Insight

Merger Agreement Spotlights FCC's Turn Away From Innovation

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Charter's buyout of Time Warner Cable and Bright House Networks was approved by the Federal Communications Commission (FCC) and the Department of Justice (DOJ), but not without some important caveats. Under the conditions imposed by the two agencies, Charter would "not be permitted to charge usage-based prices or impose data caps" for seven years, nor would the company be allowed to charge other Internet providers for traffic swapping arrangements called interconnection deals. While FCC Chairman Wheeler has said before that he has no desire to regulate either of these areas, under pressure from advocates, the agency's vision has dramatically shifted. By adopting a narrow view of the world, the FCC is no longer embracing the bright future of the Internet and has ceased to be an advocate for consumers.

For decades, it has been understood that limits on pricing models are limits on innovation, and there has been an understanding that price differentiation is good for consumers. Professor Timothy Wu, who coined the term network neutrality, described usage-based pricing as "probably the fairest system going." Professor Lawrence Lessig, who taught Wu and the first generation of scholars in this space, believed in tiered pricing, saying in front of Congress, "I believe, for example, that consumer-tiering should be encouraged." The sentiment was so pervasive that it was written into the 2010 Open Internet Order.

The United States has a more progressive pricing scheme than other countries. At the entry level, broadband access in the United States is lower in price than average, but on the top tiers, the prices are higher. Low prices at the entry level incentivize people to get online and keep them there if they are price-sensitive, while those that use the service more are charged more. For the ISPs, the added cash translates into more investment dollars and better quality service. The data support this narrative. Americans have both double the average data usage as Europeans and double the investment dollars, which means better access to faster networks and better fiber broadband development. Fairness is built into this price model.

But under increasing politicization and pressure from outside groups, the FCC has been backing out from its empirically grounded position. The conditions on the deal are the culmination of a shift that has been underway at the Commission. Mandating unlimited data will ultimately harm all consumers as the investment incentives skew toward the average.

In addition to pricing restrictions, the DOJ and the FCC have secured a deal to mandate prices at zero for interconnection deals. Since 1998 these prices have decreased nearly 100 percent from $1200 per Mbps to $0.63 in 2015. While the prices are rock bottom by historical standards, it still cost money to maintain Internet traffic and route it across the globe. As AAF explained before, competitors will love the condition because it "would legally mandate prices at zero and help their bottom line."

Chairman Wheeler has already begun to spin the agreement, proclaiming “these strong measures will protect consumers, expand high-speed broadband availability, and increase competition.” The unfortunate irony for consumers is the conditions will do exactly the opposite.