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Don't Foil the Digital Age

by

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Dear President-elect Obama: I have been asked to provide "here's what to do if you don't want to trip up" advice concerning communications policy. Happy to oblige.

In your February 2007 presidential candidate announcement, you actually referred to the "digital age." This is a good sign. Frankly, I don't think President George W. Bush has ever fully appreciated the extent to which the transition from the analog to digital era has transformed the communications marketplace.

Many of your supporters, especially those from the leftist MoveOn.org wing, are urging you to adopt a strongly pro-regulatory communications policy. The financial services collapse gives those who reflexively favor more regulation a new cudgel. But if you apply knee-jerk pro-regulatory policies to today's marketplace, you'll trip up, big-time.

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Your "Technology" Web page agenda identifies (among others) three important, interrelated issues: net neutrality, broadband deployment, and universal service reform. Before addressing them, I want to point you backward for some solid grounding.

In August 1999, William Kennard, President Bill Clinton's chairman of the Federal Communications Commission, released a "Strategic Plan: A New FCC for the 21st Century." The very first sentence predicted: "[I]n five years, we expect U.S. communications markets to be characterized predominately by vigorous competition that will greatly reduce the need for direct regulation." The plan urged that the FCC be transformed "from an industry regulator to a market facilitator."

Kennard's marketplace prediction proved correct. Communications markets, including the broadband segment, are now generally competitive. New market entry has been driven largely by ongoing technological developments.

NO NET NEUTRALITY

So, in the new competitive environment, what to do? Foremost, don't push net neutrality regulation that establishes strict mandates for broadband Internet service providers. I know "net neutrality" sounds benign: Don't allow ISPs to degrade access to any Web site. Don't prohibit subscribers from running any applications they choose. Don't prohibit subscribers from attaching any device to their broadband service. But in practice, implementation of these "openness" mandates likely will morph into something resembling traditional public-utility regulation.

Just ask Kennard. Pressured to require cable providers to provide "open access" on broadband networks, he declined, declaring: "It is easy to say that government should write a regulation, to say that as a broad statement of principle that a cable operator shall not discriminate against unaffiliated Internet service providers on the cable platform. It is quite another thing to write that rule, to make it real and then to enforce it. You have to define what discrimination means. You have to define the terms and conditions of access. You have issues of pricing that inevitably get drawn into these issues of nondiscrimination."

There is no need to adopt net neutrality regulation to protect American consumers. The broadband market is sufficiently competitive—with cable operators, telephone companies, satellite firms, and wireless providers vying for business—that if consumers are unhappy with their service, they can and will switch providers.

Neutrality regulation also will make it more difficult to realize your goal of ubiquitous broadband. By putting providers in a regulatory straitjacket, investment in new networks and services will be deterred. This is not what we want in a severe economic slump.

The most recent FCC data indicate there are two or more broadband providers in 96 percent of the nation's ZIP codes. But we know there are still communities, especially in rural areas, without any broadband.

The way to address unserved communities is not through expansion of the existing inefficient "universal service" system, which collects subsidy fees from users of a narrow group of communications services and then distributes the subsidies broadly to many areas and persons that do not need them. If subsidies are needed at all, they should be targeted narrowly to unserved areas and funded broadly from the general treasury.

If there is an "infrastructure" stimulus package, a modest amount could be designated for building out broadband networks. Reverse auctions could award funds to the provider with the lowest bid. This is the most economical way to extend broadband, and using competitive bidding to distribute subsidies would be an important step toward reforming the universal services regime.

In digital-speak, Mr. Obama, your acolytes like to say, "He gets it." I just hope you get this advice from me—with a little assist from Bill Kennard.

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