

Remarks of Michael K. Powell
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Federal Communications Commission
At the
Association for Local Telecommunications Services
Crystal City, Virginia
November 30, 2001
(As prepared for delivery)

I. INTRODUCTION

Good afternoon, it is a great pleasure to be among the entrepreneurial class. We find ourselves in difficult times, albeit times that continue to show great promise. The capital markets continue to starve the telecommunications sector, we are officially in an economic recession, and many companies struggle to stay alive from week to week. Matters only became more challenging after the horrific events of September 11th.

Let me pause for a moment and publicly commend the extraordinary efforts of the numerous competitive carriers that answered the call in New York and Washington on that dark day. The heroic efforts to restore service and provide critical communication capability demonstrated the immense value of alternative facilities. After visiting the catastrophic site where 110 stories imploded on a beloved city, killing thousands and severely damaging critical infrastructure, and seeing the magnificent efforts of the telecommunications sector to maintain and restore service, I was more proud than ever to share this profession with all of you.

These are tough times to be an entrepreneur trying to compete in the telecommunications sector. I hear regularly from many of you about the immense struggles to continue to secure and preserve funding from week to week and sometimes day to day. I believe that the lack of faith placed in the future of this sector is unfounded. Just as there was no defensible explanation for the stratospheric valuations that pumped hot air into the bubble, it is equally distressing to see the irrational disinterest by so many investors today.

The balloon deflation we are experiencing, however, presents opportunity. I think we are in a period of cold sobriety. It is very difficult to sober up. It takes constant struggle to avoid new temptations and mighty effort to go through the change necessary to get things back on track.

All of you are struggling with new realities. You work diligently to develop stronger and more sustainable business models. You are endeavoring to construct sounder financial footings. You set more focused objectives. Such efforts are very painful for your companies, I know. It is difficult for management, for your shareholders and particularly hard on your employees.

The government is not insulated from your toil. The 1996 Act envisioned a world where competition brought new choices for consumers and enabled a less regulated and robust marketplace. The rise of a competitive entrepreneur sector (that is you) was important to that vision. Those goals have frayed at the edges as a consequence of the violent storm that suddenly blew in on this market. If we wish to stitch it all back together, the government (state and federal) needs to consider its response to these events. We need to rededicate ourselves to tackling the difficult issues that will advance Congressional aspirations and improve the market for consumers. The questions we need to wrestle with are very hard. They are rarely clean and straightforward. At times, they are even paralyzing—so tough it is difficult to take any action at all. But, we must.

II. THE FCC RESPONDED IN 2001

A. Committed to Competition

We have spent much of this year, considering our response and have begun acting on it. First and foremost, we have reaffirmed our unwavering commitment to competition, to entrepreneurship. I do so again today. This year we have taken to our bully pulpit to talk with Wall Street and others to urge that the fundamentals of a communication revolution remain and that the foundations for communications growth are strong. We have conveyed that the FCC is committed to doing what it can to stimulate competition in a manner that comports with market dynamics.

B. Driving Out Uncertainty

Second, and perhaps most critically, we have committed ourselves to *driving out uncertainty, by getting out decisions*. There is no greater threat to an entrepreneur, or any business, than uncertainty. A key government decision that hangs in suspended animation will kill the best-laid business plan. Competitors are risk takers and are incredibly agile in their ability to adapt to change, but they must know what to adapt to.

I cannot promise that you will always like our decisions. I cannot make that promise to any industry, for we are charged with reaching decisions that are faithful to the statute, and that promote the public interest, not any one private interest. I can promise, however, that we will strive aggressively to get decisions out rapidly—decisions that are clear and sufficiently well-reasoned to withstand judicial scrutiny, for a decision made quickly that is overturned is of no use at all. We must avoid do-overs.

In order to make decisions more expeditiously, the Commission has to reform its own institution. This year we have worked diligently on clearing our backlogs and putting systems in place to ensure they do not return. We are developing systems to measure our productivity. We have initiated an aggressive training program, we call the FCC University. We have also begun a substantial organizational restructuring effort, to align functions and management in a manner that reflects a converging marketplace, one that evolves quickly.

Obviously, we do come up short sometimes and fail to reach to decisions expeditiously, but I do feel we have made substantial progress, and we will continue this important work to build an efficient, effective and responsive institution so that you can get answers you need to pursue business.

