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The Federal Takeover of the U.S. Telephone System During World War I

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I. INTRODUCTION

One of the characteristics of the U.S. telephone system generally thought to distinguish it from all others is the fact that it has always been privately owned. In all other major countries, telephone systems have generally been owned and operated by the government, most commonly through an organization known as a Post, Telephone, and Telegraph (PTT). The U.S. took a different course, having private ownership. Indeed, the American emphasis on individualism and lack of a legacy of strong sovereign states made government ownership of the telephone unthinkable.¹

What is not widely known is how close the U.S. came to falling in line with the rest of the world. For the roughly one-year period following July 31, 1918, the federal government took over the U.S. telephone system. This period of history is important for many reasons. First, it provides a fascinating insight into the dynamics of institutional change, particularly regarding the role of individuals, political processes, and technology. Even more importantly, the episode sheds light on many central issues of telecommunications policy. It provides new insights into

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¹ See, e.g., STONE, *supra* note **Error! Bookmark not defined.**, at 42.

why the telephone industry lapsed into monopoly, the nature of federal-state relations, and the origins of universal service.

Despite the importance of this episode in history, it has been largely overlooked by the scholarly community. Many histories discussing the competitive dynamics of this period fail to mention it at all.² A handful of accounts offer a passing reference to it³ or devote a few pages to it.⁴ Indeed, only one published work examines the history of the government takeover at any length, and that is based on a single source that fails to consider the broader range of materials available in the legislative history and the National Archives.⁵

We believe it is time to rectify this shortcoming, not only for the lessons it teaches us about the past. Interest in government owned and run telecommunications systems have enjoyed something of a renaissance in recent years, driven by the experiments in municipal WiFi, investments by European governments in alternative network capacity, and the inclusion of

² See, e.g., GERALD R. FAULHABER, TELECOMMUNICATIONS IN TURMOIL (1987); PETER W. HUBER ET AL., FEDERAL TELECOMMUNICATIONS LAW (2d ed. 1999); KENNETH LIPARTITO, THE BELL SYSTEM AND REGIONAL BUSINESS (1989); ALAN STONE, WRONG NUMBER (1989); Glen O. Robinson, *The Federal Communications Act: AN Essay on Origins and Regulatory Purpose*, in A LEGISLATIVE HISTORY OF THE COMMUNICATIONS ACT OF 1934, at 3 (Max D. Paglin ed., 1989).

³ See, e.g., GERALD W. BROCK, THE TELECOMMUNICATIONS INDUSTRY 156 (1981); JEFFREY E. COHEN, THE POLITICS OF TELECOMMUNICATIONS REGULATION 38 (1992); AMY FRIEDLANDER, NATURAL MONOPOLY AND UNIVERSAL SERVICE 77 (1995); 1 LEONARD S. HYMAN ET AL., THE NEW TELECOMMUNICATIONS INDUSTRY 81 (1987); MILTON L. MUELLER, JR., UNIVERSAL SERVICE 133 (1997); J. WARREN STEHMAN, THE FINANCIAL HISTORY OF THE AMERICAN TELEPHONE COMPANY 177 (1967); PETER TEMIN, THE FALL OF THE BELL SYSTEM 11 n.3 (1987); William P. Barnett & Glenn R. Carroll, *How Institutional Constraints Affected the Organization of Early U.S. Telephony*, 9 J.L. ECON. & ORG. 98, 112 (1993); Kenneth A. Cox & William J. Byrnes, *The Common Carrier Provisions—A Product of Evolutionary Development*, in A LEGISLATIVE HISTORY OF THE COMMUNICATIONS ACT OF 1934, *supra* note 2, at 25, 29; Geoffrey M. Peters, *Is the Third Time the Charm? A comparison of the Government's Major Antitrust Settlements with AT&T This Century*, 15 SETON HALL L. RE. 252, 257 (1985).

⁴ See, e.g., JOHN BROOKS, TELEPHONE: THE FIRST HUNDRED YEARS 150-53, 157-59 (1975); GEORGE P. OSLIN, THE STORY OF TELECOMMUNICATIONS 278-79 (1992); ALAN STONE, PUBLIC SERVICE LIBERALISM 197-99 (1991); RICHARD H.K. VIETOR, CONTRIVED COMPETITION 172-73 (1994); *The Telegraph Industry: Monopoly of Competition*, 51 YALE L.J. 629, 633-37 (1942); Adam D. Thierer, *Unnatural Monopoly: Critical Moments in the Development of the Bell System Monopoly*, 14 CATO J. 267, 275-76 (1994).

⁵ N.R. DANIELIAN, A.T.&T.: THE STORY OF INDUSTRIAL CONQUEST 243-70 (1939). The only other discussion of any significance of which we are aware is an unpublished dissertation by political scientist Kenneth Bickers. See Kenneth N. Bickers, *The Politics of Regulatory Design: Telecommunications in Historical and Theoretical Perspective* 134-56 (1988) (unpublished Ph.D. dissertation, University of Wisconsin-Madison) (on file with authors).

government funds for broadband deployment in the recent stimulus package. In addition, some scholars advocating network neutrality have actively looked to postal system as a model for the Internet.⁶ These calls for the figurative postalization of the Internet would do well to take into account the lessons from our nation's experience with the actual postalization of telecommunications.

II. THE HISTORY OF THE GOVERNMENT TAKEOVER

A. Setting the Stage

Support for public ownership of telecommunications systems dates back to the very earliest days of the telegraph.⁷ The history of the electromagnetic telegraph in the United States began on September 4, 1837, when Samuel Morse made a successful transmission across 1,700 feet of wire arranged in his classroom.⁸ Ill suited to commercializing the invention himself, he convinced Congress to appropriate \$30,000 to establish a telegraph connection between Washington, D.C., and Baltimore,⁹ through which Morse successfully sent a message on May 24, 1844.¹⁰

⁶ See Wu.

⁷ A report submitted by the Post Office to Congress in 1914 provides an excellent overview of early advocacy for government ownership of telecommunications. Government Ownership of Electrical Means of Communication, S. DOC. NO. 63-399, at 19-36 (2d sess. 1914).

⁸ OSLIN, *supra* note 4, at 19. Morse was neither the first nor the only inventor working on telegraphy. Beginning in 1793, France deployed an optical telegraph system that used a series of towers topped by a set of movable arms that could send signals in a semaphore-like manner. In 1809, a German inventor developed a telegraph that used electrochemical processes connected by thirty-five wires to communicate. European inventors were also independently experimenting with electromagnetic telegraphs at more or less the same time (indeed, perhaps slightly before) Morse. A.N. HOLCOMBE, PUBLIC OWNERSHIP OF TELEPHONES ON THE CONTINENT OF EUROPE 3-8 (1911). The U.S. Supreme Court would ultimately rule that Morse's invention came first. *O'Reilly v. Morse*, 56 U.S. 62 (1852); *see also* *Smith v. Downing*, 22 F. Cas. 511, 513 (C.C.D. Mass. 1850) (No. 13,036).

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¹⁰ OSLIN, *supra* note 5, at 32.

At the time, many observers thought that the telegraph network should be owned and operated by the government. For example, Henry Clay found it “quite manifest that [the telegraph] is destined to exert great influence on the business affairs of society. In the hands of private individuals they will be able to monopolize intelligence and perform the greatest operations in commerce and other departments of business. I think such an engine should be exclusively under the control of the Government.”¹¹ Postmaster General Cave Johnson’s 1845 and 1846 Reports similarly supported government ownership of the entire telephone system.¹² Morse even offered to sell the patent to the federal government for \$100,000¹³ and apparently attempted to give the patent to the Republic of Texas in 1838.¹⁴

Pressed for cash and stung by the losses incurred by the telegraph line, the sorry state of postal finances, and the recent failure of other internal improvement projects,¹⁵ the government declined and instead enacted legislation authorizing the Postmaster General to sell or lease the telegraph,¹⁶ with the sale being completed on March 4, 1847.¹⁷

Instead, Congress enacted the Post Roads Act of 1866 authorizing telegraphs to operate lines through and over any federal lands and to use materials gather from those lands without cost.¹⁸ The statute gave the federal government’s communications priority over all other traffic

¹¹ Letter from Henry Clay to Alfred Vail (Sept. 10, 1844), *reprinted in* Frank G. Carpenter, *Henry Clay on Nationalizing the Telegraph*, 154 N. AM. REV. 380, 382 (1892), and *quoted in* S. DOC. NO. 63-399, at 19.

¹² Report of the Postmaster General (Dec. 1, 1845), S. DOC. NO. 29-1, pt. 9, at _ (1st Sess. 1845) (Serial Set No. 470); Report of the Postmaster General (Dec. 7, 1846), S. DOC. NO. 29-1, pt. 8, at 688-89 (2d Sess. 1846) (Serial Set No. 493).

¹³ *See* Government Ownership of Electrical Means of Communication, S. DOC. NO. 399, 63d Cong., 2d Sess. 19 (1914).

¹⁴ OSLIN, *supra* note 5, at 23.

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¹⁶ Act of June 19, 1846, ch. 31, 9 Stat. 19.

¹⁷ Roper Report 20.

¹⁸ Ch. 230, § 1, 14 Stat. 221, 221, *repealed by* Act of July 16, 1947, ch. 256, 61 Stat. 327.

at rates set by the Postmaster General¹⁹ and gave the government a five-year right to purchase all the telegraph lines at a value appraised by five disinterested arbitrators.²⁰

In 1867, Andrew Johnson's Postmaster General Alexander Randall urged Congress to study the possibility of a postal takeover of the telegraph system.²¹ In 1871, shortly after the expiration of the five-year right-to-purchase period established by the 1866 Act, Postmaster General John Creswell endorsed the idea of a postal telegraph, pointing to the fact that Great Britain had nationalized its telegraph system in 1870.²² This recommendation drew the approbation of President Grant, who "recommend[ed] favorable consideration of the plan for uniting the telegraphic system of the United States with the postal system."²³ Not only would public ownership reduce rates while rendering the same level of service, if not better.²⁴ "It would secure the further advantage of extending the telegraph through portions of the country where private enterprise will not construct it."²⁵

During 1871 and 1872, Congress seriously debated government ownership of the telegraph system, dividing between one proposal (endorsed by the President and the Postmaster General) under which the federal government would take possession of entire telegraph system and merge it into the post office and another proposal (backed by Gardiner Hubbard, who would eventually become President of the Bell System as well as Alexander Graham Bell's father-in-law) that would place the entire industry in the hands of a single private company that was

¹⁹ § 2, 14 Stat. at 221.

²⁰ § 3, 14 Stat. at 221-22.

²¹ Postmaster 1867.

²² Postmaster 1871

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²⁴ "by such a course the cost of telegraphing could be much reduced and the service as well, if not better, rendered."

²⁵ Grant transmittal.

granted special privileges by the government and give the government preferential terms.²⁶

Congress deadlocked over these proposals and failed to enact either of them. Creswell would repeat his call for government ownership of the telegraph system in 1872 and 1873 to no avail.²⁷

The matter lay quiescent until 1880, when a visit to the British post office prompted Postmaster General _ Maynard to ask whether the federal government should once again take up the issue of public ownership of the telegraph system.²⁸ These calls were renewed in 1882 and 1883 by Postmasters General _ Howe and _ Gresham.²⁹ Between 1871 and 1884, Congress considered over two dozen proposals to nationalize the telegraph system, three quarters of which were apparently reported favorably out of committee. None, however, was ever enacted.³⁰

Perhaps the most vigorous early advocate of government ownership of the telegraph was John Wanamaker, the former _ who was appointed Postmaster General by Benjamin Harrison.³¹ In 1890, Postmaster General John Wanamaker raised the subject obliquely, including both the postal telegraph and the telephone (the telegraph's "natural accompaniment") in the list of new features that should be accommodated in designs for new post offices.³² Wanamaker was even more explicit the following year, offering an extended argument for postalizing the telegraph, arguing that "[t]he postal telegraph and postal telephone, can not, in logical events, be kept away from the post."³³ In 1892, Wanamaker called for the establishment of a postal telephone connecting small and suburban post offices with other post offices and telegraph offices and

²⁶ Doc. 399 at 23.

