



## COMMUNICATIONS LAW AND POLICY PRIORITIES FOR 2024

### Reject Public Utility Regulation of Internet Service Providers

- The Internet *already* is free and open, thanks to effective competition. The light-touch regulatory status quo encourages tens of billions of dollars annually in private investment – over \$102 billion in 2022 alone – and that private investment benefits consumers through higher speeds, lower prices, and greater choice.
- There is no present credible evidence that, absent so-called "net neutrality" mandates, Internet service providers (ISPs) will block, throttle, or otherwise unreasonably interfere with consumers' online experience or harm competition. Put simply, the public utility regulation proposed by the FCC is a "solution" in search of a problem.
- Subjecting ISPs to public utility regulation would create new problems by triggering a hornet's nest of rules wholly unrelated to the supposed goals of "net neutrality." For example, despite protestations to the contrary, the path down which FCC Chairwoman Rosenworcel is heading inevitably leads to rate regulation – and history shows that government price-setting attempts harm consumers by stifling investment and innovation.
- Recent Supreme Court precedent demonstrates that the FCC's "net neutrality" proposal almost certainly is a meaningless sideshow that will waste public resources, distract regulators from matters of actual importance, and – ultimately – amount to nothing. As a legal matter, the decision to regulate Internet access providers as traditional common carriers in a public utility regime is a "major question" that only Congress can address.

### Require Proper Implementation of Massive Broadband Subsidies

- The Biden Administration has committed over \$140 billion and counting to its goal of achieving "Internet For All." But with more than a dozen different agencies administering 130+ overlapping funding programs, inefficiency, waste, fraud, and abuse are all but inevitable.
- Government-led efforts to extend broadband infrastructure to *every* U.S. household should (1) focus exclusively on truly unserved areas (that is, avoid using taxpayer dollars to subsidize entry in areas where privately-funded or other networks already are serving consumers), (2) safeguard against multiple grants targeting a single location, and

(3) encourage providers to select the most cost-effective distribution technology (cable, wireless, satellite, and so on) – not preference fiber-based deployment.

- The White House, Congress, federal agencies (the FCC, the National Telecommunications and Information Administration, the Departments of Treasury and Agriculture, others), and the states all must prioritize coordination if this massive billion-dollar expenditure of taxpayer funds is to succeed in closing digital divides without waste and fraud. Such coordination includes common reliance upon the FCC's National Broadband Map as the definitive source of deployment data.

### **Reopen the Spectrum Pipeline and Act to Fill It**

- The FCC's spectrum auction authority lapsed in March 2023. Congress should act without further delay to reauthorize it if America is to maintain its position as a leader globally in the wireless marketplace.
- Consumer demand for mobile broadband continues to grow. 5G offerings require more bandwidth, especially "goldilocks" mid-band spectrum that delivers a just-right combination of coverage and speed. As it stands now, however, the FCC's hands are tied, and the uncertainty and delay the lapse of auction authority has created not only hinders present spectrum pipeline planning but also could lower the amount of money the federal government receives from future auctions.
- Implementing a National Spectrum Strategy that charts a viable path to making underutilized government-held frequency bands available for commercial use on a timely basis is also essential.

### **Reform the Broken Universal Service Subsidy Regime**

- With more than \$140 billion in taxpayer dollars already committed in the last several years to the construction of broadband infrastructure – above and beyond the more than \$2.1 trillion in funds from private sector investment already expended – the continued relevance of the FCC's Universal Service Fund (USF) needs to be reexamined.
- The USF, an analog era voice subsidy regime poorly retrofitted to the broadband digital era, is not fiscally sustainable. It also is not efficient or accountable to Congress and the public.
- It is time for an entirely new approach that relies upon direct appropriations, not a surcharge (in economic reality, a tax) applied to the bills of a dwindling number of landline phone bills.
- The Affordable Connectivity Program (ACP), which provides eligible low-income households with a monthly subsidy that they can apply to the broadband service of their choice, if properly constructed, represents a better model. Congress should extend the

ACP by appropriating more funds, but, at the same time, it should tighten eligibility requirements and implement additional safeguards to prevent waste, fraud, and abuse.

### **Remove Outdated Video Regulations**

- The emergence of the public Internet as an alternative to traditional multichannel video programming distribution platforms (cable, satellite) has revolutionized how Americans consume video content.
- Streaming video services (Netflix, Amazon Prime Video, Hulu, Disney Plus), social media platforms (YouTube, TikTok), and other new video offerings occupy an ever-growing chunk of viewers' attention, while traditional sources ("cable TV" and "satellite TV") experience steady subscriber declines. If facilities-based video distributors ever had regulation-justifying gatekeeper power, they certainly don't today.
- Legacy regulations that apply only to a subset of distributors harm consumers by impeding the efficient operation of the marketplace – and by arbitrarily picking winners and losers.
- It is time for Congress and the FCC to unleash the power of the marketplace by eliminating outdated regulations such as must-carry and retransmission consent requirements, compulsory copyright licenses, media ownership limits, and so on – and allow all market participants to compete on a level playing field by freely negotiating private contractual arrangements that will best serve their consumers.

### **Establish a Uniform, National Privacy Framework**

- Americans increasingly live their lives online. As such, the need for clear and consistent consumer privacy rights and corporate responsibilities grows with each passing day.
- Only Congress can establish a uniform national data privacy regime that, like the Internet itself, transcends geographic borders. But in the face of prolonged congressional gridlock, thirteen states and counting have taken matters into their own hands. The result is an unworkable growing "patchwork" of inconsistent, overlapping statutes that confuses consumers and imposes unreasonable compliance costs on companies, especially small businesses.
- It is time for Congress to pass a comprehensive federal data privacy law which preempts inconsistent state laws.

### **Protect First Amendment Rights and Cultivate a Culture of Free Speech**

- Many government laws and regulations applicable to media companies, whether cable, broadcast, satellite, or Internet service providers, raise serious First Amendment free speech issues. These First Amendment issues should be scrutinized and, where appropriate, they should be opposed.

- Aside from whether a law or regulation may violate First Amendment strictures under current Supreme Court jurisprudence, nevertheless such law or regulation may have the effect of inhibiting robust free speech, upon which critical inquiry and intelligent debate depends. Therefore, consistent with the spirit which impelled the Founders to include the First Amendment in the Constitution, a constitutional culture should be fostered in which free speech in both private and public spaces is encouraged.