

unreasonable, why should not the citizen be permitted to appeal to the Interstate Commerce Commission to have it determined whether the charges are or are not reasonable?"^{205/}

The Telephone Companies Consolidation Act of 1921 permitted the merger of telephone companies following ICC approval.^{206/} The statute was premised on the conviction that the telephone industry was a "natural monopoly."^{207/}

Finally, the common carrier provisions of the Communications Act of 1934, making applicable to telephone and telegraph many of the substantive provisions of the Interstate Commerce Act,^{208/} reflected continuing Congressional concern with monopoly conditions in the telecommunications industries and a desire for more effective regulation.^{209/}

^{205/} Id. at 5533.

^{206/} Act of June 10, 1921, 42 Stat. 27.

^{207/} Senate Rep. No. 75, 67th Cong., 1st Sess. 1-2 (1921); House Rep. No. 109, 67th Cong., 1st Sess. 1-2 (1921). 61 Cong. Rec. 1983-93 (1921).

^{208/} 48 Stat. 1064 (1934), as amended, 47 U.S.C. §§ 151 et seq.

^{209/} Senate Rep. No. 781, 73d Cong., 2d Sess. 2-3 (1934); House Rep. No. 1850, 73d Cong. 2d Sess. 2-3 (1934); 78 Cong. Rec. 4139, 8822-24, 8853, 10312-17, 10322-23 (1934). See also Hearings before Sen. Comm. on Interstate Commerce on Commission on Communications, 71st Cong., 1st and 2nd Sess., 1085-88, 1250, 1582-85, 2115-31, 2137 (1929-1930); Study of Communications by an Interdepartmental Committee, Print of Sen. Comm. on Interstate Commerce, 73d Cong., 2d Sess. 1-2, 7-9 (1934); Preliminary Report on Communication Companies, House

"Under the existing provisions of the Interstate Commerce Act the regulation of the telephone monopoly has been practically nil. This vast monopoly which so immediately serves the needs of the people in their daily and social life must be effectively regulated."210/

* * *

"The purpose of the proposed legislation is to make effective the power now written into the Interstate Commerce Act of control of telephone and telegraph business in this country. The Interstate Commerce Commission have (sic) been so busy regulating the railroads that they have not had time to give real consideration to the problems in connection with rate regulation of telephones and telegraph"211/

* * *

"The competition in the industry will run about as follows:

"Telephone: American Telephone & Telegraph Co., 95 percent of the business; 100 independent companies, 5 percent of the business.

[Footnote continued from preceding page]

Rep. No. 1273, Part I, pp. V-VI, XII, XIV, XVI, XXX-XXXI, 1, 39-43, 75-76, 89-93 (1934); Report on Communications Companies, Part III, pp. IX-XII, 841, 845-47, 854, 856-62, 901-02, 929, 961-63 (1934); Hearings before Sen. Comm. on Interstate Commerce on Federal Communications Commission, 73d Cong., 2d Sess. 74-75, 78, 87, 100, 132-33, 136-38 (1934); Hearings before House Comm. on Interstate and Foreign Commerce on Federal Communications Commission, 73d Cong., 2d Sess. 5-6, 10-12 (1934); House Conf. Rep. No. 1918, 73d Cong., 2d Sess. 46 (1934).

210/ S. Rep. No. 781, 73d Cong., 2d Sess. 2 (1934).

211/ 78 Cong. Rec. 4139 (1934).

"In the telegraph field: The Western Union, 75 percent; the Postal, 24 percent; and the independents, 1 percent.

"In telephone service the American Telephone & Telegraph is practically a monopoly" ^{212/}

The principal source of information for the Congress was a series of reports by Walter M. W. Splawn, Special Counsel to the House Committee on Interstate and Foreign Commerce. These showed that, for the year 1932, Bell Accounted for 94.3% of the operating revenues of all substantial telephone companies; that competition with Bell in long-distance services was virtually non-existent; and that competition among telephone companies at the local level was very limited and in the process of being eliminated entirely. ^{213/} See also Hearings before Sen. Comm. on Interstate Commerce on Commission on Communications, 71st Cong., 2d Sess., pp. 1086-88, 1582-83, 2116-37 (1930); Hearings before Sen. Comm. on Interstate Commerce on Federal Communications Commission, 73d Cong., 2d Sess., pp. 100, 137-38 (1934); Hearings before House Comm. on Interstate and Foreign Commerce on Federal Communications Commission, 73d Cong., 2d Sess. p. 10 (1934). It also showed

^{212/} Id. at 10315 (1934).

