
CONTINUING U.S. LEADERSHIP IN TECHNOLOGICAL INNOVATION

Representative Rick Boucher[†]

It is my distinct pleasure to introduce another edition of *CommLaw Conspectus*. Continuing its tradition and well-deserved reputation for cutting-edge communications law scholarship, the articles that appear in this issue address timely and important topics, including the role of fiber-to-the-home in broadband deployment, the policy and legal implications of the relatively recent phenomenon of sexting, and what constitutes reasonable network management in a world of limited Internet bandwidth. The widely varied topics covered by this volume of *CommLaw Conspectus* serve as a reminder of how communications law and policy touches the lives of all of us in so many ways.

As Chairman of the Subcommittee on Communications, Technology, and the Internet, my goals are to ensure that the United States continues its leadership in technological innovation and economic advancement and that consumers can take advantage of the full range of innovative technology products and services. The Subcommittee has addressed many important issues over the last

[†] Rick Boucher was elected to the United States House of Representatives in November 1982, and represents Virginia's Ninth Congressional District. Currently serving his fourteenth term, Rep. Boucher sits on the House Committee on Energy and Commerce and serves as Chairman of the Subcommittee on Communications, Technology, and the Internet. He also serves on the Subcommittee on Energy and the Environment Subcommittee, as well as the House Judiciary Committee, where he sits on the Courts and Competition Subcommittee. He founded the House Internet Caucus in 1996 and currently serves as one of two House co-chairman of the more than 180 member group. Rep. Boucher is a leading architect of federal policy for information technology and the Internet. In 1992, he authored the law that allowed the first commercial traffic on the Internet. His proposals to promote competition in the cable and local telephone industries are at the core of the Telecommunications Act of 1996.

Rep. Boucher earned his bachelor's degree from Roanoke College and his law degree from the University of Virginia Law School. He has practiced law on Wall Street in New York and in Virginia. Prior to his election to Congress, he served for seven years as a member of the Virginia State Senate. Rep. Boucher is a native of Abingdon, Virginia, where he currently resides with his wife, Amy.

year, including overseeing the digital television (“DTV”) transition and the broadband grant programs in the American Recovery and Reinvestment Act (“ARRA”), facilitating the adoption of a permanent instrument to replace a series of temporary agreements between the U.S. Department of Commerce and the Internet Corporation for Assigned Names and Numbers (“ICANN”), reform of the Universal Service Fund (“USF”), protecting consumer privacy on the Internet, and freeing up more spectrum for commercial use.

As a lawmaker, I have worked to promote technological innovation and foster consumer protection and choice through legislation, the development of strong and enforceable self-regulatory standards, and Congressional oversight. Our continued efforts to increase broadband deployment and access can serve as a good example of government acting in partnership with private industry. We must, as a nation, improve both the supply of and subscribership to affordable, high-speed broadband Internet service in all areas of the nation to, among other things, foster entrepreneurship, increase public participation in government, improve health care through telemedicine initiatives, and allow for telecommuting. While there has been much debate about how to measure America’s progress in rolling out affordable, high-speed broadband—the bottom line is that we can do better and need to do more to compete in the 21st century global economy.

In my district in southwestern Virginia, I have seen first-hand how broadband access can improve the economic well-being and quality of life in rural America. For example, thanks to a joint effort with former Governor Mark Warner, we were able to secure \$2.3 million in grant money to deploy fiber-to-the-home in the town of Lebanon, Virginia. Though it is the county seat of Russell County, Lebanon is a small town, home to just over 3,000 people. Combined with an information technology training center set up to prepare and train local residents for the new economy, the previously unavailable high-speed Internet access lured defense contractor Northrop Grumman and software developer CGI to the town, providing around 700 new jobs.

The ARRA provided significant funds for the deployment of broadband and the stimulation of demand for it. The ARRA provides a total of \$7.2 billion for grants and loans for broadband deployment and related activities, administered by the National Telecommunications and Information Administration (“NTIA”) of the Department of Commerce and the Rural Utilities Service (“RUS”) of the Department of Agriculture. While \$7.2 billion is not enough for universal broadband access, it is a good down payment. The ARRA also requires the Federal Communications Commission to develop a National Broadband Plan that will be provided to Congress in February 2010. This plan will provide a comprehensive framework for bringing broadband—the economic engine of the 21st century—to all Americans.

The policy of promoting universal telecommunications service for all Americans has been fundamental in driving this country's economic and social development. Every person in our nation should be able to benefit from the technological advantages of our vast telecommunications network, no matter their economic background or their geographic location.

In the 1996 Telecommunications Act, Congress codified core concepts of universal service and directed the Federal Communications Commission to implement these broad goals. For a decade, we have followed that implementation, and I would note that there have been important successes.

These successes reach across all four of the universal service programs. In part due to the High Cost program, almost ninety-five percent of American households have telephone service, including Americans living in remote areas. Our nation's libraries and schools have become access points to the Internet, making the world's great literature, music and, art available to all members of society at the click of a button. Advancements in health care that in the past would have only benefited those within driving distance of great medical centers are now being shared with consumers in the furthest corners of our country. During Hurricane Katrina, the Low Income program helped get wireless technology to those hit hardest by the catastrophe to begin their recovery.

After more than ten years, it is appropriate to look at how far we have come and what we need to do in the future. One of the strongest motivations for fundamental reform is that the existing universal service program has been bypassed by technology—namely broadband services and the Internet. We must examine whether the universal service program currently designed to support local telephone service is effectively supporting the network of the future.