²⁷ Postmaster 1872; Postmaster 1873.

²⁸ Postmaster 1880.

²⁹ Postmaster 1882 and 1883

³⁰ S. DOC. NO. 6_-399, at 35; COHEN, *supra* note __, at 37.

³¹ Postmaster 1890, 1891, 1892, 1893.

³² Report of the Postmaster-General, H.R. EXEC. DOC. NO. 51-1, pt. 4, at 102 (2d Sess. 1890).

³³ Report of the Postmaster-General, H.R. EXEC. DOC. NO. 52-1, pt. 4, at 7, 50 (1st Sess. 1891). Wanamaker explicitly thanked Judge Walter Clark of the Supreme Court of North Carolina. *Id.* at 47. Clark had been an ardent advocate of nationalizing the telegraph and telephone systems. See Walter Clark, *Telegraph and Telephone Properly Parts of the Post Office System*, ARENA, Mar. 1892, at 464-71.

offered the German postal telephone system as a model.³⁴ Wanamaker's successor, Postmaster General _ Bissell, echoed these sentiments.³⁵

In 1901, the Industrial Commission heard testimony from Professor Frank Parsons advocating government ownership. The Postal Act of January 22, 1901, contained a provision directing the Postmaster General "to report to Congress the probable cost of connecting a telegraph and telephone system with the postal service by some feasible plan,"³⁶ although it does not appear that the Postmaster General ever did so.³⁷ Aside from a passing mention by George Cortelyou in 1906 including the postal telephone in a laundry list of future improvements to the postal system,³⁸ no further action was taken for a dozen years.

Interest returned in 1912, when Postmaster General _Hitchcock once again proposed, "The Telegraph lines in the United States should be made a part of the postal system,"³⁹ only to see that recommendation specifically disavowed by President Taft's message transmitting this report. Taft "believe[d] that the true principle is that private enterprise should be permitted to carry on such public utilities under due regulation as to rates by property authority rather than that the Government should itself conduct them."⁴⁰ Taft thought it would be bad public policy "greatly to increase the body of public servants." Although the argument for government ownership would be strong if government could operate the system "at a less price . . . and with equal efficiency," Taft was "not satisfied from any evidence that if these properties were taken

³⁴ Report of the Postmaster-General, H.R. EXEC. DOC. NO. 52-1, pt. 4, at 29 (2d Sess. 1892).

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³⁷ Doc. 399 at 35.

³⁸ Post-Office Department, Annual Reports for the Fiscal Year Ended June 30, 1906, H.R. DOC. NO. 59-41, at 81 (2d Sess. 1906).

³⁹ Post Office Department Annual Reports for the Fiscal Year Ended June 30, 1911, H. Doc No. 118, 62d Cong. 2d Sess. 14 (1912).

⁴⁰ *Message of the President of the United States Transmitting the Annual Report of the Postmaster General for the Fiscal Year Ended June 30, 1911, and the Report of the Commission on Second-Class Mail Matter*, H. Doc. No. 599, 62d Cong., 3d sess. 13 (1913).

over by the Government they could be managed any more economically or any more efficiently or that this would enable the Government to furnish service at any smaller rate than the public are now required to pay by private companies.”⁴¹ In any event, Taft believed that any such initiatives should be postponed until after the Post Office had established a postal savings bank and a parcel post.⁴² Undeterred by the President’s opposition, Hitchcock’s next report did not back down, arguing that the successful creation of the postal savings system and the parcel post justified focusing attention on incorporating the telegraphy lines into the postal system.⁴³

Still, at this point, AT&T was sufficiently optimistic to predict in its annual report that “[t]he discussion of the government ownership of [telephone and telegraph] companies is not likely to become anything more than academic, at least for the present.”⁴⁴ The company was sufficiently concerned, however, to devote four additional pages to laying out arguments against government ownership of the telephone system.⁴⁵

B. Opening the Debate, 1913-1915

AT&T’s optimism would soon prove to be ill founded. Hitchcock’s proposal set the stage for a major debate over the so-called “postalization” of the telegraph system beginning in 1913. Several factors caused the 1913 debate to arise in a starkly different atmosphere than previous debates. As an initial matter, there was a global trend toward governmental ownership of telephone systems. Manitoba had nationalized its telephone system in 1907. Even more

⁴¹ *Id.*

⁴² *Id.*

⁴³ Post Office Department Annual Reports for the Fiscal Year Ended June 30, 1912, H. Doc. No. 931, 62d Cong. 2d Sess. 14 (1913).

⁴⁴ 1911 Annual Report of AT&T 36 (1912).

⁴⁵ *Id.* at 36-40.

importantly, Great Britain had nationalized its telephone system in 1912.⁴⁶ Indeed, by 1913, the United States was the only major country whose telephone system was not publicly owned.⁴⁷

In addition, consumers had widespread concern about rates.⁴⁸ After years of declines, telephone rates had begun to rise. This was particularly problematic in light of Britain's highly successful rate cut immediately following the government takeover.

In many ways, the upward pressure on rates was the direct consequence of a change in AT&T's policy. When competition first emerged in 1894, AT&T's initial reaction was to attempt to outbuild the independents.⁴⁹ The result was a boon to consumers. The number of telephone connections, which had been growing at the somewhat languid annual rate of 6% prior to 1894, jumped to 20%.⁵⁰ Initially, the independents focused on areas that the Bell System had ignored, such as rural areas, small towns, and the suburbs of major cities. Over time, they began to enter into direct competition with Bell. By 1902, competition existed in more than half of all cities with populations of greater than 5000.⁵¹ Consumers who purchased both connections could typically connect to five-to-ten times the number of other customers while paying less than the cost of buying a single connection during the monopoly period.⁵²

From AT&T's standpoint, this strategy turned out to be a dismal failure. AT&T's prices, profits, and stock price plummeted, and the capital requirements strained the company's ability

⁴⁶ STONE, *supra* note __, at 141, 195-96. For the classic study on public ownership of telephone systems in Europe, see A.N. HOLCOMBE, PUBLIC OWNERSHIP OF TELEPHONES ON THE CONTINENT OF EUROPE (1911).

⁴⁷ Debaters; ?.

⁴⁸ COHEN, *supra* note __, at 31-32.

⁴⁹ Gabel, *supra* note **Error! Bookmark not defined.**, at 354.

Stanley M. Besen & Joseph Farrell, *Choosing How to Compete: Strategies and Tactics in Standardization*, 8 J. ECON. PERSP. 117, 122-24 (1994).

⁵⁰ Gabel, *supra* note **Error! Bookmark not defined.**, at 350 tbl.4.

⁵¹ Vietor 107.

⁵² *Id.* at 94; Bornholz & Evans, *supra* note **Error! Bookmark not defined.**, at 30; Weiman & Levin, *supra* note **Error! Bookmark not defined.**, at 123-24; *see also* G. JOHNSTON, SOME COMMENTS ON THE 1907 ANNUAL REPORT OF AT&T 15-16 (1908) (describing the dramatic drop in the Bell System's rates).

to raise capital.⁵³ By 1907, AT&T's market share fell below 50%. The financial markets had had enough. The Morgan banking interests took over the company and forced a change in management, installing Theodore Vail as president. Under Vail's leadership, the company stopped competing directly with the independents and instead began pursuing two classic anticompetitive strategies. As an initial matter, they attempted to merge to monopoly by offering to buy out the independents.⁵⁴ If the independent refused to sell, they pursued a classic division of markets, by offering to withdraw from direct competition in return for a promise from the independent not grow outside its territory and to interconnect with AT&T's long distance network.

Vail justified the consolidation of all telephone companies into a single system by his "belie[f] that the telephone system should be universal, interdependent, and intercommunicating, affording opportunity for any subscriber of any exchange to communicate with any other subscriber of any other exchange."⁵⁵

AT&T backed its strategy of withdrawing from competition with what has been described as the first major corporate public relations campaign in history decrying the cost and inconvenience of having to maintain two separate connections, each with its own lines and handsets (known as dual service). To compensate for the lack of price discipline resulting from the elimination of competition, AT&T dropped its longstanding opposition to government oversight and willingly submitted to rate regulation.⁵⁶

⁵³ Gabel at 345-46; *see also* Weiman & Levin, *supra* note **Error! Bookmark not defined.**, at 109-23; MUELLER, *supra* note **Error! Bookmark not defined.**, at 70.

⁵⁴ *See, e.g.*, AT&T Annual Report 21 (1910) ("Wherever it could be legally done, and done with the acquiescence of the public, opposition companies have been acquired and merged into the Bell System.").

⁵⁵ AT&T 1910 Report at 22-23.

⁵⁶ AT&T 1907 report at 18.

The result was an abrupt end to the erosion of AT&T's market share. AT&T's competitors began to complain that the mergers represented a violation of the antitrust laws.⁵⁷ These complaints did not prompt any immediate action by from the Taft Administration's antitrust authorities, which despite its willingness to use the antitrust laws to break up Standard Oil and American Tobacco,⁵⁸ viewed each telephone merger as an independent event instead of evaluating them as part of a systematic campaign.⁵⁹ Independents warned that although each individual acquisition involved purely intrastate commerce, "[t]he avowed purpose of the Bell Company is to buy or crowd out the independent companies, which in the end will give them a complete monopoly of the telephone."⁶⁰ The Attorney General referred the matter to the Interstate Commerce Commission, which declined to act and eventually dropped the investigation.⁶¹

Toward the end of the Taft Administration, however, the Justice Department began to view AT&T's acquisition campaign with greater concern. Concerned about acting too hastily and giving the appearance of political grandstanding on the eve of a presidential election, the Attorney General simply asked AT&T not to consummate any pending transactions,⁶² a request with which AT&T complied.⁶³

⁵⁷ See, e.g., Letter from Edward F. Murray, President, Murray's Line, to George W. Wickersham, Attorney General (Nov. 13, 1912), *cited in* Bickers 116 n.64.

See generally Letter from George W. Wickersham, Attorney General, to Charles A. Prouty, Chairman, Interstate Commerce Commission (Jan. 7, 1913), *quoted in* Bickers, *supra* note 113-14 (summarizing these complaints).

⁵⁸ See *United States v. Standard Oil Co.*, 221 U.S. 1 (1911); *United States v. Am. Tobacco CO.*, 221 U.S. 106 (1911).

⁵⁹ Bickers _.

⁶⁰ Letter from Edward F. Murray, President, Murray's Line, to George W. Wickersham, Attorney General (Nov. 23, 1912), *quoted in* Bickers 116-17.

⁶¹ ICC Press Release in Investigation of Telephone and Telegraph Companies, Docket No. 5462 (Apr. 15, 1914), *cited in* Bickers 115.

⁶² Memorandum from George W. Wickersham, Attorney General, to J.A. Fowler, Assistant to the Attorney General (Aug. 29, 1912), *quoted in* Bickers 117.

⁶³ Letter from Theodore Vail, President, AT&T to the presidents of all associated Bell telephone companies (Aug. 6, 1912), *cited in* Bickers 118.

