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MODERNIZING THE COMMUNICATIONS ACT

Verizon welcomes this opportunity to provide input to the Committee on Energy and Commerce regarding its efforts to modernize the laws governing the communications sector. The communications marketplace has undergone a revolution over the last two decades. The dizzying array of choices that consumers now have to communicate – and the wide range of players competing to meet consumers' communications needs – bears scant resemblance to the voice-centric, one-wire world for communications that existed when the Communications Act of 1934 (the "Act") was enacted, or even to the "silos" of discrete technology sectors and service providers reflected in the Telecommunications Act of 1996 ("'96 Act"). The world reflected in the existing statute has been replaced by one in which consumers can choose to communicate in an ever-expanding number of ways, including voice, texts, tweets, e-mail, video chat, social networks and others, with the Internet and broadband networks providing a platform for continued innovations and more choices. Moreover, the competition experienced by today's consumers is dynamic. Within the Internet ecosystem, network providers, applications providers, device manufacturers, online service providers and others simultaneously cooperate and compete to meet consumers' evolving communications demands – and all play significant roles that affect and shape the consumer experience.

Given these fundamental shifts, Congress must resist the temptation to merely tweak around the edges of the current statute or focus reform on only the most ill-fitting provisions. This would be a lost opportunity for consumers and likely cause as much harm as good. Instead of an incremental approach, it is time for Congress to start from scratch and create a policy framework for the 21st Century that reflects and promotes today's dynamic and competitive broadband world, the full range of ways that consumers communicate, and the new applications and services that are revolutionizing every aspect of our lives.

The potential of these innovations has barely been tapped, particularly in areas of health care, education and energy management. By applying broadband technology, amazing new medical technologies could result – wonders such as remote robotic surgery or the real-time analysis of critical 3-D body scans even as an ambulance speeds a patient to the hospital. Similarly, the right governance framework would bring new technology solutions to the U.S. electrical grid. Today, there are some 200 million "smart meters" in use that connect the utility

grid to M2M and cloud platforms and allow supply and demand of energy to be managed more efficiently. This fully connected world is a few years away, but already we're seeing how information technology can save energy. In education, major universities are innovating with massive open online courses, or "MOOCs," which extend the traditional bricks-and-mortar model. Innovations such as the Khan Academy are introducing the idea of the "flipped classroom," with students watching instructional videos online at their own pace and using classroom time to get coaching from teachers and engage with peers. A new governance framework that promotes this kind of innovation and investment will spur collaboration among users, entrepreneurs, practitioners and developers to drive the next wave of digital solutions to our most pressing societal challenges in health care, energy sustainability, education and more.

Accordingly, as Congress considers a framework for the 21st Century broadband world, Verizon suggests that it remain focused on certain long-standing goals that will remain relevant regardless of where the marketplace evolves next: protecting consumers, promoting competition, and encouraging investment and innovation. Furthering these goals in the context of the dynamic Internet ecosystem requires a change of course from the old ways of regulating. It means moving away from the old, prescriptive model that too often inhibits innovation or invites regulators to pick winners and losers. It also means taking into account the foundations for the "network compact" of earlier times, recognizing that the *quid pro quo* of imposing certain regulatory obligations in exchange for a government-sanctioned monopoly have disintegrated, and redefining the network compact in ways that are appropriate for today's competitive IP-based communications sector.

In place of today's outdated framework, Congress should embrace an approach that relies primarily on consumer choice, competition and effective multi-stakeholder processes to protect consumers, guide the evolution of technology and services, and address emerging issues or market failures. Consumers will benefit from such a framework because it will encourage experimentation and collaboration that will unleash the power of technology to transform areas like healthcare, education and energy management. Notwithstanding that significant reorientation, this new framework also should include an effective governmental backstop through an agency with authority and tools to step in as needed to protect competition and consumers when and if real problems arise, regardless of their source. This approach of addressing issues as they arise on an ex-post basis is preferable to the inflexible prophylactic approach that inhibits innovation in today's dynamic marketplace.

Finally, any new framework must continue to account for certain issues specific to the communications marketplace –such as public safety, accessibility and spectrum management – that will continue to be important even as technology and the ways people communicate continue to evolve.

I. The Act Was Designed for a Different Time and Different Marketplace.

Today's Act has its origins in the Interstate Commerce Act of 1887 and 19th Century railroad regulation, and was designed for regulating legacy communications services in a "Ma Bell" monopoly era. Indeed, parts of the regulatory regime not only were based on assumptions of monopoly, they were a *quid pro quo* for a government granted monopoly.

