

# Remarks on Broadband Competition and Access Regulation

**Marius Schwartz\***

FCC Workshop on Economic Issues in Broadband Competition

Washington, DC

October 9, 2009

\* Professor of Economics, Georgetown University, Washington DC 20057  
<mariusschwartz@me.com> <<http://web.me.com/mariusschwartz>>

Disclaimer: I have consulted for AT&T on net neutrality matters, but the views expressed here are my own

# Proposed Standard for Intervention

My view: consider access regulation (in any industry) only if

1. *clear* evidence of *serious* competitive failure; *and*
2. reasonable prospects that regulation will improve matters

Condition 1 is a screen:

- *clear* evidence: to avoid convicting-the-innocent
- *serious* failure: low threshold invites rent seeking, etc.

Condition 2 resists “Nirvana approach” to intervention

Does either condition hold in broadband today?

# Broadband Competition

Interventionist view: wireline mass market broadband (BB) is a durable duopoly of the local cable and telephone company

Two responses

- Structure: “durable duopoly” premise is questionable
- Conduct: even a duopoly can exhibit strong rivalry (not “just one away from monopoly”)

# Is Broadband a Durable Duopoly?

Wireline broadband: some limited overbuilds (e.g. RCN, municipal fiber)

Wireless competition — potentially more important:

- Both fixed (e.g. Clearwire, Hughes) and mobile
- Users face performance tradeoff — mobility vs. bandwidth
- For mobile to constrain fixed we don't need all users to view them as good substitutes — only enough users on the margin
- Voice telephony example: mobile started as complement to fixed, but became strong substitute
- In fixed + mobile BB universe, most users enjoy at least 5 or 6 competitors

# Conduct: Indicators of Rivalry

## Technology Upgrades in Response to Competitors

- Landline BB: Cable cos. reportedly deploy DOCSIS 3.0 first where FiOS or U-Verse present — worth documenting systematically
- Mobile BB: Many similar examples

## Comparative Advertising

- Landline BB: Comcast v. DSL “Slowskys”; VZ FiOS vs. cable guy
- Mobile BB: Fastest Network v. Most Reliable, etc.

## Apple’s iPhone Exclusive Contracts (US and abroad)

- Signals rivalry among wireless carriers (!) — Apple can extract exclusivity premium only because carriers compete for subscribers

# Broadband Access Regulation?

## Regulated Monopoly Paradigm Doesn't Fit

Familiar traditional telecom concern:

- Price-regulated monopolist in bottleneck market vertically integrates into adjacent markets where it faces lighter regulation, and discriminates in bottleneck access against independents

But above paradigm does not fit today's broadband market:

- Risk of anti-competitive access discrimination (via pricing or non-price conditions) is lower
- Good regulation will be much harder

# Anti-competitive Discrimination Risk Is Lower

- Weaker incentive: BB margin *unregulated*, so BB seller loses profitable sales if degrades supply of *complements* (content / apps)
- Weaker ability: BB providers *compete*, so can't unilaterally exclude independent suppliers of complements from the market
- Little evidence of significant anti-competitive discrimination

## Discretion in Pricing or Network Management May Be Beneficial

- Charging content or application providers to reach end users: BB prices to end users would likely fall (2-sided markets logic; AOL '05)
- Price-quality options: allocate scarce network resources; if price discrimination role, still not presumptively bad (Hermalin & Katz)
- Clearly legitimate goals, e.g. traffic management to address congestion or user fairness (Bennett; Ou)

# Good Regulation Will Be Much Harder

Telecom access regulation has done best when the technology was relatively stable & simple. Contrast:

- Part 68 rules: relatively simple interfaces (plugs & jacks), and stable (backward compatibility with old phones mandated); vs.
- More complex environments: ONA, OSS interfaces

Broadband technology is *complex* and *rapidly changing*

- Complex: must police (1) network management, and (2) in wireless, software interfaces between network and handsets or applications
- Rapid change: impedes standards, efficient interfaces are in flux
- Regulation will impose large costs: wrong decisions, limit flexibility.

**Conclude:** serious reasons to doubt the economic case for tight BB regulation today.



# References

Bennett, Richard, “The Internet Is Burning,” ITIF, March 2008:

[http://www.itif.org/files/rbennett\\_slides.pdf](http://www.itif.org/files/rbennett_slides.pdf)

Hermalin, Benjamin and Katz, Michael, “The Economics of Product Line Restrictions With An Application to the Network Neutrality Controversy.” *Information Economics and Policy*, Vol. 19, 2007, 215-48

Ou, George, “Managing Broadband Networks: A Policymaker’s Guide,” ITIF, December 2008:

[www.itif.org/index.php?id=205](http://www.itif.org/index.php?id=205)

Schwartz, Marius, “Reforming Telecom Regulation: An Essay Review of Nuechterlein and Weiser’s *Digital Crossroads*,” *Review of Network Economics*, Vol. 7, Issue 3, September 2008, 415-447:

[http://www.rnejournal.com/artman2/uploads/1/schwartz\\_RNE\\_sept08.pdf](http://www.rnejournal.com/artman2/uploads/1/schwartz_RNE_sept08.pdf)

Schwartz, Marius and Mini, Federico, “Hanging Up on *Cartefone*: The Economic Case Against Access Regulation in Mobile Wireless.” Exhibit A to Reply Comments of AT&T Inc., RM-11361 (FCC filed May 15, 2007). <http://ssrn.com/abstract=984240>.

Wu, Tim, “Wireless Net Neutrality: Cellular *Carterfone* and Consumer Choice in Mobile Broadband.” New America Foundation, Wireless Future Program WP 17, 2007:

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=962027#PaperDownload](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=962027#PaperDownload).

DOCSIS 3.0 Deployments – Recent Press:

[www.fiercetelecom.com/story/cox-launches-docsis-3-0-attack-qwest/2009-08-21](http://www.fiercetelecom.com/story/cox-launches-docsis-3-0-attack-qwest/2009-08-21)

<http://www.dslreports.com/shownews/Still-Waiting-On-Time-Warner-Cable-DOCSIS-30-103220>

<http://stopthecap.com/tag/docsis-3/>

<http://www.justbroadband.org/shownews/Verizon-to-Comcast-Beat-400Mbps-FiOS-83699>