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# Is Common Carriage the Best Way to Preserve the Open Internet?



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February 2, 2015

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# The Proposed Open Internet Order

- Motivation: last-mile monopoly/paid prioritization
    - Primary impact: prices that are too high
    - Secondary impact: harm to content, applications, devices
  - Possible solutions
    - Telephone-style regulation/common carriage
    - Internet-specific regulation
  - Key question: comparative second best
    - Market-based outcomes are imperfect
    - Regulatory intervention is imperfect
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# Assessing Market-Based Outcomes

- Perfect competition sets price at marginal cost/  
maximizes welfare
- Monopoly sets price too high
- Oligopoly sets price somewhere in the middle
- Empirical evidence: most of the benefit comes  
from entry by the second and third firms

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# Assessing Regulatory Intervention

- Since 1960s, scholars and regulators moved away from common carriage
  - Direct costs of common carriage regulation
  - Empirical studies showing no reduction in prices
  - Difficulties implementing nondiscrimination
    - Is hard when product quality varies
    - Is hard when production technologies vary
    - Leads to regulation of nonprice terms
    - Is hard when interface is complex
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# Assessing Regulatory Intervention

- Nondiscrimination requires rate regulation
  - If vert. integ., just transfers profits between divisions
  - If not, shares of the monopoly/no consumer benefit
- Problems with rate regulation
  - Difficulty determining proper returns
  - Lack of incentives to reduce costs
  - Hindsight bias on risky investments
  - Allocation of common costs/structural separation
  - Systematic biases towards inefficient solutions

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# Assessing Regulatory Intervention

- Facilitation of collusion
  - Entry controls
  - Standardization of products and pricing
  - Pooling of information
  - Advance notice of product and price changes
  - Prohibition of hidden price cuts
  - Government as enforcer of cartel prices

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# The Tradeoff

- Perfectly competitive outcome is infeasible
- Policy choice is a question of comparative 2nd-best
  - Unregulated vs. regulated monopoly = regulation
  - Unregulated vs. regulated oligopoly = no regulation
- Ideal is to have firms vie for long-run excellence
  - Bargaining power plays a key role in spurring investments
  - Curbing bargaining power can dampen incentives
- Lack of foreign-made content and applications counsels against telephone-style regulation