The advent of the Wilson Administration marked a turn toward the principles associated with the Progressive movement. Consistent with Progressive's support for aggressive enforcement of the antitrust laws, Wilson successfully concluded the Kingsbury Commitment in December 1913.⁶⁴

Although Progressives were willing to use the antitrust laws and regulation to curb monopolies, they were far more ambivalent about government ownership. Although some commentators have simplistically seen Progressivism as favoring nationalization,⁶⁵ their attitudes were much more complex. Specifically, government ownership pitted Progressives' faith in scientific administration and centralized control against their intuitive distrust of uncontrolled economic power.⁶⁶

Wilson's scholarly work placed him in the camp of the government-ownership skeptics. In a book published within two years of his inauguration that, although natural monopolies can harm the public interest, in most cases government ownership would be inferred to government regulation.⁶⁷ Wilson's reticence would be offset by his appointment of Albert Burleson as Postmaster General. Indeed, Burleson would advocate government ownership of the telephone system with a zeal that strained the limits of even the most ardent Progressive.⁶⁸

On December 1, 1913, Burleson submitted his initial annual report. "The monopolistic nature of the telegraph business makes it of vital importance to the people that it be conducted by

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⁶⁵ See, e.g., COHEN, *supra* note __, at 37. See generally RICHARD EPSTEIN, HOW PROGRESSIVES REWROTE THE CONSTITUTION (2006).

⁶⁶ Bickers, *supra* note __, at 88-89. On the conflicts within the Progressive movement, see RICHARD HOFSTADTER, THE AGE OF REFORM 215-71 (1955); and Michael J. Sandel, *Democracy's Discontents: America's Search for a Public Philosophy*, 85 GEO. L.J. 2073, 2076-77 (1977).

⁶⁷ WOODROW WILSON, THE STATE: ELEMENTS OF HISTORICAL AND PRACTICAL POLITICS 635 ¶ 1526 (1911).

⁶⁸ Anderson, *supra* note **Error! Bookmark not defined.**, at 345 (noting that Burleson's advocacy of government ownership of the telephone system was "a goal that was really a little too radical even for more Progressives").

unselfish interests, and this can be accomplished only through Government ownership.”⁶⁹

Moreover, “Every argument in favor of Government ownership of telegraph lines may be advanced with equal logic and force in favor of the Government ownership of telephone lines.”⁷⁰

The report indicated that the Post Office Department was conducting an investigation and promised to submit a legislative proposal shortly.⁷¹

On December 20, Representative David John Lewis of Maryland introduced a resolution directing the relevant committees to consider a bill providing the postalization of the telephone network. He followed that with an extended defense of the merits of postalizing the telephone system that occupied thirty-five pages of the *Congressional Record*.⁷²

On January 31, 1914, in response to a resolution adopted by the Senate on January 12 directing the Postmaster General to send the results of his investigation to the Senate,⁷³ Burleson submitted a lengthy report that ran nearly one hundred fifty pages that members of his staff had prepared laying out the case for government ownership of both the telephone and telegraph system.⁷⁴

The House Committee on the Post Office and Post Roads would subsequently conduct hearings on “The Postalization of the Telephone” on January 15, 1915.⁷⁵ Representative Lewis essentially repeated his speech from December 1913.⁷⁶ The only other witness was an officer of

⁶⁹ Post Office Department Annual Reports for the Fiscal Year Ended June 30, 1913, H. Doc. No. 712, 63d Cong., 2d Sess. 15 (1914).

⁷⁰ *Id.* at 16

⁷¹ *Id.*

⁷² 51 CONG. REC. 1377-1412 (1913).

⁷³ *Id.* at 203-04 (1914).

⁷⁴ S. DOC. NO. 399, 63d Cong., 2d sess. (1914).

⁷⁵ *The Postalization of the Telephone: Hearing on H.R. 20471 Before the House Committee on the Post Office and Post Roads*, 63d Cong., 3d Sess. (1915)

⁷⁶ *Id.* at 3-143.

the second largest telegraph company who testified in support of postalization in order to curb supposed abuses of his chief rival, Western Union.⁷⁷

AT&T responded with a vigorous campaign against postalization that attempted to stake out a middle ground in favor of a private monopoly subject to government regulation.⁷⁸ Its most extensive statement was thirty-four page discussion in its 1913 annual report.⁷⁹ Other prominent examples include a point-by-point rebuttal of Lewis's floor statement,⁸⁰ speeches made by Vail and other Bell officials,⁸¹ as well as language in its annual reports.⁸²

Public reaction was also largely critical. A number of scholars criticized the methodology of Burleson's analysis.⁸³ The popular press was largely critical as well, raising concerns about efficiency of government operations as well as the potential abuse of patronage.⁸⁴ They also denigrated the performance of government-owned telephone systems in Europe, with one industry executive quipping, "And as to service—Government service would be a joke as compared with present service. If you don't believe it just try the Government service—telegraph and telephone—in Europe."⁸⁵

⁷⁷ *Id.* at 145-56.

⁷⁸ Bickers 142-44.

⁷⁹ AT&T Co., 1913 ANNUAL REPORT 28-62 (1914).

⁸⁰ AT&T Co., *Government and Private Telegraph and Telephone Utilities: An Analysis* (1914), *reprinted in* *Debaters handbook* 129-57.

⁸¹ Theodore Newton Vail, *Some Observations on Modern Tendencies*, Address at a Dinner Given by the Railroad Commission of California to the National Association of Railway Commissioners (Oct. 1915), *reprinted in* *VIEWS ON PUBLIC QUESTION: A COLLECTION OF PAPERS AND ADDRESSES OF THEODORE NEWTON VAIL 1907-1917*, at 240, 258-63 (1917)/ F.H. Bethell, *Some Comments on Government Ownership of Telephone Properties* (Feb. 25, 1914), *reprinted in* *Debaters Handbook* at 159.

⁸² AT&T Co., 1916 ANNUAL REPORT 49-51 (1917); AT&T Co., 1915 ANNUAL REPORT 50 (1916); AT&T Co., 1916 ANNUAL REPORT 49-51 (1917).

⁸³ A.N. Holcombe, *Public Ownership of Telegraphs and Telephones*, 28 Q.J. ECON. 581 (1914). For another scholarly discussion, see *Telegraph and Telephone Prospects*, 22 J. POL. ECON. 388 (1914).

⁸⁴ *Sat. Evening Post* (1914); Cohen 38; Stone 197.

⁸⁵ Stone 197; *Wilson Gets Facts on Wire Control*, N.Y. TIMES, Oct. 3, 1913, at 2; *C.H. Mackay Derides Federal Ownership*, N.Y. TIMES, Dec. 19, 1913, at 17

Interest in nationalization of the telephone system enjoyed little popular and political support.⁸⁶ The imposition of the Kingsbury Commitment in December 1913⁸⁷ and the outbreak of World War I during the summer of 1914 further diverted attention away from the issue.⁸⁸ Burleson maintained a steady drumbeat in support of nationalization in his annual reports, focusing some of his energy on the more limited goal of nationalizing the telephone systems of Alaska, Hawaii, and Puerto Rico.⁸⁹ Burleson appeared content not to press the issue for the time being.⁹⁰ The Navy did conduct a successful three-day test mobilization during May 6-8, 1916, during which the Navy used AT&T's network for all communication between all naval facilities and ships⁹¹

C. Enacting of the Government Takeover, 1918

Interest in nationalization of the telephone system returned with the United States' entry into World War I on April 6, 1917, and was heightened still further by the federal government's decision to take over the railroad system on December 28, 1917.⁹² The debate took place in the shadow of a looming telegraph operators' strike designed to force Western Union to unionize. The Commercial Telegraphers' Union initially called the strike for April 9, 1918, but postponed

⁸⁶ Bickers 145.

⁸⁷ Stone, *supra* note __, at 198.

⁸⁸ BROOKS, *supra* note __, at 149.

⁸⁹ See Post Office Department Annual Reports for the Fiscal Year Ended June 30, 1914, H.R. DOC. No. 63-1387, at 14-16 (3d sess. 1914); Post Office Department Annual Reports for the Fiscal Year Ended June 30, 1915, H.R. DOC. NO. 64-358, at 51-52 (1st sess. 1916); Post Office Department Annual Reports for the Fiscal Year Ended June 30, 1916, H.R. DOC. NO. 64-1728, at 46-48 (2d sess. 1917); Post Office Department Annual Reports for the Fiscal Year Ended June 30, 1917, H.R. DOC. No. 65-770, at 79 (2d sess. 1918).

⁹⁰ *Burleson Won't Press It*, N.Y. TIMES, Dec. 23, 1913, at 5; accord BROOKS, *supra* note __ at 149 (noting that "the government advocates of nationalization seemed to hang back awaiting their opening").

⁹¹ Annual Report of the Navy Department for the Fiscal Year 1916 (Dec. 1, 1916), H.R. Doc. No. 64-1480, at 29 (2d sess. 1917) see also BROOKS, *supra* note __, at 150.

⁹² CARL H. SCHEELE, A SHORT HISTORY OF THE MAIL SERVICE 148 (1970).

it to permit arbitration by the War Labor Board.⁹³ After that failed, the union called for another strike on July 9, only to relent once again at the request of the Secretary of Labor.⁹⁴

The war footing made the strike distinctly unpopular. As one contemporary editorialist put it, “At another time the controversy between the two great telegraph companies and the Commercial Telegraphers’ Union of America might come in for some public consideration on its merits. Under present conditions it is a matter entirely subordinate in public interest to the much graver question of the attitude of those companies towards the National Government in time of war.”⁹⁵ Instead, labor strife and labor rights “must be instantly swept aside if they in the slightest degree threaten the country’s efforts to win the war.”⁹⁶

The legislation that would lead to the government takeover was introduced on June 27, 1918. The House Committee on Interstate and Foreign Commerce conducted hearings on July 2 at which only three witnesses were called: Burleson, Secretary of War Newton Baker, and Secretary of the Navy Josephus Newton.⁹⁷ The Senate Committee on Interstate Commerce declined to conduct full hearings,⁹⁸ choosing on July 9 only to hear from Western Union President Newcomb Carlton, who testified that he saw no necessity that would justify taking over the telegraph system and that even if that were to happen, there was even less justification for taking over the telephone system.⁹⁹ He did state publicly that he would prefer a government

⁹³ OSLIN, *supra* note __, at 278.

⁹⁴ *Washington Plea Prevents Strike on Western Union*, N.Y. TIMES, July 8, 1919, at 1.

⁹⁵ George Harvey, “The Postal and the Western Union,” N. AM. REV.’S WAR WEEKLY (June 22, 1918). Papers of Albert Sydney Burleson, Manuscripts Division of the Library of Congress, Washington, D.C. (hereafter referred to as “ASB”), Box 35, Folder “1918.”

⁹⁶ *Id.*

⁹⁷ *Federal Control of Systems of Communication: Hearings on H.J. Res. 309 Before the House Committee on Interstate and Foreign Commerce*, 65th Cong., 2d Sess. (1918).

⁹⁸ *Votes 7 to 3 for Wire Control*, N.Y. TIMES, July 10, 1918, at 1.

⁹⁹ *Federal Control of Systems of Communication: Hearings on H.J. Res. 309 Before the Senate Committee on Interstate Commerce*, 65th Cong., 2d Sess. 7-8, 17 (1918).

takeover to yielding to unionization.¹⁰⁰ No representative from AT&T participated in either hearing, although there is some ambiguity about whether AT&T actively opposed the measure.¹⁰¹

The war added a new dimension to the debate over nationalizing the telephone system. On June 28, Burleson wrote to Representative Thetus W. Sims (D-Tenn.) that government control was necessary “to prevent communications by spies and other public enemies” and “imperative to safeguard public interests.”¹⁰² Burleson said “paralysis of a large part of the system” was threatened, and it there were “possible consequences prejudicial to our military preparations and other public activities, that might prove serious or disastrous.”¹⁰³ Comparing the American response to those of European states, Burleson concluded, “We are reminded that there is not a nation engaged in the war [that] intrusts its military or other communications to unofficial agencies.”¹⁰⁴ Wilson sent a cover note endorsing Burleson’s arguments.¹⁰⁵

Burleson as well as Secretary of War Newton Baker and Secretary of the Navy Newton Daniels all indicated that government ownership was need to prevent government secrets from

¹⁰⁰ *House Votes Wire Control: Senate Waits*, N.Y. TIMES, July 6, 1918, at 1.

