Population: 287.9 million (2002 estimate)

Area: 3.54 million square miles (app. 9.17 million square km)


UN HDI rank: 6
The United States - A Federal Republic

Power is constitutionally divided between Federal and state governments, and among three co-equal branches of the Federal government.

BRANCHES OF U.S. GOVERNMENT

EXECUTIVE
President

LEGISLATIVE
Congress (Senate & House of Representatives)

JUDICIAL
Supreme Court

- White House Staff
- Cabinet
- Dept. of Justice
- Dept. of Defense
- Dept. of Commerce
- Dept. of State etc.

- CBO
- Personel and Committee Staffs
- Independent Agencies e.g. FCC

- GAO
- Circuit Appeals Courts
- District Courts

- National Economic Council

- Dept. of Justice
- Dept. of Defense
- Dept. of Commerce
- Dept. of State etc.
Legal Framework for Competition

U.S. law includes both general competition laws and sector-specific laws and regulations.

A. Antitrust law was first implemented between 1890 and 1914 to protect competition and prohibit use of market power to restrain trade.
   - The Sherman Act (1890) prohibits trusts and monopolies, as well as collusion in restraint of trade.
   - The Clayton Act (1914) prohibits mergers or other combinations that substantially lessen competition, calls for advance review of deals.
   - Bell System Divestiture (1984)
B. State and Federal Governments Began sector-specific regulation of Telecommunications in the early decades of the 20th century.

- State governments began regulating telecommunications in their jurisdictions through public service commissions.
- In the Radio Act of 1927, the Federal Government began licensing radiocommunications and broadcasting.
- The Communications Act of 1934 set up the FCC, began comprehensive regulation of wireless and wired communications.
- The Telecommunications Act of 1996 enshrined competition as a goal in all telecom markets.
Government Players in Telecom Policy

The U.S. Congress establishes telecommunications policy within the Federal government.

The Legislative Branch

- The House of Representatives (lower house) and the Senate (upper house) consider and adopt legislation directly affecting telecom issues (sector-specific) and regarding general competition (antitrust) issues.

- Congress has established an independent agency, the FCC, to enforce sector-specific laws and regulate telecom industry “in the public interest.”

- The Federal Trade Commission (FTC) and Securities and Exchange Commission (SEC) impact communications industries.
The Executive Branch

- The Department of Justice (DoJ) enforces U.S. antitrust laws.

- The Department of Commerce (National Telecommunications and Information Administration) and the National Economic Council advise the President on telecom policy issues.

- The State Department and Office of the U.S. Trade Representative (USTR) represent U.S. telecom policy positions outside the U.S.
The Judicial Branch

- Federal District Courts (lower courts) hear claims of violations of antitrust laws and, in specific circumstances, claims involving sector-specific laws (e.g., the Communications Act, as amended by the Telecom Act).

- Federal Circuit Courts (appeals courts) may review FCC orders.

- The U.S. Supreme Court is the final arbiter of all legal disputes involving antitrust or sector-specific laws and regulations.
State and Local governments

- State legislatures may enact laws governing telecom industry practices and services within their state borders.
- State telecom laws are implemented and enforced by public service commissions, which are generally multi-sectoral.
- State courts interpret and adjudicate claims based on state contract law and sector-specific statutes, subject to federal judicial review.
- Local governments may affect competition through franchising authority, wireless tower site permits or construction permits for cable conduits.
How It Works - The Application of Competition Policy

**Antitrust Enforcement**

- Civil and criminal actions by the Justice Department or FTC may result in court judgments or consent decrees.
- Merger reviews under the Clayton Act apply merger guidelines to gauge the effect of increased market concentration.

