

The WTO Telecommunications Agreements

Policy between Trade and Networks*

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ABSTRACT

The WTO agreements on telecommunications attempt to overlay the conceptual model of trade onto communications networks. But networks assume a linked whole, rather than arms-length separation between parties effecting an exchange. Building from cases, this paper investigates the policy implications for the WTO liberalization, including a policy regime that might have been.

The WTO agreements on telecommunications,¹ completed mid-February '97, are built on a regime in which of course trade, and related notions about trade, are the foundation. If there is a conceptual model which is precisely opposite the precepts of trade, surely it is telecommunications.

Trade and networks

Trade describes the transfer of some valuable in exchange for recompense. The WTO (née GATT) regime for liberalizing trade has evolved protocols to accommodate these transfers. Distinct vendors and buyers become the basic building blocks, naturally. Nations as suppliers or buyers, and so net exporters or importers, are a natural extension.

Telecommunications, by contrast, necessarily brings the two ends together in what is effectively a joint, cooperative act (if temporarily so). Imagine the early years of telephone, when separate towns may have been unconnected islands, with only local service available in each.² To take the novel step and connect parties in the separate towns may have involved different companies, each serving a town. And yes, there was payment in some form to the vendors. But the essential event was a connection *between* the two towns and the two parties who wished to talk. The creation of a (temporary) new 'whole' entity – the connection which succeeded to link the two parties – was the crux of economic value, in this hoary and apocryphal telecommunications case.

Trade deconstructs the economic actors, into their separate units – this is necessary for appropriate cases. Telecommunications, on the other hand, requires the precise reverse – an aggregation into a (temporary) whole. Therein lie unending contortions, to try and fit trade negotiations to a network industry.

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¹World Trade Organization (WTO) Agreement on Basic Telecommunications Services, or Basic Telecom Agreement.

²Finland stills understands separate telcos for different towns.

The now-well established GATS terms, which have been force-fit onto the telecoms agreement, demonstrate all too uncomfortably. Consider some of the lower level so-called 'modes of supply':

- Cross-border supply

International telecommunications *must* cross borders (of course...)

- Consumption (or supply) abroad

Again, *one* of the parties is *always* going to be 'abroad,' for there to be international telecommunications.

- Commercial presence

There must *always* be a commercial presence, with some sort of capital, at either end of the connection ...

Of course these notions have been advanced in the effort to 'liberalize' recalcitrant regimes – that we come to presently. But the awkwardness and really utter failure of the terms to fit the real circumstance is all too painfully clear. Perhaps the coup de grâce, the precipitating conceptual unreality is in trying to identify the mythical meet point between two half lengths of an undersea cable. In the attempt to parse a network link between 'trading' countries and their 'trading' carriers, the exercise comes up against its inevitable folly.

An excellent guide to this story, *Liberalizing International Transactions in Services: A Handbook*,³ even sets the problem in a bit of historical perspective. Its first chapter traces, if briefly, the evolution of some of these ideas. The presentation makes clear (if not explicitly) the increasing non-fit – between notion and phenomenon – as GATT moved to GATS, to WTO, and finally to telecom services.

The impulse to community is the force behind the ills which the WTO telecoms agreement is aimed to mend – and community is *also* the reason for telecommunications networks, to be some physical 'connecting tissue' among community members. The conceptual tangle between trade and networks reflects a deeper conflict, in which community apparently may contravene the liberal ideals. Can we avoid the dictates of community, or at least avoid the ills it brings, if we follow the liberal ideal?

Community, and/or its ills?

COMMUNITY

The US is often considered the model of liberal telecommunications (it certainly is the 'leader of the WTO pack'). Let's look back to the apocryphal case above, with separate towns to connect; in the US case we can call those the separate RBOC's. Rather than provide 'cross-border supply' – that is, competing local telcos – the US industry is busily bringing the local telcos *back* under the umbrella from which they were banished by divestiture. With the most recent announcement of nuptials being those between SBC and Ameritech, the original seven US RBOC's have so far shrunk to four. Rather than 'liberal' competition among local telcos, the US is moving toward a 'happy family' of telcos, a 'community' with 'coordination' among the constituents. Is this a model for the other signatories to the WTO Basic Telecom Agreement?