¹⁰¹ Some commentators point out that AT&T did not oppose the measure and indicate that “it was freely said that President Vail was in favor of government control.” Danielian, *supra* note __, at 246. Company legend holds that Vail went to Wilson in early 1918 and stated, “As long as you’ve taken over the railroads, you might as well take us over, too.” BROOKS, *supra* note __, at 151. AT&T Vice President Kinsley later denied that AT&T supported the takeover and said that he had attempted to gain admission to both the House and Senate Committee hearings, but was denied in both cases. *Return of the Wire Systems: Hearings on H.R. 421 Before the House Committee on Interstate and Foreign Commerce*, pt. __, 66th Cong., 1st sess. __ (1919) (statement of N.C. Kingsbury, Vice President, AT&T).

¹⁰² Letter from A.S. Burleson, Postmaster General, to Thetus W. Smith, Chairman, House Committee on Interstate and Foreign Commerce (June 28, 1918), *reprinted in* 56 CONG. REC. 8719 (1981) Albert Sydney Burleson, “Official Bulletin,” (July 2, 1918). ASB, Box 21.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Letter from Woodrow Wilson, President, to Thetus W. Sims, Hose or Representatives (June 28, 1918), *reprinted in* 56 Cong. Rec. 8718-19 (1918).

falling into enemy hands.¹⁰⁶ They also suggested that a strike by telecommunications works would be particularly debilitating to the war effort.¹⁰⁷

The debate forced supporters of the government takeover to place important limitations on the bill. Although Burleson and Navy Secretary Josephus Daniels clearly harbored ambitions to make the takeover permanent,¹⁰⁸ Congress had rejected earlier legislation that was not limited to wartime.¹⁰⁹ The bill carefully avoided this problem by limiting its effect to the duration of the war. Indeed, the bill's sponsor, James Aswell, specifically disavowed any intention of making government ownership permanent.¹¹⁰

The absence of any emergency to justify the takeover as well as concerns that Burleson might use a wartime measure as a prelude to a more permanent takeover of the wires¹¹¹ led Wilson to assure that the power would only be used in case of a telegraph strike and to emphasize the importance of putting such authority in place before it is needed.¹¹² Burleson's statement in support of the proposal was similarly contingent, urging passage of the resolution "in order that the President may act, *if necessary*."

Indeed, the tone of the debate suggested that the authority was a prophylactic measure. Although no exigency currently existed, Congress felt that giving the President the authority would allow them to act promptly should the need arise.¹¹³ Representative Sims, who was the

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¹⁰⁸ Burleson stated, "If the efficient management and direction is given the telegraph and telephone that has been given the Postal Service, the probability is that they never will be returned to private control. Danielian 246; *see also* Bickers 147; Stehman 177.

¹⁰⁹ 56 CONG. REC. 8719 (1918) ("the resolution introduced by Mr. Aswell in January was not a war-time proposition. . . . It was not confined to the operation of the war, and therefore never considered by the committee.").

¹¹⁰ *Id.* at 8720.

¹¹¹ *Id.* at 8719 (Statement of Rep. Madden) (noting that "[e]verybody knows the Postmaster general is a 'bug' on Government ownership").

¹¹² *President Asks Power to Control All Wire Systems*, N.Y. TIMES, July 2, 1918, at _.

¹¹³ *Id.* at 8716 (statement of Rep. Thetus Sims); *see also* Bickers 149.

floor manager, similarly noted that “this power might be needed at any moment” and that the Administration simply asked that “the President be clothed with the power, so that he might exercise it *if the emergency arose*.”¹¹⁴ Aswell emphasized that the takeover authority was not permanent,¹¹⁵ as did other members in the debate.¹¹⁶

After a rancorous floor debate that forced postponement of a panned recess¹¹⁷ and despite editorial opposing the move,¹¹⁸ Congress subsequently adopted the resolution, and Wilson signed it into law on July 16, 1918.¹¹⁹ The text of the proposal made clear that it was an emergency measure. The takeover was exercised only when the President “shall deem it necessary for the national security or defense.”¹²⁰ Moreover, the statute explicitly provides that that takeover end with the ratification of the peace treaty ending the war.¹²¹

Wilson wasted little time, and exercised this power via a proclamation on July 22, 1918, that gave the federal government control of the wires effective July 31.¹²² In his proclamation, Wilson directed Burleson to undertake “the supervision, possession, control and operation of [the] telegraph and telephone systems.”¹²³ Wilson assured stock and bond holders that their interests would not be jeopardized. He stated, “Regular dividends hitherto declared, and maturing interest upon bonds, debentures, and other obligations, may be paid in due course.”¹²⁴

¹¹⁴ 56 Cong. Rec. at 8716.

¹¹⁵ _ CONG. REC. 8720 (1918) (statement of Rep. Aswell) (calling the “fear of permanent Government ownership resulting from this legislation” “ill founded”).

¹¹⁶ *Id.* at 8717 (statement of Rep. Sims) (noting that unlike Aswell’s previous proposal, the current proposal “continues the control only during the existence of war”).

¹¹⁷ *Congress Recess Held up by Flight on Wire Control*, N.Y. TIMES, July 7, 1918, at 1.

¹¹⁸ *See Government Control*, Editorial, N.Y. TIMES, July 6, 1918, at 8; *The Unrepresented Public*, N.Y. TIMES, July 11, 1918, at 10.

¹¹⁹ Act of July 16, 1918, ch. 154, 40 Stat. 904.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Woodrow Wilson, Proclamation (July 22, 1918), 40 Stat. 1807.

¹²³ *Id.*

¹²⁴ *Id.* at 1808.

On November 2, Wilson issued a proclamation taking over the submarine cables as well.¹²⁵

Although hostilities ended on November 11, 1918, and the Treaty of Versailles ending the war was signed on June 28, 1919, the government would continue to operate the wires until August 1, 1919, just slightly more than one year after taking them over.

D. Running the Telephone System, 1918-19

The Post Office that took over the telephone system on July 31, 1918, faced some seemingly insurmountable challenges. Not only did it lack the experience and administrative capacity to manage a large communications network.¹²⁶ In stark contrast to the takeover of the railroads, Congress had failed to provide any detailed guidance as to how the system should be run or what the terms of compensation should be. Burleson's first step was to issue Bulletin No. 1 on July 23 forming a Wire Control Board consisting of Burleson, two other members of the post office, and David John Lewis, the once and future Congressman who supported nationalization so avidly and who was then serving as a U.S. Tariff Commissioner after a failed bid for the Senate.¹²⁷

On July 29, Burleson summoned Vail to meet with him in Washington, D.C., amid wide speculation that the first order of business would be to fire Vail.¹²⁸ Given the breadth of discretion that had been granted to Burleson, Vail felt almost entirely at Burleson's mercy.¹²⁹

¹²⁵ Woodrow Wilson, Proclamation (Nov. 2, 1918), 40 Stat. 1872.

¹²⁶ Bickers 151.

¹²⁷ The other members from the Post Office aside from Burleson were John Koons, First Assistant Postmaster General, and William Lamar, Solicitor for the Post Office. A.S. Burleson, Bulletin No. 1, Wire Control Board, Order No. 1744 (July 3, 1918), *reprinted in* GOVERNMENT CONTROL 61, 61-62.

¹²⁸ BROOKS, *supra* note __, at 152.

¹²⁹ Vail reportedly told the two Vice Presidents who were accompanying him:

Well, I never in my life felt so helpless as I do at this moment. These people we are going up to see have got us entirely in their hands—they have taken our property and probably intend to keep

Vail pledged that all AT&T's officers and employees would do everything in their power to support the war effort. Indeed, Vail regarded it as an opportunity of what could be accomplished when both telephone and telegraph systems were operated in the same management.¹³⁰ When it came to compensation, Vail offered Burleson a blank check, saying, "You fix it, and I'll be satisfied."¹³¹

Burleson told Vail's biographer that he had expected Vail to be "in a class with the average railroad president—an autocrat, interested only in the success of his road as shown by profits accruing to his stockholders, and also largely concerned as to the continuance of his salary."¹³² Instead, he grew to regard Vail as "a great, unselfish patriot" and "a warm and true friend" who "never made a suggestion . . . that was in the slightest degree tinged with selfishness and that was not prompted by the highest motive."¹³³ Thoroughly disarmed, Burleson reassured Vail that he did not plan to operate the telephone system permanently and eventually regarded him as a "confidential adviser and counsel in all matters pertaining to the telephone."¹³⁴

Given the absence of personnel to run the telephone system, on August 1, Burleson issued Bulletin No. 2 ordering that "until further notice, the telegraph and telephone companies shall continue operations in the ordinary course of business through regulatory channels."¹³⁵ In addition, "All officers, operators, and employees of the telegraph and telephone companies will

it. They can do what they please with us, and we cannot help ourselves. For once in life I am completely at sea

ALBERT BIGELOW PAINE, IN ONE MAN'S LIFE: BEING CHAPTERS FROM THE PERSONAL & BUSINESS CAREER OF THEODORE N. VAIL 320 (1921).

¹³⁰ *Id.* at 321-22.

¹³¹ *Id.* at 323.

¹³² *Id.* at 322.

¹³³ *Id.* at 323-24.

¹³⁴ *Id.* at 323.

¹³⁵ A.S. Burleson, Bulletin No. 2, Order Assuming Possession and Control, Order 1783 (Aug. 1, 1918), Government Control 62.

continue in the performance of their present duties, reporting to the same officers as heretofore and on the same terms of employment.”¹³⁶ Thus, the takeover was more akin to a change in management, rather than a change in ownership. On December 13, Burluson gave industry executives an even larger role when he transferred operational authority from the Wire Control Board to a new operating board consisting entirely of industry executives.¹³⁷ The operating board was expanded to include additional industry executives on January 10 and March 6, 1919.¹³⁸

Regarding the financial terms of the takeover, on October 5, Burluson approved a contract that was quite generous from AT&T’s perspective. The contract promised to operate the system at the same level of efficiency achieved in the past and to maintain the property in its current state of repair and gave AT&T the right to inspect the books at reasonable times.¹³⁹ The government agreed to cover all taxes, licensee fees, and charges.¹⁴⁰ The contract preserved the four and one half percent license contract fee that the local operating companies had been paying to the Bell System’s long distance arm and included a fairly generous depreciation rate of 5.72%. The government also agreed to maintain AT&T’s stock dividend of eight dollars per share.¹⁴¹ Finally the government agreed to hold AT&T harmless for any injuries or expenses that were

¹³⁶ *Id.*; ASB, Box 35, Folder “1919.”

¹³⁷ The Board consisted of Union N. Bethell and F.A. Stevenson of AT&T; G.M. Yorke of Western Union, and A.F. Adams to represent the independent telephone companies. A.S. Burluson, Appointment of Operating Board, Order No. 2479 (Dec. 13, 1918), *reprinted in* Government Control 74. It took control on January 1, 1919. A.S. Burluson, Operating Board to Assume Operation, Order No. 2534 (Dec. 23, 1918), *in* Government Control 82 & n.3.

¹³⁸ Specifically on January 10, the operating board appointed F.B. MacKinnon of the U.S. Independent Telephone Association to serve as liaison to the independents. On March 6, the operating board placed N.T. Guernsey (AT&T’s general counsel) in charge of the board’s legal department, named Bancroft Gherardi (AT&T’s acting chief engineer) head of the engineering department, and designated W.S. Gifford (AT&T’s Comptroller) as head of the accounting department. Danielian 257.

