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The FCC vs. Broadband Investors

The last thing Internet entrepreneurs need is a new period of regulatory uncertainty.

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The Federal Communications Commission's intention to establish new rules to regulate the Internet will set off another prolonged battle in Congress and the courts. This will discourage the innovation and investment the Internet so desperately needs.

We've seen this before. The FCC's move is reminiscent of the landmark 1996 Telecommunications Act, which was obsolete almost immediately after its passage. Although it ran more than 200 pages and promised a new telecom era, the legislation barely mentioned the Internet.

Washington now seems to be making the same mistake. Innovation and investment won't come from Government Printing Office copiers. It will come from upstarts challenging incumbents and multiple market players experimenting with a range of technologies—precisely the things that the FCC or Congress cannot predict and should not be trying to regulate.

At the very moment Washington is trying to plan the next phase of the Internet, broadband technology is undergoing one of its most fertile periods of private-sector innovation. Today, the combination of radio technology and wireless connectivity has spurred hundreds of innovative start-ups to pursue new ways of connecting people to the Internet.

WiMax technology that provides wireless broadband connections to large areas is now being rolled out in several areas. Cellular broadband routers are increasingly nimble and create high-speed networks for mobile phones and computers. Rural communities are furiously petitioning to become one of Google's test sites for ultra-high-speed broadband. And over the last number of years advances in the sophistication and stability of satellite technology have soared while the costs of delivering each megabyte have plummeted, letting tens of thousands of rural customers receive broadband from similar satellites that give them cable TV.

In the face of these advances the Obama administration appears stuck on a narrow set of solutions that might have made sense more than a decade ago.

We have already seen this in the two ambitious—and short-sighted—plans for broadband the administration has already announced: federal stimulus funds to provide broadband to rural America and the 350-page "National Broadband Plan" released by the FCC in February.

Instead of encouraging investment and education that would enable the next phase of mobile broadband, the administration is funding plans favored by a few telecom incumbents or the arbitrary decisions of state and local politicians, whose track record for innovation is hardly stellar. The efforts to bring affordable, ubiquitous broadband to rural Americans—highlighted by the White House during the president's recent Midwest tour—is a case in point.

The problem of rural broadband access lies at the heart of the digital divide between rich and poor. The hard fact is that providing phone service to tiny pockets of hard-to-reach customers is not very profitable for incumbent telecom providers. Running fiber or cable to these areas in order to offer bundled phone, television and Internet service was also an economic nonstarter. One result is that many rural Americans have been left on the wrong side of the digital divide.

Yet instead of creating incentives to innovators to develop and deploy technology to serve these parts of the country, the administration's stimulus plan is largely about sending funds to local municipalities. Instead of seeding innovation, most of these funds will go to subsidize the incumbent players who will be happy to spend years digging trenches and laying fiber optic cable—even as mobile broadband innovation passes them by.

The need for new thinking, more engineers and bolder innovation in broadband is urgent. But it is foolish to think that establishing a new FCC regulatory regime will help achieve that.

Over the past 15 years, much of the old telephone network was replaced with a system that could transmit data across the Internet almost entirely through the efforts of private companies raising capital to get it done. These activities occurred despite the 1996 Telecom Act, not because of it. Today, with gun-shy capital markets, the unmistakable message of a new set of FCC rules is that the future of broadband will be established in Washington, not by entrepreneurs.

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