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**Sledgehammering the False Narrative For Regulating Broadband Internet**

by

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When it comes to video and broadband services, consumers in the year 2012 have a lot of choices. Twenty years' worth of technological breakthroughs and heavy investment by industry has transformed the advanced communications landscape. The old era of analog-based, standalone services has given way to a new digital era where convergence and cross-platform competition are the order of the day.

The most recent fruits of these dynamic forces include wireless broadband delivery options and online video distributor (OVD) services like Hulu and Netflix riding on broadband networks. And the advanced communications market forges ahead, with competitors in every segment of this multi-faceted space rolling out more and more innovative products and services.

Pro-regulatory advocates, however, would have us turn our backs on the free market environment that has encouraged these competitive and innovative developments. That means overturning the modest deregulatory reforms and prevailing marketplace freedom for delivering broadband services. Government controls over video networks and the Internet would be the new order.

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The groundwork for the pro-regulatory position includes construction of an alternate explanation – or alternate reality – regarding today's broadband market. The idea is to create a grim and pessimistic narrative about the current state of broadband competition and services that will make new regulatory controls over video networks and the Internet more inviting.

Consider the pro-regulatory outlook offered by ex-Obama Administration official Susan Crawford. FSF President Randolph May recently [blogged](#) in response to a *Wired* article in which Crawford took aim at cable companies like Comcast for letting their video subscribers use Xbox 360 consoles to stream content through their video networks. In a more recent blog post, "[The sledgehammer of usage-based billing](#)," Crawford again takes aim at cable companies' broadband services and OVDs with an alternate take on reality that runs something like this: Cable companies face no competition. So they charge consumers whatever they want, including billing based on usage, reaping monopoly rents rather than expanding broadband coverage. Meanwhile, cable companies are trying to outlaw government-run fiber-optic networks, the only plausible source for future competition.

Crawford's assertions about video networks and the broadband market are out of alignment with today's dynamic market conditions and everyday consumer experience, where choice among different video and broadband services and products is available, and where innovation continues.

A reality check is needed. That starts with hammering out some things:

### **Cable companies face competition in the broadband market from other platforms and substitutable services.**

Cross-platform competition includes "traditional" cable companies offering voice services and broadband via cable modem. Meanwhile, "traditional" telephone companies now offer broadband services, along with their own branded video services or bundled with video services from one of two nationwide direct broadcast satellite (DBS) providers. On this score, [reports indicate](#) that AT&T's U-Verse service has around 3.8 million subscribers and Verizon's FiOS has more than 4 million subscribers. CenturyLink is also looking to [expand](#) its PrismTV service to a greater portion of its footprint, which includes 5.6 million broadband subscribers.

Importantly, competition in this space comes not in the form of identical services, but from close substitutes – singly or in combination – including disruptive alternatives for consumers who place primacy on particular characteristics like mobility or low prices. Increasingly, consumers are combining [OVD subscriptions](#) with over-the-air antennas for broadcast TV reception. Various [surveys](#) and [reports indicate](#) that perhaps between 1 and 1.5 million households dropped their multichannel video subscriptions in 2011, while [over-the-air antenna sales have increased](#). Wireless broadband presents another choice, with mobile app stores making video content available. All these choices render

baseless Crawford's claim cable companies can charge consumers whatever they want, whenever they want.

**Billing broadband customers based on how much of bandwidth they choose to use – so that heavy users pay more and lighter users pay less – is an equitable and common practice in free markets.**

Unlike Crawford, even the FCC acknowledges the benefits of usage-based billing for broadband services in its *Open Internet Order*. Imposing rate controls or other regulations requiring cable companies and other broadband service providers to charge all subscribers the same would not achieve "neutrality," but it would result in light-use subscribers subsidizing heavy-use subscribers. Higher rates resulting from regulatory mandates on pricing could result in light-use subscribers dropping service altogether.

**Usage-based billing for broadband services offers a way for broadband service providers to pay the costs of building and maintaining their networks and to finance upgrades and expansion.**

Broadband is a capital-intensive enterprise with enormous sunk costs. To operate a going business, broadband providers need to be able to recover those costs and obtain profit to ensure that necessary improvements and deployments continue. Contra Crawford, there's no reason why broadband service tier prices should match the marginal costs of sending particular packets of data through their networks.

Like any other free market enterprise, broadband service providers need the freedom to figure out how best to match retail prices to the costs of building infrastructure, maintaining equipment, offering customer support, compensating employees, and complying with laws, regulations, and taxes. Broadband service providers that fail to do these things profitably are highly unlikely to undertake aggressive expansion.

**Municipal broadband projects should be limited to where there is no business case for private broadband service, subject to a local vote and other requirements for ensuring local taxpayer protection and government accountability.**

I've [previously blogged about](#) some of the perils of irresponsibly operated municipal broadband networks. Concerns include local government use of taxing and rights-of-way powers to privilege their own networks over existing or potential competitors and the institutional competency of local governments in providing broadband services in a rapidly changing market. It is also critically important that local taxpayers be protected from financially failing muni broadband projects. Otherwise, local taxpayers may find themselves saddled with tax hikes or rate or fee increases for energy, water, or sanitation services when their local governments look to bail out their cash-strapped broadband networks. Requiring approval by local voters as well as other measures for ensuring that taxpayers are protected and that free market principles prevail are

therefore reasonable public policy responses by state legislatures to the basic concerns raised by governments going into the broadband business.

Rather than recognize the choices among innovative and disruptive video and broadband services now available to consumers, the pro-regulatory advocates like Crawford [and others](#) offer up a scary story designed to pave the way for new regulations of this vibrant space. What we should really find scary is the idea of subjecting previously unregulated broadband Internet services and online video to rate controls and other intrusive government mandates. This is because saddling broadband services with new regulations will inevitably result in restricting the investment and innovation that the future of broadband relies on.

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### **Further Readings**

Seth L. Cooper, "[Questioning the Premises of DOJ's Usage-Based Pricing Investigation](#)," *Perspectives from FSF Scholars*, Vol. 7, No. 14 (June 21, 2012).

Deborah Taylor Tate, "[Use More, Pay More](#)," *FSF Blog* (May 21, 2012).

Randolph J. May, "[Propelling the Internet Backwards in Time](#)," *FSF Blog* (May 13, 2012).

Randolph J. May, "[Just Downright Flighty: The Viola and the Crazy Gate Agent](#)," *FSF Blog* (May 6, 2012).

Randolph J. May, "[Prices and Profits in the Broadband Marketplace](#)," *FSF Blog* (August 11, 2011).

Deborah Taylor Tate, "[Data Plans: Pricing Flexibility to Pay for What You Use](#)," *FSF Blog* (March 22, 2011).

Seth L. Cooper, "[Government-Owned Broadband Networks Make a Bad Budget Worse](#)," *FSF Blog* (January 6, 2011).

Seth L. Cooper, "[UTOPIA: A Costly Lesson in the Failure of Government-Owned Networks](#)," *FSF Blog* (October 31, 2010).

Deborah Taylor Tate, "[Paying For Use Is Fair](#)," *Perspectives from FSF Scholars*, Vol. 4, No. 15 (July 10, 2009).