

The Oregonian

Not so fast on network neutrality

Congress can't always tell what's best for the Internet,

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especially in anticipating problems that haven't yet occurred

Net neutrality -- the idea that everybody should be equal in cyberspace -- has gained momentum as a populist movement but seems no closer to becoming law. A House committee recently rejected a Democrat-led effort to legislate the principle, and a current Republican-sponsored draft telecommunications bill mostly avoids the subject.

As Congress contemplates an overhaul of telecommunications laws, it faces the question of whether and how to put limits on the providers of the Internet's data pipes. The telecommunications companies that own the pipes are interested in building fast lanes, which certain customers would pay a premium to use. Content providers, Internet retailers and many traditional Internet user alliances are concerned that such plans will unbalance the playing field, giving the wealthiest Internet players advantages at the expense of the small and underfunded.

Part of the problem with the discussion of net neutrality is that beyond broad statements of principles, people disagree about what it is. For example, few would disagree that the Internet should be free of discrimination, that a user should have as unfettered access to a suburban teen's fan site as he does to Disney.com.

The disagreements come in writing laws to preserve those principles. The problem with Congress dictating the Internet's myriad legal contracts, technological underpinnings and business behaviors is that Congress simply isn't wise enough or prescient enough to make the right choices.

More important, Congress could unwittingly interfere with the development of a more robust Internet, capable of delivering more multimedia, faster, in two directions. In addition, it would hand more enforcement powers to the Federal Communications Commission, a step that itself may have unwelcome, anti-democratic consequences. For these reasons, Congress should not overreach with its efforts to enshrine the principle of net neutrality.

While neutrality advocates can cite a few cases in which network providers have shut down access to sites of which they disapproved, the telecom companies correctly note that they don't have a history of playing favorites with Web sites or users. They say they understand the Net's culture of openness and recognize it would be bad business to violate it.

They point out that it's costly to build a high-speed network. They ask why customers willing to pay a premium for high speeds and broad lanes -- "throughput," as the geeks say -- shouldn't be allowed to do so. On this point, the telecoms are right -- as long as nobody else's ability to use the network is diminished.

Congress is under pressure from both sides of the debate, but it should borrow the first principle of the medical profession: First, do no harm. Bad law, in this case, could be much worse than no law. And it's not entirely clear yet what a good law would look like.

REVIEW & OUTLOOK

Out of the Telechasm

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Ten years after Congress declared it was "deregulating" the telecom industry, our Representatives and Senators are at it again. Both Houses of Congress are drawing up legislation to address some of the absurdities that resulted from the last effort at reform. We'd like to report this as a hopeful sign. But this is Congress, and aside from one noble if likely doomed effort, the prospects don't look bright.

In the past decade, our various "telecommunications" industries have converged, but the regulatory system remains fragmented and heavy-handed. Cable-TV providers operate under one set of rules, "landline" telephone companies fall under a different regime and wireless operators under yet another. Each of these are increasingly competing directly with each other, but our laws don't recognize this fact. Senator Jim DeMint (R., S.C.) has drafted legislation to sweep away these conflicting and nonsensical regulatory regimes and treat telecom the way it ought to be treated -- like any other competitive industry.

His proposal, alas, may never see the light of day. Alaska's Ted Stevens, Chairman of the Senate Commerce Committee, has his own ideas and plans to present a bill in the coming weeks. In the House, Joe Barton (R., Texas) has passed out of subcommittee a bill that deals with a couple of narrow issues -- so-called Net neutrality and cable franchising -- but avoids a wholesale revamp.

This being an election year, the Members are likely to use all of this mostly as a way to soak campaign contributions from all the competing lobbies. But in the real world the time is ripe for revisiting 1996; our current rules make less sense and impose a higher economic cost every day. The Federal Communications Commission has taken some positive steps, but these days is more concerned with Janet Jackson's wardrobe malfunctions than in jumpstarting innovation.

Last year's Brand X decision by the Supreme Court is a good example both of what the FCC has done right and the limits of what it can do. The Court decided that the FCC was within its rights to declare cable-modem Internet access an "information service" rather than a "telecommunications service," and so exempt cable-modem providers from a raft of regulations. The FCC helpfully followed up by granting DSL service (the phone companies' version of cable-modem) the same exemption.

But the real question is why so much should hinge on FCC hair-splitting about "information" and "telecommunications" -- which are two sides of the same coin. The very existence of this sort of distinction was always arbitrary, and its capriciousness only increases with time. One result is that phone companies are regulated one way when they offer voice service the old-fashioned way and another when they use Voice-Over-Internet-Protocol (VOIP) technology.

To consumers, these products blend together. But behind the scenes, each one lives in its own regulatory hell. VOIP phone calling has become popular and can be much cheaper than paying the phone company by the minute. But a good chunk of the savings comes from all the taxes and fees that VOIP customers don't pay the government, because the FCC says VOIP is different from traditional land-line service -- it's "information."

