

Remarks of Commissioner Deborah Taylor Tate
to
The European Institute
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First, I'd like to thank Joëlle Attinger and the entire staff of the European Institute for the opportunity to speak with you today, and Sean Murphy for serving as our moderator. I am delighted to be joining, and want to extend a warm welcome to, Martin Donnelly, Senior Partner in the Office of Communications – Ofcom – the Federal Communications Commission's sister agency in the United Kingdom. I have been fortunate to have previously met with other Ofcom colleagues – such as Mike Goddard, who I met at the 2007 World Radio Conference in Geneva, and Peter Philips, who I met at the Aspen Institute this past August – and I have always found these meetings, whether official bilaterals or more informal forums, to be incredibly informative and productive.

Mr. Donnelly has been asked to speak on the challenges facing regulators in a global market, while I have been asked to address the challenges facing regulators here in the United States, plus offer a few thoughts on the current state of the Transatlantic dialogue on telecom policy.

With regard to this latter point – dialogue across the Atlantic – nothing could be more important in this age of rapidly changing and highly uncertain markets, certainly even more timely today, and I'm not just talking about Wall Street. The U.S. telecommunications market is vast and expanding, with revenues of \$1 trillion in 2007, while worldwide telecommunications revenues were \$3.3 billion last year. And like financial institutions, the valuations of telecom companies rise and fall based on a number of factors, including the underlying market conditions and, yes, often our regulatory frameworks and even individual decisions

I have been a consistent advocate of dialogue across nations to promote a better understanding of different regulatory frameworks. Whether the discussion is with the 15 members of the West Africa Telecommunications Regulatory Association, CITEL in Latin America, the European Regulatory Group, or the ITU, we all share so much in common, especially the need to formulate policies that effectively promote investment and competition in the communications sector.

My Regulatory Philosophy

Before I discuss the challenges we face as regulators in the U.S., I'd like to describe my personal philosophy I bring to the Commission. First and foremost, I believe in regulatory humility. By this I mean that government does not have all the answers and we thus should, whenever possible, look to and especially encourage industry to put forward market-based solutions to our most pressing public policy problems. Especially in this dynamic industry of communications, most of the consumer benefits we see are directly correlated with significant levels of competition. Our deregulatory policies have helped facilitate this competition across platforms, spurring investment, lowering prices, and most of all, benefiting consumers. In just the last year, telecom carriers invested over \$70 billion in infrastructure. We have deregulated – for example, we have unleashed video competition across platforms through our video franchising rules – and in other cases we have applied our forbearance authority regarding outdated or unnecessary regulations.

Of course, I also understand the need for regulation, if and when there is a clear market failure, or when there are important social obligations, such as E-911. 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. 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 which, in fact, have unintended and sometimes negative consequences. Today's news reiterates how repercussions emanate from government failure at oversight. One good way to help minimize such unintended consequences is to consistently practice regulatory humility.

Another core facet of my philosophy is the recognition that Washington, DC does not have all the answers to our policy challenges. In fact, many great solutions can and will come from elsewhere. Whether these sources are the private sector or our colleagues in other nations, we must remain open to solutions that work.

Guided by this philosophy, I believe government should set the rules and then get out of the way, allowing our societies' brilliant entrepreneurs to innovate and create the communications services consumers demand. Nor should our rules pick winners and losers, but simply create the conditions by which these innovators can enter, compete, and serve consumers in the market. This is why I consistently argue that our rules must be technology neutral.

So now for a few of our many important challenges and issues:

Changing Economic Conditions and Business Models

If policymakers ever had a doubt that the market is too complex and too dynamic for any few people to get their hands around, the current economic debacle should disabuse them of this notion.

Even those who are paid by their stockholders to wisely invest in this industry do not always see where the market is going. Only a little more than two decades ago the top executives of the Bell Telephone Companies – the wireline incumbent – saw little value in their newly acquired wireless licenses. Why should they? The money was in the fixed services. Back then, one consulting team estimated that by the year 2000 there would be 1 million mobile telephone subscribers, but who could have foreseen where the market was going? The estimate of 1 million subscribers by 2000 was only off by a couple orders of magnitude, since by that year there were almost 100 million mobile subscribers! And the growth didn't stop there. Today, there are over 260 million wireless subscribers in the U.S., compared to about 160 million wireline connections.

This is just one of many examples of the best minds – in industry, in academia, and in government – not really knowing where the market is heading. It also is further proof that our rules must be platform and technology neutral. Technology will change. Business models will change. Even our language will change, as new words become a

common part of our vocabulary – like Google and SMS. Regulation also will have to change, so as to ensure that we do not limit new technologies and business models.

Broadband Deployment

The goal of broadband deployment across our nation is shared by every member of the Commission, Congress, and the President. The same is true in other nations – for remote communities in the Amazon jungle, for tiny African villages, or for farm families in the Chinese countryside – since we all share this goal of connecting our citizens. This issue has motivated much of my work with my colleagues in the U.S. and abroad, most recently including my trip to Ghana for the West Africa ICT Conference.

