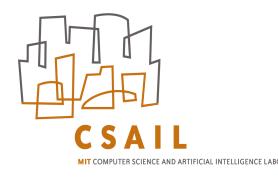
Challenges of Reconciling Broadband and Internet Policy: do we need a new Communications Act?

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See... Lehr & Sicker (2016), "Do you want your Internet with or without entertainment video?" TPRC44, available at http://ssrn.com/abstract=2757374

Broadband & Internet are distinct

- Both are essential infrastructure for society & economy
- "Broadband" is IP access platform that may be used for BIAS and other (potentially unregulated) services (e.g., Video, VoIP).
 - A potential bottleneck facility: a component that needs to be shared if competition is to be feasible in market(s) dependent on that component
 - Open, non-discriminatory access to facilitate competition.
 - Internet is not only market that may use; may not be bottleneck for all markets that make use of.
- "Internet" is network of independent IP networks that are globally reachable, providing an end-to-end platform for content & applications.
 - Market for end-to-end service provisioning and interconnection.
 - Connectivity (reachability, interoperability) & appropriate QoS (QoE)
 - Access may not be only bottleneck. Many participants not last-mile.

Communications Act 1934 (as amended)

• Confusing patchwork of legacy legislation, regulatory decisions, Court decisions accumulated over decades… *showing its age...time to level set*

Legislation: 47 U.S.C. (CommAct34, TA96, CableAct92, etc.)

• CHAPTER 1 - TELEGRAPHS (§§ 1.. to 17)

- * 1,473 sections
- CHAPTER 2 SUBMARINE CABLES (§§ 21 to 39)
 CHAPTER 3 RADIOTELEGRAPHS (§ 51..)
- CHAPTER 4 RADIO ACT OF 1927 (§§ 81.. to 120)
- CHAPTER 5 WIRE OR RADIO COMMUNICATION (§§ 151 to 622)
- CHAPTER 6 COMMUNICATIONS SATELLITE SYSTEM (§§ 701 to 769)
- CHAPTER 7 CAMPAIGN COMMUNICATIONS (§ 801..)
- CHAPTER 8 NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION (§§ 901 to 942)
- CHAPTER 9 INTERCEPTION OF DIGITAL AND OTHER COMMUNICATIONS (§§ 1001 to 1021)
- CHAPTER 10 LOCAL TV (§§ 1101 to 1110)
- CHAPTER 11 COMMERCIAL MOBILE SERVICE ALERTS (§§ 1201 to 1205)
- CHAPTER 12 BROADBAND (§§ 1301 to 1305)
- CHAPTER 13 PUBLIC SAFETY COMMUNICATIONS AND ELECTROMAGNETIC SPECTRUM AUCTIONS (§§ 1401 to 1473)

e-CFR data is current as of November 29, 2016

Title	Volume	Chapter	Browse Parts	Regulatory Entity
Title 47	1	- 1	0-19	FEDERAL COMMUNICATIONS COMMISSION
Telecommunication	2		20-39	
	3		40-69	
	4		70-79	
	5		80-199	
		Ш	200-299	OFFICE OF SCIENCE AND TECHNOLOGY POLICY AND NATIONAL SECURITY COUNCIL
		III	300-399	NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, DEPARTMENT OF COMMERCE
		IV	400-499	NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, DEPARTMENT OF COMMERCE, AND NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

47 U.S.C. Chapter 5 – Wire or Radio Communication

- Sub Chapter I: General Provisions (47 U.S.C. §151-162) establish FCC
- Sub Chapter II: Common Carriers (47 U.S.C. § 201-276) "Title II" Telecom regs
- Sub Chapter III: Radio (47 U.S.C. § 301-399) -- Spectrum management, broadcast media
- Sub Chapter IV: Procedural and Administrative (47 U.S.C. § 401-416) -- process
- Sub Chapter V: Penal Provisions; Forfeitures (47 U.S.C. § 501-510) -- process
- Sub Chapter VI: Cable Communications (47 U.S.C. § 521-573) "Title VI" Cable
- Sub Chapter VII: Miscellaneous Provisions (47 U.S.C. §601-622) -- miscellaneous

Communications Act of 2021

Title I: FCC – goals, scope, authority

 What we want from our essential communications infrastructure (not what technology...)

Title II: Bottleneck Facilities Regulation

- Open access & Interconnection
- Structural remedies

Title III: Communications Market Monitoring & Enforcement

- "Powell's 4 Principles"
- Universal Service plan
- Measurement, disclosure, transparency
- Rule-making authority & process

Title IV: Spectrum Management

Title V: Public Safety and Critical Infrastructure

Title VI: Transition Plan

?? More ??

A first-cut draft... work-in-progress...

Communications Act: what's needed (not needed…)

- FCC: independent expert regulatory agency
 - Communications Policy is industrial policy, so need sector-specific
 - Scope: flexibility & authority to act (pre-empt), but clear mandate
 - Regulatory authority for markets: traffic cop that may do nothing (but could...)
- What needed (hold for a minute...)
- What may not be needed
 - Spectrum: scarce resource, not industrial policy. Unify NTIA/FCC authority, eliminating false distinction between govt/comm spectrum
 - Broadcast: Media regulation (must-carry, program access, concentration)?
 - Cable: separate ILEC/CableCo regs no longer sensible. (Title VI replaced)

Telecom Policy: broadband platform & open Internet

- Goals: shared bottleneck BB platform & preserve open Internet
 - Identify threats to markets, and then, remedies better than the harms
- Necessary agenda items
 - Industrial policy: promote competition & access adv telecom services, markets instead of C&C, wholesale instead of retail
 - Universal service: what everyone should have, but are subsidies needed?
 - Public Safety & Crit infrastructure: e911, CALEA, reliability (→ DHS?)
- Tools: if Markets, not Regulation (government directed C&C)
 - Measurement, Transparency & Disclosure Policies (for markets...)
 - Structural remedies (to focus and limit scope of regulatory distortions)
 - Open access rules & Interconnection (for bottlenecks, e2e)
 - Last-mile bottlenecks: some but not all markets (geo & vertical)
 - Open Internet: interconnection? Routing? Security? Clouds?
 - Ex post enforcement authority ("walk softly but carry a big stick" ??)
- (AND, long transition 10yrs+ since always living with legacy)