- **EchoStar and DirecTV**
- **America Online and Time Warner (FTC)**
The Application of Merger Guidelines and the Herfindahl-Hirschman Index (HHI) in Merger Reviews

- Defining the market
- Identifying market participants and likely entrants
- Determining market concentration using the HHI
- Determining the likelihood of coordination
- Conducting a market entry analysis
- Analyzing internal efficiencies
- Consideration of imminent failure
Asymmetric Regulation by the FCC

Sector-specific regulation in the U.S. has incorporated asymmetric treatment based on market power and essential facilities doctrines since the 1970s.

— Computer II/ONA
— Dominant carrier regulation
— Streamlining
— Forbearance
The Asymmetric Framework of the Telecommunications Act

- Promoting competition is a key, but not exclusive, goal of the Act
- Pro-competition mandates are applied asymmetrically
  
  • Interconnection and resale – all carriers
  
  • Unbundling, collocation, and resale at wholesale discount – incumbents
  
  • Section 271 checklist and Section 272 structural separation - BOCs
### 1996 Telecom Act Requirements

<table>
<thead>
<tr>
<th>All carriers</th>
<th>All LECs</th>
<th>Incumbent LECs</th>
<th>BOCs</th>
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<tr>
<td><strong>InterLATA prohibitions</strong></td>
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<td><strong>Provision of interLATA services via separate affiliates</strong></td>
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<td><strong>Duty to negotiate interconnection in good faith</strong></td>
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<td><strong>Interconnection at any technically feasible point</strong></td>
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<td><strong>Network unbundling (UNEs) at cost-based rates</strong></td>
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<td><strong>Collocation</strong></td>
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<tr>
<td><strong>Infrastructure sharing</strong></td>
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<td><strong>Cannot prohibit resale of services</strong></td>
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<td><strong>Number portability</strong></td>
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<td><strong>Dialing Parity</strong></td>
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<td><strong>Access to rights of way</strong></td>
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<td><strong>Reciprocal compensation for termination of calls</strong></td>
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<td><strong>Offer interconnection</strong></td>
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<tr>
<td><strong>Coordinate for network compatibility</strong></td>
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<td><strong>Provide access to disabled</strong></td>
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<tr>
<td><strong>Contribute to universal service fund based on interstate services provided to end users</strong></td>
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FCC License-Transfer Proceedings (Merger Reviews)

- The FCC’s standard is broader than the antitrust standard; not just competition, but all factors in the public interest are incorporated in its reviews.
- In evaluating competition as a factor, FCC also undertakes market power analyses.

- SBC acquisition of Ameritech
- MCI merger with WorldCom
Federal v. State Jurisdiction

*In the U.S. regulatory framework, states regulate intrastate services, while the FCC regulates interstate services.*

- An “end-to-end” analysis is applied to communications to determine whether they cross state boundaries.

- On interconnection pricing, the FCC may set “guidelines” but the states set rates.

- Courts have ruled that states are “sovereign” within sphere of regulating purely *intrastate* services.

- States have role in implementing national policies; there is creative tension in dialogue with Federal government.
Is the Justice Department a Regulator?

— The FCC operates largely in an *ex-ante* manner, while antitrust enforcement is largely applied *ex-post*.

— DoJ is a “watchdog,” intervening only when necessary to correct market malfunctions.

— FCC is a “sheep dog,” directing the market toward outcomes mandated by Congress.

— Merger reviews get close to overlap, but are performed using different standards for potential outcomes.
The Result: Telecom Competition in the U.S.

The First 100 Years

- Emergence of AT&T, 1876 to 1893

- Survival of the fittest in a jungle of overhead lines, 1893 to 1920s

- Rise of the regulated “natural monopoly,” 1920s to 1970s

- Divestiture and the growth of competition in long distance and CPE markets
The Result: Telecom Competition in the U.S. (Cont.)

The Current Status of Competition

*Local Services*

- CLECs provide nearly 20 million switched access lines (2001)
- Number of lines grew 14% in second half of 2001.
- Residential and small business customers remain a minority (48.3%) of CLEC customers.
- Coaxial cable lines used for telephony only reached 1% in 2001.
- Assessment: local voice competition growth remains incremental.
Local Service (Cont.)