I know advancing broadband deployment also is a priority in the U.K. Your nation consistently scores high in the OECD broadband rankings, most recently (as of year-end 2007) ranking 11th in the world in broadband per capita, and fourth in the world in total number of broadband subscribers. These are impressive statistics. In addition, regulatory policies in the U.K. have allowed for important experiments in new ways to provide broadband. For example, British Telecom now offers broadband over power lines, including IPTV.

While much has been said about the U.S. in terms of broadband per capita – which the OECD ranked at 15th in the world – this analysis did not consider a number of crucial factors. For example, the Phoenix Center, a U.S. think tank, concluded that the OECD report does not consider differences in the size of households across nations, but this is a critical factor when comparing nations based on the number of broadband connections to homes. Nor does the OECD report count Internet access that is available via the thousands of hotspots and libraries in the U.S. – but when it comes to hotspots, the U.S. leads the world with over 60,000.

While much work remains to be done, our deregulatory policies have played a key role in promoting deployment thus far, with impressive results. For the last 12-month period we have recorded, ending mid-2007, broadband connections increased by more

than 50 percent, to over 100 million lines. More than 99 percent of the U.S. population lives in zip codes where a provider serves at least one customer. Virtually all of our schools have high-speed Internet connections, and have had them for a number of years, thanks in large part to the E-rate program. Broadband via DSL is available to 82 percent of the households that receive service by a local exchange carrier. Broadband via cable modem is available to 96 percent of households that receive cable television. And more recently, wireless providers are competing vigorously to demonstrate that LTE or WiMax may be the technology of choice in the near future. Mobile wireless broadband made up more than 35 million broadband connections in the U.S. last year, more than a third of the 100 million total broadband connections.

Universal Service

The Universal Service Fund is a critical component of our efforts to deploy broadband across the U.S. As a former Chairman of the Tennessee Regulatory Authority – representing the first state to connect all of its schools to the Internet and that relied upon universal service e-rate funds as a supplement in providing technology to the neediest schools – I understand what a critical role the USF plays, especially in high-cost, remote and insular areas. Now, as Chair of the Federal-State Joint Board on Universal Service, I recognize that reform is needed to ensure the sustainability of the fund. We cannot continue to provide support to multiple carriers – in some areas up to 14 carriers – based on the higher capital costs of wireline infrastructure.

Following the Joint Board’s recommendation, the FCC has made positive steps toward reform, in particular by curbing the explosive growth in the support provided to competitive eligible telecommunications carriers by capping their support at their March, 2008 state-by-state levels.

Nonetheless, it is critically important that we develop a long-term, comprehensive policy for universal service funding. We are considering a reverse auction process to direct support in high-cost areas to providers that can most efficiently serve those areas. This competitive process may provide a competitively neutral means of controlling the

growth of the fund while ensuring that universal service benefits the most underserved areas in this nation. I believe that the introduction of a pilot program could be a viable option to “test” whether reverse auctions are an efficient and effective means of providing support. Whatever method or mechanism is adopted, it must be technology neutral, transparent, explicit and subject to stringent protections against waste, fraud and abuse.

Roaming

Another issue of importance to regulators, service providers, and consumers in the U.S. is roaming for mobile telephone services. The U.S. has taken a generally light-touch approach to its roaming rules over the past two decades, encouraging carriers to reach commercial agreements. In 2007, we revised our rules in order to further encourage carriers to build out their networks in areas where they hold spectrum licenses. We continue to consider these rules, with the goal of ensuring facilities-based competition as well as the ability for consumers to be able to communicate wherever they roam.

While the U.S. roaming market is unique in some ways – for example, we have had both CDMA and GSM carriers, which has limited the number of potential roaming partners – I recognize that Europe also is struggling with this issue. The dynamics of negotiating roaming rates across independent nations certainly presents its own set of challenges for regulators in the E.U. Nonetheless, no matter which side of the Atlantic we’re on, we all collectively face the policy challenge of establishing rules that promote investment, competition, and ease of roaming.

DTV Transition

I never give a speech without mentioning the DTV transition in the U.S., which will take place in one day – February 17, 2009. Last month the Commission successfully transitioned a test market – Wilmington, NC – and now all of the FCC commissioners are traveling across the nation promoting DTV awareness. In the past two weeks, I have been to Memphis and Alabama, and I just returned last night from Atlanta, as we partner

with broadcasters, cable, satellite service providers, and also numerous non-traditional entities to ensure no one is left behind in the digital television transition.

I also want to congratulate my colleagues in the U.K, which has successfully transitioned to all-digital broadcasting. You have provided us with some great insights, yet another example of the benefits of effective dialogue. Several months ago we held a video conference between Ofcom experts and the FCC staff and learned valuable lessons prior to starting our own DTV transition efforts.

