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#CommActUpdate: Perspectives from Former FCC Chairmen

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Chairman Walden, Ranking Member Eshoo, other Subcommittee members, thank you for the invitation to testify today. While it may not be self-evident due to my youthful appearance, I have been involved for nearly 45 years in federal telecommunications policy. And, from my standpoint, what has occurred during this period is simply amazing.

When I was at the FCC in the 1970s, the average American enjoyed just three broadcast television channels, one local and long distance provider, and the Department of Defense had only begun to explore a revolutionary computer project known as Arpanet. But, today, our citizens have access to hundreds of video channels delivered by countless providers and transmission technologies, dozens of voice and text services, numerous wireline and wireless companies and, of course, Arpanet has morphed into the Internet which has become a universal medium of communications.

Interestingly, the bulk of this stunning technological metamorphosis has emerged since the 1996 Telecommunications Act was passed. That legislation significantly altered the rules governing virtually every aspect of the communications industry. The Act's purpose was as simple in theory as it was complex in implementation: to provide for a pro-competitive, deregulatory national policy framework designed to accelerate the deployment of advanced services and open all telecom markets to competition. To this end, the statute sought to eliminate cross-platform barriers and to encourage competition among service suppliers previously treated as monopolies or oligopolies.

To the credit of the drafters, the 1996 Act helped to bring about the vibrant competition that consumers currently enjoy in a variety of communications sectors, be it voice, data, or video. Whether delivered by twisted pair, coaxial cable, optical fiber, or the electromagnetic spectrum,

myriad providers today are offering their customers suites of advanced services in a marketplace that scarcely could have been imagined 18 years ago.

In my view, where the statute (and FCC implementation) has succeeded is when a lighter regulatory touch has been applied to markets, such as mobile and information services. The result has been that these sectors have thrived. For example, in the robustly competitive wireless marketplace, there are more wireless subscriber connections today than the population of the United States. And mobile broadband has spawned an entirely new industry – mobile apps – one that is estimated to employ more than 500,000 developers and related jobs and contributes billions to the economy. A similar success story is unfolding in the delivery of digital content where seemingly unlimited video streaming websites have developed to compete against traditional MVPDs offering an eagerly waiting public new ways to consume video. This marketplace is emerging because of innovation and competition, not due to government regulation.

Conversely, where the government has been less effective is in maintaining highly restrictive regulations on traditional industries like wireline telephony and broadcasting. The end result has been to disadvantage these sectors even though they may be providing services that often are equivalent to those offered by their less regulated competitors. In the developing IP-centric world, all types of providers should be able to market all kinds of services, employing the same computer-oriented language that defines digital communications. And yet, the 1996 Act continues to regulate communications markets differently based on the conduit used to reach the customer (as well as the geographic location where traffic originates and terminates).

The underlying problem is not a failure of Congressional or FCC vision. Instead, the reality is that the government has great difficulty in writing laws or promulgating regulations that

can keep pace with advancing technology, and especially so in a dynamic and ever-changing industry like communications. Thus, I would suggest that the objective of a statutory rewrite should not be to legislate premised on the current state of the marketplace or even on predictions of what it may look like in the future. Instead, Congress should consider a flexible and technologically neutral framework that will be capable of adapting to technical invention and innovation, whatever it may prove to be.

In this regard, let me close by setting forth a few principles that might guide the drafting of a new statute:

1. The industry silos embedded in the 1996 Act should be abolished and, instead, functionally equivalent services should be treated in the same manner, regardless of who provides them or how they are delivered to consumers.
2. The traditional dichotomy between interstate and intrastate services should be eliminated because regulatory classifications based on geographical end points no longer make sense in an IP environment.
3. Legislation should be focused on maintaining consumer protection and public safety regulations. Conversely, economic regulations should be considered in the case of non-competitive markets or in the event of demonstrated market failure.
4. New regulations should be instituted with a lighter touch, accompanied by sunset provisions so that the rationale for continued government intervention can be reviewed on a regular basis.

Again, thank you for the opportunity to testify today. And good luck, Mr. Chairman, on initiating what will be a very important effort.