



Introduction

ITTA, the Voice of Mid-Size Telecommunications Carriers, is a Washington, D.C. industry association dedicated to representing mid-size, incumbent local exchange carriers that provide a variety of communications services to subscribers in predominantly rural areas across 44 states.

ITTA is pleased to respond to the Subcommittee on Communications and Technology's White Paper on Competition and welcomes the Subcommittee's interest in updating the outdated Communications Act.

In 1993 when ITTA was formed, our members offered POTS (plain old telephone service). Today, ITTA members are aggressively deploying networks capable of high-speed broadband to millions of consumers, many of which live in rural areas where the cost of deploying and operating networks remains much higher than in more densely populated areas. In addition to the high cost of operating networks in rural America, reforms to the Universal Service Fund and the possibility of new net neutrality regulations, create additional challenges and uncertainty for ITTA members.

In addition to offering voice and broadband services, ITTA members offer video services. Collectively, ITTA members pass in excess of 3.9 million homes with video services and compete head-to-head against larger cable and satellite companies like Comcast, Time Warner, DirectTV and Dish Network, as well as online video providers like Netflix, Amazon, Hulu, Apple TV, and others.

Despite increasing retail competition in every segment of the industry, ITTA members continue to be regulated as if it was 1993 when retail competition was in its infancy. ITTA is encouraged that Congress will tackle many of the difficult issues relating to competition policy in order to ensure that every segment of the communications industry is competing on a level playing field.

Thank you again for the opportunity to comment and please feel free to reach out to Paul Raak, Vice President of Legislative Affairs, by email at praak@itta.us or by phone at 202.898.1514.



ITTA RESPONSE TO COMPETITION POLICY WHITEPAPER

1) How should Congress define competition in the modern communications marketplace? How can we ensure that this definition is flexible enough to accommodate this rapidly changing industry?

First, Congress should identify the public policy goal to be achieved by defining competition in the Communications Act. If the public policy goal is to ensure that every consumer has access to modern communications capabilities, Congress should provide the FCC the flexibility to evaluate when regulation is needed and to act *when a marketplace failure has been demonstrated to exist*.

In addition, Congress should recognize the differing challenges inherent in serving rural vs. more urban markets. For example, in rural areas mobile wireless service may not be a substitute for wired communications. Mobile wireless provides the consumer mobility but cannot always provide the reliability and consistent download speeds that a wired communications service provider can offer, especially in rural areas. The question of whether a market is functioning properly should not be answered purely based on the number of existing service providers but rather should take into account the level and quality of service being provided by all providers in the geographic market at issue.

2) What principles should form the basis of competition policy in the oversight of the modern communications ecosystem?

ITTA believes that the following principles should be the cornerstone of any effort to modernize the Communications Act:

- Maintain core public safety obligations for all communications service providers.
- No unfunded mandates.
- Regulate only when and where market failures have been found to exist.

3) How should intermodal competition factor into an analysis of competition in the communications market?

ITTA members compete against a multitude of providers, including networks that are owned by local municipalities and recipients of BTOP broadband stimulus and other grants. When considering the nature and extent of intermodal competition, whether a network has been funded directly by the government should be taken into account. Government-funded network operators should have the obligation to grant all competitors non-discriminatory access to their networks.

4) Some have suggested that the FCC be transitioned to an enforcement agency, along the lines of the operation of the FTC, rather than use broad rulemaking authority to set rules *a priori*. What role should the FCC play in competition policy?

Congress should take action to make the FCC more responsive to industry complaints and evidence of market failures. H.R. 3675, the FCC Process Reform Act of 2014 which passed the House of Representatives in March 2014, includes many reforms that ITTA supports. They include:

- i. The establishment of procedures for allowing a bipartisan majority of commissioners to place items on an open meeting agenda and for publishing in advance of such meetings the text of agenda items on which the FCC will vote;
- ii. The publication of orders, decisions, reports, and actions within 30 days after adoption.
- iii. The ability of a bipartisan majority of commissioners to hold nonpublic meetings, including meetings to collaborate with joint boards or conferences.
- iv. The extension of the Universal Service Antideficiency Temporary Suspension Act through December 31, 2020.

