



In a regulated industry like telecommunications, public policy decisions have a huge impact on consumers and companies. The 1996 Telecom Act is a case in point, widely credited for creating competition and consumer choice in basic telephony services, but also held responsible for creating speculative activity resulting in the telecom bust of 2001. Moreover, the 1996 Act is criticized for focusing primarily on voice service rather than the much more dynamic medium of the Internet. Now, nine years later, policymakers are eager to make up for their oversights.

Some say a major rewrite of our basic telecommunications law is badly needed, pointing to the United States' lack of a national broadband policy and precipitous drop in the race for broadband penetration — from third in 2000 to 14th today. Others question the need for a new law, saying many of the issues raised by the 1996 Act have been resolved through the courts and the Federal Communications Commission. An example is the Supreme Court's recent "Brand X" decision that cable modem broadband service is properly treated as a lightly regulated "information service" rather than a heavily regulated "telecommunications service," and the FCC's subsequent decision that digital subscriber line (DSL) broadband service merits equal treatment. For those of us in the fiber-to-the-home (FTTH) service, nothing has been bigger than the FCC's 2003 decision to lift from FTTH the so-called "unbundling" requirements — i.e., telephone companies' obligations to

lease the network to competitors at below-market rates — and Verizon’s decision to launch a major FTTH deployment a few months later.

But regardless of who is right — those calling for new telecom laws or those calling for none — Congressional proposals to address the changed technological landscape are picking up speed on Capitol Hill, and a major rewrite could occur as early as next year.

At this writing, the most widely discussed federal telecom bills are the Barton-Upton Draft Telecom Reform Bill, the Video Choice Act of 2005, the Community Broadband Act of 2005, the Preserving Innovation in Telecom Act of 2005, the Broadband Investment and Consumer Choice Act, and bills expediting the transition of analog television signals to digital. Each proposal is outlined below:

Barton-Upton Draft Telecom Reform Bill

(U.S. Reps. Joe Barton, R-Texas, Fred Upton, R-Mich.)

- Defines new categories of data, voice and video services that would be subject to light regulation — free from FCC and state/local government regulation of rates, charges, terms or conditions.
- BITS — New category of data service called “broadband Internet transmission service” (BITS), defined as a packet-switched transmission service that, regardless of the facilities used, transmits packetized information to or from a subscriber in a packet-based protocol, including TCP/IP or a successor protocol; includes any features, functions, and capabilities, as well as any associated packetized facilities, network equipment, and electronics, used to transmit or route packetized information in a packet-based protocol; may include Internet access services; does not include time division multiplexing features, functions, and capabilities.
- VOIP — Defined as a packet-switched voice communications service provided over BITS that enables a subscriber to send or receive voice communications in TCP/IP protocol or a successor protocol to or from any subscriber with a telephone number under the North American Numbering Plan; or such other identification method as is designated by the Commission to be a significant alternative or successor to such Plan; and assigns to the subscriber such a number or other identification method; may include integrated, enhanced features, functions, and capabilities.
- Broadband Video Service — Defined as a two-way, interactive service that is offered in a manner that enables subscribers to integrate a video programming package with customizable, interactive voice and data features, functions, or capabilities, which may include caller identification, call management, and the ability

to access information derived from the Internet; and may be included or offered with, but shall not be treated as subsumed in or subsuming, VOIP service or BITS.

- Other communications services not meeting definition of BITS, VOIP or broadband video service would continue to be regulated under current law.
- Municipal Broadband — The bill prohibits state laws that prevent governmental entities from providing BITS, VOIP services, or broadband video services. However, it also prohibits governmental entities that provide such services from receiving preferential treatment from the government that owns or controls such entities as compared to other providers of such services.
- Visit www.corning.com/opticalfiber/guidelines_magazine/eguidelines/vol11/BITS2005_012_xml.PDF to read the draft legislation.
- Status: At this writing, the legislation remains in draft form. Hearings and floor action are expected throughout 2005. No Senate companion bill has been introduced.

Video Choice Act of 2005

(S. 1349, Sens. Gordon Smith, R-Ore., Jay Rockefeller, D-W.Va.)

(HR 3146, Reps. Marsha Blackburn, R-Tenn., Albert Wynn, D-Md.)

- Exempts competitive video services providers from franchise requirements.
- “Competitive video services provider” — Defined as any provider of video programming, interactive on-demand services, other programming services, or any other video services who has any right, permission, or authority to access public rights-of-way independent of any cable franchise (e.g., incumbent Telcos).
 - Competitive video services provider subject to standard franchise fees.
 - Also subject to social obligations of cable franchisees, including retransmission, must-carry, consumer protection, PEG (Public, Educational or Government) channels, etc.
- Visit <http://thomas.loc.gov/cgi-bin/query/z?c109:S.1349>: to read the proposed legislation.
- Status: At this writing, this legislation was referred to the House Subcommittee on Telecommunications and the Internet and Senate Commerce Committee. No hearings have occurred.

