INTERNET SERVICES AND ANTITRUST[1]

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Abstract

This document is an analysis of the legal and regulatory issues associated with the Parler case. Parler is a social media platform and it had agreements with such third parties as Amazon, Apple and Google. Allegedly, these third parties summarily terminated the agreements thus effectively restraining Parler from conducting its business. This case presents a compelling example of how the Antitrust laws can be addressed in the context of services related Internet environment as compared to the 19th Century commercial world of hard goods and commodities. This document is not meant to be a definitive work but more a work in progress as this case evolves. It seems clear that the three third parties have dramatic market powers and that their actions appear to have been taken based solely upon divergences of political thought.

Contents

[1] The author has extensive experience operating Internet companies globally and has written extensively on the matters related hereto. In addition, the author has been deemed as and has testified as an Expert in multiple venues on matters related herein, including but not limited to multiple Federal Courts. This is a working paper and as such there are no definitive conclusions reached and the opinions herein may be changed as further information and insight is attained. This document is a work in progress and thus is subject to change or even total withdrawal. There should be no reliance upon any of the opinions which may be elicited in this document. This is not meant to be a legal opinion nor an Expert opinion. It is merely reflective of the author's understanding at the moment and is meant solely for discussion purposes only. The author is not an attorney and there is no intent otherwise.

1 INTRODUCTION

The provision of various Internet services has expanded exponentially since it became available to consumers. The Internet can facilitate transaction, information and entertainment services, it creates a multimedia communications environment and facilitates commerce. It allows for exchange of ideas, for better or worse. In certain ways it has replaced the hard copy newspapers of half a century ago. In this paper we examine the Parler case, wherein the company was forced to cease business by actions of third parties. We consider the possible arguments against such actions but there are clearly no existing well defined Court rulings on this specific matter. However, in 1996 the author considered a similar set of antitrust issues relating to conditions demanded in the 1996 Telecommunications Act[2]. This analysis builds upon that analysis in a similar fashion.

To put in context, Parler was a social media company. Not having personally used these systems to any degree, and having left after de minimis use decade past, my comments are based on secondary sources. Parler is in effect a shared bulletin board type service wherein users can real time post comments, seek likeminded others, and retain a modicum of anonymity. The comments can often be excited utterances and even incitement to act in a manner which may be prohibited by law. Parler is alleged to be protected by Section 230 of the 1996 Telecommunications Act. It is assumed that those who make such utterances are not so protected and may be subject to substantial legal consequences. The Government does have tools at its disposal to act, namely the CALEA statues.

In a strange way, these services allow for a real time means to measure such levels of discontent and to determine levels of risk. It is not at all clear that silencing these channels is either effective in suppressing such discontent or beneficial to being aware of its imminence of threat levels.

The current Parler case does present an interesting and important example of the control of distribution channels, and in this case the electronic distribution channels of information. While not taking any measure of the value of Parler, for that I hold not competence or capability, this analysis does attempt to examine the negative and suppressive powers exerted by the new proto-monopolists in the Internet market.

Thus, we examine in this paper the issues of antitrust law as applied to the Internet supply chain. Some twenty-five years earlier we examined the same issue in the telecommunications market, nationally and internationally, and applied it to business which we started at that time deploying Internet backbones internationally. In this paper we utilize some of the paradigms we have employed then and find a significant congruence. In fact there is a clear isomorphism between telecommunications networks as understood in the 1996 Act and the current Internet based services and applications. It is based upon that putative isomorphic congruence that we develop the analysis herein.

[2] See McGarty, Competition in the Local Exchange Market: An Economic and Antitrust Perspective, Presented at MIT Internet Telephony Consortium, September 15, 1996.
http://www.telmarc.com/Documents/Papers/1996_09_15_Law_Jrl.pdf

1.1 ANTITRUST

Antitrust often focuses on the consumer and the impact of corporate actions which delimit consumer choice and prices. It does not reflect the competitors but the consumers. Thus in this view any action by a company that delimits or destroys a consumer choice is per se anticompetitive.

1.1.1 Sherman

The essence of Sherman is as follows:

Every contract, combination in the form of trust or otherwise, or conspiracy, ***in restraint of trade or commerce*** *among the several States, or with foreign nations, is declared to be illegal.*

The issue is restraint of trade. One may enter into a contract containing a termination clause which the parties have negotiated. But if one party single handedly terminates an essential element of a business resulting in the termination of that business, especially via a conspiracy then one may readily have a Sherman violation. As we shall note, this is often a high hurdle to jump. However, as we shall examine, limited to public information, the putative Parler case may read onto this law.

1.1.2 Clayton

Clayton is a civil litigation wherein the issue is pricing, mergers, anticompetitive demands, tying arrangements and the like. However, Clayton does present an interesting issue and that is that of tying relationships. Tying is the process where a seller or buyer demands of the other party if they want to buy or sell something then the other side of the transaction must buy or sell another entity. For example, if one buys shoes, then the seller can tie to the shoe sale a sock sale, or even a sale of a lap top computer, in extremis. Such tying relationships are deemed illegal in Clayton.

We examine here the in extremis case of Apple, Google and Amazon. It appears that if one wants to purchase their services, they are demanding a tying, albeit not a physical purchase, but a tying on operations. Namely the buyer from these three must agree to adhere to the communications standards that they adhere to, albeit not defined in any agreement, but stipulated by their own actions. We will thus argue herein that this is a natural extension of a tying relationship, it means that when one enters an agreement with any one, separate from the terms of the agreement one must "buy into" their unstated but presumably "obvious" limitation of speech. We argue herein that that limitation is the equivalent of a purchase since it costs the company money by forgoing that speech allowance. The company must then delimit their service, forgo the revenue, and delimit their customer base. As such the forbearance on a segment of the market is a de facto "product" whose "purchase" is tied into the agreement.

1.2 NETWORKS

We use the more classic telecommunications law as a platform for trying to understand some context for this case. We then move through some other cases to build a fuller picture.

1.2.1 The AT&T Case

In 1982 Judge Greene set forth the breakup of AT&T, then one of the few legal monopolies in the US, the other being baseball. The breakup caused the resultant massive explosion of technologies in telecommunications which had been inhibited by the management and manipulations of AT&T as an entity. AT&T was broken into local and long distance companies.

1.2.2 The 1996 Telecom Act

In 1996 Congress enacted a major change to the Telecommunications Act. The key element we focus on is the access and interconnection requirements requiring the local exchange companies to allow access and interconnection to their networks. The second part is the definition of a telecommunications service and an information service. Telecommunications was in effect a common carrier whereas information was unregulated. One must remember that this was based upon 1995 technology and the Internet was at best nascent.

Specifically they used the following two definitions:

*(51) TELECOMMUNICATIONS SERVICE- The term telecommunications service means the offering of **telecommunications** for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.*

*(48) TELECOMMUNICATIONS- The term telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, **without change in the form or content of the information as sent and received**.*

The above is the operative definition that often delimits regulatory environment of contemporary telecommunications and information networks.

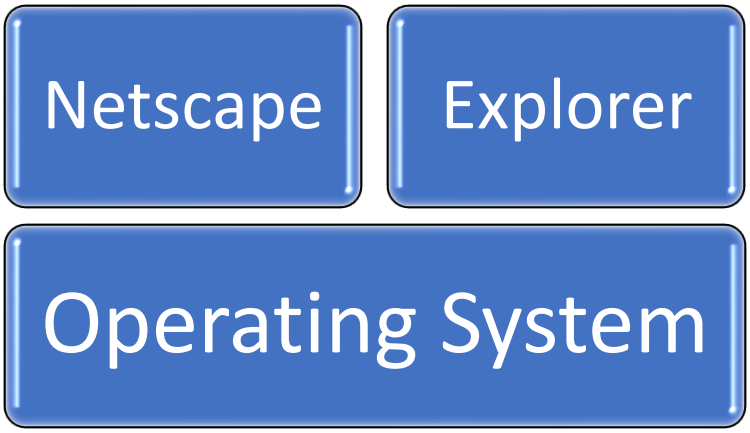
(41) INFORMATION SERVICE- The term information service means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

What is critical in the above will be the change in the Internet traffic flow, the roles of various players and the remerging of Internet backbone into effectively a de facto Telecommunications Service. In effect, the network between the end user and the service provider is providing telecommunications. We shall expand on that later but it is critical to understanding the Amazon putative liability in terms of possible antitrust violation.

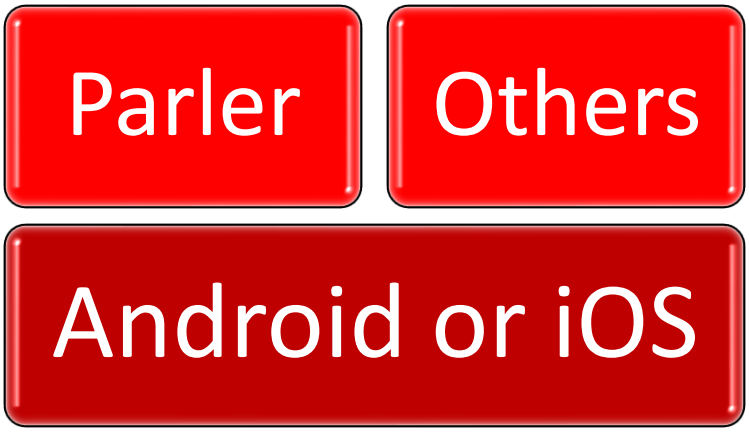
1.2.3 The Microsoft Case

The Microsoft antitrust case was based upon the introduction of Internet Explorer as a direct competitor to Netscape, one of then then dominant Internet browsers . Microsoft, in order to avoid a conviction for antitrust violations entered into a constraint settlement agreement.

The essence of the case was that Microsoft was guilty of antitrust violations as a monopolist and in restraint of trade. Simply, Microsoft shipped its operating system with Explorer whereas Netscape had to separately ship its browser. Microsoft had taken actions in such a manner to destroy its putative competition in this small niche of web browser configurations. The Judge Jackson decision was such that Microsoft was guilty. But Judge Jackson was overturned and DOJ settled the case with some modest injunctive relief.



In a sense, as we examine the Parler case, much of the original part of Microsoft may read onto the actions of Apple and Google, by their inhibiting Parler from being offered on mobile devices which use their respective operating systems, iOS and Android. We shall examine this case.



