

**Luncheon Remarks by
FCC Commissioner Kathleen Q. Abernathy**

**Regulating Wireless: How Much and By Whom
AEI-Brookings Joint Center for Regulatory Studies
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Thank you, **Bob**, for that kind introduction, and also thanks so much for inviting me to speak with you today. I am so happy to be here, because I want to applaud the AEI-Brookings Joint Center for the very valuable work you do in helping us all understand the impact that regulation has on consumers. The Joint Center's primary purpose is "to hold lawmakers and regulators accountable for their decisions." During my tenure as an FCC Commissioner, I have become accustomed to having all sorts of people looking over my shoulder (mother, brother, husband), and the thoughtful analysis you bring to the work you do is welcome indeed!

Your conference today on the appropriate scope of wireless service regulation is particularly timely. Currently, the California PUC is actively considering adopting a detailed set of new consumer protection rules – a "Telecommunications Bill of Rights" – that would apply to all telecommunications service providers in that state, including wireless carriers. And other states are waiting to see how things play out in California.

Today's topic also calls on us all to consider the broad implications of regulation - when does it add value to the consumer experience or in contrast, when does it simply add unnecessary costs? Discussing this topic today provides me with the opportunity to step back from the heat of individual proceedings and think about core principles. I will offer you my personal views on the best ways to maximize consumer welfare in the wireless marketplace of today, but first I think it's important for me to spend just a few minutes outlining the core beliefs that guide me on issues that come before the Commission.

Guiding Principles

Having worked in prior lives both at the FCC and in the private sector on telecom policy issues, I have had a lot of time to think about these matters, and I have crafted a five-point regulatory philosophy. In my time as a Commissioner, I have found it extremely useful to remind myself often of these basic principles. Some of you may have heard this before, so please bear with me through this brief summary because it provides the backdrop for my wireless remarks today.

- First, since Congress sets out the core policy objectives in the Communications Act, the FCC's principal role is to implement the law, rather than to pursue our own policy preferences. We should adhere closely to the statutory mandates, because when we don't, the appellate courts do not hesitate to reverse our

decisions. Such reversals cause tremendous regulatory uncertainty, which can be devastating for any business trying to navigate through turbulent economic waters.

- Second, my experiences in the public and private sectors have convinced me that fully functioning markets do a better job of maximizing consumer welfare than regulators can ever hope to do. Marketplace forces prompt firms to innovate and to offer better services at lower prices. Therefore, unless structural factors prevent markets from being competitive, or Congress has established non-market based public policy priorities, I believe that the FCC should be reluctant to intervene in the marketplace through prescriptive regulation.
- Third, when the FCC does promulgate rules, we should ensure that they are clear and we should enforce them vigorously. We should not adopt rules that we are not prepared to enforce. Efficient markets depend on clear and predictable rules, and a failure to enforce rules undermines the agency's credibility and effectiveness.
- Fourth, we should be humble enough to recognize that, no matter how dedicated and knowledgeable our staff is (and I could not be more proud of the skill and dedication of the FCC staff), we cannot possibly amass the depth and breadth of knowledge that exists in the industries we regulate. Therefore the FCC should constantly be reaching out to consumer groups, to state regulators, to our regulated industries, and to trade associations and other organizations so that we can maximize the amount and quality of the information available to us in making decisions.
- And finally, I believe that the FCC should always strive to act like the service-based organization that it is. This means that we should act in a timely and fully responsive way, because there is nothing worse for business than regulatory uncertainty. As a government agency that serves the public, the FCC should provide the same degree of responsiveness and effectiveness that is expected of any organization in the private sector.

In essence, I've concluded that the force of an efficient marketplace is generally more effective than regulation in prompting firms to offer better services at lower prices. When dealing with a well-functioning market, regulators can do the most good when they simply allow the market to work to its best effect. Under these circumstances, maximizing consumer welfare demands that regulators resist adopting prescriptive regulation, and act only where structural barriers to competition exist, where legislation or overriding policy priorities require it, or where market forces fail to protect the public interest.

