

Perspectives on The Network Neutrality Debate

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Overview

- **Perspective and Background**
- **The Past as Prologue: A Brief History of Telecommunications Competition, Business and Regulation**
- **The Development of Networks and Applications: Telecommunications Competition in the Internet Era: How Broadband Changed Everything**
- **The Madison River Case – The FCC Responds**
- **A Practical Guide to Network Discrimination: Engineering Degree Not Required**
- **Regulation vs. Deregulation: The Debate Any Washingtonian Can Learn to Love**
- **A Snapshot In Time: The Current Discussion**

History: Telecommunications Competition

- **Ma Bell**
- **Cable**
- **MFJ/Breakup**
- **Long Distance Competition**
- **Internet (ISPs and Backbone Providers)**
- **CLECS**
- **Consolidation (repeat cycle!)**

History: Telecommunications Business

- **1957 RBOC Revenue Components**
 - Local Service
 - Equipment
- **1997 RBOC Revenue Components**
 - Local Service
 - Access Services (++)
 - Reciprocal Compensation (-)
 - Collocation/Special Access/Other
- **2007 RBOC Revenue Components**
 - Internet/Data (++)
 - Local Service (-)
 - "Long Distance" (-)
 - Reciprocal Compensation (0)
 - Access (0)

What's Next: Video?

Question: How Do The RBOCs Replace Lost "Access Revenue"

History: Telecommunications Regulation

- Federal Regulation
 - Interstate and International Telecommunications
- Title II (Sections 201 and 202)
 - Hush-A-Phone
- Title II (Section 230)
- Title VI (Cable)
- Title III (Wireless)
- Title I
- State Regulations
 - Intrastate Telecommunications

How Broadband Changed Everything

1994

- cable = video
- rboc = telephone
- ISP = internet
- Internet applications = ftp, http, rtp, "ping"

1996 Telecommunications Act forced RBOCs to introduce ISDN/DSL, which popularized the services

How Broadband Changed Everything

- 1997-2007
 - Applications created powerful demand for the broadband Internet.
 - Offered by cable, rbocs, third parties
 - Voice and Video applications that compete with the "core" offerings of the incumbent providers
 - Broadband is "always on"; Key for "voice" networks
 - Network providers consider combination of broadband and applications a competitive "Trojan horse" (revisit economic slide)
 - Competition and Innovation undreamed of by incumbent network providers: Youtube, Slingbox, Vonage, Skype, Itunes, RealNetworks, Xbox online gaming
- Will Network Providers Become Toll Collectors for Applications on the Information Highway?
- Are they "double dipping" if the already collect from end-user customer

Madison River

- Allegations of “port” Blocking
- FCC “Consent Decree” (Feb 2005)
 - Madison River agreed not to block DSL users from accessing VoIP services, without admitting violation of FCC rules
- Reliance Upon Title II
 - Subsequent FCC order reclassifying DSL as an information service limits the precedential value of this decree

Other Potential Forms of Discrimination

- Content Impairment (intentional blocking, or degrading)
- Tiering (Pricing, QOS) (“access to ports for a price”)
- Discrimination (Offering favorable access/bandwidth, QOS, Pricing to affiliated entity)

Regulation vs. Deregulation

- Deregulation In Full Effect
 - Reclassification from Telecommunication to Information Services
 - Wireline Broadband and Cable Modem Decisions
 - *Brand X* Decisions
 - ED Minnesota *Vonage* Case
 - Preemption of State PUC Regulation
 - FCC *Vonage* Decision
 - 8th Cir Appeal
- Premised on Competition Between Broadband Providers
 - Is there competition at the "End User Level"
 - What about at the Network Level?

Status of the Debate: Why Now

1. Increasing Concentration of Network Provider Assets (loops and backbone)
2. Migration of "Everything over IP"
3. Deregulation of IP Networks
4. Threats to Traditional Core Revenues of Network Providers
5. Network Provider Needs to Avoid becoming a "Commodity" and Accompanying Price Erosion
6. Move of Network Providers into "Content" and Applications
7. Concern that Network Providers will have the Economic Incentive to Discriminate (physically or economically) and Favor their Own Applications

Status of The Debate

- Debate is teed up in Congress and at the FCC and FTC
 - What conduct is impermissible?
 - Who's rights are protected? (consumers, providers, both)
 - Who decides? (Courts, FCC, FTC)
 - What is form of action (Complaint, Lawsuit, Other).
- What can be done to facilitate broadband deployment and investment without sacrificing principals of reasonable non-discrimination
- How Do Lawmakers address issues of “reasonable” discrimination, such as “network management”
- Non-Discrimination Protections Without Title II Regulation or should we retain Title II regulation over Networks and fewer obligations upon “applications”

Status of the Debate

- FCC's 4 Principals (unenforceable)
 - Access to lawful content of their choice
 - Access to applications subject to needs of law enforcement
 - Attach legal devices that do not harm the network
 - Consumers entitled to competition among network providers, application providers, and content providers.
- SBC/AT&T and Verizon/MCI Merger Conditions included Network Neutrality controls for a limited period of time
 - Consideration of 5th principal in context of merger – non-discrimination among similar applications
- International Developments – UAE, Mexico,

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