***Telecommunications Transformation: How Broadband Networks and IP-Enabled Services Are Revolutionizing Communications***

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Thank you very much for inviting me to participate today. I have been fortunate to serve at the Federal Communications Commission during a time of great transformation. The U.S. communications marketplace — much like in Germany, the E.U., and most of the developed world — is in the midst of a profound migration from analog to digital, and increasingly from digital to IP-enabled services. More and more, network owners are racing to build out broadband networks, over which they can provide integrated bundles of voice, video, and data services. Such networks can consist of fiber optics, coaxial cable, wireless spectrum, satellite connections, and powerline systems, and all of them will be able to support a wide range of IP-enabled services.

This technological migration has significant implications for industry, as well as for regulators. For industry participants, new competitive threats are emerging from sectors that formerly were entirely distinct. For example, telecom carriers face competition from cable operators' voice-over-IP services, cable operators have to contend with telecom carriers' emerging video services, and broadcasters have to deal with the fact that consumers enjoy a multitude of new content options. Regulators also face enormous challenges, because many of our traditional regulations were designed on a sector-specific basis and did not anticipate this marketplace convergence.

What I would like to do this evening is highlight some of the regulatory issues that are posed by technological changes and marketplace convergence, and then discuss the principles I have tried to follow in addressing these issues.

**Regulatory Challenges**

The most talked-about IP-based service is undoubtedly voice-over-IP. But it's important to recognize that VOIP is just one of

many applications that consumers will enjoy over broadband networks. In fact, some of the most intriguing regulatory issues arise from the provision of *video* over IP.

In the United States, one significant debate is whether competitive video services provided over fiber optic networks should be subject to the same obligations as cable television services. Cable operators generally are required to obtain local franchises from local or state governments. As a condition of obtaining the franchise, cable operators must set aside channel capacity for public access, they must commit to serve the entire community, and they must pay a percentage of their revenues to the franchising authority, among other obligations. Naturally, cable operators take the position that new entrants into the video market — typically local telephone companies — should have to fulfill all of the same obligations. Not surprisingly, the new entrants argue that it would impede competition and slow the delivery of new services if they were required to obtain local franchises in every local jurisdiction and meet stringent regulatory

requirements in each. It is too soon to predict how this debate will be resolved. The issue has been raised in individual franchising proceedings, in state legislatures, before the FCC, and in Congress. I expect it will continue to be a major focus for policymakers over the next few years.

Another key question is the extent to which indecency restrictions will apply to content other than broadcast programming. We have an interesting and challenging law in the U.S. Under U.S. law, the FCC is required by statute to prohibit the broadcasting of indecent programming during the hours that children would most likely be in the audience — namely, between 6:00 a.m. and 10:00 p.m. Indecency is defined as material that depicts or describes sexual or excretory activities or organs in a patently offensive manner. Needless to say, there has been a great deal of controversy surrounding the application of this standard. Our Superbowl halftime show involving Janet Jackson and other high-profile incidents made indecency a heated political issue. But it remains very difficult to draw a bright line between what is

indecent and what is not. Some might find any suggestive references to sexuality to be indecent, while others believe the standard should be far more permissive. Some argue that violent content is more damaging to children than sexual content. But there are currently no legal restrictions on the broadcast of violent content. The range of opinions is nearly limitless.

Our task at the FCC is to apply contemporary community standards as objectively as we can. But our focus is strictly limited to over-the-air broadcasting, and it is limited to sexuality, not violence. This is our statutory framework, and it is up to Congress, not the regulatory agency, to decide whether changes are warranted. We also do not regulate content transmitted over subscription cable or satellite services; nor do we regulate Internet content. Many policymakers have begun to question this differential treatment.

Some advocates argue that it no longer makes sense to distinguish between broadcast and other content, because the vast majority of consumers view video programming via cable or

satellite, rather than over the air. These parties argue that we shouldn't continue to regulate broadcast content when most viewers receive their video signals via cable or satellite. Others argue that the government should focus on protecting children from indecent content, regardless of whether it is transmitted over the air, over cable or satellite, or even over the Internet.

But critics of extending indecency regulations point out that the justifications traditionally employed in defense of broadcast indecency rules simply do not apply to subscription services. In contrast to the pervasiveness of free over-the-air broadcasting, cable and satellite services are available only if parents take the affirmative step of paying a subscription fee. Such services also include blocking tools that enable parents to screen out certain programming that they deem inappropriate for their children. In light of the need to subscribe and the availability of blocking tools, cable and satellite operators, presumably joined by the new telephone company video providers, argue that extending mandatory indecency restrictions would not only constitute bad

policy but it would be inconsistent with the First Amendment's guarantee of free speech; while that concern may apply only in the United States, the broader policy debate is universal.