As we embark on this effort, we must ask the fundamental question: What is the purpose of the universal service program? To effectively answer that question we must analyze it against the backdrop of the changing technological landscape.

When we last codified the universal service program in 1996, the telecommunications network was largely comprised of copper wires, and our policy choices—namely to support the universal availability of voice service—reflected that reality. In ten short years, much has changed. Broadband is the network of the future, and voice service is just one of many applications that will run over it.

Currently we spend more than seven billion dollars a year on the universal service program. Perhaps that money can be better used for a redesigned program that will become the core of our nation's broadband policy. We owe it to the consumers who are ultimately paying for the program to get it right.

Having spent some time working on difficult issues, I am aware that others might be tempted to avoid tough problems by offering modest or incremental

changes. Such an approach ruffles few feathers and allows for laudatory public press releases. I, however, am not interested in a marginal approach to reforming the current universal service fund.

Designing a program that will achieve widespread deployment of robust broadband service raises many fundamental questions. How do we make such a system affordable? How do we encourage innovation and better services and applications for consumers? What is the role of competition, especially in remote and underserved areas? How do we ensure a smooth, efficient transition to the program of the future? What roles should business, government, and public/private enterprises play in implementing such a program?

I am convinced, however, that Congress can, should, and must do our duty to bring about fundamental reform. I look forward to many spirited conversations and am committed to investing the time and energy to ensuring that every consumer—no matter where she lives or how much she makes—has access to this country's communications network, including the network of tomorrow.

Because broadband networks are a primary driver of the national economy, it is fundamental to the nation's interest to encourage their expanded use. One clear way Congress can promote greater use of the Internet is to assure Internet users a high degree of privacy protection, including transparency about the collection, use and sharing of information, and to give them control over that collection, use, and sharing.

Because consumers need an assured level of control over the collection, use, and sharing of information about them, a statute providing those assurances is critical. That goal should be achieved by legislation, which reflects best industry practices and requires that they be followed by all Web sites that collect information from Internet users. Legislation assuring Internet users that their online experience is more secure will be a driver of greater levels of Internet uses, such as e-commerce, not a hindrance to them.

It is also important to note that online advertising supports much of the commercial content, applications, and services that are available to Internet users today without charge, and I have no intention of disrupting this well-established and successful business model.

At the same time, consumers are entitled to some baseline protections in the online space. For these reasons, I plan to introduce, with bipartisan participation, a measure based on the following principles, which will extend a clear set of privacy rights to Internet users:

I. DISCLOSURE

Consumers should be given clear, concise information in an easy-to-locate privacy policy about what information a Web site collects about them; for what

purposes; for how long the information is stored; and under what circumstances it is given or sold to third parties. A Web site that makes material changes to its privacy policy will be required to give consumers notice of those changes.

II. COLLECTION

As a general rule, Web sites should be permitted to collect information about Web site visitors sufficient to build preference profiles about them, unless the Web site visitor affirmatively opts out of this practice.

However, a Web site may only knowingly collect sensitive information, such as medical information, financial information, information about sexual preference, precise geographic location information and information about children and adolescents, with a consumer's express opt-in consent.

In addition, a network operator or Internet service provider should be permitted to use technologies like deep packet inspection, which collects information about all of a subscriber's online activities across the Internet with that subscriber's express opt-in consent.

III. USE OF INFORMATION

If someone does not want a Web site he visits to use information it collects to deliver ads to him, he should opt out of that use. However, a consumer has a reasonable expectation that a Web site he visits will not be sharing his information with unrelated third parties. Accordingly, if a Web site wants to provide information to an unrelated third party, it should procure that Internet user's affirmative opt-in consent.

IV. SAFE HARBOR

To encourage proactive industry efforts that give consumers extra control over how information about them is collected, used and disclosed, the legislation should create a safe harbor for companies that participate in robust self-regulatory programs that have been approved by the Federal Trade Commission. A variety of models that place the power to make privacy-related deci-

sions in the hands of consumers might qualify and allow, subject to consumer opt-out, the sharing of information among unrelated Web sites.

Such programs could, for example, allow consumers to opt out of the collection, use and disclosure of information by all companies participating in a particular ad network that serves targeted advertising to those companies' Web sites by taking a single step, such as checking one box on one Web site. Other programs might allow consumers to view and modify, or opt out of entirely, the profile a Web site maintains about them give consumers a ready means of obtaining more information about the source of particular online advertisements and the opportunity to opt out of them. Such a safe harbor will encourage these and other pro-consumer, creative self-regulatory efforts.

The Federal Trade Commission will be given regulatory authority to enforce the privacy principles set forth in the statute and to define the pro-consumer policies that will qualify for the safe harbor provision.

The structure I have set forth should not prove burdensome for Internet-based businesses that rely on targeted advertising and is in keeping with the practices of reputable service providers today. More importantly, by giving Internet users a greater confidence that they have control over a Web site's collection and use of information about them, it will encourage greater levels of general Internet usage and e-commerce, benefiting not only consumers, but also the companies that transact business online and our nation's economy.

Many of these issues will remain at the forefront of the communications policy debate. The communications industry affects nearly every aspect of our lives, of our communities, and of our society. New technologies, devices, and services shape how we participate in the public debate, share our stories, keep in touch with family and friends, and enhance our understanding of the increasingly interconnected world around us. In this issue of *CommLaw Conspectus*, you will see specific examples of these policy debates playing out. Regardless of the ultimate conclusions the authors draw on any particular issue, they have contributed their knowledge to the public square of information and idea sharing. And for that, they, and the staff of the *CommLaw Conspectus*, should be proud.