

Remarks of Commissioner Deborah Taylor Tate

**Federalist Society
A New Role for an Aging Star:
Universal Service in the Age of Competition and Technological Change
National Press Club
February 5, 2008
As Prepared for Delivery**

Thank you Scott for your kind remarks. I was glad to learn that after reading the title of the remarks today, the first phrase wasn't about me; at least not yet!

It is truly an honor to speak before this august group today. I would like to recognize the Federalist Society for its valuable contribution—since your founding over 2 decades ago--- to furthering public debate on relevant policy issues of the day. By providing an open and informed forum for legal experts of opposing views on a broad range of issues on all sides of the ideological spectrum to interact with members of the legal profession, the judiciary, law students, academic and the architects of public policy, your organization has contributed a great deal to assuring free speech, free debate, and public understanding of the Constitution.

I know we are here today to discuss one of those overarching public policy issues that while may not be on a top 10 for Letterman or most Americans; it probably should be: universal service and the universal service fund. Two distinct topics, I might add.

How timely to be here. However, first I would like to speak for a moment about my own personal regulatory philosophy—one, first honed at the state level as most of you know and continuing on the federal level—and how that philosophy guides me across platforms and technologies, issues and items on the 8th floor. As I look in amazement at the new technologies that evolve literally almost every day, as well as the new innovations to existing technologies; I am in awe what has become known as the American entrepreneurial spirit to innovate, create, and then monetize creativity. Nowhere is this more evident than in the telecommunications sector. From telemedicine to mobile banking, from the use of a cell phone in rural America to place an emergency call for help, to the use of a cell phone in rural China to help poor farmers get the best rice market prices –advances in telecommunications have the possibility to make us healthier, wealthier, safer, more productive –whenever and wherever we are-- the benefits are seemingly endless. This was the topic at your annual convention when the Federalist Society hosted an excellent panel that included Ambassador David Gross and my colleague Commissioner McDowell where they discussed these incredible changes in technology.

As I consider the proper role of regulatory policy in this dynamic and ever-changing world, I am reminded of a simple fact that regulators often ignore: We will not know – and cannot know – where the market will take us next. And when one tries to predict the future, even the experts often get it wrong. A generation ago, who would have expected that a device the size of a pack of cards could hold more processing capability than the Apollo spacecraft, that this device could be taken almost anywhere, and that it could provide mobile telephony, Internet access, and even television

That is why I have tried to develop a regulatory philosophy, which calls for, first and foremost, regulatory humility. I look to and especially encourage the industry to put forward market-based solutions whenever possible whether regarding moving through the digital transition or negotiating program carriage. I recognize that most of the consumer benefits we see in the communications sector of the U.S. economy are directly related to the significant levels of competition—versus regulation--- and to our deregulatory policies that have encouraged investment and thus fostered that competition.

Of course, I also understand the need for regulation, if and when there is a clear market failure. Such market failure is probably less common in communications markets as compared to other sectors, but we should not assume that it does not exist, and we should acknowledge that market failure may at times occur as new competitors appear, sometimes in most unlikely forms.

At the same time, we should not assume there will not be “government failure,” such as when we adopt rules and regulations that we intend and expect will benefit consumers but, in the long run, do not in fact do so. As members of the Federalist Society no doubt understand, policymakers, like businesspeople in the market, make mistakes, too and also aren’t bashful to let us know when we do! This is partly because we have may have imperfect information, which is another reason why your input is so very necessary.

We should welcome advances in technology and changes in the market. They are reminders that, in today's world, change is the only constant. This is all part of what the economist Joseph Schumpeter called "creative destructionism" – destroying entrenched business models and technologies through innovative vehicles to create value, whether in goods or services, for consumers.

At the same time, certain technologies are converging, allowing us to do more things with the same old wire or radio waves, or with the same device – whether communication with family, sharing in-depth research with a colleague halfway around the world, or for entertainment—the movie theater that now resides in the palm of your hand, or a mobile communications device that is a personal banking institution.

International

Several of the implications of innovation, convergence and disruptive technologies are of particular importance, and find they are the topic of discussion among my international colleagues wherever I go.