The Wireless Experience

So let's move on to the wireless work. The wireless industry, and in particular the mobile wireless sector, is a shining example of what a well-functioning market can achieve when it is not hindered by unnecessary regulation. The FCC reaffirmed in its recent annual report on the state of wireless competition that the industry has continued to show significant growth despite a difficult economic environment. More specifically, we found that in 2002, the wireless industry continued to innovate, offered a wider variety of service offerings, and increased the availability of its services, all while reducing the prices charged to consumers. The wireless industry by all accounts is a hotbed of competition, demonstrating how market-based solutions can best served customers. Because of competition, per-minute prices for mobile calling have dropped steadily for nearly a decade, declining 76% since 1994 – 30% in the past 3 years. At the same time, carriers have invested over \$126 billion in their networks, thus improving service, creating jobs, and spurring economic growth.

Perhaps most significant, there is no dominant provider in the wireless sector. Instead, with the FCC applying a light regulatory touch, vigorous competition has produced a marketplace with six nationwide operators and several major regional providers. Wireless carriers have nimbly responded to consumer preferences, and as a result, the public has increased its use of and reliance on wireless networks for basic voice communications, for news and information through Internet services, and even for entertainment.

How Did We Get Here?

To what can we attribute the tremendous success of wireless growth? Certainly, technological developments over the past decade have played a major role, giving us digital communications, higher bandwidth, smaller devices and longer battery life, and helping to spark increased demand. But I also think that the decisions of a decade ago to refrain from imposing burdensome regulations on this expanding industry contributed to the explosive growth of wireless.

Now for a little bit of history. In 1993, Congress amended the law regarding commercial mobile services. Up until then, cellular carriers were subject to state certification and tariff requirements. The new law preempted the states from regulating in those areas, and teed up for the Commission a key decision: whether to apply the heavy hand of strict Title II common carrier regulation on the wireless industry. Some argued that price regulation, service quality controls, and mandated technologies were necessary to protect consumers and promote competition. However, the Commission – correctly, in my view – judged that the costs of traditional common carrier regulation would outweigh any benefits, and chose not to burden the wireless industry with rules on pricing and the terms and conditions of service. The Commission largely freed wireless services from regulation.

In two key areas, however, the Commission did decide that the marketplace required regulatory intervention: First, in order to ensure that new entrants using PCS spectrum would be able to take root, the Commission imposed, at least initially, a spectrum cap; and second, it adopted strict technical rules to prevent carriers from interfering with each other.

The 1993 law gave states an opportunity to petition the FCC for permission to continue to regulate rates charged by wireless carriers. A number of states did so and the Commission was forced to grapple with these petitions. I was working in the wireless industry at the time, and I can recall the economic studies that were conducted at that time to assess the effects of state regulation on consumer costs. These studies found that state regulation of wireless services actually harmed consumer welfare, impeded market forces and increased consumer prices significantly. The FCC – rightfully, in my view – ultimately concluded that the statutory conditions for allowing state regulation were not met, and denied all of the state petitions that were filed.

As a consequence of these decisions, the marketplace for wireless services was allowed to develop freely, and wireless consumers now enjoy unparalleled choice in calling plans, innovative services, and dramatically lower prices.

A competitive marketplace, however, does not mean that our job as regulators is complete. In several instances, the Commission has required wireless carriers to take up several public policy priorities that markets typically would not address.

A good example is E-911. Over 150,000 times a day, someone uses a wireless phone to call 911 to save a life, to stop a crime, or to help someone in need. In the mid-1990s, the Commission adopted a two-tiered approach to improve wireless E-911: first, it required wireless carriers to provide dispatchers with a call-back number and the location of the cell site receiving the 911 call; and then it required wireless carriers to provide the precise location of the wireless 911 call. The E-911 proceedings have been arduous and implementation has presented technical challenges – but my colleagues and I are deeply committed to ensuring access to emergency services and the wireless industry has responded to this challenge.

Another example involves our decision to ensure that digital wireless phones are available for all Americans, including the hearing disabled community. In this situation, we were driven by congressional mandate, not market forces. The Hearing Aid Compatibility Act set forth the goal of ensuring access to telecommunications services for individuals with hearing disabilities. In our recent action, we concluded that technology had developed to the point that it was appropriate to require wireless phone manufacturers and service providers to modify handsets so that individuals with hearing disabilities could access digital wireless phones. So this is the wireless world of today. The question for ongoing debate is whether more regulation is necessary.