The original framework granted the former AT&T an effective, nationwide monopoly. In exchange, AT&T agreed to provide universal service at regulated rates. Given its monopoly position, myriad forms of cross-subsidization could take place within AT&T itself. AT&T served both high cost areas and low cost areas. It had to provide service in the less attractive (high cost) areas because there were no competitors for customers in the more attractive (low cost) areas. This arrangement led to various regulatory obligations – including carrier of last resort, retail price regulation, regulated and differential rates for intra-LATA/intrastate/interstate, universal service and more. It states the obvious to say that the monopoly part of this equation no longer exists. This has put tremendous strain on elements such as intercarrier compensation and universal service because they are now subject to arbitrage and competitive pressures, rather than part of the coherent whole that was the original framework.

Despite these changes, the last comprehensive update to the Act was in 1996 – and even then was based on developments in the 1970s, '80s and early '90s. The hot items debated at the time of the '96 Act included such issues as whether and subject to what conditions local telephone companies could offer "long distance" services. The Internet was just starting to emerge for the most tech-savvy consumers, and received little mention in the law. Following the '96 Act, the regulatory framework still was based largely on a prescriptive approach to regulation and on dividing different communications sectors into separate "silos," subject to different regulation based on the different types of network technologies used and the particular services provided.

Technology and competition now have evolved to the point where consumers no longer must rely on the legacy provider in their area for each of their separate communications services. Consumers have a variety of different options across and outside the traditional silos. Consumers have moved away from traditional, heavily regulated voice lines and instead flocked to more advanced IP-based voice services and wireless services. Today, only 5% of voice customers rely exclusively on Plain Old Telephone Service, while nearly 40% of households have cut the cord completely and rely exclusively on wireless for their voice services. Not coincidentally, it is the services that have been allowed to develop largely free of overly burdensome regulations that consumers are embracing.

Consumers can also choose between broadband services from multiple competing wireline and wireless providers, and the capabilities and effective prices of these services

continue to drop every year. Consumers now rely heavily on the Internet to communicate, including over e-mail, instant messaging, various forms of voice and video services (e.g., Skype, FaceTime or Vonage), social networking services and others. Competition has evolved into an intense battle among network providers, Internet companies, device manufacturers, application developers and others to meet consumers' communications needs. Unlike traditional network providers, most of these competitors have not been subject to the same legacy regulatory regime and, therefore, have had more flexibility to quickly respond to consumers' changing demands. This is not to suggest that prescriptive regulation now should apply to these new competitors. On the contrary, consumers will benefit most if Congress adopts a new policy framework that will provide *all* companies in the Internet ecosystem with the type of flexibility necessary to encourage innovation and investment, while simultaneously protecting consumer interests.

While the marketplace for "voice" services has perhaps seen the most drastic change, other services and service providers also have experienced similar shifts. For example, in 1996, the only choices most consumers had for video programming were their local cable provider, over-the-air broadcast channels, or the local video rental store. Now, competition exists between cable operators, satellite providers, the traditional "telephone" companies like Verizon and AT&T, and a wide and growing array of video programming providers over the Internet. For example, Netflix now has more than 33 million U.S. subscribers and accounts for more than a third of Internet traffic in the United States during peak hours, while Hulu Plus has more than 5 million subscribers and Amazon Prime has as many as 20 million subscribers with access to Amazon Instant Video.

II. History Has Demonstrated that a Lighter Touch Regulatory Model Has Worked.

To help determine what regulatory framework to adopt going forward, Congress should look to the approach that has allowed competitive wireless and Internet services to proliferate. These have developed largely outside of the more prescriptive, legacy framework that has been applied to traditional wireline voice providers and services. Broadband services have been subject to the lighter touch regulatory approach applicable to "information services," while Congress' decision to require a less regulated approach to wireless services provided similar flexibility. That lighter touch has proven hugely successful, sparking competition and innovation in these sectors that has driven economic growth even during the recent recession.

The success of lighter touch regulation in the wireless, broadband and broader Internet context provides a model for how to proceed more generally. That is not to say that all regulation should be abolished or that Congress should abandon the commitment to certain important societal values and principles that undermine the old statutory framework. Rather, it simply recognizes that we need a 21st Century framework designed for 21st Century technology and marketplace that is increasingly based on broadband technologies and services.

