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BOOK REVIEW

Whither Unregulated Access Competition?

Universal Service: Competition, Interconnection, and Monopoly in the Making of the American Telephone System, by Milton L. Mueller, Jr., MIT Press and AEI Press, 1997, 191 pages.

Reviewed by Clayton C. Miller*

In the great social science tradition of Thucydides and Ken Burns, Milton L. Mueller, Jr. shines his analytical light on events of the past in an effort to enhance our understanding of the present. While he succeeds in illuminating a murky chapter in the evolution of telephone service—the period from 1894 until around 1912 when the Bell System faced competition from independent telephone companies for the local and long-distance business of residential and business customers—the strength of his analysis fades as he attempts to connect this “historical episode of access competition”¹ to the telecommunications policy debates of today.

Notwithstanding the book’s title, readers expecting insight into the contemporary debate over how to implement the universal service provisions of the Telecommunications Act of 1996² (the Act or 1996 Act) will be, for the most part, disappointed. Mueller’s definition of universal service has nothing to do with external subsidies, but rather with network-wide

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1. MILTON L. MUELLER, JR., *UNIVERSAL SERVICE: COMPETITION, INTERCONNECTION, AND MONOPOLY IN THE MAKING OF THE AMERICAN TELEPHONE SYSTEM* 185 (1997).

2. Telecommunications Act of 1996, sec. 101(a), § 254, 47 U.S.C.A. § 254 (West Supp. 1997).

interconnection. Though he devotes ten pages in chapter fourteen to his review of the Act's universal service provisions, the focus of this book lies elsewhere. Indeed, the subtitle gives a greater clue to the book's contents.

The essential premise of *Universal Service: Competition, Interconnection, and Monopoly in the Making of the American Telephone System* is that a dual telephone system, in which unregulated competing networks are not interconnected, played a vital role in expanding telephone coverage around the turn of the century and might have merit again today. While Mueller, an assistant professor of communication at Rutgers University, stops short of advocating a return to dual service,³ he finds much to criticize about the approach to the reintroduction of competition to the local telephone market embodied in the Telecommunications Act.⁴ For Mueller, the promise inherent in the Act's mandate of open access to the telephone network for all competitors—that competition will supplant regulation within the framework of unified service—is too good to be true.⁵ Noting that state and federal efforts to implement the Act have increased rather than decreased regulatory intervention in the industry, Mueller concludes that “[t]rue deregulation in telecommunications will never be possible without a competitive, unregulated market for interconnection and access. This book has shown that unregulated access competition is not an unthinkable option.”⁶

While certainly provocative, Mueller's critique of the present direction of telecommunications deregulation is ostensibly secondary to his analysis of the history of the telephone industry after the expiration of the Bell patents. The meat of his book concerns the interplay between the Bell and independent telephone companies in the pre-monopoly era. Following two introductory chapters and a heavy dose of economic theory in chapter three, chapters four through twelve cover the history of the Bell Telephone System. Mueller begins with the early years, during which Bell actively and successfully enforced its patents for the technology essential to telephony. The author then extensively details the competitive period—when customers in many cities could choose between two companies, each with its own separate customer base—which ended when Bell reasserted its

3. “Whether [modern network unbundling] is more efficient than an alternative such as dual service is outside the scope of this book.” Nevertheless, “[t]he current doctrine may impose upon consumers and suppliers an economically inefficient level of unbundling.” MUELLER, *supra* note 1, at 184.

4. “[T]he new law codifies the perceived wisdom about interconnection, competition, and universal service in telecommunications [O]ne of the chief purposes of this book is to mount a historically grounded challenge to that orthodoxy” *Id.* at 166.

5. *Id.* at 177.

6. *Id.* at 185.

dominance, albeit this time as a regulated monopoly. The final three chapters take the reader from 1921, when Congress first endorsed a unitary telephone system,⁷ through the present, pausing along the way for Mueller's reinterpretation of the Communications Act of 1934.

Unquestionably, independent telephone companies were a force to be reckoned with at the turn of the century. Although the Bell System, including Western Electric and AT&T, had no rival in terms of its national scope, the success that independents achieved in several cities will come as a shock to those who may have assumed that the Bell monopoly extended uninterrupted back to Alexander Graham Bell's invention. Few people alive today remember what it was like to have to choose to subscribe to one or more (or none) non-overlapping telephone networks, and Mueller's extensive research into the relative market penetration of Bell and its competitors in scores of large and small communities across the country provides a fascinating insight into those times.