Community Broadband Act of 2005

(S. 1294, Sens. Frank Lautenberg, D-N.J., John McCain, R-Ariz.)

- Prohibits state laws preventing municipal governments from providing advanced telecommunications capability or services.
- Visit <http://thomas.loc.gov/cgi-bin/query/z?c109:S.2726>: to read the proposed legislation.
- Status: At this writing, this legislation was referred to Senate Committee on Commerce, Science and Transportation. No hearings have occurred. No House companion bill has been introduced.

Preserving Innovation in Telecom Act of 2005

(HR. 2726, Rep. Pete Sessions, R-Texas)

- Prohibits municipal governments from offering telecommunications services, information service, cable TV service.
- Grandfathers existing municipal services.
- Visit <http://thomas.loc.gov/cgi-bin/query/z?c109:S.1294>: to read the proposed legislation.
- Status: This legislation was referred to the House Subcommittee on Telecommunications and the Internet in June 2005. At this writing, no hearings have occurred. No Senate companion bill has been introduced.

Broadband Investment and Consumer Choice Act

(S. 1504, Sen. John Ensign, R-Nev.)

- Preempts state authority over telecommunications service, information service, cable service.
- Prohibits all government regulation of rates, terms, prices or quality of any communications service.
- Defines “narrowband” as 64 kbps or less.
- Defines “broadband” as over 64 kbps.
- Maintains federal regulation on narrowband services.

- For “broadband services,” repeals Title I (Information Service), Title II (Telecommunications Service), and Title VI (Cable TV Service) of the 1996 Telecom Act.
- Video service providers not required to obtain franchises, build out in any particular manner, or provide access to other video service providers.
- Video service providers subject to fees up to 5 percent of gross revenues.
- Also subject to social obligations, including retransmission, must-carry, consumer protection, PEG (Public, Educational or Government) channels, etc.
- Unbundling still imposed on copper networks.
- Contains provisions to develop competition and diversity in the multichannel video programming market.
- Municipalities, prior to providing communications services, must take bids from private sector to provide same with all advantages enjoyed by the municipality – no taxation, free rights-of-way, free use of buildings, etc.
- Grandfathers existing municipal services.
- Visit <http://thomas.loc.gov/cgi-bin/query/z?c109:S.1504>: to read the proposed legislation.
- Status: This legislation was referred to the Senate Committee on Commerce, Science, and Transportation in July 2005. At the time of writing, no hearings have occurred. No House companion bill has been introduced.

Digital TV Transition

(Numerous House and Senate bills)

- Establishes deadline in early 2009 for the transition of all television signals from analog to digital.
- Provides for optimal use of freed spectrum — e.g., first responder use, military use, or auctioning to private sector.
- Provides funds to help consumers purchase set-top boxes to convert digital signal to analog.
- Status: The House and Senate Commerce Committees have both passed bills following the general outlines described above. The issue could be resolved as part of the budget reconciliation process later this year.

Actions by the federal government are not the only public policy influence on broadband deployment. Local and state governments are very involved as well.

Currently, the main concern in the state and local communications arena is ensuring citizen access to high-quality services and consumer choice, with debates centered on video franchising and municipally-provided broadband.

In the area of video franchising, developments in Texas could impact policies in other states. In September, Texas enacted legislation allowing statewide franchising for video services, while maintaining franchise fees for municipalities. The laws of most other states require video providers to obtain a cable franchise from each municipality in which services would be provided. Although the effect of the Texas law on other states remains to be seen, a similar requirement is now under consideration in New Jersey.

Regarding municipally-provided broadband, local governments argue that they are driven to build their own broadband networks when there is a lack of broadband options to serve their citizens. Local governments often desire broadband technology for economic development and to provide expanded services to schools, hospitals and government buildings. Many municipalities view broadband as another utility, similar to roads, power and water, which flies in the face of commercial providers, arguing that such activity interferes with the private sector. As a result, we are likely to see multiple bills both for and against municipal networks in the near future.

It is impossible to say at this moment where the current activity to modify our nation's telecom policy will lead. Consensus appears to be forming most firmly around the issues of digital television transition and reform of local video franchising requirements. By mid-2006, a clear picture may develop as to the direction policymakers will take. Hopefully, it will be one that gives competitive markets relief from regulations and rewards investment in non-competitive markets.