Abstract

The Telecommunications Act of 1996 has yielded more litigation and less local competition than its supporters expected or intended. Calls for its reform are multiplying. In this Article, Professor Speta diagnoses the 1996 Act’s failings and prescribes a framework for reform. The successful deregulations of the transportation industries and of long-distance telecommunications (precedents the 1996 Act sought to follow) demonstrate that the Act should have taken additional steps to promote intermodal telecommunications competition. Transportation deregulation successfully prompted competition where (as in the case of airlines and trucking) multiple firms could compete on an intramodal basis or where (as in the case of railroads) the single firm was subject to intermodal competition from firms using other technologies. The 1996 Act’s reliance on the unbundling of incumbent local telephone companies’ networks reveals that its supporters thought that portions of the local wireline networks would remain bottlenecks. The lesson, therefore, is that the 1996 Act should have taken additional steps to create the conditions for intermodal competition.

Based on this analysis, Professor Speta outlines a new communications law that increases the possibilities for intermodal competition. Indeed, the glimmers of hope for local competition—cell phone substitution and voice-over-Internet-protocol (VoIP) telephony—are intermodal competitors. Although the 1996 Act did move in this direction and the Federal Communications Commission is vigorous on several fronts, more can be done. Spectrum reform (the most significant missed opportunity in the 1996 Act) and other steps would decrease legal and economic barriers to intermodal competition. The Article also addresses local and state control of telecommunications carriers, regulatory parity, universal service reform, and government funding of research and infrastructure, and it offers a technology-neutral regulatory scheme for VoIP. The proposed deregulatory agenda seeks a law capable of accommodating the speed and diversity of technological change in this "Internet time."