

**REMARKS OF
FCC COMMISSIONER MICHAEL J. COPPS
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Good morning and thanks for inviting me over. I see a lot of old friends out in the audience, some of whom I've had the privilege and pleasure of working with for many years, and I see some new faces, too, and I'm glad to be with all of you. I've been looking forward to this occasion since Dick Wiley first mentioned it to me. My thanks to Dick and his distinguished co-chairs Kathleen Abernathy, Henry Rivera, and Clark Wadlaw. This esteemed group represents many years of senior leadership dedicated to serving the bar association and the public interest. And thanks to the Practicing Law Institute and the FCBA for putting this conference together. It's always an important and high visibility event.

The second week in December typically kicks-off the litany of Year-in-Review shows. And while I don't expect to see myself, or dare I say anyone here, starring in "The Year in Sports," "The Year in Entertainment" or "The Year in Fashion," my first inclination for today was to present a look back at the year that was in telecom, to review our accomplishments, and where, perhaps, we might have taken a different path. But upon reflection it seemed to me that this would not be the best use of the few minutes we have together. There certainly have been successes this past year as was the case in establishing the Public Safety and Homeland Security Bureau, the completion of the AWS auction, and the opening up of White Spaces. There are other areas where I have great concerns. I worry about the consolidation underway in our media; the need to protect, as Senator Dorgan puts it, Internet freedom; and the real world impact of things like privacy, disabilities access, and universal service in a Title One world. But the truth is that most of the people in this room generally know where I have been on the issues that faced us this past year. If not, a quick check of the FCC website under Commissioners backlash Copps backlash statements 2006 can tell you all that. Therefore our time may be better spent looking to the future in what will in all likelihood be a momentous year at the FCC.

I do believe that 2007 presents us with a moment in time to think anew. Shortly we will have a new year, a new Congress, and a new opportunity to develop ideas for the communications industries that are going to be even more central in determining the future of our country through the first half of the twenty-first century. What can we do to ensure that our citizens, our businesses, and our economy stay on top (or get to the top as the case may be)? How do policy makers make good decisions in a fast-moving, paradigm-shifting environment? How do we create a landscape that really fosters innovation and keeps our country competitive among nations? How do we create an environment of regulatory stability and predictability that helps businesses to make right decisions about the future? And, most importantly, how do our actions benefit consumers? The telecom industry has a critical role to play in all this when you consider its resources, its impact on our daily lives and its entrepreneurial genius. Today, I want to

discuss a few overarching challenges we should address in the year ahead and some ideas on the role the FCC can play in the coming year.

Let me begin with this proposition: a primary goal of the FCC ought to be making its expertise in telecom issues more available and useful to the other branches of government through white papers, reports, and any other forms that could prove helpful. I believe that our agency has a lot to offer in helping other agencies, as well as Congress and the White House, to work through the difficult issues that arise at the congested crossroads of policy, engineering, economics, and law. The FCC certainly has the talent to achieve this goal. While oftentimes the folks who occupy offices on the eighth floor grab the headlines, it is the 2000 or so talented employees in the agency who make things go. I know the Chairman and all my colleagues are committed to making the FCC the best it can be. The health of our communications industries and the well-being of consumers can only benefit from this wider sharing of Commission expertise.

One example of where the FCC can play a larger role is public safety. How do we mobilize the great power of our communications and broadcast and information systems to serve the safety and security of all our people? Now I know many of you have heard me talk about the importance of homeland security and public safety over the years, but I think it merits inclusion in today's discussion because the safety of the people must always be the first and foremost responsibility of government. We are now over five years since the tragedy of 9/11 and over a year since Hurricane Katrina, and we know this: America is not as ready as it could be and should be for the next attack or natural disaster whenever that awful day should come.

