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Gerald F. George
Indiana University School of Law

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THE FEDERAL COMMUNICATIONS COMMISSION AND THE BELL SYSTEM: ABDICATION OF REGULATORY RESPONSIBILITY

The Bell System,¹ almost since its inception, has developed with the avowed intent to monopolize the telecommunications industry in this country.² Documentation of its success is almost superfluous; to most Americans "telephone company" and "Bell" are synonymous. Bell provides over eighty per cent of the telephones in this country and over ninety per cent of all inter-city transmission.³ In addition, it produces, through its manufacturing subsidiary, Western Electric, about three-quarters of the telephone equipment, insulated wire and cable manufactured in this country.⁴ This leviathan is tolerated despite a national policy generally favoring competition because, given the economies of scale available in telephone transmission, the forced atomization of telephone companies would involve wasteful duplication of facilities. Instead, the telephone industry is extensively regulated by the Federal Communications Commission,⁵ which ostensibly serves to insure that Bell operates its monopoly in the public interest. The focus of this note will be on one segment of the Bell monopoly—the telephone equipment industry—and the adequacy of the FCC response to that monopoly, particularly to Bell's efforts to extend that monopoly to apparatus peripheral to the telephone system.

I. Peripheral Equipment Restrictions

The Bell System until recently required that virtually all equipment

1. The Bell System includes American Telephone & Telegraph Co., [hereinafter AT&T], twenty-two Bell operating companies, Western Electric, and Bell Telephone Laboratories. Most of the operating companies are wholly owned by AT&T. AT&T also owns 99.8 per cent of Western's stock. Western and AT&T each own fifty per cent of Bell Laboratories.

2. See Investigation of the Telephone Industry in the United States, House Doc. No. 340, 76th Cong., 1st Sess. 145-46 (1939):

. . . Bell's watchword has been 'one system, one policy, universal service'. . . It has deemed competition to be harmful from the viewpoint of both the subscriber and the stockholder, harmful to the subscriber because of the expense incident to duplicate facilities and harmful to the stockholder because of the threat to profits.

3. American Telephone & Telegraph Co. (Rate Investigation), 9 F.C.C.2d 30, 38 (1967). Bell also provides virtually all radio and television transmission facilities and is the only American carrier providing voice transmission in international communications.

4. American Telephone & Telegraph Co. (Private Line Rates), 34 F.C.C. 244, 280 (1961).

5. Communications Act of 1934, 47 U.S.C. 151 ff. (1964). Federal regulation of the telephone industry was initially under the Interstate Commerce Commission, 36 Stat. 544 (1910). The Bell operating companies are regulated by state agencies; AT&T, as operator of the long distance service, is regulated by the FCC.

attached to the telephone system be provided by the telephone companies.⁶ This attachment restriction, even as now modified, is strongly anti-competitive, foreclosing the market for telephone attachments to independent suppliers except for sales to the telephone companies. Thus these suppliers—and the public—must rely on Bell, which is affiliated with a competing manufacturer, for a determination of whether an attachment will be marketed. Also the telephone companies may refuse to interconnect the Bell System network with another communication system. Interconnection is a potent weapon where one firm controls virtually all intercity communications, and the Bell System has not been reluctant to wield this advantage to eliminate or harass competition.⁷ To the extent that refusal to interconnect reduces the ability of other communication systems to survive, it also reduces the equipment market available to unaffiliated suppliers. In the case of both attachments and the communications systems affected by the interconnection restrictions, the equipment industry is actually or potentially highly competitive with a large number of firms and generally low economies of scale and is characterized by rapid technological advances.⁸ Thus these restrictions work against public interest by barring improvements from use with the telephone system and hampering competition which would be likely to develop more efficient communications equipment.

State agencies have consistently accepted Bell's justification that these restrictions are essential for the "protection of the integrity" of the telephone system.⁹ The FCC was amenable to this contention to the extent that in 1955, after a six year delay, it upheld the telephone

6. Bell had a complete prohibition against non-Bell attachments until the *Hush-A-Phone* decision, discussed in text at note 14-18, after which the restrictions covered devices involving direct electrical attachment or connection with another communications system. Following the FCC's decision in *Carterfone* (see discussion in text at note 26 *et seq.*), Bell allows all interconnection subject to restrictions on power input and the requirement that a Bell-provided protection device and network control signalling device be used with the customer's equipment. A network control signalling device is in its simplest form a telephone dialing mechanism. There are some exceptions to these restrictions, such as the federal government and right-of-way companies. Independent telephone companies generally adhere to similar restrictions by adopting the Bell tariff.

7. See Response of the United States Department of Justice, F.C.C. Docket No. 16979, at 34-35.

AT&T has used this power [to refuse interconnection] as a weapon against new forms of competition as they have appeared—such as private microwave systems—as it did historically against competing telephone companies.

See also Beelar, *Cables in the Sky and the Struggle for Their Control*, 21 FED. COMM. B.J. 26 (1967).

8. See Response of the Business Equipment Manufacturers Ass'n, F.C.C. Docket No. 16979, at 125.

9. See, *e.g.*, *Racine Flash Cab Co. v. Wisconsin Tel. Co.*, 65 P.U.R. 3rd 321 (Wis. Pub. Serv. Comm'n 1966); *Netsky v. Bell Tel. Co. of Pa.*, 65 P.U.R. 3rd 145 (Pa. Pub. Util. Comm'n 1966); *Peters Sunset Beach, Inc. v. Northwestern Bell Tel. Co.*, 60 P.U.R. 3rd 363 (Minn. R.R. & Whse Comm'n 1965).

companies in invoking the tariff restrictions against the use of a cup-like device which merely snapped on to the telephone handset, serving to provide privacy in much the same manner as cupping the hand around the transmitter.¹⁰ Although the Commission was unable to find that the device caused any physical impairment of the telephone facilities, it concluded that the device "is deleterious to the telephone system and injures the service rendered by it."¹¹ On appeal, the FCC's decision was reversed, with the court holding that the restriction of this device was an "unwarranted interference with the telephone subscriber's right reasonably to use his telephone in ways which are privately beneficial without being publicly detrimental."¹² Although the court based its decision on the failure to show that Hush-A-Phone harmed the telephone system,¹³ it clearly saw the danger in tariff restrictions which allow a competitor of the manufacturers' to determine if a piece of equipment may be marketed. Thus it questioned

. . . the reasonableness of a tariff which places control over petitioner's business in the hands of the [telephone companies] in the first instance. A system whereby the [telephone companies] may market equipment until such time as the commission orders a halt, while petitioners may not market competitive equipment until the commission gives them an authorization, seems inherently unfair.¹⁴

On remand, the FCC ordered the telephone companies to allow not only the Hush-A-Phone, but also to adopt a much less restrictive tariff. The Commission found that

. . . an inescapable conclusion of the court's opinion is to render such tariff regulations unjust and unreasonable insofar as they may be construed or applied to bar a customer from using other devices which serve the customer's convenience in his use of

10. Hush-A-Phone Corp., 20 F.C.C. 391 (1955).

11. *Id.*, at 420.

