

From essential.org!tap-info Fri Sep 24 10:02:34 1993  
Date: Fri, 24 Sep 1993 10:03:48 -0700  
Errors-To: /home/essential/tap/Mail/owner-tap-info@essential.org  
Errors-To: owner-tap-info@essential.org  
Reply-To: mike@essential.org  
Originator: tap-info@essential.org  
Sender: tap-info@essential.org  
Precedence: bulk  
From: Michael Ward <mike@essential.org>  
To: steeler@well.sf.ca.us  
Subject: TAP Review of IITF and NII Vision Statement  
X-Listserver-Version: 6.0 -- UNIX ListServer by Anastasios Kotsikonas

Taxpayer Assets Project  
Information Policy Note  
September 24, 1993

## **COMMENTS ON THE CLINTON ADMINISTRATION "VISION" STATEMENT FOR THE NATIONAL INFORMATION INFRASTRUCTURE (NII)**

A review of: THE NATIONAL INFORMATION INFRASTRUCTURE:  
AGENDA FOR ACTION, report released on September 15, 1993, by  
the National Telecommunications and Information  
Administration (NTIA) of the Department of Commerce.

James Love, Director, Taxpayer Assets Project  
P.O. Box 19367, Washington, DC 20036  
v. 202/658-0880; f. 202/234-5176;  
internet: love@essential.org

### **INTRODUCTION**

Agenda for Action is the Clinton/Gore Administration's first attempt to define its "vision" of the new National Information Infrastructure (NII), the "information superhighway" of the future. While the document is distributed by NTIA, it was prepared jointly by several federal agencies, with notable contributions from NTIA, OMB, NIST, the National Economic Council, and the Office of Science and Technology Policy (OSTP). As a statement of policy, the document is vague in many important areas, indicating a lack of maturity in the policy making process, as well as possible conflicts within the Administration. Among the more revealing points are the omissions. For example, AGENDA FOR ACTION is silent on the important issue of telephone/cable mergers, or virtually all interesting common carrier issues. The principle public interest objective noted in the document is a ringing endorsement of "universal service," but there are no details of how this will be financed. Access to government information will be "improved" but there isn't a single mention of the important federal "Depository Library Program," which is threatened by the Vice President's recently released National Performance Review (NPR).

In general, AGENDA FOR ACTION reads more like a campaign platform, with platitudes designed to appeal to many groups, than a serious policy statement. Few difficult choices have been made at this point.

Specific items which caught our eyes are as follows:

### **COMMUNICATIONS REFORM LEGISLATION**

AGENDA FOR ACTION calls for passage of new communications legislation by the end of 1994 that will:

*increase competition and ensure universal access in communications markets -- particularly those, such as the cable television and local telephone markets, that have been dominated by monopolies. Such legislation will explicitly promote private sector infrastructure investments -- both by companies already in the market and those seeking entry.*

Our comments are as follows:

### **UNIVERSAL ACCESS**

The twin goals of increased competition and universal access present difficult problems. Traditional policies to provide universal access involve cross subsidies between different users or services. If there is free entry into markets in order to promote competition, there will be an erosion of the revenue base to finance universal access, unless all participants are required to contribute to the cross-subsidy pool. Requiring revenue sharing to promote universal service also requires a workable understanding of the revenue base being tapped to finance the low income users. This is difficult when telecommunications providers are allowed to provide so called "enhanced" services, such as programming or data services.

We haven't heard any talk from administration sources about new broad based subsidy schemes, nor have we heard of any other mechanisms to address the issue of universal access, other than some modest grant programs for local civic networks and educational purposes, which could not in good conscience be described as solutions to the issue of "universal" access (given the small size of the grants relative to the cost of the infrastructure).

The only "action" item on universal service identified in the "vision" statement is a set of public hearings to "develop a new concept," of universal service for the 21st Century.

### **INCREASED COMPETITION**

*Increase competition in communications markets by explicitly promoting private sector infrastructure investments -- both by companies already in the market and those seeking entry.*

The tone of the "vision" and discussions with administration officials strongly suggest an end to the ban on telephone company entry into cable markets. An important issue upon which AGENDA FOR ACTION is silent concerns the legal right of local service telephone companies to buy cable franchises that provide service in the same market. There is enormous industry interest in such mergers, which would eliminate head to head competition for important consumer services. Also, telephone companies are arguing in court that the first amendment prohibits the government from banning such mergers.

