

Comments on the Berkman Center's Next Gen Connectivity Report to the FCC

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Last week I finished reading the Berkman Center's excellent report on Next Generation Connectivity and while I agree whole-heartedly with its conclusions regarding the critical importance of open access obligations. I am left to wonder why they chose to only concern themselves with OECD countries and not expand their analysis to non-OECD countries, such as Singapore, who are recognized as leaders in Broadband deployment into all sectors of the economy.

The Berkman report found that in countries where an engaged regulator enforced open access obligations, many new competitors entered the market and began providing services over these open access facilities. It was these new companies who provided an important catalyst for the development of robust competition, which, in most cases, contributed to strong broadband performance across a range of metrics the Berkman center calculated. It also found that a professional, independent, and engaged regulator one who monitors and measures the markets thereby providing confidence in its capacity to diagnose and respond to abuses by market-dominant players.

The Berkman Center's findings showed that a regulator capable of continuous monitoring and updated response lead to an increased number of new firms and new innovations. It provided the needed security to firms that all companies were on notice, that anticompetitive abuses would not be tolerated, even those that were disguised as "innovations. By these actions, they showed that the regulator was actively watching and preventing against any anticompetitive abuses. ". Moreover, by allowing dominant market actors to experiment with new operating arrangements while assuring competitors and entrants that they too can invest, because abuses by carriers who hold market power will be checked by the regulator. All these actions gave investors the needed security to loan money to new competitors and created an environment opened to growth.

The report also showed that the original intent of the FCC to permit line sharing and other open access requirements that it understood as being allowed under the 1996 Telecom act was the correct approach. The study found that the weight of the evidence, case studies and analysis support its conclusion that open access policies, where seriously implemented by an engaged regulator, contributed to a more competitive market and better outcomes for everyone. Before Line sharing and other open access requirements were struck down by the Courts, we saw that these open access requirements had led to a wave of new start ups and companies offering a wealth of products and services to the American public, if the access requirements had been allowed to continue I think the US would be in a very different place.

We only have to look at the example of the EU countries that the Berkman Center report highlights to see how the landscape could have been different. In France, change came largely as a result of European Union action in bringing infringement proceedings against the ART and many other EU countries, forcing the regulator to enact new laws that required all companies to issue a reference offer and regulated their rates. By the end of 2002 France's regulated unbundling and shared access rates dropped, and were the second lowest in the EU, second only to Denmark. Between February 2003 and January 2004, the number of unbundled loops in France grew from practically none to over 250,000. It was these policies, the active enforcement of them by regulators that now form the basis of much forward-looking planning on broadband and other next generation technologies throughout the world.

The Berkman Study found that the success of the Japanese approach was that it saw a highly competent and intensely engaged regulator as an enabler of competition and not the opposite.

So while I laud the Berkman Center for their work and their findings, I am left to wonder why they chose to only concern themselves with OECD countries and not expand their analysis to non-OECD countries, such

as Singapore, who are recognized as leaders in Broadband and in integrating broadband into all aspects of development from Education to Government and to the whole slew of new companies that sprung up as a result of the Government's policy of universal broadband coverage. Singapore, while similar in many ways to South Korea in their established Government policies on universal broadband coverage and incentives given is very different from South Korea and I had hoped that an examination of their policy interventions and outcomes, strategies, regulatory framework, e-government (mobile government), education, medical, and political and market economy as was done for all other countries would have produced some additional best practices and lessons that might be different than what could be learned from South Korea or Sweden that could be adapted by the US as it moves forward with its broadband plan.