur that was no longer needed to oversee and

handicap corporations. In his view, corporations needed to be made more competitive to bring about economic progress.<sup>vii</sup> The Reagan administration rolled out rhetoric of less government interference and policies designed to allow businesses to regulate themselves. For Chester, U.S. presidents have so much liberty in choosing leaders of watchdog groups is an area of concern. According to Chester, “the Reagan and G.H.W. Bush administrations had commissioners and special councils working at the FCC that either advised, worked, or lobbied for the Progress and Freedom Foundation, which fought for the rights of big media.”<sup>viii</sup>

Chairman Powell was a man who touted strongly conservative values. As the son of Colin Powell, he commanded respect from both democrats and republicans; however, in his time as Chair of the commission, he continued Regan’s crusade. He picked up Regan’s rhetoric of efficiency and reduced regulations. He endeavored to open everything up because he felt that the FCC was limiting opportunities for more competition ,which supposedly would lead to better products. What actually resulted, though, was carte blanche deregulation for the broadcast lobby and a stripping away of any remaining barriers to corporate interests. According to Chester, “at the top of its congressional wish list with the Telecommunications Act was corporate welfare.”<sup>ix</sup> This corporate mindset is akin to an epidemic sweeping through much of the media, whether it be TV or the internet. According to McChesney, “with the creation of the FCC, and a pro-business commissioner, big business had a regulatory apparatus to limit competition, and within a few years radio broadcast rights were concentrated in the hands of ABC and NBC.”<sup>x</sup> If the chair himself espoused such values and advocated opening up the industry, then how could the Commission continue to serve its purpose as an independent agency?

When there is a Chair who is overtly pro-business, he obviously will do things that are not in the best interest of the American people; the great irony is that even after many of the Chairs leave, they take lucrative positions with these corporations or lobbyist groups to work on behalf of the industry that they were at one time supposed to police. This is a major conflict of interest, and raises questions regarding the principles and ethics of Chairs like Powell. As long as this type of relationship exists between the Chairs and the industry, then the purpose of the FCC will not be met.

The FCC has failed in its role as an independent policing agency, and these Chairs are selling the American people short and not watching out for the public interest. The problems have been built in by this institution that once was a champion of the American people. The industry has very large firms working for them, and has become quite sophisticated and successful in reaching their goals. Each major network has a wing that deals just with these types of legal disputes, and whose responsibility it is to conjure up reports and statements for use in swaying eager ears in the halls of Washington. It is no longer a discreet endeavor; many of these firms have a permanent place at the table with offices in Washington.

Moreover, the ideas expressed in the Act are novel on the surface, but in reality what resulted was a victory for the media industry. According to Chester, “the act required the FCC to open up more free airwaves to existing TV Station owners, TV and radio owners won an increase in number of years of licensing before renewal review, and national broadcast chains would own up to 35 percent of the national audience.”<sup>xi</sup> Also, the end of ownership rules meant that companies like Clear Channel could jump from owning forty-three stations in 1995 to more than twelve hundred in 2005. Cable could continue to charge increasingly higher fees, and the American people were stuck with a more generic and convoluted source of public space.

Furthermore, it should come as no surprise that some of the major players in this Act were the Clinton administration, the GOP, and the industry lobby. The politicians were in bed with the lobbyists, who maintain numerous offices in Washington. The lobbyists were successful in achieving their objectives of loosening up regulations and creating favorable terms, all in exchange for the American people’s rights. The main concern here is the health of American democracy in these conditions. Can a healthy, vibrant democracy exist in the absence of any truly free public spaces, with no place for the free exchange of ideas or way to be given credible information on the goings on in the world?

**Goals:** The major goal that highlights the intense struggles of the Telecommunications Act of 1996, I would say, is Stone’s goal of liberty. In her opinion, many Americans feel that freedom is the essence of America. It is the central reason why the colonists fought for independence, and the most

fundamental principle at the heart of American democracy. She brings up the dilemma faced by the American Legion with the issue of the Supreme Court ruling stating that individuals cannot be banned from burning the American flag. It brings up another interesting question: Do we always have the right to do what we want? And if so, don't we also have the right to burn the flag, the primary symbol of liberty?<sup>xii</sup> She feels that the legionnaire example brings up the crux of the liberty problem: sometimes the curtailing of individual liberties may be necessary to preserve a community within which individuals can thrive and exercise free choice.

