

*Adjusting to New Realities*

**Remarks by FCC Commissioner Kathleen Q. Abernathy  
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Thank you for inviting me to speak to you today. This Conference's focus on convergence and adjusting to the new realities and opportunities that convergence provides is particularly timely. Over the twenty plus years of my career, the telecommunications market has changed dramatically. When I first started in the telecommunications industry, almost all of the world's telecommunications markets were characterized by large monopoly carriers – which resulted in few choices and high costs for those consumers who were lucky enough to obtain access to basic phone services. Throughout the 1980s and 1990s, many countries, including the United States and Canada, began to privatize and liberalize their telecommunications markets, resulting in the creation of a competitive telecommunications marketplace. This market transition was driven by globalization and the creation of the internet.

Today, we are the next plateau and it's time for regulation to catch up with technology. Regulators, must figure out whether to put a square peg into a round hole – or whether to try to create a square hole; whether to fit new regulations into an old framework or whether to create a new framework. In the US today the new broadband technologies do not fit easily into any of the current regulatory categories. So we have to figure out how to adapt their regulations so as to encourage, not stifle, the further development of innovation and competition.

I suspect other countries face similar challenges. We find ourselves working with regulatory statutes and laws based on concepts and boundaries that fit the technology of ten years ago. However, a decade or so later, it no longer makes sense to place services into distinct regulatory categories depending on the identity of the provider. In a world where different platforms are used to provide functionally equivalent telecommunications services, regulators must harmonize distinct regulatory frameworks. We need to develop more flexible regulatory structures that are centered on the fulfillment of core social policy objectives, and less bound up with arcane service categories or labels – like telecommunications services versus information service or data service versus voice service. The challenge is formidable, however, because the FCC and many regulators of other countries are constrained by a legal framework that was written before the recent technological explosion.

The good news, however, is that new technologies and services provide regulators with the perfect opportunity to promote more competitive markets. To the extent new service providers are competing for customers with others, regulators can worry less about having to address the potential for anti-competitive conduct by incumbent service

providers. One of my main goals as a regulator has been to encourage infrastructure investment thus creating choices for consumers. Where the FCC has seen success is where we had multiple providers all competing for the customer's loyalty. This has allowed us to place our trust in the market to deliver benefits to consumers. For example, in the wireless and broadband area consumers have enjoyed a high degree of innovation, high quality service, generally declining prices, and a choice of providers.

When deciding how to craft a regulatory framework for these new services I have applied what I refer to as the Nascent Services Doctrine. This doctrine sets forth a presumption against extending legacy rules, which were written for incumbent-dominated markets, to newly developed services and technologies that, not surprisingly, are not dominated by incumbent providers. Instead, I believe we should foster the development of such new services in a minimally regulated environment. The existence of multiple providers should allow regulators to relax the legacy rules applied to incumbent providers and allow market forces to level the playing field for new services and technologies.

The United State's wireless industry provides a perfect example of the flexible regulatory scheme that I have just described because it demonstrates what a well-functioning market can achieve when it is not hindered by unnecessary regulation. Back when the FCC developed the rules for our wireless industry, the FCC considered imposing heavy regulation, such as price regulation, service quality controls. We rejected such an approach and instead allowed market forces to govern pricing and service terms. This approach worked because we had multiple competitors and a largely untapped customer base

Today, the U.S. wireless industry is a hotbed of competition. Vigorous competition has produced a marketplace with five 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.

The FCC is extending this light touch regulatory approach to other areas where the market can support multiple facilities based providers. For example, in the broadband arena, in addition to cable and DSL service offerings the US has available Broadband over power line technology that enables internet service through power lines, so it holds tremendous promise for extending broadband outreach. In deciding how to regulate this new market the FCC sent the right signals to the market. We resisted efforts to impose traditional economic regulations designed for monopoly providers because we wanted to give this nascent service room to develop. In fact, I doubt that there will ever be a need to impose heavy regulatory obligations on a nascent platform such as BPL.

In the past few years, the United States also has seen an explosion of services using unlicensed spectrum – such as Wi-Fi “hot spots” in homes, offices, coffee shops, hotels, and many other settings. In these settings, where the FCC again imposed only light regulations, the user is not guaranteed exclusive use of the spectrum, and the FCC places limits on transmission power, transmission method, and usage etiquette. However, the technology is thriving – so much so that the FCC is allocating more spectrum for

unlicensed use, hoping that the development of several new technical standards could dramatically extend the range and robustness of wireless broadband services.

I am not, however, advocating complete freedom from regulation when it comes to broadband. There are certain core social policy goals that are not market-driven and probably cannot be achieved without governmental urging, and perhaps mandates. A regulators' job is to account for concerns that the market does not address, such as universal access, access to emergency services, providing services for people with disabilities, and security concerns, among others.

As we look at our regulatory successes and failures, what lesson should we draw? It seems clear that when the FCC applied a light regulatory touch where there were multiple viable competitors, where we found the courage to resist calls for increased management of the marketplace, competition has thrived, innovation has flourished, and consumers have been the beneficiaries. By contrast, overregulation in the wireline arena has drawn all providers – incumbents and competitors alike – into a downward economic spiral and litigation that has benefited only lawyers.

The movement away from traditional economic regulation undoubtedly will translate into a shift in responsibility for the regulator. We will move away from a rulemaking body to one focused on two main efforts: enforcement and consumer education.

Strict enforcement is essential for any regulatory regime to be successful. Based on personal experience, I know that the United States 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, regulators can tailor their intervention to particular circumstances, thereby allowing markets to operate with minimal regulatory distortion.

There is clearly some tension between the goals of creating clear, streamlined rules and strengthening our reliance on enforcement mechanisms: While refraining from micromanaging 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 regulators commit to strict enforcement of all of our rules, I believe we will only end up adopting very complex rules only when doing so is absolutely necessary.

In addition, technological advances require regulators to improve consumer outreach and education efforts. Competition delivers tremendous benefits, but it also can

confuse consumers as they are faced with unprecedented choices. Today, with so many service and technology choices, consumers can be overwhelmed and under informed.

Regulators play a vital role in informing consumers of their rights and opportunities so that they can better navigate the competitive marketplace. Education is essential to our ability to regulate in the public interest because only with knowledge can consumers make informed decisions. Therefore, the FCC has engaged in consumer education initiatives including issuing newsletters explaining the affect of our rules on consumers, meeting with various interested parties, to ensure that there views are taken into account as we formulate our rules, and similar endeavors. These types of outreach activities help ensure that consumers do not just have choices, but that they have meaningful choices.

As regulators, we can measure our success by continually examining whether our rules are necessary for reasons such as public policy concerns, or whether the market will address such concerns. To the extent rules are no longer necessary or hinder competition, they should be changed or eliminated. Our goal as regulators should be to create a regulatory framework that encourages the creation of innovation and competition. We must continue to evaluate whether the environment we have created allows competition and innovation flourish. Most importantly, we must consider whether we are serving our purposes as regulators – that is to ensure that consumers have a choice of innovative telecommunication services at affordable prices.

We must persevere to ensure new technology does not get bogged down by old rules, while reforming our role to focus on enforcement and consumer education. We cannot continue to force the new innovations into the old regulatory categories. Instead we must work to create a new framework for the new innovations – a new square hole for the new square peg. Although we have a long way to go, we have accomplished much, and I am confident in a bright future.

In conclusion, I am truly excited by the limitless promise of our converging communications technologies. When we look back at what has succeeded in promoting investment and innovation, it is clear that regulatory restraint is an essential ingredient.

Thank you for allowing me to share my thoughts with you today. I am happy to answer a few questions, if we have time.