Looking Backwards and Looking Forwards: Lessons Learned from the Telecom Act of 1996

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Main points

- Imperfect markets and imperfect policy constitute each other (they co-evolve)
- Telecommunications has changed from a relatively closed to an open system
- New environment poses fundamental challenges to finding sustainable policies
- Mismatch between components of TA96 and new conditions of policy-making

Outline

- Assessing the TA 96: background data
- Old and new policy environment
- Two examples (unbundling, diversity)
- Looking backwards and looking forwards

Assessing TA96

- What is an appropriate standard?
  - Status quo ante or best case in U.S.?
  - Best practice model in other country?
- Contribution and possible role of policy
  - Policy is only one factor among others
  - Policy success or good fortune?
  - Policy failure or bad fortune/uncertainty?
- Right constellation of markets, policy, self-regulation critical for overall performance

Voice access paths (1960-2004)

Source: Quello Center ICT Observatory, 2006

Broadband access (2001-2005)

Source: OECD, Quello Center ICT Observatory, 2006
Assessing TA96

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Traditional policy model

- Objective function $W = W(x)$
- Policy model $x = f(a, z)$
  - $x$ ... vector of outcomes
  - $a$ ... vector of policy instruments ($a \in A$)
  - $z$ ... vector of external factors
- Find $a^* = g(x^*, z)$ such that $W^* = W(x^*)$

New policy conditions

- Increasing interrelatedness (convergence)
- Creates fundamental challenges
  - Specification of policy model $x = f(a, z)$ difficult
  - Fine-tuning of policies complicated by feedback
  - Emergence of new economic and political feasibility constraints
- Difficulty of finding sustainable instruments; easier at higher level (goals, principles)

Example 1: unbundling

- Early unbundling policy emphasized short-run effects on new market entry
- Court challenges
  - Impairment test, TELRIC, delegation to states
  - Repeatedly remanded for lack of theoretical foundations (and supporting evidence)
- Eventual shift in emphasis on long-run effects of unbundling on new investment

Early debate: short-run effects

- Positive net effect

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Recent debate: long-run effects

Example 2: media diversity

- Challenges of balancing economic & non-economic policy goals (determining W)
- Pre-TA96 diversity policy
  - Gradual increase in size of station groups permitted as total number of stations grew
  - Increase from 7-7-7 to 12-12-12 in 1985, to 18-18-18 in 1992, to 20-20-20 in 1994
  - A politically sustainable incremental approach
  - Diversity and efficiency goals both served

Post-TA96 diversity policy

- TA96 dramatically relaxed ownership limits but consolidation exceeded policy comfort zone
- Ownership concentration rapidly increased in both industries, especially radio
- Public and congressional reaction reflected considerable unease with the situation
- Demand by courts for empirical underpinnings led to introduction of Diversity Index (DI)

Diversity Index fiasco

- DI failed due to weak conceptual underpinnings
- Diversity is vaguely defined and its connection to democratic efficacy under-theorized
  - Unlike the HHI on which it was modeled, DI formula was not derived from theory relating market structure to a notion of performance
- For DI, unlike HHI, there was no empirical measure of performance to calibrate it
- Court criticized FCC for ad hoc decisions on which media to include in DI

Selected lessons

- Incomplete information and uncertainty are pervasive (unanticipated consequences)
- Adaptive, piecemeal policy is not a sign of failure but often the only feasible approach
- TA96 worked better where it emphasized processes and overall objectives
- TA96 did not work well where it focused on outcomes and instruments

Looking forwards

- Communications law is most effective in defining the overarching framework
- Framework would ideally permit policy innovation and institutional diversity
- Practical implementation most effective if it can adapt to changing circumstances
- Different knowledge base (models, data, ex ante evaluation tools) is critical