

Key Note Address

**FCC Commissioner Kathleen Q. Abernathy
Davis Wright Tremaine
“Consumer Protection 2003:
A Primer for Telecom Companies”
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Good afternoon, and thank you for the opportunity to talk to you about my views concerning consumer protection issues in the telecommunications industry. At the end of the day, I believe it is important for the FCC to recognize that, while serving in a regulatory role, everything we do is about consumers. In order to serve consumers and the public interest, it is essential that the Commission focuses on three key areas. First is that to the extent possible, the FCC should trust the market when crafting its regulations and allow competition to thrive. Second, in order for consumers to reap the benefits of increased competition and choice, consumers must be educated about the market by both the FCC and industry. And third, where the market fails, the FCC must be willing to step in and enforce our rules promptly.

By establishing market-based regulations, educating consumers about their rights and enforcing our rules, the FCC covers all bases when it comes to consumer protection. Clearly, a balanced approach is crucial in this area because from a business perspective, consumer protection initiatives are sometimes viewed with an “us-versus-them” mindset. But what companies sometimes forget is that protecting consumers from illicit business practices ultimately lends creditability to the entire industry.

I generally favor market-based solutions over regulatory intervention because I believe that competition delivers the most innovative solutions offered to customers at the best possible prices. Therefore, where possible, FCC policies should permit firms to compete freely with one another, and allow consumers to ultimately determine the success of each entity. The FCC’s regulation of the cellular industry is a good example of where market-based solutions have best served consumers. Back in 1993, the Commission considered whether to adopt conventional Title II-type regulatory restraints in the wireless sector, such as service quality controls, mandating certain technologies, or price regulation. Wisely, the FCC determined that it would be most appropriate to rely on market forces to govern many aspects of wireless services, such as prices and service quality. The result was the development of a robust wireless services industry.

While the approach to wireless was largely deregulatory, that is not to say that there was no regulatory intervention. The FCC included in its policy a spectrum cap, at least initially, that guaranteed there would be at a minimum four distinct wireless providers in the market. The Commission also developed and enforced strict interference rules that prevented competitors from interfering with each other.

Today, the cellular market is intensely competitive. Currently, 94 percent of the U.S. population lives in areas with access to multiple wireless phone carriers, and industry revenues have soared to \$76 billion in 2002. Furthermore, the fact that none of the six national carriers dominates the U.S. market demonstrates the success of

competition within this sector overall. Plainly, the marketplace has provided the best gauge of consumer demands—prompting carriers to enhance call quality and coverage and to deliver competitive rates.

In sum, the wireless experience illustrates how FCC policy ought to work. We establish policies that encourage entry into the marketplace, firms compete based on price and service quality, and consumers make choices that maximize their welfare. In the end, some firms succeed and some might fail. But, it is the role of the regulator to referee between carriers and consumers and among providers—not to pick the winners and losers.

This brings me to my next point: the importance of educating consumers. Today, with so many service and technology choices, consumers can be overwhelmed and underinformed. Thus, in order for customers to understand what choices are available and what practices are legitimate, I believe that the role of the regulator—and also industry—is to ensure that consumers have access to the information they need. As the philosopher Epictetus said, “Only the educated are free.” Sy Syms said, “An educated consumer is our best customer.” Education is essential to our ability to regulate in the public interest because only with knowledge can consumers make informed decisions.

I would like to take a few minutes to share with you the consumer outreach efforts the Commission has undertaken. But, before I do, I would like to commend the Chairman for creating the Consumer and Governmental Affairs Bureau. I believe the Bureau, under the leadership of Dane Snowden, has made great strides in educating and informing consumers about telecommunications goods and services.

Most recently, in terms of consumer outreach, the Bureau has focused on educating parents about broadcast choices. Like most parents, I am careful to monitor television programs to ensure they are suitable for my daughter, but ultimately I do not want the government to make decisions about what television shows my family and I can watch. Therefore, at the FCC we are focused on empowering consumers to make their own personal choices. It is safe to say we all have somewhat different ideas about what is or is not age appropriate programming.

That is why it is important to let parents know what educational programming is available. And when parents are unable to directly supervise their children’s viewing, they need to know about other tools such as the ratings system, V-chip and blocking technologies—and how to use them. A recent study indicated that less than half of the parents that had a television set equipped with a V-chip were aware of that fact. And, of those who were aware, only one-third of them had tried to use the V-chip.

In keeping with our consumer education objective, the FCC recently launched a Parent’s Page on the FCC’s website. This page explains how the V-chip works, other blocking options, what the ratings system is, what our indecency rules prohibit, and how to file an indecency complaint. It informs broadcasters provide many creative and educational programs that offer family-oriented entertainment and learning opportunities. The Parent’s Page explains the broadcaster’s children’s educational and informational programming requirements and provides links to stations that are willing to make their E/I programming schedule available. I worked with the Bureau on creating this page, and I believe that having all this information together on a single page that is focused on parents will improve our ability to provide useful information to the public.