1.2.4 The Parler Case

Parler is a platform for social communications. Parler has filed an Antitrust suit against Amazon[3]. It is akin to Twitter and Facebook and many others. In order for a Parler to function it requires the following:

1. Consumer Device Platform: This generally is a computer of a mobile phone. It is some physical device generally provided by the end user.
2. App Software: This is end user's software which runs the specific application interfacing with then end user on one end and the network on the other.
3. Access to App Software: The use must load the App somehow. This will depend on the network and the local operating system. Thus it may use a Windows type OS or an Android OS as an example.
4. Network: The App must communicate with the provider and to do so it needs a network. The network is an amalgam of that of multiple providers. It may use the classic "last mile" connection, which then goes via routers to a backbone and then finally to a server farm.
5. Servers: The App runs on remote servers. These interconnect with the network and they run the software and interconnect with databases and other common equipment and provide the services of utility software
6. Software: Specific App software runs on the servers which is proprietary to the company providing the service.
7. Databases: The company providing the service manages a database to deal with the customers.
8. Network Management: An entity must provide some form of network management.

Parler relied upon a multiplicity of third parties to operate its business. Parler had contracts with these parties. We have examined one of those agreements and as anticipated there were termination clauses. These termination in our current reading, based upon our experience have entered into and written hundreds if not thousands of similar agreements, the clauses lacked the basis for such a summary termination. The alleged basis for the

We believe that the Parler suit has substantial merit. In addition, we believe that the suit pending against Apple and Google also has merit. One of the third parties informed Parler of its intent to terminate as follows:

AWS provides technology and services to customers across the political spectrum, and we continue to respect Parler's right to determine for itself what content it will allow on its site. However, we cannot provide services to a customer that is unable to effectively identify and remove content that encourages or incites violence against others. Because Parler cannot

[3] https://www.courtlistener.com/docket/29095511/1/parler-llc-v-amazon-web-services-inc/

comply with our terms of service and poses a very real risk to public safety, we plan to suspend Parler's account effective Sunday, January 10th, at 11:59PM PST. We will ensure that all of your data is preserved for you to migrate to your own servers, and will work with you as best as we can to help your migration.

Upon examination of the agreement between the parties the above seems at this time without merit. It does appear at this time with the information currently available to us that the termination was based upon a politically motivated mindset on the terminating party.

We generally do not see this as an issue of free speech nor any other Constitutional issue since it is generally understood that there needs to be a nexus with the Government in order to invoke such. However, there are a multiplicity of existing laws that may read directly onto the actions related thereto.

1.3 OUTLINE

We have used the Parler case as a significant example of doing commerce in the Internet world. We address several questions.

1. We first present the relationship between entities and their functions in both the classic telecommunications market and the current Internet Apps market. Understanding these functions and similarities we believe is essential to an understanding of how to apply the law[4].

2. We then introduce the legal structures under which these architectures are regulated in the United States. One of the challenges is that technology is constantly changing and new entrants always try to evade classic stricture by generally stating that they do not. We examine in some details the current regulatory elements to see where the current architectural elements can be interpreted in current law.

3. We then examine antitrust law. Sherman prohibits restraints of trade and Clayton pricing and tying agreements. We analyze the impact of third-party actions resulting in the closure of Parler in this context.

4. We then examine the racketeering statutes in RICO. Our focus is primarily on Civil actions since Criminal are generally the purview of the Federal Government.

5. We spend time relooking at Section 230 of the 1996 Act. It has been in our opinion generally misrepresented. It does provide a safe harbor condition of sorts but as with any law the definitions frequently provide a more nuanced interpretation. We examine those issues.

6. Finally we examine the Parler case in the context of antitrust, racketeering and Section 230 using the architectures presented and issues highlighted in this analysis.

[4] See McGarty, Alternative Networking Architectures, Harvard, 1990

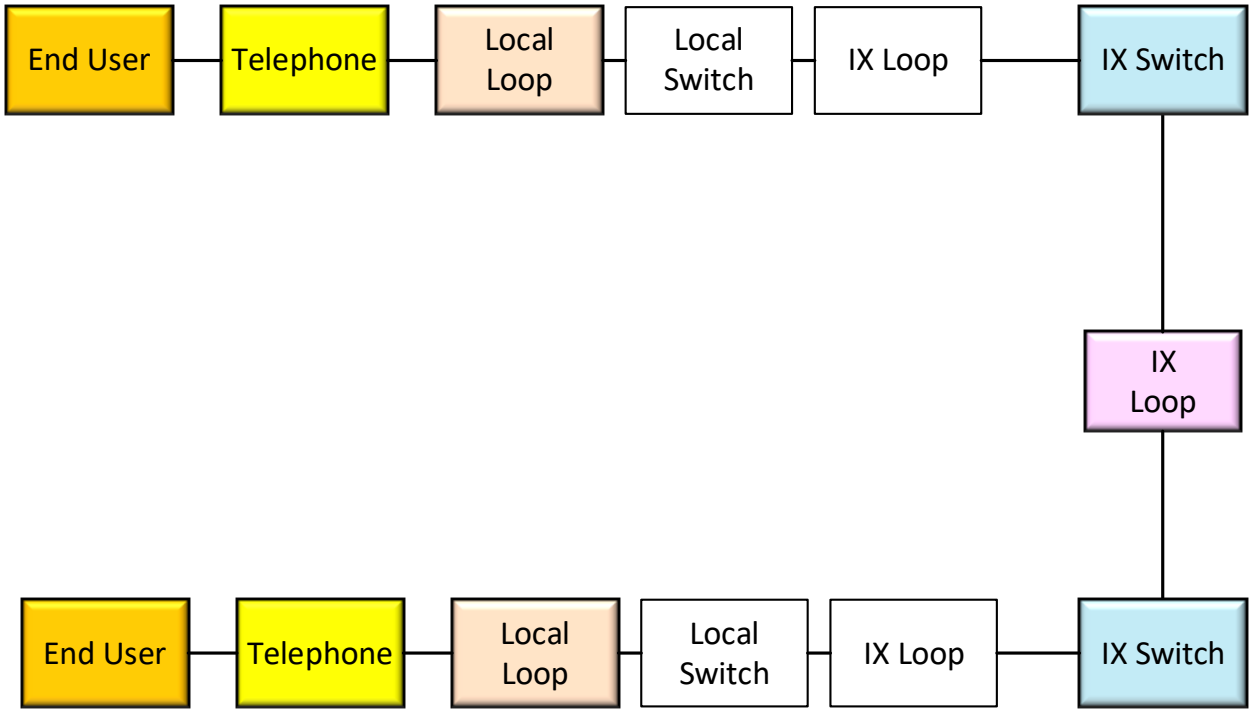
Overall, it is our current understanding that Parler has been intentionally and materially harmed by a collection of third parties. The issue of any collusion or conspiracy is open lacking any material evidence at this time. However, we believe that upon examination of the currently available information there may be a strong basis for substantial remedies at law.

2 TELECOMMUNICATIONS VS THE INTERNET

The regulation of telecommunications for more than a century has allowed for the development of a variety of definitions of elements and functions. Yet to understand this area one must first understand telecommunications, and similarly the Internet, as a service, not a product. Much of the antitrust regulations are directed at tangible products yet was we have argued previously in a service dominated world the constructs of tangible products has been displaced by a plethora of intangible but equally real and definable services and service elements. We attempt to develop herein those constructs working off of the telecommunications construct and then moving to an Internet domain.

2.1 ARCHITECTURE

We first address the issue of architecture. We have discussed this at length . Generally speaking the "architecture" is the assembly, interfaces and relationship of a collection of function elements or service elements together of which all for the provision of a higher level service. Thus we can consider the diagram below for a telecommunications service interconnecting two end users to enable them to intercommunicate in some manner using the facilities of a multiplicity of telecommunications service elements.



Namely, in the above, we have the following elements:

1. Telephone: This may be a physical device or even software operating on a computer with some added human interfaces. This device must then have the capability to both interface with

the End User as well as interfacing with the upstream network elements in both a hardware and software manner.

2. Local Loop: This is the physical connection between the End User and some distant element capable of interconnection to some ultimate other end user. This may be a copper wire, a CATV network, a wireless network, fiber, or frankly any physical means to extend the communications to a distant location.

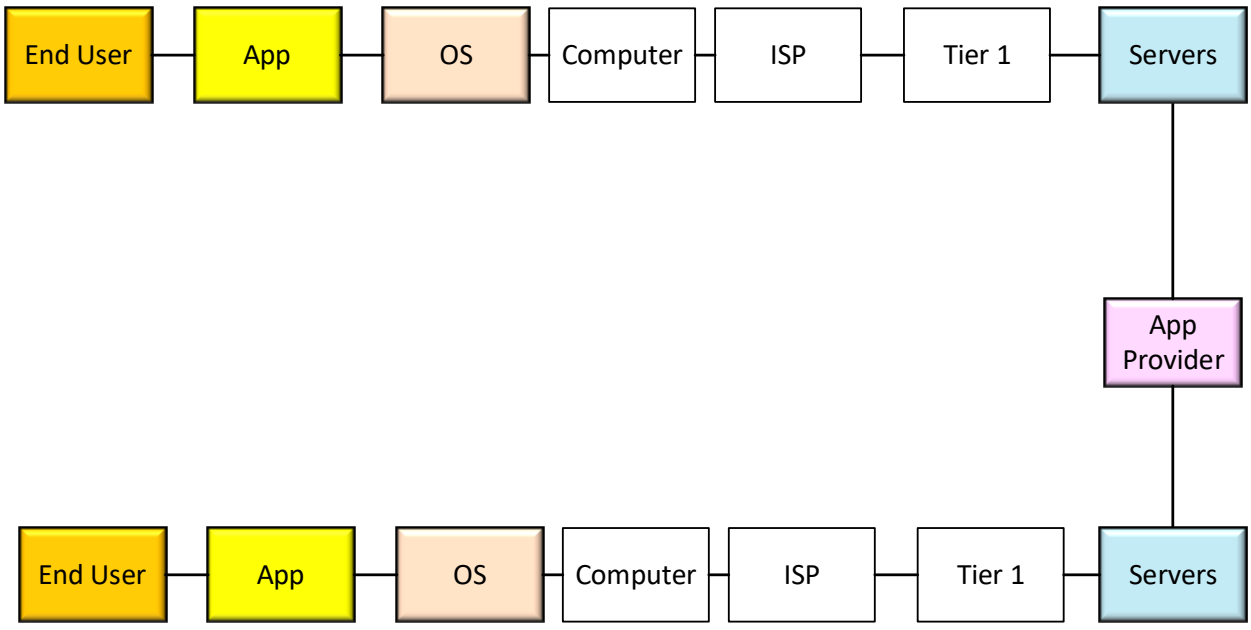
3. Local Exchange Switch: This is the amalgam of hardware and software which enable the first step in the interconnection process between end users.

