

# **Communications Policy: Issues And Opportunities For The Next Administration**

Remarks by Commissioner Deborah Taylor Tate  
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## **Introduction**

Thank you very much for the opportunity to address the Georgetown Center for Business and Public Policy. It is a pleasure to speak with you here at Georgetown, an academic center of excellence in our Nation's Capital, at a particularly exciting time in Washington. I would also like to extend my personal thanks to Professor John Mayo, for inviting me to campus this afternoon.

First, I would like to discuss the regulatory philosophy I have followed throughout my tenure, including my time as the director of State and Local Public Policy at Vanderbilt University, through my work with two governors of Tennessee, and as a state commissioner. I will also provide an overview of the considerable work the FCC has done to promote broadband, touch on some major issues that have been of particular concern to me, in particular child online safety and piracy, and address some of the major challenges before the FCC today and for the next Administration moving forward.

## **Philosophy of Regulation**

My guiding philosophy is essentially pro-market. This requires, first and foremost, regulatory humility – something I have tried to practice, both as a state

regulator and now a federal one. This means recognizing that Washington does not have all the answers. Thus, I look to and especially encourage industry to put forward market-based solutions whenever possible. I recognize that the majority of consumer benefits in the communications markets are directly related to the significant levels of competition those markets enjoy, and to deregulatory policies that have encouraged investment and thus fostered that competition. Considering that most of my professional career has been at the state level, I have consistently tried to remind my colleagues and Congress that our government is indeed still one based on federalism and that the Telecommunications Act clearly envisioned states having an important role in implementation.

Prior to the creation of the FCC, states had the primary responsibility for consumer protection and rights of way. They negotiated with providers, and being on the ground level, are the ones who truly know how competition and services are being provided. Whether working with local public safety officials or state e911 directors, mayors or governors-- I have tried to bring a unique perspective that I truly hope will continue to be heard and considered by the next commission. A perfect example of this is broadband, where creative public private partnerships and providers work closely at the local level in achieving real results rather than a top-down approach.

### **Children's Issues, Global Solutions**

Throughout my professional career, my focus has always been on improving the lives of families and children, and now, through my work at the FCC, around the world. Whether through encouraging childhood immunizations, fighting to end childhood obesity, or promoting more positive content in the media, I believe that the next generation is depending on us to prepare a safe and steady path for them to travel into adulthood. It is important to stress that these issues are not confined to America, and must be addressed globally.

To that end, as Commissioner I have had the great privilege to travel around the world and act as a strong advocate for these issues. I just recently returned from the high level council meeting of the International Telecommunications Union cybersecurity initiative in Geneva where I had the opportunity to launch the first child online protection initiative at a global level as part of the ITU's Cybersecurity Initiative. Among the issues discussed were the borderless nature of cybercrime, and the exponential increase of child pornography on the Internet – a multi-billion dollar per year industry worldwide, the rising threat of cyberbullying – an estimated 41% of children have been bullied online, and the highly disturbing proliferation of child trafficking – children being bought and sold online for sex.

At the ITU forum, and in the many other countries I have had the privilege to visit, I have continually stressed that we must all work together to develop solutions to the threats our children face online. Coordination among nations is vitally important

because the internet connects and touches us all -- and all of our children. In addition to government and law enforcement initiatives, our private sector partners have been, and must be, active participants as well—developing voluntary, self-regulatory, technological solutions. In this age of convergence, all telecommunications sectors, from wireless to wireline, to media companies, must continue to work together to share, to build, to discuss, and to take action to ensure the online safety of children around the world.