Recently I was in Geneva for final negotiations at the World Radio Conference (WRC), discussing issues such as the spectrum allocation for 3G and 4G services. The rules adopted there will allow new services to enter the market and will also protect incumbent services from interference, and they are coordinated by countries from around the world. Again, reiterating what a converged and connected world we now inhabit. As I meet with my counterparts from all over the world, I am reminded that our countries are wrestling with many of the same issues. From my colleagues such as

Chairman Shehadi of the Lebanon Telecommunications Authority, who is trying to rebuild the bombed-out infrastructure of his beautiful land with next generation technology; to bilateral negotiations and encouraging the opening of more markets to American companies (especially with the upcoming Olympics) with Vice Minister Xi of the Chinese Ministry of Information Industry; or hearing of Brazil's universal service plans by Anatel and the Ministry of Communications in Brazil which will hopefully enable people along the Amazon to be connected—and facing many of the same difficulties we have regarding similar, remote regions of our country. One of my own personal initiatives—and one that is shared by many leaders—has been to foster an international conversation regarding online child safety, even being discussed at the ITU level. In our conversations, both official and personal, we shared themes of developing our economies in an increasingly competitive and globally interconnected environment, and adopting policies that incentivize and encourage the development of future technologies, with minimal government regulation.

Wireless

Another timely discussion for today is the explosion in wireless services. If we want new and innovative wireless services, we thus need to make this critical input available, and under the right set of rules. The good news is that, when it comes to spectrum policy in the U.S., we are headed in the right direction. With the successful licenses (90 megahertz of spectrum in the Advanced Wireless Services) (AWS) auction the current 700 MHz auction (62 megahertz of the 700 MHz Band)-- spectrum that some have referred to as “beachfront” property. I am pleased to report that the auction reached nearly \$18.6 billion in bids after the 26th round last Friday. The 700 MHz

Band is part of the DTV transition, which in total will make 100 megahertz of spectrum available both for consumers – in the form of innovative new services as well as our public safety and first responders who are still facing many problems relative to true interoperability. Like you, I am following all the news and remain hopeful that the auction will result in maximization of the spectrum and benefits beyond our imagination as consumers.

DTV Transition

Because the DTV transition is one of the most significant technological revolutions in television history, I try and include a brief discussion regarding the benefits of this DTV transition, (so let me do a short commercial here as well) which, by law, will take place all in one day, February 17, 2009. I applaud the industries that are partnering with all federal entities to provide outreach. For example, the cable industry has pledged \$200 million for a consumer education campaign, and broadcasters have pledged almost \$1 billion for a similar effort, which they estimate will generate 98 billion impressions on the DTV transition. All consumers – and this means all of us – need to be informed and I strongly commend the excellent DTV website to you all www.dtv.gov.

Broadband

Another overarching issue that is critical to all policymakers, and especially to the Commission, is promoting access to broadband. Connecting to the Internet at broadband speeds means connecting to the world – *literally*. The Internet can, with the click of a mouse, take our children on an educational adventure – to the Louvre or the Library of Congress, on an exploration of the Great Barrier Reef or the Great Wall of China. It can help promote civic

participation by adults—such as online voting being piloted in Switzerland; and increased access to healthcare for families as I saw in Alaska, positively impact worker productivity, and even help create virtual employment opportunities during this downward economy or in the case of a pandemic.

In the U.S., we have opted for a light regulatory touch for broadband service provided over cable systems, telephone lines, power lines, and wireless platforms, which helps ensure what we refer to as a level playing field – technology and platform-neutral regulation, no matter the technology or business model. A light regulatory touch promotes vigorous competition, and last year the number of broadband connections in the U.S. by all these competing providers increased by 61 percent, to 82.5 million lines.

According to a report from NTIA released just last week American's use of broadband technology has soared: home broadband usage has risen substantially over the past six years, from 9.1 percent of households in 2001 to 50.8 percent in 2007. Rural America has also experienced impressive growth from 5.6 percent of rural households in 2001 to 38.8 percent in 2007.

