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**A PRIMER: COMMUNICATIONS POLICY PRIORITIES FOR 2021**  
**Do's and Don'ts for Policymakers**

by

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- **DO** reduce regulation consistent with evolving competitive marketplace conditions.
- **DON'T** allow outdated rules to stand in the way of robust competition.

The disruptive force of new competitive entry in virtually every segment of the communications and information services marketplace – whether voice, data, video, and so on – means that legacy regulation of service providers cannot continue to rest on antiquated assumptions regarding a lack of adequate competition. Instead, dramatically altered marketplace conditions, driven by ongoing technological advances, require an approach that acknowledges today's increased consumer choice and empowerment. Legacy rules that burden the efficient operation of market forces and impede innovation and investment should be repealed.

- **DO** preserve the proven light-touch approach to regulating Internet service providers.
- **DON'T** succumb to calls for "public utility" regulation of Internet providers.

The COVID-19 pandemic has confirmed the wisdom of America's reliance on market forces to drive the deployment and expansion of broadband infrastructure. Other nations that

embraced the “public utility” model have faced demonstrable bandwidth shortages. But U.S. broadband networks, engineered in a market environment to respond to competitive challenges and unpredictable increases in demand, passed the stay-at-home test with flying colors. Bouncing back-and-forth between regulatory classification models applicable to Internet service providers is a distraction that hinders progress on other important issues and creates investment-d discouraging uncertainty. The current light touch regulatory regime should be sustained.

- **DO** address the need to connect truly "unserved" areas.
- **DON'T** discourage private investment through government-subsidized overbuilding.

With justification, the migration of education, work, healthcare, and social interaction to the online space during the COVID-19 pandemic has intensified the focus on those areas where broadband is not yet available. Scarce government resources are maximized when targeted to rural and other unserved locations – and squandered when used to overbuild existing, privately funded infrastructure or to attempt to achieve aspirational speeds far beyond what consumers demand. More accurate and detailed coverage maps are necessary to execute this disciplined cost-effective approach.

- **DO** target government intervention to aid low income and at-risk groups.
- **DON'T** continue relying on the Universal Service Fund as presently conceived and administered.

High-speed Internet access today has become an essential component of meaningful educational opportunity and likely will remain so after the current public health crisis has ended. Online healthcare, too, may become the norm. Carefully targeted efforts to address affordability and adoption – indeed, government spending on broadband in general – require new support mechanisms funded by congressional appropriations. The current Universal Service Fund (USF), dependent on the ever-dwindling purchase of "telecommunications services," which has led to the present surtax of 31% on all interstate and international calls, is at or near the breaking point. And the USF's "Eligible Telecommunications Carrier" requirement now inappropriately limits the pool of potential service providers and results in efficiency losses. The \$50/month emergency broadband benefit included in the \$900 billion COVID-19 relief package, tailored to low-income families and those experiencing financial hardship during the pandemic, may serve as a useful model for future efforts addressing affordability and adoption consistent with empowering consumer choice.

- **DO** promote free competition by private service providers.
- **DON'T** push for government competition against private market providers.

U.S. policy with regard to commercial communications services has been and should remain staked on free market enterprise. Entry into the commercial 5G services market by the Department of Defense – or any other federal agency attempting to offer services to the public in competition with private market providers – is inconsistent with our nation's successful private sector-based policy. Government-led commercial ventures significantly disrupt investment-backed expectations of private providers and put taxpayer money at risk. Moreover, federal efforts to subsidize and grant special protections to municipal broadband

projects thwart successful free market policy. Municipal broadband systems tend to impede competition through self-dealing and discriminatory treatment of private sector providers, while rendering taxpayers unwitting and unwilling investors in high-risk endeavors.

- **DO** identify additional spectrum bands suitable for repurposing.
- **DON'T** allow further breakdowns in the interagency coordination process.

Steadily increasing mobile broadband usage and emerging services and applications for 5G requires more spectrum, particularly mid-band spectrum. For example, although the current proposal to free up 100 MHz in the 3.45-3.55 GHz for 5G services is welcome, efforts should be made to repurpose even more spectrum in the 3.1-3.55 GHz band for private commercial use. The Department of Defense and other government agencies hold as much as 60 percent of this "goldilocks" mid-band spectrum but generally are immune from market-based incentives to put it to its highest and best use. A revitalized intergovernmental coordination process, led by a Senate-confirmed head of NTIA, can help safeguard engineering-focused feasibility analyses. In addition, to promote more efficient spectrum use, steps should be taken to assign market-approximating values to existing government spectrum allocations.

- **DO** remove remaining obstacles to siting and upgrading wireless infrastructure.
- **DON'T** allow old rules to impede infrastructure improvements.

Next generation wireless services require collocations of radios, small cell antenna placements, and other equipment upgrades. Although these infrastructure improvements typically have no environmental impact or effect on historic sites, old rules primarily designed to address larger construction projects are preventing needed network upgrades and inhibiting rapid 5G network deployments. Collocations, small cells, and other minor upgrades should be exempted from outdated inapt restrictions, and efforts must be made to enable collocations on the approximately 5,000 "twilight towers" located throughout the country.

- **DO** reduce legacy regulation in today's competitive video marketplace.
- **DON'T** impose new regulatory mandates on competitive video services.

Regulatory policy applicable to video service providers is based largely on an early 1990s snapshot of the market share of analog cable operators – and, in some regards, even eras dominated by three broadcast networks. But consumers today have access to multichannel video programming distributor (MVPD) offerings via cable, direct broadcast satellite (DBS), and former phone company entrants, as well as popular online video distribution (OVD) services viewable via dedicated streaming devices, smart TVs, gaming consoles, smartphones, and tablets. Over-the-air (OTA) broadcast TV also is used in many American homes. Because the assumptions for legacy rules have been thoroughly upended by market and technological developments, regulatory intervention in the market should be substantially reduced.

- **DO** establish a single set of balanced data privacy rules that apply nationwide.
- **DON'T** allow for a patchwork of differing state laws or class actions.

Internet access and transmissions are inextricably interstate, and privacy regulations should apply nationwide. There should be a consistent federal approach to regulating consumer data

privacy that preempts state and local laws, rejects general private rights of action, centralizes enforcement authority for the sake of uniformity, and treats all Internet market participants consistently irrespective of non-germane regulatory classifications.

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