### **State of the Economy**

As we consider the appropriate role of government and regulatory action, we must note the obvious fact that we are enduring economically arduous times in America. Alan Greenspan has said that the current financial crisis in the U.S. is likely to be judged in retrospect as the most wrenching since the end of the Second World War, and last week, the National Bureau of Economic Research confirmed that the U.S. is mired in a recession that actually began a year ago. According to Moody's Economy.com, 81 percent of the nation's 381 largest metropolitan areas are in an economic recession and 35 states are in recession, with more at risk. The NBER stated that the recession was due in large part to the decline in jobs that began that month, and recent statistics illustrate this: unemployment is at 6.7%, up from 4.4% just 20 months ago. This figure may be hard to comprehend in real terms, so let's put it this way: A half million jobs were lost in November alone, with was a six year high according to the Bureau of

Labor Statistics. And if you are lucky enough to have a job to go to, your house may be in jeopardy. Right now, America's home prices are down a fifth, and more decline is expected, according to the Economist. So this is probably a good time to be in school.

## **The Promise of Broadband**

In the midst of the present economic downturn gripping our nation and the world, there is a bright spot on the horizon – American technology and the American entrepreneurial spirit, especially in the communications and technology sector. In particular, one cannot overstate the amazing promise and growing potential of broadband. More than ever, broadband is crucial, not only for the ICT sector and continued investment—but crucial to e-commerce, e-health, e-education and even “e-green” energy efficient initiatives so all of us can be more productive.

Why is the availability of broadband so important? Further broadband deployment will have significant economic effects. A study by Connected Nation estimated that increased availability of broadband across the U.S. would have a positive economic impact of \$134 billion. However, our focus goes far beyond positive revenue. Broadband connections are the backbone of our nation's 21<sup>st</sup> Century economy and will play a central role in assuring that Americans compete on a global scale—no matter where they live.

With broadband, the click of a mouse allows an adult to attend class at a university across the nation while still holding a job across town. As evidenced by the recent presidential campaign, broadband is increasing civic participation, allowing an array of voices and views, especially energizing young adopters to become engaged. Entire new businesses and business models have appeared - an entirely new advertising industry has developed online, from almost zero ad dollars spent on online ads in the 2004 presidential race to over \$100 million spent for the 2008 presidential campaign. And the global impact of broadband will go from \$6 million in 2008 to approximately \$1 billion by 2012. Who knows what business model will develop in the white spaces.

Broadband has had a dramatic impact and has brought remarkable growth here in America—now at 100 million lines—and we continue to see additional benefits through online innovation. The growth of teledentistry, telepsychiatry and even telesurgery have made the physical distance between a provider of medical care and the patient immaterial – allowing rural families and communities better access to healthcare. I have seen firsthand how broadband enables this kind of empowerment, bridging the gaps for those who are the most physically isolated, from Appalachia to Alaska.

I was especially pleased that the private corporate sector has joined together in issuing a “call to action” for President-elect Obama and the 111th Congress “to make the development and initial implementation of a comprehensive National Broadband

Strategy a high national priority in 2009.” The call to action, signed by 57 companies and organizations -including network operators such as AT&T, Inc., Verizon Communications, Inc., and the National Cable & Telecommunications Association; content and service providers such Google, Inc.; and network neutrality proponents such as Free Press and Public Knowledge - lays out a framework for a “comprehensive national broadband strategy,” but leaves for future decision the specific policies that would fill out the framework. The signatories, who have often been on opposite sides of broadband debate, said they would continue to work together and would hold an event in the spring “to present more specific policy recommendations to President Obama, Congress, and the American people.” I have recently met with members of the Obama transition team, and earlier this year had the opportunity to attend the Aspen Institute’s 2008 Conference on Communications Policy, which will also present the new administration with a blueprint for the future, stressing the future of the economy and the transformative capabilities of the ICT sector and potential of a national broadband network to better the economic and social welfare of our country – even more important in the months ahead.

### **What is the governments and specifically the FCC’s Role in Promoting Broadband?**

In the past ten years, the FCC has deregulated, where possible, to help clear the regulatory road to ensure that broadband is deployed quickly and efficiently. But when

there are important social goals, government can also play a role to help ensure that all our citizens have access to advanced services. For example, we used the E-Rate program to help wire America's schools, and Chairman Martin has proposed extending the Lifeline/Link-Up program to broadband services, in order to allow low-income individuals and families the same advantages as other Americans, just as the Act envisioned regarding voice communications of past decades. Before I discuss current developments, I would like to review a few of the steps the FCC has taken to enhance investment and opportunity over the last decade.

