

# Revisting the Communications Act

by [David Sohn](#) [1]

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The chairmen of the House and Senate Committees with jurisdiction over communications law [announced earlier](#) [2] this week that they will begin a process to update the Communications Act. It's a timely step; April's [federal court decision](#) [3] overturning a 2008 Federal Communications Commission slap on the wrist to Comcast raises serious questions about the extent of the FCC's authority over the emerging communications landscape. Simply put: everything is shifting to broadband. It hardly seems worth having a federal communications agency at all if it is to have zero ability to address the Internet access connections upon which the bulk of 21st century communications are likely to rely. But in the wake of the court's decision, the scope of the FCC's authority is in limbo.

Ideally, Congress would act to delineate expressly the scope -- and, just as crucially, the limits -- of the FCC's authority in the Internet age. The current jurisdictional pickle emerged from the debate over Internet neutrality, and CDT has advocated carefully targeted federal legislation on that topic dating back to [our initial paper](#) [4] on it back in 2006 and again in our [recommendations](#) [5] for the incoming Obama Administration. Telecommunications is not an area in which Congress tends to move quickly, however. The Telecom Act of 1996 was many years in the works. Any proposals on this topic will be heavily lobbied, with fierce resistance from parties that believe that they are better served by the status quo despite (or even because of) its regulatory uncertainties. And chairmen Sen. Rockefeller and Rep. Waxman are only just beginning a process; the first step will be a series of discussions, and there is no telling how far we may be from having even a first draft of an actual bill.

Congressional interest in updating the Communications Act, therefore, should not be allowed to derail the FCC's efforts to reach sensible results under the Act as currently written. The FCC remains charged with implementing the existing Act for however long it remains on the books. The agency cannot simply go dormant and abdicate its role for what would likely be multiple years in anticipation of a legislative update that is now just a glint in a committee chairman's eye.

Moving forward with its responsibilities means developing a sound and stable legal footing for agency action. The current confusion over jurisdiction is in large part the product of the FCC's own classification decisions regarding Internet access services. Thus, the FCC Chairman should push ahead with [his plan](#) [6] to revisit those decisions. There is no reason why Congress and the FCC cannot simultaneously reexamine elements of the communications law regime within their purview.

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