

Incentives Matter: Decision Making at the FCC
Speech by Commissioner Meredith A. Baker
Free State Foundation
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I want to thank Randy May for inviting me here today. I also want to congratulate Randy and all of the authors of *New Directions in Communications Policy*. The book is a thought-provoking and timely look forward at where we go from here, more than 13 years after the Telecommunications Act of 1996.

Shortly after the 1996 Act became law, then-Commissioner Michael Powell remarked that “[w]e are in the throes of a revolution. This statement is not intended to be melodramatic, but rather descriptive of the breathtaking moment in which we in the communications field find ourselves.”

Here we are—13 years later—and we are at such a moment again. Broadband has become critical infrastructure. The new digital media landscape is abundant and diverse. And communications—especially with recent wireless innovations—is becoming personalized. This revolution has and will continue to transform our lives.

Our Commission’s policy choices will either limit or expand and build on this revolution. *New Directions in Communications Policy* is timely as we begin a new Administration and a new Commission—of which I am privileged to be a part. It’s timely in light of the severe economic condition in which our nation and the world find ourselves. Now more than ever, a deliberate and carefully considered approach to regulatory policy is all the more important for the communications sector that is such a large part of the economy. This book is also timely as we at the FCC look forward to a renewed spirit of cooperation and coordination within the Commission, throughout government, and with consumers and industry. There couldn’t be a better time to celebrate the release of *New Directions in Communications Policy*, and I’m honored to be part of that here today.

As a new Commissioner, and with this as my first speech since being sworn in, I thought that it would make sense to try to give you some insight into my approach to decision making for the policy issues that will come before me, and then briefly give you an idea of a few of my policy priorities as we move forward.

As a threshold matter, I fundamentally believe that consumers will benefit most from continued investment, innovation, and competition. I start with an assumption that markets work better than government intervention and that competition regulates market behavior more efficiently than regulators can. We should not adopt regulations to address anecdotes where there is no fact-based evidence that persuasively demonstrates a problem exists. Or, as a collaboration of Hippocrates and the Free State Foundation puts it: “Don’t try to solve a problem unless you know there is a problem to solve.”

Finally, and perhaps most importantly, I believe that incentives matter. Actions government takes—or doesn’t take—affect market behavior and create incentives. I recognize that nearly any regulatory change the Commission makes will disturb the balance of the market—maybe for better, but possibly for worse. Therefore, our decisions must be fact based, fully considered, and reasoned. Good intentions are not enough.

Having said that, I do see a role for government in creating incentives that encourage investment, innovation, and competition. Undoubtedly, some changes in the way we regulate the communications industry are needed—and are coming—to address the changes in the market and point us in the right direction.

I see a role for government in promoting consumer welfare, although that need not be through stagnant, prescriptive rules of business conduct. The government can have a leadership role in encouraging and coordinating industry best practices that may obviate the need for regulation altogether. For example, in 2003, CTIA, the wireless trade association, and a number of wireless carriers voluntarily adopted a “Consumer Code” to facilitate the provision of accurate information to consumers by wireless service providers that addressed consumer concerns without government intervention. In the wake of our Report to Congress on the Child Safe Viewing Act, I hope the Commission will lead, without regulation, by identifying and encouraging industry best practices to empower and teach parents.

With those principles in mind, I want to give you a glimpse into how I reach decisions. I think it is critical to approach policy making in a principled and systematic way. When a policy decision is before me at the Commission—and a few have been already—my analytical framework is to (1) identify the objectives; (2) look at the statute and to Congress; (3) consider the context; and (4) weigh the costs and benefits.

First, as a guiding principle, we should identify objectives when launching proceedings, and design the scope of our proceedings deliberately. All actions that we take at the Commission are carefully watched—both here and abroad—to divine the nation’s regulatory directions. That is never more true than at the beginning of a new Commission.

If we seek information well beyond that needed to support our identified goals—and especially when we seek information about matters clearly beyond the scope of our statutory authority—we needlessly send signals to the market that can create regulatory uncertainty. When regulatory uncertainty skews business decisions to invest and innovate, it is consumers who suffer in the end. As policy makers, we must be particularly sensitive to this dynamic in the current economic environment. Thus, as issues come before me, I will be looking to identify these objectives and will be measuring our policy outcomes against those objectives over time.

Second, we must look to the statute. The Communications Act, as amended many times since 1934, gives the FCC a broad mandate. Congress has also given us powerful tools in section 10 forbearance and ancillary jurisdiction to tailor the Communications Act to competitive conditions and the public interest. But to be candid, as the book says, a “very real history of mission creep . . . has characterized communications regulation” over the decades. Our authority under the statute is not unbounded.

Where the authority is not clear and broad, I will need to satisfy myself that the Commission is acting within its statutory mandate, within Congressional intent. Indeed, we should not strain the limits of our jurisdiction to fit the political pressures of the day.

And I would be remiss if I did not mention here the role of the courts in our decision making. Few significant Commission orders go unchallenged. There is usually a lot of money at stake. Over the many decades, this has yielded a significant body of case law. We need to consider what it tells us about the parameters of our authority, what it tells us about what the Commission has done right in the past, and where the Commission has overstepped.

Third, I want to understand the context of the policy at issue. Many of the issues that come before us today have long and complicated, even tortured, histories—not only from a judicial perspective but also in policy, economics, politics, and technological development. Some issues with which we still struggle have been with us for more than a hundred years—universal service comes to mind. Even though we are a new Commission, I think it’s important that we not pretend that we are starting with a clean slate every time; we need to understand how we got to where we are now.

