

Is There Enough Broadband Competition? How High Is Up? Cold Enough For Ya? And Other Questions Without Proper Referent

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WE HAVE THIS PANEL BACKWARDS

- Determine policy goals
- What are the best means to achieve these goals?

WE ONLY CARE ABOUT COMPETITION AS A MEANS TO AN END, NOT AN END IN ITSELF.

- What do we mean by “Competition?” How does it achieve these goals?
 - Are regulations necessary to ensure that “Competition” achieves the policy goals?
- Will “Competition” emerge on its own?
 - Are regulations necessary to create competition?

CONGRESS HAS SET SPECIFIC POLICY GOALS

- [T]o 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 with adequate facilities at reasonable charges...
47 USC §151 (emphasis added)
- [T]o promote ... diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.
47 USC §257(b)

CONGRESS HAS SET SPECIFIC POLICY GOALS (con't)

- [To] encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.
Telecommunications Act of 1996 §706
- [T]o promote the continued development of the Internet and other interactive computer services and other interactive media; to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.
47 USC §230(b)

IN PLAIN ENGLISH

- Cheap Wicked Fast Broadband For **EVERYBODY**.
- An Internet as open and diverse as exists today – or better!
- Lots of competition for all goods and services related to internet access or available online.
- “Unfettered” by Federal or State regulation – whatever that means.

WHAT DO WE MEAN BY “COMPETITION”?

- Presence of a comparable service? Potential presence of a comparable service?
 - What exactly *is* a “comparable service”?
- Do we care about market share? Potential market share?
- Do we care about lock in? Disclosure? Other things that might keep subscribers from switching?

“COMPETITION” CAN ONLY WORK IF A SUFFICIENT NUMBER OF SUBSCRIBERS WILL SWITCH IN RESPONSE TO “BAD BEHAVIOR”

- Access possibilities must be “close substitutes” not just “substitutes.”
 - Soda v. bottled water v. tap water v. mud puddles
- Competing products available to a sufficient number of subscribers nationally? Regionally? Locally?
 - Bottled water v. free soda 100 miles away

CAN USERS REALLY SWITCH?

- Lock in, convergence, “sticky features,” network effects.
 - To cancel your water cooler service costs \$1000, takes five days, you need to buy new glassware, and you need to switch from oil to natural gas heat (bundled service).
- Users cannot switch to a “potential” service.
 - Bottled water v. mud puddles v. “It looks like rain.”

HOW MUCH COMPETITION IS “ENOUGH?”

- Duopoly (Bertrand v. Courant v. Stackleberg v. ????)
- How does the market function? Do actors engage in “conscious parallelism?” What information do actors have to make decisions? Do factors outside the immediate market make a difference?
- Is there an “upstream market?” “Two-sided competition” (e.g., cable programming)? Complex relationships we don’t know about? What needs to be disclosed? To whom?
- Vertical integration with backbone? Other vertical integration? Bundling with other services?

IS THE MARKET REALLY “UNFETTERED”?

- Laws that support certain types of competition or certain specific players.
 - pole attachments (favors cable v. telco and BPL)
 - program access (favors telcos and other video rivals)
 - mandatory interconnection and termination of calls (favors cable over telcos).
- Federal license needed (spectrum)? State or local laws?
- Patents or other extraneous laws?
- Government actors?

HOW DOES THE REAL WORLD STACK UP TODAY? GOALS

- Broadband is “Wicked Slow”
- Not available everywhere, but can get something better than dial up in most places
- But, if we don’t care about “fly over” country, poor people, Native Americans, “those” neighborhoods, etc., things start to really look up!

HOW DOES THE REAL WORLD STACK UP TODAY? COMPETITION

- Over 95% of residential subscribers take DSL or cable.
- Appears people regard cable and DSL as substitutes or “close substitutes.” No evidence anyone regards anything else (even where available) as a substitute.
- Internet content and services still competitive and diverse – but ability to “tier” content relatively new. For all we know, may be happening.

WILL COMPETITION ON OTHER PLATFORMS EMERGE?

- Technological challenges, market forces, market power, regulatory issues, make other possible competitors uncertain.
- Potential competitors may emerge too late to capture sufficient market share.
- Significant issues about lock in, disclosure, and stickiness from convergence.

DUOPOLY NOT ENOUGH

- "It's too early to draw a conclusion, but it appears that competition is not leading us to a race to the bottom," Banc of America analyst David W. Barden said. Instead, he said, a duopoly is emerging where cable and phone companies can avoid provoking price cuts in their core services. Carriers, for instance, can discount DSL service while keeping prices up on phone service, and cable firms can drop prices for phone service but maintain higher pay-TV rates."
Baltimore Sun February 1, 2007
- "The speed we offer is based on competition from the cable sector," says Michael McKeehan, Verizon's director of Internet and technology policy. "If they offer 6Mbps, we go a bit better. We don't see the need to ramp up the speeds just yet."
BroadbandReports.Com February 2, 2007

HEALTH INSPECTOR OR RESTAURANT CRITIC?

- Economic theory, informed by real world observation and relevant history, tells us betting on cartelization, high prices, and discrimination plays the odds.
- Other countries with more “intrusive” regulation whupping our butts.
- This is critical infrastructure, not turnips or tulip bulbs.

RECOMMENDATIONS

- Network Neutrality a must: status quo for most of internet's history, theory that it impedes "wicked fast broadband" questionable; Democracy, civic engagement, and all that other good stuff; prevents formation of new market barriers; reduces overall market inefficiency.
- Look to reduce factors that cause switching cost, lock in, or anticompetitive advantages. Permit bundling? Email portability? Disclosure of some kind?

RECOMMENDATIONS (con't)

- Dump Shibboleths of “level playing field” and “technological neutrality.” This is not a football game. Reality matters, economics matters, technologies are different and how people use/access this stuff is important. Do you want actual competition or not?
- May need to encourage other potential broadband delivery forms (more unlicensed spectrum, preempt state rules against muni-broadband, subsidies, tax incentives, others).