Is More Regulation Necessary?

Before jumping to any conclusions, we must first take into account the current state of the market itself, then identify any problems that exist, and only then can we determine whether a better outcome will result from regulation, or from letting the existing market forces work their will. The *real* question, therefore, is whether *current marketplace* failures compel us to adopt additional regulation.

Unlike the duopoly cellular market of 10 years ago, today's wireless industry is intensely competitive. Carriers compete on price, on service, on handset choice and on applications. It seems that new applications and services are being introduced constantly, and all the while rates for wireless services have been falling sharply.

And wireless services are more pervasive than ever. According to the Commission's recent annual report on competition in the commercial wireless industry, over 140 million Americans now subscribe to mobile wireless services, up over 60% in just 3 years. Consumers are relying more and more on their wireless services, with the average monthly minutes of use up from 185 to 427 over the last 3 years – an increase of 230%. Consumers are increasingly using wireless networks not just to make voice calls, but to send messages, to surf the Internet, and to take and transmit pictures.

With this explosion of wireless services, consumer expectations are higher than ever. As consumers, we expect service to be available when we want it, we expect our phones to work even when dropped on the ground repeatedly, and we expect our calls to be completed and not dropped. We also expect to be treated fairly and to know what we are buying. Let me first address the issue of service quality and then turn to the customer rights issue.

Surveys have shown that concerns about service quality and coverage top the list of consumer complaints. As a wireless consumer, I know how frustrating a dropped call or dead spot can be. As a regulator, however, I recognize the physical realities of providing a service that relies on the use of radio frequencies. It is self-evident yet occasionally forgotten that radio signals can be blocked by hilly terrain, excessive foliage, and tall buildings, or zoning prohibitions and that propagation distances are finite. That is why for most consumers today wireless is a supplement to their wireline service, not a substitute.

As a regulator, I also recognize that in an industry as competitive as the wireless sector, market forces have driven greater value to consumers than regulatory fixes. The competitiveness of the market forces service providers to respond to their customers' expectations. Specifically, carriers race to build out more robust networks and compete on the basis of service quality. We've all heard Verizon's "Can you hear me now Campaign." This is a classic example of how providers will strive to improve their services to differentiate themselves from competitors' offerings. In light of such competition, I believe that imposing regulation of service quality in the commercial

mobile service sector not only is unnecessary, but would risk freezing technology at a specific point in time and diminish the benefits of head-to-head competition.

In addition, we must recognize that regulation by its nature imposes costs, creates unintended consequences, and restricts competitors' abilities to respond quickly to consumer demand. Regulations take a long time to enact, and it takes even longer to change them. And I have never believed that regulators are in a very good position to predict the twists and turns of the marketplace. Even market experts sometime find their crystal balls a little cloudy.

In contrast, markets are set up specifically to react to current conditions. When consumers are unhappy with their service – and with 140 million subscribers, there are certain to be valid complaints – they can and should complain. In a competitive market, and especially one in which firms incur steep acquisition costs for each new subscriber, carriers have every incentive to keep their subscribers happy by providing high-quality service and top-notch customer care.

Ultimately, of course, customers can and do vote with their feet by changing carriers – The industry's 30% annual churn rates indicate the degree to which consumers walk away dissatisfied. We know based on data released today that the introduction of wireless number portability has increased customer choice and created even greater flexibility for consumers.

So when I ask myself what characteristics define today's wireless market I'm left with: Intense competition, no dominant player, multiple service and pricing options, and a customer base willing to walk. Fundamentally this is the stuff of a well-functioning market.

We are fortunate that the current wireless marketplace offers a classic example of carriers' self-interest coinciding with the public interest. I believe that, when these stars align, we in government should be very reluctant to add more layers of regulation, particularly when wireless carriers are continuing to invest billions of dollars every year to increase network coverage and expand their capacity and service offerings. This is good for consumers and good for our economy. Rather than imposing unnecessary compliance costs, we should be doing what we can to encourage this on-going investment.

