Remarks of

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I. Introduction

Good afternoon. I want to thank Goldman Sachs for inviting me to speak at this year's Communicopia Conference—it is certainly a pleasure to be here before you today, although I do wish it was under better circumstances for the telecommunications industry.

This year's conference finds us in the midst of difficult--and for many dire—times. This is an industry suffering—there have been nearly 500,000 jobs lost, a reported $2 trillion of market value extinguished, and by some estimates companies are laboring under nearly $1 trillion in debt.

Corporate governance scandals, over-capacity, hyper-competition in some markets, a retrenchment of capital, continuing credit-rating downgrades, continued cuts in work force and capital expenditures and bankruptcies sadly characterize the day.

These difficult times in the telecommunications industry have understandably raised anxiety high, sometimes even bordering on hysteria.

And, as is customary in the world of Washington, the anxiety is being translated into wails of injustice, cries for salvation, finger pointing and recriminations. It is sometimes hard to distinguish debate over war with Iraq and telecom policy.

It is challenging to sort through the noise to decipher fact from rhetoric.

Indeed, I recently met with a senior Senator who expressed in exasperation that he had no idea who was right and who was wrong. I told him that in a way they are all right and all wrong. He did not seem particularly comforted by my answer.

The result has been an unsettling lack of consensus on what to do, if anything, or the best approach to cure the telecommunications industry's ills. The Senator concluded, "Mr. Chairman, this will have to be on your shoulders—do something, but I have no idea what that is." This was not particularly comforting to me.

There is a strengthening consensus however that the industry is in real trouble, that its difficulties are having real impacts on our Nation's economy and that there have been real policy failings that have played a role in the industry's demise.

II. Steps to Economic Recovery

The telecommunications market suffers from many ills and I believe it will take efforts from all stakeholders to bring back prosperity—industry, state and federal government, Wall Street and Main Street. I think there are some clear critical steps that must form the foundation for any lasting recovery.

First, the government and industry leaders must ruthlessly root out corporate fraud. The deplorable and despicable actions by those select few in the industry must be uncovered and the perpetrators punished. As a member of President's Corporate Fraud Task Force, I echo the resounding resolve of the President that if you breach the trust of the American public, we will find you and we will punish you. Investment activity will not return if there is not confidence in corporate governance, or the company books.

Second, we must work to restore the financial soundness of the industry by taking the painful, but necessary steps of cleaning up bloated and often opaque balance sheets. Firms must find ways to cut costs and pay down the debt that hangs over this industry. The best companies with the best leadership are those committed to restoring financial fundamentals. Those that are should be rewarded and those that are not should be abandoned.

Third, to address over-capacity, hyper-competition, weak pricing power and falling revenues, many sectors of the industry must undergo some prudent restructuring. Let me be clear, this Commission will block transactions that are anticompetitive and harm consumers; however, where, as here, the market must shake out, no transaction can or will be deemed unthinkable before the application is even filed with the Commission. This Commission will review mergers on their merits, and not attempt to shape the "right" industry structure by public musings.

Fourth, as communications markets mature and the opportunity for further market penetration wanes, telecommunications carriers will have to expand beyond the traditional business of selling access to their networks and begin to offer new services. In the communications space, we see broadband, and wireless technologies such as ultra-wideband and IP telephony, as key sources of revenue growth offering consumers a wealth of new benefits in the years to come. To realize this future, however, it will be vitally important that new investment capital flow from you—the financial community—so that today's innovations can become tomorrow's key revenue drivers.

Fifth, and this is where I would like to focus my comments today, federal and state policy-makers must implement reform to create genuine and viable economic and regulatory foundations for communications services, growth and competition.

III. Regulatory Reform—Can Government Drive Economic Productivity?

Any discussion of how to revive the telecom economy must start by asking whether the government can, in fact, drive economic productivity.

More particularly, do regulators have at their disposal tools of sufficient power to drive forward economic growth and productivity by altering the telecommunications regulatory landscape?

The market will always be the principal driver, but I think the answer is yes. Although the Telecommunications Act of 1996 is far from perfect, Congress was wise to explicitly recognize that the market would evolve, or even convulse as a result of the massive changes it was introducing in the market.

To respond to upheaval, Congress legislated mechanisms to re-evaluate and calibrate the incentives, rights, obligations and competitive landscape of the marketplace that underlie the regulatory regime. By creating standards for assessing the terms and conditions of entry and access, by forcing the Commission to review its rules periodically, and by granting powers of forbearance and preemption, Congress invested state and federal regulators with the tools and the daunting responsibility to use them to create workable economic foundations for competition.