12. Hush-A-Phone Corp. v. United States, 238 F.2d 266, 269 (D.C. Cir. 1956).

13. *Id.*, at 269. "It would seem that, although the Commission has no such control in general, there is asserted a right to prevent the subscriber from achieving [low and distorted] tones by the aid of a device other than his own body." The court noted other adverse effects which the FCC said resulted from Hush-A-Phone. These included "receiving impairment," *i.e.*, ". . . the size and shape of some heads is such that if a Hush-A-Phone is held sealed to the mouth, the receiver will not be 'well seated on the ear,' so that the user will not hear as well what is said by the other party." The court noted that, "The Commission does not indicate why a Hush-A-Phone user would keep the phone glued to his lips when listening rather than speaking. Nor does it appear why the user may not, as a matter of his own choice, impair his ability to hear in order to attain privacy of speech." *Id.*, at 269 n.10.

14. *Id.*, at 268 n.9.

the facilities furnished by the defendants and which do not injure the telephone company's employees or facilities or the public in the use of defendant's service, or impair the operation of the telephone service.¹⁵

Bell's response to the Commission's order was a new tariff allowing customer-owned attachments with the exception of devices involving "direct electrical connection to the equipment or other facilities of the Telephone Company," and devices "to interconnect any line or channel of the Telephone Company with any other communication line or channel of the Company or of any other person."¹⁶ The FCC allowed this tariff to go into effect,¹⁷ with the result that the anti-competitive potential recognized by the court in *Hush-A-Phone* remained virtually unscathed.

The lawfulness of these restrictions was challenged in 1965 by Carter Electronics Corporation, manufacturer of the Carterfone, an acoustical device designed to connect mobile radiotelephone stations with the public telephone system. When sales for the device were hindered, Carter filed a private antitrust suit against American Telephone and Telegraph Co., Southwestern Bell and General Telephone of the Southwest.¹⁸ The federal district court held that the FCC, by virtue of its intricate scheme of regulations and the technical nature of restrictions, had primary jurisdiction for the resolution of "questions relating to the justness, reasonableness, validity and effect of the tariff and practices complained of."¹⁹

The FCC then ordered a hearing on the lawfulness of the tariff restrictions. Before the Hearing Examiner, the tariff restrictions were

15. *Hush-A-Phone Corp.*, Decision and Order on Remand, 22 F.C.C. 112, 113 (1957).

16. AT&T Tariff, F.C.C. No. 132, para. B.7 and B.24.

17. The FCC took no action with regard to the reasonableness of these restrictions beyond permitting them to go into effect. In an investigation in 1962, the Commission refused the carriers' request that it declare the tariff restrictions reasonable. *American Telephone & Telegraph Co.*, 32 F.C.C. 337, 340 (1962). Consequently, when the Commission found the restrictions unreasonable in *Carterfone*, (see text at note 18 *infra*) it held that they were illegal since inception. As a result of this holding, parties injured during that period may recover damages and attorney's fees under 47 U.S.C. § 206 (1964), or file an antitrust suit seeking treble damages. See note 19 *infra*.

18. *Carter v. American Telephone & Telegraph Co.*, 250 F.Supp. 188 (N.D. Tex.), *aff'd*, 365 F.2d 486 (5th Cir. 1966). Carter alleged a conspiracy among the Bell companies and General Telephone & Electronics, the largest non-Bell phone company, to monopolize the radiotelephone equipment market. 15 U.S.C. §§ 1 & 2 (1964). Although the opinion does not make it clear, the further claim under the Clayton Act, § 3, 15 U.S.C. § 14 (1964), probably alleges that the telephone companies are illegally tying the lease of interconnection devices to the lease of the telephone.

19. *Id.* at 192. The court retained jurisdiction for determination of the anti-trust issues after the FCC had ruled. Although the injunctive relief sought is no longer necessary, Carter may recover treble damages. See *Carnation v. Pacific Westbound Conference*, 383 U.S. 213 (1966); *Hewitt-Robbins, Inc. v. Eastern Freight Ways Inc.*, 371 U.S. 84 (1962).

attacked as unreasonable under the *Hush-A-Phone* decision,²⁰ since there was no showing of harm to the telephone system. The restrictions were also attacked as unwarranted interference with the telephone subscriber's right to use his telephone in a way privately beneficial and without public detriment. These blanket restrictions were unnecessary since minimum technical standards would be sufficient to protect the integrity of the telephone system. The restrictions also have undesirable anti-competitive aspects since the source of connecting devices is limited to the telephone companies, and technical developments in wire and radio communication are stifled. Accordingly, the relief sought was not only removal of the restrictions on the Carterfone, but also cancellation of the tariff in its entirety and the institution of minimum technical standards for protection of the telephone system.²¹

Bell contended that the Carterfone was in fact harmful to the telephone system, reciting a list of problems associated with its use, but did not rely solely upon the specific shortcomings of the device. Its position was that the blanket tariff restrictions were reasonable and necessary for the protection of the telephone system. As common carriers, the Bell operating companies are responsible to the public and the regulatory agencies for the furnishing of telephone service; allowing interconnection would divide that responsibility by removing portions of the system from the carriers' control. Thus, regardless of the harmlessness of the particular interconnection device used, the very fact of interconnection would allegedly "inevitably result in degradation of service."²² The argument for development of technical standards for interconnection was rejected as "impractical," a somewhat surprising position since the Bell System is interconnected with over 1900 independent telephone company systems using diverse equipment. This interconnection extends in many cases even to integration with the Bell Direct Distance Dialing network.²³ Bell further stated that there was no guarantee that these proposed technical standards would be met, or that the equipment would be properly maintained, a rather cynical view of the competency of non-Bell manufacturers and the interest of customers in

20. *Hush-A-Phone Corp. v. United States*, 238 F.2d 266, 269 (D.C. Cir. 1956).

