

**REMARKS OF
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CONSUMER ASSEMBLY 2004
THE CONTINUING COMMUNICATIONS REVOLUTION:
THE NEED FOR CONSUMER PROTECTION**

“AN ALWAYS-ON CAMPAIGN FOR CONSUMERS”

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Good afternoon. Thank you for having me here today. I jumped at the chance to speak at this year’s Consumer Assembly because it is an event with such a rich and storied history. For 37 Years, the Consumer Federation of America has fostered discussion and laid the groundwork for effective action at this gathering, always promoting the interests of American consumers. You’ve made a difference, your leadership makes a difference and certainly one of the most gifted and productive people in this town is my friend Mark Cooper whose penetrating intellect, good judgment and total dedication have done so much for all of us. So I am honored to be with a group whose passion in life is putting consumers first.

You put consumers first. Our telecommunications statutes put consumers first. Alas, our Commission does not always put consumers first. Sometimes we create the perception that we are perhaps more interested in protecting companies, sometimes that our priority is advancing a deregulatory ideology. For me, I would rather advance practical solutions to help consumers. You know, at the FCC it is all too easy to fall into the trap of believing that the whole universe is composed of the few dozen powerful lobbyists that we see day in and day out. If only we can strike a deal that balances the interests of the companies they represent, then we have found a fair solution, some think. But the truth is that these few powerful interests are not the ones Congress created the FCC to protect. And sometimes we get so insulated that we just assume American consumers don’t show up on our doorstep very often because they don’t care about their rights or protections. The truth is that consumers generally have no good way of knowing that their rights and protections are in danger. Who reads *The Federal Register*? Who even knows where 445 12th Street, SW is? And even if you knew, who has the bankroll it takes to win hearts and minds at the FCC? Thank goodness for consumer advocates and the leadership of Mark and his colleagues, but the agency itself has the responsibility to bring these issues and proceedings to the attention of the American people.

We need to change this. I believe it is time to declare at the FCC an “always-on” and always-aggressive campaign for consumers. Because our job *is* to put the interests of American consumers front and center. This is, really, the heart and soul of the Communications Act and it’s what the public interest is all about. By my quick count, the term “public interest” appears 112 times in the Communications Act. When Congress tells me something once, I pay attention. When they tell me something 112 times, I stand up and salute.

The Commission has not merely the directive to *consider* the public interest in its decisions—it has the statutory obligation, pursuant to the Communications Act, to *take only actions that are in the public interest*. When the Commission stops making decisions based on the public interest because it supposedly has trouble pinpointing the exact parameters of that public interest, it is breaking the law. I have found that if a person really believes in that North Star called the public interest, it's usually not that difficult to figure out what it entails. And I've found that when there are questions about what it means in a particular situation, if we go out and talk to America, we can get our public interest moorings and sense of direction back real quickly.

At the FCC we don't talk to America enough. All too often our proceedings are run as classic inside-the-Beltway operations with too little outreach from the Commission and too little opportunity for public participation. Rarely do we get around the country, talk to people, collect adequate data and really reach out. But communications issues are no longer technical concerns falling within the province of the few. They are important everyday issues to every American. And every American deserves the opportunity to be heard and every American deserves to have available open and user-friendly FCC processes so he or she actually can *be* heard.

The Commission should have learned that lesson as a result of what happened when some within tried to treat the media concentration decision as another classic "inside-the-Beltway" operation. You know what happened: more than 2.3 million citizens found out about it. And they got really mad, both at the substance of what the majority was attempting to do in loosening the ownership rules and at the stealth process which people concluded was designed to keep them out of the debate. Inside the Commission the operating premise seemed to be that no one really cared about things so arcane as radio signal contours or the precise number of stations one company could own. Outside the Commission people thought: "Hey, someone is messing around with my airwaves in ways I don't appreciate and I'm going to do something about it."

So one thing I have been trying to do at the Commission is to encourage our casting a wider net in our various proceedings, and get us into the habit of reaching out to all our stakeholders—America's consumers or, better put, America's citizens. In communications, *every* American is a stakeholder, because each of us is affected in so many important ways by how the public spectrum is used. Our freedoms, our diversity and our values all come into play. So I am convinced that an essential part of being a commissioner is to reach out to what I have called "non-traditional stakeholders"—those we don't usually hear from—in order to ensure that Commission decisions do indeed reflect the wide public interest.

Thirty-seven years ago no one was contemplating the kind of communications landscape that we have now. Technology has developed at a blistering pace and created so many new opportunities for each of us. Our job is to keep up with these changes and to make sure that the opportunities are shared by all of our people. Let me emphasize the word "all." *All* of our citizens deserve access to the best, most advanced, most accessible

and cost-effective telecommunications systems in the world—whether they live in rural areas, on tribal lands or in our inner cities; whether they have limited incomes or disabilities; whether they are schoolchildren or rural healthcare providers. In the Twenty-first century, we should call this access a civil right.

