

## Telecommunications Industry Association

Communications Act Update  
Responses to Questions from the House Energy and Commerce Committee  
January 31, 2014

### **1. The current Communications Act is structured around particular services. Does this structure work for the modern communications sector? If not, around what structures or principles should the titles of the Communications Act revolve?**

The current structure of the Communications Act does not work effectively for the modern communications sector.

Recent technological advances are pointing the way towards a radically different future based around very different services, not just those common today. The advent of miniaturization and the rapid reduction in information & communications technology (ICT) equipment costs means a future in which nearly everything – home appliances, furniture, automobiles, public spaces & property, medical devices, even clothing – will be connected in an “Internet of Things” that will transform and enhance the quality of our daily lives. Indeed, the day may not be far off when the majority of communications traffic will not be initiated in response to direct human requests.

What all of these services have in common is a reliance on broadband. As a result, a modern Communications Act should be re-built to focus around the unifying principle of achieving universal, reliable, and affordable access to broadband – not just by people but by devices themselves. In doing so, Congress should recognize the successes that a light-touch regulatory model for advanced value-added services – today’s “information services” – has led to, and preserve this principle going forward.

### **2. What should a modern Communications Act look like? Which provisions should be retained from the existing Act, which provisions need to be adapted for today’s communications environment, and which should be eliminated?**

The FCC has an important public interest role to play in ensuring that all Americans have access to broadband. Indeed, Congress should articulate and consolidate – perhaps in one title or section of the Act – all of the *specific* public interest objectives it seeks to achieve. These could include, for example:

- Universal high speed broadband service to homes, libraries, and schools;
- Availability of broadband services in public spaces such as roadways or parks, and for public purposes;
- Reliable emergency communications for services such as 9-1-1, and for public safety responders, the realization of the full potential of a nationwide public safety broadband network;
- Accessibility for those with disabilities.

Second, the laws of physics mean that spectrum is limited, so government will continue to play an important role in avoiding the “tragedy of the commons” problem whereby spectrum becomes unusable. However, today’s service-specific and balkanized regulations governing spectrum allocations need to be overhauled in response to the convergence around broadband. Moreover, the Act should look to the future by accommodating various assignment approaches including traditional licensing, unlicensed uses, or emerging hybrid models based on technological advances in spectrum sharing.

A national spectrum policy must reflect the following principles to allow the nation’s use of radio spectrum to evolve to meet changing demand and innovation:

- Spectrum allocations need to be predictable – identifying demand and changes in demand, understanding the pace of radio technology development by platform, and planning for the long term are all part of a spectrum policy plan that can support predictability for both commercial and government users.
- For commercial allocations, flexible use policies consistent with baseline technical rules that are technology-neutral, has proven to be the best policy.
- Government allocations of spectrum should be better managed to ensure better usage of scarce spectrum resources for all users.
- Policies should encourage more efficient use of spectrum where technically and economically feasible.
- In cases where band sharing is technically and economically possible, policies must advance good engineering practice to best support an environment that protects those with superior spectrum rights from harmful interference.

Third, the FCC’s regulatory authority should be connected directly to achieving the specific end-user objectives set forth by Congress. Intermediary regulations – whether imposed by the agency or by statute – should be eliminated. For example, the current Act’s mandates regarding provider-to-provider issues such as interconnection need to be re-evaluated in the context of the IP transition, since the nature of technology means that such regulations may always lag behind business models and changes in consumer demand.

Instead, the FCC’s role should be to regulate with a light touch, much as it presently does in the information services space. It should intervene only in cases where demonstrable evidence shows a disruption to the ecosystem in which industry can continue to innovate, consumers are protected, and Congress’ specific user-facing objectives are achieved. Indeed, the initial response to the D.C. Circuit’s recent decision from Internet service providers was to express their continued commitment to maintaining an open Internet, which is not surprising since the current dynamic ecosystem serves the long-term economic interest of all concerned. Market forces should be allowed to operate more smoothly in responding to changes in content delivery models, including the establishment of more transparent and efficient secondary markets.

Fourth, although forward-looking legislation will always be difficult in such a rapidly-evolving marketplace, there may be specific things Congress can do to (literally) pave the way to the

future. For example, “dig-once” legislation would require empty conduits for telecommunications to be incorporated into road construction and other public infrastructure projects. Over time, this simple policy could greatly decrease network deployment costs while facilitating future technologies such as intelligent transportation systems.