³United Nations Conference on Trade and Development (UNCTAD) / World Bank, *Liberalizing International Transactions in Services: A Handbook*, United Nations, New York, 1994.

Nor is local competition even the model, any more, at least for a significant portion of the concerned intellectuals in the US. The Stanford law professor, who also negotiated and initially oversaw divestiture while in the Justice Department (and as staunch, intelligent, and eloquent a defender of liberalism as can be heard), William Baxter is recently quoted, "I personally didn't really expect that there would be multiple providers at the local level. The economics of the business won't allow it."⁴ As further evidence, (other) leading and respected academics in the US insisted to their European colleagues, at the US policy conference as recently as fall '97,⁵ that "real," facilities-based local competition was not reasonably to be expected. It is now two and a half years post the US Telecommunications Act of '96, which specifically mandated local competition.

How is the US, the putative liberal model, responding to WTO liberalization for foreign ownership, of the means of telecoms production? The FCC "compare[s] its 'foreign entry requirements' to safeguards it has applied to domestic incumbent local exchange carriers"⁶ In other words, by whatever rationalization, the US continues to maintain some of those protections for local ownership – the sort of thing which in the extreme came to be called 'crony capitalism,' in the recent demise of an Indonesian regime which was a direct target of the WTO liberalization.

On a more upbeat note, the US has also been the cultural hotbed which sired the Internet Engineering Task Force/IETF. The IETF has put the forces of engineering 'community' to most positive effect, building on them to foment the really stunning pace of innovation which is the 'Net and Web.

The liberal 'ideal' has if anything, veered back to community, at least in some guise. Liberalization, in this case anyway, does not obviate the dictates of community. But what of the ills it may bring?

THE ILLS FROM COMMUNITY

Were there real problems, which the WTO Basic Telecom Agreement needed to tackle? Certainly.

Chile is often cited as the showcase for ills repaired by liberalization. As one fundamental demonstration – the demand elasticity effect, where grossly inflated prices are dealt with through liberalization – a "30 percent reduction in prices for international calls from Chile to the United States led to a 260 percent increase in traffic volume on that route."⁷ We can also see how the tortured categories, necessary to shoehorn telecommunications into trade, were intended to surface topics for discussion. For instance a draft offer from Indonesia, shortly before the WTO Agreement was finally signed, scheduled as follows: Under 'Limitations on Market Access,' re the 'Commercial presence' mode of supply – "Long distance services are provided by PT Telkom exclusively."⁸

⁴A. Michael Noll, communications professor at University of Southern California, is also quoted, "The investments required to get into the business are too high for there to be competitors." Both are cited in *The Boston Globe*, May 12, 1998, p. D14.

⁵Twenty-Fifth Annual Telecommunications Policy Research Conference, September 27-29, 1997, Alexandria, Virginia, USA, discussion in session on "Restructuring in Industrialized Countries," September 28, 10:30 AM.

⁶Charles M. Oliver, "WTO Agreement on Basic Telecommunications Services and FCC Implementation," *Communications Lawyer*, Winter 1998, p. 13 (single quote marks added for emphasis).

⁷Op. cit., p. 18.

⁸Communication from Indonesia: Draft Offer on Basic Telecommunications.

Community seems an imperative, even for the most committed, liberalized/liberalizing leader. Yet community seems to bring ills, too. To understand we need, I believe, to put events into a significantly longer-term perspective.

A longer perspective

Community gave rise, I suggest, to the restrictive practices which liberalization aims to mend. Indonesia, again, offers a most instructive purview. The Indonesian Constitution even enshrines the family – the core for community – as the basis for economic structure.⁹ In smaller, more compact forms of society, family may be an adequate surrogate for community as a whole – certainly, there is practically no difference, for inbred communities! Then, family-centric aggrandizement serves the whole body politic. As numbers grow of course, the interests diverge, and the service of family slights the rest – coming, in time, to the grotesque distortions of a Suharto family with some \$30 billion spoils, extracted at the expense of its (only-)social brethren. But the dictates and imperatives of community do not dissipate – especially in the face of such injustices.

So the imperatives of community breed ills. In telecommunications, which is the connective tissue for community, those ills are (for instance) the lop-sided control of the infrastructure, particularly regarding its future technical evolution. Yet, community will not be denied, and will/must find its expression, ills notwithstanding.

