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The Law of Unintended Consequences: How Regulation Affects Infrastructure Investment

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The Law of Unintended Consequences: How Regulation Affects Infrastructure Investment

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Throughout my career at Ameritech, I've had ample opportunity to witness the various ways in which public policy influences communications investment. Over and over, I've seen how actions taken in Washington and our state capitals have unintended consequences for the communications industry—consequences that go far beyond the investment decisions themselves.

Consider, for example, the impact on customers.

At Ameritech, customer needs play the dominant role when it comes to determining where we direct our capital—the technology we select, the kinds of jobs we create and the services we offer. For the past five years we have been driven not by what the visionaries predict or by what the engineers and technologists can deliver, but by what customers say they want and are willing to pay for.

This year we'll invest approximately $3 billion, most of it in the five states of the upper Midwest. In the past five years, we've invested more than $12 billion. That's an extraordinary commitment to the future.

In a perfect world, all those investments would go precisely to where customers need them most. Should the Illinois State Police ask for a high-speed data network to connect all of their offices around the state, we'd be there. If the University of Wisconsin wanted to link its off-campus students to the libraries at each of the University's locations, we'd hook them up. If a small hospital in southern Indiana wanted to share video with diagnostic facilities in Indianapolis, we'd provide the technology.

But because of regulatory limitations created more than 15 years ago at the time the old Bell System was broken up, there is no effective way to do these things. And the situation is grow-

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ing worse. In an effort to anticipate and manipulate the world's most dynamic market segment—a task that is increasingly impossible for them to do—regulators are making decisions based on ancient history. As a result, those decisions are rife with unintended consequences. And there is no question that those consequences are impeding our investment into the critically important broadband digital networks of the future.

To illustrate, let me share two examples with you—one from the fairly recent past and one that will be determined early in 1999.

Let's flash back about five years to a time when companies like mine were eager to get into cable TV. In the early '90s, everyone was talking about convergence between the two market segments—in fact, Bell Atlantic was widely applauded at the time when it announced it would acquire TCI.

The FCC set out to divine the outcomes of this market convergence. To do so, they came up with a concept called video dial tone, the gist of which was that companies wanting to offer cable would invest hundreds of millions of dollars in alternate broadband systems. Once such systems were in place, their builders would be required to sell space on them to other companies. They would have very little say about what these companies put over the systems, and they would have absolutely no ability to determine pricing. The incumbent cable provider, on the other hand, would face no such impediments.

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During several months of discussion, companies like Ameritech pleaded with the FCC to understand that we could not take on the risk of such an untried investment without the possibility of some reward. But the FCC held fast to its position. As a result, the companies that had planned to come in, build advanced infrastructures and give the public the choice they wanted in cable TV providers said, "This is crazy. Count us out."

Clearly, such investment would have created jobs. It would have put billions of dollars into the economy. It would have offered customers choice for cable service—something they'd been demanding for years. But we couldn't participate. The FCC had taken away the incentive to invest, and company after company bailed. In its effort to manipulate the marketplace and steer the development of competition in cable television, the FCC created the unintended consequence of shutting down the whole initiative.

There's a positive footnote to this story. Since Ameritech is guided by our customers' wishes, we decided to look for an alternative means to stimulate cable competition. And we came to the conclusion that if we couldn't offer cable as a *telephone* company, we'd do so as a *cable* company. So we invested hundreds of millions of dollars. We created thousands of primary and secondary jobs. And we delighted our customers, who are awarding us with up to 40% of the market in more than 70 communities where our service is up and running.

Today, in three of Ameritech's states—Illinois, Ohio and Michigan—customers have better cable service, lower prices and a real choice of providers. If the FCC had only handled their opportunity with more vision and less manipulation, I have no doubt that by now cable customers across America would be enjoying the same thing.

Looking back, the problem wasn't so much that the FCC didn't understand what was at stake, because they did. The real problem was that they were whipsawed by the cable industry and others who had a vested interest in maintaining the status quo.

Today, the FCC is facing a very similar situation with regard to broadband access to data—and, if anything, the stakes are even higher than they were five years ago.

The need for high-speed access to data cuts across all customer boundaries. Huge multinational companies demand it so they can stay competitive in the global marketplace. Hospitals, libraries and schools want it to broaden the base of information available to their constituents. Individuals crave it as a way to speed up the process of accessing and downloading data from the Internet. In all my years in this business, I've never witnessed so great a pent-up demand for a specific communications capability.

And here we sit, not only willing, but with the technical expertise and resources necessary to give customers exactly what they're asking for. But once again, regulatory uncertainty looms large. So we wait. And customers wait. And we hope that this time, the FCC will create public policy that makes broadband investment possible.

To understand the reasons for this logjam, a little history is in order.

When Congress passed the Telecommunications Act of 1996, it understood that it was impossible to foresee exactly how the future would roll out. So legislators purposely included Section 706, which gave regulators the ability to set aside portions of the law if doing so would foster the development of advanced telecommunications services.

Ameritech and some of our counterparts felt that if Section 706 applied to anything, it applied to data delivery—a market that had been stifled by 15-year-old rules prohibiting companies like Ameritech from carrying voice calls across artificial boundaries called Local Access and Transport Areas, or LATAs. So earlier this year, we petitioned the FCC to do one of two things: Either to provide interLATA relief for data delivery—essentially allowing us to transport data across limited portions of these artificial boundaries—or, as an alternative, to create a global data LATA to completely do away with the restrictions as they applied to data.