¹³⁹ App. A, Government Control 24-25.

¹⁴⁰ *Id.* at 26.

¹⁴¹ Government Control 21-29

incurred.¹⁴² In short, the government effectively guaranteed AT&T's previous rate of return while assuming all of the risks of operating the system.

In addition, the Post Office took several actions that would have a lasting impact on the telephone system.

1. Unification of the Service

Burleson moved quickly to declare the scope of his intentions and his perspective on the future of the system. Bulletin No. 2 (issued the day after he took over the telephone system), Burleson made clear that the purpose of government control was “to coordinate and unify these services so that they may be operated as a national system.”¹⁴³

On August 7, issued Bulletin No. 3 on “Consolidation of Competing Telephone Systems,” which noted, The Governmental operation and control of the telephone systems of the country *would undoubtedly cause the coordination and consolidation of competing systems wherever possible.*¹⁴⁴ To encourage the unification of the service, Burleson indicate that “negotiations . . . already under way for the consolidation of a number of competing telephone systems at the time the Government assumed control . . . should be continued.”¹⁴⁵ Even where such negotiations were not yet underway, Burleson made clear that he had “no objection to the companies taking up such negotiations.”¹⁴⁶

Burleson quickly backed up his rhetorical support for consolidation with directives to the operators. Bulletin No. 4, issued on August 15, ordered companies “[t]o proceed as

¹⁴² Government Control 25, 28.

¹⁴³ Albert Sidney Burleson, *Order No. 1783* (August 1, 1918), in Government Control 62.

¹⁴⁴ A.S. Burleson, Bulletin No. 3, Consolidation of Competing Telephone Systems (Aug. 7, 1918), in Government Control 62.

¹⁴⁵ *Id.* at 63.

¹⁴⁶ *Id.*; see also Office of Information, Post Office Department (August 7, 1918) (emphasis added). ASB. Box 21.

expeditiously as possible with the plans heretofore instituted for consolidating and unifying the telephone plants and properties.”¹⁴⁷ In areas where such plans were not yet underway, consolidation plans “should be formulated as soon as practicable” wherever consolidation “is desired by the public” and “can be effected on fair terms and in accordance with law.”¹⁴⁸ Where two competing operators continued to operate, Burleson ordered them “to cooperate in making extensions and betterments, in order to promote “unification and the limitation of waste.”¹⁴⁹ On the same day, Burleson issued another order creating a Committee on Solicitation of Telephone Systems consisting of AT&T Vice President Nathan C. Kingsbury and the president of one of the independents to “for the purpose of making the necessary investigations, conducting negotiations, and arriving at agreements *for the unification and consolidation of the various telephone companies operating in the same community.*”¹⁵⁰ In all, Burleson would approve thirty-four consolidations of competing telephone operations.¹⁵¹ In addition, Burleson forced all long distance companies to interconnect with any local telephone companies that did not have having long distance facilities.¹⁵²

Burleson’s advocacy for integration and consolidation extended beyond just the telephones. On November 18, 1918, Burleson ordered that as of December 1, all of the telegraph systems “shall hereafter be operated as one” and “all telegraph offices shall accept for transmission all classes of messages now accepted by any one of them at the prescribed tariff

¹⁴⁷ A.S. Burleson, Bulletin No. 4, Extensions and Betterments Curtailed, Order No. 1858 (August 15, 1918), in Government Control, *supra* note 143, at 63.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ A.S. Burleson, Committee on Consolidation of Telephone Systems, Order No. 1855 (Aug. 15, 1918), in Government Control 63. ASB, Box 21.

¹⁵⁰ Office of Information, Post Office Department (Nov. 19, 1918). ASB, Box 22

¹⁵¹ Final Report 11.

¹⁵² A.S. Burleson, Bulletin No. 13, Long Distance Connections for All Systems (Nov. 18, 1918), in Government Control 67.

rates.”¹⁵³ The same day, Burleson issued an order taking control over the submarine cable system, using the same language contained in his order taking over the telephone and telegraph systems indicating his “to coordinate and unify these services so that they may be operated as a national system.”¹⁵⁴

The next day, Burleson stated that an effective communication system required “intimate relations under which a continuous circuit can be established. . . . The effectiveness of the service is dependent upon the extent of the common control of circuits.”¹⁵⁵ Burleson drew support for his conclusion from the fact that each of the telegraph systems had their “own independent cable systems.”¹⁵⁶ Moreover, Burleson pointed to recent problems to make his case: “The recent breakdown in connection with one of the cable systems has demonstrated the absolute necessity of being able to utilize at will the facilities of either cable system with all of the land line systems, in order that traffic may be adjusted in the same hands as it is on the land lines.”¹⁵⁷

Burleson laid out the multifaceted rationale for these moves in his letter of December 4, 1918, ordering Western Union to place its European submarine cables under the control of its chief rival, the Commercial Cable Co. First, there was the notion that the war required greater unity. Burleson explained the “present emergency” demanded “unification to the fullest extent possible the cable systems” and that it could only be accomplished “through the operation of the two systems under one management.”¹⁵⁸ Second, and perhaps most importantly, Burleson had a fixed set of beliefs about the importance of consolidation. He envisioned a national economy

¹⁵³ A.S. Burleson, Bulletin No. 16, Order No. 2353 (Nov. 18, 1918), *in* Government Control 70. ASB, Box 22.

¹⁵⁴ A.S. Burleson, Bulletin No. 14, Order No. 2351 (Nov. 18, 1918), *in* Government Control 68.

¹⁵⁵ Office of Information, Post Office Department (Nov. 19, 1918). ASB, Box 22.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Letter from A.S. Burleson, Postmaster General, to Clarence H. Mackay, President, Commercial Cable Co. (Dec. 4, 1918), Office of Information, Post Office Department. ASB, Box 22.

linked by a common communications system. Burleson wrote, “To do this efficiently and economically requires the combination of every kind of electrical transmission of intelligence into one system over which the most efficient service could be rendered through the development of new and useful services, and the wire plant and other facilities being utilized to their fullest extent.”¹⁵⁹ The public was demanding “one telephone system,”¹⁶⁰ and the only real barriers to development were the disunity in the current system. Burleson argued, “The transmission of speech or electrical continuous signals is now practically from every commercial industrial or social community as a center, to the limits of *effective common control over a continuity of circuits*. Any limitations are wholly in the lack of continuity in the facilities – not in the ‘state of the art.’”¹⁶¹ Echoing statements made by defenders of monopoly, Burleson said that a long-distance system required “perfect co-ordination which can only come from one unified system.”¹⁶² Burleson allowed that interconnection could work, but only with a reciprocity equaling “virtual subordination” during the time of control by the other system.¹⁶³

Burleson’s belief was further underscored by his anger when the Commercial Cable Co. refused to unify its facilities with Western Union’s. Burleson declared that “the present emergency necessitated the unification of operation to the fullest extent possible of the cable systems leading from this country to Europe.”¹⁶⁴ Indeed, it was manifest that full utilization “could only be accomplished through the operation of the two systems under one management.”¹⁶⁵ Burleson underscored the importance that “the operation of said cable systems

¹⁵⁹ Report on Post Office Department Wire System (Dec. 6, 1918). ASB, Box 22.

¹⁶⁰ *Id.* at 2.

¹⁶¹ *Id.* at 2 (emphasis in original).

¹⁶² *Id.* at 3.

¹⁶³ *Id.*

¹⁶⁴ A.S. Burleson, Appointment of Manager of Cables, Order No. 2474 (Dec. 12, 1918), *in* Government Control 72, 73.

¹⁶⁵ *Id.*

be unified not only for improvement of service but also that important economies in operation may be effected during the period of Government control which can be accomplished only by placing such unified operation under the management of persons in complete accord with the ends desired.”¹⁶⁶ When Mackay refused to interconnect his cables with Western Union’s in December 1918, Burleson removed the leadership of Commercial Cable from any management role of the marine cable system and transferred those responsibilities to Western Union, ordering him to “carry into effect directions which have been given for the unification of the operation.”¹⁶⁷ When Commercial Cable continued to resist unification, Burleson removed its officers, board of directors, and owners from any supervisory responsibility and placed operating board member A.F. Adams in charge of the company.¹⁶⁸

Burleson’s belief in unification was reflected in his final report. He sought to promote “the coordination and unification of all service’ rendered by the telephone and telegraph properties” by promoting “consolidations for the purpose of getting rid of pernicious competition and wasteful operation” as well as through “a general standardization of rates and rules of operation.”¹⁶⁹ This reflected his belief in the “potential economies under a national system of telegraphs and telephones, provided such a system were brought under an efficient and intelligent management.”¹⁷⁰ Based in part on the “[i]nterchange in the use of wires,” such a system was “further illustrated by the steps taken for the consolidation of competing properties.”¹⁷¹

¹⁶⁶ *Id.* at 74

¹⁶⁷ *Id.*

¹⁶⁸ A.S. Burleson, Removal of Certain Offices of the Postal Telegraph System, Order No. 2904 (Marc. 19, 1919), *in* Governmental Control at 84, 85.

¹⁶⁹ A.S. Burleson, Report of the Postmaster General on the Supervision and Operation of the Telegraph, Telephone, and Cable Properties (Oct. 31, 1919), *in* Government Control, 5, 10.

¹⁷⁰ *Id.* at 11.

¹⁷¹

In this regard, Burleson's vision of the telephone network was remarkably similar to Vail's. Both clearly thought that the telephone system should consist of a single system under unitary control.

2. Labor Unrest

Despite (or perhaps due to) his best efforts, Burleson never shook the labor troubles that he inherited when the Post Office took over the wires. Even before taking over the wires, Burleson's testimony before the House Committee on Interstate and Foreign Commerce had already put himself on record as saying that "if the telegraph and telephone lines are taken over the employe[e]s should not be affiliated with any outside organization. The sole affiliation should e be with the Government, and no outside organization should be allowed to influence their action."¹⁷² Apparently Burleson thought that "outside organizations" included unions.¹⁷³

Upon taking over the telegraph system, Burleson immediately met with representatives from the Commercial Telegraphers' Union and the Association of Western Union Employees.¹⁷⁴ On August 19, Burleson approved a moderate increase in wages for employees of Western Union.¹⁷⁵ Western Union executives informed Burleson that negotiations were already "under way" for an increase, and Burleson said that the negotiations should continue.¹⁷⁶ With regard to the demands being made by non-Western Union employees, Burleson was neither prepared to move quickly nor reach an agreement amicable to the unions.

¹⁷² House Hearings.

¹⁷³ *Quotes Burleson as Opposing Union: Head of Western Union Says Government Would Not Permit Workers to Organize*, N.Y. TIMES, July 5, 1918, at 15.

¹⁷⁴ Office of Information, Post Office Department, "Postmaster General Burleson and other members of the Departmental committee..." (August 7, 1918). ASB, Box 21.

¹⁷⁵ Office of Information, Post Office Department, "Postmaster General Burleson stated today that he had approved..." (August 7, 1918). ASB, Box 21.

