

Introductory Remarks
Commissioner Robert M. McDowell
The Mercatus Center & The Progress & Freedom Foundation event:
“Ronald Coase’s The Federal Communications Commission at 50”
October 29, 2009
George Mason University
Arlington, VA

Thank you, Adam, for your kind introduction. And I want to thank both The Progress & Freedom Foundation and the folks here at The Mercatus Center at George Mason University for your invitation to provide some opening remarks at this event celebrating the 50th anniversary of one of the most provocative articles ever written about media and communications policy, Ronald Coase’s essay on “The Federal Communications Commission.”

When Ronald Coase started to write down his thoughts fifty years ago, did he have any idea how his ideas would fundamentally change the paradigm of the debate over government’s role in communications policy? For those of us who came of age during the Reagan Revolution, it is easy for us to take such thoughts for granted. But due to the intellectual and economic environment of Coase’s time, his proposals were dismissed as unthinkable.

For example, the notion that spectrum could be allocated by anything other than command-and-control regulatory mechanisms was considered unworkable in 1959. And the suggestion that broadcast speech should be governed by the First Amendment instead of an array of speech restraints, such as the amorphous “Fairness Doctrine,” was considered radical. More generally, the notion that government intervention might be inefficient or politically biased wasn’t a matter of widespread concern.

Then along came Ronald Coase who fundamentally changed the debate. His work created an awareness among academics, industry analysts, and then, finally, even public policymakers of transaction costs and trade-offs in this sector and more generally throughout our economy. Coase pointed to a new way forward by illustrating the role of free markets as the more efficient means of allocating goods and services. He challenged the prevailing notion that only markets fail and only governments can correct them by asserting that public policy can distort markets in unforeseen and unintended ways, resulting in regulatory failure rather than market failure. When his ideas were put into practice in the field of spectrum allocation through the initiation of spectrum auctions in the 1990s, a revolution began that has resulted in a cornucopia of new competitive wireless networks and innovations.

Coase's words still contain relevant lessons for us 50 years later, especially as free markets and freedom of speech are under constant challenge from many different quarters.

After several decades, for example, we're still debating the potential for the resurrection of something akin to the so-called "Fairness Doctrine," even if we're not certain what the next iteration of it might be called, what platforms it might cover, or how it might be enforced. But everything Coase taught us a half-century ago about the ambiguities of public interest regulation of the broadcast spectrum remain equally applicable for today's media landscape and help us understand why it would be such a serious mistake to reinstitute this misguided doctrine, which the FCC wisely took off the books in 1987.

Second, consider what Coase can teach us about the more recent forms of micromanagement of spectrum auctions, such as the 700 megahertz auction in 2008. Coase would have been the first to point out that, once the Commission moved back into the business of allocating spectrum among competing interest groups, unforeseen harms would arise. And, depending on how policy debates play out in the next few months, we might one day point to the open access mandates in the 700 Mhz auctions as the first step towards network management regulation of the wireless sector.

Coase's work also provides a valuable perspective for analyzing the debate over media ownership regulation. Next year, the FCC will, once again, undertake its quadrennial review of its media ownership rules to consider, among other things, what limits should remain on broadcasters, as well as newspapers, in local media markets. Although Coase contended that "spectrum scarcity" was a byproduct of regulatory failure, not market failure, the scarcity rationale continues to serve as an increasingly creaky foundation for ownership regulations. Just read Justice Thomas' concurrence in the *FOX* indecency decision. The ongoing reliance on this rationale is especially vulnerable to challenges in light of the explosion of new media platforms and outlets. And if one takes into account the fact that scientists tell us that spectral efficiency doubles every two and a half years and, as a result, we are two trillion times more spectrally efficient today than when radio was first invented, coupled with the promise of new technologies coming over the horizon that will squeeze even more capacity out of the airwaves, the concept of "spectrum scarcity" is likely to become harder to defend.

Most importantly, perhaps, Coase closes his article with a warning not to allow our natural uncertainties about new technologies to lure us into unwarranted regulation, which may be difficult or impossible to reverse. He explains that:

[T]he history of regulation in the broadcasting industry demonstrates the crucial importance of events in the early days of a new development in determining long-run governmental policy. It also suggests that lawyers and economists should not be so overwhelmed by the emergence of new technologies as to change the existing legal and economic system without first making quite certain that this is required.¹

Coase's advice may be all the more relevant today as the Commission contemplates imposing a potentially wide-ranging regulatory regime on another new technology – broadband access to the Internet.

In closing, Ronald Coase's FCC article serves as a testament to the notion that ideas have consequences. Regardless of whether one agrees or disagrees with Coase's ideas, his work should instill within us a sense of optimism about our ability to use the power of ideas to improve the human condition.

Thank you again for having me here today.

¹ R.H. Coase, *The Federal Communications Commission*, 2 JOURNAL OF LAW AND ECONOMICS, 1, 40 (1959).