

Reverse Engineering Institutional Questions from the *Comcast* Order

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February 8, 2009

Overview



Three Questions from the Order

- Does the FCC really have plenary authority over the Internet?
- What can we reverse engineer from the FCC's liability and remedy theories?
- Did the FCC's model of proceeding work well?

The Claimed Authority

- To “promote the goal of achieving reasonable charges”
- To take measures improving consumer experience because that “will result in increased consumer demand” and therefore “increased deployment”
- To regulate because applications providers interconnect the Internet with the PSTN



You Cannot
Be Serious

Remember?

- “The FCC and the Unregulation of the Internet”
- IP-Enabled Services Rulemaking

Reverse Engineering the Order

- The liability story is a competition story
- Is it an antitrust story?
 - Where is the market power finding?
- Is it an unfair competition story?
 - Where is the market structure discussion

- The remedy story is a nondiscrimination story
- Do DSL (or wireless or other) providers have to do network management that is application and protocol neutral?

Being Serious

- Some selection among theories
 - Balance the foundation and the muddle
- Inquiry, serious inquiry into market structure

Serious Procedure

- (FTC) inquiry and study
- (FTC) adjudication/RM structure
 - ALJs and formalities have their uses
- But at the FCC
- See Phil/Gigi