Remarks of
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Avoiding Regulating by Accident

Communication policy is about to be --- if it isn't already --- at a crossroads. I think there is going to be a very, very important set of decisions to be made as to how we embrace Internet-premised, Internet-based IP type communications and whether we will tailor a set of regulatory clothing uniquely for it, or whether we will make it wear Ma bell's hand-me-downs.

And I think a public debate about it not being just a telephone or just an incremental change off of the way we have looked at the telephone system for 100 years is a very, very important part of the crossroads. The micro judgments about what regulatory policies apply then seem to me to be easier, or start to fall in place, if you at least create national consensus that this thing is different, it's different from a historical prospective, its different from a technological perspective and it's deserving of a sort of singularly unique policy examination, as opposed to what I see at risk right now, which is regulating it by accident.

What is happening now is it's slowly being regulated by accident. As we stumble through these new innovations, the market moves faster, the entrepreneurs are moving faster and the innovations are moving faster then any regulator in this country is moving to keep up with it. And I know what regulators do. I am one of them. We are conservative, and we will fall back to what we know when fearing being run over by something we don't understand.

And I think the first thing is to truly commit ourselves to understanding the technology and the market and the nature and the way in which it's unfolding so that we're not fearful --- we don't approach this with fear, but we approach it with excitement and optimism that this is inherently a good thing for the world, a good thing for the country, a major breakthrough in telecommunications and communications, and a great new opportunity and promise. We shouldn't be afraid of that.

I personally think we should be embracing it. And so I think that that's an important part of the debate. And so we're very excited about it.

I have decided that the Commission is now going to start exerting itself in this area much more directly. And that is not to say regulating it either, only to put a marker down that it's time to start having these policy questions in forums that matter. I really don't. And I think that we run the risk that if we don't move quickly to at least show that we're focused on it, then if you don't have a state jurisdiction do it, you will have a court do it.

Again I can honestly debate what the answers are, but I do think there is a danger if you don't have the right institutional player in the right place. And if you're not going to have an institution that's going to be capable of dynamism and flexibility as it goes through trying to learn this, I think we're going to have a problem.

The role of regulation seems to me to depend on the time, the nature of the problems, and the nature of the consequences, Because it "depends" is why I think the worse thing we could do is, again, regulate it like a telephone, regulate it by an accident for no other reason than that's what we know and that's what we understand. And I think there are a lot of quarters right now throughout the federal government and state governments that are poised to do just that.

Or you have the almost equally ideological absurd libertarian "who cares" --- we do care because we care about law enforcement capability, we do care because we care about the disabled, we do care because we care about anticompetitive behavior. I think the greatest error going on is the misunderstanding that if you believe in the Internet being free and minimally regulated and unregulated that means you don't care one wit about these other policy things.

Build Up from a Blank Slate

I think that's wrong. I think what I care about is I want to build from a blank slate up as opposed to from the myriad of telecommunications regulations down. We might agree we want to be in the same place, but it is a nasty, entangled litigious exercise to start from a phone company world of regulation and work your way down this way, rather then to try to say, no, this is something new.

Let's make each regulatory judgment as the consequence of forethought and judgment and understanding about this specific technology. The statue makes that cumbersome, because it's sort of like we want a set of new clothes but we've got to work with the old sewing machines, the old thread that we can find in the aging 1996 telecom closet. And that's not easy. I would submit 80% of the questions that face me today are gray. There is no clear answer in the statute, the statute is in its little buckets, and the buckets don't make sense.

And why is the FCC in the midst of controversy all of the time? Because it is always forced to try to negotiate a course through an ambiguous statute premised on yesterday's technology and apply it to something that's emerging and changing the new rule. We will keep doing that, but that's going to crumble. The Act is going to crumble under relevance, even under its own weight, from the pressures of technology. And one day, whether we like it or not, Congress will have to come back to this lest it sort of sanction a set of odd and observed contradictions that I think start to unfold in the law.

So our goal should be --- the TAC and the Commission --- to shape an intelligent debate. Make sure that long before congress starts getting involved, we help win in the public mind what the understanding of what that issue is, and we make these things more thoughtful and minimal. I believe in minimal regulation here only because I believe there is a futility principal. I think that our institution, and state regulatory institutions, are not built particularly well for fast changing dynamic technology-driven innovations.

We're really good with matured industries that have generally stabilized to a point of fixed points, of regulatory choke points, and things. But I think we're really on dangerous turf when we're regulating change. You don't get a rule making out of the FCC in less than a year or 6 months and in Internet time that can be forever.

And so making sure that we focus on those handful of core regulatory values, and having the courage to shed the rest, seems to me to be the billion dollar question, I think there will be core regulatory values to protect but we ought to go through the judging of where those are, commit to them, focus on them and be confident and courageous enough to say "and the heck with the rest of this stuff."

And if time goes by and it turns out some of that rest of that stuff is needed we'll bring it back. I'm always amazed at this sort of suggestion that somehow there's one window for things and you will never be able to fix it again. I don't know what world that comes from. I have watched 100 years of telecom regulation constantly change, evolve, and flow back and forth, push and shove.

So what's the role of regulation? One, I think you should justify what it is beyond general antitrust principles and I think there are things. But on this revolution, I think the burden is on the government. I think for this revolution, when the Internet is already prospered so nicely without a lot of government handholding, where IP and voice over IP and power line infrastructure and other things that are interesting begin to prosper without our help, we should own the burden of presumption of why we're needed here. And when we can satisfy it, we should act and act clearly and swiftly. But when we can't, we should stay the daylights away from it lest we interfere with a healthy robust, innovative market.