



## Ready or Not....

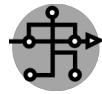
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## Public Highway or Toll Road or Hybrid?

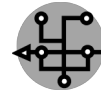
- Info Super highway....
  - Gov't built and controlled roads?
  - Privately built roads? – w/ Gov't oversight?
  - Access for everyone? (traffic jams?)
  - Toll Roads?
  - HOV lanes
  - Safety/Social Guidelines (crash barriers, HAZ Mat restrictions),



Look how well LA has done.....

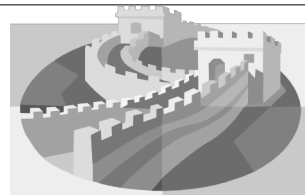


## Battle Lines



- Depending upon where you sit this is either a battle among titans or a guerrilla war against them
- Cable v. Telcos v. Wireless v. WIFI v. Broadband over Power
- Each network in isolation may be ready (with some greater capital investment) to deliver greater bandwidth services
- To What End? - Deliver premium content/functionality of their choosing – e.g. internet baby sitting.

## But what aspects of Network are most vulnerable to “protectionism?”



- Last mile – getting into your house and office
- End Office – use of the loop/DSL bandwidth/cable bandwidth - collo
- Individual Use of WIFI – restricted
- End Office/Head-end to Network – Bandwidth/Speed Throttling
- Network Islands – Caching, interoperability
- For now, long haul internet seems adequate; the rest is questionable.
- What about Content?????

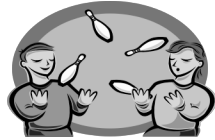
## Can we even define broadband?

FCC use of the term "broadband" and how they "define" it in reverse chronological order:

- In the order on DSL deregulation and NPRM on Wireline Broadband Facilities, released September 23, 2005, the FCC referred to broadband transmission as "transmission in excess of 200 kbps in at least one direction." *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, CC Docket Nos. 02-33, 01-337, 95-20 and 98-10, WC Docket Nos. 04-242 and 05-271, released September 23, 2005, at page 6.)
- In March 2005 in the IP-enabled NPRM, the FCC used the term broadband. They specifically said they were "using" the term to define what is required by Section 706 of the Act, which covers "advanced services" and referenced language in earlier cases. *Notice of Proposed Rulemaking, IP-Enabled Services*, WC Docket No. 04-36, released March 10, 2004, footnote 3.
- Section 706 of the 1996 Act addresses the definition of "advanced services" as follows: "'advanced telecommunications capability' is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.
- *Other Sources*
- In the Supreme Court case in *Brand X*, in June 2005, the Court refers to "broadband" as faster than dial-up and cites DSL and cable modem as two examples, but goes no further.



- **SEC. 251. [47 U.S.C. 251] INTERCONNECTION.**
- (a) GENERAL DUTY OF TELECOMMUNICATIONS CARRIERS.—Each telecommunications carrier has the duty--
  - (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and
  - (2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256. <sup>(255</sup>  
-ACCESS BY PERSONS WITH DISABILITIES)



• **SEC. 256. [47 U.S.C. 256] COORDINATION FOR INTERCONNECTIVITY.**

(a) PURPOSE.--It is the purpose of this section--

(1) to promote nondiscriminatory accessibility by the broadest number of users and vendors of communications products and services to public telecommunications networks used to provide telecommunications service through--

(A) coordinated public telecommunications network planning and design by telecommunications carriers and other providers of telecommunications service; and

(B) public telecommunications network interconnectivity, and interconnectivity of devices with such networks used to provide telecommunications service; and

(2) to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks.

**And then there was the Brand X decision...**

National Cable and Telecommunications Assn. v. Brand X Internet Services, 125 S. Ct. 2688 (June, 2005)

Affirmed FCC's declaratory ruling that cable-provided Internet access is an information service and that cable operators have no statutory obligation to allow other ISPs to provide high speed broadband service through the cable operator's wires.

## August 5, 2005

The Federal Communications Commission adopted a policy statement that outlines four principles to encourage broadband deployment and preserve and promote the open and interconnected nature of public Internet:

- (1) consumers are entitled to access the lawful Internet content of their choice;
  - (2) consumers are entitled to run applications and services of their choice, subject to the needs of law enforcement;
  - (3) consumers are entitled to connect their choice of legal devices that do not harm the network; and
  - (4) consumers are entitled to competition among network providers, application and service providers, and content providers.
- Although the Commission did not adopt rules in this regard, it will incorporate these principles into its ongoing policymaking activities. All of these principles are subject to reasonable network management.



## Which sets up the FCC to eliminate the prior rules that required the BOCs to...



offer the telecommunications transmission component of it, such as DSL, as a common carrier offering to unaffiliated providers of Internet access service, such as ISPs; abide by Open Network Architecture ("ONA") rules; and Comparably Efficient Interconnection ("CEI") rules.

By issuing an order on DSL deregulation and NPRM on Wirelines Broadband facilities (9/27/05) that classified wireline broadband Internet access service as an information service because it offers the subscriber more than pure transmission and involves, in the FCC's view, an inextricable intertwining of transmission with information processing. The FCC contrasted this service with "pure" transmission services such as frame relay and ATM which it stated were telecommunications services. The FCC's classification of wireline broadband Internet access service as an information service does not depend on whether the carrier owns or leases the transmission facilities.

The FCC eliminated all these rules based upon the new assumption that the ILECs were no longer the sole network providers. Now the FCC found that there were two established broadband network providers (cable and ILECs) as well as several emerging platforms and providers.

- The FCC also found that the existing rules imposed unnecessary costs, and inhibited innovation and provision of new services. The FCC believed that carriers will have adequate business incentives to offer transmission services to ISPs even without rules obligating them to do so.

## What do we now know?

- 96' Act a failure at bringing about local competition or broadband availability
- Current regulatory construct is impediment to everyone – and investment suffers
- Bandwidth scarcity not yet prevalently acknowledged.
- Without some change, only the mighty will prevail.
- Law of unintended consequences dictates caution – be wary of correcting evils that don't yet exist
- That we don't know enough...and may never know enough

*So, with the regulatory parity argument in full swing, the FCC has become the Master of Ambiguity...Are there any rules of the road?*

- What to do?
  - Stop legislating beyond principles – advantages niches.
  - Establish specialized “courts” that provide rapid, cost effective policing and dispute resolution that is relatively independent of political gamesmanship.
- If not, we will have to wait until the pendulum swings back to anti-trust enforcement....
- But at what cost to –
  - National competitiveness in the world market
  - Freedom of Expression
  - Community

