

EXECUTIVE SUMMARY

Net Neutrality-Digital Discrimination Or Regulatory Gamesmanship In Cyberspace?

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A heated dispute erupted in late 2002 between corporate giants in the high-tech sector over how the networks owned by cable and telecom companies will be governed in the future. Several major software and e-commerce firms have formed the Coalition of Broadband Users and Innovators to petition the Federal Communications Commission to adopt rules ensuring that cable and telephone industry broadband operators will not use their control of high-speed networks to disrupt consumer access to websites or other users. In the name of preserving “network neutrality” and Internet “openness,” CBUI members argue that the FCC must adopt preemptive “nondiscrimination safeguards” to ensure Net users open and unfettered access to online content and services in the future. CBUI claims such preemptive, prophylactic regulation is necessary because the current market is characterized by a cable-telco “broadband duopoly” that threatens Internet users.

Such rhetoric and calls for preemptive regulation are unjustified. There is no evidence that broadband operators are unfairly blocking access to websites or online services today, and there is no reason to expect them to do so in the future. No firm or industry has any sort of “bottleneck control” over or market power in the broadband marketplace; it is very much a competitive free-for-all, and no one has any idea what the future market will look like with so many new technologies and operators entering the picture. In the absence of clear harm, government typically doesn’t regulate in a preemptive, prophylactic fashion as CBUI members are requesting.

Moreover, far from being something regulators should forbid, vertical integration of new features and services by broadband network operators is an essential part of the innovation strategy companies will need to use to compete and offer customers the services they demand. Network operators also have property rights in their systems that need to be acknowledged and honored. Net neutrality mandates would flout those property rights and reject freedom of contract in this marketplace.

The regulatory regime envisioned by Net neutrality mandates would also open the door to a great deal of potential “gaming” of the regulatory system and allow firms to use the regulatory system to hobble competitors. Worse yet, it would encourage more FCC regulation of the Internet and broadband markets in general.