



National Review Online: Don't Neutralize Video Franchise Reform; Congress must lean to the side of infrastructure investment and consumer choice

April 19, 2006, 8:18 a.m.

By Phil Kerpen

A high-stakes lobbying battle between cable and telephone giants over video services may finally be headed for a cool-headed solution, but a new battle of the titans between content and infrastructure companies is still heating up. The consequences for consumers are significant since we are now closer than ever to enjoying what's known as "convergence" — cable and phone companies offering video, voice, data, and next-generation services while competing on price, quality, and convenience.

The House Energy and Commerce Committee's Subcommittee on Telecommunications and the Internet recently approved a bill, sponsored by Reps. Joe Barton (R., Tex.) and Bobby Rush (D., Ill.), that would make it possible for Verizon and AT&T to obtain national franchises to offer video services. Video, the highest-value telecom service, is a key driver of infrastructure deployment. Local franchising rules are a huge regulatory barrier that prevents phone companies from offering video, in turn discouraging investment. That's why video franchising reform is crucial to both broadband deployment and convergence.

Unlike previous national franchising proposals that could have disadvantaged cable companies, Barton-Rush would free cable companies of onerous local franchise requirements as soon as they face competition, creating a level playing field and unleashing a wave of new investment. This is a winning approach that has been openly praised by the cable and telecom sectors.

Barton-Rush, which passed the subcommittee 27 to 4 and is fast-tracked for a full committee vote later this month, may cool the tension between cable and telecom. But it is caught in the crossfire of another controversy that pits cable and telecom on one side, and Internet behemoths like Amazon, Microsoft, Yahoo, and Google on the other. The issue is whether or not infrastructure companies should be prohibited from creating premium service tiers — virtual toll lanes that would prioritize network traffic for some applications. The buzz-term for this concept is "net neutrality," which the content companies define as all Internet traffic being treated the same way.

Net neutrality, which could undermine the promise of convergence by preventing a carrier from having any meaningful control over what comes through its pipes, would also undercut infrastructure investment. Advanced networks cost billions of dollars to deploy and need to generate predictable revenue to make business sense. The infrastructure companies are unanimous in their belief that offering premium services with guaranteed bandwidth will be necessary. Quality-of-service issues alone are likely

to require tiering, because in a world of finite bandwidth, people won't want high-value services like video and voice if they can be degraded by the peer-to-peer applications of teenage neighbors.

Craig Moffett of Bernstein Research recently told the Senate Commerce Committee that Wall Street would severely punish infrastructure investment under a net-neutrality regime since the amount of bandwidth required for video applications is prohibitively expensive. Moffett estimates that the bandwidth for an average TV viewer would cost carriers \$112 per month. A high-definition TV viewer would cost \$560. He concludes that the multiplicity of payers that would be prohibited by net-neutrality rules is critical to broadband deployment.

Believers in net neutrality are using apocalyptic rhetoric, talking about the end of the Internet and suggesting a future in which carriers strictly limit what content is available to their customers. Such a scenario is highly implausible in a competitive marketplace, where customers would cancel Internet service if they could no longer access some websites.

Video franchising is too important to be held hostage to the bitter debate over net neutrality. The best legislative outcome would be a clean franchising bill with no neutrality mandates.

To the extent that this may not be politically feasible, the Barton-Rush compromise approach may avoid the pitfalls of strict net neutrality. It would give the FCC adjudicatory, but not rulemaking, authority to implement its broadband policy statement, which includes the principle of open access. The FCC would be authorized to impose fines of as much as \$500,000 per incident if a carrier blocked lawful content, but tiering would be permitted.

As Congress moves rapidly to address video franchising and broader telecom deregulation, they must keep the proper objective in mind, which is to encourage infrastructure investment and greater consumer choice. Americans will not enjoy the full benefits of video franchising reform if onerous net-neutrality requirements come along with it.

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