

COMMISSIONER MICHAEL J. COPPS, SUMMARY OF TESTIMONY

Thank you for inviting me to appear before you. I am pleased to participate in this discussion today and obtain the guidance of the Subcommittee during this critical year.

- Health of the Telecommunications Sector: I am an optimist about the future of telecommunications and about communications technologies generally. Communications technologies will not only be a part of America's 21st century prosperity. They will lead the way. Broadband, wireless, Wi-Fi, digital broadcasting and interactive media, telemedicine and telecommuting are already joining the parade, and around the corner where we can't see yet will be much, much more.
- Public Interest: At all times, I strive to maintain my commitment to the public interest. It is at the core of my own philosophy of government. More germanely, it permeates the statutes which the Commission implements.
- Competition: We should vigorously pursue Congress' goal of competition for the benefit of consumers -- better services, greater innovation, higher technology, and more robust discourse. And we must recognize the intersection between competition and deregulation. The 1996 Act is at base a deregulatory statute. Not deregulation all at one fell swoop, but over time, as, step-by-step, competition takes hold.
- Universal Service: My overriding objective is to bring the best, most accessible, and cost-effective communications system in the world to *all* of our people whether they live in rural communities, on tribal lands, are economically disadvantaged, or have disabilities.
- Broadband Deployment: We must ensure all Americans have access to broadband services. Before we reclassify these services, we had better understand the potentially far-reaching implications of our actions for such issues as homeland security, universal service, and competition.
- Consumer Protection: We should reduce the chance that marketplace misdeeds or corporate mismanagement injure American consumers or competition. And we should focus on consumer protection and enforcement.
- State Cooperation: In all of these areas, we must work closely and cooperatively with our colleagues at the State Commissions.
- Media Concentration: At stake in the Commission's review of virtually all of its media consolidation rules are core American values of localism, diversity, competition and maintaining the multiplicity of voices and choices that sustain our democracy. These issues deserve a national dialogue and debate, because *every* American is a stakeholder in the great Communications Revolution of our time.

**STATEMENT OF
MICHAEL J. COPPS, COMMISSIONER
FEDERAL COMMUNICATIONS COMMISSION
BEFORE THE SUBCOMMITTEE ON TELECOMMUNICATIONS AND
THE INTERNET OF THE HOUSE COMMITTEE ON
ENERGY AND COMMERCE
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Mr. Chairman, Members of the Subcommittee, I am honored to appear before you today. This is the first time that I have appeared before you in my role as an FCC Commissioner and I welcome the opportunity to share with you some of my perspectives on the great issues before us and, more importantly, to hear yours. I am a product of the Congress, having worked for many years -- many years ago -- on the Senate side for my friend, Senator Fritz Hollings. Let me tell you first of all how grateful I am for the privilege of being an active participant in the deliberations of the FCC as the telecommunications revolution transforms our lives and remakes our world. It is a responsibility that I undertake with utmost seriousness.

Let me say at the outset that I am an optimist about the future of telecom and about communications technologies generally. That puts me in a minority compared to many of the so-called experts and analysts, but I don't mind either being a minority or taking issue with the prevailing wisdom. It was just a couple of years ago that all the analysts were soaring in optimism over anything even remotely related to telecom. You'll remember how they pitched prosperity forever, with telecom leading the way into some brave new world that would no longer be subject to the vagaries of the business cycle. Then recession hit, and all those experts went -- on the turn of a dime -- from irrational exuberance to equally irrational pessimism.

I think they were wrong on both the upside and the downside. Sure, the business plans of more than a few companies were faulty, but the technologies behind them not only remain -- they proliferate. Plus, this "boom-and-bust-and-boom-again" cycle that we have lived through in telecom is really nothing all that new -- it has accompanied other great technology and infrastructure rollouts throughout our history. Excess enthusiasm and risky investment at the outset, the bubble bursts, and then -- if the infrastructure need endures and the technology is viable -- growth returns. I think exactly that will happen here. While no technology will ever lay the business cycle to rest -- I think we all finally understand that now -- a technology as substantive and transformative as telecommunications is not going to remain fallow for long. I am encouraged that, at long last, some of the experts are beginning to see the end of the telecom downturn. I'm encouraged by the more balanced approach that a few of these experts are beginning to show. Because, in fact, what's coming down the road is going to make all of the dramatic telecommunications changes of the past century -- and they *were* dramatic -- pale by comparison. Communications technologies will not only be a part of America's 21st century prosperity. They will lead the way. Broadband, wireless, Wi-Fi, digital broadcasting and interactive media, telemedicine and telecommuting are already joining the parade, and around the corner where we can't see yet will be much, much more.