^{213/} Report on Communications Companies, House Rep. No. 1273, 73d Cong., 2d Sess., Part III, No. 1, pp. X, 841, 845-47, 854, 856-62, 901-02 (1934).

that Bell possessed a monopoly in international telephone services.^{214/}

In the case of telegraph including international cable, Western Union accounted for over 75% of operating revenues and Postal Telegraph accounted for almost all of the remainder.^{215/} Moreover, Postal Telegraph was incurring deficits and was said to be interested in a merger with Western Union,^{216/} The operations of other domestic telegraph companies were negligible and continued competition in the industry was questioned.^{217/} In international wireless there were additional companies, but Western Union was using the facilities of RCA and the only other substantial competitor was International Telephone & Telegraph, affiliated with Postal Telegraph.^{218/}

^{214/} Report on Communications Companies, House Rep. No. 1273, 73d Cong., 2d Sess., Part III, No. 1, p. 998 (1934).

^{215/} Report on Communication Companies, House Rep. No. 1273, 73d Cong., 2d Sess., Part III, No. 1, pp. 961-63 (1934).

^{216/} Report on Communications Companies, House Rep. No. 1273, 73d Cong., 2d Sess., Part III, NO. 1, p. X (1934).

^{217/} Report on Communications Companies, House Rep. No. 1273, 73d Cong., 2d Sess., Part III, No. 1, pp. 961-63. See also Hearings before Sen. Comm. on Interstate Commerce on Commission on Communications, 71st Cong., 2d Sess., pp. 1086-88 (1930); Hearings before Sen. Comm. on Interstate Commerce on Federal Communications Commission, 73d Cong., 2d Sess. pp. 132-33 (1934).

^{218/} Report on Communications Companies, House Rep. No. 1273, 73d Cong., 2d Sess., Part III, No. 1, pp. 961, 998 (1934).

In sum, with respect to common carrier regulation, the attention of Congress was focused on the monopolized segments of the industry and the primary objective of Congress was to achieve effective regulation of monopoly telecommunications enterprises.

VIII. CONCLUSION

The Communications Act of 1934 was the culmination of regulatory developments stretching back almost ninety years. The policies it articulated had their roots in a pattern of legislative and judicial responses to telegraph and telephone monopoly. The scope of the legislation should be construed in the light of the historical development of which it was a part.

In the case of carriers of goods, common law doctrines of common carriage were concerned primarily with establishing the fiduciary responsibilities of carriers. For this purpose it was not critical that the carriers possess monopoly power or special franchises. Prior to the railroads, it was not usual for such carriers to require or possess any special franchises from the state, and monopoly conditions, if present at all, were not stressed by the courts or the commentators.

Telecommunications does not involve problems of fiduciary responsibilities for goods in the possession of a carrier. The common law of common carriers was applied to this industry for an entirely different reason -- because the communications entity, possessed of special government privileges, exercised monopoly power. Even on questions of liability, the common law of fiduciary responsibilities proved to be inadequate; the monopoly-franchise approach ultimately yielded more satisfactory solutions.

It is a product of confusion -- produced by the railroad industry -- that has created a haphazard fusion of the two concepts, so that tests appropriate for custodial responsibility are sought to be applied to cases where the monopoly-franchise approach should provide the governing criterion. The railroads were common carriers in both the custodial and the monopoly-franchise traditions, and because of the overriding importance of the railroads in the nineteenth century the relevant distinctions between the two concepts became blurred. But it is not necessary that the confusion be continued. The Communications Act clearly was part of a tradition of regulation premised on the monopoly-franchise characteristics of the telecommunications companies. The scope of the common carrier definition in the Communications Act should be limited to firms that possess such characteristics.