**3. Are the structure and jurisdiction of the FCC in need of change? How should they be tailored to address systemic change in communications?**

First, Congress need not, and should not, dictate the internal organizational structure of the FCC. The Communications Act wisely grants significant discretion to the Commission itself (and to its chairman) to organize the agency in a manner best suited to achieve the statutory objectives established by Congress. For example, Chairman Michael Powell merged the former Mass Media and Cable Bureaus into one Media Bureau, reflecting the commonalities in the underlying content delivery. Undoubtedly a future Communications Act may lead to an eventual restructuring within the agency to better align with its assigned statutory objectives.

Second, Congress should improve spectrum management broadly, including both government and private uses of spectrum. To begin with, Congress should clarify the jurisdiction of various agencies, including both the FCC and NTIA, regarding management of the entire electromagnetic spectrum. Large portions of spectrum are currently used for federal government or other public purposes, and better management of all the nation’s spectrum resources is needed to meet ever-increasing demand today and in the future “Internet of Things.” As things stand, even a spectrum inventory remains a challenging task, but a forward-looking Communications Act that is simpler, more transparent, and clarifies agency roles would greatly facilitate more efficient spectrum use. Congress should also allocate a small fraction of future spectrum auction revenues towards better spectrum management and towards (currently underfunded) telecommunications R&D efforts on topics like spectrum sharing.

**4. As noted, the rapidly evolving nature of technology can make it difficult to legislate and regulate communications services. How do we create a set of laws flexible enough to have staying power? How can the laws be more technology-neutral?**

First, Congress should generally refrain from micro-management of technical issues. The current Communications Act wisely charges the FCC to resolve detailed technical matters, including issues such as radio interference and the interconnection of devices to networks. Continuing with those two specific examples, legislative mandates on receiver standards or the interoperability of devices are not appropriate. Rather, much better solutions would come from simpler and more transparent spectrum management in the first place, or by focusing on whether Congress’ specific public interest objectives regarding universal access to new technologies are being achieved, respectively.

Second, with the FCC expected to play an important role even under a future Communications Act, Congress should enhance the quality of the FCC’s work through process reform legislation. Indeed, the House Energy and Commerce Committee recently advanced meaningful and bipartisan legislation. Another useful proposal once championed by former Sen. Olympia Snowe

would allow each FCC commissioner to hire a technical staff member, likely sharpening the quality of technical discussions and debates within the agency prior to formulation of final rules.

Third, adopting a set of laws based around the general principle of broadband, rather than regulatory silos based on legacy services, will go far towards ensuring the laws' staying power. A legislative focus on specific, well-defined public interest objectives will ultimately prove more durable in achieving those objectives as technology evolves, rather than an approach which micro-manages how content providers, network operators, and customers should relate to each other.

**5. Does the distinction between information and telecommunications services continue to serve a purpose? If not, how should the two be rationalized?**

In a broadband-oriented world, the legacy distinction between information and telecommunications services will no longer serve a useful purpose.

The distinction between information and telecommunications services – or “basic” and “enhanced” services – at one time provided a very useful framework to distinguish services furnished by regulated communication networks from emerging “data processing services.” This division focused on a technological difference between circuit / message switching and data processing. The policy succeeded in allowing new value-added services that required telecommunications transport to be introduced free from the encumbrances of regulation or legacy carrier market power. Indeed, its success facilitated the rapid adoption of the Internet in the U.S.

However, as a matter of basic technology, that once-useful distinction between circuit / message switching and data processing is no longer relevant in a broadband world in which all communications traffic is delivered via Internet Protocol. As a result, services going forward will likely look more like “information services” than “telecommunications services,” at least as those terms were envisioned in 1996.

This blurring of the lines and increasing competitiveness of telecommunications markets also permits a reevaluation of the extent to which legacy regulation is still required. The market for broadband is highly competitive, with most consumers having access to various modes of broadband service delivery and new communications technologies constantly being developed. Going forward, a unified light-touch model for regulation should be focused on ensuring universal, reliable, and affordable access to broadband – both by people and by devices themselves – which ensuring that advanced value-added services can continue to facilitate innovation as they have done under the current light-touch model.