If telephone and cable companies are allowed to enter into joint operating agreements or mergers, the principle avenues for "last mile" telecommunication services to individuals and small businesses will be from firms holding FCC licenses for wireless services transmitted over scarce radio spectrum. But it is likely that many of the holders of the wireless licenses will be companies affiliated with incumbent wired telephone, cellular and cable businesses (On September 23, 1993 the FCC ruled that all three are allowed to bid on the new PCS spectrum licenses). In any event, as the PCS market matures, the available spectrum will be less than demanded, limiting competition regardless of the number of license holders.

Simply allowing entry into markets does not guarantee competition. Local cable markets would be served by several firms if there was genuine cable industry interest in entry against incumbent firms. The fact that cable markets are nearly always served by a single firm is due largely to the enormous economies of scale in laying cable. The fact that cable and telephone companies pose potential competition against each other is an artifact of the legal barriers which have prevented the telephone company entry into the cable business. Had the market been open to entry in the earliest days, it is likely that the local phone companies would have long ago monopolized the cable market.

Often the existence of rate regulation has created the appearance of competition. For example, neither MCI nor Sprint would have likely achieved significant market penetration against AT&T, were it not for FCC rules which set floors on AT&T prices. Similarly, many of the firms providing telecommunications services to large firms exist only because the local telephone companies are required to set rates above cost in order to carry out "universal service" cross subsidies. In the absence of local rate regulation for the RBOCs, many smaller "competitors" would have been eliminated by the incumbent phone companies.

There is nothing in the "vision" statement that even acknowledges these unpleasant realities. The promise of future "competition" in telecommunication markets serves as a promise, yet unfulfilled, of better days to come, which is reminiscent of the 1983-84 debate over legislation which removed the cable television industry from rate regulation. Cable operators argued that new "blue sky" technologies, like satellite delivered video, were "just on the horizon," and capable of providing adequate competition to cable companies. Nine years later Congress was forced by angry consumers to acknowledge the obvious fact that cable looked, acted and was priced like a monopoly.

Competition in telecommunication markets is an appealing objective, particularly where competition will lead to greater innovation and efficiency. A particularly important

area for competition, moreover, concerns competition in value added markets, including markets for video and other editorial products.

Regulatory schemes can promote or discourage competition, both among communications carriers (the conduit) and in the area of programming content. These regulatory schemes must be based upon clear understandings of anticompetitive problems in telecommunications markets. These include spectrum scarcity, economies of scale for wire connections and centralized switching, large sunk costs, and historical conditions which create incumbent firms.

**AGENDA FOR ACTION** makes no distinction between competition in carrier markets (the conduit) and the programming markets (the content). Telephone, cable and broadcasting have been developed with entirely different approaches to competition in content markets. In our view, the most important consequence of any new broadband communications regulatory scheme is its impact on competition in content markets. The disastrous history with cable franchises, which allows the carriers to control programming content, should be reversed in any new reform legislation.

Finally, **AGENDA FOR ACTION** ignores the far reaching changes in regulatory policies over the past 12 years on a wide range of public interest issues designed to promote a diversity of views, non-commercial programming and democratic dialogue. The FCC's rejection of the fairness doctrine, the inapplicability of the equal time rules to cable franchises, the limited spectrum allocation for non-commercial purposes, and the need to tie rates for electronically delivered political ads to participation in limitations on campaign spending are among the many issues which should be addressed in a new "vision" of the NII.

#### **THE NEED FOR NEW COMMON CARRIER MODELS: THE NEED TO SEPARATE CONDUIT FROM CONTENT**

**AGENDA FOR ACTION** is not a particularly encouraging starting point for the new administration. There are few signs that the Administration is prepared to acknowledge the importance of the development of new regulatory models to achieve important goals. Even the announced goals of including greater competition is described in such a way that the enormously important issues of vertical and horizontal concentration are never mentioned.

**AGENDA FOR ACTION** should have stated that a core objective is to promote competition in content markets. The current cable model, where the telecommunications carrier is allowed to own programming and decide which "channels" are available to local subscribers has led to monopolistic practices. Today large firms like Time-Warner and Telecommunication, Inc., wield enormous control over who can succeed in the cable market. Abundant press reports have documented the predictable consequences of this flawed policy.

Efforts by the telephone companies to introduce common carrier type switched video dialtone services to consumers offers a better approach, with the potential for true competition in video markets (as there is now in markets for value added data services transmitted over telephone lines).

The large problem yet to be addressed, however, concerns the lifting of "line of business" restrictions which have limited telephone company entry into content markets. By "reducing" the regulatory restrictions on the telephone company line of business, regulators or anti-trust litigants will be forced to deal with very complex issues concerning anti-competitive practices by the telephone companies, who will be both a partner and a competitor in those markets where it provides content services.

