

Remarks by FCC Chairman Kevin J. Martin
“Balancing Deregulation and Consumer Protection”

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Thank you Dr Hahn. It is a pleasure and I am excited to be here today.

These days, the biggest buzz word in Washington is change. Change in Administration, change in party in power, change in tone and change in the way we do business. Change from analog to digital TV -- although according to press reports this morning some are now rethinking whether it is time for that change.

As we begin to prepare for the coming change in administration, I thought it was an important time to reflect on the changes in the industry and in the regulatory approach that have occurred since I arrived at the Commission and became Chairman. Too often that broader vision -- of where we were, where we are going, and why -- gets lost in the day to day battles. So let's take a step back.

I have had the privilege of serving at the Federal Communications Commission for almost 8 years, including 4 years as the agency's Chairman. During this period, we have seen a telecommunications industry undergoing rapid and unprecedented change.

In 2000, the Commission was still mired in the fights between local and long distance. Television stations had barely started making plans to broadcast in digital. More people had wireline telephone service than wireless. And few people had a broadband connection. Cable companies weren't offering voice and telephone companies weren't offering video.

Today, ushered in by the broadband revolution, we have finally found the promised land of convergence. Telephone calls are made using the Internet and over cable systems. Television programs are watched whenever we want, are offered by telephone companies and are increasingly available on the Internet. Cable, wireless and traditional telephone companies all sell packages of minutes that don't differentiate between local and long distance.

There are over 260 million wireless subscribers, or twice as many as there are wireline subscribers. And cell phones are mini-computers. They take pictures, play songs and games, send e-mail, and hopefully will send and receive emergency messages in times of disaster.

Finally, all of the broadcasters are already broadcasting at least one digital signal and are on the verge of turning off their old analog signal for good in just a few weeks.

To keep up with and help facilitate such fast-paced technological change and convergence, the Commission needed to change its approach. It also needed to make sure that -- as the industry was transforming -- average consumers didn't get left behind.

I have approached our decisions with a fundamental belief that a robust, competitive marketplace, not regulation, is ultimately the best protector of the public interest. Competition is the best method of delivering the benefits of choice, innovation, and affordability to American consumers. Competition drives prices down and spurs providers to improve service and create new products.

Government, however, still has an important role to play. We need to create a regulatory environment that promotes investment and competition, setting the rules of the road so that players can compete on a level playing-field. And we need to be prepared to step in when the transition from monopoly to competition doesn't seem to be working or fails to meet broader social objectives.

My philosophy throughout my time at the FCC including the last four years as chairman has been to pursue deregulation while paying close attention to its impact on consumers and the particulars of a given market; to balance deregulation with consumer protection.

Indeed, the transformation of a telecommunications sector dominated by monopolies to a truly free market with many players is not yet complete. So we need to continue to monitor closely the impact of our decisions on real people.

In order to have credibility when removing unnecessary or outmoded regulations, those of us who adhere to a market-based philosophy must be willing to acknowledge an important fact: There are times when regulators may need to step in -- when the marketplace doesn't allow for sufficient competition to a former monopoly, when the market needs to be open to new entrants and technologies, or when larger societal goals such as ensuring the needs of public safety, fall outside the market's scope. The key is to look at the facts and not to be lulled by general assumptions or wishful thinking about a market's functioning.

In the words of Ronald Reagan: "Trust but Verify." Trust that a competitive market not government regulation is the goal, but verify the facts. Is the market actually competitive enough to protect consumers -- i.e. verify that it is actually working. And if it is not, what are the minimal steps that you can take to get it back on track.

I recognize this approach was at times controversial. I have voted with my Democratic colleagues as often as with the Republicans. And so it might not have been the best way to make friends. In Washington, no one remembers when you agree with them, but they never forget when you disagree. But while at various times every

Commissioner or industry may have felt that I wasn't with them, I believe that I was with consumers all the time.

Against this backdrop of unprecedented change and new regulatory approach, let me discuss the commission's priorities.

During my years at the FCC, first as a Commissioner and then as Chairman, I have been focused on establishing the appropriate regulatory environment that achieves the right balance between two competing interests: (1) to encourage investment in communications infrastructure and (2) to make sure consumers and innovation are not unintentionally or intentionally disadvantaged by the owners of that infrastructure. To spur further investment in the next generation of communications infrastructure, while at the same time ensuring that these platforms remain open to innovation on the edges of that network. Under my Chairmanship, the Commission has acted to level the playing field so that all entrants could fairly compete, facilitating increased investment. At the same time we have been able to push for more open platforms to spur innovation and the consumer benefits of lower prices and improved services.