21. See Proposed Findings of Facts and Conclusions by Common Carrier Bureau, F.C.C. Docket Nos. 16942 & 17073, at 38-39.

22. Brief and Proposed Findings of Fact and Conclusions of Bell System Parties, F.C.C. Docket Nos. 16942 & 17073, at 20. "It is not too much to say that if interconnection were widely permitted, the regulated telephone industry could no longer be held responsible for the quality of service." *Id.*, at 21. The "inherent degradation" contention has no more substance than the above quote indicates.

23. See Response of the Business Equipment Manufacturers' Ass'n, F.C.C. Docket No. 16970, at 129.

assuring the proper functioning of their equipment.²⁴ Use of customer-provided equipment, Bell asserted, would also destroy the "economies which result from unified control of the selection, design, installation, operation and maintenance of the telephone network," and serve, ironically, as an impediment to the introduction of improvements into the telephone system. Finally, Bell raised the specter of higher costs of telephone service to the general body of subscribers, who would have to compensate for the loss of revenue from those able to utilize their own equipment. Bell, in conclusion, wished the FCC to hold that interconnection should be allowed only where an exceptional public interest exists, and to find that interest lacking in the case of Carterfone, largely because of the existence of the Bell System mobile radio service.²⁵

The Hearing Examiner found the Carterfone itself to be harmless, but accepted the carriers' rather dubious position on the reasonableness of the tariff generally and refused to eliminate the restrictions because of what was without substantiation referred to as the "risk of serious harm to the heart of the nation's communications system."²⁶ He did note the "inherent unfairness" of the restrictions to unaffiliated suppliers but indicated that the solution of the problems lay in the carriers' establishment of a process of expeditious approval or disapproval of attachments. The Commission reversed the Examiner's decision in part by ordering the tariff stricken entirely as unreasonable but left the development of the tariffs in the hands of the carriers,²⁷ thereby assuring that any benefit derived from the decision would have to be dragged grudgingly from the Bell System. Subsequent events illustrate Bell's reluctance to initiate any substantial change in its foreign attachment policy.

Initially Bell proposed tariff changes which allowed only the use of interconnection devices similar to the Carterfone, and of some types of customer-provided terminal devices. This flaunting of the *Carterfone* decision understandably generated strong, and often bitter, criticism

24. Cf. *United States v. Jerrold Electronics Corp.*, 187 F. Supp. 545 (E.D. Pa. 1960), *aff'd per curiam*, 365 U.S. 507 (1961). The court held that while requiring a service contract in connection with the sale of community antenna systems may have been reasonable when the industry was developing and the risk of harm to Jerrold's reputation and to the industry was based on more than "mere speculation," the requirement became illegal "as the industry took root and grew."

25. Brief and Proposed Findings of Fact and Conclusions of Bell System Parties, F.C.C. Docket Nos. 16942 & 17073, at 46. "A serious flaw in the presentation of . . . the complainants . . . is the absence of evidence that the occasional use of the Carterfone could not be adequately met by means of common carrier services."

26. Initial Decision of Hearing Examiner, Carterfone Device, F.C.C. Docket Nos. 16942 & 17073 (August 30, 1967) at 16 n.9. (unpublished opinion).

27. The Commission has authority to prescribe reasonable practices once it finds that the carrier's practice violates the Act. 47 U.S.C. § 205(a) (1964). It gave no reason for declining to do so. It also has the power to issue regulations necessary to accomplish the purposes of the Act. 47 U.S.C. § 201(b) (1964).

from other equipment manufacturers.²⁸ Bell has offered a series of further changes which give the impression that it is opening its system to interconnection with all types of equipment and private communications systems. The complaints of manufacturers and customers make it clear that this relaxation of the restrictions is illusory. The tariff requires that customer-provided equipment be connected with the telephone system through a carrier-provided protection device and a carrier-provided network control signalling device. These requirements impose an additional cost on customers using non-carrier equipment and force manufacturers to conform their equipment design to the carrier's device, thus reducing their efficiency. In addition, the tariff requires carrier installation and maintenance of the interconnection device, with charges for interconnection to include all telephone company costs, including engineering, design, construction, maintenance, and return on investment.²⁹ The sham nature of the relaxation is further illustrated by the application of the restrictions to interconnection of private microwave systems. When the tariff changes were announced, Bell stated that they would open the system to interconnection of all types, including private microwave. However, interconnection is limited to narrow "voice-grade" channels unsuitable for efficient use of microwave, which utilizes broad bands.³⁰ Under these conditions, it is no surprise that a Bell System spokesman can express optimism about the possibility of retaining customers for its leased equipment in spite of the "relaxation" of the tariff restrictions.³¹

Although Bell's tariff restrictions appear to be clearly contrary to the spirit, if not the letter, of the *Carterfone* decision, the FCC has allowed them to go into effect, though it has not specifically approved them.³² Thus the Bell equipment monopoly has survived, virtually intact, as it

28. See, e.g., Remarks of the National Retail Merchants Association, 34 *Telecomm. Rep.*, Sept. 23, 1968, at 2:

AT&T, in effect, seems to declare that it is going to ignore the Commission order, that it is a law unto itself, disliking the implications of the Commission order and deciding not to obey it.

29. 34 *Telecomm. Rep.*, Nov. 4, 1968, at 2.

30. 35 *Telecomm. Rep.*, March 10, 1969, at 1-7. The FCC policy since 1958 has been to encourage the growth of private microwave systems. As a result of FCC decisions easing restrictions on frequency sharing and forcing Bell to raise volume rates instituted to eliminate private microwave competition, several large users of microwave have announced that they are considering private systems. See 34 *Telecomm. Rep.*, Nov. 18, 1968, at 33. However, such systems would not be practical in most instances without interconnection since large users of microwave generally require systems which are widespread geographically. See Irwin, *The Communication Industry and the Policy of Competition*, 14 *BUFFALO L. REV.* 256 (1964); Beelar, note 7 *supra*.

31. 34 *Telecomm. Rep.*, Nov. 4, 1968, at 2.

32. 35 *Telecomm. Rep.*, Dec. 26, 1968, at 1. Because of the complaints about the restrictions, the Commission has instituted a series of informal conferences to determine the reasonableness of the network control signalling requirement.

did after the Commission's earlier decision in *Hush-A-Phone*. However, effective as the attachment restrictions are in excluding competition, they protect only a small part of the equipment market. The more important element in the maintenance of the equipment monopoly is the vertical integration of the Bell System, which preserves for Western Electric almost exclusive access to the Bell market.

