

SPEECH OF FCC COMMISSIONER ROBERT M. McDOWELL

**CREDIT SUISSE MEDIA AND TELECOM WEEK CONFERENCE
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Good morning. Thank you for inviting me to speak here today. It's good to be back in New York. I like to get out of Washington as much as possible so I can learn what's going on in the real world. In fact, just last week, I was in one of the epicenters for positive and constructive economic disruption: Silicon Valley. I met with investors and entrepreneurs of all stripes to learn what new opportunities they saw coming over the horizon. I also asked them a lot of questions, such as: what can the FCC do, or perhaps NOT do, to help speed the creation of new services and delivery platforms to meet new waves of consumer demand? And my visit here today to New York, the citadel of capitalism, strengthens my firm belief that the core mission of the FCC is to promote freedom. It's as simple as that.

I want consumers to have the freedom to have their demands satisfied. And I want entrepreneurs to have the freedom to innovate and bring their products and services to market so they can satisfy those consumers' demands. I trust free people acting within free markets to make better decisions for themselves than those of us in government. Free markets and free ideas are the twin cornerstones upon which we have built our free nation. Government should not adversely interfere with the relationships between consumers and entrepreneurs. Rather, government should try to remove barriers to entry and allow competition to flourish.

However, there are times when the government should address market failure so new entrepreneurial ideas have a chance to compete in the market place, and succeed or

fail on their own merits -- and their own merits alone. Any remedies applied to market failure should be narrowly-tailored, and sunsetted, to maximize freedom for all market players.

As you already know, an immensely powerful new wave of consumer demand is dictating business decisions across all media platforms. Consumers want to be able to “pull” the content of their choice through the pipe of their choice anytime and anywhere. Consumers also want to be able to manipulate that content at their discretion and, all the more frequently, create their own content and send it back up the pipe for the world to see. Never have consumers been as empowered as they are today, thanks to brave and brilliant entrepreneurs who dared to smash the paradigms of old. And consumers have responded more brilliantly than anyone could have imagined – to the point where this new wave of demand has become a new wave of democracy. Anyone who tries to frustrate this demand will do so at their own peril.

At the FCC, under Chairman Martin’s leadership, we are working hard on creating even more opportunity for consumers, entrepreneurs, and democracy alike. We are trying to make it easier for entrepreneurs to construct new delivery platforms more quickly. Our policies will also make it easier for the owners of existing platforms to upgrade their facilities. This new surge in capital investment will give American consumers new tools to strengthen their freedom, and all of us will benefit as a result.

Many of you here today come from broadcasting, cable, telephony and other traditional media industries. Changes, such as the migration to digital TV technology and the necessary upgrades to existing systems, already have begun to provide exciting innovations and make capacity limitations a thing of the past. Pipes are getting fatter and

faster. However, competition increasingly will come from new technologies, as both the birth of mobile TV and the promise of the 700 MHz band can attest. In fact, one legendary Silicon Valley investor told me last week that such wireless technologies may end up being more disruptive than the Internet itself.

So, your companies have a choice: they can feel threatened by these new competitive platforms; or they can adapt to this new wave of change and prosper as a result. I realize that this challenge is daunting, but I am confident that the dynamism of the private sector will lead to dazzling displays of adaptation and innovation. You, the marketplace, rather than the Commission, should pick the winners. Currently, we have a full plate of issues before us that may affect the delivery of these new and improved platforms. So, before I take your questions, I'd like to rush through some brief thoughts on a few of the issues we have been working on, such as: the digital TV transition; white spaces; digital audio broadcasting; media ownership; video franchising; and the cable set-top box/integration ban – all before 11 o'clock!

Digital Transition (television)

The Digital Television Transition and Public Safety Act of 2005 (the DTV Act) establishes a hard deadline of February 17, 2009, for the cessation of analog broadcasting. The DTV Act also requires the Commission to begin the auction for the licenses associated with the recovered analog spectrum no later than January 28, 2008, and to deposit the auction proceeds no later than June 30, 2008. In October, the Commission released the Seventh Further Notice of Proposed Rulemaking to begin the final stage of the transition of broadcasters to digital television. The Notice proposed a new DTV Table of Allotments, taking the seventh and final step to complete the DTV

channel election process. We are working hard at the Commission to make the 2009 transition deadline a reality for broadcasters and, through consumer education efforts, for the American public. I look forward to the innovative new programming and services that digital broadcasting will enable local broadcasters to provide for free, over-the-air to their communities.

Also, as a result of the Congressional directives in the DTV Act, the Commission is actively engaged in proceedings that are each examining ways to maximize the efficiency of the 700 MHz band and to increase access to broadband services by American consumers, businesses and emergency response providers. Certainly the auction for spectrum in the 700 MHz band, which must begin by January 2008, is on the horizon, and the Commission is working hard to finalize the service rules for these licensees. The 700 MHz band, the “Park Avenue” of spectrum real estate, holds great promise and roll-out there will inaugurate a new era of opportunity for media entrepreneurs of all stripes. The best part is, the government will not be micromanaging the use of this spectrum. Such important decisions will be left to the true experts and ultimate shareholders in this enterprise: American consumers.

