

# “Common Sense and Common Carriage: Draining the Net Neutrality Swamp”

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# Topics

1. Problem—Universal broadband promise leads to policy swamp with nasty alligators
2. Solution—Reframe the problem: Drain the swamp with common carriage principles
3. Real Clear Policy—U.S. law *now* accounts for both innovation and neutrality, if enforced
4. Process—Craft 21st century common carriage legislation with input from public and ICT players
5. Common Sense & Common Carriage—  
Conclusions and Recommendations

# 1. Problem—Universal broadband promise inevitably leads to policy swamp

## 1.1 Universal broadband—“pathway to the world”

(great positives)

- Broadband gives critical access to “life, labor, and the pursuit of happiness” (education, health, work, business, entertainment)
- Broadband pipe delivers *all media* via technology convergence—*voice, data, text, graphics, video*; this is new (comm; finance; news; photos; TV → new media)
- Expect staggering, tandem growth of user demand together with bandwidth supply

## 1.2 Leads to policy swamp full of nasty alligators

(dangerous negatives)

- Digital divide; economic bottleneck; content control; network nonneutrality/preferentiality; regulatory nightmare
- Control of access—broadband access is your *doorway* to the world, that swings both ways (IC inbound, IC outbound)
- Expect “knife fight in a phone booth” over these issues—stakes are too high for players to ignore

## 2. Solution—Reframe the problem: Drain the swamp with common carriage principles

### 2.1 Reframe the problem—use the colloquial business maxim:

- “When you’re up to your [anatomy] in alligators, you have to remember we first set out to drain the swamp.”

### 2.1 In truth, this policy swamp is an old problem with a classic solution—common carriage principles

- Toll roads; ferry boats; railroads; telegraph; telephone—all historic, feasible precedents
- Franchise in exchange for nondiscrimination (neutrality) in carrying traffic
- Cooperation of provider, social structure and market to serve the common good
- Protections for provider’s revenue & management; safeguards for customer costs & service

### 3. Real Clear Policy—U.S. law *now* accounts for both innovation and neutrality, if enforced

#### 3.1 U.S. policy encourages technical innovation for the public

##### **SEC. 7. [47 U.S.C. 157] NEW TECHNOLOGIES AND SERVICES.**

- (a) It shall be the policy of the United States to encourage the provision of new technologies and services to the public.

#### 3.2 U.S. law requires real network neutrality\*

##### **SEC. 202. [47 U.S.C. 202] DISCRIMINATION AND PREFERENCES.**

- (a) It shall be unlawful for any [\*]common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

## 4. Process—Craft 21st-century common carriage legislation: Input from public and ICT players

### 4.1 Common carriage principles allow:

- for end-users, client businesses and customers—information access; content freedom; reasonable cost/performance ratios
- for carriers, service providers—reasonable, predictable network management parameters; potential for tiered service revenues (not “unjust or unreasonable”); level competitive playing-field
- for regulators, governments—rational, feasible, tested basis for policy and regulation; equality of treatment for users and providers; framework for handling innovation and especially future growth

### 4.2 Craft 21st-century common carriage legislation to supersede murky legal decisions & piecemeal regulatory compromises

# 5. Common Sense & Common Carriage— Conclusions and Recommendations

5.1 Broadband growth is the engine of common good—21st-century development and prosperity (a new “information renaissance”)

- Therefore: Encourage broadband demand and supply

5.2 Broadband demand and traffic growth inevitably lead to conflicts of “public convenience, interest, or necessity”

- Therefore: stop the knife fights—use common sense to craft solutions based on the common good

5.3 Broadband architecture problems lend themselves to common carriage solutions

- Therefore: work cooperatively to craft 21st-century common carriage legislation and applications

# Thank You—and Discussion

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