### *Deregulation*

The past ten years could be called the decade of the Internet. Although it had shown its importance by the year 2000, it has grown from a luxury to a necessity in that time. In addition, the sheer size of the Internet has grown; today, YouTube alone uses more bandwidth than the entire Internet did in 2000. How did we get here? I think the classification of broadband as an information service is a logical starting point. When the Supreme Court upheld the FCC's determination in the *Brand X* case that broadband provided over cable networks is an information service, thereby remaining unregulated, a door was opened for the Commission to expand this classification to other methods of providing broadband. We extended this to DSL service in 2005, broadband over power-lines in 2006 and wireless broadband in 2007. By removing the strict Title I



legacy obligations from these services, the Commission took a great step toward the unencumbered deployment of broadband.

I believe this deregulation has led to continued and substantial—billions of dollars—in investment, both cross-platform and cross-sector. Ensuring that companies continue to roll out new fiber is of the utmost importance. Applications and devices will drive demand, and more and more capacity will be needed in the future, and we must continue to incent carriers to continue to roll out and upgrade their networks.

We have also tried to create more choices for consumers, both by streamlining the local video franchising process and by banning exclusive contracts; both in all multi-unit dwellings and in the video market, facilitating increased competition and consumer choice. Our aim has been to open markets as much as possible, and we continue to apply our policies in a platform-neutral and technology-agnostic manner to all technologies.

### **Rural Health Care Pilot Program**

I would be remiss if I did not mention another historic Commission action: the *Rural Health Care Pilot Program*. Today, this is no longer a proposal but one that will effectively distribute \$216 million over the next 3 years to telehealth projects, and I commend Chairman Martin for his leadership and efforts. During my tenure, I am pleased to have served as the Federal Chair of the Joint Board on Advanced Services, and in this role had the opportunity to organize the first national summit in Silicon

Valley to highlight innovative broadband practices and innovations across the country. At this historic meeting, attendees were treated to an insightful live demonstration of a telehealth application by the California Telehealth Network, a pilot program recipient, which was a vivid example of the direct impact the program is already having, as well as its broad potential for the future. This will also encourage and enable the continued adoption of EMR-electronic medical records so that literally your records can be accessed by multiple and widely dispersed providers, and by patients. Again, more efficient access and use of healthcare services in the end saves tax dollars.

### **White Spaces**

At our last Open Meeting, the Commission voted to open up the so-called “white spaces.” “White spaces” represent the unused portion of spectrum on the bands presently allocated to TV broadcast operations. This item helped us move towards modernization and more effective use of unused portions of the spectrum, and advanced us on a path to facilitate use of the white spaces for new wireless services, including broadband services, for all Americans. Indeed, these are revolutionary times in an evolutionary industry, with the promise of yet unseen devices on the horizon. Many visions exist for how unlicensed use of the white spaces will evolve, but evolve they certainly will. It is my hope that the item we voted will help facilitate the deployment of unlicensed devices and services that will enable consumers to enjoy more television programming than ever before, and that will allow families to transfer

and network information, photos, and much more across multiple devices, technologies and platforms in their homes. Similarly, communities of users may find they are able to communicate seamlessly through mesh networks rather than traditional phone lines.

When considering the item, I strongly recommended that the FCC set aside a specific portion of this spectrum *now* for rural backhaul. However, the majority chose not to do so, but did issue a Notice of Inquiry. As someone who has consistently championed the interests of rural America, I will continue to stress the critical need for rural backhaul – which is only assured to grow in the near future and will be a necessity to truly revolutionize broadband in our rural areas – and hope that the next administration recognizes its potential and gives it the attention it deserves. We currently have the opportunity to create this revolution, both with rural backhaul, and with meaningful reform of the Universal Service Fund. Again – the white spaces provides another example of how government can provide leadership, champion new technologies, set reasonable rules and then get out of the way and let entrepreneurs and technology launch entirely new service devices and business models – hopefully jumpstarting this sluggish economy.

