

Broadband Policies and the U.S.

IS250 Computer-Based Communications Networks and Systems

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Although the Internet was invented by U.S. investment, over the past ten years there has been a perception that other countries have surpassed our networking speeds by large margins. In response to this, the FCC contracted with the Berkman Center for Internet & Society at Harvard to complete a study comparing international connection rates, speeds, policies, and their causes and interactions. Among the findings in their lengthy report were several that indicated that U.S. Internet policy was in need of change. These findings are striking, and require some specificity:

- Among first-world countries, the U.S. was found to be 17th in broadband penetration, but this was not a result of our large geography, as is often suggested.
- Among first-world countries, the U.S. was found to be 19th in advertised Internet speeds, and 11th in speeds, as measured by speedtest.net.
- Among first-world countries, the U.S. was found to be 12th in broadband price.¹

In short, Americans paid far more than other countries, and in return received worse speeds and lesser penetration. Their next question was why this should be, and overwhelmingly they determined that was caused by a lack of competition among Internet Service Providers (ISP). In spite of this, when the FCC released their sweeping broadband plan, this finding was largely absent.^{2,3}

In their study, the Berkman Center advocated for more open access amongst service providers. This is a position that nearly all of the “high performing” first-world countries have taken, which requires “telecommunications providers...to make available to their competitors...various parts of their network...so that the competitors can begin to compete using these components as part of their service, without having to replicate the full investment that the incumbent originally made.”⁴ They remark that in those countries that implemented various forms of open access and which had an engaged regulator, the results and improvements of the Internet speeds and access have been marked. The advantages of open access are many, including lowered barriers to entry for new companies, increased attention paid

1 Yochai Benkler, Robert Faris, Urs Gasser, Laura Miyakawa, & Stephen Schultze. (2009, October 1). Next Generation Connectivity: A review of broadband Internet transitions and policy from around the world. Berkman Center for Internet & Society.

2 Federal Communications Commission. (2010, March 16). Connecting America: The National Broadband Plan. Retrieved from broadband.gov

3 Matthew Lasar. (2010, March 2). The end of analog: Blair Levin on the National Broadband Plan. *Ars Technica*. Retrieved from <http://arstechnica.com/telecom/news/2010/03/an-interview-with-blair-levin-on-the-fccs-national-broadband-plan.ars>

4 Supra 1 at page 77.

to innovation-driven profits, more locations in the telecommunications industry where innovation can occur, and incentives among companies to “seek approaches to share costs, risks, and facilities, rather than...creating redundant facilities to assure competition.”⁵ An unmentioned advantage this last point creates is a reduction in the environmental and social impact of network connectivity: In a market where infrastructure is shared, there need not be redundant wires going to each house, nor redundant wireless towers for each cell phone carrier. Instead, the investment is placed into innovation.

According to the report, there is “extensive evidence to support the position...that open access policies...contributed to broadband penetration, capacity, and affordability in the first generation of broadband.”⁶ So, then the question becomes, why has the United States not yet adopted such a policy? In looking into this question, three answers emerge. The first is a belief in the free market, and the power of competition to promote the best end. The second is the lobbying power of the telecommunications industry, which spent at least tens of millions of dollars in 2008.⁷ The third, explained by Blair Levin, the FCC's director of the broadband plan, is that, “There is a higher percentage of broadband subscribers in the consumer market receiving it off of cable than anywhere else in the world,” and that, “in the United States...when a regulator says something...it's challenged in the courts and you have a time lag.”⁸

Looking at these reasons, it's clear that none of them is insurmountable, but that each presents challenges to good national policy. The first can and should be discounted, since the high fixed costs of deploying telecommunications networks empowers incumbents while discouraging competition, creating a clear market failure. This is understood around the world, and the evidence provided in the Berkman study should be used to demonstrate how regulation of the market is successful. The second should also be discounted, since the lobbying of a company is not always in the best interest of policy making. However, like the first reason, it should be noted that this lobbying power is difficult to overcome. The third reason, is an unfortunate situation that needs to be addressed. The definitional problem, that cable companies are not regulated the same way as the “telcos,” should be addressed swiftly, since the current definitions are a hindrance to fair competition. The second problem of legislation being fought in court should not be a reason for policymakers not to make good policy, but is rather a way of not going to bat for fear of a strike. Such reasons should not drive policy.

5 Ibid at page 76.

6 Ibid at page 75.

7 Fernandez, B. (2009, May 17). Comcast's lobbying budget soars. *Philadelphia Inquirer*. Pennsylvania. Retrieved from <http://www.allbusiness.com/government/government-bodies-offices-us-federal-government/12727043-1.html>

8 Supra 3.