C. Channels of Communication

I am also acutely aware that I do not own a magic mirror that allows me to divine the challenges that arise in the marketplace. We recognize that we must listen carefully to the concerns of communications firms and consumers in order to gain a rich understanding of where things stand and how our actions impact the market. As I learned in Kindergarten, listening is very important.

This year, we have tried to open up further our channels of communication with this industry. For example, this past summer I held a CLEC CEO summit, the first of its kind. At the meeting were some of the leading figures of your industry. We sat for hours talking and discussing the challenges that you faced and tried to sharpen the focus of our competition policy. Many concerns identified in that meeting have lead to major FCC initiatives.

Maintaining a regular interaction with ALTS has been, and will continue to be, very important. This should be evident by our support of this conference. We have sent most of our senior staff here to engage the industry on its concerns and to explain our actions and preview our direction. In fact, when this speech concludes, I will sit down to lunch with the Board of Directors of ALTS and continue the dialog.

D. Action 2001

I know full well, that one can make speeches from the bully pulpit, state principles and do a lot of listening, but what matters most is action. This past year, ALTS identified as its FCC priorities: (1) Enforcement, (2) Inter-carrier Compensation, (3) Loops and UNE Access, (4) Special Access, and (5) Building Access and Rights of Way. Let me say something about our accomplishments this year in each of these areas, as well as actions soon to come.

1. Enforcement

During our discussions with the CLEC industry this year we heard time and again the critical importance of enforcement. The point was made repeatedly that while there were many positive rules to promote competitive entry, they were largely meaningless without a credible enforcement effort to back them up. We heard the call and have made enforcement a cornerstone of our competition policy.

We recognized quickly that much of the authority that we had in this area was inadequate. The level of fines we could impose in many cases was paltry. For many large carriers the penalties could be absorbed as the cost of doing business. Moreover, pursuing an enforcement action often drains the resources (both time and money) of a small competitor, yet the statute affords no compensation for its losses or expenses.

In response, we called on Congress to dramatically increase the forfeiture amount allowed under the statute. Additionally, we have supported changes that would allow successful litigants to receive compensatory damages from the fines, as well as associated litigation expenses. I reiterate my call to Congress to pass legislation in this area and am encouraged by the response that we have had from key members, particularly, Congressman Fred Upton, the chair of the telecommunications subcommittee.

We have not, however, limited our efforts to calls to Congress to make changes. We have dedicated more resources to enforcement and made dramatic strides in reducing our backlog. I authorized additional hires to beef up the litigation resources of the Enforcement Bureau. We recently successfully hired 5 new outstanding litigators from top law firms, two of whom were partners. And, on the backlog front, we have reduced our backlog from 180 cases to only a handful.

We have also taken a stronger path on forfeiture cases. This year we brought the first major NAL against a BOC since the passage of the 1996 Act. It was not the only one of the year, either. Additionally, we have enjoyed quite a bit of success with our structured mediation process in resolving disputes.

There is more to do in these areas for sure. In particular, we hope to continue to increase the speed with which we resolve disputes in the coming year.

2. Intercarrier Compensation

ALTS identified the area of intercarrier compensation as a key priority this year. We have tried to move aggressively on bringing more clarity to these life and death issues.

The reciprocal compensation issues remained unresolved at the FCC for several years, having bounced back from court and then remaining unresolved for far too long. The uncertainty of the outcome was draining the life out of many CLECs, as the capital markets assumed the worst from our impending decision. While the decision languished, there were credible movements on Capitol Hill to resolve the issue immediately. We reached that decision and provided a cushioning glide path for CLECs to transition away from reciprocal compensation, rather than a precipitous flash cut that Wall Street assumed and many CLECs feared.

Additionally, this year we acted on several major CLEC access issues. Our efforts were designed to try and settle festering questions about reasonable compensation and to facilitate CLECs getting paid compensation that they might have been owed, but for which they were not being paid.

Finally, the Commission recognized that there were a whole host of intercarrier compensation issues that had to be addressed in a comprehensive manner. Our response was to initiate a rulemaking on intercarrier compensation to do just that. That proceeding will provide a fulsome opportunity to bring greater rationality to the intercarrier compensation regime.

3. Loops and UNEs

The FCC recognizes the importance of unbundled loops and other UNEs to competitors hoping to enter local markets. This was recognized in the comprehensive Collocation Order that we issued in July. If those components are not provided in a timely manner there can be serious competitive consequences.

