Overview

- Anti-trust, consumer protection and economic regulation
- European and U.S. approaches
- Competitive disruption of traditional regulatory tools
- Concluding questions
Anti-trust, consumer protection and economic regulation

- **Antitrust** – Ensure that a range of options is available
- **Consumer protection** – Protect consumers’ ability to choose among options

**Economic regulation** – Initial assumption that few or no options are available

Assumed “withering away of the regulator”
Creative tension between assumptions and disciplines
Disputes over primacy
Gaps and conflicts
“Evolve or die”

**Competition as a goal of regulation**
- Stresses traditional regulatory approaches
  - Infrastructure deployment
  - Rate setting
  - Consumer Protection

**Lessons from transport**
- Old systems costly
- Benefits: Efficiency, innovation, choice, increased use
- Ongoing needs for infrastructure support, coordination, unserved customers, consumer protection, market monitoring

**Retail Rates**
- Rate base
- Rate of Return
- AFORs
- Price cap

**Wholesale**
- Rates
- Terms
- Numbering/LNP
- Service quality
- Interconnection/unbundling
- Structural/non-structural safeguards

General consumer law
Securities
Uniform Commercial Code
Bankruptcy
Antitrust
Common law (torts/common carriage)

**Regulation’s substance, form and process**

**Customer**
- Customer education
- Consumer protection
- Retail service quality

- Customer support – Low Income
- Loop support – High Cost Fund
- E911
- Schools & libraries
- Rural health care

**Forum**
- Legislation
- Agency
- Court
- Standards body
- Private dispute resolution

**Level**
- International
- National
- Regional
- State
- Local

**Form**
- Contested case
- Tariff
- Rulemaking
- ADR
- Auctions
- Collaboration
- Contract
- Implicit consensus

**State of nature** – Hobbes v. Rousseau
European and U.S. approaches

European Union reform goals

- EU review of 2002 telecoms rules, commenced in late 2005
- Goal of “future proof” rules recognizing convergence of digital technologies
  - Remove bottlenecks to “faster, more innovative and competitive services”
- Emphases
  - Market-oriented deregulation
  - Focus on ex-ante approaches
  - Streamline regulation
  - Spectrum - flexibility, simplification, coordination
- Specifics
  - Reduced roaming rates
  - One-stop regulatory shopping
  - Reject German “regulatory holiday” for broadband -
    - Endorse evolution from service to infrastructure competition
- Concluding extended consultation, proposals due November 13 2007
### EU – U.S. comparisons

<table>
<thead>
<tr>
<th>Subsidiarity</th>
<th>Federalism</th>
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</table>
| More activist competition policy – appears more consistent with “structure, conduct, performance” | Less activist anti-trust  
Appears tempered by “public choice”/“law and economics” |
| Refusal to forbear for broadband - rejects national “regulatory holidays”    | “Title I” reclassification of broadband                                   |
| Formal structure driven by market definition, findings of Significant Market Power | Gradual partial decoupling of sector from economic regulation  
Increasingly focused interventions, including support for Carrier of Last Resort |
| Infrastructure: Wireline + **unbundling** + wireless                        | Infrastructure: Wireline + **cable** + wireless                           |
| Estimated 20% broadband infrastructure competition                          | Estimated 80% U.S. broadband competition                                  |
| Currently higher European broadband deployment                              | Currently higher US wireline cap ex/revenues                              |
| European Regulator’s Group                                                 | NARUC                                                                     |

### Themes and variations

- Interplay of anti-trust (ex post) and economic regulation (ex ante)
- Monopoly - competition continuum
- Temporal dimension
- Gaps and inconsistencies
- Jurisdictional tensions and resolutions
  - Approaches to federalism and subsidiarity
  - U.S. Commerce clause
- Litigiousness
  - “Lawyers behaving badly”?
- Universal service
  - Consistent goals over time, pursued through varying/evolving means
- Investment and deployment concerns
- Disruptive effects of technology and economic models on then-current regulatory regimes
- Different approaches to and assumptions about consumer desires and consumer protections
Competitive disruption of traditional regulatory tools

Implicit versus explicit support of high cost areas, customers, services

From *Universal Service Funding*, Balhoff, Rowe & Williams, LLC (2007)