No surprise that the fastest growing portion of this market is wireless, where our technology-neutral approach to policy has allowed technologies based on CDMA and GSM to compete head-on. The mobile wireless market has produced dramatic results, with wireless providers employing a quarter million people and generating annual industry revenues well over \$100 billion. Most notably from this competition, there are over 240 million mobile subscribers in the U.S. who use over *two trillion* minutes every year. As the competing mobile technologies offer high-speed Internet access with, for example, EDGE and EV-DO, we see the exciting opportunity to offer

broadband service to more and more of these 240 million mobile subscribers.

The U.S. has the most broadband connections in the world, and virtually all of our schools have high-speed Internet connections, and have had them for a number of years—my state of Tennessee was the first to connect every school to the internet. At the same time, we can and should improve broadband access to more of our citizens.

Less-populated states and regions should not be left behind. In this regard, I especially want to highlight public/private partnerships, such as “Connected Nation,” a non-profit organization that coordinates governments, communities, businesses, and service providers to identify supply and demand conditions and tailor services to unmet needs. Through GIS mapping of areas without access to broadband, Connected Nation outlines a “business case” scenario, identifies barriers to consumer adoption, and helps develop plans to build out broadband services. I’ve found that most public policy issues are never solved entirely by the government. That is why I generally believe in market-based solutions and in creative approaches, such as public/private partnerships, which converge at the intersection of technology, consumer needs, and proven business models – all of which is “in the public interest.”

Universal Service Fund

Finally, since we are here today to hear examine universal service, I would like to say a few words about this important issue. As you know, this

discussion is timely, as just last week the Commission issued a Notice of Proposed Rulemaking seeking comment on the recommendation of the Federal-State Joint Board on Universal Service regarding comprehensive reform of high-cost universal service program. The Commission also incorporated two other NPRMs into this Notice: one which seeks comment on rules governing the amount of high-cost universal service support provided to competitive eligible telecommunications carriers, including elimination of the “identical support rule”; and the second which seeks comment on whether and how to implement reverse auctions as the disbursement mechanism for determining the amount of high-cost universal service support to ETCs serving rural, insular, and high-cost areas. By the way, comments are due 30 days after publications of this notice in the Federal Register. Reply comments are due 60 days after publication of this Notice in the Federal Register so we welcome your input!

Incidentally, I would like to take this opportunity to recognize all of the Joint Board members for their commitment to the in-depth study of the complex issues related to universal service and to making decisions in the public interest. Certainly, all of the Joint Board members deserve praise for their commitment to the in-depth study of these complex issues, their desire to positively affect public policy and to make decisions in the public interest. They should all be commended for their commitment to serve on the Joint Board in addition to their full time positions as government officials.

History

In accordance with the process envisioned by Congress in the 1996 Act, in 2002 the Commission asked the Joint Board to review certain rules related to

the high cost universal service support mechanisms and recommend any reforms to the Commission to ensure that these principles are advanced. The high cost fund is the largest universal service program, and the one most often thought of when someone refers to universal service.

As a commissioner, I have been clear about my commitment to the key tenets of universal service: to promote the availability of quality services at just, reasonable and affordable rates, to increase access to advanced telecommunications services throughout the Nation, and to advance the availability of such services to all consumers in the U.S., no matter where they live. Some of you may disagree with the need to continue to fund a universal service fund when most areas of the country have multiple platforms and players; however, as long as it is on the books, I want to do all I can to reform and transform it to meet its goals in an efficient, fiscally responsible and technology neutral manner.

I have seen and experienced firsthand the opportunities provided by universal service in very rural areas. I remember the day the telephone wire was rolled up a gravel road to my grandmother's house in rural Tennessee – likely an impossibility without a universal service program. At the same time, in my roles at the Commission and on the Joint Board, I have a fiduciary responsibility to preserve and advance the Universal Service Fund to best serve the public interest and to insure its viability and sustainability.

While I support the principles of Universal Service, I also recognize the need for fundamental reform especially as this relates to the provision of services in high-cost areas. We must recognize how technological changes are putting strains on the mechanics of our contribution and distribution

systems. The high-cost support mechanism alone has grown from about \$2.6 billion in 2000 to approximately \$4 billion in 2006, placing significant pressure on the stability of the fund. This growth has largely been due to increased support provided to multiple competitive eligible telecommunication carriers (CETCs).

