

The Free State Foundation

A Free Market Think Tank For Maryland...Because Ideas Matter

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On October 30, 2007, the Free State Foundation and the Institute for Policy Innovation sponsored a major policy conference entitled “The Federal Unbundling Commission?” on Capitol Hill. The following is a slightly edited version of the Keynote Address delivered by Senator Jim DeMint (R-SC) to open the conference.

The Public Interest Is In Free Markets by Sen. Jim DeMint

I want to begin by thanking the Free State Foundation and the Institute for Policy Innovation for organizing today’s event.

I know a great deal will be covered today, and I am not going to delve too deeply into the specific issues our panel will cover. But I do want to talk a bit about my thoughts on today’s discussion and touch on a few items I expect will come up.

Randy May asks whether the Federal Communication Commission, by virtue of recent actions and rhetoric, might more accurately be called the “Federal Unbundling Commission.” Examples include “open access” rules being placed on the 700 megahertz spectrum soon up for auction, renewed talk of a la carte and multicast must carry mandates in the video market, and the always present idea to regulate the Internet known to many as “net neutrality.”

I feel that the instinct of legislators and bureaucrats in Washington is to use the possibility of future problems or relatively isolated issues as a reason to preemptively regulate markets. Much of this meddling stems from a vague notion of the “public interest.” I would argue that the public interest is in free markets, and I hope that is shown throughout my remarks.

I see much more wisdom in looking at what works in a market and finding ways to replicate those results. So, with that in mind I would like to share my perspective on the communications marketplace we have today. I believe we are witnessing the most dynamic and productive explosion of consumer services, devices, and benefits ever seen. This is all because of increasing competition.

The competition we are witnessing – and I am speaking of true facilities-based competition – has developed through technology, investment, and deregulation. As digitization of content and increasingly robust Internet infrastructure develop and roll out into the market, consumers enjoy increasing choice from new and old industries alike.

When unbundling is mentioned in the communications context, my first thoughts go to the 1996 Telecom Act. If we take one good lesson from the '96 Act, it should be that forced unbundling at the facilities level did not produce true facilities competition. In fact, it did a great deal to hold consumer choice and investment in a rather static position for years afterward.

In spite of the missteps of a decade ago, however, today we are actually seeing vibrant and growing facilities based competition; and consumers are the winners. Technology, investment, and a light regulatory touch have brought us the innovation and value we experience today.

Open Access: Wireless phones are just about the most ubiquitous accessory in our country at this point. Over 200 million Americans use wireless service. We consume more minutes and pay lower rates than any nation in the world, and over 90% of our fellow citizens have a choice of at least 4 wireless providers. This competition is now extending beyond sound quality and geographic coverage to contract terms and devices.

I do not believe and would never trust that the federal government could have regulated us to this point. This market instead has been allowed to grow with a light touch from Washington and the results are tremendous. Unfortunately, the FCC has now decided to saddle a block of the soon-to-be auctioned 700 megahertz spectrum with an “open access” mandate.

While the intentions may be good – to force the winning bidder to allow any device or application to be used on their network – I must ask the simple question: where is the market failure?

Leaving aside the fact that anybody who currently owns a network or builds one in the future is free to apply “open access” to themselves, the market is competitive and agile enough to meet consumers needs in this regard. Unlocked phones are a growing market and every major carrier allows their use on their networks. I understand that this may not be enough for some folks, but I would suggest that the market will provide what you are seeking sooner than a new network is up and running on the new 700 megahertz spectrum.

A la Carte and Multicast Must Carry: The traditional video market is seeing its fair share of competition as well. In this market, convergence is leading to cross-platform facilities-based competition. Satellite television is a ubiquitous offering which 30% of subscription television consumers choose. And, we are now witnessing thousands of consumers each week choosing video service from traditional phone companies. Again, consumers are winning and have increasing options because of technology, investment, and deregulation – in this case removing monopoly-era franchise rules.