Likewise, cable companies are now offering a so-called triple play -- phone, cable-TV and voice service bundled at a discount. Customers need only call one number to be put on hold when they have a problem, and they only get one bill. The phone companies are installing fiber-optic cables to homes to offer the same bundle. That's right -- the same bundle. Even mobile-phone operators are getting into video and broadband Internet.

But at the moment the Bells can't offer TV in your city without a "franchise" -- a license typically issued by the municipal government. Local franchising dates back to the days when cable companies had to tear up roads or string lines on utility poles to bring service into the home.

Because those rights-of-way were usually controlled by local governments, franchising was a way of making sure that towns had a say in how it was done. But local governments' legitimate interests extend only to those roads and rights-of-way, not to what is transmitted over the network after it is laid down. So the requirement that phone companies seek TV franchises from thousands of local authorities is a purely artificial roadblock to the competition that the federal government supposedly supports.

Mr. Barton's House bill would remedy this by creating a national franchise that would, theoretically, require only rubber-stamp approval from the federal government. As a band-aid, this is better than the status quo. But his bill also threatens to introduce a whole new wave of regulatory requirements by codifying "Net neutrality" rules in law.

Last year the FCC published a non-binding set of Net neutrality "principles" laying out what consumers are "entitled" to -- basically, choices about the content they see, the devices they use and the networks they connect to. However, giving the FCC the power to enforce these rules against Web sites and network owners alike would open a Pandora's box of intrusive regulation and litigation.

The far better solution would be to start from scratch, a la Mr. DeMint's Senate bill. It says, in effect, that telecom companies should be regulated on the basis of fair competition standards used everywhere else in the economy. Rather than trying to legislate competitive outcomes, as the 1996 Telecommunications Act did, Congress could allow open-field running save for anyone who violates antitrust rules.

For years, regulators and "consumer advocates" have argued that telecom is "too important" to be left to market forces. Something like the opposite is closer to the truth. In a digital age, telecom is too important for policy to hinge on arbitrary distinctions between "information" and "telecommunications," or to be held hostage to thousands of rent-seeking municipal agencies. It's time for a rethink, and the more fundamental, the better.

REVIEW & OUTLOOK

Stuck in Neutral

March 8, 2006; Page A20

Here come the telecom mergers, and right behind them come the bad ideas. With even many fervent regulators (even Reed Hundt!) now conceding that the current mergers aren't bad for consumers, the new Maginot Line for the politically ambitious is something called "Net neutrality."

If you haven't heard the term yet, you're bound to soon, as a bevy of "public-interest" groups and Web site operators push Congress to enshrine the concept in law. And as Republicans on Capitol Hill begin to rewrite the unfortunate Telecom Act of 1996, now is a good time to sort out the free-market principles from the chaff, starting with "Net neutrality."

These days, this concept usually means that phone and cable companies should not be able to charge the Googles and Amazons of the world for the bandwidth they need to reach Internet users' homes. The issue came to the fore recently after the phone companies started making noises about offering preferential treatment -- basically, faster downloads and better service -- to Web sites willing to pay for the privilege.

Of course, the phone and cable companies own the networks through which Web surfers connect to Ask.com, eBay, Yahoo, et cetera. And they say that preferential charging would allow the spread of fancy new Web features that require more speed and reliability than currently available. Think of video calling over the Internet, or high-quality, full-screen video streaming (in contrast to the tiny window on which you now watch a video clip on your PC).

The Net neutrality crowd claims this is an attempt to set up "toll roads" on the Internet, holding Web sites to ransom, keeping users captive -- and "breaking the Net," to hear one industry exec tell it. Naturally, they'd rather not pay. So, naturally, they're asking Congress to pass a law saying they'll never have to. They paraded through Washington last month to argue that charging for preferential access would turn the Internet from an open system to one more like a cable TV network, in which your provider gets to choose what you can and cannot watch.

There's a term for this in the high-tech world. It's called FUD -- fear, uncertainty and doubt. The Web site owners are trying to scare Congress and the public with dire warnings that the Internet will be ruined by rapacious phone and cable companies. Those companies in turn swear that they would never block legal Web sites. They could be lying, but it would probably be bad for their business if they did lie. In most places in the country, a provider that "broke" the Internet would lose customers to another that didn't.

We've also seen this movie before. A decade ago, the country was told that, to promote the spread of high-speed Internet access, the Baby Bells needed to give competitors access to their subscribers' phone lines. So services, such as broadband Internet access, were "unbundled" from the network infrastructure and vibrant competition for customers was supposed to spur ever-faster and cheaper Internet access. In the process, the phone companies' property was forcibly leased to its own competitors at prices determined by regulators, but all that meddling was said to be justified by the predicted expansion of Internet services.