4. Interexchange Loop: This is the transmission complex including all hardware and software enabling the dynamic interconnection required for end users interconnection.

5. Interexchange Switch: This is the amalgam of hardware and software which enables the intermediary steps in the interconnection process between end users.

There may be a multiplicity of Interexchange Loops and Switches as well as a collections of management and support hardware and software in this model. However the above is the fundamental paradigm for a Telecommunications Service. Specifically its supports the "application" of interconnecting End Users. This has also been the paradigm for over a century regarding the regulatory framework for telecommunications.

We now consider a similar paradigm for the provision of an applications service.



In the above case we have a connection between an End User and an Apps Provider. The Apps Provider replaces the other End User in the previous Classical Case. Now we can explain the general functions of each element and also provide a context of who or which entity can or is providing this service. Moreover multiple End Users may interconnect and communicate via the App Provider.

1. App: The End User interconnects with some App that resides on some device. The App is fundamentally a portal to the App Provider which in turn enable communications with some other end user.

2. OS: The Operating System, OS, is the fundamental software that runs a computer allowing for applications to function. In the mobile world it is iOS and Android and in machine based world we have MacOS, Windows, Linux and the like.

3. Computer: This is the hardware and limited software that allows the various circuitry and memory to function may include a BIOS which allow for non-OS booting of the system.

4. ISP: The ISP is an entity which facilitates the interconnection of the messages between the computer and a network that can connect to other users.

5. Tier 1 Carrier: The Tier 1 carries is the Internet backbone. Companies such as Google, Amazon, Verizon, and others are typical Tier 1 carriers. They often are oligopic players in the interconnection of IP networks. They can be the ultimate gatekeepers of IP transport.

6. Server Farm: This is a third party collection of servers and server support software that allows an App provider to run their applications in a highly saleable manner. Server Farms can be readily displaced by each App provider having their own but due to the great scale economies Server Farms provide great economic advantages.

7. App Provider: The App Provider is an entity which facilitates the communications with the End User App and assists in the interconnection with other End Users. Frequently the App Provider is just a pass through facilitator whereas some, such as Facebook and Twitter interject added content selected by them for the specific End User tuples. App Providers who are merely pass throughs, such as Parler are passive Apps Providers whereas those who use various means to promote and monetize the End User tuples are active App Providers.

Thus having such an architecture and elements as defined one can more readily apply existing laws and the definitions related therein.

2.2 PRODUCT OR SERVICES

This then leads to trying to define the "product" or "service" offered. We use the terms interchangeably. In applying much of the antitrust laws and other similar laws, it is necessary to understand the terms as are currently in use and as applied to the laws as written.

2.3 Interface And Interconnection

The concept of interface or interconnection relates to the establishments of common standards and methods to transfer the goods or services along a distribution channel from the originator of the process to the ultimate end user of the process. Thus a shirt manufacturer may be required to box the shirts in containers of a certain size and weight to move the shirt from point A to point B.

2.4 Access And Industry Role

Access is a fundamental issue when considering antitrust implications. The issue of access is a relatively simple one. Namely in order to provide a service or product there frequently is required the interconnection of multiple entities. For example to sell a shirt, the manufacturer must on one end have access to the materials and on the other end have access to the shipping means to get the product to the ultimate end user or customer. Interconnection, as discussed above is the functional process and access is the legal or regulatory process. Interconnection may be physically possible but access may be delimited by one or more of the parties for reasons other than purely physical or logistical.

In our example of the shirt maker we discussed interconnection as a physical process of shipping containers. The access is may then be the regulatory issues of import and export and the documents and regulations delimiting the movement across the distribution channel. This is a common problem with physical goods but it is equally common in the electronic world as well.

There are three views of access that are currently in use. These are:

1. Access as Externality: This is the long-standing concept of access that is the basis of the current access fee structures. We will use the example of access in the context of the telephone market and as generally interpreted in the 1996 Act. The telephone company, Telco, contends that it has certain economic externalities of value that it provides any new entrant and that the new entrant brings nothing of value to the table in the process of interconnecting. The TELCO has the responsibility of universal service and furthermore permits the new entrant access to the TELCOs customers, which brings significant value to the new entrant. In fact, TELCOs argue that a new entrant would have no business if the TELCO did not allow it access to “its” customer base. This school of access is the Unilateral school. Commissioner Barrett has stated publicly on several occasions that any new entrant should reimburse the TELCO for the value the TELCO brings to the table. The TELCOs, especially Bell South, are strong supporters of this view.

2. Access as Bilateralism: This is the view currently espoused by the Commission in some of its more recent filings. It is also the view of the New York Public Service Commission in the tariff allowing Rochester Telephone and Time Warner Communications to interoperate. It also is the view of Ameritech in its proposed disaggregation approach. Simply stated, Bilateralism says that there are two or more LECs (Local Exchange Carriers, or local phone companies) in a market. LEC A will pay LEC B for access or interconnect and LEC B will pay LEC A. It begs the question of what basis the reimbursement will be made, what rate base concept, if any, will be used, and what process will be applied to ensure equity. This is akin to reinventing the settlements process of pre-divestiture days. Bilateralism is rant with delays, with expensive legal

reviews and administrative delays. It clearly plays to the hand of the established monopolist. Suffice it to say that U.S, West owns a significant share of Time Warner and one would suspect that their presence in this Bilateralism approach is seen.

3. Access as Competitive Leverage: This concept of access assumes that there is a public policy of free and open competition and that the goal is providing the consumer with the best service at the lowest possible price. It argues that no matter how one attempts to deal with access in the Bilateral approach, abuses are rampant. Thus the only solution in order to achieve some modicum of Pareto optimality from the consumer welfare perspective is to totally eliminate access fees. The Competitive access school say that the price that the consumer pays for the service should totally reflect the costs associated with its providers and not with the provider of the service to the person that the individual wants to talk to. For example, my local telephone rate does no change if I desire to talk to someone in Mongolia, even if their rates are much higher due to local inefficiencies. In addition, if I mail a letter to Poland then I only attach a U.S. stamp and am not required to also pay a Polish fee by buying a Polish stamp. The Competitive Access school says that externalities are public goods, created perforce of the publicly granted monopoly status of the past one hundred years. It states further that Bilateralism is nothing more than an encumbrance that allows the entrenched monopolist to control the growth of new entrants, and is quite simply an artifact of pre-divestiture AT&T operations. The only choice for the Competitive Access school is no access at all and price at cost.

3 REGULATORY ENVIRONMENTS

We now consider several regulatory issues to help place the analysis in a structural context. We examine the 1996 Telecommunications Act, the 1996 Act, the interpretation therein of interconnection, and then the application and interpretations under the CALEA law requiring access to records of communications.

3.1 TELECOMMUNICATIONS

Let us firs begin with the 1996 Telecom Act. The 1996 Act contains critical definitions whose interpretations we believe are beneficial in the analysis of this case. The 1996 Act defines the following:

(48) TELECOMMUNICATIONS- The term telecommunications means the transmission, between or among points specified by the user, of information of the user s choosing, without change in the form or content of the information as sent and received.

(49) TELECOMMUNICATIONS CARRIER- The term telecommunications carrier means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

(50) TELECOMMUNICATIONS EQUIPMENT- The term telecommunications equipment means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

(51) TELECOMMUNICATIONS SERVICE- The term telecommunications service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.
The Act also defines and Information Service as:

(41) INFORMATION SERVICE- The term information service means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

Each of these have been through interpretations in the Courts over the past twenty five years. The key ones we shall come back to later since they assist in defining roles and the imputed authority to act under these roles.

3.2 CALEA

CALEA is basically an act that enable the Government to have access to a multiplicity of communications networks. As with so many laws written in a time of rapidly changing technology it demands continuing interpretation and updates. As the FCC has noted :

Law enforcement agencies conduct electronic surveillance as authorized by court order under chapter 119, title 18 of the U.S. Code.3 In response to concerns that emerging technologies such as digital and wireless were making it increasingly difficult for telecommunications carriers to execute authorized surveillance, CALEA was enacted on October 25, 1994. CALEA does not modify the existing surveillance laws. Instead, it requires carriers to ensure that their facilities are capable of providing the surveillance law enforcement is authorized to conduct. Specifically, section 103(a) of CALEA requires that "a telecommunications carrier shall ensure that its equipment, facilities, or services that provide a customer or subscriber with the ability to originate, terminate, or direct communications" are capable of

(1) expeditiously isolating the content of targeted communications transmitted by the carrier within its service area;

(2) expeditiously isolating information identifying the origin and destination of targeted communications;

(3) transmitting intercepted communications and call identifying information to law enforcement agencies at locations away from the carrier's premises; and

(4) carrying out intercepts unobtrusively, so that targets are not made aware of the interception, and in a manner that does not compromise the privacy and security of other communications.

These core functional requirements are referred to as the assistance capability requirements of CALEA.

3. CALEA does not specify technologies or standards that carriers must use to meet these assistance capability requirements. Instead, to ensure the implementation of section 103, section 107(a) of the Act directs the Attorney General, along with federal, state, and local law enforcement agencies, to consult with "appropriate associations and standard-setting organizations of the telecommunications industry, with representatives of users of telecommunications equipment, facilities, and services, and with State utility commissions."6 A telecommunications carrier will be found to be in compliance with the requirements of section 103 if it complies with "publicly available technical requirements or standards adopted by an industry association or standard-setting organization, or by the Commission . . . ."

4. Other provisions of CALEA further support the central assistance capability requirements. Section 104 prescribes a mechanism for quantifying the extent of carriers' assistance capability. Section 105 ensures the integrity and security of telecommunications systems. Section 106 mandates cooperation of equipment manufacturers and telecommunications support service providers. Section 108 provides for enforcement orders.

4 ANTITRUST PRINCIPLES

The two major Antitrust Laws are Sherman and Clayton. There is an extensive body of literature regarding antitrust and a multiplicity of schools of thought. We shall try to drive a middle road in the context of this investigation since definitive Court rulings appear lacking.

