

The Need for Modernizing Communications Law for American Consumers

Scott Cleland, Chairman NetCompetition, January 14, 2015

The most modern part of the economy suffers from the most obsolete technology law.

- **Obsolete Technology Assumptions:** The foundation of FCC communications law remains predicated on analog technology assumptions of 1934-era copper wire telephony and broadcast radio, and remains largely unchanged by the technological innovations of digital computing, the Internet, or broadband.
- **Obsolete Economic Assumptions:** 1934 technology law still assumes a nationwide AT&T voice monopoly that hasn't existed for 30 years; 1992 technology law still assumes permanent cable monopolies that haven't existed for well over a decade. Much of the law wrongly assumes market competition can't exist.
- **1996 Act Incomplete Transition to Competition:** The core limitation of the 1996 Telecommunications Act -- that changed U.S. policy from monopoly to competition -- was that it was transitional. It never prepared for the broader deregulation warranted by the end of telephone or cable monopolies and the advent of dynamic facilities/platform-based, Internet ecosystem competition. At core, the law is at war with itself.
- **Historical Anomaly:** Congress has repealed 19th century common carrier regulation of every other American technology/industry: railroads in 1976; trucking and bus-lines in 1980; and airlines in 1984.

Severe legal obsolescence spawns increasingly serious national problems & unintended consequences.

- **The Forgotten Consumer:** Current FCC technology-based law, in contrast to FTC consumer-centric law, means consumers can't know what protections apply to what technologies. Gaps in current law do not reliably protect consumers universally with 911 emergency services, privacy, security, or disability access.
- **Anti-Innovation Bias:** FCC permission-based, 1934 technology law assumes telecom technologies are problems with consumer harms, not solutions with consumer benefits. Rigid law ensured the telephone changed little from 1934-1984. Despite Bell Labs invention of mobile phones in 1947, the FCC did not approve commercial mobile use until 1982. And despite Bell Labs invention of the computer modem in mid-1950s, they weren't broadly commercialized for consumers until the mid-1990s.
- **Uncertain and Eroding FCC Regulatory Authority:** FCC attempts to assert Internet regulatory authorities have twice been overturned legally: *Comcast v. FCC in 2010*; and *Verizon v. FCC in 2014*. It will take another 3-5 years to learn if the FCC's third attempt at asserting authority will survive legal challenge.
- **Legal Barriers to Unforeseen Competition:** The 1996 Act only allows telephone and cable companies full access to pole attachments and local rights of way, which impedes competition from new unforeseen entrants like Google Fiber. The law also does not envision or facilitate Over-the-Top (OTT) video, raising uncertainty about legal competitive access to programming and the applicability of local franchise rules.
- **PSTN Decay:** 80% of Americans have abandoned the old monopoly legacy Public-Switched Telephone Network (PSTN) for wireless, the Internet and competitors, so only 20% of Americans are using a public network designed to be paid by everyone. It is a cost sinkhole and a big drag on network modernization.

America's most valuable communications resource, spectrum, is the most-wasted & worst-managed.

- **1G Government Spectrum Management in 4G World:** Government departments and agencies control the vast majority of America's radio spectrum. There is no coherent Federal policy that spectrum is a valuable scarce resource that needs to be conserved, well-managed and put to its highest and best use for the Nation and the American taxpayer. There is no formal spectrum budget process in the executive or legislative branch, where dominant government spectrum holders have to justify their continued use of the spectrum, defend why they can't share their spectrum with other bureaucracies, or why they can't clear it for public auction. There is no accountability process to ensure government spectrum isn't wasted.