We cited the unparalleled public demand for high-speed data capability, and explained how our numerous artificial LATA boundaries make cost-effective delivery of data impossible. Ameritech, for example, has 41 LATAs, 25 of which are too small to support a stand-alone data offering. Illinois actually has more LATAs than California—and Indiana has more than New York!

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In short, we made a strong case that the rules set up for the circuit-switched world of voice simply are not relevant to the packet-switched world of data.

The initial results were encouraging. The chairman of the FCC made public statements on the importance of getting high-speed data capabilities to the American people. And he seemed inclined to use the flexibility Congress had put at the FCC's disposal in order to make this happen.

In August of 1998, the Commission said that if incumbent providers were to get the relief we sought, we would have to make our loop facilities available to competitors—and to modify that equipment to maximize its use for data. They denied our global LATA request, but they said they might consider a narrower LATA modification.

- ✓ Check. We have no problem with the first part. And we said we'd come back with a compromise on the second.

Second, they said we would be required to let our competitors co-locate in our central offices—to physically attach their equipment to our unbundled loops.

- ✓ Check. No problem with that, either.

Third, they said we have to set up our data businesses as totally separate subsidiaries.

- ✓ Check again. We have no problem with that requirement either. In fact, Ameritech anticipated such a request from the FCC and set up our separate data subsidiary back in 1993.

Finally, we modified our global LATA proposal and requested five statewide data LATAs. And we went back to the FCC with high hopes. If the FCC established new data LATAs, and we could actually invest in this capability with the hope of earning a return on our investment, we could give our customers what they need.

But just as cable operators lobbied the FCC five years ago, so too are potential competitors leaning hard on the FCC today. To advance their own agendas, these opponents are coming up with all sorts of preposterous demands: That any such subsidiary would require a separate board of directors. That it would have to raise independent capital. That we couldn't even use the Ameritech brand!

These opponents, which include giants many times our size, clearly hope to influence the FCC to make the conditions on the relief companies like Ameritech are seeking so onerous as to force us to curtail our plans to invest in high-speed data delivery. And if that were to happen, the public once again would be impacted by unintended consequences.

But maybe, just maybe, that won't happen this time. Because one competitor took a radically different tack.

NorthPoint Communications, the largest data-based competitive local communications carrier in the nation, and Ameritech worked together to find middle ground. Then we jointly proposed a reasonable compromise. For the first time, potential competitors chose collaboration over litigation.

Now the FCC has a chance for a win-win-win-win. NorthPoint can get what it needs to succeed. Ameritech can get what it needs to invest. Customers can get data capabilities they are clamoring for. And the FCC can make an historic, out-of-the-box decision that supports a visionary approach, rather than try to second-guess what needs to be done and risk the probability of unintended consequences.

One thing is certain: When the FCC hands down its order, no matter what that order says, we will have a clear-cut illustration of the relationship of public policy to infrastructure investment. And we hope that this time, we'll see what tremendous progress can be made when policy-makers opt for leadership rather than micromanagement.

Now, how do we avoid unintended consequences in the future?

From my perspective, the most important thing is to temper the adversarial undercurrent that permeates the interaction between regulatory agencies and communications providers in the United States.

Such is not the case elsewhere. Communications markets throughout the world are embracing competition. As a result, they must deal with many of the same challenges and complexities that we face in this country. But on the whole, others are doing a far better job of working together to advance the best interests of their citizens and their national economies.

The most important thing is to temper the adversarial undercurrent that permeates the interaction between regulatory agencies and communications providers in the United States.

As the largest foreign investor in Europe's telecom market, Ameritech has had many opportunities to witness this phenomenon. We learned that governments aren't necessarily the natural nemesis of business. That regulators in nations like Belgium or Hungary aren't afraid to admit that they don't have all the answers for their newly competitive markets. And that they're open to collaboration with the businesses that serve their nation.

When I come to Washington, much of the time I'm made to feel like a pariah. If you're a local communications company, you're bad. If you're successful, you must be stopped. If you have something to say, it is automatically suspect.

In Europe, we are more likely to be judged by the value we add. By the jobs we create. By the tax base we support. By the contributions we make to the community. And yes, by our investments in an infrastructure designed to offer state-of-the-art communications services as these countries head into the 21st century.

I would also recommend that everyone involved in America's communications industry—providers and regulators alike—evaluate their success according to market measures.

Ameritech shifted to such a customer focus in 1993 as we prepared for a competitive marketplace. We ramped up our capabilities in areas like marketing and strategy that we had never needed to develop in the past. We outsourced functions that didn't directly impact customers. And we scrapped our internal success measurements in favor of feedback from those we served.

None of that was easy, but it has made us a far better company. And we long for the day when we'll be free to put what we've learned to work for customers in a completely open communications marketplace.

Regulatory bodies would benefit from that same kind of transformation. In all likelihood, such an idea would meet with a high level of resistance, similar to what we encountered at the outset. But consider for a moment how different things might be if agencies measured the number of citizens who gained access to advanced communications services during a year rather than the number of orders that were written during that same period.

It's when we get sidetracked from the perspective of the customer that we get in trouble. When the rules are deemed more important than the results...when the procedures take precedence over performance...when the clocks have no hands on them because of a lack of urgency—that's when we head down the road of unintended consequences.

It is only to the extent that we look at what we do through the eyes of customers that we will get it right. And only as we substitute vision for manipulation that we will ensure America's leadership position in the global marketplace of the 21st century.

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