Stone feels that the dilemma of liberty surfaces in public policy around the question of when government can legitimately interfere with the choices and activities of citizens. She believes that John Stuart Mill's belief of limited government is the dominant way of thinking in the US, and I tend to believe that this is the kind of thinking that played a dominant role in bringing the 1996 Telecommunications Act into existence.<sup>xiii</sup> First, Mill believed that a government is justified in restricting behavior when there is a real risk of harm to others. Second, he believed that there was a clear distinction between a behavior that affects the behavior of other people, and a behavior that does not. The third justification is that liberty is seen as an attribute of individual action. In this sense, liberty means doing nothing, refraining from acting, rather than doing something.

One challenge to this view, however, is in defining exactly what harm has occurred as a result of the Telecommunications Act. The industry lobby wanted to remove regulations, and even Chairman Powell saw the FCC as wasteful and a means of enforcing outdated regulations. The industry felt that the American people were being harmed by antiquated regulations codified by the old Communications Act of 1934, which was now obsolete. Stone feels that the question of liberty is defined by the nature of harm. Chairman Powell and the industry lobby met with some very eager ears in Washington who undermined the average citizen's safety net that was provided by the old Communications Act. The Clinton administration felt that the regulations were harmful, and there needed to be less interference; the market would take care of itself at the citizens' expense.

The telecommunications industry wanted to remove regulations because this would benefit them. Deregulation would allow them to act for a number of people without being punished or feeling the ramifications of their actions. They claimed to be acting in the public's best interest, working in a collective manner; however, the result was not what was best for the public interest. Those who are concerned with this monopoly control of our airwaves are now looking for a collective public action that is responsible and cognizant of the rights of the American people. What the industry lobby wants is to be able to have the liberty to choose what is right for other people when, in fact, they are being deregulated. Stone brings up an interesting problem when she states, "the dilemma of liberty surfaces in public policy around the question of when government can legitimately interfere with the choices and activities of citizens[;] when if ever should community social purpose be allowed to trump individual choices?"<sup>xiv</sup>

In this instance, especially with public space, those who look to take away public space to let the market control and dictate competition would view the government as an instrument of protection for this public utility. Those against monopolization believe that that this space is a basic right for citizens, and it should be guaranteed by the government. Ironically, this is what the FCC is supposed to do as an independent agency tasked with safeguarding the public interest and protecting people from discrimination by the private interest of the industry lobby. Liberty, in this sense, is communal and collective; as a result, individuals must have some of their desires restrained. In a democracy, there are many individuals who make up the larger community; individual is not special. Yet the industry lobby feels it has the right as an individual to make a profit off of something that those against monopolies feel is a public utility. This public utility, for those against monopolies, must be safeguarded and protected. The industry lobby would enjoy curbing the liberties of the public, especially considering what transpired with the 1996 Telecommunications Act. Once the bill was passed, the industry was able to force onto the public a generic product with very little diversity in choice. They acted on behalf of the many without taking into consideration what was really good for them. Instead, they decided that what was good for the industry must also be good for the people.

For example, the Kirby and Gibson article states, "when it implemented the Newspaper Rule, the Commission believed that common ownership of daily newspaper and broadcast stations would not enhance [the] diversity of viewpoints available to the public; instead, the Commission feared that

common ownership would preclude new voices from obtaining the decreasing number of available broadcast licenses.”<sup>xv</sup> So there was a tradeoff, because the authors do not believe that there can be a society where liberty is maximized while there are power struggles. In all honesty, considering the current condition of the FCC, it is difficult to expect an agency so marred with private interests to have a total shift in the other direction. The authors go so far as to say that it is worth striving for, but actualizing this goal would be very difficult. The Telecommunication Act really took away a major right of the American people, in terms of access to free public space, in favor of corporate interests. This public space, accessed through radio and television, is vital for the health of a democracy. In trying to understand how such a heinous bill could be rationalized, Stone believes that corporate owners and managers are immune to financial losses and unemployment caused by their decision; this is the epitome of inequality because the industry lobby was able to dictate to the public.

