



January 31, 2014

The Honorable Fred Upton
Chairman
House Energy and Commerce
Committee
2183 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

The Honorable Greg Walden
Chairman
Subcommittee on Communications
and Technology
2182 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

Re: Modernizing the Communications Act

Dear Chairmen Upton and Walden:

The Computer & Communications Industry Association (CCIA) hereby submits its response to your recent inquiry about “Modernizing the Communications Act.” CCIA represents large, medium-sized, and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications and Internet products and services – companies that collectively generate more than \$250 billion in annual revenues.¹ Since the early 1980s when the Reagan Administration broke up the AT&T monopoly, CCIA has worked to promote competition in all telecommunications markets, both wired and wireless. In keeping with the FCC’s Computer Inquiries of the same period, CCIA supported the regulatory distinction between “enhanced” computer information services and “basic” underlying telecommunications transmission network facilities and services.

The Telecommunications Act of 1996 preserved the same framework. Fast forward to the 21st Century and we find that same distinction between the wildly competitive world of websites and applications (information services) on the one hand and basic network access connections on the other, remaining a very relevant one. Industry re-consolidation has produced newly concentrated access markets offering most

¹ A complete list of CCIA members is available at <http://www.cciagnet.org/members>.

consumers and small businesses some choice of access providers, but not much. Even large businesses have few alternatives for critical high capacity broadband connections, known as “special access.” The economics of capital-intensive wired and wireless local networks has simply not changed enough to make multiple network build-outs sustainable, anywhere but in the most lucrative and dense geographic markets.

Our comments focus on three of your questions in particular. We address questions 2, 4, and 5, which relate to recommended changes in current law, characteristics of sustainable laws, and the distinction between telecommunications and information services.

Question 2. What should a modern Communications Act look like? Which provisions should be retained from the existing Act, which provisions need to be adapted for today’s communications environment, and which should be eliminated?

The TV broadcast retransmission provisions of Title VI, established by the Cable Act of 1992, are a part of the Telecommunications Act that should be modified in light of 21st century video market realities. Before 1992, cable operators merely were required to pay compulsory copyright license fees set by the Copyright Office for local broadcast programming they were already required to carry by the FCC “must carry” rules. Then the retransmission consent rules were enacted to allow broadcasters to negotiate for additional payments directly from cable TV operators. Detailed rules also covered terms for importation of distant broadcast signals, when, for example, a local market was missing a station of one of the 4 major national networks. Now that satellite providers, telecoms, and “over the top” Internet options have entered the video distribution market, and the broadcast industry has consolidated, these 20 year old rules are being abused by the 4 major broadcast networks whose owned and affiliated stations still operate local monopolies. FCC territorial exclusivity and program non-duplication rules protect TV broadcasters’ monopoly under Title III of the Telecom Act and give local TV stations major leverage in programming markets. In negotiations over retransmission fees, networks threaten to pull their programming from specific geographic markets if their demands are not met. American consumers have been experiencing a record number of program blackouts in recent years, while retransmission fees demanded by broadcasters from cable and satellite pay TV providers continue to escalate. This ends up costing

consumers in higher monthly bills, in addition to the inconvenience and disappointment of the blackouts. Solutions to this problem have already been proposed in this Congress, and they deserve serious and expeditious consideration.

Question 4. As noted, the rapidly evolving nature of technology can make it difficult to legislate and regulate communications services. How do we create a set of laws flexible enough to have staying power? How can the laws be more technology-neutral?

Sustainable laws are those that focus on core values and outcomes, not technology, means or methods. The 1996 Telecom Act, with its focus on advanced communications services for all Americans at reasonable rates, interconnected networks, and competition, is mostly an example of such a sustainable law. It centers around enduring values like communications services for all Americans, regardless of geography, network interconnection and competition, public safety and interoperability. With the exception of broad wired vs. wireless network categories, with only the latter involving spectrum considerations, the law is largely technology-neutral, and thus flexible in its application to new technologies. It does not distinguish for example, between analog and digital voice, data and video transmissions across networks, or whether Internet protocol (IP) is being employed or not. The Act's nondiscrimination provisions are what created enough certainty for entrepreneurs about the ability to innovate without permission from network operators, that AOL, Yahoo!, Google, eBay, Amazon, Facebook, and countless other online services could be commercially launched and fully scaled up. Treating Internet access as just another information service, which is permissible, but not required by the Act, actually upsets this certainty, even as it provides comfort to Internet access companies.

Question 5. Does the distinction between information and telecommunications services continue to serve a purpose? If not, how should the two be rationalized?

The distinction between "telecommunications" and "information services" serves the purpose of clarifying what is physical underlying network infrastructure, especially critical bottleneck end user connections, and what are "over the top" services or applications that depend on physical telecommunications networks for transmission to

and from user end points. Telecommunications networks do not depend for their functioning on any particular information service, but instead operate independently. Information services, on the other hand, are not available to any end user without a physical network connection. For this reason, CCIA believes that the distinction remains useful to Congressional policy deliberations. For example, ISP bundling of information services with network access connections creates market incentives and capabilities for anticompetitive discrimination that do not exist with respect to either service on a standalone basis. Thank you for this opportunity to share our perspectives with your Committee.

Respectfully submitted,

A handwritten signature in cursive script that reads "Catherine R. Sloan".

Catherine R. Sloan
Vice President, Government Relations
CCIA