Public Safety Communications

One very positive result of the U.S. DTV transition is that it has made available over 100 megahertz of prime “beachfront property” spectrum for commercial and public safety use. In January 2008, the Commission auctioned a portion of this spectrum, in what was the most impressive spectrum auction in U.S. history. We assigned over 1,000 licenses and raised over \$19 billion for the U.S. Treasury, money our government desperately needs these days. In addition, we established rules for a public/private partnership for a commercial licensee to provide broadband service for the benefit of public safety, using the D block license in the 700 MHz band. Ultimately, our goal is to provide access to a nationwide, interoperable broadband network for the benefit of public safety.

Because the D block license did not sell in our last auction, the Commission has been reconsidering our original rules in this critical matter affecting the safety and lives of all citizens. To better learn about public safety communications by those who actually will use and benefit from our decisions – the men and women in the field – I have met with, toured and sought input from public safety service providers in a number of jurisdictions across the nation, including New Orleans, New York, San Francisco, and Washington, DC. These communities have invested millions of taxpayer dollars and have already embarked on creating interoperable networks. I believe our rules should provide incentives, not disincentives, for early build out. Those public safety entities that already are deploying – whether funded by local, State or Federal tax dollars – should not be penalized for their leadership.

Unlike the U.K., which already has an impressive, nationwide communications network that is available for public safety, the U.S. has many disparate networks that accommodate devices across multiple spectrum bands, which in turn makes interoperable communications a serious challenge. This is the result of many factors, such as our geographically vast nation with dispersed population, our generally federalist system of government that has worked so well in other areas, and much more. But now, as we work to promote access to a truly interoperable, nationwide communications network, we must ensure that our rules meet the specific needs of local public safety providers on the ground, such as robustness and survivability, coverage and penetration, spectrum efficiency, and operating and capital costs. This is one of the Commission's most serious responsibilities.

Protection of Children

Throughout my career, first as a State official and now at the Federal level, I have tried to be a voice for children and families. Often, this simply means using what in the U.S. we refer to as the "bully pulpit" to encourage industry to step up to the plate and provide parents with the tools they need. In some cases, regulation is appropriate, such as in the protection of our children from online predators.

Many of the global discussions in which I have participated over the past three years involved children's issues; including not only online safety but also unhealthy products advertised on children's television, as well as the increasing levels of violence, coarse language and sexual content during hours when children are watching television.

Certainly parents have a responsibility to parent and are the first line of defense for their families, yet in this world of pervasive communications and constant bombardment of messages, parents cannot do it alone. What was once described as a "virtual world" is now our children's real world – 24/7. The average teenager spends 16 hours per week online – that's in addition to hours spent watching TV. A 2007 Pew study shows that 28% of teens have created their own blog.

In addition, given that 10 million children in the U.S. are obese or at risk of becoming obese – a true health epidemic – and given that they watch 22 to 28 hours of television a week, media and advertisers must be part of the discussion and solution. Again, the U.K. has an important lesson to share regarding this national health issue. They are implementing a policy that will, starting January 1, 2009, limit marketing of unhealthy food and beverages to children under the age of 16.

Efficient Use of Spectrum by Federal Users

While I have been speaking about the Federal Communications Commission's policies, let me say a word about our sister agency that also is involved in telecom regulation, NTIA. This agency oversees spectrum used by all federal agencies, from the Department of Defense to the Department of the Interior, from the Department of Justice to the Department of Agriculture. Recently, NTIA's Commerce Spectrum Management Advisory Committee made recommendations for improving the efficiency of Federal spectrum management. One recommendation under consideration is implementation of user fees for federal spectrum use. This practice reflects policies regarding other resources provided to federal agencies that are not free of charge. The argument is that such fees provide incentives for increased efficiency in use of this valuable and finite spectrum resource.

The U.K already requires that government agencies, not just the private sector, pay for spectrum use, in a practice known as Administrative Incentive Pricing (AIP). This model has encouraged efficient and innovative use of spectrum among government agencies in the UK. Moreover, it has given government agencies incentive to share their spectrum with other agencies as a means of reducing agency cost. For example, UK Defense, Aviation and Maritime agencies, which hold over half of the government's spectrum, are currently looking at ways to share part of their spectrum with other agencies. I look forward to hearing more about this from Mr. Donnelly.

Conclusion

Thank you again for the opportunity to participate in the European Institute's Transatlantic Roundtable on Telecommunications, IT and Media Policies. The dialogue between Europe and the United States on policy issues such as telecommunications is one of the strongest and most productive in the world. In particular, Ofcom and the FCC have had many opportunities to learn from each other, and it is my intention that we will make every effort to continue to do so. We seem to be on the receiving end at present!

It is our solemn responsibility to promote the most effective and efficient telecommunications policies possible. In this increasingly dynamic telecommunications market – which is too big and too complex for any industry leader to fully master, let alone any government official – it is critical that we all do what we can to learn from each other. I look forward to continuing the dialogue and the sharing of great ideas, to benefit all our citizens.