II. Monopoly of the Bell System Market

Bell operating companies purchase their telephone equipment almost exclusively from Western Electric, although they are not required to do so.³³ Their justification for the extent of such purchases is that Western Electric has the lowest prices on most equipment, a fact invariably borne out by Western's price comparison studies.³⁴ These lower prices result, according to Bell, from efficiencies of vertical integration. The massive Bell market assures high volume and allows mass production methods to be utilized resulting in lower manufacturing costs. Also, Western does not incur sales or credit costs. Further economies result from co-ordination of development, production, installation and maintenance efforts. Thus, Bell spokesmen conclude, vertical integration of Western and the Bell System results in lower final cost of equipment and therefore lower rates for telephone service than possible under competitive conditions.

As might be expected, given the importance of reasonable equipment costs to effective rate regulation, the FCC has viewed Bell's economies of integration argument with some skepticism. The Commission's initial activity in this area stemmed from the Communications Act of 1934, which directed the FCC to examine the vertical integration question and make recommendations to Congress for additional legislation.³⁵ Pursuant to this directive and a later Congressional resolution,³⁶ a full investigation of Bell's operations was launched in 1935. The study found that Western's prices to Bell were unreasonably high, partly because of an inadequate cost accounting system,³⁷ and a request was

33. American Telephone & Telegraph Co. (Private Line Rates), 34 F.C.C. 244, 280 (1961).

34. See Irwin, *supra* note 30, at 261.

35. 46 U.S.C. § 215(a) (1964):

The Commission shall examine into transactions entered into by any common carrier which relate to the furnishing of equipment . . . to such carrier . . . and shall report to Congress . . . The Commission . . . shall report specifically whether in its opinion legislation should be enacted . . . (2) subjecting such transactions to the approval of the Commission where the person furnishing . . . the equipment . . . is a person directly . . . controlled by, or under . . . common control with such carrier.

36. H.R.J. RES. 8, 74th Cong., 1st Sess. (1935).

37. Investigation of the Telephone Industry in the United States, H.R. Doc. No. 340, 76th Cong., 1st Sess. 585-89 (1939). The Report recommended legislation authorizing

made in the proposed report that Congress enact legislation requiring competitive bidding on purchases of telephone equipment. This request was dropped, however, when the Commission sent the final report to Congress in 1939.³⁸

Although it noted in its report the importance of keeping current the material in the Telephone Investigation, the FCC took no further action concerning Western until 1948, when, prompted by state commission complaints, it instituted a joint state-FCC preliminary investigation of Western's prices.³⁹ This action apparently influenced Western to reduce some prices, but the FCC was still unable to make an informed judgment concerning the reasonableness of Western's prices or efficiency of its operation.⁴⁰ This situation had not improved by 1961, when, in an investigation of Bell's rates for private line service, the FCC specifically refused to find that Western's prices to Bell were reasonable.⁴¹ With characteristic dispatch, the FCC rendered a final decision in this case in 1963,⁴² and ordered late in 1965 a full investigation of Bell's rate practices, including prices paid to Western Electric.⁴³ This investigation has scarcely proceeded apace, with only the first phase completed and Western in no imminent danger of investigation.

The FCC policy of attempting to insure the reasonableness of Western's prices through indirect regulation has proven ineffective because the Communications Act gives the FCC authority to do little more than compare Western's prices and profits with those of other manufacturers.⁴⁴ Effective regulation requires that the Commission be able to

the FCC to institute cost accounting systems for manufacturing subsidiaries, but no action was taken by Congress. Western reformed its accounting system after the investigation. It is now required to maintain its accounting system according to generally accepted principles under the terms of a consent decree entered in 1956. *United States v. Western Elec. Co.*, 5 TRADE REG. REP. (1956 Trade Cas.) ¶71,134 (D.N.J. 1956).

38. Congress has authorized the FCC to require competitive bidding with regard to equipment and services for the communications satellite system and satellite ground stations. 47 U.S.C. § 721 (1964).

39. 14 F.C.C. ANN. REP. 85 (1948).

40. See Antitrust Subcomm. No. 5, House Judiciary Comm., Report on the Consent Decree Program of the Department of Justice 73-78 (1958).

41. *American Telephone & Telegraph Co. (Private Line Rates)*, 34 F.C.C. 244, 281 (1961):

Accordingly, we find and conclude that AT&T's presentation is without probative value in demonstration of the reasonableness of Western's prices and profits with respect to its sales of equipment, services, and supplies to the operating telephone companies in the Bell System.

42. *American Telephone & Telegraph Co. (Private Line Rates)*, 34 F.C.C. 217 (1963).

43. *American Telephone & Telegraph Co. (Rate Investigation)*, 2 F.C.C.2d, 871, 874 (1965).

44. The FCC has the power to obtain "full and complete information necessary to enable the Commission to perform the duties . . . for which it was created" from carriers and those persons directly controlled by carriers, 47 U.S.C. § 218 (1964); to require the

establish a reasonable rate of return on Western's investment, which can be done now only indirectly and inadequately through reduction of Bell's rate base.⁴⁵ The FCC could seek legislation authorizing it to regulate carrier-controlled equipment manufacturers directly, thereby assuring "reasonable prices," but, given the limitations of the regulatory process, direct regulation would not insure efficient production.⁴⁶ Thus extension of regulation to Western should not be sought in lieu of compelled disintegration under the antitrust laws unless it appears that, either because telephone equipment production is a declining cost industry or because Western's vertically integrated position within the Bell System creates unique advantages, the telephone equipment industry is unable to support competition.

Bell suggests that the telephone equipment market is a natural monopoly sufficient to support only a single firm, since smaller scale operation would result in higher production costs. This contention is rendered suspect by the huge volume of Western's sales alone.⁴⁷ Furthermore, the data relating efficiency to scale is inconclusive. Mass production of telephone equipment seems to produce lower average costs, and Western is able to utilize mass production for most types of equipment.⁴⁸ However, a large number of firms produce, under competitive conditions, electrical apparatus no less complex than telephone equipment by similar methods and from the same materials,⁴⁹ with radio and television receivers

filing of all contracts of the carriers, 47 U.S.C. § 211 (1964); and to require annual reports from persons controlled by carriers, 47 U.S.C. § 219 (1964). See also 47 U.S.C. § 215 (1964).