From this perspective, the liberalizations wrought by a GATT, then eventually a WTO Basic Telecom Agreement, are a necessary antidote to such problems of ‘[social] inbreeding.’ But that antithesis leaves us only half way to a [synthesized] solution. To be complete, we must understand how *also* to incorporate the structure community will seek, even as we would dissipate its ills.¹⁰ Liberalization is a vital astringent, yet it is only halfway – some major next step is necessary, to be complete.

Perhaps a more useful characterization is this: If we see ourselves proceeding along a [socially] evolutionary track, a liberalization phase provides the breath of fresh air – it allows for access to and by new ideas, which the ‘inbred group’ would otherwise have missed. But the coherence, the stability, the structure that organized community proffers is also essential as a counter-balance, in the overall human experience. In fact, balancing the two together – first access and [unknown and potentially de-stabilizing] novelty, then [the relative certainty of] structure and coherence, and of course repeatedly – can define the path of evolution Such is a ‘cognitive’ (or if you please, knowledge- or ‘information’-based) construction of the social path which underlies the economics of innovation.

So what we require is a relatively more sophisticated policy, which can somehow account for these contradictory [sub-]regimes.

Policy

WHAT MIGHT-HAVE-BEEN

What policy regime might have been, if we had the complete mechanism, for both liberalization and for community?

⁹The 1945 Indonesian Constitution holds that, “The economy shall be organized as a common endeavor based upon the principle of the family system.” (This line, in translation, is cited in the New York Times, March 10, 1998, p. A9.)

¹⁰My “Beyond Competition: Where are We in the Dialog about Policy for Telecommunications?” develops the history of this ‘forward evolution of ideology’ in a bit more detail; *Beyond Competition*, Don Lamberton, ed., Elsevier, Amsterdam, 1995.

‘Trade’ could then be taken in the more traditional (community-based) sense of ‘reciprocity’ – you and I take care to maintain a ‘balanced ledger sheet’ between us, with a shared sense of reciprocal obligation. Trade, in other words, really comes down to balanced exchange of like ‘tokens/valuables’ – that is, traditional barter has its fundamental, psychological place. This community depends then [as do they all ...] upon its social protocols – the unwritten, but socially binding ‘rules of the road.’ Not unimportantly, *informal* means of arbitration are fundamental.

What devolves, when there is access for new ideas, from new [outside] people – when, that is, a liberalization successfully brings its breath of fresh air, and the cycle turns forward, once again? Among others, the prevailing social protocols, central to stable operation forward, may come up for inspection. The community may grapple to find a renewed basis for exchanges among its members.

So there arises the need, in this unending cycle – once again – for a re-assertion of community with its coherence and the stable arbitrations which that brings. Hence, the cycle rolls forward ...

Of course such a cycle presumes a fairly sophisticated (and at least intuitive) grasp of the alternations, by the members of the community. Predations, by “spoilers,” are not uncommon; ‘spoiling’ may be the only mode in evidence, if the local culture has not trained-in greater sophistication. This includes necessary sanctions against spoiling, typically via social isolation of the offender. Fortunately, cases such as the IETF offer evidence that such sophistication is entirely possible, even from avowedly liberal cultures.

If this is what-might-have-been, what may we expect from the current round of WTO liberalization in telecommunications?

PROSPECTS?

The US, and its proselytization for liberalization, has been a – if not the – lead actor in the WTO telecom agreement. “[The WTO Basic Telecom Agreement] exports American values of open competition, fair rules, and effective enforcement.”¹¹ “To make this agreement work during the transition ahead, the United States has to be united in purpose and willing to use all available means – including both carrots and sticks – to build the WTO framework.”¹² The pivotal ‘reference paper’ was “modeled in large part upon the principles embodied in the [US ‘96 Telecommunications] Act ...”;¹³ it “reads like a capsule summary of the [US Telecoms Act.]”¹⁴ The US has brought “one-third of the sixty-eight [WTO] cases filed over the past two years[, as of March 1997].”¹⁵

But like holy wars, over the centuries, longer-term outcomes will turn enormously on how wide is the consensus, beyond the US as a relatively lonely prophet. The Crusades in the Middle Ages did not return Christianity to the Holy Land; nor have more modern jihad’s had so much more success, with other faiths. Power balances shift, with the years; that which is not shared widely – the prophet’s promise, accepted expediently, for some short-term gain – will fall by the wayside, as power moves to other parties. Worldwide change in regime, one that would strike to the very core of culture, will depend on whether relative world community is gathered

¹¹Ambassador Jeffrey Lang, Office of US Trade Representative, as reported in a summary of his remarks at a conference, “The WTO and the Global Communications Revolution: The Road Ahead,” organized at the American Enterprise Institute by Cynthia Beltz, AEI Research Fellow, and reported at <http://www.aei.org/>.

