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

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December 9, 2016

See... Lehr & Sicker (2016), "Do you want your Internet with or without entertainment video?" TPRC44, available at http://ssrn.com/abstract=2757374
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)
- CHAPTER 2 - SUBMARINE CABLES (§§ 21 to 39)
- CHAPTER 3 - RADIOTELEPHONICS (§ 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)

* 1,473 sections

47 U.S.C. Chapter 5 – Wire or Radio Communication
- Sub Chapter II: Common Carriers (47 U.S.C. § 201-276) – “Title II” Telecom regs
- Sub Chapter VI: Cable Communications (47 U.S.C. § 521-573) – “Title VI” Cable
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)
  - Ex post enforcement authority ("walk softly but carry a big stick" ??)
- (AND, long transition 10yrs+ since always living with legacy)