Recently, several public safety proposals have surfaced that raise important and difficult questions that lie at that intersection of policy, economics, and engineering. These proposals would, in varying ways, authorize innovative public-private arrangements whereby public safety agencies and commercial providers would share the same or adjoining spectrum bands. Now, the problems these plans address are quite real. I certainly don't think there are any real disagreements about the policy objectives here. Everyone understands the need to provide the nation's first responders with interoperable equipment when they charge into a burning building or perform the thousands of dangerous tasks each year that keep us safe. Everyone understands the importance of making sure that these dedicated public servants have the resources and funding they need to keep us – and themselves – safe. And everyone understands that public safety providers must be able to avail themselves of all the extraordinary advances that high-tech companies and commercial providers have made in network architecture and advanced hardware.

But even though there is broad consensus on the right policy objectives when it comes to our nation's heroic first responders, there are still open questions about if and how these recently proposed plans would actually work in the real world. On the pro side, we now have the new Public Safety and Homeland Security Bureau to help us find out. The Bureau brings together a lot of talent and gives that talent focus. Our charge now is to make sure the Bureau has the resources to do the work we're all counting on it

to do. Part of that work is acting as a clearinghouse for ideas and proposals to address public safety—an idea I suggested early-on. Why should every jurisdiction and first responder and health care facility have to start from scratch in devising a plan when others have tried many different solutions, some of which worked, some of which didn't work. If folks could contact an FCC that had this record, think how they could profit from the experience of others. Think of the effort, the time, maybe even the lives, that could be saved. The new Bureau has started down this road, I am happy to report. But to do it right will take resources and ongoing commitment. Here, too, I am looking forward to working with Chairman Martin, as well as my colleagues, to put this agency's unparalleled knowledge of these issues even more at the service of the other branches of government and other stakeholders. Other agencies are attempting to do work that the FCC should be doing and the resulting lack of expertise, coordination and organization that we too often see is helping neither public safety nor the people of this great country.

What I'm talking about regarding public safety would build upon what we have already begun doing in the White Spaces. Again, I think most everyone agrees on the pressing need for new unlicensed spectrum, especially as it applies to the problem of broadband deployment in rural areas. At the same time, I believe that most of us – certainly me – believe in the fundamental importance of maintaining free, over-the-air television, both before and after the digital transition. I am optimistic that existing or future technology can accommodate both goals. I applaud Chairman Martin for setting our Office of Engineering and Technology on the task of working through these complicated issues. I believe the process we have put in motion—a process that draws upon the enormous expertise of private industry when it comes to new technologies—will lead to expanded choices for consumers who, after all, want both clear television signals *and* a new generation of wireless broadband devices.

Let's move now to how we might deploy the Commission more robustly in the area of broadband. Some of you have already heard me say that I believe broadband is *the* great infrastructure challenge of our time. I have talked often about how I see broadband networks as the turnpikes and canals and railroads and highways of the Information Age. This isn't just personal opinion because most of the technology innovators I talk to tell me that, too. And many of these same innovators are mightily worried about the broadband road we're heading down.

The President set out the goal of universal broadband access by 2007. We didn't make it. And the problem is that as a country we had no strategy to realize that objective. We do know this: nearly every industrialized country, except the United States, has a national strategy for broadband deployment. And they're cleaning our clock. The ITU has developed a Digital Opportunity Index that ranks how nations are doing in the transition to a digital world. Your country and mine ranked twenty-first, right after—some of you know what's coming—Estonia and in a dead heat with Slovenia. That's twenty rungs too low when Asian and European consumers are getting broadband speeds of 25 to 100 megabits per second at a fraction of the cost Americans are paying for much less bandwidth. In Japan, not only are consumers getting faster speeds, but according to

one recent report I saw, 80% of fiber-to-the-home in the world is being deployed in that country—not America.

One part of this broadband penetration challenge that doesn't receive as much attention as it should is the need to ensure that we are doing everything we can to foster innovation. According to a report by the National Research Council released this past summer, industry-driven innovation over the last several decades is in decline and the United States' role as the global leader in technology innovation is seriously at risk. The NRC concludes that over the last few decades there has been “decreased industry support for long term telecommunications research and a general shift in research focus from the long term to the short term.” Our companies find themselves operating with tighter margins, and fewer resources are being dedicated to research agendas that may pay out in 20 years instead of 20 months. The NRC also found that federal support has not increased sufficiently to replace the decline in industry involvement. Some may call that scaled back industry effort a saving—I call it a waste.

