



Telecommunication Industry Association Comments regarding House Energy & Commerce Committee's Competition White Paper

1. *How should Congress define competition in the modern communications marketplace? How can we ensure that this definition is flexible enough to accommodate this rapidly changing industry?*

Telecommunications policy should replace the current “regulatory silos” that are based on legacy services to reflect a broadband marketplace of competing services and technologies. 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.

2. *What principles should form the basis of competition policy in the oversight of the modern communications ecosystem?*

A modern Communications Act should be renewed to focus around the unifying purpose of achieving universal, reliable, and affordable access to broadband without undue subsidization. In doing so, Congress should recognize the successes that a light-touch regulatory model has had in enabling advanced value-added services.

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 more closely resemble

“information services” than “telecommunications services,” at least as those terms were envisioned in 1996, and regulation should be consistent with this change.

3. *How should intermodal competition factor into an analysis of competition in the communications market?*

Multiple technologies and their associated business platforms directly challenge each other in the marketplace in a manner not fully contemplated at the time of the 1996 Act. In addition, over-the-top services compete against stand-alone services, and service providers offer “triple-play” and “quad-play” packages. Policies should be updated to reflect this reality.

4. *Some have suggested that the FCC be transitioned to an enforcement agency, along the lines of the operation of the Federal Trade Commission, rather than use broad rulemaking authority to set rules a priori. What role should the FCC play in competition policy?*

Beyond assuring a competitive marketplace, 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 access to homes, businesses, public safety, libraries, and schools without undue subsidization;
- 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 an interoperable nationwide public safety broadband network;
- Reasonable telecommunications accessibility for those with disabilities.

5. *What, if any, are the implications of ongoing intermodal competition at the service level on the Commission's authority? Should the scope of the Commission's jurisdiction be changed as a result?*

The market for broadband is highly competitive, with most consumers having access to various modes of broadband service delivery.

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 – while ensuring that advanced value-added services can continue to facilitate innovation as they have done under the current light-touch model.

6. *What, if any, are the implications of ongoing intermodal competition on the role of the FCC in spectrum policy?*

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," using a range of technologies and services.

As things stand, even conducting a spectrum inventory remains a challenging task. 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

The laws of physics dictate that spectrum is a limited resource, so government will continue to play an important role in avoiding the "tragedy of the commons" problem, whereby spectrum becomes unusable. Today's service-specific and balkanized regulations governing spectrum allocations need to be reexamined 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 have generally 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.

7. *What, if any, are the implications of ongoing intermodal competition at the service level on the FCC's role in mergers analysis and approval?*

The definitions of markets should reflect the increasing competitiveness of telecommunications markets across services and technologies. Such a holistic market analysis will also permit a reevaluation of the extent to which legacy regulation is still required, particularly where that regulation is imposed on only some of the competitors.

8. *Competition at the network level has been a focus of FCC regulation in the past. As networks are increasingly substitutes for one another, competition between services has become even more important. Following the Verizon decision, the reach of the Commission to regulate "edge providers" on the Internet is the subject of some disagreement. How should we define competition among edge providers? What role, if any, should the Commission have to regulate edge providers – providers of services that are network agnostic?*

The legacy regulatory distinction regarding "edge providers," between information and telecommunications services – or "basic" and "enhanced" services, 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. TIA cautions against bringing "edge services" under the ambit of telecommunications regulation.

Were this important distinction not continued, to the extent that "edge providers" benefit from universal broadband service, it could be argued that they should also contribute to the subsidization programs that will spur and support universal broadband service.¹

¹ Of historic note, "enhanced service providers" (the previous term for information service providers) were originally exempted from the payment of access charges by the FCC on what was supposed to be a "temporary" basis in order to protect that "nascent industry."

9. *What regulatory construct would best address the changing face of competition in the modern communications ecosystem and remain flexible to address future change?*

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.

Although forward-looking legislation will always be difficult in such a rapidly-evolving marketplace, there may be specific things Congress can do (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.

10. *Given the rapid change in the competitive market for communications networks and services, should the Communications Act require periodic reauthorization by Congress to provide opportunity to reevaluate the effectiveness of and necessity for its provisions?*

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.