

If the FCC were truly concerned with protecting Network Neutrality it would reclassify broadband under Title II to enforce competition mandates -- the Chairman's "third way" plan to regulate broadband service is a charade and just a Pro con to cover up the fact that it is not going to do the most essential thing--- bring in competition to the "last mile"; to the customer's home or office.

Also, it harms all customers because phone customers, not the investors, have been and continue to be the primary funder of broadband-Internet in America. In fact, in the National Broadband Plan, the FCC is requesting 4 different ways to overcharge customers including a new tax and raising local rates --- all in the name of broadband. (See our next story on FCC raising rates through a broadband tax, rate increases, etc.)

What is the "Third Way"? It is extremely wonkish in detail but the FCC is proposing to reclassify broadband and Internet as two services, "telecommunications" and an "Interstate Information Service". This would fix the previous FCC administration's blunder to have broadband and Internet as one service, an interstate information service, with none of the original telecommunications obligations. The change in 2005 essentially erased the rights of competitors to use the current and future networks. Returning to this new classification, the hope was that the FCC would be reopening the networks, as well as deal with giving them more regulatory tools to handle Net Neutrality and Internet service.

Besides closing the networks to competition, the FCC's 3rd Way, not to mention the entire series of broadband proceedings, totally failed to examine the massive flows of money that have been and continues to be collected in the name of broadband. Customers, not investors, have been the major funder of broadband in America and yet the FCC claims that reopening the networks would harm "investment". As we will discuss, this point of view is an invention of the AT&T & Verizon lobbying machine.

First, Competition:

This plan is a total cop-out as it keeps the current broadband networks closed to competition, and yet it dazzles in its manipulation to obfuscate, almost sounding like it is going to reopen the networks.

The secret: Anything that is a fiber-optic, coaxial or DSL- based network "read broadband networks" are still closed to competition but the underlying service will now officially be "telecommunications". This FCC is now sound-byte-ing great, but without the basic truth "The broadband networks will not be reopened; customers can't choose their Internet Service Provider (ISP), the companies will not have competition except for the broadband duopoly of cable and telco.

It also doesn't fix the basics of Net Neutrality issues, which are concerned with the phone and cable

companies? blocking, degrading of customers? service, including giving their own service preferences. Unfortunately, Net Neutrality is caused when there is a market failure ? a lack of competition. With competition, a customer can simply change providers if they are harmed. Today, there is basically a duopoly who control not only the wires but also the Internet service. There?s no serious 3rd choice ? So much for the third way.

We?ve written about this: http://www.multichannel.com/article/452161-Competition_Not_Neutrality_Is_Key.php

In fact, the FCC?s legal opinion makes it very clear it is not going to attempt to overturn any previous ruling to allow the competitors to use the broadband networks. Known as ?unbundling?, the opinion states: ?No New Unbundling Authority?, meaning, while it may be reclassifying broadband as telecommunications, it?s not going to do what most everyone except for AT&T, Verizon and the cable giants want --- to open the physical networks, the last mile links themselves, to competitors. Instead, it will keep the monopoly/duopoly on the connection to the customer, and keep the customers ?funding these closed networks.

http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-297945A1.doc

Follow the Money

The second part of this problem is more problematic. There has been no mention or recognition of how customers, not the telcos or investors, have been the primary funder of the telephone companies' broadband networks. The FCC?s ?wrong way? parrots the phone companies' lobbyists. They keep saying that if there were drastic changes in the regulations ? i.e., reopening the networks, it would cause ?less investment? and ?less innovation?.

It almost sounds plausible until you realize that almost the entire broadband investment has been made, not by shareholder monies but through rate increases of local phone rates and various other customer overcharging. Caused through a series of state deregulatory actions known as ?alternative regulations?, it has given the phone companies over \$320 billion in funding for fiber optic networks, most of which was never put into the ground.

And when I mention ?rate increases?, they are occurring now. Let me give a specific example. There has been a 90% increase in rates in New York since 2004, and this has been on almost every service. And yet the state commission, the New York Department of Public Service in 2009 increased rates again for ?fiber optics?.

?We are always concerned about the impacts on ratepayers of any rate increase, especially in times of economic stress,? said Commission Chairman Garry Brown. ?Nevertheless, there are certain

increases in Verizon's costs that have to be recognized. This is especially important given the magnitude of the company's capital investment program, including its massive deployment of fiber optics in New York. We encourage Verizon to make appropriate investments in New York, and these minor rate increases will allow those investments to continue.

90% increases are not "minor". However, neither the FCC nor the state commissions actually have a clue about the flows of money and the customer funding of broadband. And the flows of monies today are huge. Besides the billions collected per state through these "rate-increases", AT&T, Verizon et al also get the benefits of the Universal Service Fund or other protected universal service policies. (I note the cable companies never got these benefits, but it is clear as the new national broad band plan in underway, they too, will be able to get government subsidies, which are really nothing more than taxes customers pay every month.)

Another real humdinger --- The FCC is making rural telcos' closed DSL and Fiber optic data services eligible to collect Universal Service Funding, a blank check to provide the AT&T and Verizon monopoly broadband service, while banning competitive carriers from collecting from the USF. So, any Wireless ISP or other wireless carriers who have been struggling to serve rural areas will now face subsidized competition, paid for by a new national tax on broadband services.

The FCC's legal opinion document also has another zinger ? If the FCC does change the definition of broadband into reclassifying it as a telecommunications service, the FCC can, at any time "forebear" on implementing the new regulation, i.e., they can not put into effect specific parts of the new regulation. The FCC claims:

"Congress gave the FCC authority and responsibility via Section 10 of the Communications Act to "forebear" from applying telecommunications regulation, so that the new services are not subject to needlessly burdensome regulations."

So, the FCC has an out whenever it wants to create a law that will never be enforced, or explain to those concerned that if a regulation does go through, it will actually not matter in the end.

Finally, the FCC claims that this national broadband plan and this third way are being done through "consensus". "The consensus understanding of the FCC's role with respect to broadband". What are they smoking? Two Commissioners are actually against this FCC action, but more importantly ? there's no consensus. If the FCC wants to imagine there is consensus, maybe they should just take a walk down Main Street and ask the public about raising rates, increasing taxes, and a lack of competition and how other countries have 100mbps speed services for the cost of our slow DSL, which is about 20-100 times slower.

Bruce Kushnick

Note: We have asked the FCC continuously to investigate our claims pertaining to customer-funding of broadband. I guess the consensus is the FCC doesn't need to worry about overcharging customers or the failure of the companies to properly upgrade their networks. They have consensus.

NewNetworks request for the FCC to create a workshop and investigate the "customer funding" of broadband.

<http://www.newnetworks.com/fccbroadbandworkshops.htm>

Sincerely,

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