Also, we must not forget about one other facilities-based competitor to cable, satellite, and phone companies. It's called over-the-air broadcasting. We often seem to forget, while talking about regulating the market that roughly 15% of the American public chooses to not consume their other video options. And I expect this number will actually go up after the transition to DTV is complete.

But as with the competitive wireless industry, some of our friends in Congress and at the FCC want to get involved to “improve” the situation with video. The favorite mandates on this industry are “a la carte” channel selection and multicast must carry.

Just like I do not believe the government could have distributed 200 million cell phones, I also don't think Congress or regulators at the FCC know the best way to please consumers in the video market, much less attract new ones. I have faith that a free market and healthy competition will sort out the most efficient and economic way to deliver video services to the homes of Americans. And we are getting more competition every day.

Ultimately, an a la carte mandate would take away the one, fundamental practice that all businesses use to differentiate themselves from others to compete: packaging. Whether talking about microwave dinners or cable television, removing the freedom of a private business to offer consumers products in the manner they choose runs counter to the proven effectiveness of the free market, and probably the Constitution.

And multicast must carry. Of course, the current must carry mandate requires cable companies to carry all local broadcast channels. Another way to look at it is that all cable subscribers are required to receive those channels – which they may not wish to receive – as part of their purchase. So, the great irony here is that the outcome of multicast must carry would be very similar to what the cable industry is accused of: forcing consumers to purchase extra products (in this case, channels) they may not want. I suppose as long as it's the government forcing you to pay for extra weather channels and infomercials that's just fine.

In the meantime, while the regulators have their eyes on micromanaging the video market, the bundles being offered to consumers continue to improve.

Video on demand, parental blocking controls, digital video recorders, interactive programming guides, digital music, and even karaoke are increasingly available today. None of this innovation has come by way of mandate from Washington, DC, but it is clearly welcomed by consumers in the free market.

Net Neutrality: And finally, net neutrality. What is essentially being proposed is to mandate the way in which private companies enter into business agreements. Remember, we are talking about networks built with private capital and consumers voluntarily making a choice to get online. I like to look back at the Commerce Committee's debate last summer about net neutrality. We were told that the sky was falling. We are now told, 18 months later, that the sky is falling. I would remind everyone of the vast expansion of the use, value, content, and quality of the Internet over the last year and a half. And, can you believe it, this has all happened without a net neutrality regime in place.

I feel the best protection for consumers in the Internet market is the nature of the market itself. First, there is growing choice at the household level from traditional phone companies, cable companies, wireless providers, and a promising BPL product. Second, the number of players in the market that depend on each other ensures a level of cooperation and efficiency. Infrastructure companies rely on content providers to drive demand and content providers rely on infrastructure companies for increased capacity.

In conclusion, I always shudder when I hear somebody say that the federal government should act on behalf of consumers and the "public interest". I think we in government often forget that we are the biggest and most powerful monopoly around, and any poll will show that customer satisfaction rates are abysmal.

I feel consumers benefit and industries flourish in one of two ways: by lack of regulation or in spite of regulation. In the last 20 years, we have witnessed the overhaul of legacy networks, the creation of completely new ones, and a true convergence of it all. Of course, this is all happening because of remarkable and unprecedented innovation; and the innovation is happening because of competition; and that competition is driving the flow of private capital to seek out individual visionaries with the next great idea.

But I know we could be witnessing more – more innovation, more applications, and most importantly, more consumer benefit. Our economy is at its competitive best when individuals are free to invest and create. But that can only happen with the certainty that comes with limited market regulation. Market regulation is no less than market manipulation, and we need to take that power away from the government and put it where it belongs, in the hands of consumers in the free market. The communications environment is always changing, and we should not burden this dynamic process with unnecessary or misguided regulations.

So those are the thoughts I hope will kick off today's discussion. Thank you again to Randy May, the Free State Foundation, and the Institute for Policy Innovation.