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Cable Merger Shows How Legacy Language Leads to Outdated Policy

by

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When the proposed merger between Comcast and Time Warner Cable was announced last week, various self-styled consumer groups said it would be unthinkable to allow the top two "cable" operators to combine.

This is a case in which continued use of what might be called "legacy language" reinforces outdated legacy regulatory policies that leave too much control of our communications and media businesses in the government's hands.

Like any proposed merger of its size, the Comcast-TWC transaction deserves close scrutiny to ensure it's not anticompetitive. But, most likely, the merger just reflects the companies' effort to survive in a fast-changing communications marketplace that bears little resemblance to the one that existed at the time our nation's basic communications law was last revised in 1996.

The growing disconnect between current market realities and policies that assume service providers fit into neat regulatory classifications can be seen by considering the way we continue to describe communications market participants.

Comcast and TWC are still commonly referred to as "cable television" companies when, in fact, they are broadband providers offering high-speed Internet, video, and voice telephone services, either bundled together or separately, as many consumers prefer. Indeed, for the past several years, the number of pay TV subscribers served by Comcast and TWC has declined, while they have gained Internet subscribers. Netflix now has as many pay TV subscribers as Comcast and TWC combined.

And Verizon and AT&T, which we still call "telephone" companies, are, like Comcast and TWC, broadband providers offering high-speed Internet, video, and voice services, bundled or otherwise. In 2013, these two "telephone" companies had 10 million pay TV subscribers, and the number is growing each year.

DISH TV, the satellite television operator, offers high-speed Internet services in addition to its pay TV services.

And the wireless device we still call our "cellphone," most likely delivers broadband services. In other words, in addition to voice service, our phone delivers high-speed data and video services. And the carrier could be AT&T, Verizon, Sprint, T-Mobile, or several others.

It is indisputable that we are watching an ever-increasing amount of "television" on our smartphones, tablets, computers, and e-readers. In mid-2013, a survey found 27 percent of adults watch videos on devices other than conventional television sets. It's not surprising that Comcast is live streaming over 200 hours of video from the Olympics to smartphone and tablet "screens" at the same time the events are broadcast on "television."

I could give more examples, but you get the picture.

What does the continuing use of this legacy lingo mean for communications policy?

It means it is easy for policy to be distorted in ways that enable government regulators to keep outdated legacy regulations in place long after they are necessary. Or, in merger reviews, it is easy to apply irrelevant market definitions that thwart transactions generating economies of scale to benefit consumers and promote increased investment. Thus, as soon as the proposed Comcast-TWC transaction was announced, consumer groups that, frankly, oppose almost all proposed mergers in the communications marketplace, claimed the government should stop the top two "cable" operators from combining.

But focusing on Comcast and Time Warner Cable as participants in some bygone "cable" market is misleading. Both companies, as should be evident from the above description, are competitors in a much broader market – the broadband marketplace. And this is a market that, due to the ongoing technological advances fueled by the digital revolution, grows steadily more competitive and dynamic. In this market, the cable and telephone companies and the satellite operators and wireless providers all compete in offering Internet, video, and voice services, delivered in various packages designed to appeal to consumer demand.

I'm not saying that the proposed Comcast-Time Warner Cable merger shouldn't be scrutinized. But, in doing so, let's jettison the legacy language, along with legacy regulatory mindsets.

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