CLEC Market Share Growth

%  
0 12 10 8 6 4 2 0


Source: FCC
Local Service (Cont.)

The percentage of CLEC lines that serve residential and small business customers has risen to nearly 50%.

Source: FCC
More than 780 companies are classified as toll carriers, but the largest three remain AT&T, MCI and Sprint.

Long distance is a stagnant market segment, due to rising Internet, VOIP and wireless use.
Broadband Access

High-Speed Cable Modem, ADSL Lines
(Over 200 kbps in at Least One Direction)

Percentage Change
ADSL 36%
Coaxial 45%

June 2001-Dec. 2001
ADSL 47%
Coaxial 36%
Broadband Access (Cont.)

- The FCC defines high-speed access lines as those with a capacity of more than 200 kbps in at least one direction.

- Accelerating broadband network deployment is a top priority for the FCC and Congress.

- Wireless access strategies (fixed wireless and satellite) have struggled in the U.S. market; interest rests increasingly with unlicensed WLAN opportunities (e.g. 802.11b/Wi-Fi.)

Estimated Subscribers

(Millions)

91 92 93 94 95 96 97 98 99 00 01
Mobile Services
(Cont.)

- Mobile data services are a small, but growing market (8-10 million users)
- Wireless carriers are migrating through "2.5G" technologies
- The U.S. has struggled to define spectrum for 3G, but recently allocated two paired blocks of 45 MHz at 1.7 GHz and 2.1 GHz
- Delay in allocation and licensing ironically let U.S. avoid 3G auction bubble.
Intermodal Competition

- The U.S. is seeing increased blurring of competitive lines among market segments
  - Broadband Internet access competition between telephone and cable TV
  - Voice competition between wireless and wireline carriers.

- The convergence of competition has complicated U.S. regulatory categories and led to calls for “regulatory parity.”
Current Competition Policy Issues in the U.S

The Referendum on Network Unbundling

- Incumbent and competitive local exchange carriers are locked in a battle over the “unbundled network element platform” (“UNE-P”)

- Incumbents believe the FCC has erred in the past by designating unnecessary UNEs, thus undercutting incentives to invest in competitive networks.

- Competitors and states believe UNE-P availability is needed to encourage market entry and consumer choice.

- A federal court has remanded the FCC’s unbundling and “line-sharing” orders.
Source: FCC
Broadband Rollout

The FCC is examining several ways to possibly reduce regulation of incumbents’ broadband network offerings, in an effort to spur accelerated roll-out.

- Incumbent carriers are calling for deregulation and regulatory parity, arguing that current policies constitute a disincentive to investment.

- Competitors and cable TV companies believe deregulation will lead to leveraging incumbents’ local market power into broadband, IP networks.
The FCC is facing growing questions regarding the overall level of the universal service burden, the cost of administering the USF, and the method of levying the contribution amounts.

- The projected total of USF costs for the fourth quarter of 2002 is $1.586 billion, or $6.34 billion, if annualized.
- Carriers face a growing number of legal challenges based on allegations of “overcharging” to collect contribution amounts.
- The FCC is considering proposals to revamp the collection system by basing it on “connections” rather than on revenues.
- Questions have been raised regarding fairness of contribution levels assessed on wireless carriers.
Conclusions

- U.S. competition policy was not created, it evolved
- Because of the nature of divided government, multiple agencies have roles to play, within multiple jurisdictions
- U.S. competition policy balances *ex ante* rulemaking and *ex post* law enforcement.
- The U.S. system is based on rule of law and legal precedent, not short-term political shifts.
Challenges

- The need to avoid administrative overlap in applying competition policy
- The need to coordinate and avoid tension among different policy players within the federal government and between federal and state governments
- Managing policy formulation and implementation amidst constant litigation and judicial review
- Keeping sight of, and marking progress toward, policy goals amidst the complexity of governmental processes