

**Remarks of  
Michael K. Powell  
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Thank you for the introduction and for the opportunity to address NARUC's General Assembly this morning. It's a pleasure to be here.

It is particularly satisfying to meet with people who travel great distances to be in Washington for this meeting. I too have been traveling. And I have seen some extraordinary things: "Smart Dust" in California; a boy with cerebral palsy treated with the aid of telemedicine in North Carolina; rural wireless ISPs providing broadband to remote, hard to reach parts of Kansas, California, and Virginia. Each time I see a new broadband application my eyes open wider to its digital potential.

Americans are problem-solvers, and these visits demonstrate the power of the American entrepreneurial spirit. Whether it's a rural ISP or a large IP-based network, each challenge us to broaden our vision – to look for new solutions to old problems – and to think critically about the role of regulation in the Innovation Economy.

My remarks today focus on our cooperative role in facing the move from the one-line, monopoly, analog world of the past to the multi-line, competitive, digital world of the future. We already share an extraordinary number of goals:

- We all want to deliver the benefits of next-generation networks to all Americans as quickly as possible;
- We all believe making the universal service fund as efficient and fair as possible;
- We all know we need to work together to preserve the quality and reliability of our current network as we transition to the new one; and
- We all know we need to preserve and advance valuable social and security policies, including emergency response, law enforcement and ubiquitous, affordable service for all.

As brother and sister regulators, we also face the same difficult questions that arise in this time of unprecedented change.

## ***Turning the Corner on the Digital Migration***

We are turning a corner on the digital migration. Innovative entrepreneurs are replacing yesterday's slow, limited networks with many different types of high-speed, full-service digital networks, like BPL, WIFI, FTTH, Cable Modem and DSL. And these networks are ushering in the latest advanced applications, like internet voice, streaming video and music services. Competition among these facilities-based networks, combined with the openness of Internet Protocol, has begun to introduce the transformative forces of innovation and entrepreneurial spirit into a sluggish telecommunications sector.

Already today, two percent of U.S. firms use some form of IP telephony, and that number is expected to grow to 19 percent by 2007. A new Yankee Group survey found that 73 percent of wire line service providers and 31 percent of wireless operators either have implemented, or were testing, packet telephony in their networks.

To serve this growing demand, software-based communications providers have sprung up seemingly overnight. Entrepreneurs are taking advantage of low-entry barriers to challenge established telephone giants. By now, many have heard of Pulver.com, which offers a free computer-to-computer voice communications application, and of Vonage, which offers unlimited local and long distance communications for just \$39.95 per month. And there are others in the wings – entrepreneurs are moving swiftly into this space.

As regulators, we need to embrace the reality that the torrent of change from IP technologies has arrived, is unstoppable and will accelerate over the next year. And American citizens will be the richer for it.

## ***Power to the People***

More Americans have more providers and services to choose from and more devices to communicate with than in any time in American history. Interest in next-generation VOIP networks is rightly very high. One recent study shows that 50% of Internet households – *fifty percent* – are interested in Internet Voice as a way of reducing monthly long-distance charges. According to the study, these consumers are not interested in supplementing their local and long-distance telephone services but in replacing it entirely with a new, cheaper, more functional system that better integrates data-services and voice-services into a seamless communications infrastructure.

Consumers crave personalization. If anyone has any doubts about the trend toward personalization, I submit to you the fact illustrated in USA Today that Starbucks offers its customer *19,000 ways* to have coffee. Consumers are picky about having it their way.

This trend is equally true in telecommunications. Now, VOIP applications deliver voicemail as an MP3 file in your email box, on your palm pilot, and voice can be transcribed to text and vice versa – information is delivered to consumers when and where they want it. All of this is possible with VOIP applications.

Meanwhile, firms that invest in broadband are investing in our economy and our quality of life. Small businesses are beginning to use Wi-Fi and WiMax to lower the costs of business, to enter new markets, and to connect more easily with suppliers and consumers around the globe—allowing local business to stay home and offer hometown kids hometown jobs. Productivity has risen significantly as investments in information technology have begun to bear fruit. Telemedicine over high-speed networks has brought specialists in big cities to the sick in small towns. And through the Net, our children not only have access to the Library of Congress, but to the library of the world.

These anticipated gains will prove fleeting, however, if we regulators are impediments to change rather than leaders of change. A global Internet necessarily means entrepreneurs can set up shop literally in any corner of the globe. A recent cover of Fortune Magazine about the inventors of Internet phone application Skype starkly made the point. It read: “They bloodied the music business with KAZAA. Now they aim to take down the \$300 billion phone business. Want to stop them? You’ll have to find them first. We did. In Stockholm and Estonia”

If we do not create a regulatory climate that attracts and encourages investment in our states and in our Nation, we will face the rude reality that opportunity can and will go elsewhere. If the regulatory climate is hostile, the information age jobs go to India not Appalachia. If regulatory costs are excessive, email, voice and video servers will be set up in China not California. Unlike the earth-bound networks and businesses of the past, there is nothing I, or you, can do to keep economic activity in your state.