4.1 SHERMAN

Sherman was the first antitrust law. It fundamentally addresses what is termed a restraint of trade. It was the result the large monopolies and trusts of the late 19th century and their overt actions destroying new companies who they viewed were competitors or just unacceptable to their interests. The basic premise of Sherman is:

15 U.S. Code § 1 - Trusts, etc., in restraint of trade illegal; penalty

*Every **contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.** Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.*

It continues:

15 U.S. Code § 2 - Monopolizing trade a felony; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

and also:

15 U.S. Code § 4 - Jurisdiction of courts; duty of United States attorneys; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case;

and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

We have summarized many cases of this law in the Appendix attached hereto. Sherman is not lightly applied and it often requires substantial hurdles to overcome in asserting it, especially due to the criminal penalties that attach. However in our examination of the Parler case our current understanding appears to admits to its application as we shall demonstrate.

4.2 CLAYTON

Clayton focuses on restraint of trade via a multiplicity of means primarily focused on issues of pricing and agreements that are compulsive[5]. Namely it notes:

Every contract, combination in form of trust or otherwise, or conspiracy, ***in restraint of trade or commerce in any Territory of the United States*** *or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.*

4.2.1 Tying on a Statutory Basis (Clayton Section 3)

Tying is a simple concept and is covered under the restraints of Clayton. In a simple example, if a shoe manufacturer sells shoes but, in the contract, demands that the seller also agree to sell their shoe polish say on an exclusive basis, then the seller has tied the sale of shoes with an exclusive sale of polish. That is a simple example of tying. We now begin with Clayton Section 3 (15 USC 14) which states[6]:

It shall be unlawful for any person engaged in commerce, in the course of such commerce*, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement,* ***or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or***

[5] https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title15-section3&num=0&saved=%7CZ3JhbnVsZWlkOlVTQy1wcmVsaW0tdGl0bGUxNS1zZWN0aW9uMTI%3D%7C%7C%7C0%7Cfalse%7Cprelim

[6] https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title15-section14&num=0&saved=%7CZ3JhbnVsZWlkOlVTQy1wcmVsaW0tdGl0bGUxNS1zZWN0aW9uMTI%3D%7C%7C%7C0%7Cfalse%7Cprelim

seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

The above is a statutory prohibition relating to tying. In our case in point, the tying is related to what appears as an unstated "agreement" not to deal with information or customers who in the process of speaking their political opinions do so at variance with the vendor.

Part of the tying argument rests on the interpretation of the term "commodity". As written and as initially interpreted, the term was means to deal with goods. Yet the plain text of the law shows its expansion beyond a specific form of commodity, thus allowing for a more inclusive interpretation. As such one can consider the "political views" held by a third party something of value to that party and something which they believe can be monetized. It thus can be argued that of a transaction demands the tying of a "political view" or actions related thereto to an agreement then in a broad sense this "political view" demand has the same character as a commodity. It has value to the third party.

Now as Tobia has noted regarding the use of ordinary meaning in interpreting the law:

Within legal scholarship and practice, among the most pervasive tasks is the interpretation of texts. And within legal interpretation, among the most pervasive inquiries is the search for ordinary meaning. Across the interpretation of contracts, wills, trusts, deeds, patents, statutes, regulations, treaties, and constitutions, legal theorists and practitioners regularly evaluate the text's ordinary meaning …

That critique highlights a crucial insight.

Ordinary meaning inquiries are often understood as empirical ones, which aim to discover descriptive facts about meaning. Theories holding that a legal text must be applied consistently with its ordinary meaning do not typically characterize their project as a normative inquiry. Rather than debating how a text should be understood by some ideal person, these theories ask how a text would in fact be understood by ordinary people.

There are several empirical methods commonly used to inquire into a text's ordinary meaning, including consulting dictionary definitions or using "legal corpus linguistics" to analyze patterns of language usage across a corpus. The popularity of these methods is not difficult to explain. Dictionary use and the dominant form of legal corpus linguistics are both relatively easy to employ. Moreover, they often seem objective, neutral, and scientific.38 Both methods are also increasingly popular.

The Supreme Court cites dictionaries more today than ever before. *Legal corpus linguistics is certainly less prevalent, but it has also grown in use and esteem. The Supreme Court has examined patterns of word use through newspaper databases, and state supreme courts have searched corpora including the Corpus of Contemporary American English (COCA). The growing use of dictionaries and legal corpus linguistics is likely to continue. Yet, despite the enthusiasm surrounding dictionaries and legal corpus linguistics, there is surprisingly little work*

assessing what these tools actually do in legal interpretation. Although the use of dictionaries and legal corpus linguistics seems to grow more sophisticated, their reliability has never been rigorously assessed. There are important critiques of these methods from external theoretical perspectives, but we might also take an internal perspective, considering whether these methods succeed on their own terms.

Theories relying on these tools typically assume that dictionaries and legal corpus linguistics reliably reflect ordinary meaning, what "the ordinary user of the English language might understand," but the question remains: Is this assumption true?

This above analysis is essential in extending the law and its applicability. Since the Internet as ever evolving introduces new names for essentially identical constructs in the law, the Court must be informed as to how the law can be applied and interpreted. Now regards to the "ordinary meaning" of the term commodity. Let us examine the meaning in Webster[7]:

Definition of commodity

1: an economic good: such as

a: a product of agriculture or mining agricultural commodities like grain and corn
b: an article of commerce especially when delivered for shipment reported the damaged commodities to officials
c: a mass-produced unspecialized product commodity chemicals commodity memory chips

2:
a: something useful or valued that valuable commodity, patience also : thing, entity
b: convenience, advantage … the many commodities incidental to the life of a public office …— Charles Lamb

3: a good or service whose wide availability typically leads to smaller profit margins and diminishes the importance of factors (such as brand name) other than price

4: one that is subject to ready exchange or exploitation within a market … stars as individuals and as commodities of the film industry. — Film Quarterly

5 obsolete: quantity, lot

Clearly if we accept the use of "ordinary meaning" as such, then commodity may be understood to be much more than a mere thing. It is more than a carrot, a shoe, or frankly any physical entity. It reflects something of value. Indeed, in the context of the demands of the third parties related hereto, they would not make such a demand if it did not have some positive value, and a value integral to their business and/or persons. As such, it can be argued, that the demand for editing the speech on Parler to meet the unspecified demands of third parties meet the ordinary

[7] https://www.merriam-webster.com/dictionary/commodity

meaning of a commodity. Thus, in so meeting, it is consistent with the meaning in Clayton as a commodity, consistent furthermore with a tying arrangement. Thus a violation.

4.2.2 Tying Arrangements Defined

We now extend the analysis by reviewing some of the Court decisions and we quote from the Court in Kodak:

"A tying arrangement is "an agreement by a party to sell one product but only on the condition that the buyer also purchases a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier." Northern Pacific R. Co. v. United States, 356 U.S. 1, 5-6 (1958). Such an arrangement violates 1 of the Sherman Act if the seller has "appreciable economic power"' in the tying product market and if the arrangement affects a substantial volume of commerce in the tied market. Fortner Enterprises, Inc. v. United States Steel Corp., 394 U.S. 495, 503 (1969)."

A tying arrangement exists only when a producer of a desired product sells it only to those who also buy a second product from it. Consider the arrangement made by the CMRS. If a local exchange carrier who is not the I-LEC desires to enter the local exchange market by purchasing air time from the CMRS, then the CMRS may tie with the air time such services as network management, customer service, engineering services and other such services. In addition the CMRS generally ties together the interconnection between the switch of the CMRS and the switch of the I-LEC. The latter is a separable set of product offerings and the forced tying arrangement we argue is a per se violation. The Court has ruled in Jefferson Parish Hospital v. Hyde that when "forcing" occurs with a company that has "market power" that such is unlawful.

The elements of an illegal tying arrangement have been articulated by the Court in Jefferson Parish Hospital v. Hyde. Specifically the elements for a successful claim are:

i. the tie must affect more than a de minimis amount of interstate traffic;

ii. where the tying arrangement is not express, buyers must in fact have been coerced into buying the tied product as a condition of buying the tying product;

iii. the two products must be separate;

iv. the defendant must have economic power in the tying market;

v. there must not be any valid business justification for the tied sale.

We shall now go through each of these elements in turn for the case of the I-LEC and CMRS relationship.

1. Interstate Traffic

The issue of interstate traffic is a forgone conclusion in the case of telecommunications. The specificity of the interstate issue has been joined and resolved by the Congress and is stated in U.S.C. 47 Section 332.

2. Coercion

The contracts with the OS providers explicitly require the purchase of the tied elements. Namely, if one were to go to any existing provider the service offered. It is argued that that refusal is a per se violation.

3. Separate Products

In Kodak the Court ruled that products or services are separate when there is sufficient consumer demand to justify firms providing one item without the other. Let us consider the products being offered. For the providers they are:

1. App portals for the purpose of delivering the App to the End User

2. Server Farms for the purpose of running the Apps on a networked system

3. "Political View" compliance with the third party's interests with putative monetizable relationships.

We can then see that the third parties bundle these three elements into a fee for service.

4. Economic Power of Incumbent

It is beyond a doubt that the incumbent has significant economic power. As an oligopolistic player aligned with the putative monopolist player this is without a doubt. The cartel formed by the A and B band cellular providers who are for the most part the third party providers, affiliates or agents is prima facie proof of this power.

5. Business Justifications

There are no viable business justifications for the bundling of such services. This has been addressed in US v Microsoft.

4.3 PRIOR RULINGS

In the ruling of *Bell Atlantic v Twombly* (October 2006, 05-1126, 550 US 544), the Court ruled against Twombly. The Court summarizes the case as follows:

Respondents (hereinafter plaintiffs) represent a class of subscribers of local telephone and/or high speed Internet services in this action against petitioner ILECs for claimed violations of §1 of the Sherman Act, which prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with

foreign nations." The complaint alleges that the ILECs conspired to restrain trade (1) by engaging in parallel conduct in their respective service areas to inhibit the growth of upstart CLECs; and (2) by agreeing to refrain from competing against one another, as indicated by their common failure to pursue attractive business opportunities in contiguous markets and by a statement by one ILEC's chief executive officer that competing in another ILEC's territory did not seem right.

The question is one where a plaintiff can make a Sherman claim in a broad sense asserting some form of collusion or conspiracy. The Court rejected Twombly. The Court states:

Stating a §1 claim requires a complaint with enough factual matter (taken as true) to suggest that an agreement was made. An allegation of parallel conduct and a bare assertion of conspiracy will not suffice.