¹⁷⁶ *Id.*

Burleson had a reputation for being “coarse, vain and excessively arrogant.”¹⁷⁷ His relations with the postal unions were strained from the moment he took office:

He refused to meet with representatives of the postal employee organizations. He called for the dissolution of all unions of postal employees and, to underscore his position, fired from the postal service the president of the Railway Mail Association and the president of the Rural Letters Carriers Association on the same day. He gave the president of the National Association of Letter Carriers the choice of quitting his position or quitting the postal service.¹⁷⁸

Burleson’s hard-line against the postal unions backfired in terms of postal employee militancy. In 1917, members of the National Association of Letter Carriers voted 18,769 to 3,968 against affiliation with the American Federation of Labor (AFL).¹⁷⁹ But in reaction to Burleson’s firing of the union presidents and in the context of wartime inflation, the same union voted in 1918 for affiliation with the AFL by a margin of 23,551 to 1,971.¹⁸⁰ Burleson was not just at odds with the unions; Congress had asked Burleson to raise postal employee wages during the war, but Burleson refused.¹⁸¹ His rationale was that postal mail carriers were being paid three times what soldiers were paid without undertaking any of the risks involved in combat.¹⁸²

This history of mutual dislike between Burleson and the labor movement served as the backdrop for Burleson’s attempts to accommodate the wage demands of the telephone and telegraph operators. In an attempt to buy some time, Burleson appointed a committee on September 14, 1918, “to investigate the working conditions of and wages paid to employees of the telegraph and telephone companies, and report as to what improvements, if any, should be made in the working conditions, the wages which should be paid the various classes of

¹⁷⁷ GERALD CULLINAN, *THE UNITED STATES POSTAL SERVICE* 124-25 (1973).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 126.

¹⁸² *Id.*

employees, and the feasibility of standardizing the same.”¹⁸³ The committee consisted of Union N. Bethell of AT&T; F.B. MacKinnon of the United States Independent Telephone Association; William S. Ryan, Assistant Superintendent, Division of Post Office Service; John B. Colpoys, Special Agent of the Department of Labor, and Julia S. O’Conner, “representing the organized telephone workers of the country.”¹⁸⁴

Shortly after the Committee’s appointment Burleson issued a bulletin attempting to dispel widespread rumors “that it is the desire of the Government that employees of the telegraph and telephone companies should join the Commercial Telegraphers’ Union, the International Brotherhood of Electrical Workers, or other unions.”¹⁸⁵ Burleson averred that “[t]hese representations have no foundation in fact whatever” and averred that “the Post Office Department will not distinguish between nonunion and union employees.”¹⁸⁶

Reporting on the Committee’s work in November, Burleson stated that the committee had encountered difficulty in determining the appropriate wage rate because working conditions were markedly different across the country.¹⁸⁷ Burleson also found challenging the “violent disturbances of employment conditions occasioned by the war and the circumstances that telephone rates have not been generally readjusted to meet rising costs as in other employments.”¹⁸⁸ As such, the Committee continued working on the problem, and wages remained stagnant.

¹⁸³ Office of Information, Post Office Department, *Order 2005* [hand written], (Sept. 14, 1918). ASB, Box 21.

¹⁸⁴ *Id.* O’Conner’s title was not mentioned in the initial report announcing the committee, but she was reported to be president of the Boston Local 1A of the Telephone Operator’s Division of the International Electrical Brotherhood in June, 1919. *Congress Moves to Return Wires*, N.Y. TIMES, June 17, 1919, at _.

¹⁸⁵ A.S. Burleson, Bulletin No. 9, Employees Joining Unions, Order No. 2067 (Oct. 2, 1918), in *Government Control* 67.

¹⁸⁶ *Id.*

¹⁸⁷ Office of Information, Post Office Department, “The Postmaster General stated today that he has had a committee at work...,” (Nov. 19, 1918). ASB, Box 22.

¹⁸⁸ *Id.*

The conflict boiled the following April, and a large strike swept portions of New England. Not surprisingly, Burleson took a hard line against the strikers. He released a statement on April 16, 1919, saying that the government could not authorize wage increases “merely upon demand from the employees. A strike on the part of employees working for the Government is not permissible.”¹⁸⁹ On April 19, Burleson telegraphed Woodrow Wilson, who was in Paris, to explain the situation. Burleson saw strikes against the government as entirely illegitimate. He wrote, “To yield means for the Government to surrender to a strike demand without an opportunity to pass on the question whether it is a just demand. . . . To do this in my opinion would be a fatal mistake and will result in multiplying and aggravating these troubles.”¹⁹⁰

For Burleson, the issue was not whether striking was a legitimate means of dealing with labor disputes, but rather whether striking could be justified against the government. Burleson explained to Wilson, “However justifiable a strike may be as an effective means of securing the recognition of proper demands of labor against private concerns whose interests are involved the principles should not apply to persons employed by the Government where public opinion and the political power may be safely relied upon to secure absolute justice.”¹⁹¹ In other words, Burleson believed unions had a right to strike when a private interest was involved because there was no inherent check upon the employer. However, a strike could not be justified against the government, when “public opinion” and “political power” ensured just working conditions, according to Burleson.

¹⁸⁹ Office of Information, Post Office Department (Apr. 16, 1919). ASB, Box 23.

¹⁹⁰ Telegram from Albert Sydney Burleson to Woodrow Wilson 5 (Apr. 19, 1919). ASB, Box 23.

¹⁹¹ *Id* at 6.

To be clear, Burleson was not opposed to the goals of the labor movement. He applauded the work of Samuel Gompers and the labor movement, generally.¹⁹² But Burleson felt strongly that workers had no right to strike against the government, when the public interest would supposedly guarantee that wages were just. From Burleson's perspective, beyond the substantive question of whether workers could rely upon the government to insure just working conditions, there was also the procedural problem of submitting government wage scales to *ex parte* demands. Burleson declared, "The issue is as I see it[,] where the orderly processes of government shall be ignored, whether a labor organization can defy its authority and put into effect their will regardless of the rights of others and the public interest."¹⁹³

On the actual economics involved, Burleson was convinced that settlement on the terms that the union demanded would be cost prohibitive to AT&T and the independent operators. He telegraphed Wilson the results of a study that he had commissioned. If the union's demands in Boston were applied to all operators nationwide, "it would increase operating expenses of Bell Company along by nearly forty million dollars and Independents by nearly twelve million dollars."¹⁹⁴ With Wilson's tacit backing, Burleson refused to settle, and the April strike was generally unsuccessful. Undaunted, the Commercial Telegraphers' Union would strike again on June 11 for union recognition and another increase in wages.¹⁹⁵

3. Rate Increases

As noted earlier, the government takeover left Vail with the helpless feeling of being unable to control the financial health of his company. Indeed, Vail confided in Western Union

¹⁹² Office of Information, Post Office Department (April 27, 1919). ASB, Box 23.

¹⁹³ *Id.*

¹⁹⁴ Telegram from Albert Sydney Burleson to Woodrow Wilson (undated, circa Apr. 19, 1991). ASB, Box 23.

¹⁹⁵ GEORGE P. OSLIN, *THE STORY OF TELECOMMUNICATIONS* 279 (1992).

President Newcom Carlton that he feared that the government takeover would make it impossible for him to raise the capital needed to continue expanding. Carlton soothed Vail, replying, “It’s your salvation. The government will be able to raise your rates and get you new money.”¹⁹⁶

Carlton’s words would turn out to be prophetic. On August 28, 1918, just four weeks after assuming control, the government authorized telephone companies to begin charging installation fees, which had been one of AT&T’s longstanding goals. The size of the charge varied with the cost of service: it was \$5 when the monthly rate was \$2 or less, \$10 when the monthly rate was between \$2 and \$4, and \$15 when the monthly rate was more than \$4.¹⁹⁷

Burleson said that the charge was due “to the necessity for conserving labor and material.”¹⁹⁸

The final report indicated that wartime shortages made it “essential that the telephone companies . . . curtail their normal expenditures for extensions and temporarily arrest the normal development of their business.”¹⁹⁹ As such, these rates had “no reference to the cost of installation.”²⁰⁰ Instead, their “prime purpose . . . was military in character, to be justified as a war measure and not as the expression of commercial purpose.”²⁰¹ A few weeks later, Burleson began to refer to these fees as “service connection charges” and provided that changes of name where no lapse of service occurs and relocations of equipment within the same premises would pay a charge of \$3.²⁰²

¹⁹⁶ GEORGE P. OSLIN, *THE STORY OF TELECOMMUNICATIONS* 252, 278 (1992).

¹⁹⁷ A.S. Burleson, Bulletin No. 5, Service Connection Charges, Order No. 1931 (Aug. 28, 1918), *in* Government Control 64. ASB, Box 35, Folder “1919.”

¹⁹⁸ *Id.*

¹⁹⁹ Final Report 12.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² A.S. Burleson, Bulletin No. 8, Service Connection Charges (Sept. 14, 1918), *in* Government Control 65. ASB, Box 35, Folder “1919.”

On November 18, Burleson concluded that the relief of “the necessity for conserving labor and material” associated with the cessation of hostilities justified revising the service connection charge in line with “the average cost of the initial expense or establishing service for new subscribers.”²⁰³ Consequently, he reduced the charge for new installations to \$3.50, while setting the fee for less radical changes at \$1.50 or \$3.²⁰⁴ As he indicated in his final report, while the initial schedule of charges “must be regarded as a war measure,” the revised schedule “rests on commercial considerations.” and “a sound commercial principle” and now “must be regarded as one item in the unified and standardized system of telephone charges.”²⁰⁵

On December 13, 1918, after persistent lobbying by Vail, Burleson also authorized a twenty percent increase in long distance rates effective January 21, 1919, which augmented AT&T’s revenues by roughly \$10 million.²⁰⁶ He justified the rate incase in part on the abnormal economic conditions brought about by the war.²⁰⁷ In addition, “[t]he purpose of the new schedule of telephone toll rates is to standardize the long distance service throughout the country and to establish uniform charges.”²⁰⁸ Burleson lamented the interconnectivity problems that variations in rates had caused and cast standardization as a program to include all Americans in the telecommunications system: “Under the toll rates now established, the toll service is an intercommunity, interstate, and interregional service, available to all Americans, at all times, everywhere.”²⁰⁹

²⁰³ A.S. Burleson, Bulletin No. 15, Modified Connection Charges, Order No. 2352 (Nov. 18, 1918), *in* Government Control 68, 68.

²⁰⁴ *Id.* at 69-70.

²⁰⁵ Final Report 13

²⁰⁶ A.S. Burleson, Bulletin No. 22, Toll Rate Schedule, Order No. 2495 (Dec. 13, 1918), *in* Government Control at 75; Danielian, *supra* note **Error! Bookmark not defined.**, at 256.

²⁰⁷ Final Report 14.

²⁰⁸ Office of Information, Post Office Department (Feb. 6, 1919). ASB, Box 22.

²⁰⁹ *Id.* One of the other service changes was the addition of person-to-person calling that precluding charges when the particular person being called could not be located. *Id.*

The order raising long distance rates also called for a fifty percent reduction between the hours of 8:30 p.m. and midnight as well as a seventy-five percent reduction in rates between midnight and 4:30 a.m.²¹⁰ The final report indicated that night rates were the application of a business principle developed in the context of the telegraph that was both “simple and of universal recognition. It recognizes the fact that the facilities of any industry must provide for carrying the maximum business load, and that if this load can be distributed over the 24 hours of each day, a larger amount of business can be carried on with relatively less investment than if the business done is crowded into relatively few hours of each day.”²¹¹ In short, Burleson recognized that telecommunications networks must be sized according to the peaks in traffic and engaged in an early example of traffic shaping through peak-load pricing in an attempt to increase the efficiency of the network and to reduce the cost of service.

On March 19, 1919, Burleson also approved an increase in local rates recommended by the operating board.²¹² Together these rate increases total roughly \$50 million.²¹³

Unsurprisingly, these rate increases were quite unpopular with consumers. Burleson sought to address criticisms by releasing the data that supported the need for increases. In April, Burleson said that cost of materials during the war had increased one hundred percent, and, “The increase of 20% in telegraph rates should be considered in comparison with the 100% increase in

²¹⁰ *Id.* at 78. This followed a similar order imposing reduced telegraphy rates for “night messages.” A.S. Burleson, Bulletin No. 17, Telegraph Rates on “Night Messages,” Order No. 2354 (Nov. 18, 1918), *in* Government Control 70. ASB, Box 22. The night-message would be transmitted to a receiving station which would transcribe the message and then place the message in the regular mail. Burleson explained the importance of this service, “A very great increase of traffic between distant points is expected to result from this low rate. A letter may take four or five days with no alternative but the payment of one dollar. This gives the alternative of one-half dollar service, and brings together the distant parts of the country about three days closer together.” Office of Information, Post Office Department (Nov. 19, 1918). ASB, Box 22.

