Regulatory Policy Update

Robert C. Atkinson
Director of Policy Research
CITI
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Advisory Committee’s 2003 Conclusions Still Valid

• Regulatory policy was not a major cause of “boom” or “bust” but could accelerate or retard any recovery
  – Reg not a major factor in Internet exuberance: investors assumed Internet would be unregulated
  – But policy becomes relatively important when other industry fundamentals are weak
  – Post “bust” regulatory uncertainty promotes paralysis
• Specific 2003 recommendations continue to be worthwhile

Summary of 2003 Recommendations

• Converge policies, encourage experiments
• Streamline regulatory process
• Deregulate retail rates
• Interconnection Agreements for all carrier-to-carrier matters
• Loss of licenses
• Tax telecom as normal business
• Reform Universal Service

Greatest Regulatory Problem for Recovery Is “Gridlock”

• To support (and not retard) recovery, regulatory decisions must be “in sync” with what is now an unpredictable, unstable, volatile business
  – Substance of decisions may be less important than speed: management and investors will adapt to whatever the decision is, but are paralyzed until decision is made and “final”

Telecom Act Encouraged Gridlock

• Statutory micromanagement
  – Deadlines, checklists, pricing standards, etc.
• Nebulous, inconsistent language
• Responsibility and risk centralized at FCC
  – Loss of State experimentation/diversity
• RESULT:
  – Unending proceedings (= uncertainty)
  – Greater risk
  – Inability to react to unforeseen developments (such as Internet and the meltdown)

Critical Policy Action for Recovery: Reduce Gridlock

• But the causes of gridlock are barriers to reducing gridlock:
  – Industry rivalries
  – Consumer vs. industry interests
  – Due process
• To help recovery, a solution to gridlock must avoid being gridlocked
  – Complex, interminable regulatory or legislative proceedings are the problem for recovery, NOT the solution
### Reducing Gridlock

- Minimize opportunities for gridlock in the first place by reducing scale, scope and complexity of regulation:
  - Adopt simple guiding principles
  - Promote self-regulation
  - Deregulate retail services
  - Resolve all carrier-to-carrier issues through private negotiation and arbitration, never by regulation
  - Base decisions on better evidence (e.g., from experiments instead of “dueling” theories/experts)
- Streamline processes for few remaining regulatory issues

### Reduce Gridlock by Adopting Guiding Principles

- Competition is preferred means for avoiding consumer abuse
  - Network interconnection and consumer right to attach
- When consumer abuse is demonstrable, granular regulation should be applied where and when necessary
- Regulate for consumers, not suppliers
- When government wants something, it should buy it not extract it
- Strict technology neutrality
- Consider infrastructure separately from applications

### Reduce Gridlock by Encouraging Self-Regulation

- Strong, rapid enforcement with meaningful penalties
  - Larger fines, quicker proceedings
  - Since licenses are symbols of “trustworthiness,” loss of licenses should be possible penalty for major violations of trust, including massive frauds, systematic abuses
  - Should bankruptcy affect licenses?
  - Bar once-disgraced managers from managing any licensee
- Encourage industry codes of conduct

### Reduce Gridlock by Deregulating All Retail Services

- Competition is sufficient to risk flash-cut, national deregulation of all retail rates
  - Resale/wireless/VoIP
- Re-impose price or service regulation in any market where consumer abuse is demonstrable
  - States are best positioned to find and counter abuse on granular basis under Federal guidelines
- Added benefit: eliminate some implicit subsidies
- If politically necessary: regulate only basic “lifeline” consumer services

### Reduce Gridlock by Never Regulating Carrier-Carrier Matters

- Negotiated agreements for all carrier-to-carrier arrangements
  - Access charges, recip comp, performance standards, UNEs, collos, etc. etc.
- Commercial arbitration for any un-negotiated issues
  - “Baseball” arbitration as default to encourage settlement
- State regulators’ involvement limited to approving or rejecting arbitrator’s decision based on Federal standards
  - i.e., maximizing interconnection, reliability, consumer benefits, efficiency
- All agreements are available for “opt in” in similar circumstances
- Rely on private antitrust and antitrust enforcement to prohibit anticompetitive behavior