The Court in my opinion was correct. The Twombly claim was that there was some form of conspiracy amongst a large group of telephone carries to inhibit or prevent competition. The Court continues:

Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true. Applying these general standards to a §1 claim, stating a claim requires a complaint with enough factual matter to suggest an agreement. Asking for plausible grounds does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement.

,

Now Amazon uses this opinion as a basis for rejecting the claim for injunctive relief[8]. However the burden for injunctive relief is not as high as that for adjudication of the ultimate claim. Reasonableness based on the evidence presented should be adequate. Moreover Twombly was so vague as to be surprising that the Court even heard the argument. Generally Sherman claims are quite difficult and the hurdles quite high. Yet in the Parler case the elements may meet that burden. Clearly this demands a well versed antitrust litigation team.

[8] https://www.courtlistener.com/recap/gov.uscourts.wawd.294664/gov.uscourts.wawd.294664.10.0_4.pdf

5 RICO: CRIMINAL AND CIVIL

RICO is a law originally directed as Organized Crime. It has criminal and civil elements. We discuss the fundamental RICO elements then focus primarily on Civil RICO.

5.1 RICO PRINCIPLES

A key element of RICO is the element of racketeering. As noted in 18 USC 1961[9]:

(1) "racketeering activity" means

(A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year;

(B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), … sections 1831 and 1832 (relating to economic espionage and theft of trade secrets), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), …

(C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds),

(D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States,

(E) any act which is indictable under the Currency and Foreign Transactions Reporting Act,

(F) any act which is indictable under the Immigration and Nationality Act, …
…
(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;…

[9] https://www.law.cornell.edu/uscode/text/18/1961

Fundamentally racketeering is a pattern of an illegal activity carried out in the furtherance of an enterprise by the owners or those in control of the enterprise. Illegal may mean criminally or civil illegality. Thus, in the case at hand, if the actions regarding restraint of trade and tying, clear legal violations of Sherman and Clayton respectively, are demonstrable, by an enterprise consisting of the third parties in whole or in part, then one may have created a racketeering organization. The following discusses the consequences.

5.2 CRIMINAL RICO

Criminal RICO is racketeering. As DOJ notes[10]:

It is unlawful for anyone employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of ***racketeering*** *activity or* ***collection of unlawful debt****.*

A more expansive view holds that in order to be found guilty of violating the RICO statute, the government must prove beyond a reasonable doubt: (1) that an ***enterprise existed****; (2) that the enterprise* ***affected interstate commerce****; (3) that the* ***defendant was associated with or employed by the enterprise****; (4) that the defendant* ***engaged in a pattern of racketeering activity****; and (5) that the defendant conducted or participated in the conduct of the enterprise through that pattern of racketeering activity through the* ***commission of at least two acts of racketeering activity as set forth in the indictment****.*

An "enterprise" is defined as including any individual, partnership, corporation, *association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.*

"Pattern of racketeering activity" requires at least ***two acts of racketeering activity*** *committed within ten years of each other.*

Continuity refers either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition.

We do not currently see any criminal application nor is it our purview to do so.

5.3 CIVIL RICO

[10] https://www.justice.gov/archives/jm/criminal-resource-manual-109-rico-charges and https://www.justice.gov/archives/usam/file/870856/download

We now move to Civil RICO[11],[12]. As noted in Hamill et al:

Congress passed RICO in 1970 as part of a comprehensive legislative package aimed at combating the influence of organized crime on interstate commerce. When it was introduced, RICO was described as "an act designed to prevent 'known mobsters' from infiltrating legitimate businesses." RICO outlaws four types of activities:

(1) Section 1962(a) prohibits a person from investing in an enterprise any income derived from a pattern of racketeering activity;
(2) Section 1962(b) prohibits a person from using a pattern of racketeering activity to acquire or maintain control over an enterprise;
(3) Section 1962(c) prohibits a person from conducting the affairs of an enterprise through a pattern of racketeering; and
(4) Section 1962(d) prohibits a person from conspiring to violate §§ 1962(a), (b), or (c). "Racketeering activity" is an element common to all of RICO's prohibitions. Congress defined "racketeering" activity to include a variety of state and federal predicate crimes.

RICO is not violated by a short-term episode of "racketeering." There must be a "pattern" of racketeering activity—meaning long-term, organized conduct. Persons convicted of violating RICO's criminal provisions are subject to imprisonment and forfeiture of certain assets. When it enacted RICO, Congress included a civil remedy provision that allowed private parties to sue for injuries to their business or property caused "by reason of" a defendant's violation of RICO. Under this provision, a private plaintiff may sue in state or federal court to recover treble damages and attorney's fees caused by a RICO violation. Plaintiffs and their attorneys have invoked civil RICO in a variety of situations beyond the context of organized crime and traditional "racketeering."

Most frequently, civil RICO claims are premised on allegations that the defendant engaged in a pattern of racketeering activity by committing numerous acts of mail fraud or wire fraud. *Most courts have rejected arguments that civil RICO must be limited to conduct traditionally associated with organized crime. Nevertheless, because RICO applies only to* ***organized long-term criminal activity****, it should not apply to ordinary business disputes. Courts have found that it to be an abuse of the RICO statute to attempt to shoehorn an ordinary business or contractual dispute into a civil RICO claim. Such abuse can have deleterious effects on a defendant because of the stigmatizing effect of RICO claims and the charges of fraud often used to support them.*

The elements common to nearly all RICO violations are (a) a culpable "person" who (b) willfully or knowingly (c) commits or conspires to the commission of "racketeering activity" (d) through a "pattern" (e) involving a separate "enterprise" or "association in fact," and (f) an effect on interstate or foreign commerce. As discussed in § 16, the "collection of an unlawful debt" is itself a RICO violation even without a "pattern" of "racketeering activity." The "pattern" and "enterprise" requirements are discussed separately in §§ 12–16 and in §§ 17–25, respectively.

[11] See Civil RICO: A Manual for Federal Attorneys, DOJ, October 2007

[12] https://www.law.cornell.edu/uscode/text/18/1961

Thus we believes that civil RICO may attach to this case. However there are many hurdles that must be gotten over the see this to fruition. These are beyond the scope of the current analysis

6 SECTION 230

We believe it is worth discussing Section 230 of the 1996 Act in its entirety. This will lend additional insight to the duties of the parties as well as the lack of authority related to third parties. Many of the companies involved have sought protection in the safe harbor clauses of Section 230. However, if examined in detail, this safe harbor may, we believe, have significant limitations.

6.1 THE LAW

The statement in the 1996 Act as currently operative notes:

SEC. 230. PROTECTION FOR PRIVATE BLOCKING AND SCREENING OF OFFENSIVE MATERIAL.

(a) FINDINGS- The Congress finds the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.
(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.
(3) ***The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.***
(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.
(5) ***Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.***

(b) POLICY- It is the policy of the United States—

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;
(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;
(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;
(4) ***to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children s access to objectionable or inappropriate online material;*** *and*
(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) ***PROTECTION FOR GOOD SAMARITAN BLOCKING AND SCREENING OF OFFENSIVE MATERIAL****-*

(1) TREATMENT OF PUBLISHER OR SPEAKER- ***No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.***
(2) CIVIL LIABILITY- ***No provider or user of an interactive computer service shall be held liable on account of****—*

(A) any action voluntarily taken in good faith to ***restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected****; or*
(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

(d) EFFECT ON OTHER LAWS-

(1) NO EFFECT ON CRIMINAL LAW- Nothing in this section shall be construed to impair the enforcement of section 223 of this Act, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, United States Code, or any other Federal criminal statute.
(2) NO EFFECT ON INTELLECTUAL PROPERTY LAW- Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.
(3) STATE LAW- Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.
(4) NO EFFECT ON COMMUNICATIONS PRIVACY LAW- Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(e) DEFINITIONS- As used in this section:

(1) INTERNET- The term Internet means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) INTERACTIVE COMPUTER SERVICE- The term interactive computer service means any ***information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.***

(3) INFORMATION CONTENT PROVIDER- The term ***information content provider means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.***

(4) ACCESS SOFTWARE PROVIDER- The term access software provider means a ***provider of software (including client or server software), or enabling tools that do any one or more of the following:***
(A) filter, screen, allow, or disallow content;
(B) pick, choose, analyze, or digest content; or
(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

6.2 INTERPRETATION

Interpretation of this law in the Parler case is questionable. Parler is the Information Content Provider. In contrast the Access Software Provider can be an amalgam of a multiplicity of players. In fact, its broad definition could arguably include chip makers, router manufacturers and optical fiber interconnect system manufacturers, just to name a few.

The term Interactive Computer Services includes both Information Content Providers and Access Software Providers. It also calls out a "systems provider" without and definition thereto. Such broad and poorly constructed terms are typical in most if not all laws resulting in the ultimate determination by the Courts.

Now the "Good Samaritan" clause refers to information providers expressly and not to Access Software Providers. Thus, it can be argued in the Parler case that Parler is the Information Content Provider with Good Samaritan privilege whereas the Access Software Providers are not included in this privilege. Thus, any action taken by an Access Software Provider seeking protecting in the safe harbor clause is most likely vacant. It is not clear if the Courts have ruled on this issue at this time.

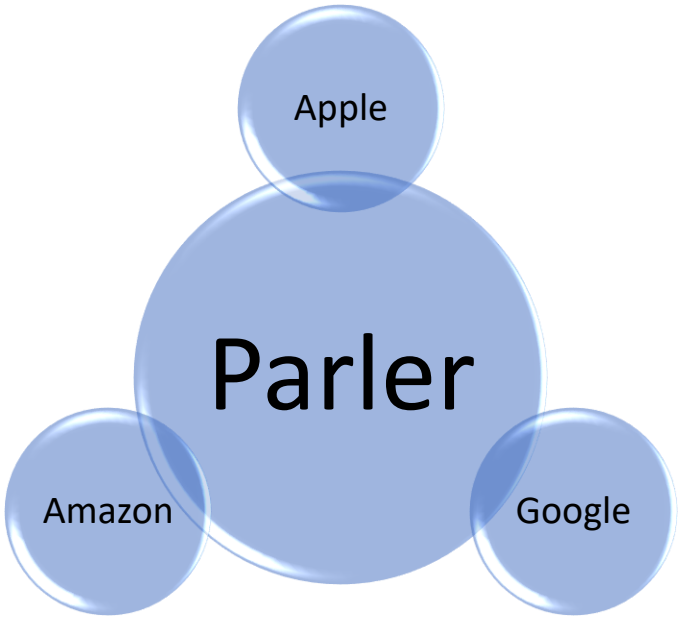
7 EXAMINATION OF PARLER

The Parler case against Amazon AWS has been filed and will work its way through the courts.

