"Hot Issues from D.C."

FCBA Northern California Chapter Luncheon
Remarks by FCC Commissioner Kathleen Q. Abernathy
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(As prepared for delivery)

Thank you, Rachelle. It is always a pleasure for me to have an opportunity to speak to the FCBA Chapter members around the country, especially here in Northern California where I have so many close friends and former colleagues. As a former FCBA President and an active member of the FCBA, I realize how important our Chapters are in terms of bringing diversity of members and breadth of experience to the bar.

What I thought I would do today is talk a little about some of the hot issues pending in D.C. Although it's only April, we have already had a very active year; we initiated a proceeding on VOIP, adopted some orders on indecency that raised some eyebrows and are working towards a resolution of the 800 MHz proceeding.

I will start with an area near and dear to my heart, spectrum reform. An area of major focus of mine while at the Commission has been to ensure that we are making the most efficient use of this limited resource. Spectrum has immense potential value to the American people, but only if properly managed. Therefore, the goal of the FCC should be to create regulatory policies that foster efficient investment and stimulate the delivery of services to the American people.

We have taken several important steps to accomplish that goal. For example, we adopted an order making unlicensed spectrum available for ultra-wideband devices, allocated a significant amount of spectrum for wi-fi devices on an unlicensed basis, and initiated a proceeding to craft technical rules for the provision of broadband services over power line. In each instance, we focused on how to better utilize the spectrum resource while protecting existing licensees from harmful interference. Our goal is to stimulate the development of multiple broadband facilities-based competitors.

We've also begun to examine other ways to facilitate new technologies and services and permit more intensive and efficient use of the spectrum resource. For example, late last year we instituted two new proceedings – one to examine the possible use of cognitive or "smart" radios and one to examine temperature interference metrics. With regard to the smart radio proceeding, the FCC sought comment on the use and applications of smart radio systems. These radios have programmable software that enables them to operate in multiple bands. We are proposing rules that allow technical and operational flexibility for service providers, particularly in rural and underserved areas, and also offer the potential for interoperability with public safety first responders. Recent advances in smart radio technologies have the potential to provide more innovative and comprehensive use of the spectrum while at the same time minimizing the risk of harmful interference.

We also recently initiated a proceeding on a possible new way to quantify and manage interference among different radio services. Termed "interference temperature" this model for addressing interference takes into account the actual cumulative radiofrequency energy from wireless devices, and would set a maximum cap on the aggregate of these transmissions. This is in contrast to our current approach for managing interference which focuses on specifying and limiting the transmit powers of individual wireless devices as the chief way to prevent interference. We believe that the interference temperature approach may facilitate more intensive use of radio spectrum, creating the opportunities for new services and improving the predictability of any interference to existing services.

I believe that these proceedings, in conjunction with other issues we are examining, have the potential to dramatically improve our management of spectrum and deliver greater value to consumers.

Another issue that is aligned directly with our spectrum reform efforts is ensuring that current users do not experience unacceptable interference in their communications from new or existing licenses. Just a couple of years ago, it was brought to our attention that CMRS uses in the 800 MHz band had the potential to cause harmful interference to public safety users of the band. We initiated a proceeding to address this issue and we have spent a significant amount of time and effort trying to determine how to best protect public safety. I have always considered the 800 MHz proceeding to be a top priority for resolution by the Commission.

Although this proceeding was initiated in the summer of 2002, at that time, there was very little support for any specific solution to the interference problem. Substantial progress was made, however, when the major public safety organizations and many members of the public safety community jointly developed a proposed rebanding plan, called the Consensus Plan. This plan was originally presented to us a little over a year ago and significant refinements to this proposal have been made as recently as August of this past year.

In addition, a counterproposal, the Balanced Approach was submitted by a group of industrial users, utilities, cellular providers, other members of the public safety community and several others in the spring of 2003. This group believes that the disruption of rebanding is unnecessary and that mandatory best practices would substantially reduce the potential for interference between public safety and CMRS users in the 800 MHz band.

These proposals now provide an extensive record for the FCC to analyze and make a final determination regarding the best course of action. I appreciate the efforts of public safety and other interested parties in working to find proposed joint solutions to this very complex problem.

Our goal has always been to resolve the issue of public safety interference. That is why I am fully supportive of rebanding. I also believe that whatever outcome the FCC

adopts must provide as many benefits as possible to public safety, without providing a windfall to any particular commercial entity. In fact, Section 1 of the Communications Act specifically provides that the FCC has an obligation to act to promote the "safety of life and property."

It is for this reason that it is important for the Commission to carefully evaluate each option available to it in this proceeding and ensure the approach we adopt is consistent with our statutory mandate and resolves interference issues for public safety. I am hopeful that we will be able to resolve this proceeding sometime in May.

On the media side, the indecency issue seems to have pushed everything else to the sidelines for now. As you know, the Commission has stepped up its enforcement efforts. These efforts range from imposing the maximum statutory fine ($27,500) for violations, to fining on a "per utterance" basis, to finding that in at least some instances the use of the "f-word" is both indecent and profane if broadcast during hours that children are most likely to be watching television. In every instance we are balancing free speech rights against our legal obligation to protect children from indecent broadcast content. Therefore, when broadcasters cross the line, we must be ready and willing to enforce our rules.

