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"Doing the Hustle at the FCC."

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Doing the Hustle at the FCC

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Back when polyester was hip, disco was king, and car phones were the exclusive provenance of the very rich and powerful, the Federal Communications Commission (FCC) allocated spectrum by divining which uses would best serve the public interest and granting licenses to applicants it deemed most worthy.

That approach was a disaster. Every group and company had its own definition of the public interest, leading to endless hearings and legal challenges. As a result, mobile phones, which Ma Bell had proposed to the FCC in the 1940s, remained largely nonexistent.

It wasn't until the Commission introduced spectrum auctions that consumers really began to benefit from innovative mobile technologies and their constantly falling prices. As a bonus, the auctions have generated billions of dollars to the U.S. Treasury.

Polyester and disco seem to be safely confined to our past, but the FCC appears to be on the verge of resurrecting the long-discredited approach of setting spectrum rules that favor whoever yells "public interest" the loudest.

Today, under intense lobbying pressure, the FCC is considering adopting proposals for friendly-sounding spectrum mandates like "open access." Generally speaking, an open access network is one that any wireless device could use to access any service.

It sounds good, but make no mistake. These proposals represent a big step backwards to policies that are proven failures. In particular, they rest on the long-debunked idea that particular groups can define the public interest and fly in the face of all our experience with spectrum allocation. Imposing these mandates is likely to harm, not help, consumers.

The current spectrum fight has specific problems as well as broader implications.

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The specific problem is that mandatory open access is likely to require complex new regulations that will themselves be subject to endless lobbying and is likely to reduce investment in the relevant spectrum band. It is for that reason financial analysts estimate that taxpayers are likely to receive far less money for spectrum subject to that restriction than unencumbered spectrum.

For example, would the company that wins the spectrum be required to allow any wireless device use the network, regardless of technology? Increasing the number of technologies a network must support will increase the costs of building out the network, increase prices consumers would have to pay to use it, and ultimately reduce demand and investment. Alternatively, would the government mandate which technology the network should use? If so, who will decide what that technology should be?

And what about prices? Would those be regulated? If not, then a provider could simply bypass the open access requirement by charging very high prices for all but a select group of wireless devices. But if prices are regulated, what would those prices be?

It turns out to be a Herculean and highly controversial task to figure out how to regulate prices fairly and efficiently. Any good-faith effort will be constantly challenged, just as previous rate regulation was. It proved to be nearly impossible to come up with defensible regulated rates when the industry evolved more slowly, and would be even more difficult today as technology changes so quickly.

An open-access network of some form might be a great idea, and spectrum rules should allow it. Google's entry into the wireless industry could be thrilling. They have revolutionized the Internet, and it would be great to see how their entry into wireless might change the industry. But Google could participate in a fair auction and offer innovative services if it wins.

The broader problem is that acquiescing to one group that claims to best know the public interest opens the door to future lobbying from groups that want other rules to support their definition of the public interest.

And even if proponents of particular mandates are correct at the moment, what about the future? We once thought giving spectrum to broadcasters was in our best interests. We now know that was a mistake, but undoing those bad rules has proven to be painfully difficult. In other words, dictating how spectrum must be used is likely to lock us in to a particular approach that is not guaranteed to work but is guaranteed to be nearly impossible to change.

We can avoid both the narrow and broad problems by making spectrum rules less, not more, restrictive. Government should not decide how spectrum should be used, but should instead ensure that it can easily move to its most valuable use, both today and in the future. It is through this type of flexible use that consumers and the economy will benefit.

The way to achieve that goal is to relax restrictions on how current licensees and new entrants can use their spectrum and make sure that spectrum can be easily traded in secondary markets. At the same time, the FCC should continue to aggressively move additional spectrum into the market. Indeed, 37 economists of all political stripes signed a statement in 2001 explaining why these steps are important.

We learned decades ago that it is impossible for any single entity to define or represent the public interest accurately, and that trying to do so generates huge costs to the economy. Auctions have been a resounding public policy success. They are not perfect, and the rules of the auctions themselves matter enormously. But bowing to unsubstantiated claims that only particular rules and business models best serve the public interest would be a major step backwards.

The Hustle died in the 70s. Stop doing it at the FCC.