### **Universal Service Reform**

During my time at the Commission, I have had the privilege of serving as Federal Chair of the Joint Board on Universal Service, and the privilege of working with industry and academic experts like Professor Mayo. From holding national hearings to

participating in forums at the state and local level, to testifying before Congress, I have tried to outline and champion meaningful reform of the Universal Service system. A month ago, we issued a Further Notice of Proposed Rulemaking on the Chairman's USF and Intercarrier Compensation reform proposals, as numerous members of Congress, industry, and state and local officials felt it was prudent to seek comment on the proposal. I applaud the Chairman for putting forward a wide-ranging, comprehensive plan, and am also pleased that we put the plan out for comment. While reform remains critical, we did not want to make a decision in a vacuum, or without proper APA procedures and needed insight to the very real impact of reform. I felt confident that we would be able to start down a path of meaningful reform this month. I continue to believe there is a great deal of bi-partisan consensus, both among industry as well as my colleagues at the FCC. While I would still like to have the opportunity to vote on a plan this year, it is my sincere hope that the next FCC continues to build on the efforts of Commissioners both at the state and federal level have made, and the consensus that has been built. Professor Mayo and I share many of the same goals regarding Universal Service reform, and recently served on panel on Capitol Hill where there continues to be more and more interest from both sides of the aisle. We both agree that reform should include moving toward making subsidies explicit and transparent, broadening the subsidy base, creating incentives for the most efficient companies, holding recipient entities accountable for deployment goals, and adhering

to sound economic principles, including a rational relationship between government subsidize and real cost – targeting the fund to those truly unserved.

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.

### **Piracy Problems**

While no one can deny that the economic opportunities broadband and the Internet provide, we must be mindful of the substantial economic risk of intellectual property infringement, which has been made easier as a result technological advancements. One huge problem affecting the U.S. economy -- and one the next administration must face -- is stemming the flood of piracy. The numbers are simply staggering. Pirated CD sales outnumber legitimate sales in 30 worldwide markets. Two-thirds of the 20 billion illegal downloads worldwide each year are of U.S. recorded music. That constitutes billions of thefts from U.S. artists, songwriters, and publicists that are being “robbed.” The U.S. Chamber of Commerce estimates that counterfeiting and piracy cost the U.S. economy up to \$250 billion per year. These losses affect the auto industry, software, fashion, and of course, music and movies. Moreover, I want to stress that counterfeiting and piracy are illegal. If you are downloading illegally you may face severe fines.

No longer is this problem focused on one type of media, all digital media, whether it is video, music, software, or another type, is routinely stolen through the internet. However, as piracy has grown, fortunately, so have the solutions to this problem. Content owners realize that technology is a vital weapon in their efforts to curb piracy. These solutions have become surprisingly complex, and very effective. In particular, two widely-used innovations that are helping to combat the wave of illegal content online are *digital watermarking*, where data is inserted directly into the content, and as it appears on the internet, or passes through a university network, the content can be scanned for the digital watermark; and *digital finger-printing*, where characteristics of a video are catalogued, with the ability to capture both audio and video samples. These samples may include the particular way color shifts in a scene or the background music of a clip. These are then stored on a database and compared against other files, effectively detecting pirated content.

### **Network Management**

These technological solutions, which can help negate the impact of piracy, also illustrate the positive side of reasonable network management, an important tool in preventing infringement that is far too often overlooked. Internet-based companies such as Google, YouTube and MySpace, industry, and internet service providers are all working together, using the latest technology to prevent piracy.

