Remarks of U.S. Federal Communications Commissioner Kathleen Q. Abernathy
Market Reform: A Tool for Achieving Universal Access Panel
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I am honored to be here today to moderate this panel on "Market Reform: A Tool for Achieving Universal Access." Universal access is an important goal to all of us at this Symposium. Utilizing market reform to achieve universal access to telecommunications services is an issue that I am certain all of us as regulators can agree is one of the most complex and difficult issues we must adequately address. Before I turn the floor over to our panelists, I thought I would share the experiences of the United States on how we have tried to achieve universal access and also outline some of the principles I have relied on to guide my decisions in this area.

The goal of providing high quality telecommunications services to all consumers in the United States at affordable rates is a cherished principle of U.S. telecommunications policy and law. In implementing this goal in the United States, the FCC is required by law to balance two key goals that at times appear to be in tension with one another: the first, opening local markets to competition and the second, preserving universal service. The FCC achieves this balance by creating a pro-competitive regulatory framework that encourages the development and deployment of innovative services at reasonable prices while also having in place a funding mechanism available to help support access to telecommunications services to underserved areas.

With every decision we make, I have found it helpful to always keep in mind <u>why</u> are we trying to achieve the goal of universal access; we are doing this to ensure that consumers have a choice of innovative telecommunications services at affordable prices. Therefore, each of the regulatory principles on which I rely is designed to help advance that goal. These principles are:

1. Having faith in a competitive market;
2. Ensuing transparency by adopting clear rules that are vigorously enforced; and
3. Educating consumers about the market so they can make intelligent choices.

I would now like to take a few minutes to talk about each of the three principles.

Over the course of my career, I have found that fully functioning competitive markets deliver greater value and services to consumers than those that are heavily regulated. Despite the noblest of intentions, government simply cannot allocate the resources, punish and reward providers, and encourage innovation as efficiently as markets. While there is a critical role for regulation, particularly when competitive forces are in their infancy, we should strive to rely on, and trust, markets forces and private sector initiative whenever we can do so consistent with our governing telecommunications law.

My general approach in this area stems in large part from my experiences in the U.S. wireless arena. There, the FCC decided against a heavy regulatory hand — against, for example, price and service regulation. Instead the FCC allowed the marketplace to develop, albeit with some broader regulatory constraints — such as establishing rules to guard against harmful interference. Today we have an incredibly robust wireless telephony marketplace — with six national providers, a number of significant regional carriers, and a number of niche players. Prices have continued to fall, while usage continues to rise. Consumers switch providers in response to market changes at a significant rate, and carriers have continued to build out their networks and offer innovative suites of services. I have also watched with interest the rapid and substantial contribution wireless services have made to universal access in many countries around the world – oftentimes dramatically increasing penetration levels well-beyond what was available over wireline technologies.

That is not to say we should walk away from market intervention. Quite the contrary, we <u>must</u> remain engaged. There are always cases in which the unfettered market would lead providers to engage in conduct either contrary to our laws or harmful to consumers — or both. I will touch briefly on three areas.

First, I firmly believe that it is necessary for regulators to intervene when structural or competitive barriers impede the development of competition. Therefore, as markets transition from a monopoly to a competitive model, it is important for the regulators to craft narrowly tailored regulations aimed at curtailing the anti-competitive behavior of incumbents. Let me provide you with an example. To achieve competition in the local wireline telephony market the FCC intervened because the incumbent local exchange carriers' had control of <u>essential</u> network facilities, and their natural business incentive was to resist making those facilities available to competitors. This sharing of the network is required where there is economic impairment. The key to implementing such an approach is to preserve a delicate balance that allows competition to flourish while also maintaining incentives for carriers to <u>invest</u> in <u>facilities</u>.

There are also policy goals that do not necessarily track market forces. For example, in the U.S., Congress has directed us to implement programs such as universal service, which includes a program that provides for advanced telecommunications services to schools and libraries. These social policies are unlikely to be advanced in the marketplace absent regulatory intervention yet they are critical to promoting universal access. Without such programs, consumers in rural and remote locations, for instance, may not be able to access even basic telecommunications services.

It is also important that regulators not allow their rules to lay stagnant. In fact, we must continually reexamine our rules to ensure that they remain relevant. Sometimes there is a tendency for regulators to expand and defend the scope of their authority, even after the narrow justification for regulatory intervention in the marketplace has long since disappeared. Accordingly, while I believe that regulatory safeguards are key to ensuring that competition can take hold in a market, overtime, the rules must continually be re-evaluated to ensure that they are still appropriate for the market.

Creating a competitive telecommunications regulatory framework alone is not sufficient to encourage universal access for consumers. And that brings me to my second point, transparency. I believe that transparency is best achieved through the creation and publication of clear rules. However, for the regulatory regime to be successful, these rules must also be strictly enforced. Based on personal experience, I know that the U.S. regulatory model has only been successful when the FCC has enforced its rules vigorously. Failure to enforce rules sends the inappropriate signal that companies may engage in anticompetitive behavior or other unlawful conduct with impunity.

I also find strict enforcement of narrowly tailored rules to be more effective than broad prescriptive rules, which prohibit whole categories of conduct, only some of which may be problematic. By relying more on enforcement mechanisms, the FCC has been able to tailor its intervention to particular circumstances, thereby allowing markets to operate with minimal regulatory distortion.

Now I recognize that there is clearly some tension between the goals of streamlining our rules and strengthening our reliance on enforcement mechanisms: While refraining from micromanaging carriers has the advantage of making our rules simpler and more concise, the absence of detail can create gray areas that may sometimes make enforcement appear unfair.

Regulators can resolve this tension in large part by crafting our rules with enforcement in mind. If we commit to strict enforcement of all of our rules, I believe we as regulators will end up adopting very complex rules only when doing so is absolutely necessary.

This brings me to my last point: the importance of educating consumers. As competition brings new choices to the market consumers can be overwhelmed and under informed. If customers are to understand what choices are available and what practices are legitimate, the regulator—and to some extent the industry— must ensure that consumers have access to the information they need. Education is essential to our ability to regulate in the public interest because only with knowledge can consumers make informed decisions. Therefore, at the FCC we have engaged in consumer education initiatives including issuing newsletters explaining the effect of our rules on consumers, and we meet with various interested parties, to ensure that there views are taken into account as we formulate our rules. I also take the time to ensure we meet with consumer groups and the press, to make sure that I understand the views of all parties that may be affected by our actions.

I believe that the principles just discussed are essential to promoting the goal of universal access. If we as regulators can incorporate some or all of these principles into our regulatory regimes, we will be in a strong position to bring the benefits of competition to consumers and ensure that consumers have access to high quality and affordable telecommunications services. I look forward to discussing these issues further with you throughout this forum.