To be clear, the FCC doesn't regulate innovation *per se*. And I'm not suggesting it should. But I do think we need to be more attentive to the needs of innovation in our Commission analysis and in all of our proceedings. It used to be that the Commission as a matter of course looked at the impact of mergers and acquisitions on innovation, research and development, and the competitive posture of the nation. When a deal is cut and then has to be financed, does that lead to less R&D? That seems to have happened in some other industries—what's happening here? We don't know. We need to know. You need to know. Perhaps it's time for the Commission to start asking these questions again because without innovation and research, there's not much hope that our country can maintain the technology edge that made us the world's greatest power. Nor will there be much hope that we can move up from that paltry Number 21 ranking in the Digital Opportunity Index. That's why we need to better understand the nature of research and development in our telecom industries—who is doing it, how it is done, what factors make it or break it, and how our decisions at the FCC should factor into this. It's important that our decisions make it easier for new ideas to get to market. We need to ask what do Joseph Schumpeter's famed “gales of creative destruction” mean in today's market. We should consider when regulations hurt innovation, and when they might nourish nascent ideas. We should survey history and consider the role research and development play in big companies with large resources. And we should consider the role that scrappy start-ups play. When it comes to innovation, the private sector should always lead the way. But there is clearly a role that government-funded research and development have played in making America strong. And we need to ensure that our policies and proceedings going forward clear the way for innovation and make it possible for new ideas to blossom and to grow.

This isn't about ideology or some simplistic feud between regulation and deregulation. It's about getting a job done for the country—one of the most important jobs we face. And to get a job done right, we need the facts, and then we need to understand those facts. The place to start the Commission's broadband analysis is with the collection of solid, useful, and reliable data on who in this country actually has access

to broadband. Put most simply, how many broadband options does the consumer have, at what speeds, and at what cost? While we may think we know the answer for consumers in most major American cities, we don't actually know what's available in vast areas of this country. No business in its right mind would make decisions based on the weak set of statistics and data that currently constitute our broadband information inventory. Our mission should be to provide Congress and the Executive Branch with the information and analytical tools they need to formulate a national broadband strategy.

I should mention that Section 706 of the Telecommunications Act directs the Commission to encourage the deployment of advanced telecommunications capability—broadband—to all Americans. If the Commission finds that this is not being accomplished in a reasonable and timely fashion, Congress directs us to take action to accelerate such deployment. It has been over two years since the Commission issued its last report. That's just the 706 *report* that I'm talking about, not the deployment action. We don't have that kind of time to get our act together. So I am hopeful that the Commission will begin the 706 process quickly in the New Year. It's our duty under the law to perform this study and we should view it as an important tool to craft our broadband approach. Until we get the right kind of 706 study, we're flying without the fuel that makes for good decisions.

As part of this study, we should look at what other countries are doing. Other countries are not only beating us in broadband penetration—they are beating us in broadband analysis, too. Do you think there might be a connection here? Japan, I am told, does a pretty granular job of collecting and releasing data concerning exactly the types of technologies and broadband services that are available to subscribers in each of the country's 47 prefectures. I propose we go them one better by collecting data on a neighborhood-by-neighborhood basis, maybe even house-by-house. At a minimum, let's commit now to take a far more serious look at what others are doing. I'm not saying we need to emulate what other countries with different economies and cultures may be doing, but let's at least recognize that there are some pretty creative broadband penetration initiatives going on out there beyond America's borders and there may just be a lesson or two in them for us.

We also need to look within our own borders, specifically at what so many towns and municipalities have done to deploy broadband themselves, issuing bonds, entering private-public partnerships, and experimenting in different areas within a city to get the job done. What do these partnerships tell us? Why are some jurisdictions going down this road? With what success? And what lessons does this have for other localities?