Today, I want to discuss a few of the important steps that we can take to advance a pro-consumer, pro-citizen agenda.

Competition

Let's begin with competition. Competition is critical and we need to promote it. Facilitating competition in all communications markets was central to the 1996 Act. But Congress did not seek to establish competition merely for the sake of competition. Rather, it recognized the enabling power of competition to give choices to consumers—choices of services, choices of providers, choices of technology, and choices of sources of content. When there are options, consumers reap the benefits—better services, greater innovation, higher technology, and more robust public discourse. Competition empowers consumers. It's the electricity that sparks the development and deployment of innovative services. Competition brings the big win-win—getting more and paying less. It helps consumers; it helps business; it helps the country.

In telecom, we are finally **beginning** to see competition come into being, although with 85 per cent of residential and small business customers still serviced by incumbent companies, we obviously still have a long way to go. But there are nearly 25 million competitive lines out there now and new technologies like Voice over Internet Protocol (VoIP) can help expand this competition—if we handle them wisely. We are also beginning to see competition not only **within** delivery platforms, but also **among** delivery platforms—an increasing convergence of industries, services and markets. Here too, we are only at the beginning with a long way still to travel before consumers reap the benefits of true intermodal competition. For all the talk we hear of intermodal competition, most Americans still don't have a choice between cable and DSL. They can take whichever one is available—**if** one is available. And for all our talk about exciting new technologies, like broadband over power line and satellite services, technologies other than cable and DSL provide not much more than two per cent of the nation's residential broadband services. Truth is, when it comes to competition, we're still nursing an infant.

I must tell you that I am deeply concerned about the future of competition. Last week's *Triennial Review* decision by the DC Circuit will be, unless it is overturned by the Supreme Court, a stunning setback for consumers. It's going to hurt and it's going to hurt a lot. We should all be concerned about the court's assault on the requirement for incumbent carriers to open their legacy networks to competition. The prospect now is for competition to fall prey to consolidation, just like we're seeing in the media world, and the consumer benefits of a truly competitive marketplace will never be enjoyed.

Given this particular court's history and predilections, last week's decision was rather predictable. So now we have to look elsewhere—and higher. In the past the Supreme Court has been clear that the FCC indeed has significant discretion in ensuring that local telephone markets are open to competition. Now we need the Supreme Court to weigh in again. So I hope consumer advocates everywhere will join in and make your voices heard as we seek appeal to the Supreme Court. In the last week alone, diverse groups of consumers and businesses and public officials from across the political spectrum have raised their voices to say that the kind of micro-managing judicial activism behind this decision is bad for consumers, bad for competition and bad for the economy. Those we have already heard from include the Consumer Federation of America, Consumers Union, the American Farm Bureau Federation, the International Brotherhood of Electrical Workers, the National Association of Regulatory Utility Commissioners, AARP, and the National Association of State Utility Consumer Advocates. I think you'll hear more voices joining the chorus soon.

Truth-In-Billing

Now let's get down to some specifics. Let's talk about truth-in-billing. Consumers must have good information in order to make good choices. In telecom, much of the information that is available is what's on the monthly bill. But how accurate is this information? How understandable? What does it really convey?

There is no question that consumers right now are not amused by their telephone bills. From quarter to quarter, we receive more consumer complaints on telephone billing than on any other issue, with the one exception of indecency. What are we doing about it? Not much—and nothing recently.

Consumer rights and competition are just so many words unless people have access to accurate and meaningful information. And that information needs to be in a format that consumers can understand. Building on this simple concept, the FCC in 1999 took initial steps to provide consumers with some basic information about charges on their bills. But these were just first steps and the FCC even exempted wireless carriers from most of these limited truth-in-billing requirements.

Fast forward to 2004. In spite of nascent competition, in spite of the efforts of earlier commissions, consumers are still stumped by the line item clutter on their bills. They are challenged to understand the real rates they pay. They lack the tools to compare services, bucket plans and charges. Our truth-in-billing rules have morphed into confusion-in-billing.

Take a look at your phone bill. It's bewildering how complicated it is. The explosion of line items has made it all but impossible for consumers to compare rates and shop around. You need a lawyer and an accountant—preferably both—to root out what you're being charged for and why. My telecom advisor at the Commission is as bright as they come, but she will tell you she has problems understanding what's on her bill. So pity me and the rest of us! There are line items for basic service, subscriber line charges,

E911, number portability, universal service and taxes. Some bills have minimum usage charges and ambiguous fees for administrative purposes. I'm not saying that many of these aren't legitimate costs nor do I infer that most carriers are unscrupulous. But how are we supposed to know if we're getting a good deal that fits our usage patterns? How do we compare rates and figure out if we should pack up and take our telephone business elsewhere? There's no consumer bliss in ignorance!

