

# The European Framework for Electronic Communications: A U.S. FTC Perspective

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# Preliminary Comments

- On behalf of FTC Chairman Kovacic, I am pleased to present an American competition policy perspective on the new European Framework for Electronic Communications.
- The views set forth below are my own. They do not necessarily represent the views of the Federal Trade Commission or any individual Federal Trade Commissioner.

# Introduction

- I will use the history of U.S. regulation of communications as background for my observations on European efforts.
- Since the 1930s, the U.S. FCC has regulated private uses of the spectrum and the U.S. Commerce Department, through the NTIA, has overseen uses of spectrum assigned to federal agencies.

# U.S. Communications History, cont.

- The FCC has lightened its regulation in recent decades and has auctioned increasing blocks of spectrum transferred from federal control for private uses.
- The FCC has authorized unlicensed spectrum for certain wireless uses as well as licensed spectrum uses. New wireless alternatives.
- The FCC now generally refrains from regulating broadband and non-common carrier uses (radio and television still regulated through licenses).

# U.S. Communications History, cont.

- Traditional wireline common carrier regulation: mainly consisted of FCC oversight of AT&T monopoly.
- 1984 breakup of AT&T did not bring instant full competition, rather regulation of multiple common carriers (welfare effects uncertain).
- Huber, Geodesic Network: regulatory separation costly.
- 1996 Telecom Act moved toward deregulation of non-common carriers but imposed onerous local loop access rules (TELRIC) on RBOCs to promote competition.
- Resistance to FCC rules (litigation) suggests TELRIC rules may have created investment disincentives and done little to spur competition. Still being debated.

# Where We Are Today

- 1996 Telecom Act did not anticipate pace of innovation, effects of Internet.
- Increased focus on broadband to deliver voice, data, video, cuts against artificial regulatory separations among providers.
- Recently “net neutrality” debate has been concern of Congress and regulators.
- 2007 FTC Broadband Competition Report.

# 2007 FTC Broadband Report

- Staff report based on FTC workshop on broadband Internet access.
- Notes FCC policy, Supreme Court holding: broadband— no common carrier regulation.
- Thus clear that DOJ/FTC antitrust jurisdiction applies to broadband services.
- But is additional regulation needed?

# FTC Broadband Report, cont.

- Proponents of net neutrality regulation argue certain broadband providers have incentive to act as content and applications gatekeepers and discriminate.
  - Blockage, degradation, content prioritization.
  - ISP vertical integration into content/applications
  - Effects of innovation by content providers, etc.
- Opponents of net neutrality regulation argue that intervention harms welfare.

# FTC Broadband Report, cont.

- Net neutrality opponents argue:
  - Neutrality stops business/technical innovation.
  - New applications require data prioritization.
  - Letting network operators innovate promotes competition, enhances service offerings.
  - Barring price differentiation bars service models more attractive to marginal users.
  - Vertical integration through content and applications bundling may help consumers.
  - Insufficient evidence of harm for regulation.
- DOJ has argued against regulation, legislation.

# FTC Broadband Report, cont.

- Prioritization of data transmission may raise quality and innovation but critics concerned about quality degradation, transactions costs. Net welfare effects as matter of theory cannot be determined. Prioritization common in business.
- Evidence of more broadband competition.
  - Faster access, falling prices, new entrants.
- Consumer protection – FTC has enforced laws against deceptive practices by ISPs.
  - Disclosure and security/privacy are key issues.

# FTC Broadband Report, cont.

- Suggested guiding principles summarized:
- Policy makers should pursue ways to increase broadband access competition.
- Policy makers should proceed with caution in evaluating regulatory proposals.
- Continued agency oversight (FTC, DOJ) through competition and consumer protection laws is appropriate.

# NTIA Broadband Report (Jan 2008)

- Outlines recent broadband growth in U.S.
- Broadband service now available in areas covering 99% of American population.
- 6.8 million broadband lines in Dec. 2000 to 82.5 million broadband lines in Dec. 2006.
- By Dec. 2006 91.5% of nation had 3 or more competing broadband providers, over 50% of nation had 6 or more.

# NTIA Broadband Report, cont.

- Much new radio spectrum now available for advanced wireless services, thus new licensed/unlicensed broadband services.
- New technologies: Wi-Fi hotspots, broadband over power lines.
- Elimination of unnecessary regulation, level playing field, cable/phone providers.
- Internet tax moratorium, tax incentives.

# Economic Analysis

- June 2006 Study by Wallsten: Broadband and Unbundling Regs in OECD (AEI-Brookings):
- Population density positively correlated with broadband penetration and speeds.
- Mandatory unbundling slows penetration growth, on-site collocation raises it.
- Mkt rules that keep costs low but let firms earn returns on investment raise broadband growth.
- Inefficient local regulations and spectrum policy have slowed U.S. broadband investment.

# FTC Comments to EU (Dec 2006)

- FTC staff recommendations to Directorate General for Information Society on security measures and security breach notification:
- EC should consider flexible safeguards that allow organizations to tailor security safeguards to their own circumstances.
- EC should not require breach notification in all cases, but focus on cases of significant risk of identity theft or related harms.
- See USG guidelines re factors to be considered in deciding whether/when/how to notify affected individuals when personal data compromised.

# Competition Analysis Overview

- Current U.S. focus on facilities-based competition, level playing field for cable, telephone, wireless, other providers.
- Minimize federal broadband regulation.
- Minimize barriers to entry.
- Reform franchising and other state/local restrictions on broadband competition.
- Additional spectrum for broadband.
- Reduce tax burdens, target tax incentives.

# November 2007 Reform Package

- Reduction of market reviews (18 to 7) with stress on wholesale regulation is interesting.
- Antiregulatory presumption, but EU states may show regulation still needed in dropped markets.
- Later 2008 guidance on fiber investment.
- Move to “on demand” market reviews.
- EC power to harmonize remedies.
- Retail/wholesale functional separation.
- New ETMA oversight and review authorities.

# 2007 Reform Package Assessed

- Helpful step forward, echo of “telecom federalism” efforts in U.S.
- I hope fiber investment guidance will stress incentives. Unbundling not always needed – e.g., competing fiber networks in France.
- Remedies should minimize transactions costs, be narrowly tailored to competitive problems.
- Re net neutrality issues: congestion pricing, alternative “bundles of bits” efficient, innovative.
- Functional separation: serious questions.

# Functional Separation Issues

- Competition spurred if new entrants offer broadband on telcos' networks? (Maybe not.)
- Concern with dominant companies where no serious facilities-based competition.
- But investment disincentive problems, see bad U.S. experience. Disincentive applies to telcos and other entrants, e.g. cable.
- UK functional separation a doubtful precedent.
- Weigh transactions cost savings, efficiencies from vertical integration against costs.
- Long-term goal: facilities-based competition.

# Questions on Reform Package

- Why will wholesale regulation suffice to ensure adequate competition in retail markets where competition found lacking?
- What problems have arisen from different regulatory remedies in EU states?
- How often will functional separation be used, if it is made available?
- What can ECMA add to market reviews?
- How will ECMA identify what market decisions merit “on demand” reviews?

# Conclusions

- Proposed EU Telecom Regulatory is a major step forward – congratulations.
- As EC and European Parliament weigh alternatives, I hope that U.S. failures and successes may help inform the analysis.
- I recognize that institutional differences in US/EU may lead to differences in approaches.
- Consider weighing empirical evidence on innovation and efficiency as well as theory.
- Thank you very much.