Interview with **Prof. Eli NOAM**

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Conducted by **Yves GASSOT,**
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Yves GASSOT: I am delighted that you have consented to do this interview. I would like to begin with the current situation in the United States. We, in Europe, have noted the various attempts to rewrite the Telecommunications Act. The pressure to rewrite seems more intense. We also noted CITI has had Conferences on a potential rewrite of the Telecommunications Act. The threshold question is: Do you believe the Telecommunications Act of 1996 needs to be rewritten? And, if so, why?

Eli NOAM: Sure, everybody believes that the reform Act deserves reforming. But everybody wants to fix different problems, so either there will be a stalemate, or a law like a Christmas tree with gifts for every industry. There have been a number of outside attempts to draft a model law, and several Congressional bills have started to get the ball rolling for a 2006 legislative debate.

YG: What general framework would you advise Congress to use in its rewrite?

EN: Focus on process rather than substance. What the 1996 Act demonstrated is that less is more: simple principles are more enduring than lengthy and specific laws. This would be a "common law" type approach, with the FCC, the courts, and the state PUCs fleshing out details as time progresses and as the industry evolves. But the chances that Congress will let this opportunity pass to delve into every problem are about as great as life being discovered on Pluto.

The second major problem is the endless procedural opportunities for delays that tie everything in knots. Unfortunately, any reform here is tied to the

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general Administrative Procedure Act, an issue that goes far beyond telecom and media, and which is hard to change. But there are some improvements possible. For example, Bob Atkinson of CITI has proposed mandatory "baseball-style" arbitrations and other changes.

YG: Many commentators discuss the convergence of the media and telecommunications. Indeed, many commentators feel that inter-modal competition is sufficient to relax regulation of the Bell Operating companies entirely. What is your view?

EN: It all depends. Where there is robust inter-modal competition, much of regulation becomes unnecessary, except for "social regulations" such as emergency service 911 access, privacy protections, etc. On the other hand, in low-density areas with no real competition, consumers need protection from market power. And competitors may require some wholesale regulation for essential bottleneck facilities such as the local loop, at least for a transition period.

YG: Some commentators feel that the variety of broadband providers in the United States is sufficient for viable competition without regulatory intervention? What is your view? How does it compare with the diversity of broadband providers in Europe?

EN: One must understand how different the broadband structures are becoming on the two sides of the Atlantic. In America, two powerful and competitive broadband pipes are emerging – cable TV, and the fiber infrastructure of telecom companies which is being built as a competitive response – plus a few smaller platforms. I call this the "2.5" broadband industry structure, and it exists also in Canada, and some of the smaller European countries. In contrast, most of the larger European countries, as well as Japan, have no significant or healthy cable TV infrastructure. Their broadband is mostly based on DSL over copper, plus a few smaller platforms, which can be called a "1.5" broadband industry structure. This makes for a big difference. 1.5 type infrastructures have gatekeeper power and price-setting ability, and therefore require a more protective regulation to deal with such powers. In contrast, 2.5 type infrastructure countries are relatively more open, more dynamic, and require less regulation. On the other hand, they are less profitable and are riskier for investors. 1.5 countries are likely to have a faster penetration of basic broadband; 2.5 countries, conversely, are likely to create a more fundamentally upgraded infrastructure. Thus, for the megabit-stage of individualized communications, a 1.5 infrastructure might be the faster solution than a 2.5 infrastructure. But for a gigabit infrastructure, which requires rapid upgrade investments, it will be the other way around.

YG: Do you see the elimination of the distinction between telecommunication, broadcast, and cable sections in any new Telecommunication Act?

EN: The old system was one of vertical "silos", that is, a separate regulatory system for each medium based on its technology, economics, and history. A new system would, instead, harmonize treatments across functions. But the differences aren't going to disappear. Television will never be identically treated as telecom. Convergence will never be total.

YG: What do you see as the FCC's most pressing problems in the telecommunication sector? And, why are they so critical?

EN: There are many medium-sized problems, such as reforming universal service, and integrating the internet into the system, such as with VoIP. The larger issue is the harmonization of regulatory treatment for cable and telecom. But the most important one is one of long-term strategy: after two decades of opening, liberalizing, deregulating, what is next? What should be the goal and purpose of the next generation of policy initiatives? What is the post-liberalization agenda?

YG: In the media sector?

EN: Three big issues. First, "net-neutrality", that is, the status of media content over the broadband. Second, media concentration and ownership rules. This has led to a ferocious debate last year, with the Powell's FCC the loser, and the new FCC will have to navigate this minefield again. Third, the application of indecency rules to TV, and their extension to cable TV and satellites, which seems to be higher on the agenda of Chairman Martin than for his predecessor.

YG: What is a key problem of the internet that needs to be addressed?

The most difficult issue conceptually and strategically is the convergence of the different regulatory approaches for regulated industries as they converge. The most interesting issue is the treatment of television over the internet.

It is important to know where we want to go, rather than to stumble into a system that then becomes entrenched.