Let me lay out a few things I think we should be doing. First, we must ensure that carriers do not overcharge for certain line items. Some carriers may use the many changes that are underway in the industry as a smokescreen to increase line items and raise consumer charges, even as costs are decreasing. The FCC doesn't really know the extent of what's going on here. It's been too long since the Commission took a hard look at carriers' line item charges. We need to get a handle on this problem, do so quickly and, once we understand its full dimensions, resolve it.

Second, we should ensure that carriers do not falsely represent charges as mandatory fees. This has caused monumental confusion and we need to make the distinctions between fees clear.

And third, we should promote telephone bills that are models of clarity instead of confusion. With so many creative new line items, and with line items that differ from carrier to carrier, comparing carriers and plans is like comparing apples to oranges. We need a way to compare oranges to oranges. Consumers need this information to make rational choices. What we need here is a common vocabulary for competition.

We could take this one step further and consider proposals that would *really* allow consumers to compare rates. At the bank, we can compare interest rates by looking at annual percentage yields. At the grocery store, we can count calories or carbohydrates by comparing nutrition labels. Wouldn't it be helpful if we could compare telephone services by looking at a real per-minute rate that includes every charge on the bill rather than having an advertised per-minute or bucket rate that has no relationship to your bottom line cost because of all those add-ons at the bottom of your bill? If carriers told their customers at the front of the bill what the customer's average per-minute rate is for the month, we could slice through the clutter quickly, shop around, compare service plans and make the same kind of rational choices that we have the ability to make when we choose a bank or a box of cereal.

These are just a few proposals that we ought to consider. I encourage other ideas to give consumers cleaner and clearer bills. We have a choice at the FCC. We can let consumers slide deeper into confusion and be on the receiving end of exponentially more complaints—we had nearly 7000 such complaints in the last quarter alone—or we can explore solutions. We should return to the fundamental principle that competitive markets require consumers to have access to accurate and meaningful information. If they don't, we need to do something about it. That's what an "always-on" approach to consumers demands, and what truth-in-billing must require.

Wireless Service

Truth-in-billing applies in the wireless world as well. In fact, things are, if anything, even more challenging here than in the wireline world. All the confusion I just spoke about on traditional phone bills still applies, but add in all the opportunities for confusion created by bucket plans, mobile termination rates for international calls and, perhaps most importantly, the absence of any good way to compare service quality or coverage between carriers.

The FCC should be helping. Instead, we sometimes make the problem worse. Did you know that the Commission recently eliminated the rule that carriers have to give customers a map of where they provide service? How can you trust the market forces that some say will protect us if consumers don't have information *this basic*? And even if carriers do provide maps, the maps they provide sometimes cover areas so large that the exact boundaries are impossible to determine. They may not include dead zones that carriers know are there. And they often include small print that warns consumers that the map can't really be relied upon. As one major wireless company's map says: "The map is not a guarantee of service and contains areas with no service." What good is that?

The FCC should start by reversing its anti-consumer map decision and by re-establishing a requirement that carriers must make maps available upon request and also on their web sites. We should require that these maps be accurate to the best ability of the companies and that they include all known dead spots. Finally, the maps should be available at a level of detail that allows consumers to know whether their homes or offices have service. The carriers have this information already. There is no way for consumers to get this information themselves, or even for consumer publications to get it for them, without performing an extraordinarily expensive national survey that the carriers have already done themselves.

The other main consumer complaint related to wireless services is that service quality is unacceptable. Consumers complain about dropped calls and poor voice quality. These are problems that must be addressed if wireless is ever to be a real substitute for wireline. But in today's environment, we will have a hard time trying to get the FCC to even discuss whether setting basic quality of service standards is needed for consumer, public safety or other goals. But I applaud your efforts and urge you to keep at it.

There is something else, short of setting standards, that we could do to help consumers navigate the wireless world. We could figure out how to give consumers information about the level of service quality of various carriers in various locations and then let the market do its work. To do this we would first have to standardize our customer complaint process. We could have an easy-to-use form on the FCC web page that allows consumers to register complaints about service quality issues, such things as dead zones, by company and by location. Then we could make the results of these complaints available for other consumers on the web site, again by company and by

location. If I'm shopping for a carrier, I want to know which one has the most complaints about dropped calls, dead zones and poor voice quality. If a consumer can see who is the best and who is the worst in their city, and then compare the quality they'll get with the price of each plan, then he or she can make a smart decision. Right now they can't do this.

Bottom line: wireless consumers just don't have the basic information they need to take full advantage of the wireless market. The FCC needs to help them.