With respect to our policy agenda in the media area, furthering the digital transition. Last fall the Commission took several important steps by issuing rules on cable plug-and-play and the broadcast flag. The cable plug-and-play order permits the development of a one-way cable-ready digital television set. This means consumers will no longer be forced to incur the additional costs of a separate set-top box. And the industry is working on two-way capabilities, as well. The broadcast flag order restricts the indiscriminate redistribution of programming over the Internet and will thereby foster the development of more digital and high-definition programming without fear of piracy. This year, we may finally resolve outstanding questions concerning what part of a broadcaster's digital signal a cable operator is required to carry and when such carriage obligations begin, as well as the scope of the broadcasters' public interest obligations in a digital era. But the timing of any upcoming proceeding remains unclear at this point.

Finally, I want to point out that the digital transition is not limited to television. Just last week, we adopted an NPRM to set up rules for digital radio service. Digital radio offers improved audio quality and additional programming opportunities without using any additional spectrum. As radio broadcasters now face competitive challenges from satellite radio, the ability to transition to digital, as their counterparts are doing in television, has become increasingly important.

On the wireline side, the Commission has been spending a lot of time in recent months looking into IP-enabled services, such as VOIP. Together with related issues such as intercarrier compensation, VOIP will remain a primary focus throughout the remainder of the year. This past February, the FCC adopted a broad NPRM that seeks comment on categories of IP-enabled services and the jurisdictional status, statutory classification, and regulatory framework for each. This item covers VOIP provided over

all technologies and both domestic and international services. So, it is extremely far-reaching.

One of the points I have tried to stress in this area is that, before we get too fixated on VOIP services, we need to remember that broadband networks must first be deployed. Because VOIP is simply a broadband application, deploying broadband networks is a prerequisite to a more widespread migration from traditional circuit-switched telephony. This reality underscores the need to continue our efforts to remove impediments to investment in wireline broadband networks – something that began with the Triennial Review proceeding. We also need to develop other platforms to supplement cable and DSL offerings, including wireless, satellite and power line networks. In short, the promise of VOIP is one more reason why furthering the deployment of broadband networks is one of the Commission's top policy goals.

When it comes to the regulation – or non-regulation – of VOIP services, it is too early to predict exactly how the FCC will approach the various categories of services. But I have certain overarching principles that will guide me in this proceeding.

First, I believe that the regulatory framework for IP-based service must be predominantly federal. A federal scheme will facilitate nationwide deployment strategies and avoid the burdens associated with inconsistent state rules. Moreover, most forms of IP communications appear to transcend jurisdictional boundaries, rendering obsolete the traditional separation of services into interstate and intrastate buckets.

Second, I am deeply skeptical about the application of economic regulation to these nascent services. Public utility regulations have traditionally been imposed on local exchange carriers to restrain their market power. Services such as VOIP, by contrast, appear to have low barriers to entry and it does not appear that any provider occupies a dominant market position. Rather than reflexively extending our legacy regulations to VOIP providers, we need to take this opportunity to step back and ascertain whether those rules still make sense for any providers, including incumbents.

Third, notwithstanding my interest in maintaining a light touch, I am committed to ensuring that our regulatory approach meets certain critical social policy objectives. As most policymakers at the federal and state level have recognized, we will need to find solutions to guarantee access to 911 services, maintain the ability of law enforcement agencies to conduct surveillance, preserve universal service, and ensure access by persons with disabilities. Some of these goals may well be achieved without heavy-handed regulation, but I am willing to support targeted governmental mandates when necessary.

In the coming months, as we build a record on VOIP issues, I hope the Commission pays special attention to intercarrier compensation. The emergence of VOIP highlights a pre-existing problem: our intercarrier compensation rules draw artificial and inefficient distinctions based on service classifications, jurisdictional boundaries, and other factors. We have just taken interim action by issuing a declaratory ruling in

response to a petition filed by AT&T regarding long distance services that use IP in the backbone. And I hope that we are able to take more comprehensive action later this year. We understand that industry groups are putting the finishing touches on reform proposals, and that will be a big help as the Commission considers rule changes.

The last topic I want to touch on is universal service. This is of course closely related to intercarrier compensation. The Commission has been considering changes to the contribution methodology as well as the rules governing the distribution of support, and most recently we have been focused on the latter.

The FCC issued orders that granted in part and denied in part ETC status to two wireless carriers, Virginia Cellular and Highland Cellular. An ETC is an eligible telecommunications carrier — that is, a carrier that is eligible to receive federal high-cost support. The *Virginia Cellular* and *Highland* orders establish a number of conditions that wireless carriers and other competitors must meet to qualify for support.

In addition, the Federal-State Joint Board on Universal Service, which I chair, recently issued recommendations on the standards state commissions should apply in evaluating ETC applications. State commissions have been eager to receive such guidance, because the statute itself says very little about how to apply the public interest standard in this context. I have been a strong supporter of issuing guidelines that will help ensure a rigorous application process and also one that is more predictable and uniform.

The Joint Board also issued recommendations regarding the appropriate scope of support. The proposals that have attracted the most attention and controversy concern restricting universal service support to a single connection to the network, in contrast with the current rule, which provides funding to an unlimited number of providers for an unlimited number of connections. These issues are complex, and I will let the Joint Board recommendation speak for itself, but briefly I think the primary-line concept warrants further consideration. I am concerned that universal service support was never intended to fund an unlimited number of connections, and I also believe that proceeding on the current path will eventually strain the fund to its breaking point. So I would like to further develop the record on proposals to modify the scope of support. I am sensitive to the needs of rural carriers that have invested in reliance on the current rules, and I have worked hard to ensure than any proposals will take this issue into account.

These are just some of the “hotter” issue we are addressing at the Commission. As you can imagine, it’s been quite a busy year and will continue to be. I appreciate your attention and if time allows, I would be happy to answer any questions you might have.