

CEA Guiding Principles for Telecommunications Policy Reform

The rapid advancement of digital technology and telecommunications has outpaced the current U.S. regulatory regime. The Telecommunications Act of 1996 defined (and re-defined) economic regulations and classifications of telecommunications services and providers. These regulations, however, have become outdated and are no longer relevant to the new services and technologies that have arisen over the past few years. Attempts to classify these new services into outmoded regulations stifles innovation, creates uncertainty in the marketplace and diminishes the increase in productivity that is directly attributed to such innovations.

Policymakers understand the need to establish a new communications policy framework that encourages the continuing transformation and modernization of communications networks through broadband and IP-enabled applications. As they begin to debate and examine regulatory policy in this new era, CEA offers the following guiding principles for consideration.

Minimal Federal Regulation:

Policy makers should encourage industry to develop solutions to important public interest obligations (E911, access for the disabled, wiretaps, etc.) before the government mandates solutions. Further, as new technologies emerge, it is critical to avoid creating a patchwork of state laws governing these technologies. For example, IP-enabled services, including Voice over Internet Protocol services, are interstate in nature, and where subject to regulation should be subjected only to federal jurisdiction.

IP networks and services are different from traditional communications networks and services. Any regulation of such services must only be to cure a proven market failure or address vital public safety issues. Policy makers, therefore, should impose only a minimal level of regulation and should refrain from imposing legacy economic regulations on these new networks and services. When developing such regulations, it is important to consider and balance the technical capabilities of different types of IP-enabled service, as well as consider new technical solutions to address these issues. For example, IP-based online gaming services should not be required to comply with E911 obligations.

Lastly, government should not be picking winners and losers among the emerging, competing technologies. Instead, government should let service providers and manufacturers compete in an open marketplace.

Preserve the Freedom to Use the Internet:

In the broadband era, the open and unfettered consumer access to content, service and applications that has fueled the growth of the Internet must be preserved. Innovation will flourish only if device manufacturers have certainty that their products will be able to connect to the Internet. High-speed broadband networks offer a platform for innovation

that will thrive if applications developers, device manufacturers and network providers are able to differentiate their offerings and invest in new technologies without restrictions imposed by government or by other industry players. Government policy should encourage the use of open, industry-developed standards to promote interoperability and prevent the unfair use of market power to become *de facto* gatekeepers to content and innovation.

To ensure that all Americans continue to reap the benefits of the Internet, CEA urges service providers to voluntarily adopt the following broadband connectivity principles or “Net Freedom Principles.”

- Freedom to Access Content – Consumers should have access to their choice of legal content.
- Freedom to Use Applications – Consumers should be able to run applications of their choice.
- Freedom to Attach Personal Devices – Consumer should be permitted to attach any device of their choice to the connection in their homes, so long as it does not harm the network.
- Freedom to Obtain Service Plan Information – Consumers should receive meaningful information regarding their service plans.

CEA believes the FCC must vigilantly monitor broadband services as they develop, have the authority to expeditiously review and address complaints, and should reassess the marketplace every two years to assure that these principles are not being undermined.

Encourage and Promote Interoperability:

Service offerings such as voice, video and data depend on the ability to connect to devices. Interoperability between services and products are a key element to the digital revolution. Creating a marketplace that allows for optimum interoperability will result in more product offerings, which will provide more consumer choice. No regulation should limit services ability to interoperate with a wide variety of devices. Whenever possible, polices should promote interoperability.

Promote Fair Access to Digital Content:

Digital content that is currently available on a multichannel video programming distribution platform will soon be widely available on a broadband Internet platform. High quality HD programming content is key to broadband adoption and the DTV transition. Therefore, we must ensure that suppliers of digital content, particularly those affiliated with incumbent cable operators and other dominant broadband distributors, do not deny competing distributors access to such content. If a video service provider has a stranglehold on attractive content, then distortions in the marketplace will arise, limiting consumer choice and ultimately harming adoption of HDTV and broadband.

Fair Use Should Apply to Content on the Internet:

The use of IP-enabled technology should enable and not prevent home recording and other fair-use rights that consumers can enjoy today. For example, consumers should retain the right to private, noncommercial home recording of content originating as free terrestrial broadcast, regardless if it is accessed over the Internet, without requirement for authorization or technical restrictions as to home recording, except as required by FCC rules (i.e. broadcast flag).

No Legislation or Regulation Should Discourage the Development of New Technologies:

For innovation to flourish, the manufacture, distribution and sale of consumer electronics products and components with substantial non-infringing uses should continue to be legal. No legislation or regulation should undermine the Supreme Court's holding in the "Betamax" case which has been essential for new and beneficial technology, products, and services to reach consumers.

New Regulatory Regime Must Provide Certainty:

Regulatory certainty is critical for the development and deployment of innovative products and services. One of the biggest pitfalls of 1996 Telecom Act was its extreme complexity and that the regulations were open for interpretation and debate long after they were adopted. This regulatory uncertainty resulted in a preoccupied FCC, years of litigation and marketplace uncertainty. A clear and concise regulatory environment is essential to the success of this new digital age.