A New Telecom Act?

Douglas C. Sicker
Lord Endowed Chair
Head, Department of Engineering and Public Policy
Professor, College of Engineering & School of Computer Science
Carnegie Mellon University
Director, Broadband Internet Technical Advisory Group (BITAG)

Workshop on Internet Economics (WIE)
UCSD
Overview

• Agenda
  – Why are we talking about a rewrite?
  – What do we want?
  – An open discussion

• Open Discussion
  – What matters?
  – How are we covering this now?
  – Is it appropriate and right for future?
  – What might be a better approach?
Why
Why?

• The 96 Act did not consider many of the challenges we now face
• The FCC has worked to keep pace (through rulemaking), but
  – Convergence and restructuring of the networks where services are offered in different ways over multiple evolving technologies
  – HW/SW boundaries blur; service, network, equipment provider boundaries blur; evolution is rapid and unpredictable
  – Inconsistent set of rules across technologies offering critical services
• So what matters and where should we be heading?
• BTW, not useful to argue about
  – Current feasibility of reform
  – Competitiveness of only the last-mile (bottleneck likely to shift)
  – Whether we understand the details of the current Act and Rules
  – Which regulatory approach to take
  – The completeness of what we propose today
What do we want?
What do we want?

- What do we want?
  - kc’s and Dave’s aspiration list
  or
  - Open Internet, reliability, security, privacy, availability, affordability, interconnected, public safety, CALEA, e911, media rules (ownership, must carry, access), attachment, access to spectrum, and many things not listed here

- What approach? (maybe we can ignore this today)
  - Transition plan, sunsetting, definitions
  - Prescriptive (structural remedies, common carriage, price regulation), reactive (competition analysis, ALJ and hearings), both, something else
  - Transparency, Disclosure, Measurement (security, market, BW, loss, delay, reliability...)
  - Forbearance, preemption, agencies, enforcement (authority and the means)
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...
Open Discussion
New Act (or rules)

- What matters?
- How are we covering this now?
- Is it appropriate and right for future?
- What might be a better approach?
New Act (or rules)

• What matters?
  – Open Internet, device attachment, reliability, security, privacy, availability, affordability, interconnection, public safety, CALEA, e911, media (ownership, must carry, access), CPNI, access to spectrum and all of those things that we didn’t think of

• How are we covering this now?
• Is it appropriate and right for future?
• What might be a better approach?
New Act (or rules) – an example

• What matters?
  – Access to spectrum

• How are we covering now?
  – FCC (Commercial), NTIA (Government)

• Is it appropriate and right for future?
  – No, a highly ineffective process
  – Should be managed as scarce resource, not as tool for industrial policy
  – Need facts and framework to enable efficient and effective use
  – Artificial distinctions - should have unified regulatory authority

• What might be a better approach?
  – Unified independent spectrum regulator
New Act (or rules)

- **What matters?** Protect Customer Proprietary Network Information (§ 222)
- How are we covering this now?
- Is it appropriate and right for future?
- What might be a better approach?
New Act (or rules)

- What matters?
- How are we covering this now?
- Is it appropriate and right for future?
- What might be a better approach?
Thank you

sicker@cmu.edu
extras...
Structure and intent of the 96 Act

- Preemption – ability of the Feds to preempt state and local gov
- Interconnection – overcome incumbent resistance to interconnect new entrants
- IC compensation – recover the cost of carrying a call (in a calling party pays model)
- Entry into LD – let local phone companies offer long distance
- Wholesale access to network elements – provide new entrants cost-based access to incumbent network elements
- Universal service – how to ensure that all consumers got access to telecom service
The Current Act and Rules

• Lehr covered this
• Pillars of the 96 Act were competition and deregulation
  – Deregulation has occurred. Competition can be argued.
  – 96 Act amended parts of the 34 Act, representing a long, complex document
  – A massive set of proceedings followed the passage of the 96 Act, focused on
    competition in the telecom networks (much of this is now marginally applicable)
  – Many court decisions followed
• Many other related rulemakings (cable, broadcast, wireless, enforcement...)
• Open Internet rulemaking occurred (and again a visit to the courts)
• The Act, the Rules and the Court decision together create a structure that govern
  communications in the US

• We don’t have time to discuss any details, so our discussion will be incomplete
  and possibly inaccurate. That’s OK, it’s just a start – a thought experiment -- and
  many of you do know the details or at least have strong opinions.
Going forward

• **What do we want?**
  – Do we codify Open Internet (how much of it)?
  – How about those set-top boxes?
  – Do we want a new competition model, a new interconnection model, ...?
  – Do we want to identify critical services and obligations?
  – What about reliability, security, availability, affordability, interconnection, public safety, CALEA, e911, media (ownership, must carry, access...), enforcement, ...?
  – Do we create a set of reporting requirements for security, reliability, performance, ...?
  – What about privacy (of search, of access, of location, of whatever)?
  – Do we split responsibility between FTC and FCC on some things? Do we consolidate?

• **What approach to take and what data might we want to collect?**
  – Prescriptive (structural remedies / common carriage), reactive (competition analysis), both, something else
  – Transparency and Disclosure policies, Measurement (BW, loss, delay, reliability...)
  – Ex post enforcement (authority and the means)

• **Do we need a new Act to accomplish any (all) of this?**