

Remarks on Broadband Competition and Access Regulation

Marius Schwartz*

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* Professor of Economics, Georgetown University, Washington DC 20057
<mariusschwartz@me.com> <<http://web.me.com/mariusschwartz>>

Disclaimer: I have consulted for AT&T on net neutrality matters, but the
views expressed here are my own

Proposed Standard for Intervention

FCC's Net Neutrality NPRM 10-09: broadband ISPs may not charge application/ content providers for prioritized access

Significant costs likely; is there a compelling need to intervene?

My view: consider access regulation—in any industry—only if

1. clear evidence of serious competitive failure; *and*
2. reasonable prospects that regulation will improve matters

Condition 1 is a screen: low threshold invites rent seeking, etc.

Condition 2 resists “Nirvana approach” to intervention

Does either condition hold in broadband access today?

Broadband Competition

Interventionist view: wireline mass market broadband (BB) is a durable duopoly of the local cable and telephone company

Two responses

- Structure: “durable duopoly” premise is questionable
- Conduct: even a duopoly can exhibit strong rivalry (not “just one away from monopoly”)

Is Broadband a Durable Duopoly?

Wireline broadband: some limited overbuilds (e.g. RCN, municipal fiber)

Wireless competition — potentially more important:

- Both fixed (e.g. Clearwire, Hughes) and mobile
- Users face performance tradeoff — mobility vs. bandwidth
- For mobile to constrain fixed we don't need all users to view them as good substitutes — only enough users on the margin
- Voice telephony example: mobile started as complement to fixed, but became strong substitute
- In fixed + mobile BB universe, most users enjoy at least 5 or 6 competitors

Conduct: Indicators of Rivalry

Technology Upgrades in Response to Competitors

- Landline BB: Cable cos. reportedly deploy DOCSIS 3.0 first where FiOS or U-Verse present — worth documenting systematically
- Mobile BB: Many similar examples

Comparative Advertising

- Landline BB: Comcast v. DSL “Slowskys”; VZ FiOS vs. cable guy
- Mobile BB: Fastest Network v. Most Reliable, etc.

Apple’s iPhone Exclusive Contracts (US and abroad)

- Signals rivalry among wireless carriers (!) — Apple can extract exclusivity premium only because carriers compete for subscribers

Broadband Access Regulation?

Regulated Monopoly Paradigm Doesn't Fit

Familiar traditional telecom concern:

- Price-regulated monopolist in bottleneck market vertically integrates into adjacent markets where it faces lighter regulation, and discriminates in bottleneck access against independents

But above paradigm does not fit today's broadband market:

- Risk of anti-competitive access discrimination (via pricing or non-price conditions) is lower
- Good regulation will be much harder

Anti-competitive Discrimination Risk Is Lower

- Weaker incentive: BB margin *unregulated*, so BB seller loses profitable sales if degrades supply of *complements* (content / apps)
- Weaker ability: BB providers *compete*, so can't unilaterally exclude independent suppliers of complements from the market
- Little evidence of significant anti-competitive discrimination

Discretion in Pricing or Network Management May Be Beneficial

- Charging content or application providers to reach end users: BB prices to end users would likely fall (2-sided markets logic)
- Price-quality options: allocate scarce network resources; if price discrimination role, still not presumptively bad (Hermalin & Katz)
- Clearly legitimate goals, e.g. traffic management to address congestion or user fairness (Bennett; Ou)

Good Regulation Will Be Much Harder

Telecom access regulation has done best when the technology was relatively stable & simple. Contrast:

- Part 68 rules: relatively simple interfaces (plugs & jacks), and stable (backward compatibility with old phones mandated); vs.
- More complex environments: ONA, OSS interfaces

Broadband technology is *complex* and *rapidly changing*

- Complex: must police (1) network management, and (2) in wireless, software interfaces between network and handsets or applications
- Rapid change: impedes standards, efficient interfaces are in flux
- Regulation will impose large costs: wrong decisions, limit flexibility.

Conclude: serious reasons to doubt the economic case for tight BB regulation today.

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