The health of this critical sector has many facets. There are, among others, macroeconomic issues, capital market issues, issues related to accounting and corporate malfeasance, and of course, there are regulatory issues. As we discuss these regulatory issues, let me emphasize that, at all times, I strive to maintain my commitment to the public interest. As public servants, we must put the public interest front and center. It is at the core of my own philosophy of government. More germanely, it permeates the statutes which the Commission implements. Indeed, the term "public interest" appears over 110 times in the Communications Act. The public interest is the prism through which we should always look as we make our decisions. My question to visitors to my office who are advocating for specific policy changes is always: how does what you want the Commission to do serve the public interest? This is my lodestar.

Much of our focus at the Commission is on competition and deregulation. Competition has the power to give choices to consumers. With more choices, consumers reap the benefits – better services, greater innovation and higher technology. Managing competition within and across platforms – and *both* are important in the statutory framework – presents great challenge to us.

Congress declared that the preeminent goal of the 1996 Act is "to ensure lower prices and higher quality services for American consumers." I am of the strong belief that we should not use the current economic downturn as an excuse to back away from competition. This is fundamental. Instead, we must renew our efforts to *promote* competition, just as Congress directed. It is during recessions and tough economic times when we hear the pleas for less competition and increased consolidation. But re-monopolization is not the cure for telecom's problems. Instead we should vigorously pursue Congress's goal of competition.

Competition, just as Congress predicted, did unleash an unprecedented investment in 21st century communications infrastructure. Facilitating competition in this fast-changing environment, at the same time as we transition from monopoly to competition, is, to say the least, tricky. To assume that a simple hands-off approach can be the midwife for a brave new competitive world is to ignore the facts of life. Promoting competition is a hands-on, not a hands-off, job. Each day, every day, we need to be about the job of pursuing Congress's goal of consumer choice through more competition.

As we carry out our job of implementing Congress' statutory framework, we need to gather more and better data to inform Commission decision-making. I would also note the need for such data to *sustain* our decisions legally once they are made, especially in light of the often-activist approach of some of the courts that watch so zealously over the FCC. We have come to rely over the years perhaps too much on self-reported industry data or Wall Street analysts for information to make critical decisions. We must commit to doing the hard work of collecting our own data rather than relying on potentially misleading and harmful financial, accounting, and market information produced by corporate sources subject to clear biases and market pressures. And we must conduct more of our own analyses of the industries we regulate.

These efforts should include completing our proceedings on performance measurements that have been pending for over a year. And they should include better follow-up on what happens in a State *following* a successful application for long-distance authorization. One thing this Commission has done to promote competition is to move briskly ahead on Section 271 applications. No year comes close to matching the pace of 271 approvals -- many of which I supported -- during the past 12 months. But competition is not the result of some frantic one-time dash to check-list approval. It is a process over time. It is about -- or should be about -- creating and then *sustaining* the reality of competition. Our present data on whether competition is taking hold is sketchy and non-integrated. We need better data to evaluate whether and how approved carriers are complying with their obligations after grant of the application, as Congress required.

We must also tend to the critical intersection between competition and deregulation. As competition develops, we are enabled to meet another core goal of Congress -- deregulation. The 1996 Act is at base a deregulatory statute. Not deregulation at one fell swoop, but over time as, step-by-step, competition takes hold. So the Act clearly envisions deregulation as competition expands to replace monopoly. Where markets function properly, we can rely more on market forces -- rather than legacy regulation -- to constrain anti-competitive conduct. Where competition does not exist or market failures arise, however, we must respond with clear and enforceable rules tailored to serve the public interest. The choice is not between regulation and deregulation; it is a question of responsible versus irresponsible deregulation. And the public interest never gets regulated away.

We recently voted on one of the most important telecom orders on the Commission's agenda this year, the so-called Triennial Review. The Order was not the one that I would have written had I been given *carte blanche*. Then again, each of my colleagues could -- and probably would -- make that same statement. But now that we have worked through these issues and made the difficult decisions, it is time to make it work.

This brings me to a central point of my presentation this morning. As we move ahead to implement this decision and to consider further items, I encourage parties to work far more collaboratively to find constructive solutions. Feelings run deep on these issues. No one emerged as the hands-down winner or the complete loser in last week's vote. But now we need to take a deep breath, nourish a collaborative dialogue, lower the decibel level and, finally, try to pull together to make some progress. Quite frankly, I believe the state of telecom's intra-industry dialogue has been pretty close to awful over the past year and more. All too often, parties seem interested only in throwing the long ball in the regulatory or legislative arenas. But there is no simple panacea for all the ills that plague the telecom industries. All these expensive public relations campaigns and hurling costly ads at one another don't appear to be helping anybody except Madison Avenue advertising agencies.

