

A Regulatory Framework for Convergence and Competition

An Address by

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It's a pleasure to be with you today to discuss a subject that's very much on the minds of regulators throughout the world in this day and age of digital convergence. It goes by different names at different times: regulatory reform, regulatory restructuring, developing new regulatory paradigms. But whatever name it goes by, it all comes down to the same thing: how best to adapt government *regulation* to the *reality* of new technologies.

The rapid growth of digital technology is driving convergence in telecom services and in the companies that offer them.

Everywhere in today's world we see the evidence of this twofold

convergence, as formerly separate service markets morph inexorably into one another.

Cellphones that began by offering voice telephone service now provide data services like email and text-messaging as well as audio and video programming. Computers that initially provided data services now offer voice telephone service. Cable TV and direct-to-home satellite companies that formerly provided multichannel video service now offer nonvideo voice and data services, and broadcast TV and radio stations are only beginning to determine how to best use their digital channels.

Small wonder, then, that this digitally-driven convergence in telecom technology is also driving the convergence of telecom companies. Converged services make converged companies economically rational and, that is why in the US we are seeing a seemingly endless progression of industry mergers and acquisitions.

What is the appropriate role of the regulator in this new world? We are confronting a world that is developing in ways that were unforeseen and that remain, to a considerable extent, unforeseeable. How do we conform our own structures and processes to this ongoing convergence of services? To what

extent, if any, are the old approaches to telecom issues suitable to the Digital Age? How do we accommodate and embrace changes in technology and economics that have few reference points in existing law or regulation?

All excellent questions, and all these excellent questions demand answers. And yet, the fact that regulators all over the world are asking these *same* questions underlines the wisdom of the old saying that those who understand everything must be misinformed.

For the truth is, no one today can authoritatively say how, or when, the ongoing digital transformation will finally resolve itself. We cannot predict with any certainty how many dominant providers of converged voice, video and data services there will ultimately be, because we cannot finally predict what packages of services consumers will demand and what prices they will be willing to pay. So, while we can perhaps understand some of the reasons why existing markets are changing, we cannot yet say definitively what the ultimate shape of things will be. And the digital transformation will vary from country to country depending on population density, economic conditions, geography, and governmental involvement.

Given all these variables it is impossible beyond a point to say that any one regulatory framework is clearly better than another. For example, even in simpler times when monopolists dominated and broadcasting, cable TV, telephones, and satellites could safely be regulated *along*, rather than *across*, industry lines, debates went on in the US over the proper regulatory framework for telecommunications.

This is not to say that because there are no easy answers there are no answers at all. In fact I think most regulators would agree that new digital technologies hold great promise for delivering greater connectivity and improved economic conditions. Broadband connections can erase distances, dissolve geographic isolation and link citizens to government services.

Therefore, my job and the job of other regulators is to create a regulatory environment that provides incentives for investment in new digital technology and broadband networks and to adjust our regulatory frameworks to accommodate this revolution.

Regardless of whether the regulator is a single person, a board, or an agency convergence and competition impose four important regulatory responsibilities:

The first of these responsibilities is to replace extrinsic regulation with trust in the market. Why, because a fully-competitive market is the best protection against harm to consumers and providers. In the US digital convergence is spurring a level of interindustry competition the likes of which we have seldom seen before. While the growth of competition will vary from country to country the goal should remain constant; that is to gradually step away from micro-managing the industry and trust the discipline of competition to restrain prices and spur innovation. We must adjust, alter, or reform our regulatory codes to dismantle unnecessary rules that may have been appropriate in traditional markets emerging from monopoly but which may stifle innovation and competition in a converged environment.

Regulators must also minimize disparate regulation of like services. This is a particular challenge in the US. The days when television, telephone, and wireless companies competed only with one another rather than across industry lines, led to very different regulatory regimes. This legacy of disparate regulation perpetuates irrational line drawing and represses interindustry competition.

The second responsibility for regulators is to appreciate that increased competition requires us to place more reliance on educating consumers. At the FCC, we have created a Consumer and Governmental Affairs Bureau with direct responsibility for assuring that consumers' interests are being served, and the ability to intervene when they are not.

But what happens in this brave new digital world in individual situations where markets, consumer education, and private negotiation fail to safeguard rights provided by law or regulation? That leads to the regulator's third responsibility: assuring prompt and efficient enforcement of rules. The ability to bring a bad actor to heel is the indispensable element of any responsible regulatory body, at any time, no matter how competitive the market may otherwise be.

And finally we come to the regulator's fourth responsibility, the ultimate safeguard: imposing across-the-board regulation. In today's world, once competition takes hold regulation should be applied only when there is a compelling showing that substantial harm is occurring in its absence.

These four responsibilities are not mutually exclusive: rather, they represent a regulatory continuum calibrated to the

competitiveness of each market we regulate. For example, in the US the wireless industry best reflects the competitive market in which trust in market forces is an effective safeguard of the public interest. Over time, as other US communications markets become more effective, more of them will transition to that regulatory model.

Notwithstanding how common-sense these recommendations might appear, they can be more difficult to achieve than one might think. This is because every single telecom regulator -- no matter who, no matter where -- looks at this new age of convergence through three eyes: an eye on the past, an eye on the present, and an eye on the future.

There's nothing inherently wrong with this. Lessons learned from the past contribute to the development of informed policy in the future, as long as our policy predicates are relevant and we do not refuse to recognize fundamental changes in the market. Similarly, foresight is not to be foresworn, as long as it is trained on avoiding real, as opposed to theoretical, problems. As long as our main focus remains on what exists *today*, a sense of what has occurred and what is likely to occur rightly belongs in, and balances, the regulatory process.

Nevertheless, there is no set recipe for accurately seasoning present-day realities with a dash of the past and a pinch of the future. Small wonder, then, that convergence and competition pose such real-life dilemmas for regulators, and that different countries reach widely varying results when they implement regulatory reform.

But in a larger sense, perhaps this is as it should be. The challenge of assuring that digitally-spawned competition produces the best for people is individual to each country and each culture. Different countries can and should approach these issues somewhat differently, based on their own unique history, perspective, and expectations.

My friend, former FCC Chairman Michael Powell perhaps put it best when he said that competition is a *process*, not a *product*. And if *competition* is a process, so also must be *regulation*. And so it follows that successfully balancing past, present and future is a governmental art form in which we sometimes succeed and occasionally fail, observe others and learn from their mistakes, and share with them our own hard-won lessons.

I look forward to sharing with you what we in the US have learned, and I know I will take back with me valuable insights from you.