

## **Communications Policy in Service of *Equity***

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Digital “equity” is the current touchstone for broader, broadband universal service efforts. In 2015, a new group, the National Digital Inclusion Alliance (NDIA), formed to promote this agenda. In 2016, Chairman Wheeler linked the FCC’s reform of the Lifeline Program to digital equity concerns. Commissioner Rosenworcel and others have used the language of equity in describing the “homework gap,” which refers to the inability of some students to use digital tools necessary for that dreaded but necessary activity – which resulted, among other things, in a bipartisan bill, the Digital Learning Equity Act of 2015. (It didn’t pass.)

The definitions of equity are potentially wide-ranging. The NDIA, recognizing that its early efforts suffered from a diffuse understanding, has offered this: “Digital Equity ensures all individuals and communities have information technology capacity needed for full participation in our society, democracy, and economy. Digital Equity is necessary for civic and cultural participation, employment, lifelong learning, and access to essential services.” The Sesame Workshop, together with Rutgers and New America, implicitly used the term “equity” to go beyond a narrow definition that might have been associated with POTS universal service, saying “access is no longer just a yes/no question. The *quality* of families’ Internet connections, and the kinds and capabilities of devices they can access, have considerable consequences for parents and children alike.” At the other end of the spectrum, the Digital Equity bill did not actually offer a definition of equity, but rather would have funded a few demonstration projects to identify levels of high school digital homework completion with different levels of funding.

The increased use of “equity” in communications policy discussion prompts three observations:

First: The appeal to equity shifts the lens from the communications service itself to the functionality (benefits) provided by that communications service. In the language of this advocacy: Equity in Internet access is to ensure that all people have access to jobs. Equity in Internet access is to assure equal educational opportunity. Equity serves broad democratic participation. Equity enhances social cohesion.

Second: This is actually nothing new in universal service discussions. In the Internet age, where communications technology enables so much more than traditional telephone service, the policy justifications for earlier efforts might seem lost in the haze. But the notions of equity – at least as defined as the manner in which communications equality enables other pursuits – were at the bottom of even the earliest universal service policies. On the broadcast side, licenses were allocated based on the notion that each community should have local news coverage – an allocation of licenses inefficient from a channel diversity viewpoint. On the telephone side, universal service was associated with broader values that included jobs, access to health care, and democratic participation. More recently, the FCC’s National Broadband Plan in 2010 was explicit in discussing both broader frames from the “equity” push – that is, it discussed both

those functions enabled by broadband and the need for broader access (to devices and education, not just connectivity) necessary to reach those goals.

Third: Equity is not, or should not be, communications policy, but communications policy can be in service of equity – and it is important that this analytic arrow be kept pointed in the right direction. The current and historic manner of addressing communications universal service policies by looking beyond the communications service is, of course, right and appropriate. The FCC has been a focus of expertise on these broader social communications issues, and communications access can be a means of promoting equity in the larger debates. But (for example) the debate over the homework gap is a debate about equity in educational opportunity, and the debate over access to employment opportunities is a debate over equity in economic participation. Enhanced communications access may be a good tool for enhancing equity in education, but focusing principally on the communications aspect can obscure a debate about equity in the actual target. The Digital Learning Equity Act’s proposal did not ask whether the increasing use of digital technologies was an appropriate pedagogical move: are teachers using technology because they are being forced by spending cuts to teaching methods with different scale? And of course the Act didn’t ask the even deeper question of whether the current definition of elite education – one centered on an enormous volume of homework – is really associated with better outcomes. When it comes to communications policy, allowing equity language to pull over from the broader function or goal can mean that creating “equality” in communications obscures a clear-eyed debate over equity in the outcome that communications is allegedly to serve. If most students do certain homework through home broadband connections and devices, then equity in education (the slippery logic goes) means that all students need equal broadband connections and devices. But that is a conclusion that is not linked to the relevant educational outcomes – which might be achieved in a non-communications intensive alternative assignment or which might be achieved through a communications alternative not tied to home access or devices. In short, equity cannot serve as the communications goal – though equality of communications might serve other equity goals.

Now, the conclusion from a broad equity analysis – of education equity, employment equity, social cohesion, democratic participation, and other – might lead to (if I may) a convergence point, where the conclusion is that high-quality home access broadband, with devices, is the manner in which many or most people meet these needs. And, if so, then the communications policy conclusion would be a routine conclusion for a universal service policy pointed in that direction. But we don’t need the language of equity in communications policy to get there – indeed, as I’ve said, it’s distracting. If we reach that decision, through whatever set of philosophical and political tools, then the conclusion is simply, and much more easily, one of equal provisioning.

## **A Capabilities Approach to Communications Equity**

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The concept of equity is deeply established in American communications policy, as well as its antecedents in public utility regulation and common carriage. The Preamble to the Communications Act declares a goal, “to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service...” Fast-forwarding to recent times, the struggle over network neutrality reached its crescendo in an equity-oriented battle over “fast lanes.” Yet both the meaning and value of equity in today’s world of multidimensional competition, new aggregations of platform power, digital convergence, and shifting usage patterns are far from clear. Equity issues are seemingly more prominent than ever, but so is the view that economic welfare maximization should trump such normative considerations.

This article seeks to clarify the role of equity considerations in contemporary communications policy. It offers a framework for equity-enhancing measures that avoids the outdated boundaries of industry silos. It then digs into the nature and rationale for equity as a policy goal. There is no universal definition of fairness, nor is there a universally-accepted justification to support it. To escape the confusion inherent in the present approach to equity, I propose a new framing based on the Capabilities Approach of Amartya Sen. This approach has been extremely influential in international development circles. It provides a more nuanced and normatively rich perspective based on the human functionings that communications systems afford. Some implications of the shift to a capabilities approach for communications policy are then laid out.