We should consider how our proposed action relates to the jurisdiction and responsibilities of other agencies. I am no doubt particularly cognizant of this issue coming from NTIA, but an increasing number of agencies have some responsibilities related to communications—the Departments of Commerce, Justice, Homeland Security, Agriculture and even Health and Human Services, the Federal Trade Commission, and the Securities and Exchange Commission, to name a few. As the new Administration tries to coordinate agency activities, for example with cybersecurity or broadband, it makes sense for us to consider how our actions fit with the broader puzzle of government.

And of course, we must consider the public record of the proceedings before us. Here, I must take a moment to recognize the efforts, already, of Chairman Genachowski to improve the process at the Commission—to the benefit of the commissioners, staff, and the public. He is working diligently to make FCC decision making more transparent, less opaque, both within the agency and to the outside world.

The Chairman has come up with innovative approaches to gain greater, and more substantive, public participation in our proceedings. You heard from Blair this morning about the innovative way we are developing the record for the National Broadband Plan to elicit needed information, often from parties who are new to our proceedings. I also appreciate the Chairman's efforts to release voted items in a timely manner. This small thing improves information flow to the public and reduces uncertainty in the market while people wait for details of orders already voted. I commend the Chairman for these efforts, and although I too am new to the agency, it's obvious that there is new, more positive, energy at the Commission.

Fourth, I will carefully weigh the benefits and costs of any decision. So long as the Commission is acting within its authority, this is the most important part of the analysis. All regulation imposes costs—we cannot lose sight of that fact. We have a responsibility to weigh the benefits of any proposed regulation against the costs—and to carefully consider potential unintended consequences of our actions. As regulators, we must strike the right balance. If we fail, we risk imposing costs and other regulatory burdens on providers. That in turn raises prices, reduces quality of service, and harms innovation. These outcomes damage consumer welfare and endanger economic growth in this dynamic sector of the economy at a time when we can least afford it.

So next, I would like to turn briefly to a few of my policy priorities. I don't have time here—and there will be more speeches to come, I'm sure—to discuss particular policy issues in depth. But I do want to highlight for you some of the themes I will be pursuing in the many—many—votes that I have ahead of me as I start my tenure.

It will come as no surprise that broadband is our and my priority. Broadband is the enabling technology for everything from the future of education and health care to the smart energy grid and public safety. From an economic standpoint, broadband infrastructure is essential for restoring sustained economic growth, opportunity and prosperity; and for maintaining American competitiveness in the 21st Century.

I do not want to prejudice any ideas that might be in the Plan presented to us or approaches developed out of the innovative methods employed to build a solid record for decision. But I do want to briefly talk about a few things that I will bring to the discussions with my fellow Commissioners on this important topic, particularly developed during my work on NTIA's Networked Nation: Broadband in America report.

The United States is the innovation capital and content capital of the world. Getting broadband policy in the National Broadband Plan right is essential to keeping it that way. In the global marketplace,

and with an Internet that knows no borders, the world is watching. We set an example. Our policy choices are watched—and emulated—in many nations. Inconsistent or imprudent policy decisions at home can have significant policy ramifications abroad.

We should recognize that the United States is not a one-size-fits-all place. Rather, we are a country of individuals with a communications market with many different types of services and pricing structures to suit the diversity of the nation. Competition best serves consumers. Where competition thrives, consumers can best decide what services and pricing structures fit them best. But where competition doesn't thrive—or no market exists at all—the Commission will likely need to step in to ensure that broadband critical infrastructure gets to everyone and no one is left behind.

Accordingly, our highest priority in broadband policy should be to get broadband to all remaining unserved areas of the country. Where the market does not provide sufficient incentives for businesses to deploy, the government may need to step in with carefully targeted policies to ensure the availability of critical infrastructure without foreclosing the possibility of future competition as the market and technology progress.

Finally, good data is critical. I feel strongly that we need granular and reliable geographic data and mapping to properly target our policies and programs, so that we achieve the broadband goals of the Communications Act and the Recovery Act with a minimum of intrusive regulation.

The fastest-growing sector of America's broadband economy is wireless. According to CTIA, wireless carriers directly employ more than 268,000 people, and these carriers have invested \$22.8 billion per year, on average, to upgrade networks to provide broadband services. From my vantage point, it is clear that the wireless industry continues to be highly competitive due, in large part, to the government's deregulatory approach. As demand for wireless broadband services continues to increase, so will demand for spectrum. I have a keen interest in spectrum policy and I am convinced that it is critical that we pursue policies that foster the efficient use of spectrum to promote continued innovation and investment in the wireless marketplace to the benefit of the American consumer.

In conclusion, I am encouraged by the road that lies ahead for the Commission specifically, and the communications industry as an engine of our economy more broadly. I commend our new Chairman for both his commitment to a cooperative approach at the Commission and his emphasis on fact-based policy analysis founded on evidence in an open and transparent record. As a member of the minority at the Commission, I look forward to working together with my fellow commissioners where we can make better communications policy, and I look forward to disagreeing without being disagreeable where our policy perspectives just cannot line up. I think that *New Directions in Communications Policy* is a meaningful and thoughtful contribution to the policy debates ahead. I thank the Foundation for that contribution and for including me here today.