Why not try -- just *try* -- looking for some incremental steps that can put us on the road to larger solutions? Resolution of any number of issues, maybe even including pricing, could benefit from a collaborative dialogue. In this regard, I was pleased to learn of discussions among incumbents and competitors begun at the urging of state regulators late last year. I'm told this dialogue even made a bit of progress before some of the participants decided to focus their whole attention on the Commission in recent weeks as we worked our way toward completion of the Triennial Review. My hope today is that these discussions can begin again and work toward an early problem-solving agenda of incremental, achievable, target-able first steps that could pave the way for even greater cooperation farther down the road. I hope this Subcommittee will encourage that process.

There are those who remain skeptical that such a process can accomplish anything, and they may be right, although their very skepticism only endangers those chances more. Perhaps those in the business world who would like to see the Commission less involved in their daily affairs would be better off looking for collaborative solutions among themselves rather than getting so dug in that agency action or Congressional action becomes the only way out. I do know this: something more is needed in communications among our communications industries.

Moving from competition for the benefit of consumers, a second priority of the Federal Communications Commission is to facilitate universal service. The goal here, imposed by statute, is to ensure that all Americans have access to communications services. My overriding objective as an FCC Commissioner is to help bring the best, most accessible and cost-effective communications system in the world to all of our people -- and I mean *all* of our people. That surely includes those who live in rural communities, those who live on tribal lands, those who are economically disadvantaged, and those with disabilities. Each and every citizen of this great country should have access to the wonders of communications. I really don't think it exaggerates much to characterize access to communications in this modern age as a civil right.

No one should underestimate the force of the Congressional commitment to universal service. A critical pillar of federal telecommunications policy is that all Americans should have access to reasonably comparable services at reasonably comparable rates. Congress has been clear -- it has told us to make comparable technologies available all across the nation. Many carriers serving rural America have made, or plan to make, significant investments in communications infrastructure. But they need certainty and stability to undertake the investment to modernize their networks, including investment in broadband. Rural carriers face unique and very serious challenges to bring the communications revolution to their communities. As we move forward on all of our proceedings, including, among others, universal service decisions, broadband policy, access charge reform, and intercarrier compensation, we just must do everything we can to make certain that we understand the full impact of our decisions on rural America. If we get it wrong on these rural issues, we will consign a lot of Americans to second-class citizenship.

Today, having access to advanced communications – broadband – is every bit as important as access to basic telephone services was in the past. Providing meaningful access to advanced telecommunications for all our citizens may well spell the difference between continued stagnation and economic revitalization. Broadband is already becoming key to our nation's education and commerce and jobs and entertainment and, therefore, key to America's future. Those who get access will win. Those who don't will lose. I want to make sure we all get there.

I sympathize with the concerns about the lack of regulatory clarity in this area, but I question whether we are in fact heading in the direction of providing greater certainty. The Commission has already placed cable modem services into Title I. We reached a similar but tentative conclusion for wireline DSL providers in an NPRM last year. My worry is that we are taking a gigantic leap down the road of removing core communications services from the statutory frameworks intended and established by Congress, substituting our own judgment for that of the law, and playing a game of regulatory musical chairs by moving technologies and services from one statutory definition to another, all without understanding the full impact of our decision.

Law enforcement has raised concerns about the implications of this decision on its ability to protect our citizens. And the Federal-State Joint Board on Universal Service recently concluded that a Title I decision would mean that the universal service fund could never support broadband access. Additionally, rural carriers have expressed concerns about cost recovery for broadband deployment. Before we move all the chairs, we had better understand the potentially far-reaching implications of our actions for such issues as homeland security, universal service and ensuring that all Americans, including those living in rural and high-cost areas, have access to advanced services.

As we strive to implement competition and to advance universal service, we must be ever-mindful of our preeminent charge to protect consumers. Let me lay out three steps we should take in this regard. First, we must use our current authority to reduce the chance that, in a competitive market, corporate misdeeds and mismanagement will injure American consumers or the competition that Congress sought to promote in the 1996 Act. In light of all the accounting depredations we have witnessed in the financial world regulated by the SEC, we need to reassure ourselves that our own accounting procedures and requirements are in good stead. Our accounting data inform our decisions about the reality of competition and the protection of consumers. Some traditional FCC accounting rules may be good candidates for extinction – and the Commission has already done a good bit of extinguishing – but it may be that the new times in which we live demand some new procedures. In that regard, I am pleased that the Commission and the States have come together in a new Joint Conference on Accounting to look at these challenges, I hope from the bottom up. I am also pleased that Chairman Powell designated me as a member of this Joint Conference.