**Problems:** A problem with the Telecommunications Act of 1996 is what Stone describes in Part III of her book as “interests.” These interests, in the case of the Telecommunications Act, placed the FCC, the industry lobby, and the government into collusion in making life hard for the average American, who after the Act would see their rights marginalized. Stone states: “the quintessential political point of view defines problems not by their causes but by their effects: Who is affected? In what way? Do they know? What do they do about it?” She pushes further by arguing that if a politician is asked to define a problem, then he will probably create a battlefield and tell you where he stands.

According to Stone, the various sides represented in politics are called “interests.” These groups have a stake in an issue or are in some way affected by it. In the example of the Telecommunications Act, the major power players were the Clinton administration, the FCC, and the industry lobby. Stone believes that “interests, in the language of politics, are the active side of effects, the result of people experiencing or imagining effects and attempting to influence the outcome. In the case of the Telecommunications Act we see the industry lobby going to Washington, and actively lobbying to weaken the FCC regulations, for more of an open laissez faire business approach[;] however their approach failed to mention how Americans were being robbed of free public spaces.”

In explaining the issue of how interests became a problem with the Telecommunications Act, it is important to consider Stone’s comment: “when objective interests are correctly perceived and converted to subjective interests, liberals speak of political awareness. There can be a mistake called either a lack of awareness or a lack of consciousness, or people might not be affected by something but still believe they are, a situation called mistaken belief or false consciousness.” Stone believes that both mistakes go together; when people search for causes of problems and mistakenly blame one factor, they usually ignore other causal factors.

In the case of the Telecommunications Act, the Clinton administration took advantage of a sea change desired by the industry lobby who was looking for an opportunity to weaken key FCC regulations, in order to (from their perspective) make business fair and efficient by privatizing public space. The industry thought that the old regulations that protected citizens’ rights were now obsolete in this modern age. To the industry, the FCC symbolized all that was old and outdated, and it no longer served any real purpose. The industry must have interpreted the function of the FCC as being useless. According to Kirby and Gibson, “the commission’s first effort [was] to carry out the congressional mandate to determine periodically whether any of its broadcast ownership restrictions remain[ed] necessary in the public interest as the result of competition and to repeal or modify any rules.”<sup>xvi</sup> They put out rhetoric in their policy analysis using “the story of helplessness and control,” because for those touting the importance of deregulation, the FCC was just an obstacle stopping real progress. The industry lobby proclaimed the benefits of competition and choice over being blocked by over-regulation and policy-making. They painted the regulations as bad for the public. What happened is the Clinton administration bought into many of the ideas of the modern global world connected at a high speed, and thought that the old regulations would only be detrimental to progress and the advancement of the interests of the American people.

This was detrimental because this misinterpretation of the media industry had a major political ripple effect on Congress, as well as on the Clinton administration. They viewed the FCC regulations as having a negative impact on the American people. Thus, they passed legislation from the mistaken perspective that such legislation would allow for greater access to information, better access to health care, economic progress, and a more informed citizenry. The end result, however, was a greater

privatization of public space, less social mobility, and if anything, an arguably less healthy democracy.