Applying indecency regulations to Internet content would present still further complications. Like cable and satellite, Internet access services require a subscription and also offer parental filtering tools. In addition, policing such content would present a host of pragmatic questions for policymakers, given the open and decentralized nature of Internet architecture. When Internet content is stored on server in a foreign jurisdiction halfway around the world, how can one country's regulator effectively control access to it? While it is possible to block access to a broad range of websites — and some countries such as China do this — you also end up shutting off adults from content and information they may wish to obtain. Thus, even if regulators wanted to police Internet content, it is not clear how we would go about doing so.

While I have tried to highlight some of the regulatory issues that arise in the context of the new video programming

marketplace, it is worth noting that the voice-over-IP debates present very similar issues. Established service providers tend to argue that new VOIP entrants should be subject to many, if not all, of the traditional social obligations, such as the requirement to provide location-capable emergency calling services, which we call E911 in the United States. Some go further and argue that *all* of the traditional phone company regulations — including economic regulations of entry, price, and service quality — should apply. In contrast, new entrants — as in the video context — generally argue for a light regulatory touch, pointing out that many traditional forms of regulation were designed to curb monopoly power, something that is plainly absent in the new market for IP-enabled services.

**Principles for the New Regulatory Age**

So, faced with all of these difficult issues, how should regulators respond? Should we focus on establishing a level playing field by extending traditional regulatory requirements to

new entrants?—by regulating up? If we take this path new video competitors would be subject to franchise-type requirements and indecency restrictions? And should the new VOIP providers be subject to traditional common carrier regulations designed for the monopoly telephone companies? Or, should regulators take a more circumspect approach, refraining from applying many traditional forms of regulation and applying requirements on a narrower, more targeted basis?

My own view is more sympathetic to the latter position — that we should give new platforms room to breathe instead of saddling them with legacy regulatory requirements. This is something I have called the Nascent Services Doctrine. My thesis is that reflexively extending legacy rules can do great harm, and is often unnecessary, because the conditions that justified adoption of such rules may not apply to new entrants. Most importantly, where the justification for legacy rules was an incumbent provider's market power, it is counterproductive to apply such rules to entities that *lack* market power. Regulatory parity is an

important long-term goal, but it should be achieved by lifting legacy restrictions on incumbents once new platforms have emerged, rather than extending those rules to the new platform. This approach is consistent with my experience that fully functioning markets invariably do a better job of maximizing consumer welfare than regulators can hope to achieve. I am encouraged that other regulatory authorities, such as Ofcom, are increasingly endorsing this approach in dealing with IP-enabled services. So where an entity lacks market power, we should focus on ensuring the fulfillment of essential social obligations, like emergency calling services; but we should ***not*** regulate prices and service quality or adopt other forms of economic regulation.

In the video context, the debate is a bit more complex because we are also dealing with content issues. But there are other kinds of regulatory requirements we can forego. For example, I do not believe IP video providers should be subject to the full slate of public access mandates, build-out requirements, or other traditional service obligations. Imposing such requirements

could choke off new investment and thereby undermine the development of effective competition and its resultant consumer benefits. If we succeed in developing new platforms for the delivery of video programming, consumers will enjoy innovative new features, lower prices, and better service. We should not risk the denial of these benefits by insisting on perfect regulatory parity right at the outset. While new entrants should not be permitted to discriminate against low-income consumers, nor should they be required to build-out networks capable of serving all parts of a market simultaneously. Regulations must take account of realistic restraints on capital investment; they must be flexible enough to recognize the risk inherent in becoming a new competitor to more entrenched platforms. Thus, just as I believe that new voice-over-IP providers should be exempt from most traditional telephone common carrier or public utility regulations, I believe that video-over-IP providers should be free from most traditional franchising obligations as they roll out new services.

In time, once new services are established, the question for regulators will be whether the legacy regulatory requirements remain necessary for **any** providers. Some regulations — such as the social policy obligations regarding emergency calling, universal service, and access for persons with disabilities — probably should apply irrespective of the competitive state of the market, because such rules are not market-driven. We adopt them because we believe there are fundamental social expectations, not because we are trying to curb market power. But economic regulations, build-out requirements, and other rules designed to compensate for an insufficient level of competition — these are the sort of rules that should be abandoned once competition becomes more robust. Thus, rather than achieving regulatory parity by extending these traditional rules to new providers, we get there by eliminating the economic regulations altogether.

But what about content regulation. How do we resolve that dilemma. I know from my experience in the U.S. that many

viewers while clearly having choice in the 100 channel universe, also feel like they have lost control. So I do believe as a regulator I should try to figure out the scope of the problem and potential solutions. I tend to believe that giving parents better tools to manage the 100 channel universe is better than attempting to regulate content. That is why the FCC has created a website called the Parent's Place where we provide information on parental controls like the V-chip and channel blocking. We are also working with industry on better navigational tools that direct parents to the kid friendly educational programming that is available today but is sometimes difficult to find.

At the end of the day consumers must be better educated to take advantage of the many new technologies. That is why regulators must shift their focus from an entity that primarily writes rules to one that emphasizes consumer education and enforcement. We need to rethink our regulatory responsibility in the face of the many new technologies available today so that

consumers benefit from better content, more choices, lower prices and a broadband world that improves education and healthcare.