The tools are there to respond to changed conditions if only we have the courage to use them.

Past Policies

Times have changed and policies must change.

In implementing the 1996 Act, previous Commissions were faced with a different context—the market was booming. Internet ecstasy had enraptured any one who had a way to touch its sacred robes. The promise of a new paradigm that abandoned the natural monopoly thesis and saw a promised land of infinite competitors was fully embraced.

In first implementing the '96 Act, regulators were writing on a blank slate. Their judgments were necessarily predictive, because introducing local competition on this scale had not ever been fully attempted. The policy principles were clear and unvarnished:

Government policy was to create a competitive industry to compete in the local telecommunications market.

And it did.

Government policy was to provide extraordinary advantages to competitive entrants in order to bring competition into being rapidly.

And it did.

Government policy also explicitly and implicitly signaled that it would protect these new entrants from failure. No matter how weak or shoddy the fundamentals or poor business models were, and no matter how irresponsible the debt levels or exaggerated the growth expectations were, policy promised that all competitors could be salvaged and sustained in the name of competition.

It is here where the government's pro-competitor industrial policy cracked. It could not possibly protect against these shortcomings.

The reason is simple—money flows in the free market. While the terms and conditions of access to the market could reside and be controlled by the government, capital could not. Government was not offering to pay directly to achieve its objectives. The capital needed to build the information autobahn; the cash necessary to fund competitive entry; the "dinero" necessary to lay fiber, install switches and set up billing systems; the coin critical for paying to open the network; --- all had to come from the free capital market.

Capital follows its own rules and not those of the government. It demands a return. It will not follow where debt has ballooned and credit has suffered. At the end of the day, no matter what the government policy, it is inconsequential if cash will not go along. Government policy needs to follow the rules of capital and investment, rather than the other way around.

To be sure, the pro-competitive policies did help attract capital to sample the opportunity. But it was obvious the market was over-valued and that revenue was not on the horizon. Here, the investor community bears serious responsibility. It knew or should have known that the fundamentals did not justify the wash of cash. The bubble had clearly shown itself, yet every one wanted to sip the quick riches before the dam broke.

And when the first signs of trouble from the dot com crash surfaced, capital went running scared. It is sort of like a group of high school kids that break into a pool to skinny dip at night. They all know they are not supposed to be there, but came nonetheless for some quick thrills. The second, however, that someone screams, "COPS" the group flees at light speed. When investors saw the first sign of trouble in this sector, they did the same. They fled, leaving the poor guy they pressured to let them in holding the bag.

When the capital woke up to the dangers, it exited the market at dizzying speed. The government was left powerless to stop the exodus of capital when "King Cash's" needs could not be met. There was no rule or regulation that could make it stay.

F.A. Hayek, in his famous book, The Road to Serfdom, observed: "We are ready to accept almost any explanation of the crisis . . . except one: that the present state of the world may be the result of genuine error on our part and that the pursuit of some of our most cherished ideals has apparently produced results utterly different from those which we expected."

It is time to look critically at our actions and their failure to produce the hoped-for results.

What we have learned

In contrast to the initial implementation of the 1996 Act, we now are armed with more than predictive theory in developing our rules. We have nearly seven years of experience. We have seen the criticality of tailoring our policies to respect the capital needs of the market. And we have seen how monumental the impact on our economy is when things go seriously wrong.

Government must now approach the review of its regulatory structure with these lessons understood and digested. It can advance and implement a regulatory structure that more faithfully answers more to capital investment, rather than airy political imperatives.

This is what the Commission is doing today.

Just as corporate scandals must be rooted out, and just as balance sheets must be repaired, regulatory foundations must be restored to reflect sounder economic fundamentals. All of these things are necessary to entice a return of investment.

This view is frequently attacked and mischaracterized—often purposefully by those whose self interest is furthered—as anti-competition or pro-monopoly. I reject this homonym completely—competition can and will succeed, but only if fundamentals represent genuine and sustainable economic competition.

We must not confuse change that adversely impacts a particular competitor as synonymous with hurting competition.

It is exactly that kind of thinking that invites political power struggles to compel policy to choose sides between competing supplicants rather than advance sound economic structures.

Twin Imperatives

Instead, under the statute and given the current characteristics of this market, we must be guided by twin imperatives.