Some would respond to this position by saying "What are you going to do about consumer rights?" Well, I believe that, in a competitive market, regulators can best foster consumer welfare by focusing their efforts on education and enforcement. Only educated consumers can reap the benefits of a highly competitive marketplace. We need only look at what the marketplace has achieved on its own to know the power of an informed consumer. For example, as nationwide wireless carriers extended their footprints into rural areas and began to advertise their services nationwide, rural residents became better informed about the available choices and began to demand better prices and greater choice. As a result, rural markets have quickly become associated with the nationwide

market for wireless services, and consumers in rural markets now have access to the same services at the same prices as consumers throughout the rest of the country.

To be sure, wireless service choices can be complex, and consumers often can be overwhelmed and under informed. That is why both the industry and government have a responsibility to help ensure that consumers have access to the information they need to make intelligent purchasing decisions. This is no different than ensuring consumers are properly educated when making other major purchasing decisions, such as a car or a dishwasher. So I am very pleased that the wireless industry has established a voluntary Code of Conduct, and that all of the major carriers have committed to following it. I also expect many of the smaller carriers will follow their lead. Ultimately the Code will educate consumers about wireless service offerings. And, the better educated the consumer, the more they will be able to get better value and service. At the end of the day, the industry's willingness to implement a voluntary code of conduct reaffirms the decision by the FCC ten years ago to avoid costly regulatory oversight. This Code exists because competition is driving wireless carriers to better serve consumers and increase customer loyalty.

The Commission also is doing its part to provide information to wireless consumers. Our Consumer and Governmental Affairs Bureau has published a handbook – which is available on the FCC website (www.fcc.gov) – to help consumers understand wireless service and how to assess competing service offerings. Along the same lines, a section of my office webpage titled “Focus on Consumer Concerns” is devoted to offering helpful and up-to-date information to consumers about issues that directly impact them, such as E911, hearing aid compatibility, phone bill charges, and telemarketing practices. Because of my strong belief that the FCC is and should be a service organization, I regard providing useful information to the public as one of my basic responsibilities as an FCC Commissioner.

The States' Role

Now, as to the role that state regulators should play in protecting wireless consumers, once again I fall back on my general regulatory philosophy and find it equally applicable. Unless there is some overriding public policy priority that is not market driven, such as E911, state regulators should trust competitive market forces to deliver value and choice to consumers. Therefore, regulatory efforts should focus on facilitating consumer education without imposing prescriptive regulations. That is why I have serious reservations about at least one version of the California consumer rights regulations under consideration today. Regulation such as this invariably imposes costs, some of which cannot be predicted. And it is reasonable to assume that costs imposed on an entire industry will be passed on to consumers without delivering any increased value.

It's also important to recognize that the market for mobile wireless services has become increasingly a national market. To efficiently provide a nationwide service, carriers create billing and customer care systems that cross state lines. And it is efficiencies such as these that have enabled wireless carriers to reduce rates year after year.

Especially in wireless markets that cross state lines, I have to question the wisdom of enacting disparate regulatory regimes to govern the relationship between wireless carriers and their customers. Congress has expressed an intent on numerous occasions to achieve substantial national uniformity over the operation and regulation of wireless telecommunications services.

The FCC's light regulatory touch in the early 1990s, coupled with the 1993 budget act's preemption of state regulation of wireless rates and entry, ushered in a period of huge investment in wireless infrastructure, adding jobs and increasing productivity across the economy. And today, the wireless industry is poised to unleash a new generation of services that promise additional consumer benefits.

Before launching a new round of regulation – with the potential for 51 distinct sets of regulatory obligations – I believe we should first ask ourselves, what problems are we trying to fix and are we adding any value? Enacting a patchwork quilt of state wireless consumer rights regulations may very well result in greater consumer confusion and frustration. Although it is tempting to believe that additional government intervention can only improve the landscape, I believe sometimes less is more. So I offer an alternative course of action; one where government regulators continue to inform and educate consumers; one where health and public safety mandates continue to be driven by the government; and one where competitors battle fiercely for each and every customer through innovative and creative service prices, bundles and packages.

So, I thank you for the opportunity to speak with you today, and if we have time, I'd be happy to take a few questions. Thank you very much.