45. Cf. *In Re Pacific Telephone & Telegraph Co.*, 53 P.U.R. 3rd 513, 533 (Cal. Pub. Util. Comm'n 1964) where the California Public Utilities Commission found Western's prices unreasonable to the extent that Western's return on its sales exceeded PT&T's allowable return.

46. The regulatory process has been criticized as providing no incentive for efficiency or innovation and as providing a positive incentive to misallocate resources by increasing capital costs. The latter tendency results from determining reasonable profit as a percentage of net investment. See Averch and Johnson, *Behavior of the Firm Under Regulatory Constraint*, 52 AM. ECON. REV. 1052 (1962); Loevinger, *Regulation and Competition as Alternatives*, 11 ANTITRUST BULL. 101 (1966); see generally PERFORMANCE UNDER REGULATION (H. Trebing ed. 1968).

47. Western Electric's sales in 1965 totaled over 3.3 billion dollars, with sales to the Bell System of 2.8 billion dollars. The bulk of its non-Bell sales were to the United States Government. 1965 Western Electric Annual Report.

48. Sheahan, *Integration and Exclusion in the Telephone Equipment Market*, 70 Q.J. ECON. 249, 258-59 (1956).

49. See C. KAYSEN and D. TURNER, ANTITRUST POLICY 275 276, (1959) which lists telephone and telegraph equipment manufacture as a tight oligopoly, with the first eight firms having ninety-four per cent of the market, while in "radio and related products" the first twenty firms hold slightly over half the market. See also Response of Business Equipment Manufacturers Association, F.C.C. Docket No. 16979, at 125:

At present much equipment used by the common carriers is produced by a comparatively small number of manufacturers. Economies of scale . . . in the manufacture of a great deal of this equipment are negligible. Certainly they are

only the more obvious examples. Moreover, the fact that smaller firms are able to match and, occasionally, better Western's prices on some equipment suggests that Western has exceeded the optimum scale of production.⁵⁰

Bell's claim that vertical integration creates unique economies is also unconvincing. For example, the alleged savings of sales and credit costs is unlikely to be a significant factor. The value of coordination of development and production efforts is also dubious, since it is clear that monopolization retards rather than assists the rate of innovation in an industry.⁵¹ Furthermore, the benefits of coordination can be achieved without vertical integration. Bell uses much standardized equipment which could be purchased through competitive bidding on requirements contracts. The successful bidder in each instance would enjoy with respect to that contract the position now occupied by Western. Thus operations of the manufacturer and Bell could be coordinated without completely foreclosing other manufacturers from the Bell market.

The FCC itself has implicitly rejected the economies of integration argument in its *Above 890*⁵² and *Carterfone*⁵³ decisions. In the *Above 890* hearing, Bell contested the expansion of eligibility for private microwave communication systems partially on the basis that allowing such systems would promote competition of independent suppliers who could not secure such economies and would lead to higher costs of communication service. The FCC rejected the Bell argument and allowed expanded eligibility, noting that this expansion would "afford a competitive spur in the manufacturing of equipment and in the development of the communications art."⁵⁴ Likewise, in *Carterfone*, the FCC apparently gave no consideration to the Bell claim of "economies which result from unified control of the selection, design, installation, operation and maintenance of the telephone network."⁵⁵ Rather, it held that "no one entity need provide all interconnection equipment for our telephone system any more than a single source is needed to supply the parts for a space probe."⁵⁶

Moreover, this unified control raises a danger which renders its

no more extensive than in many other light manufacturing industries such as those producing electronic equipment and small electrical appliances.

50. See Sheahan, *supra* note 48, at 159.

51. See Scherer, *Research and Development Resource Allocation under Rivalry*, 81 Q.J. Econ. 359 (1967).

52. Allocation of Frequencies in the Bands Above 890 Mc., 27 F.C.C. 359 (1959) [hereinafter cited as *Above 890*].

53. *Carterfone Device*, F.C.C. Docket Nos. 16942 & 17073 (June 27, 1968).

54. *Above 890*, *supra* note 52, at 414.

55. Brief and Proposed Findings of Fact and Conclusions of Bell System Parties, F.C.C. Docket Nos. 16942 & 17073, at 20-21.

56. *Carterfone*, *supra* note 53, at 7.

desirability doubtful. The operating companies and Western have complete control of the choice of equipment to be offered to the public and the rate of obsolescence assigned to equipment in the companies' plant; therefore, introduction of improved equipment may be delayed until the present plant is fully depreciated.⁵⁷ Also, Bell may refrain from introducing improvements initially developed by outside suppliers until Western has developed a similar product. Whether or not deliberate delay has occurred,⁵⁸ the possibility of such activity is inherent in the Bell System relationship and works against the public interest in efficient telephone service.

Another danger lies buried in the joint ownership by Bell and Western of Bell Telephone Laboratories. The expenses of Bell Laboratories are borne by both Bell and Western with Bell generally paying the costs of research and fundamental development and including these costs in its current operating expenses.⁵⁹ However, a significant percentage of Western's sales of equipment resulting from this research is to non-Bell customers, particularly to the Government.⁶⁰ Although some attempt is made to allocate a portion of the research expenditures to these sales, the figure is at best approximate.⁶¹ Consequently the joint use of Bell Laboratories presents an opportunity for Western to lower its prices to non-Bell customers at the public's expense. These possibilities for abuse in the relationship and the unpersuasiveness of the economies of integration argument render highly doubtful the contention that benefits flow from Bell's vertical integration. Consequently the resolution of the problems caused by the equipment monopoly should not be sought in further regulation, but in the restoration of competition in the equipment market through divestiture of Western from the Bell System.

Having only investigatory powers over subsidiaries of carriers,⁶² the FCC lacks authority to force divestiture of Western by Bell. The appropriate source of the remedy is in the courts. An antitrust suit could be brought under at least two theories. Under one theory, Western and Bell would be considered as participants in a conspiracy to restrain trade

57. American Telephone & Telegraph Co. (Rate Investigation), 9 F.C.C.2d 30, 77-78 (1967).

58. Several examples of delayed introduction of equipment have been alleged. See Sheahan, *supra* note 48, at 262-65. See also J. GOULDEN, MONOPOLY 146-85 (1967).

