

Communications Policy: Reflections at an Inflection**

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Eighteen years ago this month, when Congress last updated the regulation of telecommunication, it was both just on time and too soon. Correctly, lawmakers sensed a new era of competition about to emerge. But they didn't anticipate the impact of the Internet. And, why would they? Back then, a mere .007 percent of the world's population was using the Internet, and just 14 million U.S. households were online. On average, it took about 30 seconds to load a web page and Americans who actually had access to the Internet spent fewer than 30 minutes a month surfing the web. Not so surprising then that the Telecommunications Act of 1996 barely mentioned the Internet at all.

Since then, we've had a digital revolution that has changed almost everything about how we communicate. Digital technology is smashing old economic paradigms, creating new businesses and choices at the speed of an eye blink, and toppling old market leaders just as fast. But this freight train of digital progress could be derailed by a regulatory paradigm devised in the 1930s. Even with the 1996 updates to our telecommunications law, government regulation of communications traces back to the 1930s when a dial telephone was the cutting edge and a single, monopoly provider made up most of the market.

It's time for a new regulatory approach that builds off of the realities of the current marketplace, assures a vibrant market of innovation and new choices for consumers, and stokes the private sector investment that fuels economic growth and jobs. So, it's encouraging that Congress has decided to examine the current laws and explore ways of making the regulatory paradigm more relevant and applicable to today's consumer demands and vulnerabilities.

But, where should telecom policy wind up?

Begin with objectives – traditional goals such as consumer protection, stoking competition, and ensuring access to communications services for all Americans remain relevant and are important to preserve. Policymakers should move beyond stale, ideological arguments about “more regulation” or “less regulation.” In its place, they should opt for evidence-based policymaking that enables market participants to meet national objectives.¹ Regulations that set prices, prescribe profits, equalize market shares, or dictate operational details should be ruled out absent clear evidence of market failure that deprives consumers of critical services and meaningful choices.

Instead of aiming at models of perfect competition that appear only in textbooks, regulators should focus on real economic metrics that tell us what’s happening in actual markets involving actual consumers. For example, we should want to know if consumers have genuine choices. Is competition strong enough that consumers can walk away from one provider and take their business to another? Are competitors delivering the services and the prices they promise, or do consumers need government’s helping hand against fraud and deceit? Is the marketplace producing investment and innovation that advance the welfare of consumers and the productivity of businesses?

Given the cost of building, maintaining, and enhancing digital infrastructure – hundreds of billions for the next decade or two – policymakers surely should consider whether proposed rules will mean more or less of the private sector investment that can drive America forward.

¹ For a detailed discussion along these lines, see John w. Mayo “The Evolution of Regulation: Twentieth Century Lessons and Twenty-First Century Opportunities,” *Federal Communications Law Journal*, 65(2), April 2013, pp. 119-156.

All of this should be seasoned with the humility to recognize our limited ability to see the future or pre-emptively govern technologies, services, and business models that don't yet exist. Recent experience is a cautionary tale of hot companies or technologies – AOL and Blackberry, for example – that tumbled far from their perch despite a sense that they were poised for dominance. Rules that presume to pick winners and favor specific technologies, or offer subsidies for classes of competitors should be met with extreme skepticism. In the real world, unimagined innovations, new business models, and consumer preferences will surprise us almost every time.

The goal must be to fashion a modern 21st-century regulatory paradigm that is suitable for a digital world in which change is the only sure thing and competition drives innovation. By embracing regulation that is based on evidence, not ideology, and protects consumers, but not companies, policymakers can unleash an industry that is poised to enhance Americans' lives, fuel economic growth, and enable market competition to maximize consumer choice.