²¹¹ Final Report 14.

²¹² Letter from Albert Burleson, Postmaster General, to U.N. Bethell, Chairman, U.S. Telegraph and Telephone Administration’s Operating Board (Mar. 19, 1919), *quoted in* DANIELIAN 258.

²¹³ Danielian 260.

other prices, and it is less than that found necessary to add to the railroad freight rates and is no greater than has been made generally in other public utility rates, in order to obviate financial collapse.”²¹⁴ Burleson further explained that despite being required to carry unprofitable business, e.g. government communications, the Post Office had not been able to reduce the price paid for the materials involved.²¹⁵ The problem also included the expansion of the system into rural underserved areas. As Burleson explained, “The extension of the telegraph service into fields that are less profitable than are the great business centers, and the handling of Government business claimed by both companies to be at a loss of 50% of the operating cost, are a charge upon the gross revenues which is escaped by a company which avoids the rendering of this necessary public service.”²¹⁶

Burleson’s decision to increase local rates also antagonized state regulatory agencies, who successfully obtained injunctions against \$16 million of the rate increases in ten states across the country.²¹⁷ The Supreme Court overturned these injunctions in *Dakota Central Telephone Company v. South Dakota*, which was argued on May 5-6, 1919, and decided on June 2, 1919.²¹⁸ Writing for an 8-1 majority, Justice White held that war power was complete and sufficient to uphold Congress’s decision to take over a public utility.²¹⁹ Moreover, the state police power did not require that the judiciary carve out realms of state prerogative.²²⁰ In other words, Congress’ authority over the telecommunications under the war power was complete and that included the ability to set rates for intrastate services.²²¹

²¹⁴ Office of Information, Post Office Department 1 (Apr. 19, 1919).

²¹⁵ *Id.* at 2.

²¹⁶ *Id.* at 1.

²¹⁷ Danielian, *supra* note **Error! Bookmark not defined.**, at 256, 262.

²¹⁸ 250 U.S. 163 (1919).

²¹⁹ *Id.* at 183.

²²⁰ 250 U.S. at 183-84.

²²¹ *Id.* at 187.

E. Returning the Wires, 1919

On December 13, 1918, Chairman John Moon of the House Committee on the Post Office and Post Roads introduced a proposal directing the Postmaster General “to negotiate contracts for the purchase of any or all telephone lines . . . subject to the approval of Congress.”²²² The House Committee on the Post Office and Post Roads conducted hearing on the bill in January 1919 in a series of hearings somewhat neutrally titled, “Government Control of the Telegraph and Telephone Systems.”²²³ On January 29, the Committee issued a report entitled “Extension of Government Control of Telegraph and Telephones.”²²⁴ While the report indicated that “many of the committee desired a longer time for extension of Government control of telegraph and telephone lines, the majority are of the opinion that the lines should be returned to the owners on December 31, 1919.”²²⁵

On May 19, Vail and the president of the United States Independent Telephone Association sent a letter to Congress requesting the return of their telephone properties.²²⁶ The Senate Committee on Interstate Commerce conducted hearings on May 29,²²⁷ while the House

²²² H.J. Res. 368, 65th Cong., 3d Sess. (1918), reprinted in *Government Control of the Telegraph and Telephone Systems: Hearings on H.J. Res. 368 Before the House Committee on the Post Office and Post Roads*, Part I, 65th Cong., 3d Sess. 3 (1919).

²²³ *Government Control of the Telegraph and Telephone Systems: Hearings on H.J. Res. 368 Before the House Committee on the Post Office and Post Roads*, Part I, 65th Cong., 3d Sess. (1919); *Government Control of the Telegraph and Telephone Systems: Hearings on H.J. Res. 368 Before the House Committee on the Post Office and Post Roads*, Part II, 65th Cong., 3d Sess. (1919); *Government Control of the Telegraph and Telephone Systems: Hearings on H.J. Res. 368 Before the House Committee on the Post Office and Post Roads*, Part III, 65th Cong., 3d Sess. (1919).

²²⁴ H.R. Rep. No. 65-1012 (3d sess. 1919).

²²⁵ *Id.* at 5.

²²⁶ Danielian 266.

²²⁷ *Relinquishment of Government Control of Telephone and Telegraph Lines: Hearings Before the Senate Committee on Interstate Commerce*, 66th Cong., 1st sess. (1919).

Committee on Interstate and Foreign Commerce conducted hearings on May 30-31 and June 4-5.²²⁸

By this time, the political atmosphere surrounding the debate had changed markedly. The Supreme Court had just handed down its decision upholding the local rate increase over the objections of the state regulatory commissions on June 2. Labor tensions were brewing that would culminate in the second telegraph operators' strike on June 11. The armistice had been in place for over half a year, and the negotiations that would culminate in the June 28 signing of the Treaty of Versailles were approaching their conclusion. The change in the political winds is well illustrated by the titles of the hearings. Unlike the January hearings, which referred to "Government Control," the hearings of late May and early June spoke of the "Relinquishment" and the "Return" of the telephone system.

Burleson gamely tried to rally support for the continuation of government ownership, arguing that private control would not solve the basic problem that the government had faced during the war: increased costs of materials and labor. He wrote, "The extraordinary increased cost of operation and maintenance which has been fastened on [the telephone and telegraph operators] as a result of the war will continue for some time after control passes from the Government."²²⁹ Burleson remained adamant that "the various systems should be coordinated as to operation."²³⁰ Monopoly was not necessary to maximize efficiency, but consolidation was necessary to avoid "wasteful competition and the economic loss occasioned by duplication of

²²⁸ *Return of the Wire Systems: Hearings on H.R. 421 Before the House Committee on Interstate and Foreign Commerce*, pt. I, 66th Cong., 1st sess. (1919); *Return of the Wire Systems: Hearings on H.R. 421 Before the House Committee on Interstate and Foreign Commerce*, pt. II, 66th Cong., 1st sess. (1919); *Return of the Wire Systems: Hearings on H.R. 421 Before the House Committee on Interstate and Foreign Commerce*, pt. III, 66th Cong., 1st sess. (1919).

²²⁹ "Return of the Wire Systems," *supra* note **Error! Bookmark not defined.**, at 6-7.

²³⁰ *Id.*

plant and force.”²³¹ In order to facilitate this consolidation, Burleson recommended that Congress enact a law allowing any telecommunications company to “purchase the property of any telegraph or telephone company, or any part thereof, or consolidate with any other telegraph or telephone company, or pool its traffic and facilities with any other telegraph or telephone company,”²³² subject to the approval of the Interstate Commerce Commission. Burleson recognized that if government ownership was going to end, then the best that he could hope for was that Congress would encourage consolidation of the industry via relaxation of the antitrust regulatory scheme.

On June 4, the Senate Committee issued a report entitled “Return of Telephone, Telegraph, and Cable Lines” that proposed setting the outer limit of the return of the wires at sixty days after the bill’s enactment.²³³ On June 16, the House Committee issued a report entitled “To Repeal the Telephone and Telegraph Act” that would require the restoration of the wires at midnight on the last day of the calendar month the bill is signed into law.²³⁴ Both chambers adopted the House’s language on June 27,²³⁵ and the president signed the legislation into law on July 11.²³⁶ Per the terms of the statute, the telephone system left government control at midnight on July 31. The act did provide that the rate increases that Burleson had approved would continue in force for up to four months.²³⁷

In the end, a number of factors brought the nation’s experiment with a publicly owned telephone system to an end. As an initial matter, assurances that the initial proposal was only temporary placed a natural limit on the prospects for extending the period of government

²³¹

Id.

²³²

Id.

²³³

S. Rep. No 66-4, at 1 (1st sess. 1919).

²³⁴

H.R. Rep. No. 66-45, at 2 (1st sess. 1919).

²³⁵

58 CONG. REC. 1906-07, 1924 (1919).

²³⁶

Act of July 11, 1919, ch. 10, 41 Stat. 157.

²³⁷

Id. at 157.

ownership. Indeed, Burleson continued to be dogged by accusations of trying to make the arrangement permanent.²³⁸ The rate hikes that Burleson had authorized were intensely unpopular. Indeed, Representative Aswell, the sponsor of the original legislation, said, “I owe it to my people and to Congress to apologize for my resolution if government control means increase in rates.”²³⁹ Burleson’s decisions had alienated key constituencies, such as the labor unions and the state regulatory authorities. And both legislators and the public had the strong sense that the network had been poorly run.

After signing the order returning the wires to private control,²⁴⁰ Burleson wrote a personal letter of thanks to Theodore Vail, then Chairman of the Board of Directors of AT&T.²⁴¹ Reflecting on this period, Burleson wrote “to express [his] heartfelt appreciation” for Vail’s assistance.²⁴² Burleson praised Vail’s unselfishness, and hoped that the future of the wire service would involve “the same successful control and direction” which it had received under Vail’s administration.²⁴³ Wishing Vail “many years of health and happiness,” Burleson signed off, “your sincere friend,” and an exceptional experiment in American telecommunications came to an end.²⁴⁴

AT&T was owed a deficiency payment of \$13 million, \$4 million of which they forgave “to facilitate prompt and economical settlement.”²⁴⁵ The Treasury allocated an additional \$4 million to compensate the independents. AT&T emerged from this period in decent shape. Rates were raised and standardized. The state regulatory commissions had been prevented from

²³⁸ See 58 Cong. Rec. at 1347.

²³⁹

²⁴⁰ Albert Sydney Burleson, *Order No. 3380* (July 30, 1919). ASB, Box 24

²⁴¹ Albert Sydney Burleson to Theodore N. Vail (July 30, 1919). ASB, Box 24.

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ Danielian 268.

blocking national rate increases. New universal service charges were added that subsidized development. Labor militancy had been thwarted. The case for nationalization, given the unpopularity of the rate hikes and the labor troubles, was lessened. Proposals to revive government ownership of the telephone system would continue to appear throughout the 1920s, but none was able to garner any substantial support.²⁴⁶

III. IMPLICATIONS OF THE GOVERNMENT TAKEOVER

The government takeover yields new insight into several key questions of telecommunications policy. First, it provides a new view of the reasons that the telephone network collapsed into a monopoly. Second, it provides a new perspective on the origins of universal service.

A. **The Role of the Government in the Reemergence of Monopoly**

One of the historical puzzles concerning the early telephone industry is how AT&T was able to reestablish its monopoly. By 1907, AT&T's market share had dropped below fifty percent. And somehow it was able to reassert its dominance by the end of the 1920s.

The most frequently cited explanation for the reemergence of monopoly is the economies of scale associated with high fixed costs. Economies of scale cause unit costs to decline as volume increases. When average costs decline, the firm with the largest volume can underprice its rivals, which causes it to take even more share. If the economies of scale remain unexhausted, markets that begin as competitive will collapse into natural monopolies.

²⁴⁶ Cox & Byrnes 30 n.39.