Second, we must be increasingly focused on enforcement. The 1996 Act developed a bold vision for a vastly different telecommunications world, one in which the vitality of competition was to replace the heritage of monopoly. As competition grows

and regulation is reduced, enforcement becomes even more important. This Commission has taken forward steps on enforcement, but there still is the need to make our enforcement more efficient, more effective, and broader reaching. In addition to the broad enforcement authority given to the Commission in Section 4, the statute gives the Commission the authority to conduct investigations and audits, to issue subpoenas, assess forfeitures, issue cease-and-desist orders, and revoke licenses. We must use all of the tools we have. For example, revocation of some wrongdoer's license would send a real wake-up call to those who seek to misuse the nation's spectrum. Congress may even wish to expand our enforcement authorities, which I believe all of us would happily welcome.

Third, in a competitive environment, we must establish a concrete plan for how we will protect consumers in the event a carrier ceases operations or otherwise disrupts service. A central responsibility of the FCC is to protect the network from dangerous disruption, not only for consumers, but for critical public safety, military, and government users. We need to make sure we do all we can to protect consumers and ensure that they do not face service disruptions.

In all of these areas, we must work closely and cooperatively with our colleagues at the State Commissions. The Telecom Act is very much a federal activity, using the term "federal" in its historical context of the state and national governments working together. The Commission and the State Commissions have a joint responsibility under the Act to ensure that conditions are right for competition to flourish.

We rely on State Commissions for their efforts to open local markets to competition. We rely on State Commissions to evaluate the openness of local markets in applications for long-distance authorization under Section 271. This cooperation works. It has led to the grant of 35 long-distance applications, the majority of them in the past year. And I firmly believe we have seen stronger applications due to the involvement of the State Commissions. The importance of Federal-State cooperation cannot be overstated.

Before I conclude, I want to briefly mention one other matter. Indeed, I don't go anywhere these days without talking about it. The Commission is, as you know, currently reviewing virtually all of our media concentration rules. I think this review is, without doubt, the most important item on our agenda this year. In the coming months, we will decide whether to keep, modify, or scrap virtually all of our media competition rules. There is the potential here to remake our entire communications landscape, for better or for worse, for many years to come. The stakes are enormous for every community and for every citizen of our great country.

These rules, among other things, limit a single corporation from dominating local TV markets; from merging a community's TV stations, radio stations, and newspaper; from merging two of the major TV networks; and from controlling more than 35% of all TV households in the nation.

At stake in this proceeding, as I see it, are core American values of localism, diversity, competition and maintaining the multiplicity of voices and choices that undergird America's precious marketplace of ideas and that sustain our democracy. At stake in this vote is how TV, radio, newspapers, and the Internet will look in the next generation and beyond. And at stake is the ability of consumers to enjoy creative, diverse and enriching entertainment.

The elimination of some radio consolidation protections in 1996 has already led to conglomerates owning hundreds (in one case, more than a thousand) stations across the country. More and more programming originates outside local stations' studios -- far from listeners and their communities. Today there are 34 percent fewer radio station owners than there were before 1996 and most local radio markets are oligopolies.

Some media watchers argue that this concentration has led to far less coverage of news and public interest programming and to less localism. Many feel radio now serves more to advertise the products of vertically integrated conglomerates than to inform or entertain Americans with the best and most original programming. Additionally, I am concerned that we have not analyzed the impact of consolidation on the increasing pervasiveness of offensive and indecent programming as programming decisions are wrested from our local communities and made instead in distant corporate headquarters. Is it simple coincidence that the rising tide of indecency -- whether sexual, profane, or violent -- is occurring amidst a rising tide of media industry consolidation?

I am frankly concerned that we are on the verge of dramatically altering our nation's media landscape without the kind of national dialogue and debate these issues so clearly merit. The stakes are incredibly enormous and we must, simply *must*, get this right. We need the facts. We need studies both broad and deep before we plunge ahead to remake the media landscape. And we need to hear from people all across this land of ours.

Suppose for a moment that the Commission votes to remove or significantly modify the ownership limits. And suppose, just suppose, that it turns out to be a mistake. How would we ever put *that* genie back in the bottle? The answer is that we could not. That's why we need -- truly *need* -- a national dialogue on the issue. We need it all across America with as many stakeholders as possible taking part. And in my book, *every* American is a stakeholder in the great Communications Revolution of our time.

Mr. Chairman, distinguished Members, these are some of the major issues on our agenda. There are others, too, which you may want to discuss today. I approach all of these issues with the expectation -- the happy expectation -- of continuing to work closely with the Congress which authorizes and enables our work. Thank you for inviting me to appear before you. I look forward to working with each of you as we build a better future for all our citizens through communications.