A number of experienced regulators, including former FCC Chairman Nick Johnson, express deep pessimism that regulators will be able to prevent the telephone companies from using their market power in local service markets to hurt their competitors in the content markets. They argue that less regulation of the line of business restrictions will inevitably lead to more regulation of cross subsidies and other practices. This was also the prevailing view when AT&T was broken up in the early 1980s. Most of the Modified Final Judgement (MFJ) "line of business" restrictions were designed to make it far simpler to introduce competition in telecommunications markets, by separating the monopolistic local ("last mile") services from the potentially competitive markets for a number equipment and value added services.

If, as expected, the Clinton/Gore administration is going to eliminate many of these "line of business" restrictions, it will be a large step backwards in promoting competition where it counts -- in valued added and content markets.

### **THE NEED TO DEFINE ADEQUATE COMPETITION**

AGENDA FOR ACTION never mentioned the words rate regulation. Hopes that new "competition" will solve pricing problems are often expressed by public officials who are on the receiving end of endless lobbying by industry groups. If competition is to be a solution to pricing problems, then more thought needs to be given to what constitutes adequate competition. College economics courses typically describe competitive markets as markets with large numbers of firms offering similar products and services. Markets for telephone or broadband video services are served by small numbers of firms.

Consider, for example, the proposed auction of PCS spectrum (an important new wireless technology). On September 23, the FCC announced that it will auction thousands of PCS spectrum licenses. The number of licenses per geographic market, however, will be seven. Moreover, the FCC has proposed allowing the initial seven licenses to be aggregated into as little as three licenses. The FCC has also ruled that firms providing telephone, cable and cellular services can bid on the licenses in their own markets, even though the PCS license holders will be competing against them for customers. Finally, the FCC will also allow bidders to submit national bids, allowing a single consortium to tie up a large block of the entire national PCS spectrum.

The PCS license holders will argue that since PCS is an emerging industry, and subject to competition, it should not be subject to rate regulation. How many license holders in each geographic market will constitute "competition?" Most economic theories of imperfect competition say there is a large difference between 3 and 7 firms. Moreover, what

if the licenses end up in the hands of incumbent telephone, cable and cellular companies? Won't this limit an important element of cross-technology competition? And, as the market for PCS matures, demand for the services will exceed the available spectrum, driving prices up.

Government regulators need to develop workable models of pricing, which account for the number of firms, the existence of alternative technologies, and other items, which can be used to determine when and if rate regulation becomes desirable.

### **RULES ARE NEEDED TO PROMOTE DEMOCRATIC DIALOGUE**

The new private sector NII which is described in AGENDA FOR ACTION isn't bursting on the scene from a vacuum. Telecommunications regulation today is the product of decades of federal efforts to promote a variety of public interest purposes.

**BROADCAST TELEVISION AND RADIO.** Large sections of broadcast spectrum (radio and television) are reserved for non-commercial stations. Owners of broadcast licenses are subject to the "equal-time" rules (ads must be made available at the "lowest unit charge" for any and all candidates for political office). From 1949 until abandoned by Reagan's FCC in the late 1980s, broadcast television and radio were also bound by the "fairness" doctrine, which required the license holders to provide "discussions of controversial issues" and the "expression of opposing views" when only one side was aired in a broadcast (even when the "one side" was first aired in a paid advertisement). Broadcast stations were also required to ascertain and serve local community needs, produce and air news and public affairs, and provide programming for children. Several bills are now pending before Congress that seek to require stations to offer deep discounts on political ads to candidates who are willing to accept voluntary limitations of campaign spending.

**CABLE.** Cable franchises were not subject to the equal-time or fairness doctrine. Local franchising authorities, however, often required cable systems to provide a number of community services, including stations for local government or educational use, and production facilities for locally produced programming. Cable franchise operators were also required to provide channels for non-commercial public access, as well as some "leased access" time for independent programming.

**TELEPHONE.** Telephone companies are required to operate as common carriers (they cannot refuse to sell services to value added or "content" companies), and they are also required to set residential rates below cost in many markets to promote universal services.

As the older technologies converge and new technologies (cellular, PCS, etc) become more important, regulators will have to decide which types of the traditional public interest objectives should be kept, which ones should be discarded, and if any new public interest objectives are worth promoting.

The fact that AGENDA FOR ACTION doesn't mention any of these issues is a telling statement on the Administration's new "vision" for the NII. Many citizens are alarmed that

the "harmonization" of regulatory obligations is aimed at finding the lowest common denominator of public interest objectives. These issues warrant a much fuller discussion by Administration officials, particularly in a "vision" document.