A revisionist history has emerged challenging each of these explanations.²⁴⁷ They point out that telephone service was not a declining cost industry. In particular, when switching was performed manually by operators sitting at a switchboard, it did not scale well.²⁴⁸ The deployment of mechanical switches would eventually change this limitation, but AT&T did not begin deploying mechanical switches until the 1920s.²⁴⁹

Rather than facing declining costs, the independents, who had relied on promises of declining rates to convince municipalities to allow them to compete, were plagued by having to make constant requests for rate increases.²⁵⁰ It is thus unsurprising that the government faced the same problem. Indeed, Nathan Kingsbury made precisely this point in his testimony regarding the return of the wire systems. Kingsbury stated that installation cost more in the cities than in the rural areas because of the need for additional central switching stations. Each central station could only take about 10,000 lines, and as a city grew, AT&T was forced to install new central stations, with new trunk lines between those stations.²⁵¹ Trunk lines were exceedingly expensive.²⁵² Moreover, as the central stations grew in a city, the company was required to

²⁴⁷ CAMBRIDGE BOOK _ . For a contemporary critique, see J. MAURICE CLARK, *STUDIES IN THE ECONOMICS OF OVERHEAD COSTS* 321 (1923) “Telephone companies . . . show no signs of economy with increased size, but rather the opposite.”

²⁴⁸ See Kenneth Lipartito, *When Women Were Switches: Technology, Work, and Gender in the Telephone Industry, 1890-1920*, 99 *AM. HIST. REV.* 1075 (1994); Milton Mueller, *The Switchboard Problem: Scale, Signaling, and Organization in Manual Telephone Switching, 1877-1897*, 30 *TECH. & CULTURE* 534 (1989).

²⁴⁹ See H.R. DOC. NO. 76-340, at 261 (1939); BELL TEL. LABS., *A HISTORY OF ENGINEERING AND SCIENCE IN THE BELL SYSTEM: THE EARLY YEARS (1875-1925)*, at 552-53, 611-12 (1975); ROBERT J. CHAPUIS, *100 YEARS OF TELEPHONE SWITCHING (1878-1978)*, at 249 (1982); Joan Nix & David Gabel, *The Introduction of Automatic Switching into the Bell System: Market Versus Institutional Influences*, 30 *J. ECON ISSUES* 737, 738 (1996).

²⁵⁰ See MILTON L. MUELLER, JR., *UNIVERSAL SERVICE* 15, 36-37, 65-66, 190 (1997); David F. Weiman & Richard C. Levin, *Preying for Monopoly? The Case of Southern Bell Telephone Company, 1894-1912*, 102 *J. POL. ECON.* 103, 104 (1994).

²⁵¹ Kingsbury said, “As the city grows it is necessary to install a larger and larger number of central offices because a girl’s arm is just so long, and as the manual switchboards are constructed she can only reach about 10,000 stations with her arm.” *Id.* at 31.

²⁵² *Id.*

employ additional inter-operator connectors.²⁵³ While automatic switches could overcome some of these issues, the costs of installing new trunk lines between new central stations could not be ameliorated.²⁵⁴ Summing up this situation, Kingsbury stated, “The profit per unit decreases as the number of units increases.”²⁵⁵

Others have suggested that AT&T’s control of key long distance patents allowed it to reestablish its monopoly position. This ignores the fact that the independents had equaled the size of AT&T and even established market leadership in large areas of the country, including particular the Midwest. In addition, long distance calling represented a tiny fraction of overall telephone revenues, and what toll calling that did exist tended to be fairly regional.²⁵⁶ Indeed, AT&T’s skeletal pattern and emphasis on interstate long distance made it possible for subscribers in Muncie, Indiana, to call Chicago or New York. The independents were better positioned to connect calls to adjacent counties, which is where most of the demand for toll calling existed.

Lastly, some historians attribute the reemergence of monopoly to a failure of antitrust authorities. As noted earlier, in 1907 the Bell System shifted to a strategy of merger to monopoly and division of markets that was eventually stopped by the Kingsbury Commitment.²⁵⁷

²⁵³

Id.

²⁵⁴

Id.

²⁵⁵

Id. at 30. “The difficulty is that the larger the number of units that you serve in the telephone business, under conditions that exist requiring a larger and larger investment per unit, a larger and larger operating cost per unit, that larger investment and larger cost goes up so fast that the larger the number of units you serve, the more it costs per unit to serve them.” *Id.*

²⁵⁶

Cohen 40; Herring & Gross 213.

²⁵⁷

Some say this was too late.²⁵⁸ By allowing the Bell System to keep the properties instead of breaking it up as it did with Standard Oil, the antitrust authorities effectively condoned monopoly by refusing to undo the existing acquisitions and leaving them intact.²⁵⁹ This argument is belied by the fact that at the time of the Kingsbury Commitment, the independents still controlled 45% of the market²⁶⁰ and still competed in _% of the cities.²⁶¹ While more than half, it was hardly the kind of decisive advantage needed to explain the dominance of AT&T.

More commonly say that antitrust authorities implemented the Kingsbury Commitment in a way that permitted the Bell System to evade it. The Commitment did not prevent AT&T from acquiring independent local telephone companies with which they did not directly compete.²⁶² Many scholars have claimed that the antitrust authorities allowed mergers of competitive companies so long as the transaction involved a swap of lines.²⁶³ Others disagree, insisting that the Kingsbury Commitment was successful in slowing down mergers.²⁶⁴

A close analysis of the history reveals that the Kingsbury Commitment did successfully slow the pace of AT&T's acquisitions between 1913 and 1916. The tolerance for swapping territories did not emerge until 1917, and even that occurred at the behest of the independents.²⁶⁵

What is missing from this story is the government takeover during World War I. Burleson's implementation of the postal model represented an important and underappreciated

²⁵⁸ 37 Fed. Comm. L.J. at 87 (citing Terbing, *Common Carrier Regulation—The Silent Crisis*, 34 LAW & CONTEMP. PROBS. 299 (1969)).

²⁵⁹ Vietor 172.

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²⁶² Brock; Cohen 48

²⁶³ Brock; etc.

²⁶⁴ Brock; JLEO 112; 62 FCLJ 125 (citing Brends & Leo 4; Thierer 272; Brock 156); Mueller 134

²⁶⁴ CITES. 1936 FCC study; Faulhaber 18-19 n.6 – ceased growth by acquisition at 55%, up from 49 % in 1907); Mueller 133, 136 (Halted for 5 years; within three year started up); 62 FCLJ 125 (independents maintained significant market share after Kingsbury); Jayaker 342 (“significant market share remained with the independents until 1921, when the Willis-Graham Act again permitted the Bell System to acquire non-affiliated companies.”).

²⁶⁵ Bickers 125-26/

force toward consolidation. Indeed, he consistently advocated consolidation throughout the period when he oversaw the telephone network. The data suggest that the pace of mergers did not accelerate until the war.²⁶⁶ Indeed, the war gave the merger policy complete immunity.²⁶⁷

The war years thus provide an important bridge between the Kingsbury Commitment and the complete abrogation of antitrust review by the Willis-Graham Act of 1921. Rather than portraying the emergence of monopoly as being driven by AT&T despite the efforts of hapless antitrust authorities powerless to stop the Bell System, this view suggests that the government was not asleep at the switch. Instead, the government was the primary proponent of the return to monopoly.

B. The Origins of Universal Service

There is also a vibrant debate over where universal service came from.²⁶⁸ AT&T apologists indicate that universal service was the result of AT&T's business leaders' technological and social vision. The historical record is replete with statements by Alexander Graham Bell, Gardiner Hubbard, and Vail extolling the virtues of universal connectivity. As Vail said in AT&T's 1910 report, "It is believed that some sort of connection with the telephone system should be within the reach of all. It is believed further, that this idea of universality can be broadened and applied to a universal wire system for electronic transmission of intelligence (written or personal communication), from everyone one in every place to everyone one in every

²⁶⁶ Brock 156; Vietor 172-73.

²⁶⁷ Bickers 127.

²⁶⁸ For an overview, see Richard R. John, *Theodore N. Vail and the Civic Origins of Universal Service*, 28 *BUS. & ECON. HIST.* 71, 71-74 (1999).

other place, a system as universal and as extensive as the highway system of the country which extends from every man's door to e every other man's door."²⁶⁹

Such claims are belied by AT&T's dismal record in building out unserved areas during its monopoly period. It was not until the independents forced AT&T's hand that it began to live up to the promise of its earlier rhetoric.

Other critics suggest that the modern vision of universal service is the product of the 1970s and the result of AT&T's to justify the continuation of its monopoly when facing the emergence of competition.²⁷⁰ These scholars point to the fact that the separations process did not begin allocating a disproportionate amount of the joint and common costs until the 1950s.

Although these scholars are correct that the long distance-local cross subsidy did not emerge until later, the urban-rural cross subsidy associated with rate averaging and the business-residential cross subsidy emerged much earlier.²⁷¹

A third line of scholarship concludes that universal service was a longstanding goal influenced largely by the ideas developed in the postal context. The vector through which those ideas became incorporated into the Bell System was Vail, who ran the Railway Mail System in between stints at AT&T.²⁷²

The government's experience running the telephone system supports this argument of a postal element, but provides a much more direct vector. The influence was much more direct than the indirect influence based on Vail's experiences. Indeed, throughout the period of the

²⁶⁹ AT&T 1910 22-23.

²⁷⁰ Mueller. Did not begin until 1950s. Crandall & Waverman.

²⁷¹ Warren G. Lavey, *The Public Policies that Changed the Telephone Industries into Regulated Monopolies*, 39 FED. COMM. L.J. 171, 182-84, 187-89 (1987).

²⁷² See John.

takeover, Burleson continually espoused principles of universal service associated with cross subsidies.

C. Federal-State Relations

[To be added.]

D. The Limits of Government

Perhaps the biggest question is that having taken over the telephone system, why did it ever give it back? Burleson harbored open ambitions of making government ownership permanent. Doing so would also have brought U.S. policy into conformity with the rest of the world.

One challenge that government ownership struggles to surmount is the problem of raising capital. The telephone in Europe was primarily developed by government actors, and as such was less well funded. Government operators in Europe “used their market power to protect themselves from risk rather than to maximize profits.”²⁷³ These governments had invested heavily in telegraph systems, and the development of the telephone posed significant risks to telegraph revenues: “All the public agencies attempted to protect their telegraph services from telephone competition, even when they controlled both telegraph and telephone.”²⁷⁴ Even when European governments did not grant an exclusive monopoly to government agencies, these very same agencies “used similar tactics to those of private companies to extend their power.”²⁷⁵

²⁷³ GERALD W. BROCK, *THE TELECOMMUNICATIONS INDUSTRY: THE DYNAMICS OF MARKET STRUCTURE* 145 (1981).

²⁷⁴ *Id.* at 146.

²⁷⁵ *Id.* at 145.

Without the threat of antitrust, there was nothing to restrain unfair practices on the part of the government agencies.

In the U.S., development was much more rapid owing to the competitive environment. Competition encouraged innovation and experimentation. For instance, “The existence of several companies allowed various beliefs as to the elasticity of demand to be tested and prevented slow growth through a mistaken belief that the demand was inelastic.”²⁷⁶ But the pace and pattern of development in the U.S. was not merely influenced by the *absence* of government ownership, as discussed above. U.S. development was also influenced by the *presence* of state and local regulation, the possibility of antitrust enforcement, and the specter of nationalization.

Another reason cited during the hearings when the government decided to return the telephone system to private control was the government’s inability to control costs. Both of these concerns should serve as cautionary tales to contemporary advocates of networks operated by governments. Indeed, the government’s struggles to run the telephone network during World War I is part of a larger tradition identifying circumstances under which common carriage regulation is most likely to work well. It is best suited to industries in which technology is static, market shares are stable, and the fact that network has already been built out reduces the emphasis on investment incentives.

All of these considerations should give modern proponents of government ownership of telecommunications networks considerable pause. Indeed, the most salient examples appear to confirm these lessons.

The decision to return the wires underscores the importance of personalities.

²⁷⁶ *Id.* at 144.

On a more optimistic note, this episode also provides reassurance about how justifications based on national security need not necessarily be enduring.

IV. CONCLUSION

[To be written later.]