**Solutions:** One general solution that makes sense for the Telecommunications Act is inducements. The reason why inducements make sense is the carrot and stick approach they bring. Inducements offer a reward for desirable behavior, and appropriate punishments as well. Incentive and deterrence affect the behavior of people. Incentives have a way of making it easier or more rewarding for people to do what we may want to coax them into doing. However, on the flipside deterrence is effective in harder and more difficult situations, when we need to encourage people not to do something that we do not want them to do. Stone believes, “one uses the promise of rewards, the other uses the threat of penalties, but they both rely on getting other people to choose actions we would desire.”<sup>xvii</sup>

Inducements can be positive, meaning they come with some kind of positive incentive. Inducements can be negative as well, meaning they can have penalties or sanctions attached to them. Inducements could be one possible solution for the problems created by the Telecommunications Act because they offer an interesting solution for when there is a divergence between private and public interests, or for when certain individuals benefit by doing something that harms others or the community. This is the case with the Telecommunications Act because the industry lobby definitely gained at the expense of the public; private interests always stand to gain when they can dictate prices and conditions to the customer, especially when the public is left no other option but to go to that buyer.

Even more interesting is the idea that inducements work not by direct force, but instead by getting people to change their minds. The theory rests on a utilitarian model of human behavior; people are assumed to be rational, each with their own goals and each acting on conscious goal-seeking. This is true, in a way; the industry lobby was able to sell the idea of deregulation to the Clinton Administration and Congress, which in turn produced and signed the bill into law. The industry also produced propaganda promoting the notion that people would have more choices and better values, while in reality this was not the case. The sales pitch was more or less effective, though, since there has not been a huge outcry or an organized rally against the Act.

Another interesting solution is something called the “rules of behavior.” Rules play a vital role in policy making. Rules are mostly seen as similar to laws, since they govern the ways in which we behave and set guidelines for how we should behave. Rules are very important in any society, democratic or otherwise, because they help society reach whatever goals it has deemed desirable. Rules are important to society even though there is no way to inform all individuals of every single thing they can or cannot do; regardless, society must attempt at least to set guidelines for behavior. Some rules can make behaviors, and command organizations, people, and governments affecting those behaviors. There are rules that confer powers, either on private citizens or on organizations. Rules tend to be indirect since they are commands that work over time; a country will not keep a law because once it is made people will have to follow it, even though there is the threat of sanctions attached to the people who follow them.

Moreover, what makes a rule powerful is the idea of legitimacy that can be attached to it. If people connect a rule with legitimacy, they are likely to perceive that rule as a good; this makes it much more likely that they will change or control their behavior. You cannot have a willing suspension of disbelief unless you are successful at selling the belief as legitimate. The industry lobby, more or less, did a heck of a job selling the importance of market values, and highlighting how the old FCC rules were no longer valid (as they no longer carried any bite with them). The rules of the FCC came under tremendous pressure by lobbyists and politicians; even the FCC’s own Chairmen would undermine their rules and purpose. It is with these issues that the FCC lost its bite. What good is a watchdog or independent agency that can no longer control the behavior of the industry it once guarded?

Finally, the trouble with the political activities surrounding the Act is the major threat they posed to the health of the American democracy; public spaces represent a place where citizens can engage in dialogue, deal with grievances, demand greater transparency, and have a tangible impact on their community. What is difficult, especially in terms of the speed and enthusiasm with which the law was passed, was there was virtually no debate or any resistance, even though it had a profound impact on everyday life. It is disheartening to see a law such as this enjoy such bipartisan support, because it has some cancerous features that have led to the troubling condition of the media today.

Programming, news, and radio are now flooded with hardcore ideologues espousing very narrow and rigid viewpoints. Instead of having a media that acts as a watchdog for the public, we have a generic product sold to the masses. The irony is that many will not even question what they are being fed. Ultimately, this will damage the health of this democracy. It explains the political apathy we see, and even a lack of desire to know what rights we even have. The industry lobby has become so powerful that people are just happy with what they have access to, and cannot be bothered to know what a public space is or that it is a utility they have a right to as a citizen. I would also add that Domhoff's take on "elites" is interesting because when considering the key players - like Bill Clinton and Chairman Powell - as well as industry leaders, one notices that many of these people came from powerful universities and organizations. Clearly, many of these actors had substantial political, economic, and social clout. Most of these actors were from the upper class; this is why in a longer discussion it would be very interesting to add the "elite" element to the explanation of how public spaces are disappearing. It makes one wonder about the health and vitality of the American democracy without access to public spaces.

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