59. American Telephone & Telegraph Co. (Private Line Rates), 34 F.C.C. 244, 274 (1961).

60. See note 47 *supra*.

61. American Telephone & Telegraph Co. (Private Line Rates), 34 F.C.C. 244, 274 (1961).

62. See note 44 *supra*.

in the telephone equipment industry.⁶³ Bell's control of Western would not prevent the formation of a conspiracy for "restraint may result as readily from a conspiracy among those who are affiliated or integrated under common ownership as from a conspiracy among those who are otherwise independent. . . ."⁶⁴ An alternative view would be to show monopolization of the equipment market by Bell through its subsidiary.⁶⁵ This suit may be successful simply by virtue of Western's market share, since that percentage comes very near even the strictest of tests thus far laid down.⁶⁶ Moreover, Western's market share understates its potential market power since it does not make a serious effort to compete for the business of independent telephone companies.⁶⁷ If Western's size alone is insufficient, the more general test would be used that a violation exists if one "has the power to exclude competition. . . and has exercised it," and that power "is not attributable solely to the defendant's ability, economies of scale, research, natural advantages, and adaptation to inevitable economic laws."⁶⁸ It can be convincingly argued that Western's market power results not from its own ability, but, in large part, from the legal monopoly which Bell holds. An overriding concern of the antitrust laws has been the prevention of the extension of legal monopolies into other areas.⁶⁹ Moreover conduct which might be proper for less powerful firms will be improper for a monopolist if the conduct tends to

63. 15 U.S.C. § 81 (1964): "Every contract, combination . . . or conspiracy in restraint of trade . . . is declared to be illegal."

64. *United States v. Yellow Cab Co.*, 332 U.S. 218, 227 (1947). See also *Timken Roller Bearing Co. v. United States*, 341 U.S. 593 (1951); *Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc.*, 340 U.S. 211 (1951). This view was expressed more recently in *Perma Life Mufflers, Inc. v. International Parts Corp.*, 392 U.S. 134 (1968).

65. 15 U.S.C. § 2 (1964): "Every person who shall . . . monopolize any part of the trade or commerce among the several States . . . shall be deemed guilty of a misdemeanor . . ."

66. No exact market percentages have been set down by the courts, and the standard seems to vary from industry to industry. The thirty-sixty-ninety dictum (thirty per cent—certainly insufficient; sixty per cent—doubtful; ninety per cent—sufficient) of Judge Hand is the most widely cited standard. *United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2nd Cir. 1945). The Government recently obtained modification of the decree in *United States v. United Shoe Machinery Corp.*, 110 F. Supp. 295 (D. Mass. 1953), where the percentage was only sixty-six per cent, (*Wall Street Journal*, Jan. 23, 1969, at 1, col. 3) and has filed suit against *International Business Machines* whose market share is seventy-four per cent (*Wall Street Journal*, Jan. 22, 1969, at 1, col. 3).

67. See Sheahan, *supra* note 48, at 259. Western uses a dual pricing system and sells to non-Bell customers at higher prices. Under the terms of the 1956 consent decree, the Government may order Western to cease this practice. *United States v. Western Elec. Co.*, 5 TRADE REG. REP. (1956 Trade Case.) ¶ 71, 134 (D.N.J. 1956).

68. *United States v. United Shoe Mach. Corp.*, 110 F. Supp. 295, 343 (D. Mass. 1953), *aff'd per curiam*, 347 U.S. 521 (1954).

69. See, e.g., patent cases such as *International Salt Co. v. United States*, 332 U.S. 392 (1947); *Mercoid Corp. v. Midcontinent Investment Co.*, 320 U.S. 661 (1944); *International Business Machines v. United States*, 298 U.S. 131 (1936).

diminish competition.⁷⁰ Bell's use of attachment restrictions to maintain its market position in the equipment market may then constitute an abuse of its monopoly power.⁷¹

Bell's enforcement of the present tariff may also be a *per se* violation of the Sherman Act notwithstanding an FCC determination that the standards are reasonable. If Western is considered a separate party under the antitrust laws,⁷² the situation parallels that in *Radiant Burners, Inc. v. Peoples Gas Light & Coke*,⁷³ where a trade organization of public utilities and appliance manufacturers set standards for gas appliances, and the utilities refused to provide gas service to persons using unapproved equipment. The Supreme Court allowed an antitrust suit by a manufacturer who had been unable to obtain approval of his gas heater and implied that, regardless of the reasonableness of the standards, this arrangement was *per se* illegal. In the case of Western and Bell, FCC approval of the standards may not insulate the conspiracy. The Supreme Court has noted, concerning a rate-setting conspiracy, that while a finding of reasonableness may preclude an award of damages, it does not prevent a suit to enjoin the conspiracy, since there was no indication Congress intended to immunize such conduct from the antitrust laws.⁷⁴

However, application of the antitrust laws will meet with some difficulty because of an earlier antitrust suit by the Department of Justice which resulted in a consent decree in 1956.⁷⁵ A consent decree, although the result of private negotiation rather than trial of issues, has the same effect as a litigated decree, and Bell is likely to plead res judicata as a defense to any further government antitrust actions. This possibility raises no insuperable difficulties, however, for while the courts recognize the application of res judicata to antitrust suits, they have

70. See, e.g., *United States v. United Shoe Mach. Corp.*, 110 F. Supp. 295 (D. Mass. 1953), *aff'd per curiam*, 347 U.S. 521 (1954); *Eastman Kodak Co. v. Southern Photo Materials Co.*, 273 U.S. 359 (1927).

71. The FCC's finding that the blanket restrictions are unreasonable would make the equipment monopoly more similar to a "power coupled with illegal restraints" situation than to a "power abuse" situation. However, there have been complaints that Bell has discontinued lower-priced equipment offerings, conduct which may, if substantiated, fall into the abuse category. See 34 Telcomm. Rep., Oct. 20, 1968.

72. See cases cited in note 64 *supra*.

73. 364 U.S. 656 (1961).

74. *Georgia v. Pennsylvania R.R.*, 324 U.S. 439, 457-58 (1945). See also *United States v. Radio Corp. of America*, 358 U.S. 334, 358 n.16 (1959) wherein Warren, C. J., stated that the *Georgia* decision was based on the danger that the conspiracy would push rates to the "uppermost limits of the zone of reasonableness," a danger equally present in the case of technical standards.