### Stages, Policy and Financial Perspectives on universal service goals

<table>
<thead>
<tr>
<th>Historical Stages</th>
<th>Policy Perspectives</th>
<th>Financial Perspectives</th>
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<tbody>
<tr>
<td>Early Formation 1804-1921</td>
<td>Interconnection and Antitrust Issues</td>
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<tr>
<td>First Generation 1924-1966</td>
<td>Support through Separations into Interstate/Intrastate</td>
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<tr>
<td>Second Generation 1966-2001</td>
<td>Expansion of USF mechanisms</td>
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<tr>
<td>Third Generation 2001-</td>
<td>Competitive USF Systems</td>
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</tbody>
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Emerging Models
- Monopoly: Rates, Investments, Returns
- Competition/monopoly: Commitment to fulfill obligations

Monopoly Rate, Investment, Returns
- Competitive markets move toward cost
- Support is moremodulated

Explicit USF
- Explicit USF systems target marginal regions, competition rules elsewhere

From Universal Service Funding, Balhoff, Rowe & Williams, LLC (2007)
Monopoly Model of Support

- Policymakers regulate carriers to ensure policy-based ubiquitous/affordable services in exchange for economic viability of entire enterprise.
- Historically, residential and high-cost rural consumers benefited from a system of enterprise-based internal cross-subsidies:
  - Support included in access and long distance
  - Geographic rate averaging
  - Value-of-service pricing
  - Residual pricing of value added/"vertical" services
  - Rate differentials unrelated to cost differences
- System began to fail when certain sources (lines of business) of internal cross-subsidies became competitive:
  - LD from approximately 1970
  - Business in the 1990s/2000s
  - Residential with VoIP in 2000s

Competitive Model

- Explicit support mechanisms intended to eliminate internal cross-subsidies:
  - Access systems
  - Federal/state USF programs
  - Access reforms
- Competition targets most profitable business lines, eroding profitability & making cross-subsidies unsustainable:
  - LD market example
- All lines of business must be economically justifiable:
  - Allow competition to govern competitive markets
  - Uneconomic regions receive increasingly explicit support
  - Policy support matches policy duties
Concluding questions

### Traditional and evolving policy roles

<table>
<thead>
<tr>
<th>Function</th>
<th>Needed or not?</th>
<th>Who does it and how?</th>
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<tbody>
<tr>
<td>Retail rate setting</td>
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<td>Carrier of last resort</td>
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<td>Wholesale structure, rates, terms</td>
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<td>Enforcement</td>
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<td>Mediation and facilitation</td>
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<td>Organization and system management</td>
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<td>Information to facilitate choice</td>
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<td>Consumer protection</td>
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<tr>
<td>Infrastructure support</td>
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<tr>
<td>Others</td>
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</table>

Which functions are needed? How are they best performed? By whom? Coordination? Do some conflict?

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What’s Next?

- Diverse business models allow comparisons
  - Is broadband a separate network?
  - Approaches to COLR and rural
  - Implications for regulation and policy
  - AT&T is once again the largest local and long distance company in America – and the largest rural carrier

- Meaningful cross platform competition
  - CATV providers are offering telephony services
  - Strong and rapid success
  - Tend to focus on dense areas, but includes smaller towns as well as larger cities

- Video products
  - IPTV - the ability to deliver television content via IP over broadband facilities
  - Verizon's FiOS roll-out compared to DSL-based deployments
  - Most telcos using last mile copper
  - Need to address backbone networks as well
  - Telcos are attempting to get content deals from the media companies

- Transactions
  - Sales of rural properties
  - Wireline spins
  - Roll ups of smaller companies

- Spectrum!

If Heisenberg were a regulator

“One cannot simultaneously find both the position and momentum of an object to arbitrary accuracy.”
- The uncertainty principle

“Policy solutions tend to look simple from a distance, and messily complicated up close.”
- Regulatory corollary
Balhoff, Rowe & Williams, LLC, is a specialized professional services firm focused on providing financial-regulatory advice. The principals have more than 40 years of experience in advising investors and regulators on complex investment issues. They have provided services to a wide range of communications companies, including incumbents, competitive carriers, wireless operators and cable operators. Additionally, the firm has expertise in energy and other utility services. The services of Balhoff, Rowe & Williams include research, think-tank projects, professional facilitation, advocacy efforts, financial and restructuring advice for various companies, carriers and policymakers. The company offers an unparalleled combination of experience, credibility, strategic insight and access in a rapidly changing environment.

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