Cable Rates

Let's turn to one final area that has generated enormous concern for consumers—cable rates. Annual cable rate increases have become as inevitable as death and taxes. I hear every day from consumers who are fed up with the skyrocketing cable rates they are forced to pay. Quite a few Members of Congress don't seem too pleased either. Since passage of the Telecommunications Act in 1996, rates have soared by more than 50 percent, with substantially higher increases for customers in some areas. These increases are almost three times the rate of inflation. And even when calculated in a manner that takes into account the number of channels, the rates still far outpace inflation. Cable points to the investments it has made and these investments have been impressive. But they aren't the whole story.

Cable operators also point the finger at programming costs. Programmers blame the cable operators. We need to find a way to take the poor consumer out of this food fight.

What has the FCC been doing address these issues? Well, we should be doing a lot. Congress directed us to examine cable rates and competition each year. Unfortunately, while consumers keep getting hit in the pocketbook each year, the Commission has been gathering less than adequate data, conducting skimpier analysis than it did even a few years ago and failing to tee up the really tough questions in order to ensure that consumers are protected. Here's what we need: we need to get serious about the reports Congress instructed us to conduct; we need to gather comprehensive data and subject it to in-depth analysis; and then we need to take our findings and turn them into action at the Commission, or, if more authority is needed, recommendations to Congress to promote competition for the benefit of consumers.

Consumer advocates have done a lot to inform the cable rate discussion by raising really important questions. Are those who subscribe to the basic tier shouldering a disproportionate increase in rates? Shouldn't we be seriously considering an a la carte channel selection option under which consumers could choose—and pay for—only the programming they want? What other market mechanisms of greater competition might be out there? The General Accounting Office found that cable operators who face head-to-head competition from an overbuilder have substantially lower rates. Unfortunately, this competition is available to less than five per cent of consumers. Given that cable

operators are exempt from basic rate regulation where there is so-called “effective competition,” does the Commission’s failure to examine changed circumstances in communities harm consumers? Is competition being affected by such trends as the increase in regional clusters of cable systems? Is must-have content such as sports programming being kept from competitors either through exclusive arrangements or the manner in which it is delivered? And, finally, what about controlling price increases through the re-regulation of rates? These are precisely the issues that we need to be tackling head-on.

The FCC’s analytical inaction is bad enough. But going far beyond the inadequacies of our own analysis, the Commission is aiding and abetting soaring rates by waving the green flag for further industry consolidation. We are actually opening the way for less competition, fewer choices for consumers and what will likely be even greater price increases in the future. You cannot discuss competition, consumer choice and fair prices without addressing the enormous consolidation that is occurring in cable and in media generally, encompassing not only unprecedented levels of horizontal concentration, but vertical integration as well.

It is instructive that as the Commission allows ever greater levels of consolidation, the merging companies always allege savings from consolidation, but rarely demonstrate that any of these savings are passed on to consumers. The increasing consolidation we have witnessed so far has clearly not led to lower cable rates for consumers. What happens is that when we approve a transaction that significantly increases concentration in programming production and distribution, we set the stage for more upward pressure on rates. The only question left is how much those rates will rise.

The trend towards increasing links of common control of both content and distribution channels is not going to slow down—it’s going to accelerate. All the talk now is about more mergers and acquisitions. The Commission has made it clear it will permit cable-broadcast cross ownership and it is likely that we will further loosen cable concentration rules in the very near future. In the end, it all comes back to this: putting too much power in one conglomerate’s hands creates opportunities for abuse that hurt consumers. Yet your FCC continues to wave the green flag to ever more concentration without appreciating its devastating impact on consumers and prices, as well as its terrible effects on competition, localism, and diversity.

We can do more. We can do better. Whether it’s consumer bills, wireless coverage maps or cable rates, the Commission needs to adopt an “always-on” approach to empower consumers. We need to give everyone the tools to make rational choices in competitive markets. Markets function better with more information. Consumers function better with more information. Commissions function better with more information.

Lots of problems, yes, but let me tell you as I close that I am an optimist about our ability to get a handle on all this and to help put the country on the right course. I’m an optimist because I have personally witnessed, all across this great land of ours, a rising

tide of citizen power intent on reclaiming consumer rights and building media democracy. It is an unprecedented grassroots movement of left and right, Democrats and Republicans, north and south, young and old—all understanding that some things have gone awry and that the field is being tilted against the average citizen, but also dedicated to the proposition that people of all persuasions must unite and fight to put things right. I can see it, hear it and almost touch it wherever I go. This is the cause of my optimism, because I know that if we can harness this energy and send it into battle, victory on all these fronts can yet be ours. And all of these potentially liberating new technologies coming our way will really prove liberating, bringing opportunity to all our citizens and a bright future to our country. That's your challenge; that's my challenge; that's all our challenge. Let's work together to make that dream reality.

Thank you.