This timely and provocative book is a detailed look at the 2010 U.S. acquisition of the television and movie studio NBC-Universal by the cable giant Comcast. It uses the Congressional hearings into the acquisition as the launching point for an examination of the rise of Comcast from a small local cable television operator in Mississippi to the dominant cable company and the dominant provider of wired broadband internet in the United States.

Professor Crawford first sets out the history of railroad and then telephone regulation in the United States and the tradition of common carriage and vertical separation that arose to deal with the potential for competitive abuses and the need for universal access. She then contrasts that history with the current failure of the United States regulatory and competition systems to come to grips with the vertical integration and private carriage that characterizes the modern cable and internet industries. Combining both regulatory and antitrust failure, she makes a forceful argument that Comcast, even before its acquisition of programming assets from NBC-Universal, was in a position to discriminate in favor of its own programming in dealing with other cable television distributors, to discriminate against any outside programmers in connection with access to Comcast cable distribution, and to delay or deny access to new internet video streaming services that threaten its core pay television business.

She analyzes the specifics of the acquisition and critiques the approval of the deal by the Antitrust Division of the Justice Department and the Federal Communications Commission through a consent decree. That decree imposes, in her view, weak anti-discrimination conditions that can be easily circumvented through creative interpretation, aggressive litigation, and the realities of smaller players being at the mercy of the combined Comcast-NBC in the market place.

Her solution is a simple one, treat the wires that carry cable transmission and internet access into homes and businesses as infrastructure and impose the classic conditions of common carriage and equal access to all customers or impose actual vertical separation. In Crawford’s words, this would mean if you own the pipes, you cannot own the water that flows through them.

Crawford joins a group of distinguished scholars such as Tim Wu and Brett Frischmann who are dealing with the competitive consequences of private integrated firms which control different components of infrastructure to the detriment of competitors, consumers, innovation, and society at large. Whether or not you agree with the specifics of Professor Crawford’s analysis and proposal, this is an invaluable book for understanding the more recent proposed Comcast-Time Warner Cable merger and the continuing debates over net neutrality in both the United States and the European Union.

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