7.1 THE BUSINESS OF PARLER

Parler is in the business of providing what is termed a "social media" platform. The service Parler provides is that participants can post messages and others can view those messages and add to these postings. In effect it creates a virtual meeting place where individuals can exchange ideas, opinions, and possible engage in dialog of various sorts. This is precisely what was anticipated in the 230 Section of the 1996 Act.

Let us examine the relationships. Generally, we have the three parties under discussion. We are also aware of a significant number of other third parties who have severed relationships in a relatively similar period of time and also for generally vague and indescribable reasons. We defer any discussion related to them at this time.



In the above we arguably have "agreements" regarding the relationship between Parler and the noted third parties. In the case of Amazon (AWS) it is for server capabilities and as for Apple and Google it is for access to the OS facility based app providing the End User with access to the Parler App. We do not have access at this time to the Apple and Google agreements but Parler has presented its AWS agreement in its filing with the Court.

To achieve this business objective Parler had to have access to the facilities we have discussed earlier. Namely the End User must have an App on their device capable of interfacing with the

OS of the device, there must be a network carrying the communications and servers and software to facilitate the service.

We commence with the terms of the agreement between Amazon, AWS, and Parler related to these actions is contained below from the Trial filings[13]. First is the section on what is termed Temporary Suspension. Thus, we have

6. Temporary Suspension.

*6.1 Generally. We may s**uspend your or any End User's right to access** or use any portion or all of the Service Offerings immediately upon notice to you if we determine:*

*(a) **your or an End User's use of the Service Offerings** (i) **poses a security risk to the Service Offerings or any third party**, (ii) could adversely impact our systems, the Service Offerings or the systems or Content of any other AWS customer, (iii) could subject us, our affiliates, or any **third party to liability**, or (iv) could be fraudulent;*

(b) you are, or any End User is, in breach of this Agreement;

(c) you are in breach of your payment obligations under Section 5; or

(d) you have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

6.2 Effect of Suspension. If we suspend your right to access or use any portion or all of the Service Offerings: (b) you will not be entitled to any service credits under the Service Level Agreements for any period of suspension.

It appears that the only possible reference which AWS can have reliance upon is the security risk statement in 6.1 (a) (i). Since this term is not defined it can have many interpretations. It may mean a risk to AWS facilities and personnel, to AWS systems and services. It may quite frankly means risk to anything. Failure to craft a contract reasonably thus leaves the interpretation vague and undefined. In my opinion and in my experience the drafting of this agreement is materially defective and lacks any reasonable basis for interpretation.

We now move to the Termination clause. It is as follows:

7. Term; Termination.

7.1 Term. The term of this Agreement will commence on the Effective Date and will remain in effect until terminated under this Section 7. Any notice of termination of this Agreement by either party to the other must include a Termination Date that complies with the notice periods in Section 7.2.

[13] https://www.courtlistener.com/docket/29095511/parler-llc-v-amazon-web-services-inc/

7.2 Termination.

(a) Termination for Convenience. You may terminate this Agreement for any reason by providing us notice and closing your account for all Services for which we provide an account closing mechanism. We may terminate this Agreement for any reason by providing you at least 30 days' advance notice.

(b) ***Termination for Cause.***

(i) By Either Party. Either party may terminate this Agreement for cause if the other party is in ***material breach of this Agreement and the material breach remains uncured for a period of 30 days from receipt of notice by the other party.*** *No later than the Termination Date, you will close your account.*

(ii) By Us. ***We may also terminate this Agreement immediately upon notice to you (A) for cause if we have the right to suspend under Section 6,*** *(B) if our relationship with a third-party partner who provides software or other technology we use to provide the Service Offerings expires, terminates or requires us to change the way we provide the software or other technology as part of the Services, or (C) in order to comply with the law or requests of governmental entities.*

7.3 Effect of Termination.

(a) Generally. Upon the Termination Date: (i) except as provided in Section 7.3(b), all your rights under this Agreement immediately terminate; any fees and charges you incur during the post-termination period described in Section 7.3(b); (iii) you will immediately return or, if instructed by us, destroy all AWS Content in your possession; and (iv) Sections 4.1, 5, 7.3, 8 (except the license granted to you in Section 8.3), 9, 10, 11, 13 and 14 will continue to apply in accordance with their terms.

(b) Post-Termination. Unless we terminate your use of the Service Offerings pursuant to Section 7.2(b), during the 30 days following the Termination Date: (i) we will not take action to remove from the AWS systems any of Your Content as a result of the termination; and (ii) we will allow you to retrieve Your Content from the Services only if you have paid all amounts due under this Agreement. For any use of the Services after the Termination Date, the terms of this Agreement will apply and you will pay the applicable fees at the rates under Section 5.

Now 7. (b) (ii) appears to be the operative clause referring back to 6 which we have argued is crafted in a grossly vague and inoperative manner. Thus this cause for termination seems grossly lacking in specificity due to vagueness.

One can then reasonably argue that the basis for Termination, especially for Cause, lacks specificity and substance and thus can be considered unenforceable.

7.2 PARLER READS ONTO MICROSOFT

If one examines the issue of Parler with Apple and Google one sees the following. Apple and Google are providers of operating systems, iOS and Android respectively, to manufacturers, Apple and third parties respectively. Each OS vendor also ties to their product an App which is a portal to other Apps. They monetize that portal as well and determine what other App providers can have access to it. In effect, the relationship of both parties to Parler reads onto the relationship between Netscape and Microsoft. Namely Microsoft bundled Explorer and advantages Explorer at the expense of Netscape. We demonstrate these facts with the statements from the initial DOJ complaint.

The initial complaint (US v Microsoft (98-1232) May 18 1998) notes

2. Microsoft possesses (and for several years has possessed) monopoly power in the market for personal computer operating systems. Microsoft's "Windows" operating systems are used on over 80% of Intel-based PCs, the dominant type of PC in the United States. More than 90% of new Intel-based PCs are shipped with a version of Windows pre-installed. PC manufacturers (often referred to as Original Equipment Manufacturers, or "OEMs") have no commercially reasonable alternative to Microsoft operating systems for the PCs that they distribute.

3. There are high barriers to entry in the market for PC operating systems. One of the most important barriers to entry is the barrier created by the number of software applications that must run on an operating system in order to make the operating system attractive to end users. Because end users want a large number of applications available, because most applications today are written to run on Windows, and because it would be prohibitively difficult, time-consuming, and expensive to create an alternative operating system that would run the programs that run on Windows, a potential new operating system entrant faces a high barrier to successful entry.

4. Accordingly, the most significant potential threat to Microsoft's operating system monopoly is not from a direct, frontal assault by existing or new operating systems, but from new software products that may support, or themselves become, alternative "platforms" to which applications can be written, and which can be used in conjunction with multiple operating systems, including but not limited to Windows.

5. To protect its valuable Windows monopoly against such potential competitive threats, and to extend its operating system monopoly into other software markets, Microsoft has engaged in a series of anticompetitive activities. Microsoft's conduct includes agreements tying other Microsoft software products to Microsoft's Windows operating system; exclusionary agreements precluding companies from distributing, promoting, buying, or using products of Microsoft's software competitors or potential competitors; and exclusionary agreements restricting the right of companies to provide services or resources to Microsoft's software competitors or potential competitors.

28. Fifth, Microsoft has entered into anticompetitive agreements with virtually all of the nation's largest and most popular ISPs, including particularly Online Service Providers ("OLSs"), firms

which provide the communications link between a subscriber's PC and the Internet and sometimes related services and content as well. Windows 95 (and soon Windows 98) presents PC users with "folders" or lists including the names of certain of these ISPs that have entered into agreements with Microsoft and enable users readily to subscribe to their services. Because Windows is preinstalled on nearly all PCs in the United States, inclusion in these folders and lists is of substantial value to ISPs. As a result, almost all of the largest and most significant ISPs in the United States have sought placement on the Windows desktop.

29. Microsoft's agreements with ISPs allow Microsoft to leverage its operating system monopoly by conditioning these ISPs' inclusion in Windows' lists on such ISPs' agreement to offer Microsoft's Internet Explorer browser primarily or exclusively as the browser they distribute; not to promote or even mention to any of their subscribers the existence, availability, or compatibility of a competing Internet browser; and to use on their own Internet sites Microsoft-specific programming extensions and tools that make those sites look better when viewed through Internet Explorer than when viewed through competing Internet browsers.

30. Microsoft's anticompetitive agreements with ISPs have substantially foreclosed competing browsers from this major channel of browser distribution. Over thirty percent of Internet browser users have obtained their browsers from ISPs.

As Butts noted:

U.S. District Court Judge Thomas Penfield Jackson, presiding over the Microsoft case, appointed Judge Richard Posner, currently a judge on the United States Court of Appeals for the Seventh Circuit, to act as a mediator in the Microsoft case. Many recognize Judge Posner as having shaped antitrust policy in the second half of the twentieth century and acknowledge his "godlike stature on antitrust law." He has been harshly critical of the aggressive antitrust laws of the 1960s, and holds the view that breaking up monopolies is not always either necessary or appropriate. His views on antitrust are indicative, if not representative, of the "Chicago school's" view of antitrust, and accordingly represent a prevailing view on antitrust. After his involvement with the Microsoft case, Judge Posner explicitly wrote his views of antitrust law in the new economy.

Judge Posner is not primarily concerned that the application of traditional antitrust laws to new economy firms is insufficient in and of itself. Instead, his concern is that the institutional structure of enforcement of traditional antitrust laws is incapable of handling the unusually difficult questions of fact that arise as a result of the technical complexity of the products and services produced in new economy industries.