75. *United States v. Western Elec. Co.*, 5 TRADE REG. REP. (1956 Trade Cas.) ¶ 71, 134 (D.N.J. 1956).

been extremely reluctant to raise it as a barrier to subsequent actions.⁷⁶ The Supreme Court, noting the "public interest in vigilant enforcement of antitrust laws,"⁷⁷ has refused to bar an action involving private parties based on the same course of wrongful conduct as alleged in an earlier suit by the plaintiff which had been settled before trial and dismissed "with prejudice" by court order. The court found it sufficient to establish a new cause of action that the conduct complained of was subsequent to the earlier decree and that there were additional allegations of antitrust violations. The Department of Justice should have little difficulty alleging conduct sufficient to meet this test, and the current AT&T rate investigation⁷⁸ may provide the requisite factual basis for the new cause of action by documenting Western's market power and examining its practices for abuse of that power.

An alternate approach would be for the Government to seek modification of the consent decree. A consent decree is subject to the continuing jurisdiction of the court in which it is entered, and may be modified or terminated by the court at any time.⁷⁹ Parties seeking modification of a decree are subject to the severe test formulated in *United States v. Swift & Co.*,⁸⁰ which requires a showing of a change of conditions that so attenuates the dangers on which the decree is based that it is no longer needed, and of undue hardship, because of "new and unforeseen conditions," should the decree remain in force.⁸¹ This test has generally been considered applicable to the Government as well as to private parties, but several cases have cast doubt on that proposition.⁸²

76 See Dabney, *Antitrust Consent Decrees: How Protective an Umbrella?*, 68 YALE L.J. 1391, 1397-98 (1959). The Department of Justice apparently shares this view. In January of this year, the Department filed an antitrust action against International Business Machines Corporation charging monopolization under Section Two of the Sherman Act, although an earlier Section Two action had been settled with a consent decree in 1956. Wall Street Journal, Jan. 22, 1969, at 1, col. 3.

77. *Lawlor v. National Screen Serv. Corp.*, 349 U.S. 322, 329 (1955). Where the second suit is brought on the same facts but under a different statute, the courts have denied the action to private parties, but have permitted it to the Government, distinguishing the result on the Government's special interest in enforcement of the antitrust laws. *Williamson v. Columbia Gas & Elec. Corp.*, 186 F.2d 464 (3d Cir. 1950), *cert. denied*, 341 U.S. 921 (1951); Dabney, *supra* note 76, at 1400-05.

78. *American Telephone & Telegraph Co. (Rate Investigation)*, 2 F.C.C.2d 871, 874 (1965).

79. *United States v. Swift & Co.*, 286 U.S. 106, 114 (1932); F. JAMES, CIVIL PROCEDURE § 11.8 (1965).

80. 286 U.S. 106 (1932).

81. *Id.* at 119.

82. See *Chrysler Corp. v. United States*, 316 U.S. 556, 562 (1942): "We think the test to be applied in answering this question is whether the change served to effectuate or to thwart the basic purpose of the original consent decree"; *Hughes v. United States*, 353, 357 (1952), where the Court reversed the lower court's action in modifying the decree because no hearing was held, but suggested that modification of a consent decree is proper "where necessary to preserve competition and to prevent

The Supreme Court's recent decision in *United States v. United Shoe Machinery Corp.*⁸³ may have settled this issue. In *United Shoe*, the district court held that modification of the decree could not be granted because the decree had been effective in restoring competition to a limited extent and that therefore the request could not meet the stringent requirements of *Swift*. The Supreme Court, stating that the district court had misconstrued its holding in *Swift*, ruled that "nothing in *Swift* precludes" the court from granting a modification to achieve the "principal objects" of the decree.⁸⁴ The Court noted that in *Swift* "the defendants sought relief not to achieve the purposes of the decree, but to escape their impact."⁸⁵ Thus the Court has clearly applied a less stringent test to the Government—a not unreasonable holding since public interest would not have the Government bound perpetually by an unwise consent decree.⁸⁶

The application of the achievement-of-principal-objects test to the Western Electric decree raises some difficulty because the object of the decree is not readily apparent. In the complaint filed in 1949, the Government sought a broad range of relief, including separation of Western from Bell and dissolution of Western into three competing firms.⁸⁷ However, of the major items of relief, only compulsory licensing of patents was included in the 1956 decree; the remaining terms of the decree dealt primarily with restrictions on the activities in which Western

monopoly"; *Columbia Artists Management, Inc. v. United States*, 381 U.S. 348 (1965), where the court affirmed a lower court decision which clearly modified a consent decree, but the basis of the decision is unclear. See Note, *Requests by the Government for Modification of Consent Decrees*, 75 YALE L.J. 657 (1965).

The Department of Justice in a report filed with the Antitrust Subcommittee took the position that it would be able to seek modification of the decree if it could show that modification was necessary to establish competition, citing *Hughes v. United States*, *supra*. Antitrust Subcommittee No. 5, House Committee on the Judiciary, 86th Cong., 1st Sess., Report on the Consent Decree Program of the Department of Justice 294 (1958).

83. 391 U.S. 244 (1968).

84. *Id.* at 249.

85. *Id.*

86. Although *United Shoe* involved modification of a litigated decree, its result should apply to consent decrees as well. See *United States v. Swift & Co.*, 286 U.S. 106, 114, (1932): "The result is all one whether the decree has been entered after litigation or by consent." The *United Shoe* opinion implicitly supports this view; the cases cited as authority for the district court's power "to modify the decree so as to assure the complete extirpation of the illegal monopoly" are *Swift* and *Chrysler*, both involving consent decrees. *United States v. United Shoe Machinery Corp.*, 391 U.S. 244, 251 (1968). See Note, *Requests by the Government for Modification of Consent Decrees*, 75 YALE L.J. 657, 667-68 n.56 (1965), where the writer suggests that a more lenient test has been applied by a few courts to modification of litigated decrees, and argues that "[i]n either case, should the advantage of hindsight prove modification to be desirable, it makes little sense to remain imprisoned within the confines of the original decree."

87. Details of the pleadings and relief sought are found in Antitrust Subcommittee No. 5, House Committee on the Judiciary, 86th Cong., 1st. Sess, Report on the Consent Decree Program of the Department of Justice 31-34 (1958).

and Bell may engage.⁸⁸ The acceptance of this weak decree was apparently prompted by a change in political administration and a resultant change of opinion concerning the disruptive effect of divestiture.⁸⁹ However, the decree retains the same objective as the original complaint—insurance of effective regulation of telephone rates by preventing inflated equipment charges to the telephone companies. Thus the decree includes a provision for patent licensing to encourage competition in the equipment market and also provides that Western maintain a cost-accounting system consistent with generally accepted accounting principles. These provisions have proven completely insufficient for the achievement of the decree's objective. Consequently, the Government should be free to seek modification to insure attainment of that goal.