It was during this period of "dual service" that universal service first became an issue. According to Mueller, the term "universal service" was first coined by AT&T President Theodore Vail in 1907.⁸ Universal service to Vail and his contemporaries, however, represented something very different from what the term represents to present-day audiences. Speaking at a time when his company faced real competition for customers, Vail attempted to trumpet the advantages to be gained by having all telephone customers hooked up to the same system, namely his. Today, however, universal service means "regulatory policies to promote the affordability of telephone service through cross-subsidies."⁹ As Mueller emphasizes throughout his book, Vail's self-interested paean to uniformity through interconnectivity is a far cry from the sweeping reallocation of resources on which modern efforts to maintain affordable local rates are based. And yet proponents of this second-generation universal service concept, which the author argues arose in the mid-1970s "when long-distance competition began to threaten the new separations practices adopted by federal and state regulators,"¹⁰ have a tendency to identify Vail as the progenitor of their vision. The author posits that this misunderstanding of the ideological origins of universal service has caused contemporary policymakers to place too great an emphasis on the role of the regulated monopoly in the development of this country's geographically ubiquitous telephone infra-

7. The Willis-Graham Act of 1921 "gave the imprimatur of the U.S. Congress to the elimination of the last vestiges of competition." *Id.* at 145.

8. *Id.* at 4.

9. *Id.*

10. *Id.* at 162-63.

structure.

Mueller maintains that, contrary to current conventional wisdom attributing high levels of telephone penetration to "an industry-government commitment to put a telephone in every home,"¹¹ "[t]he geographic extension of the American telephone network came during the years of access competition."¹² He makes a strong case that competition from independents, rather than monopoly status, spurred the Bell System to reach out and touch as many new customers as it could get to sign up for service.¹³ By the time it came to a close in 1920, "the competitive period had created the kind of geographic and social penetration capable of supporting the modern notion of universal-service-as-social-ubiquity."¹⁴

That Vail introduced the idea of universal service as a contrast to dual service is surely correct. Still, Mueller's zeal to strip contemporary conceptions of universal service of any pre-1970 moorings proves unconvincing. Even if government-mandated subsidies were absent from earlier visions, the social utility of extending telephone service as universally as possible was recognized early on. As the following quote suggests, at least Alexander Graham Bell thought Vail had something more in mind than enabling a phone customer to be connected to any other phone customer:

I dreamed of wires extending all over the country and of people in one part of America talking to people in another part of America. It was the dream of a dreamer, but Mr. Vail has made it come true. . . . Mr. Vail has brought this instrument into every home. . . . He has covered this continent with a network of wires. . . . He has accomplished the dream of my youth. . . .¹⁵

Less convincing still is Mueller's take on the Communications Act of 1934. It may be a leap from the general aspiration found in the preamble to the Communications Act—"For the purpose of regulating . . . commerce in communication by wire and radio *so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges . . .*"¹⁶—to government-mandated subsidi-

11. *Id.* at 166.

12. *Id.* at 148.

13. "Bell management came thus to understand that improving and extending service was the most powerful response to competition." *Id.* at 71.

14. *Id.* at 149.

15. LEONARD S. HYMAN, ET AL., *THE NEW TELECOMMUNICATIONS INDUSTRY—MEETING THE COMPETITION* 101 (1997) (quoting ALBERT BEGELOW PAINE, IN *ONE MAN'S LIFE: CHAPTERS FROM THE CAREER OF THEODORE N. VAIL* 282 (1921) (quoting Alexander Graham Bell)).

16. Communications Act of 1934, ch. 652, § 151, 48 Stat. 1064, 1064 (codified as amended at 47 U.S.C.A. § 151 (West Supp. 1997)) (emphasis added).

zation of local service. That such a transfer was not necessarily the inevitable result of the express commitment found in the preamble, or that today's policies did not immediately evolve after 1934, however, hardly undermines the connection between universal service as we now know it and the ends which were readily apparent in the above-quoted language. Mueller may rightfully lament that the redefinition of universal service occurred with less than full historical knowledge,¹⁷ but his attempts to delegitimize the prevailing universal service doctrine overstate his case. Furthermore, in suggesting that the same results might be achieved if Congress had not required interconnection, he seems to sidestep concerns about whether any competitor for local service could stand a chance developing a customer base under such circumstances.

Mueller acknowledges that the geographic expansion of the dual service era took place when the market contained plenty of room for additional development.¹⁸ He further observes that when a technology or service is newer there is often a shake-out period as customers eventually gravitate toward one standard or service and abandon rivals in the process, not infrequently resulting in a snowball effect as the victor's advantages of scope increase.¹⁹ Witness the demise of Beta videotape. Nevertheless, Mueller's refusal to examine the real world implications of unregulated dual telephone service today diminishes the effectiveness of his critique of present universal service and interconnection policies. One might even concur with his assessment that "our policy dialogue needs voices capable of articulating and defending a twenty-first-century version of dual service,"²⁰ but, while Mueller does an admirable job of documenting the period of access competition between the Bell and independent telephone companies in this country, he leaves that task to others.

17. MUELLER, *supra* note 1, at 151.

18. *Id.* at 180.

19. "Once rapid growth in the overall number of subscribers stopped . . . disparities tended to reinforce themselves over time." *Id.* at 86.

20. *Id.* at 188.