Judge Posner points out that while the Chicago school is "skeptical . . . about the danger to competition that is posed by unilateral firm action," the Chicago school emphasizes "the danger that heavy-handed antitrust enforcement [in the case of unilateral firm action] may suppress a practice that may seem anticompetitive but actually is efficient, or at least neutral, from the broader social standpoint." Posner, Highly technical questions can be expected to be central in antitrust cases in the new economy, as new economy firms might exercise or achieve monopoly control by technical modifications to products. Judge Posner also points to the institutional

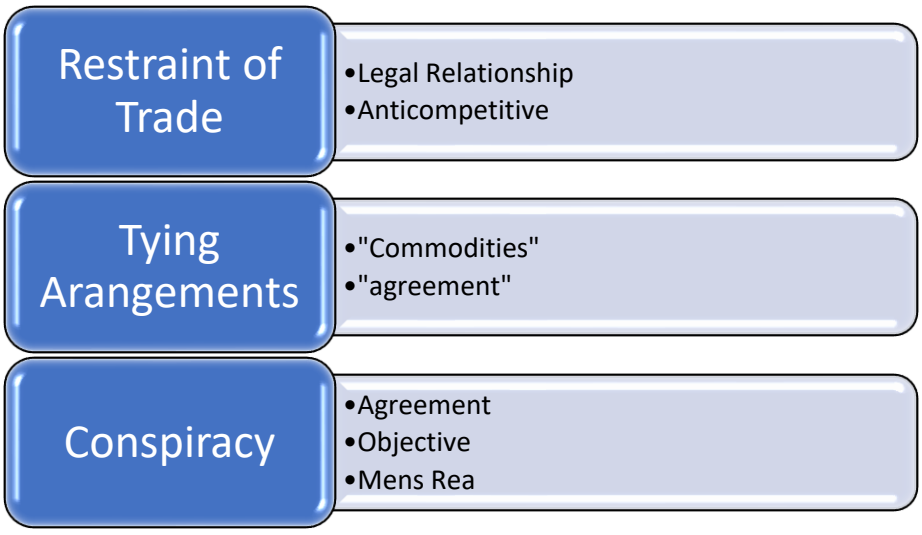
implication of rapid innovation in the new economy. The mismatch between "law time" (how long it takes to try a case) and "new-economy real time" is troubling because litigation of antitrust cases in the new economy might drag on for so long that the conditions of the industry might ultimately become irrelevant, and the litigation itself might have devastating effects on the companies involved by making investment riskier and complicating business planning.

While Judge Posner does not claim to have a definitive solution for these problems, he emphasizes the importance of having competent, neutral experts involved. This emphasis recognizes and attempts to account for the fact-intensive nature of new economy antitrust cases. Much care must be taken with respect to both the technical inquiries and the less technical inquiries because the combination of intellectual property, network externalities, and rapid growth in consumer demand creates difficult questions involving the ascertainment and measurement of monopoly

In a sense there existed a tying relationship. In the Parler/Apple-Google case the tying is that of the App install with the OS. For a vendor such as Samsung to get the OS they must also tie in the App portal for the vendor of the OS to provide access to the Apps. There is no other alternative. The Apps must come through the "tied" App portal as part of the OS.

7.3 Parler And Antitrust

Antitrust issues are generally divided into Sherman and Clayton. Clayton deals generally with pricing but also the use of trying to obtain a market advantage. Sherman is a clear restraint of trade, namely the inhibition of a putative competitor or player in the market.



8 OBSERVATIONS

Having examined the facts as best known and having examined the history of this technology and as it has been understood and interpreted over the past decades, we can reach several key observations. It again should be noted that these are not conclusive but suggestive and subject to material change as more information is obtained. On 12 January 2021 Amazon replied to the Parler Complaint[14].

8.1 ANTITRUST VIOLATIONS

We discussed Sherman and Clayton issues. Tying under Clayton we argue below. However under Sherman we see a clear "restraint of trade" argument. Furthermore, without an express written agreement, the simultaneous nature of the third party actions, and actions by other influenced third parties, may appear as a collusion between the parties even to the degree of being a conspiracy.

8.2 230 RESTRICTIONS

Section 230 applies to Parler not to third parties. Thus Parler is protected and third parties fall outside Section 230 but may have other protections. If they were Common Carriers or some other protected class they might then have a set aside.

8.3 TYING

Tying requires a commodity and using the now accepted method of ordinary meaning the "refusal to carry"

Specifically, AWS asserts:

we cannot provide services to a customer that is unable to effectively identify and remove content that encourages or incites violence against others.

Now the above requires interpretation but it also is a position asserted by Amazon, extra its express agreement with Parler, and it is a position that one can readily interpret as having both value to Amazon and as a result in the ordinary meaning is a commodity, something of value to Amazon, that it demands from Parler concomitant with the provision of the server farm service. As such, one may attempt to assert a tying claim.

8.4 OPERATING SYSTEMS AND EXCLUSIONS

[14] https://www.courtlistener.com/recap/gov.uscourts.wawd.294664/gov.uscourts.wawd.294664.10.0_4.pdf with Parler rebuttal as noted in https://www.courtlistener.com/recap/gov.uscourts.wawd.294664/gov.uscourts.wawd.294664.21.0_2.pdf

The US v Microsoft case appears to read directly on the actions of Apple and Google. Each hold a relatively clear monopoly in their respective places as OS providers. Each has added software integrated in their systems, such software to sell third party Apps. Each has restrained Parler from access to the portals and there being no other similar means due to the closed proprietary OS they are restraining trade.

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10 SUPREME COURT DECISIONS

Case	*Cite*	*Decision*	*Relationship*
United States v. Loew's, Inc.	466 U.S. at 13-14 citing 371 U.S. 38 (1962)	Court held that Loew's violated § 1 Sherman because of block booking despite having only 8% or market share but Court ruled that "requisite economic power is presumed when tying product is patented or copyrighted".	Any patent protection by the RBOC is putatively proof. The extension to this is the RBOCs ability via the standards setting body or even via the regulatory bodies to establish de factor "patent" rights by their presences in the market as the participant controlling the definition of interfaces.
United States v. Jerrold Electronics Corp.	466 U.S. at 23, aff'd per curiam, 365 U.S. 567 (1961)	Issue of two separate products. Court focused on three elements: 1. Firms other than Jerrold sold the products separately. 2. Jerrold priced the product separately. 3. Jerrold's packages were customized suggesting separate products.	The issue is the separability of such products as I-LEC interconnection and airtime. Also airtime as merely the provision of connections and not bundled with other separable products.
United States v. Fortner Enterprises (Fortner I)	394 U.S. 495 (1969)	Reiterated Northern Pacific. Namely; ...a total monopoly is not essential, rather the key is whether some buyers can be forced to "accept a tying arrangement that would prevent free competition for their patronage in the market for the tied product"	This is the case with I-LEC and the airtime issue. The tying applies to the bundled CMRS opportunity as well as the bundling into the pricing algorithms used by the PUCs. The clear way to eliminate this ruling is to go to Bill and Keep.
United States Steel Corp. v. Fortner Enterprises (Fortner II)	429 U.S. 610 (1977)	US Steel credit company had insufficient market power. The Court concluded that a tying arrangement existence is insufficient unless the entire deal makes consumer worse off than they would be in a competitive market.	The issue is the consumer welfare and this is driven by clearing the market with the most efficient use of capital by the most efficient producer of the overall product. Clearly, in the case of interconnection, be it for local service or interconnect, the consumer is better off with a lower price, which has been shown via the IEC competition to be a direct result of competition.
United States Shoe Corp. v. United States	258 U.S. 451 (1922)	The Court ruled that "while the clauses enjoined do not contain specific agreements not to use the machinery of a competitor of the lessor the practical effect of these drastic provisions is to prevent such use."	Clearly the specific enjoining of usage is not required only the effect thereto. The application herein relates to the specific use of tandem offices that may be a back door into increasing access fees.
Unger v. Dunkin' Donuts of America, Inc.	531 F.2d 211) 3d Cir. 1971)	Court held that the seller's power could be inferred from: 1. coercion. 2. resolute enforcement of a policy to "influence" buyers to take both products. 3. widespread purchase of both products by buyers.	Clearly there is a form of coercion as argued supra and there is significant influence. There is no widespread purchase of both other than is the small segment of competitors. We have demonstrated these elements in this paper.
Times Picayune Publishing Co. v. United States	345 U.S. 594 (1953)	Clayton was only to commodities. Government evoked § 1 of	The issue is whether the products are products or services. If ruled services

Case	*Cite*	*Decision*	*Relationship*
		Sherman. However although in § 3 of Clayton either "monopolistic position" or restraint of significant volume of trade was required, in Sherman both were required.	still have protection but a sharper issue to prove. Clearly the issue here is services.
Siegal v. Chicken Delight, Inc.	448 F.2d 43 (9th Cir. 1971), cert. denied, 405 U.S. 955 (1972)	Court found against Chicken by stating that if it had been secret recipe than it would have been acceptable but that defendant could have provided specifications for materials and the Plaintiff could have achieved the same results. Court ruled that three elements must be shown: 1. the scheme in question has two distinct items and provides that one may not be obtained without the other. 2. the tying product possess sufficient economic power to appreciably restrain competition in the tied product area. 3. a "not insubstantial" amount of commerce is affected.	Two distinct have been proven supra, economic power id evident via the monopoly control, and commerce is telecommunications which is per se "not insubstantial".
Northern Pacific Railway Co. v. United States	356 U.S. 1 (1958)	Court condemned the freedom of choice for consumers. Court held could show monopolistic control by simply showing "sufficient economic power to impose an appreciable restraint on free competition of the tied product". Court held the per se rule by stating: "tying arrangements serve hardly any purpose beyond the suppression of competition..."	Argue that "per se" rule can be applied directly. This is applicable to all elements of these arguments.
Kentucky Fried Chicken Corp. v. Diversified Packaging Corp.	549 F.2d 368 (5th Cir. 1977)	Court upheld Kentucky because there was no real coercion. Kentucky had approved other suppliers.	Not allowed to choose other suppliers thus a violation and Kentucky does not apply. This also applies since the monopolist controls the market.
Jefferson Parish Hospital District No. 2 v. Hyde	466 U.S. 2 (1984)	Set out five elements for successful tying: 1. must effect more than de minimis amount of interstate traffic. 2. tie is not express and coercion to buy the tied product is evident. 3. two products must be separate. 4. defendant must have economic power. 5. no valid business reason for tying. Court in Jefferson ruled that Jefferson had only 30% of market power and thus did not force "customer" to buy product. Court stated, dicta, that:	Have proved all elements supra. Also this extends the per se rule to this violation. This case has been discussed extensively in the body of the paper.