First, we fully recognize the dangers of continued monopolization and control of critical facilities. Our enforcement policies, our faithful application of section 271, not to mention the backdrop of antitrust law, are all squarely targeted at these concerns.

But, there is a second imperative that is more frequently neglected by regulators. That is in introducing competition, we should no more trust the promised benefits and representations of competitive entrants as we do the promises to do no harm from incumbents. We must insist on market fundamentals that provide proper incentives for long term, sustainable competition.

Just as we are aggressive in policing anticompetitive behavior, we should be equally aggressive in developing incentives that push entrants to enter in a manner that offers long-term, sustainable choice and meaningful welfare for consumers.

Economic recovery in the telecommunications space, as it is for the economy as a whole, rests on spurring capital expenditures. We need service providers buying switches and other equipment from the Nortels, Lucents and Ciscos, who are ever more distressed than the service industry. Such companies are innovators, the R&D arms that have kept the network at the cutting edge of the world. They must survive for our future.

Economic recovery means building business that can expand employment opportunities for our Nation's citizens.

It means bringing real competitive choice to consumers and enhancing consumer welfare through differentiated products and services and differentiated pricing packages.

It means, in short, investment in facilities. For only through facilities-based competition can an entity offer true product and pricing differentiation for consumers.

Only through facilities-based competition will corporate spending on equipment thrive.

Only through facilities-based competition can a competitor lessen its dependency on an intransigent incumbent, who if committed to frustrate entry has a thousand ways to do so in small, imperceptible ways.

Only through facilities-based competition can an entity bypass the incumbent completely and force the incumbent to innovate to offset lost wholesale revenues.

Only through facilities-based competition can our Nation attain greater network redundancies for security purposes and national emergencies.

IV. What is the Commission Doing to Effectuate Positive Change?

We must remember that the difficulties in the telecommunications industry were present long before this season of corporate scandals fell upon us. It pre-dated the tragic events of 9/11, or the current upheaval in the stock market.

The destructive cracks in this industry surfaced some time ago.

Seeing the need to take action, we initiated key rulemakings intended to tackle these and other issues long before the corporate scandals and unrest.

We initiated last fall a major review of the Commission's unbundled network element and access policies. This proceeding is only months from completion and it will provide a meaningful opportunity to improve the regulatory foundations of competition.

We also initiated a comprehensive review of the appropriate regulatory regime for the provision of broadband services. Such new services are going to be indispensable to recovery and the long-term growth prospects of the industry. This, too, is around the corner.

Because we started these proceedings in the early stages of the turmoil in this industry, we are now only a few short months away from concluding these proceedings, as well as others intended to assist the competitive industry.

We are also pursuing equally ambitious initiatives in the areas of spectrum policy and media ownership that we believe will have significant and positive impacts on the market and for consumers.

We also must emphasize that we cannot succeed alone. We share authority with the states. States have yet to tackle critical issues such as retail rate rebalancing and universal service reform. These and other issues are vital if our objectives are to be realized.

Finally, we are now constantly looking for targets of opportunity that might stimulate positive economic activity, or relieve financial stress on the industry.

V. Conclusion

What has changed since we started these proceedings is that the industry's troubles have deepened and they have spread.

Corporate scandals, WorldCom's bankruptcy—one of over 60 in this industry—and the declining values in the equity markets have brought with it an intense anxiety.

The result has been calls for the Commission to do something immediately—though what exactly that something is enjoys little, if any, consensus across the political or industry spectrum. We do not have the luxury, however, to wait until a clear consensus is formed.

But these are major and tremendous questions. It is vitally important that we not only do them quickly—but that we do them right. For the much needed regulatory stability and clarity to come into focus for this industry—our decisions must be sound and judicially sustainable—a shortcoming that has plagued prior Commission efforts in this area. Those unhappy with our choices have never hesitated to litigate to attack them.

We have reached a pivotal point in this industry and we are in the process of determining what changes to the regulatory framework are indicated. The time has come to stop the finger pointing and recriminations about what happened and whose fault it is—and instead to focus on solutions.

Few are prospering. Few are growing. Few are spending. Few are investing. The status quo is certain death and can no longer be considered a viable option.

Winston Churchill once remarked "Americans always get it right, but only after exhausting the alternatives." We have tried the alternatives; it is time to get it right.

There is little prospect Congress will act soon, so the task falls to us—and we welcome it.

For in the immortal words of President Reagan: "If not us, who? And if not now, when?"

Thank you.

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