We are well-advised to pursue regulatory policies that invite, nurture and promote innovative activity in the digital age, or we stand to lose out on its rewards.

A necessary predicate to these market developments is a solid consensus that the migration of services to digital platforms is positive for America. The greatest nation on earth should not be content to be 11<sup>th</sup> in broadband deployment. If we can agree that this migration is welcomed, then an effective federal/state partnership will flourish, united by a common goal.

### ***A Changed World Needs a Changed Regulator***

As the volcanic forces of innovation unearth and flow economic and social prosperity throughout the United States, we have to make economic regulation of the Internet a last resort, lest we chill the hot bed of IP-enabled services that are springing to life in a fast-changing environment. Therefore, the Commission should start from the premise that traditional monopoly economic regulation should not be spilled over to the Internet. The emerging universe of VOIP providers – whether Pulver.Com, Vonage, 8x8, or one of the established, facilities-based providers rolling out new technology, such as Cox Communications – differ fundamentally from the voice monopolists of the public switched telephone network.

New networks deserve new thinking. We should take non-regulation of the Internet as a regulatory imperative, absent clear and compelling evidence of real harm, because limiting government intrusions – both at the federal and state level – maximizes the potential for innovation and increases opportunity for the nation as a whole.

This is not to say we should not remain vigilant to the risks of anticompetitive behavior. We must. Indeed, I have recognized that the vertical integration of internet applications and distribution could tempt a provider to discriminate against the font of innovative choices made available by others. Recently, motivated by this concern, I challenged the industry to adopt four simple Internet Freedoms for consumers:

- *Freedom to Access Content*: Consumers should have access to their choice of legal content;
- *Freedom to Use Applications*: Consumers should be able to run applications of their choice;
- *Freedom to Attach Personal Devices*: Consumers should be permitted to attach any devices they choose to the connection in their homes; and
- *Freedom to Obtain Service Plan Information*: Consumers should receive meaningful information regarding their service plans.

These freedoms will preserve consumer choice, foster competition and promote investment in infrastructure and Internet applications. In short, we need to think creatively about how to protect consumers in a newly competitive communications environment.

### ***Working Together***

A light regulatory touch does not mean that state and federal regulators do not have a role to play. On the contrary, joint, cooperative efforts among state and federal regulators become even more crucial when the network we oversee defies easy jurisdictional classification. Indeed, there is more than enough work to go around.

To my mind, there are at least five key areas where we must closely cooperate to ensure that the benefits of the digital migration reach all Americans. They are: Local Competition; Consumer Protection; Universal Service; Disabilities Access; and Homeland Security. More than ever, we must work in partnership to provide the support, guidance, and resources needed to respond to the challenges and opportunities presented by the transition.

#### ***1. Local Competition***

Let me begin with local competition and last week's court decision vacating our unbundling rules and striking down our scheme to turn over key federal decisions to the states.

Some have suggested that last week's *USTA* decision represents the death knell of meaningful cooperation among state and federal regulators. I strongly disagree. On the contrary, the D.C. Circuit made clear that where the Commission has been entrusted and directed by Congress to make critical decisions it may properly enlist the aid of state commissions in developing the factual record and may turn to them "for advice and policy recommendations, provided the [Commission] makes the final decisions itself."

What the Commission may not do, however, is recruit -- like Huckleberry Finn--someone else to do the job Congress specifically directed us to do. Just as States are charged with setting UNE prices and it would not be proper for them to turn that responsibility over to the FCC --- as States themselves argued to the Supreme Court in *Iowa Utilities* --- the FCC cannot abandon its responsibilities to the states—no matter how competent or credible they may be.

Even so, there remains substantial room for meaningful cooperation, and I strongly endorse our continued partnership. States can and will play a key role in the development of the new rules, just as they played a vital role in the FCC's evaluation of 271 applications, even though the decision resided with the Commission.

Yet, having suffered our third court defeat in a row—once at the hands of the Supreme Court and twice by the D.C. Circuit—we find ourselves yet again in a regrettable place. And the question we are asked repeatedly is where do we go from here?

No matter what one's view of the Commission's wounded rules, or of the court's treatment of them, we are confronting an unfortunate period of continued, and perhaps prolonged, uncertainty. The *USTA II* decision and its aggressive timeframe for Commission action creates the real possibility that local telecommunications markets will operate in a vacuum of vacated rules and changing interconnection agreements.

We as policy makers must work to stabilize and clarify the situation so consumers are not harmed and so the market can make reasonable sense of things in the short-term.