ENCOURAGE INFRASTRUCTURE INVESTMENT:

Removing Legacy Rules and Creating a Level Playing Field

When I arrived at the Commission in 2001, the communications industry was mired in a period of far-reaching decline. The dotcom bubble had already burst. Investment in technology and telecommunications was gone. Capital spending had vanished, innovation had disappeared and companies were going out of business, taking jobs with them. Old-style regulations placed on new investment and broadband were part of the problem.

We have worked hard to create a regulatory – or rather a deregulatory – environment to encourage investment and promote broadband deployment in the U.S. For instance, shortly after I became Chairman, we removed legacy regulations, like tariffs and price controls which discouraged providers from investing in broadband networks. Since then, broadband penetration has increased while the prices of DSL and cable modem services have decreased.

We have also worked to establish a level playing field by making sure that all of the companies are subject to the same basic rules. As a result of our efforts, today all broadband delivery platforms whether they are cable modem, DSL, or wireless are classified as information services and are subject to the same light regulatory touch.

Importantly we have seen some success as a result of these policies. Since 200, the number of broadband subscribers has grown from less than 5 million to more than 100 million. Since 2001, the price of broadband has been cut in half while at the same time speeds have increased, enabling consumers to purchase service that is over ten times faster than what was offered.

In particular we have seen amazing growth in investment in fiber – from about 80,000 lines in 2001 to over 1.4 million lines. For example, Verizon estimates spending \$18 billion in net capital from 2004 to 2010 to deploy its FiOS network. As a result of this ongoing industry investment, fiber now passes over 13 million U.S. homes, with median download speeds of 7 Mbps.

Even in today’s challenging economic climate, the industry continues to invest in broadband. Telecommunications companies expect to make \$50 billion in capital expenditures in 2008 and 2009 regarding broadband investment.

Making Spectrum Available

Increasingly broadband is moving from a wireline to a wireless world. And wireless broadband uses spectrum. In order to encourage the growth of wireless broadband the Commission has taken unprecedented steps to make available as much spectrum as possible to put the next generation of wireless broadband devices into the hands and homes of consumers.

In the last three years alone the FCC conducted the two most successful auctions in Commission history. In the AWS-1 auction 90 MHz was sold for \$13.9 billion. The 700 MHz auction the following year put an additional 62 MHz on the market and raised a record-breaking \$19.6 billion.

In addition, the Commission has dramatically increased spectrum on an unlicensed basis. We adopted rules to allow unlicensed use in the broadcast television spectrum at locations where that spectrum is not being used by licensed services (this unused TV spectrum is often termed “white spaces”).

Our action opening the white spaces will encourage the creation of a WiFi on steroids. It has the potential to improve wireless broadband connectivity and inspire an ever-widening array of new innovative Internet based products and services for consumers.

Finally, with the Sprint Nextel and Clearwire transaction, the Commission has encouraged investment and provided sufficient spectrum for the building of new nationwide communications infrastructure. That new company will deploy a new mobile broadband technology --WiMax-- nationwide.

Removing Barriers to Entry

We have also worked hard to remove barriers to entry into the video market. For example, several years ago telephone companies began investing billions to upgrade their networks to provide video services along with their traditional voice and data services. Some local authorities however, were making the process of getting franchises unreasonably difficult. We streamlined the franchise process, requiring action within a reasonable time period, and preventing the imposition of unreasonable build-out requirements or the provision of unrelated services.

Similarly, we saw that long-term exclusive contracts between owners of apartment buildings and incumbent cable or telephone operators posed a barrier for new entrants in the provision of video and voice services. Last year the Commission barred these exclusive arrangements between providers and apartment building owners. We removed this barrier to entry and put new entrants on equal footing with incumbents.

FOSTERING INNOVATION AND PROTECTING CONSUMERS

While we have pursued policies to encourage investment in networks, or the “pipes”, the Commission has also acted to prevent the owners of those pipes from impeding innovation or harming consumers. We achieved this goal of fostering innovation and protecting consumers by pursuing a policy of open platforms.