Consumer education is a significant goal in other areas as well, such as in our Emergency 911 deployment efforts. The E911 rules require wireless carriers to provide the location of wireless callers to 911 emergency dispatch services. The FCC has undertaken an ongoing education effort to inform consumers about E911 issues. For example, the Commission's Wireless Telecommunications Bureau has established a web page for E911 issues, which includes Fact Sheets on the general requirements and explains the E911 deployment obligations of the national wireless carriers.

Another example of consumer education and outreach is the "Focus on Consumer Concerns" section of my website, at www.fcc.com/commissioners/abernathy, where consumers can read in plain language about issues that directly impact them, such as phone bill charges, slamming, telemarketing practices, and what to know when purchasing a digital television set. And, I am pleased to note that, in similar fashion, many industry entities have their own consumer education initiatives, such as newsletters, website bulletins and invoice inserts.

Now, I would like to turn to the most difficult part of any regulator's job—enforcement. Mindful of the boundaries of the FCC's role, I believe the public is best served if I adhere to a strong enforcement policy rather than advocate prescriptive rules. Simply, there is less danger of unwarranted, government-imposed limitations if the FCC supports the American people by way of narrowly-tailored enforcement mechanisms instead of extensive, complex rulemaking. Trusting market forces and educating consumers prevent the Commission from acting outside its realm of regulatory authority. But to ensure this approach is effective, the FCC must strictly observe its enforcement obligations and not hesitate to act when rules are violated. Stringent enforcement is crucial when we rely on market forces rather than prescriptive regulations. It is only when our rules have force that companies will think twice before violating them.

For example, an area in which congressional directives have given the FCC clear responsibility is the enforcement of slamming prohibitions. The Communications Act outlaws slamming—the illegal practice of changing a customer's telephone service without consent. Accordingly, the FCC has adopted change-of-carrier authorization and verification rules that carriers must adhere to, as well as liability rules that apply when a slam occurs. We have aggressively enforced the anti-slamming requirements. Since January 2000, the Commission has issued final forfeiture orders or entered into consent decrees with 17 carriers, totaling more than \$17.5 million. While enforcement efforts remain fervent, slamming regulations continue to evolve. Currently, the FCC is working with the states to ensure full participation in the administration of slamming regulations.

The E911 regulations for wireless carriers provide another example of an area in which my colleagues and I have acted quickly in enforcing our rules. We have monitored and will continue to monitor each carrier's progress in initiating each phase of the implementation process and assess penalties for failure to comply with deployment benchmarks.

And, the Commission has active enforcement underway in other many other contexts, including mass media, but I could take up your whole day if I got into the subject of indecency. I have made clear my general approach, however: we must uphold the statutory limitations on the broadcasting of indecent content, and at the same time we must be mindful of the First Amendment's limits on our ability to regulate in this area.

Overall, I believe that David Solomon and his team in the Enforcement Bureau have done an exemplary job in boosting our enforcement capacities. Now, as we move forward, we must emphasize the need faster resolution of disputes. The Bureau has eliminated most of the previous backlog and is well positioned to continue to improve its timeliness. But more fundamental changes may be necessary. If we are going to place a heavy reliance on enforcement mechanisms, we need to make sure our rules are clear and crafted with enforcement in mind. Our goal of boosting reliance on enforcement is well served by the creation of simple and easy-to-administer benchmarks.

For example, if circuits must be provisioned within X number of days or with Y degrees of reliability, that will make interconnection disputes easier to adjudicate. Of course, state commissions have done a great deal of work in this area through Section 271 processes. However, because states are unable to regulate interstate services, it might make sense to introduce more uniformity to the standard-setting process. I applaud competitive carriers for joining together to develop a consensus approach to national standards, and I look forward to considering recommendations from the Wireline Competition Bureau.

In sum, each party—the Commission, the carriers, and the consumers—has an essential role. Reliance on market forces creates many opportunities for consumers, but also can pose challenges. The Commission plays a critical role in serving as an information clearinghouse for consumers and ensuring its rules have teeth. As a service-based organization, the FCC considers both regulated entities and general consumers as our customers, and we best serve our customers through outreach and enforcement. Similarly, industry plays a critical role by responding to consumer demands and taking measures to make certain that their customers have timely and accurate information. Finally, consumers have a responsibility to take an active role in seeking the knowledge they need to make informed choices in the marketplace.

Thank you for your time and attention. I would be happy to take any questions that you may have.