The Joint Board's Recommended Decision is a common sense, practical, first step toward more fully implementing universal service reform.

I support the recommendation to eliminate the identical support rule. I also agree with the Recommended Decision that reverse auctions could certainly offer advantages over current high-cost distribution mechanisms. The Joint Board sought and received numerous in-depth comments and several creative proposals for reverse auctions, and I look forward to exploring this issue further. I have been one of the proponents of examining whether some type of cost-based mechanism is an appropriate replacement methodology for calculating support for CETCs in high cost study areas. Again, a public fund that allows payments in areas determined to be high cost in the first place, based on embedded wireline costs versus for instance, much less expensive wireless costs, probably would not meet most federal funding guidelines.

Some Concerns

Nonetheless, some of the recommendations raise questions that need to be addressed in more depth. I especially question whether it is prudent to create three new government-administered funds instead of reforming the existing ones, which are already growing at untenable levels.

We must more clearly target and direct the funds than is done at present, as Congress in Section 254 of the 1996 Act specifically intended to assist Americans who live in “rural, insular and high cost areas.” Like most citizens I know that when the government starts creating new funds, more often than not it ends up impacting our pocketbooks. We must not forget that it is the consumer who ultimately pays universal service contributions, every single month, and thus any increase in the size of the Universal Service Fund will raise the burden on consumers.

Moreover, does it make economic sense to provide ongoing support for three services that ultimately compete for the same customers? Indeed, this Commission has worked to help ensure technological and competitive neutrality in communications markets, that is, to the extent possible, all providers of the same service must be treated in the same manner regardless of the technology that they employ. For instance, the Commission has adopted the same regulatory approach for broadband Internet access service provided over cable systems, telephone wires, power lines, and wireless platforms, to help ensure a level playing field among competing platforms.

I also believe that many questions remain with respect to two of the new funds: the Broadband Fund and the Mobility Fund. Should these new funds be more targeted, limited to unserved areas or used to enhance substandard service and/or to provide continued operating subsidies? What is the source of funding for the proposed \$300 million and when will it accrue? How should the proposed Broadband Fund relate to other current existing government programs such as those administered by the federal Department of Agriculture, the many broadband bills that are currently pending in Congress, and the hundreds of state and local projects that have already been

undertaken with state and local taxpayer dollars? While we all support the expansion and deployment of broadband to every corner of this Nation, we must do so in a way that is coordinated, efficient, targeted and fiscally responsible. Again, as stewards of public funds, we must remain mindful that it is consumers who ultimately pay universal service contributions, and any increase in the fund size will increase the burden on consumers.

Since I arrived at the Commission, in addressing reform of universal service and the myriad of other issues that come before us, I have worked hard to promote the public interest by balancing the interests of consumers and service providers while facilitating the transition to a more competitive environment.

In addition, I have dedicated much of my professional life to public service—addressing issues important to consumers—but especially to children and families. At this time in our Nation’s history, the Commission must be focused on our responsibilities relative to national security and homeland security. I have and will continue to do all I can to support those efforts. In addition, to being competitive globally, the FCC must do all we can to encourage broadband deployment so that no one is left behind. Our rural healthcare pilot project, commitment to universal service and e-rate are important priorities for me. And, I hope to continue other important efforts regarding my work in the media programming and content arena. More specifically, knowing the pervasive impact which media can have in our lives—especially upon our children—I have tried to influence the media toward more positive messaging and recently served on the Joint Task Force on Childhood Obesity with several members of Congress. I continue to be active and supportive of educational programming for children, studying the

effects of violent programming on children, improving tools for parental control and especially the raising the dialogue here and internationally regarding Internet safety. I hope to continue working with my colleagues and Congress to further enhance these goals for all Americans.

In closing, I want to again thank the Federalist Society for its good work. Mostly I want to encourage you, and all those who care about the quality of our public policy, to stay engaged in these kinds of debates. What you do matters. We need leading-edge thinking to keep up with leading-edge innovation. Not because we need a new regulation for every new technology, but precisely because we need to know what the appropriate policy framework should be in this dynamic, transformative world. With your help, we can create a policy framework that provides effective incentives for the investment and competition that ultimately benefit consumers. I look forward to continuing this effort with all of you.