Making Platforms More Open

I pushed for greater openness on wireless networks after looking closely at the wireless market in this country. Americans did not enjoy as much choice and innovative services when it came to their wireless phones as did those living in Europe and Asia. (For example phones sold in other countries had WiFi capability. The same phones sold in the US didn't; not because consumers didn't want it, but because network operators wouldn't allow it.

In the 700 MHz auction the Commission for the first time required the winner of the biggest piece of this spectrum to open its network so consumers could use the devices of their choice and download whatever applications they choose. Such an open network can help ensure that innovation on the edges of the network swiftly pass into the hands of consumers.

The impact of this targeted regulatory action was far reaching. Shortly after the FCC acted, others in the wireless industry, including Verizon, Sprint, T-Mobile and AT&T, announced plans to adopt a more open approach. AT&T's vaunted iPhone now has its own Apps Store where consumers can purchase and download a multitude of applications to their phones.

We deliberately took a cautious and limited approach to fostering more openness in the wireless world. Our plan followed a careful balance of spurring innovation and consumer choice while encouraging infrastructure investment. The Commission deliberately didn't apply mandatory unbundling or wholesale requirements that might undermine investment incentives. And we didn't apply this openness requirement to all of the spectrum blocks being sold or to existing networks.

Similarly, when the FCC stopped allowing cable operators to offer proprietary set-top boxes last year, the same free market principle was also at work. Requiring cable operators to provide cable cards for competitive set-top boxes moved us significantly

closer to the day when consumers can walk into their local store and buy a set-top box or TV of their choice that will work on any cable system.

Defining Reasonable Network Management

The rights of consumers to access the legal Internet content of their choice and run any application on their computers must be protected in the wireline world as well. Three years ago the Commission made clear it would not hesitate to act if faced with evidence that a provider was violating this principle by blocking consumer access to content or applications.

Recently we responded to broadband subscribers' complaints that Comcast was blocking or delaying their Internet traffic when using the file-sharing application, Bit Torrent. The Commission told Comcast to end its unreasonable network management practices and disclose to its customers how it was going to manage traffic on a going forward basis.

As with the open access in the 700 MHz auction, we have taken a cautious approach to network management practices. We have dual responsibilities of preserving the vibrant and open character of the Internet while maintaining companies' incentives to invest in providing faster broadband to more people. So while we have not adopted burdensome regulations, we will punish bad actors that interfere with consumers' ability to access the Internet content of their choice.

ACTING WHEN MARKETS ARE NOT COMPETITIVE OR MARKETS FAIL

Insufficient Competition in the Video Market

No discussion of the Commission's priorities would be complete without talking about the dramatic and ever increasing rise in cable rates. The same willingness to "trust but verify" the workings of market forces in wireline and wireless industries has characterized my approach toward the cable.

In order to have credibility calling for deregulation, those of us who prefer competition to regulation must be willing to acknowledge when there is insufficient competition and the market is not functioning properly.

It is almost universally accepted that cable rates have risen dramatically over the past decade and that consumers' bills for video services are too high. The increase in cable prices (almost 100% over the last decade) appears even more dramatic when viewed relative to the prices for a number of other communications services: prices for long distance (down 33%), international (down 80%), and wireless telephone service (down 50%), have all decreased dramatically during this same timeframe.

An examination of the video market however, indicates that the current market may not be competitive enough to get the job done. While cable does face some competition from satellite both the Commission and the Government Accounting Office

concluded that satellite and cable do not seem to compete on price. In other words, the presence of a DBS operator does not have an impact on the price the cable operator charges its subscribers.

Again, I have tried to urge a narrow solution. Rather than re-regulating cable rates, I have argued that consumers should have more control over the packages and channels they are buying.

Upholding Important Social Values

Even when we are successful in achieving a competitive market, certain social objectives take precedence over the unencumbered functioning of the marketplace. The federal mandate putting airbags in automobiles is an example of government deciding that a social benefit reducing injury and death due to car accidents justified taking direct action instead of solely relying on market forces.

Meeting the Needs of Public Safety

Ensuring the public safety is the most basic function of government in part because it is one that can rarely be achieved by market forces alone. Early in my chairmanship, we set regulations – and deadlines – to make sure consumers using Internet-based telephones had access to 911 emergency services.

