

# *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)
- 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)

\* 1,473 sections

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

Title	Volume	Chapter	Browse Parts	Regulatory Entity
Title 47 Telecommunication	1	I	0-19	FEDERAL COMMUNICATIONS COMMISSION
	2		20-39	
	3		40-69	
	4		70-79	
	5		80-199	
		II	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)**