That little experiment didn't work out so well. Investment slowed as lawsuits tried to sort out who had the right to do what to whom and for how much. Innovation also slowed. In the end we

discovered that cable and phone companies were perfectly capable of competing against each other for Internet customers -- and now increasingly for each others' phone and TV subscribers as well.

Last year, the Supreme Court affirmed the Federal Communications Commission's ruling that cable companies offering high-speed Internet access were not "common carriers" subject to mandatory federal regulation, and the FCC later extended that exemption to DSL service offered over phone lines. These decisions ended a decade in which the conventional wisdom dictated that the way to deliver the broadband revolution was to regulate the network owners (the phone and cable companies for the most part) into making it available -- or else.

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The "Net neutrality" debate has many similarities with that unbundling cul-de-sac. Both raise the question: Is innovation better served by undermining the property rights of network owners, or by reinforcing them?

In the present debate, the property right at issue is that of cable and phone companies to charge Web site operators for faster access or better service. Telling a firm what it may charge for a service -- or that it may not charge anything -- is a good way to ensure that the service won't be offered at all. Placing limits on the ability of network owners to charge for better access will mean less investment, as we learned after 1996.

Incidentally, whether the network owners could ever succeed in charging some of the millions of Web sites for preferential access is unclear. But it seems unlikely that they would do so if it so degraded users' experiences that it turned them off Web surfing or drove them to a competitor. If the phone and cable companies are the rapacious rent-seekers they're made out to be, "breaking" the Internet would turn out to be a bad way to turn a profit.

The Washington Post

The Eden Illusion

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BACK IN 1984, AT&T Inc. was judged to be a competition-squelching monopoly. It was hanged, drawn and cut into eight pieces. Now, with a planned merger between AT&T and BellSouth Corp., the old monopolist is set to reemerge as the world's biggest telecommunications company, uniting four of the regional phone companies created by the breakup. The reaction to this merger shows how things can change. Cell phones and Internet telephony have created competition aplenty for traditional land lines, and there's no reason to object to the consolidation of BellSouth's customer base in the Southeast with AT&T's customer base in the West, Southwest and Midwest. To the extent that the proposed merger will generate regulatory questions, these hinge on an issue that didn't exist 22 years ago.

That issue is "net neutrality," the principle that cable and phone companies, which own the plumbing that connects you to the Internet, should make all Web sites equally accessible. The plumbers want the right to deliver some Web services -- Amazon.com Inc.'s bookstore or Yahoo Inc.'s search engine -- faster than others, and to charge Amazon or Yahoo for that privilege. Not surprisingly, Internet companies don't want to fork over money to the cable and phone guys. To discredit the plumbers' pay-to-play idea, they invoke the original vision of cyberspace: a democratic utopia in which surfers choose freely among a zillion sites, with humble hobbyists and multimillion-dollar firms competing for eyeballs on a level playing field. (The Washington Post Co. owns both cable and Web sites and so has commercial interests on both sides of this issue.)

Leave aside the irony that corporations such as Google Inc. are invoking the anti-corporate spirit of the Internet's founders. The vision of a neutral net has an intuitive appeal; if anyone anywhere can post opinions or sell T-shirts, choice, diversity and competition will flourish. But it would nonetheless be a mistake to force AT&T to promise net neutrality as a condition of its merger. Equally, legislative proposals to enforce net neutrality, including one introduced this month by Sen. Ron Wyden (D-Ore.), should remain just that: proposals.

The proponents of net neutrality exaggerate the purity of cyberspace. Big names on the Web already have a huge advantage over no-brand competitors: Surfers go to places that they trust, particularly to make credit-card purchases. Moreover, once you have an advantage on the Web, it becomes self-reinforcing: If your site is popular and many others link to it, search engines such as Google will direct more traffic your way. Corporations already strive mightily to make your Internet experience non-neutral. From the early days of the World Wide Web, America Online Inc. tried to keep customers

within its own virtual "walled garden" of services. More recently, Google has elbowed out competitors by offering toolbars and other freebies that keep its friendly search box perpetually on computer screens. Meanwhile, big e-tailers have accelerated their service by paying to "cache" their Web pages on computers close to customers. So if cable and phone companies start delivering some Web content at premium speeds, they will be adding to an existing trend, not sullyng Eden.

The proponents of net neutrality also understate the costs of regulation. If cable and phone companies are not allowed to charge Internet firms for fast delivery, they will be deprived of one source of profits. This will make it harder to raise capital to build the next generation of superfast Internet pipes, capable of delivering high-quality video. Moreover, any definition of net neutrality is likely to be contested in the courts, and legal uncertainty will further deter investment. As a result, net neutrality could end up meaning that all Web services get delivered at a similar but relatively slow rate.

If the cable and phone companies start blocking out chunks of the Web's content, there will be opportunities for Congress to weigh in. But it's hard to see how these firms can expect to win extra subscribers by doing that.