In addition, ITTA believes that FCC enforcement mechanisms should be more reflective of companies' size and resources. Today, many of the enforcement mechanisms intended to provide relief to small and mid-size companies are too expensive and time-consuming to pursue. Forcing small to mid-size companies to spend hundreds of thousands of dollars in legal fees to pursue enforcement action at the FCC undermines the core mission of the FCC and disenfranchises those consumers served by small to mid-size companies.

6) What, if any, are the implications of ongoing intermodal competition on the role of the FCC in spectrum policy?

ITTA members' core business model remains providing high-capacity wired communications services to consumers. However, ITTA members compete against wireless providers and our members are forced to pay broadcasters for the rebroadcast of content delivered over the public's spectrum. ITTA believes there are two areas where Congress can direct the FCC to do a better job of protecting competition in spectrum policy:

1. The FCC must ensure that spectrum held by broadcasters is meeting the social obligations for use of this taxpayer-owned resource. This includes ensuring that broadcasters fulfill their obligation to provide "free, over-the-air" signals to the entire DMA in which they serve. In cases where a broadcaster is unable or unwilling to deliver the signal to its entire DMA, the FCC should take appropriate action, including making the broadcaster relinquish unused spectrum to be made available in a spectrum auction.
2. Any build-out rules conditioned on the use of spectrum should meet the same requirements as regulations placed on wired service providers.

7) What, if any, are the implications of ongoing intermodal competition at the service level on the FCC's role in mergers analysis and approval?

Providers seeking approval from the FCC for a merger or acquisition should have their type of service judged against all providers of similar services in the same geographic market.

8) Competition at the network level has been a focus of the FCC regulation in the past. As networks are increasingly substitutes for one another, competition between services has become even more important. Following the Verizon decision, the reach of the Commission to regulate "edge providers" on the Internet is the subject of some disagreement. How should we define competition among edge providers? What role, if any, should the Commission have to regulate edge providers – providers of services that are network agnostic?

ITTA members recognize the benefits that edge providers bring to consumers. As ITTA members expand their reach and connect more customers, the value of the entire network increases significantly for all edge providers. However, as more data is delivered to more consumers from an increasing number of edge providers, the following two questions should be considered:

1. Should edge providers be assessed regulatory fees to ensure that the burden of funding the FCC is a shared responsibility among network providers like ITTA members and edge providers like Netflix?
2. Should edge providers contribute in support of the broadband networks on which they depend?

9) What regulatory construct would best address the changing face of competition in the modern communications ecosystem and remain flexible to address future change?

Please refer to response to question #1.

10) Given the rapid change in the competitive market for communications networks and services, should the Communications Act require periodic reauthorization by Congress to provide opportunity to reevaluate the effectiveness of and necessity for its provisions?

Five years ago, ITTA members were not involved in the debate to reauthorize STELA. Today, ITTA members are aggressively competing with cable and satellite companies in the paid television market. In many of the geographic areas where ITTA members are offering video services, they are the fourth and fifth entrants into the video market.

Despite aggressive competition in the video distribution market, however, consumer prices continue to increase at significant rates. These increases are directly attributable to the outdated provisions of the 1992 Cable Act which provide broadcasters a guaranteed, federally-protected transfer of wealth from consumers via the retransmission consent fees that are passed through on their cable bills.

If not for STELA expiring at the end of this year, the chances of consumers receiving any relief would be next to none. The reauthorization of STELA has generated vigorous debate and, hopefully, will lead to pro-consumer changes in the video competition marketplace.

However, ITTA cautions that any debate regarding whether some provisions of the Act should be subject to sunset will likely create business and regulatory uncertainty and could stifle investment. Therefore, ITTA encourages Congress to consult with the FCC and permit the FCC to make suggestions on what parts of the Act should sunset or not be reauthorized.

Congress should also be prepared to debate what role, if any, the states should play in regard to continuing the regulation of “intrastate” telecommunications services in a global economy.