As I have noted, network elements must be provisioned in a timely manner to be useful. Examining performance has continued to be a critical element of our review when we consider section 271 applications. Acceptable performance will remain a hallmark of our review and critical shortcomings will lead to rejection of an application.

Additionally, we have embarked on an effort to simplify performance measures that we rely on at the federal level to the essential items. There is a widely held view that there are a handful of critical performance measures that are competitively significant. Incumbents complain they are buried in hundreds of different measures and need clarity as to their obligations. CLECs find it difficult to direct their limited resources toward too many measures and really need to assure availability of certain critical pieces.

We hope to find mutual ground in our National Performance Measures NPRM that was initiated this month. An essential list of clear measures also should aid in clarifying obligations and, thereby, enforcement when those measures are contravened. This proceeding is one of the seminal proceedings in our competition agenda.

Another critical proceeding in the area of unbundled elements is the Triennial Review, which will be initiated at the end of this year. This proceeding is designed to roll up a number of UNE issues that have been pressed upon us in piecemeal fashion. A comprehensive proceeding will allow us to examine the host of UNE related issues that have been swirling around. It will be an important proceeding and one that will critically need your input and your experience, if we are to make sound judgments.

4. Special Access

Finally, in this area, we have recognized the issue of obtaining access to important infrastructure through special access tariffs. After hearing concerns raised by the CLEC community, the Commission has agreed to develop a record and consider whether performance standards for special access are warranted. That proceeding will proceed in concert with the others.

III. THE NEXT PHASE—LOOKING FORWARD

While pleased with our actions thus far, the Commission is not content simply to be reactive. My colleagues and I have embarked on efforts designed to consider more comprehensively the various components of a sound competition policy. We intend to examine the last six years and consider what has worked and what has not.

There are many new considerations as we move into this second phase of implementing the Act. The rise of broadband deployment as a central policy objective will have to be more fully considered, as will the growing importance of wireless services in offering competitive choices for consumers. And, the positive and negative experiences of CLECs will have to be examined as well.

We will make course corrections and adjustments as needed in order to maximize consumer welfare—always guided by a desire to preserve and promote competition, in the least regulatory manner possible.

In this effort, I am guided by a strong belief in facilities-based competition. I have consistently expressed my view that facilities providers, like you, are the key to robust competition. Facilities-based competitors offer the promise of more substantial and enduring investment in local markets. They are less dependent on incumbent carriers; which means less regulatory morass, fewer ways for the incumbent to frustrate competitive entry, and greater product and cost differentiation. Finally, it means something very important as we awake to the realities of our vulnerabilities as a nation—a redundant national network infrastructure. In short, *real meaningful choice for consumers*.

You should understand that when I speak of facilities-based providers we mean YOU, not just full facilities providers like cable companies. I recognize that access to the loop, critical network elements, and collocations remain important. Moreover, resale and other modes of entry are provided for by the statute and can serve as important interim steps in entering a market.

In the upcoming Triennial Review, we will examine in a comprehensive way our UNE rules. We promised to do this three years ago, and the statute implies the need to continually evaluate the necessity and impairment that justify access to network elements. This proceeding, however, should not be viewed as a crusade to eviscerate access to all UNEs, in favor of full-facilities providers.

IV. SUMMARY AND CONCLUSION

Let me conclude by summarizing the key elements of our competition policy:

1. Competition remains a critical objective of public policy.
2. We will endeavor to act quickly on competition critical issues to drive out uncertainty in the marketplace.
3. We will continue to strengthen enforcement.
4. We will grapple with key areas of competition in a full and comprehensive manner. The key proceedings for the upcoming year will be:
 - UNE Performance Measures NPRM (initiated in November)

- Triennial Review (to be initiated in December)
- Dominance/Non-Dominance Proceeding (to be initiated in Dec.)
- Inter-carrier Compensation (underway since April)
- Broadband NPRM

I believe we have accomplished a lot this year in the area of competition policy. However, a great deal more needs to be done. I am pleased that at the end of this year we will have underway the key proceedings for grappling the tough issues that will solidify the foundation for healthy and robust competition. And when the market rebounds, and the luster of the telecom sector is revealed again, consumers will see another installment on the benefits of the most competitive and dynamic communication market in the world. And the tenacious, dogged, determined entrepreneur that finds the handle will prosper. I am convinced some of them are right here in this room.

Thank you. I wish you sincerely a better and more prosperous year, and extend the same hope for our noble and glorious nation.