III. Congress Should Not Be Constrained by the Old Statutory Framework.

In deciding how to proceed, Congress should not rely on the old statutory framework and regulatory classifications or try to tweak the current framework to try to make today's marketplace fit into it. Instead, Congress should more broadly consider a new policy framework that better fits today's dynamic and competitive communications marketplace. Congress should start with a blank page and ask what would work best now, regardless of what was done in the past. In place of today's silos and inconsistencies, Congress should focus on a set of technology-agnostic policy principles to guide regulation going forward.

IV. Adopting the Right Model for the 21st Century.

An appropriate 21st Century broadband policy framework should be based on three technology-neutral principles: (1) protect consumers; (2) promote competition; and (3) encourage investment and innovation. Adhering to these principles will better allow for adjustments to market changes and new technologies as they arise.

To promote these three principles, Congress should implement a 21st Century broadband model that will cover the Internet ecosystem with the same pro-innovation and pro-investment approach. Such an approach will rely, in the first instance, on consumer choice and competition to dictate the direction that the marketplace will take and will make greater use of the highly effective and agile multi-stakeholder processes that have helped drive the successes of the Internet. At the same time, it should provide for an effective government backstop that can step in if and when necessary to prevent harm to competition or consumers. More specifically, an appropriate 21st Century approach should have the following key elements:

1. Federal Framework.

To ensure consistent treatment of all relevant providers, the new framework needs to apply at the federal level. Broadband services and the Internet are inherently interstate, and the policy framework must reflect as much. Such a uniform federal approach is in the best interest of consumers, as consumers should not have to navigate a patchwork of differing requirements from state to state (or locality to locality) to determine how they are protected. Moreover, complex and fragmented regulations increase the cost of serving those consumers – a cost that consumers ultimately must bear. Adopting a federal approach will create a more uniform set of expectations, which will help spur innovation and investment. Indeed, using a single, national framework and pre-empting state and local regulation was a key factor underlying the success of wireless and broadband.

2. Light Touch Regulatory Regime.

Congress should extend the light touch approach that has worked well in the wireless and Internet sectors. Such a regime has the following components:

Reliance on Competition rather than Economic Regulation. The new model should rely primarily on competition and consumer choices to drive the marketplace, with regulatory intervention only if and where necessary to protect competition or consumers. Competition drives the best outcomes for consumers. Government regulation generally should occur only where there is a demonstrated market failure and should be narrowly tailored to cure it.

Multi-Stakeholder Approach. The new regime should encourage flexible, multi-stakeholder governance processes to establish industry standards and practices and as a model for problem-solving as new issues emerge. This approach has proven successful in the Internet context and can be expanded, particularly as Internet-based services and companies continue to take on an increasing role in communications. It is a more nimble way of addressing new issues as they arise, regardless of the particular service or technology at issue.

The Role for Government. To encourage innovation, Congress should adopt an enforcement-based regulatory model pursuant to which government intervenes on an ex-post, rather than ex-ante basis. This approach will provide the flexibility necessary to encourage the kind of experimentation that is the life blood for economic growth, while still allowing government to step in if a problem arises. In other words, government should provide a backstop to address anti-competitive or anti-consumer behavior that occurs – for example, on a complaint basis. But it should not preempt innovation with prophylactic rules.

Targeted Regulation As Needed in Some Discrete Areas of Concern. There may be some areas unique to the communications space that deserve some particular regulatory focus and attention. Given the special nature and importance of these issues, Congress should think about whether particularized provisions are needed in the areas of: public safety, universal service, disabilities access, and spectrum management. Even as Congress considers these important areas of concern, however, it must take into account the changed competitive and technological circumstances that would make the reflexive extension of current regulatory obligations problematic and unworkable. Addressing these issues must account both for the wider range of players involved in meeting consumers' communications needs, and for the competition that now undermines the *quid pro quo* that may have justified previous policy approaches.

CONCLUSION

While the principles of protecting consumers and encouraging and investment and innovation are as relevant today as they were in 1934 and 1996, the technology that connects us has outgrown the legislative and regulatory framework that was put in place last century to

promote these principles. Congress should take the opportunity to build a new framework that reflects the realities of today's marketplace, protects consumers and competition, and also encourages the investment and innovation necessary to develop new solutions to meet the societal challenges we face in areas such as health care, energy sustainability, education and more.