But the public must not only be able to call 911. When they do, help must be able to reach them in a timely manner. E911 is meant to ensure that when someone dials 911 during an emergency, public safety can easily and reliably find them. The location accuracy rules originally established by the Commission however, did not keep pace with consumers' increasing reliance on cell phones and improvements in technology. The Commission updated its location accuracy rules to provide information on a more local level permitting first responders to reliably find persons in need when seconds count.

Providing Equal Access to Communications

Perhaps the best example of the need for government intervention to uphold certain social values is the Universal Service Program. That program was created to ensure that all Americans regardless of where they live have equal access to communications services.

In many parts of rural America however, it is cost prohibitive for one, let alone multiple, phone companies to provide service at a reasonable cost to consumers. It is only through direct grants from the USF that consumers in those high cost areas can have the same phone service that you and I enjoy here in Washington DC. In addition, through our Universal Service Fund, we have wired nearly 100 percent of all public schools and will connect over 6,000 healthcare facilities throughout the country.

CONCLUSION

The Next Commission

Finally, I would like to take a moment to identify the issues that I believe are most urgent for the new Commission to address.

Most immediate of course is managing the digital transition. The Commission has been hard at work on a number of fronts to minimize the potential burden for consumers and to maximize their ability to benefit from the upcoming digital transition. Almost every broadcaster has taken the steps necessary to successfully switch to broadcasting in digital. Moreover, the Commission has taken and continues to take action to make every resource available for broadcasters to mitigate any lost service to consumers.

Another critical issue that the next Commission must address is the state of the video marketplace. Today, average Americans are dealing with tough economic times that have forced difficult choices on families trying to balance their budgets. Now, more than in the recent past, consumers are feeling the direct impact of rising cable rates which have continued upward during the past decade.

The American consumer will expect the next Commission to take a serious look at the video market and determine whether competition can provide relief from runaway price increases. If the market can not provide a solution to address this problem, then consumers will look toward the Commission for leadership on innovative ways to further promote competition in the video marketplace.

Third, while we have made significant progress in broadband deployment there is more to be done. Achieving universal broadband requires using all the tools at our disposal starting with reforming the USF program. I have advocated that monies be distributed in a more targeted manner to restrain the growth of the fund and allow for the inclusion of broadband in the universal service program. The comprehensive reform proposal I made last year would have spurred rapid and widespread deployment of broadband.

Another important tool we can use to achieve our national broadband goal is requiring the winner of auctioned spectrum to provide a free basic broadband service to all Americans.

Final Thoughts

The market-oriented but fact-based approach I have followed during my time at the Commission has produced meaningful results for consumers. We have put in place the appropriate regulator framework that achieves the twin goals of spurring investment and establishing open platforms to deliver choice and innovation to consumers. As the new Administration comes in, they should be mindful that there is no need to throw the baby out with the bath water and sacrifice one for the other. Just as those of us who prefer competition to regulation must be willing to acknowledge when there is insufficient competition and the market is not functioning properly, those who instinctively call for more regulation and government intervention need to be mindful of the negative effects that such an approach can have and did have in the past.

We must also be creative and flexible in our approach making sure government is working for consumers. Most of that time that means getting out of the way. But sometimes we must recognize that there is a unique role only government can play. In order to have credibility calling for deregulation we must be willing to act in a targeted limited fashion when the market isn't properly working is important for another reason as well. As the current financial crisis has reminded us problems don't disappear if they are simply ignored. They can become bigger problems requiring the government to intervene in a larger way later.

I will be the first admit my approach has been controversial and has at various times criticized by almost every industry we regulate. It has resulted in 3-2 votes in which some instances I voted with the Republicans on the Committee and with the Democrats in others. It has also resulted in my supporting the positions of each of the various industries we regulate on some issues and opposing them on others. It is a truism in Washington that people don't remember when you were with them but never forget when you disagreed with them. The main piece of advice I would offer the next Commission is that you have to be willing to be unpopular and to call things as you see them.

In their new book "Grand New Party" Ross Douthat and Reihan Salam remind us that Reagan "was far more flexible and innovative in his pursuit of reform." Reagan himself said his goal was not "to do away with government" but "to make it work—work with us." Hopefully, some day in the near future, others will look back at this period at the FCC and say that it tried to make government work for the American consumer.