### Reduce Gridlock by Basing Decisions on Better Evidence

- Hypothetical evidence of dueling experts, theories and predictions cause confusion, delay and paralysis, not speed or clarity
  - At least use trial-type hearings to test hypothetical evidence
- Better evidence will often be experimental evidence
  - Try different approaches in different markets, observe results, adopt what works best and stop what works worst
  - Lowers risks for managers and investors as well
- Better evidence also means fewer appeals, fewer reversals
Reduce Gridlock by Streamlining Remaining Regulatory Processes
• Contested hearings before ALJs instead of “paper hearings” for fact-finding, adjudications
  – Faster, less appealable, more sustainable
• One Federal “commissioner”
  – No compromising: quicker, clearer, more consistent and sustainable decisions
• All appeals to one Circuit Court (DC)
  – No forum shopping, more expertise and consistency

Encourage Recovery by Reforming Telecom Taxes (inc. Univ. Svc.)
• Telecom is no longer a “golden goose” able to collect hidden taxes
  – Tax telecom like any other business
• Make telecom investment tax credits transferable
• Treat Universal Service as explicit social subsidy not administered by regulators
  – Telecom voucher to food stamp recipients
  – Add’l vouchers in high cost areas
  – Funded by existing 3% excise tax

Is New Legislation Needed?
• Current law is out-moded, confusing and could definitely be improved
• Many stakeholders want reform
• Could regulators sufficiently “self-reform” without legislation?
• Uncertainty about new legislation could be a major drag on recovery for two years…or even longer
  – Legislation is easy to gridlock
• But, if legislation is inevitable or unavoidable…

To Avoid Legislative Gridlock…
• No legislative micro-management
• Look forward, but don’t assume any particular future market structure or technology
• Don’t favor/disfavor any technology or industry segment
• Do a complete rewrite, not piecemeal amendments, and keep it very, very short

Ideal Legislation
• Will avoid legislative gridlock by dealing exclusively with:
  – PRINCIPLES, that all (most?) industry segments and consumers can support
  – PROCESS, so that final, sustainable decisions can be reached quickly

Legislated Principles
• Updated Sec.1 to set objectives/scope:
  – An efficient, reliable nationwide and worldwide telecommunications system providing all persons with access to reasonably priced services
  – “Telecommunications” broadly defined, technology neutral
• Market competition preferred to regulation
  – Geographically granular regulation where markets have failed or abuse is clear
  – Network interconnection and consumer right to attach and use are essential to competition
• Plenary federal authority
  – Fed authority shall be delegated to States when varying local/regional circumstances require varying regulatory policy/response
  – States may exercise non-conflicting State police power regulation
Legislated Principles

- Fed to encourage granular experiments
  - Experiment results are “best evidence”
- Forbearance allowed and encouraged
- No retail regulation by Feds or States in absence of demonstrated market-by-market consumer abuse
  - States may re-regulate under Fed standards
- Carrier-to-carrier matters to be handled only through negotiated agreements
- Carriers shall not collect or contribute to “universal service” directly or through implicit subsidies
- Regulators to encourage trustworthiness by service providers
  - Blanket licenses revocable for systemic untrustworthiness
  - Licensees may be prohibited from employing managers who have a record of untrustworthiness

Legislated Process Improvements

- Single Federal regulator
- Fact finding and adjudication in contested hearings before ALJs
- All Federal appeals to DC Circuit
- For carrier arbitrations:
  - Default “baseball” arbitration
  - State is default geographic market
  - Opt-in

And Handle Non-Regulatory Matters in Separate Legislation

- Universal Service
- Taxes
- R&D