Case	*Cite*	*Decision*	*Relationship*
		"to force a purchaser to do something that he would not do in a competitive market" was condemned.	
International Sale Co. v. United States	332 U.S. 392 (1947)	Defendant may insist upon a tied sale when the quality of the tied product affects the operation of the tying product. Tying arrangement is not justified when the defendant can set quality standards for the tied product.	No issue of quality changes can be made in the issue of interconnection. Specifically, with the establishment of standards there is now a set of open and definable interfaces and performances and certifications that these interfaces must comply with. Thus any grounds from this case do not apply.
International Business Machines v. United States	298 U.S. 131 (1936)	When the tied sale is not accompanied by escape clause for the buyer who finds a better price then the tying arrangement can be used to price discriminate.	No escape clause allowed is one option to consider an antitrust case. We extend this to cover the inability to interconnect as a per se barrier to entry since it automatically precludes any competitor to enter the market in any efficient manner.
Henry v. A.B. Dick	224 U.S. 1 (1912)	Allowed defendant to force users of patented duplicating to use its paper.	This cases may have some benefit to the I-LEC but we believe that it is irrelevant since the defendant in this case had no monopoly position and it could be shown that there was some justification for the tying. Again, in the interconnection world there is a clear precedent for separation and the elimination of the tying arrangement.
Eastman Kodak Co. v. Image Technical Services, Inc.	112 S.Ct. 2072 (1992)	Court reaffirmed the view that products are separate when there is sufficient consumer demand to justify firms providing one without the other.	This extends the per se rule and reads onto the cases presented in this paper Moreover, the issue of bundling is at the heart of the current debate regarding interconnection. The I-LEC is forcing companies to interconnect at the access tandem levels and will not allow them to select their own interconnect. They are bundling transport and switching and pricing it a factor of ten to twenty times their Long Run Average Costs. .

11 THE OLD BELL SYSTEM

The following is a review of the book by Gertner espousing what in his mind was the glory of monopolistic R&D. In many ways it presages what we are seeing today in the proto-monopolistic Internet companies we have discussed herein. Posner in his Antitrust book also espouses the "need" for monopolies or proto-monopolies to be able to fund massive R&D. The fact, in reality, is quite the opposite. Ironically, these megaliths of monopolists were spawned as the classic start up. Their emergence as heavy fisted enforcers of their world view is interesting to speculate.

"The Idea Factory[15] by Gertner is a well written presentation of what happened in Bell Laboratories in its early and middle lifetime. The author has captured the view from within the Lab and has presented a history that is in many ways presented in a manner in which the Lab people would have wanted it presented. His conclusions however are subject to significant debate, if not being downright wrong.

I write this review also having heard the author present his work in Madison, NJ to an audience almost totally filled with hundreds of former Labs staff and also as one who spent a great deal of time at the Labs from 1964 through 1972, while going back and forth to MIT, plus over fifty years in the industry.

The author presents the often told tales of Shockley and the transistor, Shannon and information theory, as well as all the management types who formed, directed, and molded the Lab like Kelley and others. Many of these people I knew firsthand and as any observer the view is all too often colored by one's position at the time.

The driving presumption of the author is best stated in his introduction where he says:

"Some contemporary thinkers would lead us to believe that twenty-first century innovation can only be accomplished by small groups of nimble profit seeking entrepreneurs working amid the frenzy of market competition. Those idea factories of the past, and perhaps their most gifted employees, have no lessons for those of us enmeshed in today's complex world. This is too simplistic. To consider what occurred at Bell Labs, to glimpse the inner workings of its invisible and now vanished "production lines" is to consider the possibilities of what large human organizations might accomplish."

This conclusion is frankly a significant over-reach, if not just out right wrong, since it is posited without any basis in fact contained within the book. The author never really looks at the many other parts of the Lab, the tens of thousands who worked on miniscule parts of large systems. The R&D group at Murray Hill was but a tiny part of an enterprise whose overall goal was to ensure the monopoly that AT&T had been granted by the Federal Government and to maximize the profit made in that monopoly.

[15] https://www.amazon.com/gp/product/0143122797/ref=ppx_yo_dt_b_search_asin_title?ie=UTF8&psc=1

To understand one must recognize that in the old Bell System profit was defined as a return on investment, meaning the invested plant. Revenue thus equaled expense, plus depreciation plus that profit construct; namely the company could charge whatever it wanted to subject to the regulators limited control. The game was thus to maximize profit, which in turn meant to maximize the invested plant, and not to be maximally efficient in a competitive sense, there was no competition. Understanding the ground rules of the old Bell System is essential to the understanding of Bell Labs. No other company, save perhaps the power utilities, functioned in such a manner. This was the basis of the world view of the Labs, a world of monopolistic control.

But the "creative destruction" of the free market did begin to surround the Labs. It surrounded the Labs in the areas in which the author appears paradoxically to make them most successful. Let me discuss just three examples.

Satellite Communications: The author speaks glowingly of Pierce and his vision of satellite communications. Yet Pierce wanted dozens of low orbit satellites, apparently driven by his desire to have low time delay for voice. He wrote a paper which appeared in Scientific American proselytizing the idea. Based upon that proposal, COMSAT was formed and capitalized based upon a need for this massive investment not only in space segment but also in the complex tracking earth stations. A few days after the COMSAT IPO Hal Rosen and his team at Hughes launched Syncom I, the first synchronous satellite. Within weeks they launched Syncom II. Synchronous satellites provided global coverage with only three satellites, not the dozens demanded by Pierce's world view. COMSAT was then off with its own satellite, Intelsat 1 and its progeny using not Pierce, but Rosen. Somehow this minor fact is missing from the book.

Digital Switching: Fred Kappel was the Chairman of AT&T in the 60s during the time of the development of the first Electronic Switching System, the No 1 ESS. This system was developed by people such as Ray Ketchledge and others. They had deployed a computer based system, albeit still with analog mechanical switches called Fereeds. Fereeds were small mechanical switches that clicked and clacked. The Fereeds made the new computer elements be the dog still wagged by this old technological tail cross-connection technology. Kappel wanted an all-digital switch and the Labs kept putting him off. But at the time he had another card up his sleeve. AT&T also owned Bell Canada and their Bell Labs entity called Bell Northern Research. So off he went and got them to build the all-digital switch. The entity doing it became Northern Telecom, NORTEL. NORTEL subsequently became a major switch supplier of their new and better switches to the Operating Companies. Thus, in a true sense, Kappel used the entrepreneurial spirit of the Canadians to do what the mass of people at Bell Labs would not do.

The Internet: Now in the mid-1970s the ARPA net was in early development and some of the basic principles were evolving from Government, Academia, and a bunch of small start-up companies like Linkabit and BB&N. ARPA, the DOD advanced research arm had an office called IPTO and they wanted to expand the Internet more aggressively using the public telephone network. Yet since AT&T was a monopoly they somehow had to co-opt AT&T to agree. A first step was to go to a meeting at Murray Hill and seek their support. So off go a couple of folks from ARPA and in Murray Hill they met the standard Bell System meeting of a few dozen people. The senior person, a VP I was told, began to lecture them that if they wanted this

accomplished just send them the money and they would deliver what they felt was the correct design. The ARPA folks walked away somewhat aghast and immediately reached the conclusion that they would develop what became the Internet, totally independent of AT&T. This was, in a sense, the final straw since it sowed, in my opinion, the seeds for AT&T's ultimate destruction, not the Judge Greene breakup.

The author, in my opinion, misses many other R&D entities which had a significant role in the evolution of technology, oftentimes well exceeding Bell Labs. Let me discuss just a few:

MIT Rad Lab: At the beginning of WW II Vannevar Bush set out to establish a center for R&D focusing on radar. Bell Labs had tried to capture this jewel but Bush wanted a more innovative and competitive center and as such he chose MIT and from that came the Rad Lab. The Rad Lab was composed of engineers, but they were drawn from many places and the best part was that when the war was over they went back to those many places. The Rad Lab designed radar but radar had the same elements as communications, and specifically digital communications. Thus from the Rad Lab came such innovations as the modem, designed by Jack Harrington, to interconnect signals from distributed sites. From the Rad Labs came rapidly effected engineering systems, and the terms system is critical, because the parts all worked together. From the Rad Labs came a set of book, the Rad Lab Series, which became the bible for engineers who entered the wireless world and the digital age. The Rad Lab was a petri dish that bred hundreds of engineers who went forth and created the core "startups" in the Cambridge 128 areas and also in Silicon Valley.

DoD Design Companies: It is well known that many of the transistor companies were driven by the demands of DOD. Also many of these same types of companies in Silicon Valley and in the 128 Corridor were driven by DOD money as well. Groups of engineers educated from the Rad Lab type entities of WW II came out and started small companies fed from the DOD demands in those days. It allowed for many bright engineers to experience the "startup" albeit at the Government trough.

This this book has strengths and weaknesses. Its strengths are:

1. A well written story of some of the key players in Bell Labs.

2. A well described evolution of the development of the management techniques.

3. An excellent discussion of some of the major personalities in the R&D world at the time.

Its weaknesses however should be considered when taking the author's conclusions to heart. Namely:

1. This is truly a tale written from the perspective of Bell Labs. It totally fails to consider the competitors and thus when reaching his conclusion the author does so without any basis in fact. He totally ignores the weaknesses of such a system as Bell Labs and moreover he fails to consider the alternative entities such as the Rad Lab and its offshoots. In my opinion this is the major failing of this book. It would have been much more credible and useful if the author had

looked at Bell Labs in the context of the total environment; the strengths and weaknesses and the competitors and alternative models of research.

2. The monopolistic structure of AT&T was a major driver for what people do and why. The issue of return on investment being the profit, and not revenue less expenses, is a true distortion of what is done and why. This idea of a world view is a formidable force. It molded what the Labs and AT&T did and why they did it. The author seems to be totally devoid of any notion of its import.

3. There were many failures at Bell Labs, and those failures were never truly perceived by those within the system, and it was this blind spot that in my opinion also led to its downfall. The author missed a great opportunity to follow up on this. Instead we see all these Herculean minds making great successes and yet the system collapses.

4. Bell Labs was enormous in size and scope at its high point. I had spent time at Holmdel, Whippany, Indian Hill, Andover and even a brief stint at the remains of West Street. Yet the focus is on Murray Hill and a small part of a small part. This is especially disturbing in light of the author's global conclusion which is reached without a single discussion of these areas. To do Bell Labs justice one must perforce covers these as well. The Pierce, Shockley and Shannon tales are told again and again, but the efforts of the hundreds of thousands of others over the decades are still silent. In the presentation by the author before a mostly former Bell Labs group it was clear that my observation on this point had substantial merit.

Overall, there is a significant story to be told but this author does not accomplish it. In fact the author's statement denigrating the entrepreneur and the process of "creative destruction" is made without any attempt to understand the difference between a monopolistic structure and competitive markets. Perhaps if we had kept the old paradigm we would still have our black rotary dial phones."