In that light I want to call for action and enlist your help:

- Beginning today, competitors and incumbents should enter into a 30 day negotiation period. I call upon both sides to work earnestly to arrive at commercially negotiated rates for access. The Statute authorizes and encourages commercial negotiation of interconnection agreements and it would be irresponsible for the critical industry players not to make meaningful efforts to do so. I urge states to encourage these negotiations.
- If those negotiations fail, however, I will propose to my colleagues that the FCC adopt an interim set of rules to protect against precipitous disruptions that might result after day 60 because of the court's ruling. I fully appreciate that my colleagues and some states have indicated their interest in pursuing an appeal of the *USTA II* decision. I disagree with that course, for I am convinced it will prolong the morass of litigation, and extend the already lengthy and punishing period of uncertainty. Nonetheless, nothing in this interim plan would prejudice my colleague's ability to pursue that course of action if they deem it appropriate.
- To absolutely ensure stability and to eliminate the possibility of consumers experiencing significant disruptions, I will work with my colleagues to craft an 18 month moratorium and transition to protect existing UNE-P customers from sudden changes in their service.

- I will also instruct our staff to begin developing a framework and proposals for new rules that are judicially sustainable and faithful to our mandate to advance local competition. I encourage state commissioners and staff to work with the Commission in this effort. No matter what twist or turns continued litigation will bring, eventually this matter will likely require further regulatory decisions. We must not waste a moment in developing ideas for new rules, so we can act quickly once the litigation merry-go-round finally stops spinning.

Working in partnership, we can identify the reasonable middle ground – if we can put aside entrenched positions associated with one industry group or another. Doing so will require compromise. It will require moving past jurisdictional battles and toward recognition that both of us – state and federal regulators – owe a duty to get this right for consumers. We are entering a remarkable information era that delivers value for consumers and economic growth for America. Working together we can make meaningful competition a reality.

## ***2. Consumer Protection***

Our partnership efforts do not end with local competition. They include things such as coordinating in monthly State and National Action Plan (SNAP) calls to share information and develop new strategies to combat slamming. Local number portability was an area where states and federal officials worked together to ensure that last November's deadline was a reality – and consumers have benefited because of our efforts. As the deadline for implementation outside the top 100 MSAs nears, we must continue these efforts to bring competition to all areas of the country.

## ***3. Universal Service***

In the area of Universal Service, we need a common recognition that the current system is in need of repair. The FCC cannot solve this problem alone, and here again we need your insights and innovative thinking to find answers to these difficult questions. We must make all implicit subsidies explicit to ensure continued high-quality, affordable service and network investment.

To that end, I applaud those states that have undertaken efforts to adjust retail rate structures and intra-state access charges. I want to particularly thank the federal and state members of the Universal Service Joint Board who recently presented to us their recommendations in the *Portability Proceeding*. This document is a significant contribution to the public policy debate about the future of universal service.

## ***4. Disabilities Access***

And there are other areas of common interest.

Disabilities access is one. Today we have an incredible opportunity to ensure that the special needs of persons with disabilities are considered at the outset. If we consider the needs of this community at the design stage, we will bring more benefits to more people sooner.

To explore these issues in depth, we will hold a Solutions Summit on disabilities access on May 7, 2004. I urge every organization in this room to participate in this process. When the old copper networks were laid in the 1930s, our predecessors failed the disability community.

Let's not repeat that oversight. Help us design our new networks with the disability community in mind.

### ***5. Homeland Security.***

In the area of homeland security, I would like to highlight an additional opportunity for federal-state partnership. We intend to hold a "Critical Infrastructure Inter-dependency Workshop" later this year. The FCC is working with NARUC's Ad Hoc Committee on Critical Infrastructure, the Department of Homeland Security and the Federal Energy Regulatory Commission on this critical effort. At this forum, federal and state entities involved in critical infrastructure protection and homeland security can discuss the interdependence among energy, water and telecommunications services.

The examples of federal-state partnership could go on, but I will rest here.

### ***Conclusion***

We need to do more than cooperate and coordinate. In the end, we need to share a common vision of where the telecommunications industry is going – and why it is a good thing that the industry gets there as fast as possible. A world of digital, IP networks is a place where consumers are empowered and our cherished social policies – like universal service – are preserved.

We will undoubtedly confront thorny issues along the way – but we must all remain focused on our common goals of the digital future. If we share a common desire to move toward a world of IP-enabled networks – as I believe we do -- the incremental decisions will be easier to make.

We are different you and I. We are neither industry nor lobbyist, neither pundit nor analyst. We are public officials—men and women who have taken an oath to uphold the law and who have committed ourselves to serve only the best interests of the people of the United States.

It is this privilege that we together share—and on this foundation our cooperation will continue to stand firm as we lead America into the future.

Thank you.

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