Whither the FCC?

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U.S. Telecoms Symposium Part II

Washington, DC
Where should the FCC be going?

• **Overall: What makes telecom special?**

• **The skeptical argument -- redundancy**
  o The FCC’s primary role is to prevent practices that create or maintain market power
  o But that’s what the antitrust laws are for

• **Questions for today**
  o Is this correct?
  o Are there other rationales?
  o Assess by policy area

• **Caveats**
  o With one exception, not talking about legal permissions
  o The law could give FCC authority it ought not have
  o The law could deny FCC authority it should have
Mitigating market power: promote competition

• Redundancy argument strongest here
• What makes telecom different from any other industry?
• Leave competition to competition authorities
• Specialized knowledge argument not compelling
  o DOJ, FTC figure out lots of industries
  o And, DOJ did break up AT&T
• But the legal block: *Trinko* and other S.Ct. decisions
  o *Flamingo, Credit Suisse*
• Remove antitrust when a regulator is present—despite explicit savings clauses!
• If you dislike redundancy, get *Trinko* repealed

Brennan: Whither the FCC?
Mitigating market power: price regulation

• Competition law (in US) by and large doesn’t involve price regulation
  o Consent decrees in Section 1 cases: ASCAP
  o FRAND for “standard essential patents”

• Doesn’t apply for/to natural monopolies

• Familiar old story, but are there any now?
  o Mobile backhaul?
  o Fiber, eventually?

• If there are any, will they be left to state regulators?

• (What makes telecom different from oil, autos …)

• Also, will FCC emphasize non-discrimination?
Network externalities: market power issues

- Going back to 1996 Telecom Act
- Originally two sources of market power: physical scale and network externalities
- Technology, maybe accident (cable plus telco plant) reduced the former
- Still need to solve latter: Mandatory interconnection
- Not just entry barrier, but ongoing concern
  - Competitors could set mutually high fees to raise price
  - Like agreeing on a high license fee
- Consequently, need price regulation (“bill and keep”)
Network externalities: universal service

• One universal rationale was that the value of a telephone went up the more others had one
• Manifested now in interconnection regulations
• Internet protocol standards
• Might this be the best rationale for something like network neutrality?
  o Value of access to a content provider depends on expectation that others can access links
  o Justifies minimum quality standard, not non-discrimination
• Sounder argument than market power
  o Network neutrality as preventing exclusive dealing in disguise?
  o Could leave for antitrust – except for *Trinko*!

Brennan: Whither the FCC?
Consumer protection

• **What is “consumer protection” about?**

• **Economizing on search**
  - Let the FCC pick what we’d want?
  - *Could* be efficient if error cost less than search cost

• **Asymmetric information preventing sale of high quality services?**
  - FCC as certifying quality through licensing, perhaps

• **Keeping consumers from making mistakes**
  - Behavioral economics, anyone?
  - Assuming this is a role for government, let the FTC do it.
Wealth distribution

• (Caveat: I think this is actually important in principle—but is it important for FCC matters?)

• Apart from market power issues

• Universal service

• Redistributive subsidies
  o Distortionary responses, not necessarily progressive

• How much wealth at stake?

• More efficient ways to achieve that end

• A distraction from genuinely egalitarian policy
Rights (ethics, not law): Speech and access

- (Caveat: I think this is actually important, too)
- Apart from economic efficiency and equality issues
- What should each person (citizen) have by virtue of personhood (citizenship)?
- How do we identify rights?
  - Not enough time, but there are insights out there
  - Need to tie to these ends (autonomy, civic participation)
  - Need to differentiate from efficiency, wealth *per se*
- Did one need a telephone for these ends?
- Does one need broadband now?
- Efficiency, not rights, justifies rights to facility owner
Last and not least: Spectrum allocation

- Like doling out other property
  - Taking as given that spectrum publicly owned in the first place

- Hazlett, others: Could common law courts handle it?
  - Includes interference rules

- Market power considerations: Antitrust
  - DOJ oversight over oil tract drilling rights awards

- Auction scheme design? Depends
  - Trust or mistrust secondary markets?
  - Having the government get the money?
  - More money => reduce supply?

- FCC as zoning board: Does compatibility still matter?