So, as these few examples hopefully illustrate, there is an important role for the FCC to play as our nation's communications expert. Of late we have been taken to task for our lack of rigor. In May of this year, the GAO set out to determine the extent of broadband deployment in America. The GAO's principal conclusion: the FCC's "data may not provide a highly accurate depiction of deployment of broadband infrastructures." Why is that? Well, the FCC still hasn't fully completed its divorce from the assumption that if there is a single subscriber to 200 kilobit broadband in a zip code—yes, I said 200

kilobit—then broadband is being reasonably and timely deployed throughout that area. It's like—as someone once told me—finding one driver of a Mercedes in each zip code and concluding, ergo, everyone there drives a Benz.

More recently, the GAO issued another report, this time on special access services. There is no need to read beyond the title to identify its conclusion: “FCC Needs to Improve Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services.” Particularly bothersome was the auditors’ conclusion that “without more complete and reliable data, [the] FCC is unable to determine whether its deregulatory policies are achieving their goals.”

There is some good news. I'm glad to see that we have been making some progress in the current Commission with additional analysis and data gathering for our cable reports and price surveys. But there is certainly more we should look at doing. We have an opportunity to demonstrate our commitment to better research in the media ownership proceeding. I commend the Chairman for recognizing the need for studies, but in some ways the initial notice raised more questions in the public mind than it answered. How were the researchers selected? What instructions regarding content and methodology for the research were provided? What are the costs of these studies? What type of peer review is envisioned? When you consider how roundly the Commission was criticized during the last go-around three years ago for its lack of meaningful research, we should be bending over backwards to be transparent about the research and to ensure that we get it right this time. The answer to whether we will repeat the mistakes of the past will only become apparent in the months ahead.

Now having said all of this, it is no doubt correct that the FCC has not cornered the market on good ideas. The Congress, state and local governments, and the telecommunications industry all have important contributions to make. As I said at the start, industry has the genius, the resources and the incentives to accomplish great things for America. It is certainly the case that many of the important ideas that the FCC eventually supports are first suggested by industry. The opening of White Spaces, reconfiguring the 800 MHz band for public safety, and access charge reform spurred by CALLS are just a few examples of policies where the FCC has benefited from the technical expertise that industry brings to the table. In these types of cases, the FCC's role is really as an honest broker—assessing the proposals that industry brings forth and deciding (in a way that the American people can trust) whether these ideas are in the public interest. One part of our job is to make sure the FCC never stands in the way of progress, while also never defining progress so narrowly that whole classes of stakeholders are left behind.

So by now you may be thinking, “Well that's all fine and good, but you're not a think tank. The FCC's job is to tend to the administration of the statutes and the agency's rules and regulations.” I understand the frustration that sometimes exists over the pace of decision-making at the Commission, and we need to fix that. There is a backlog of long standing and the Commission should realize that business cannot operate with a question mark, as your friend and mine, Fritz Hollings, so colorfully put it. But our duties extend

beyond day-to-day administration of the rules. We are a public agency in a democratic country charged with matters important to the American people and the future of our nation. We have an obligation to think larger thoughts and to provide both the public and private sectors with the best thinking that our 2000 experts can devise. We need to be developing creative options. If we can implement forward-looking initiatives, we should do so. If it is up to others to make a particular decision, we will have provided a public service by enhancing their understanding of the challenges they confront.

At the end of the day, I am optimistic about the Commission and about our future. I firmly believe that the questions you and I are grappling with are the questions that will play a formative role in determining how well our country fares in this still-new century. So I look forward to working with you, with my colleagues at the Commission, with Congress, with other agencies and jurisdictions—surely including states and localities—and with all the diverse set of stakeholders that make up our great country in order to make it happen.

Thanks for your attention, and from everyone at the Copps office, I extend to each and every one of you and your families our best wishes for the holiday season and for a great new year.