¹²AEI conference, op. cit., Donald Abelson, Office of US Trade Representative.

¹³Oliver, op. cit., p. 13. Also affirmed at AEI conference, op. cit., Lang.

¹⁴Oliver, op. cit., p. 14.

¹⁵AEI conference, op. cit., Abelson.

for the purpose. And that depends in turn, I believe, on recognition of the role of community in successful policy for the future.

The WTO Basic Telecom Agreement covers 69 nations representing 82 percent of the world's telecommunications revenues, to quote the Oliver piece. However, the agreement only covers 19 percent of the world's *population*.¹⁶ Besides underlining how our network technology is drastically limited to only the few rich peoples, this stark contrast suggests that any real, long-term change must win the hearts and minds of a sea of humanity vastly larger than ourselves. Most of those people have the reputation for feeling that community is a principle on which they organize, implicitly. An understanding of community, for purposes of policy going forward, seems well recommended.

More, community shapes in response to and is buttressed, or cleaved, by technical means. If we are to be serious about community, then we have no choice but to move deliberately and make the technology available to that four-fifths of the world currently without. By one estimate, \$60 billion *per year* will be needed, "*just for the basic plans that are already on the table.*"¹⁷ Some previous sources for such funds are being rationalized away of course, with moves away from a settlement rate system that has no relation to costs. The liberal ideal, the US, found that a universal service fund was necessary, as liberalization began to bite. It appears that it is time for an international universal service fund, to make the sort of serious contributions which must total \$60 billion and beyond, annually.

The conceptual tangle, where we started, proves to be a natural concomitant of an underlying tension – in fact the conceptual problem can be our signal, to unearth and gain insight on a key mechanism. Community is fundamental, but liberalization is a necessary antidote to its ills. We need to learn to alternate fairly fluidly between the two – to enjoy both coherence and access for novelty, together, in a dynamic to-and-fro.¹⁸

¹⁶Oliver, op. cit., p. 13, 14.

¹⁷AEI conference, op. cit., Carlos Primo Braga, World Bank.

¹⁸Some of the issues in this paper (along with related theory) are treated at further depth in my "Microsoft vs. Netscape: Policy for Dynamic Models," *The Limits of Government: On Policy, Competence and Economic Growth*, Gunnar Eliasson & Nils Karlson, eds., City University Press, Stockholm, forthcoming.

REFERENCES

Abelson, Donald, Jeffrey Lang and Carlos Primo Braga. 1997. Cynthia Beltz, editor, *The WTO and the Global Communications Revolution: The Road Ahead*. (conference summary) American Enterprise Institute, <http://www.aei.org/>.

Allen, David. Forthcoming. *Microsoft vs. Netscape: Policy for Dynamic Models*. In Gunnar Eliasson & Nils Karlson, editors, *The Limits of Government: On Policy, Competence and Economic Growth*, Stockholm: City University Press.

Allen, David. 1995. *Beyond Competition: Where are We in the Dialog about Policy for Telecommunications?* Don Lamberton, editor, *Beyond Competition*, Amsterdam: Elsevier.

Draft Offer on Basic Telecommunications. 1997. Communication from Indonesia.

Oliver, Charles M. 1998. *WTO Agreement on Basic Telecommunications Services and FCC Implementation*. Communications Lawyer, Winter.

The 1945 Indonesian Constitution. (The line cited is reported, as translated, in the *New York Times*, March 10, 1998, p. A9.)

United Nations Conference on Trade and Development (UNCTAD) / World Bank. 1994. *Liberalizing International Transactions in Services: A Handbook*, New York: United Nations.

World Trade Organization. 1997. *Agreement on Basic Telecommunications Services*. <http://www.wto.org/wto/services/tel.htm>