In the meantime, the Commission recently completed an auction for advanced wireless spectrum in the 1710-1755 and 2110-2155 MHz bands. These bands are ideal for the delivery of bandwidth-intensive applications. Auction No. 66 closed on September 18, after 161 rounds of bidding, raising total gross bids of nearly \$13.9 billion. Over one hundred companies placed winning bids, and over one half of those were small businesses. It is important to America’s continued economic competitiveness that the Commission be in a position to grant applications, and release this spectrum to the

winning bidders, as quickly as possible. And we are. In fact, just last week, we issued an Order granting 550 of the 1,087 licenses won in the AWS auctions. This represents \$12.2B of the total net high-bids from Auction No. 66.

White Spaces

At our October meeting, the Commission adopted an Order and Further Notice of Proposed Rulemaking regarding unlicensed operation in the white spaces of the TV broadcast bands. This proceeding starts a chain of events that will lead to an explosion of entrepreneurial brilliance for further unlicensed use of these slices of the spectrum.

I like deadlines, and I am delighted that the Commission has laid down a timetable that will help ensure that consumer products will be available for sale at the conclusion of the DTV transition. In the interim, we are proceeding mindful of the need to protect from harmful interference not only broadcasters, but all authorized commercial and public safety entities that operate in the TV bands as well.

Digital Audio Broadcasting

While we have a solid start on the DTV transition, I hope that the digital transition for the radio industry will be just as rewarding. I applaud the “early adopters” of in-band on-channel (IBOC) technology for taking the initiative and embracing the capabilities of digital radio, particularly multicasting, to provide their listeners with better quality sound and expanded programming options, particularly for underserved and niche audiences. I expect that the service rules and other licensing and operational requirements we are developing will provide both the regulatory certainty and the flexibility that the industry needs to expedite the transition to digital radio and to provide higher quality audio, diverse programming and innovative data services to the public. However, I am

particularly frustrated that it has taken the Commission so long to finalize these rules. I am working hard to spur resolution of issues that some of my fellow commissioners may have regarding IBOC so that the Commission can release a Report and Order outlining service rules as soon as possible.

Media Ownership

As an inventory of any average American household will show, the media marketplace has changed drastically since the inception of the Commission's ownership rules. I, for one, have a hunch that we are no longer in 1975. Clearly, the broadcast industry faces enormous competitive challenges from cable TV, satellite MVPDs, satellite radio, iPods and podcasting, the Internet and blogging -- and perhaps most importantly, the rapidly changing viewing and listening habits of young people -- with more on the horizon. Competition in this space has never been so fierce and chaotic.

At my first meeting as a commissioner, we commenced our latest comprehensive review of the media ownership rules on June 21. As our review proceeds, I look forward to continuing to learn more about competition, diversity and localism in markets around the country from the perspective of people "on the ground" there -- consumers, broadcasters, programmers, artists, economists, academics and so forth. People with first-hand knowledge of the realities of the market are providing us with valuable information on how to go forward with the proceeding.

Our broadcast ownership rules must strike a difficult balance. They must take into account the dramatic changes that have occurred in the media landscape in recent years. At the same time, we must ensure that the rules continue to promote our long-standing values of competition, diversity and localism. We must also carefully thread the

legal needle handed to us by the Third Circuit in the Prometheus decision. Being an incurable optimist, I am confident that we can develop a reasoned approach that resolves the regulatory uncertainty that followed the appeal of the previous order.

Video Franchising

The regulatory issues that arise from a traditional industry's entry into a new business are illustrated by the video franchising proceeding. The proceeding pending at the Commission focuses on how to ensure that local franchising authorities do not unreasonably refuse to award cable franchises to competitive entrants. Legislation proposed on Capitol Hill earlier this year likely will not be passed. In the absence of additional guidance from Congress, we will review the issue carefully and attempt to ensure that competing MVPDs, whether they be traditional phone companies, cable companies, or overbuilders, each has the same opportunity to succeed or fail without the government – any government – putting its thumb on the scale. Any unnecessary regulatory underbrush that can be cleared away will be. And, hopefully, our actions will take place sooner rather than later.

Set Top Boxes/Integration Ban

This year, several cable companies have requested waivers of the Commission's integration ban. My staff and I have been following this issue closely. As all of you know, it presents several extremely complicated technological and policy issues. I understand that the cable industry and the consumer electronics industry are continuing to talk with each other to reach a solution. Also, a group of consumer electronics and IT companies have recently filed with the Commission a proposal for a two-way plug-and-play solution. I hope that innovation and private sector negotiation will provide answers

that are workable for the cable and CE industries. Of course, the best solution for consumers and industry alike would have downloadable security at its core. I strongly encourage a private sector resolution to this challenge.

Conclusion

In closing, I'd like for you to consider an important footnote to all of this: as consumer demand becomes more sophisticated, and as more delivery platforms come online, hopefully, those who create content will face increasing pressure to resolve the challenge of intellectual property protection in the wake of the Digital Revolution. The sooner that Gordian Knot is untied, the sooner we will witness an acceleration of broadband take-rates and a new surge of technological innovation. While intellectual property issues are not at the heart of the FCC's mission or jurisdiction, they silently shadow many of our initiatives like an unhappy apparition. But I firmly believe that competition and technological innovation are the universal solvents for these and other challenges. They help to create and preserve our freedom and, ultimately, help to improve the human condition – and that should be our highest calling. I hope that you, the private sector, will resolve these crucial challenges before the government feels compelled to take a stab at them. Rarely can we do as good a job as you.

Thank you for having me today and I look forward to your questions.