Whether the Government institutes a new suit or seeks modification of the consent decree, it should have little difficulty obtaining extensive relief. The courts have a duty in monopolization cases to prescribe relief which will "terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation and insure that there remain no practices likely to result in monopolization in the future."⁹⁰ Clearly necessary for the restoration of competition are divestiture, disposal of Western's interest in the Bell Telephone Laboratories and termination of its contracts with the Bell operating companies. These acts alone may not be sufficient, however, since Western would remain the dominant manufacturer of telephone equipment and would retain its close association with Bell by virtue of its experience in manufacturing, installing and repairing Bell's equipment. For this reason, serious consideration should be given to the admittedly difficult task of dissolving Western into smaller, and ideally, competitive firms.

Should dissolution prove possible, the institution of compulsory competitive bidding by the Bell System in its purchase of telephone

88. *United States v. Western Elec. Co.*, 5 TRADE REG. REP. (1956 Trade Cas.) 71,134 (D.N.J. 1956). The decree limits AT&T to offering regulated communication service, and Western Electric to manufacturing types of equipment which the Bell System uses in providing communication services, subject to exceptions for services and equipment provided to the Government. It also requires Western to maintain a cost accounting system consistent with generally accepted accounting principles, but this provision effected no change in Western's accounting procedures. M. GOLDBERG, *THE CONSENT DECREE: ITS FORMULATION AND USE* 46 (1962).

89. See Antitrust Subcommittee No. 5, House Committee on the Judiciary, 86th Cong., 1 Sess., Report on the Consent Decree Program of the Department of Justice 51-52 (1958). The Committee was extremely critical of the decree and the circumstances surrounding its negotiations, and referred to it as "devoid of merit and ineffective as an instrument to accomplish the purposes of the antitrust laws." *Id.*, at 290.

90. *United States v. United Shoe Machinery Corp.*, 391 U.S. 244, 250 (1968); *United States v. Grinnell Corp.*, 384 U.S. 563, 577 (1966); *Schine Chain Theatres v. United States*, 334 U.S. 110, 128-29 (1948).

equipment may be considered. This alternative would at least provide incentive for the smaller suppliers to seek entry to the Bell System market and, over time, might result in workable competition. There are difficulties with obtaining this relief, however. An initial problem is illustrated in *United States v. Paramount Pictures*.⁹¹ The Supreme Court refused to institute competitive bidding because "the judiciary is unsuited to affairs of business management and control through the power of contempt is crude and clumsy and lacking in the flexibility necessary to make continuous and detailed supervision effective."⁹² However, the Court emphasized that competitive bidding in that industry would have been a highly sophisticated matter⁹³ with only "dubious benefits" to competition. In this instance, competitive bidding, involving generally comparable, if not totally fungible, equipment for the telephone companies, would be much easier to manage and would be almost essential to the restoration of workable competition. Moreover, in calling for bids for equipment, the Bell System, like the Pentagon, could surely provide detailed specifications which all bidders must meet, and thereby render all bids comparable in pure dollar terms. Under these circumstances a court might more readily grant this relief.

The institution of competitive bidding might be improper for two further reasons: it would conflict with the intent of Congress that the FCC have exclusive power to regulate equipment purchases by the telephone companies, and it would constitute judicial interference in an area where the FCC has greater expertise and supervisory capacity. These arguments fail because although the FCC has been given extensive investigatory powers by Congress, it has not been given any power to act directly on dealings with equipment suppliers.⁹⁴ Thus Congress has not expressed any intent to exclude the courts from this area. Furthermore, the FCC's greater expertise is irrelevant where it has no power to impose competitive bidding. Consequently, the courts should not hesitate to utilize competitive bidding should that be essential to the re-establishment of competition in the equipment market.

III. Conclusion

The restoration of competition in the telephone equipment market will ease many of the problems raised by the FCC's decision in *Carterfone*,

91. *United States v. Paramount Pictures, Inc.*, 334 U.S. 131 (1948).

92. *Id.* at 163.

93. *Id.* at 163. "It would involve the judiciary in the administration of intricate and detailed rules governing priority, period of clearance, length of run, competitive areas, reasonable return, and the like. The system would be apt to require as close a supervision as a continuous receivership. . . ." And see, Gordon, *The Legality of Motion Picture Splits*, 75 *YALE L.J.* 239, 258-59 (1965).

94. See note 44 *supra*.

but divestiture is a long-range goal. Moreover, even if competition is restored, Bell will have an economic interest, though somewhat lessened, in maintaining control of the attachment market since use of its equipment will increase the base on which its return is measured; and Bell will also retain an interest in curbing the development of rival communication systems through refusal to interconnect.⁹⁵ Thus the FCC should eliminate Bell's overly restrictive policy on attachments. Its action in allowing Bell to prepare new tariff restrictions after *Carterfone* is clearly inadequate and an abdication of its responsibility to the public under the Communications Act. To expect disinterested consideration of standards from a company involved in manufacture of competing equipment, especially in light of past complaints about Bell's application of these restrictions, is incredibly naive. Furthermore the FCC, since it may consider possible antitrust violations in reaching decisions,⁹⁶ should recognize the anti-competitive effect of allowing Bell to establish the standards for attachments to the telephone system, and judge accordingly "the reasonableness of any tariff which places control over petitioners' business in the telephone companies in the first instance."⁹⁷ The FCC should exercise its authority under the Communications Act⁹⁸ and establish technical standards for interconnection and a process for expeditious approval or disapproval of equipment under those standards. The public interest requires only that these standards be sufficient to insure a "rapid, efficient, . . . communication service";⁹⁹ the Commission should not by its failure to act allow standards which insure only the interest of Bell in protecting an equipment market.

Gerald F. George

95. See text at note 7 *supra*.

96. See, *e.g.*, *United States v. Radio Corp. of America*, 358 U.S. 335, 348 (1959). The FCC also has jurisdiction over violations of Section Three of the Clayton Act, 15 U.S.C. § 21 (1964), although it is limited to issuing cease and desist orders.

97. See text at note 14 *supra*.

98. See note 27 *supra*.

99. 47 U.S.C. § 151(a) (1964).