Network management has a very positive role when it comes to eliminating online piracy, but much of the emphasis of network management is put on the restriction of lawful uses of the internet. The focus should be on how network management can help reduce illegal uses of the internet, allowing operators to effectively identify and remove pirated content traveling across their platforms. It is crucial that we not only allow operators to manage their networks, but also not hamstring them with prescriptive regulations. As you may have heard, there has been much talk about the new Administration's interest in promoting "net neutrality." My advice to them is proceed with caution. Make no mistake, if "net neutrality" is implemented in its strictest form, the hands of network operators will be effectively tied from implementing new technologies to protect against piracy. Digital fingerprinting and watermarking would not be possible if net neutrality is enforced in its harshest form.

In addition, reasonable network management also plays a key role in helping to prevent the many dangers facing children online that I highlighted earlier. This summer, the majority of America's cable broadband providers signed an industry-wide agreement to fight child pornography on their networks. An example of the benefits of network management in action, this was an important step in the fight, and was endorsed by the Attorney Generals of 48 of our 50 states, and the Center for Missing and Exploited Children, America's center for child protection. Scotland Yard and

Ireland's law enforcement have similar initiatives. These are important steps to ensuring that our children are safe in today's digital world, and it is important that we do not hinder these efforts by pursuing over-prescriptive regulatory policies for the Internet.

## **Other issues**

### **DTV**

Regarding the other key issues currently before the FCC, nothing gets more attention these days than the DTV transition. This transition from analog to digital broadcast TV is going to occur on a single day, February 17, 2009, roughly a month after Inauguration Day, and exactly 71 days and 5 hours from now. While most of you all probably subscribe to cable or satellite TV and should not experience any problems, I hope you will help us get the message across to your parents and grandparents who may have an old analog television or bunny ears antenna. They will need to act. You can buy a digital TV, subscribe to cable or satellite, or purchase a converter box. The government is offering every household two \$40 coupons that can be used toward the purchase of these boxes – information is available at [www.dtv2009.gov](http://www.dtv2009.gov).

### **Auctions**

The DTV transition is part of a much larger national public policy issue, and that is the efficient use of our spectrum. Spectrum is a national, natural resource. Because it is a limited resource, we often license the spectrum through auctions.



Our auctions team is known across the world for taking complicated theories by Nobel-prize-winning economists and converting these ideas into an auction process that efficiently assigns a large number of spectrum licenses.

The DTV transition will move TV channels off certain frequencies and, in so doing, will make available over 100 megahertz of spectrum for consumer wireless products, as well as public safety providers. This spring, the FCC completed an auction of a portion of the spectrum to be reclaimed by the DTV transition and raised more money for the U.S. Treasury than any auction in the Commission's history, about \$19 billion.

## **Conclusion**

During my tenure at the FCC, I have tried to take into consideration that decisions I make not only affect the particular parties or overall industry, but also small business, universities, and in the end all consumers – who end up footing the bill for any regulatory costs we impose on private companies. This is at the heart of my philosophy of regulatory humility.

It is my hope that as the next FCC faces the many challenges on the horizon, it will use similar discretion in its decision-making. None of the issues the next Commission will confront will be easy, but they will have a profound impact on telecommunications policy across this nation and even the world. I hope I have given you all a sense of the importance of strong, principled public policy decision-making,

and the need to try to understand not only the technology but also the economic impact on old and new business models and to incent continued investment. In my opinion, these issues are not and should not be political. I have tried to review each order or item beginning with my now tattered copy of all the applicable statutes, asking first if this regulation is indeed within our legal authority, and if so, is this an appropriate time for government action. Oftentimes, I have encouraged parties to negotiate a marketplace solution themselves. In other cases, I have held multi-stakeholder mediation-type sessions. And I have always applauded industry resolution through voluntary action or self-regulation.

Ensuring broadband access to all Americans—but especially those in low income or rural America – is not only important to our national economy but crucial to our global competitiveness as well. I am proud of the deregulatory road the FCC has forged; serving as a “humble regulator” so that we incent investment and innovation in the marketplace. Thank you again for the opportunity to speak before you today.