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At FCC, Change Must Be The Mantra

by
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There's an area ripe for change that we're not likely to hear discussed on the campaign trail--communications law and policy. While perhaps understandable, this is too bad.

Because our communications policies are still mired in 20th century regulations tied to 19th century ideas concerning regulation of the new railroads, they are in dire need of a deregulatory overhaul. After all, even the railroads were deregulated a quarter century ago.

Today's competitive communications marketplace is indisputably much different than the mostly monopolistic one that characterized much of the last century.

While there have been some deregulatory steps since passage of the 1996 Telecommunications Act, much more needs to be done. Further loosening of the regulatory grip would stimulate investment and innovation in high-tech market segments, providing a long-term, sustainable boost for the American economy.

So what to do? The existing Communications Act, which ties regulatory activity to outmoded techno-functional regulatory constructs, should be replaced by a statute tying regulation firmly to marketplace realities. What would then matter would not be whether a service is classified as "telecommunications," "cable," "broadcasting," "mobile," and so forth, but whether services face marketplace competition.

In a converging world in which telephone companies offer video and Internet service; cable companies offer telephone and Internet; and wireless companies offer all voice, video, and data, the decision of whether or not to regulate should be based on competitive realities.

Moreover, a new communications law should also point the Federal Communications Commission toward regulating predominantly through adjudication rather than rulemaking. Complaint-driven adjudication, necessarily focusing on specific situations, is more likely to lead to narrowly drawn regulation than rulemaking proceedings which, by their very nature, are overbroad because they generally try to anticipate all possible harms.

And often by the time the cumbersome rulemakings are completed, technologies and markets have changed so much that whatever regulation is proposed is obsolete on arrival.

Sen. Jim DeMint, a South Carolina Republican, made a good start two years ago when he introduced a deregulatory competition-based bill. A change-oriented presidential candidate, and reform-minded congressional candidates, could lay the groundwork by picking up the reform mantle.

In the meantime, the FCC itself ought to take certain actions this year to effect free market-oriented change:

Reform the bloated Universal Service subsidy system, which is intended to ensure that all Americans have access to affordable communications services. Universal service is a worthy goal, but the current system provides wasteful, untargeted subsidies in ways that are not technologically or competitively neutral. All telecommunications users now pay, in effect, a 10 percent tax on their phone service, a tax that will continue to grow if left unchecked.

Last year, a panel of federal and state regulators led by FCC Commissioner Deborah Tate and Oregon Public Utility Commissioner Ray Baum made worthwhile reform recommendations that the FCC should adopt.

They include placing a cap on the size of the subsidy fund, employing auctions as a method of determining which communications providers can serve high-cost areas on the least costly basis, and stopping wireless carriers from receiving subsidies based on the support received by the incumbent wireline carriers, even though the wireless companies generally have lower costs.

Reject proposals to impose Net neutrality regulation on broadband Internet service providers like AT&T and Comcast. Even in the face of exploding traffic demands and ever-changing forms of spam and other forms of malicious traffic, Net neutrality advocates are asking the FCC to assume the role of an uber-network manager.

Now, under the guise of determining the "reasonableness" of the providers' network management practices, Net neutrality advocates really want to put today's competitive broadband providers in last century's common carrier straightjackets, depriving them of any freedom to treat network traffic differentially or to integrate services and applications, even when such differential treatment or integration is more efficient and leads to a more consumer-friendly Internet experience.

The FCC needs to send an unmistakably clear signal that it is going to adhere to the deregulatory policy it adopted in 2002 for broadband Internet services.

The FCC should implement an institutional reform by combining its separate wireline, wireless, and media bureaus into a new broadband bureau. Many functions performed by these individual offices, such as information-gathering and policy analysis, could be performed more efficiently in a single broadband bureau with a slimmed-down staff.

A broadband bureau under unified leadership would focus the agency on the reality that wireline, wireless, and cable services are now mostly broadband and that firms in the formerly distinct market segments increasingly compete against each other in one marketplace. This should lead to a more consistent deregulatory broadband policy.

The FCC should approve the XM-Sirius satellite radio merger. Because satellite radio is part of the broader audio information and entertainment market that includes terrestrial broadcast stations, wireless audio services, iPods and similar MP3 devices, and the Internet, prompt agency approval of the merger would show it appreciates the dynamic, competitive nature of the communications marketplace.

And, in a show of self-restraint, the commission should eschew the imposition of last-minute merger conditions that are not related to any putative competitive harm.

With change in the air, at least rhetorically, the FCC should implement meaningful market-oriented reforms this year--setting the stage for more lasting, fundamental changes in our communications laws in the following years.

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