There are three basic models, all with their advocates. The first is to treat the providers of broadband services, such as cable TV and telephone companies, like a print publisher. Like the *Financial Times*, they would have the right to determine what content it wants to carry, and what other information providers can be accessed from its website. Alternative content

providers can emerge, but they are not assured that they can reach viewers. Market forces are supposed to generate such access. This is the approach which the Federal Communications Commission has set for America, and which was blessed by the US Supreme Court this summer.

The second approach is that of "common carriage", the basic system of telecom carriers. Users can access any lawful content or application, and the broadband provider cannot be a gatekeeper. This approach is known as "net-neutrality", and is advocated by public interest groups. It is also the traditional way in which the internet has functioned so successfully. But it is not entirely non-regulatory in that the broadband providers are legally obliged to keep their connections open and non-discriminatory.

Both of these two models have solid free-speech arguments in their favor, with the difference being whose rights are given priority, those of the network providers or those of the users. But the third approach is clearly one of state control. It is to treat TV over the internet just like a variation of regular broadcast TV, and require its licensing by a governmental body, or at least its following all the rules that apply to over-the-air broadcasting.

This is the approach taken by the world's leader in broadband internet, South Korea. Seoul requires governmental licensing of internet TV, and it has not issued any such license. It is also an approach that some of the European states are likely to seek for regularly scheduled IPTV. This would provide protection to established public and private broadcasting institutions from new providers, including those at a distance such as American media firms. It would also help government to protect children, ethnic minorities, gullible consumers, etc, to the extent that existing laws do not do so already.

The licensing of broadcasting has a reason - there were only a few frequencies available for TV, and they had to be allocated. But for TV over the internet, no such rationale exists. An unlimited number of programs are possible. Any public purpose other than control over media can be pursued by support of valuable programs and of parental blocking technologies.

YG: A variety of technologies are allowing the consumer to bypass the traditional voice telephone service. Voice over internet Protocol (VoIP) is one of the more obvious, but e-mail, instant messaging, etc. also allow the consumer bypass the standard universal service charges and other charges imposed by the FCC and collected by the telephone companies. Do you see this as a threat to these funds? And, if so, what funding mechanism would you suggest, if any?

EN: The emerging funding mechanism will be based on an assessment of phone numbers, not of revenues. But this will be only a short-gap remedy. Longer term, public funding from general revenues will become important, since telecom-specific taxes will create distortions among competitors and

media. And while some efficiencies are possible and desirable, the overall funding requirement will grow, if anything, with broadband and mobile wireless entering the definition of universal service. Given their importance for participation in society and economy, and given political realities, that is inevitable. This should be a matter for the individual states to determine.

YG: What can the FCC do to bring competition back to local services? Will it take the form, perhaps, of community WiFi (*à la* Philadelphia)?

EN: Local services are becoming more competitive, just more in an inter-platform way, where it is doing fine. In contrast, Intra-modal local competition seems to wither for residential service.

There is a myth that the US has done away with unbundling. Not so. What was abolished was UNE-P, which includes more than the local loop, such as switching elements and transport. Regular unbundled network elements are available, just as in Europe, at least for narrowband. For broadband they have been abolished as a requirement, to provide incentives for network upgrades. Municipal WiFi accelerates the incumbents' broadband investments, but will not make much difference for voice.

YG: You have written that the US telecommunications industry is likely to stabilize into an oligopolistic structure. Do you still see it moving in that way? If so, can the industry remain innovative and dynamic, or will it become more like a commodity business with appendages?

EN: The recent boom-bust cycle shows that telecom is a fundamentally unstable industry in competition, more like the airlines and less like water utilities. Fixed costs are high, marginal costs low, and products near-commodities. In competition, prices drop to unsustainable levels. VoIP is an example. One major way for companies to deal with this price deflation is to try to reduce price competition. An oligopolistic market structure helps. This might reduce innovation, but there isn't much innovation in a depressed industry, either. The R&D levels in American telecom firms and equipment makers have dropped sharply when the carriers had no money to invest in upgrades and entry. An oligopoly is a compromise, at least when it is open to new entrants. But it has problems, which are hard to regulate. Policy analysts and researchers must focus on such a market structure as the realistic, though less desirable, future.

YG: I know your research agenda includes the study of concentration in the ICT sector. What insights can you offer us from this research?

EN: Industry concentration trends in the overall American information sector look like a giant U. Concentration has been rising since 1996, but it is lower

today than it had been in 1984, after the AT&T Divestiture. Since 2001, overall concentration has been flat, except for telecom, where it has risen with recent mergers. Similar U-shaped trends can be observed for the telecom, internet, and IT sub-sectors. Concentration in the mass media sector is especially sensitive politically and socially; it has steadily increased for 15 years, but it is not as high as for the three sub-sectors mentioned, at least not in terms of the classic antitrust concentration standard. Maybe that antitrust index is not the best yardstick for media.

We plan to extend our analysis of media concentration trends from America to the rest of the world, since the issue is universal.

YG: I hate to end this interview, given your wide range of your practical and applied knowledge of the telecommunications and media sectors and you involvement in public policy, but we are out of time. Thank you for your time.