



## A Democratic Voice of Caution on Network Neutrality

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The advocates of network neutrality have become distressingly, stridently apocalyptic, rallying all good liberals against (the following is a fair composite quote):

“those with the deepest pockets...corporations, special-interest groups, and major advertisers, who decide what you get to see and how much it costs, and especially the billion-dollar telephone and cable companies that now dominate the business of providing broadband connections to the public—who want to control what you read, see or hear online....Major corporate sites would be able to pay the new fees, while little-guy sites could be shut out.”

Now wait just a minute.

I consider myself a good liberal Democrat. I played a leading role under President Carter in the deregulation of the airlines (as Chairman of the Civil Aeronautics Board) and trucking (as Advisor to the President on Inflation), against the almost unanimous opposition of the major airlines and trucking companies and—let’s be frank about it—their strongest unions. Among our strongest allies were Senator Ted Kennedy, Stephen (now Supreme Court Justice) Breyer, and such organizations as Common Cause, Public Citizen, the Consumer Federation of America and Southwest Airlines.

This is not the place to argue about the consequences of those deregulations. What is unarguable is that airline deregulation has saved travelers many billions of dollars annually and made air travel affordable for people with modest means, just as we intended.

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I have played an active role also as Chairman of the New York State Public Service Commission and consistently, both before and after, opposing the efforts of AT&T to induce the FCC and Congress to protect its historical monopoly. I have also over the last half century been a consistent public advocate of strong antitrust policy.

Our premise in all these efforts, in opposition to reactionaries and special interests, on the one side, and to the indifference or scorn of radicals, on the other, was that wherever it is feasible, competition is a far better protector of the interest of both consumers and content providers (think radio, television, motion pictures and, now, the Internet) than government ownership or regulation. In telecommunications, cable and telephone companies compete increasingly with one another, and while the two largest wireless companies, Cingular and Verizon, are affiliated with AT&T and Verizon, respectively, some 97 percent of the population has at least a third one competing for their business as well; and Sprint and Intel have recently announced their plan to spend 3 billion dollars on mobile Wi-Max facilities nationwide. Scores of municipalities led by Philadelphia and San Francisco, are building their own Wi-Fi networks. And on the horizon are the electric companies, already beginning to use their ubiquitous power lines to offer broadband—to providers of content, on the one side, and consumers, on the other.

By far the most promising intensification of that competition is the tens of billions of dollars that the phone companies themselves are spending converting copper to fiber, which will enable them to offer video programming pervasively, in direct competition with the cable companies. Can anyone seriously believe that competition would be forthcoming if those incumbents were still subject to public utility-type regulation? Or prevented from surcharging the heaviest content suppliers—the ones demanding the speediest possible access to subscribers that those telco investments will make possible?

In describing the danger that the telephone and/or cable companies will, as the preponderant suppliers of broadband access, discriminate against competitive providers of service or programming, every single network neutrality advocate, to my knowledge, cites the case of the Madison River Communications (telephone) Company's refusal to carry the messages of Vonage, the leading independent provider of telephone service via the Internet. Not one of them mentions the fact that the FCC promptly stepped in to prohibit that obvious violation of antitrust principles, as did the Canadian Radio-television Regulatory Commission in exactly the same situation. It is unthinkable that the regulatory or antitrust agencies would not strike down any other such discrimination by the telephone or cable companies against competing providers of content in favor of their own.

As for the fear that those companies will, as one net-net advocate predicted, "create different tiers of online service selling access to the express lane to deep-pocketed corporations and relegating everyone else to the digital equivalent of the winding dirt road," it is difficult to understand why if, as a New Republic editorial supporting a Congressional mandate of network neutrality points out without apparent

disapproval, “content providers from Google and Amazon to Daily Kos...currently pay web-hosting companies to put their content on the Internet [and] still make money,” its editors should consider it objectionable that the providers of broadband Internet access “will be able to charge content providers a fee to deliver their content to consumers and, in particular, an additional surcharge to deliver their content...more quickly...” Newspapers charge advertisers for access to their readers—more for big ads than small ones—television broadcasters charge similarly for access to their audiences; and the charges vary widely depending upon the anticipated size of the audience. Why is that any different from the proposed additional fees for guarantees of the unusually rapid rates of transmission required for some content, with its greater claim on the broadband facilities?

Some 25 years ago, I thought it was logical to try to prevent cable television companies, as beneficiaries of exclusive territorial franchises, from discriminating against unaffiliated suppliers of programming in favor of their own by prohibiting broadcasters holding a financial interest in the programs they carried. I eventually recognized, however, the public benefits from the especial incentives of the several broadcasters to produce programming of their own, as well as to bid for independent programming, in competition with one another; and that that competition sufficiently protects independent producers from discrimination or exploitation. If Google and eBay depend upon the telephone and cable companies for reaching their audiences, that dependence is mutual: what would happen to the willingness of subscribers to sign up for DSL or cable modem service if one or the other of those suppliers decided not to carry Google or eBay?

Demonstrably, those broadband facilities have to be created by investments—especially huge ones by the telephone companies; and applications requiring priority transmission can entail lower priority transmission of others. Except as the offer of broadband service is subsidized by governments—a possibility I do not exclude—those costs must be collected from users—subscribers to broadband services, on the one side, providers of programming or content on the other, or some combination of the two—just as in the case of newspapers or television stations.

Why all the hysteria? There is nothing “liberal” about the government rushing in to regulate these wonderfully promising turbulent developments. Liberals of both 18<sup>th</sup> and 20<sup>th</sup>—and I hope 21<sup>st</sup>—century varieties should and will put their trust in competition, reinforced by the antitrust laws—and direct regulation only when those institutions prove inadequate to protect the public.