We are particularly interested in concrete proposals that address a fundamental problem in the United States. Political influence and the ability to debate important public issues is far too dependent upon the amount of money you can spend. In a world of highly sophisticated information technologies, the voices of the rich and powerful are deafening. Congressional candidates raise thousands of dollars per day from narrow commercial interests so they can appear before the voters in 30 second commercials. Industry groups spend millions of dollars to shape national debates on health care reform and other issues. Most video programming, including important educational innovations like Channel One, are simple vehicles for advertising campaigns. Telecommunications markets are important because they are part of our most important "product." The content of communications is the soul of our democracy and our culture.

The regulatory crisis which is caused by the development of new information technologies should be an opportunity to take a sober look at how these technologies are serving society, and to "rediscover" ways to serve the public interest in a world connected by fiber optics and wireless communications.

To this end, the Clinton/Gore administration needs to develop new technology relevant methods of achieving the objectives of the equal-time and fairness doctrines. Broadcasting, cable television, and telco video dialtone regulation should promote campaign reform, by providing the necessary incentives to achieve voluntary limits on the national scandal that we call campaign fundraising. Older concepts of spectrum allocations for non-commercial programming and public access programming need to be updated for the new technologies. Regulation of cable and video dialtone needs to provide much better protections for the independent producers of video and multimedia programming.

## ACCESS TO GOVERNMENT INFORMATION

One of the early promises of the Clinton/Gore Administration was a much broader public access to federal information databases and systems. Twelve years of Reagan/Bush administration efforts to privatize the dissemination of federal information have caused enormous problems for citizens who seek access to even the most basic government information. AGENDA FOR ACTION makes no mention of the bitter debates over these policies, but the document does promise to make federal information more accessible, at a "fair price." The five "action items" are largely a listing of various initiatives which are already well known, such as the recent revisions to OMB's Circular A-130, the passage of the GPO Access legislation, the development of the National Technical Information Service (NTIS) FEDWORLD program, and the creation of some type of a federal locator system (renamed a "virtual card catalog").

This section of the report was cursory and general, and will offend few readers. The Taxpayer Assets Project is concerned about several issues which were not discussed. First,

while AGENDA FOR ACTION repeats the Administration's official policy that agencies should charge no more than dissemination costs for information products or services, it does not say how that policy can be implemented without legislative changes in the charter for NTIS. Specifically, since the mid 1980s, NTIS has been required to operate without legislative appropriations. Since many of the NTIS activities lose money, NTIS makes up the difference by charging high prices on information products and services. A single reel of magnetic tape from NTIS with EPA data can cost as much as \$2,800, and other datasets are even more expensive. For example, ten years of "bank call" reports cost more than \$20,000.

There is also a crisis in the important federal Depository Library Program (DLP). This program, which dates back to the beginning of the 19th century, has historically provided free public access to most government reports and documents. GPO runs the DLP, which serves 1,400 libraries, including at least one in each Congressional district. Vice-President Gore's National Performance Review (NPR) has recommended eliminating the current statutory obligation that federal agencies use GPO for printing, and OMB's newly revised Circular A-130 says that federal agencies do not have to provide electronic information products and services to the DLP. Federal documents librarians are justly alarmed that these initiatives may lead to an end to the federal commitment to the DLP, leading to an enormous loss of public access to federal information.

### CONCLUDING COMMENTS

As a starting point, AGENDA FOR ACTION is a vast disappointment. The level of the discussion was extremely general, without acknowledging the most obvious sources of difficulty or controversy. The general tone of the telecommunications sections is quite similar to the positions of the major industry trade groups, who seem to be offering much more pro-active leadership on the regulatory issues. The problems with the AGENDA do not seem to be simple matters of style, but rather a lack of a compelling vision to guide the nation toward outcomes that are not dictated by current market forces.

James Love  
Taxpayer Assets Project  
September 24, 1993

-----  
Taxpayer Assets Project, P.O. Box 19367, Washington, DC 20036  
v. 202/387-8030; f. 202/234-5176; internet: tap@essential.org  
-----

Subscriptions to tap-info are available by sending an email message to listserver@essential.org with the following message:  
subscribe tap-info your name  
-----



# SECOND INTERNATIONAL SYMPOSIUM: NATIONAL SECURITY & NATIONAL COMPETITIVENESS: OPEN SOURCE SOLUTIONS Proceedings, 1993 Volume I - Link Page

[Previous](#)      [The Spirit of Access: Equity, NREN, and the Nil](#)

[Next](#)      [Community Computer Networks](#)

[Return to Electronic Index Page](#)