

“Regulatory Principles and Policy Priorities 2.0”

Remarks of Commissioner Meredith Attwell Baker

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It's terrific to be back here giving a keynote at this important event. I gave my first policy speech as a Commissioner here in September of 2009 regarding my regulatory philosophy and policy priorities. Today's theme is "Broadband Policy: One Year after the Broadband Plan." I'd like to incorporate the two themes and take a look at how we've done. On the whole, while we accomplished some things, we missed a lot of opportunities.

The structure of today's agenda is illustrative. You have two panels – one on Net Neutrality and one on spectrum. You will be talking about what we did on Net Neutrality, a divisive area in which the Commission did not need to act, nor did it have the authority to do so. And then you will be talking about spectrum policy, an area that is in desperate need of Commission action to incentivize further broadband deployment, and a consensus Commission priority.

I think that dichotomy best represents my frustration with the past year, and the promise the New Year brings. The question is, how do we avoid the pitfalls of 2010 as an agency, and the answer requires us to return to core regulatory principles.

Regulatory Principles

First and foremost, the statute must be our beginning and our end. The Communications Act can and should define the parameters of our regulatory jurisdiction. It is when we reach beyond our core statutory authority that we too often find ourselves in a political and legal morass. More judicious self-selection of the issues and proceedings we tackle would help us become a more predictable agency that fosters greater legal certainty.

Using the statute as our starting point and our ending point will limit opportunities for mission creep, and encourage the Commission to act only in the areas in which it is the congressionally designated expert agency.

Central to this principle is a willingness to declare that a potential regulatory issue, such as net neutrality, is beyond our statutory authority. There is no weakness in conveying to Congress what we understand to be the natural limits of our power as an agency, or the need for additional congressional action to conduct our mission as we see it. It is up to Congress to adjust our statutory authority accordingly, if it wishes.

Second, in those areas where the Commission has affirmative authority, we should act only where there is a factual record demonstrating conclusively that there is a market failure necessitating government action. As the President recently said in calling for a

more balanced regulatory philosophy across the entire government, regulations have costs, and we are responsible for ensuring that we act only where those costs are necessary to preserve competition and promote the public interest. Absent a genuine evidentiary record of a need to act, we must resist the urge to reward the loudest and most persistent advocates for action. We should also avoid regulating to respond to a handful of isolated incidents.

Third, our focus should be on the development of a long term, comprehensive plan, as opposed to piecemeal “ripped-from-the-headlines” fixes. Each new technological development or commercial dispute should not be viewed as an opportunity to investigate, regulate or bless. In the dynamic space in which we regulate, the risk of market-shaping action or picking winners and losers by regulation is too high.

And fourth, robust, market-based competition provides the best results for consumers. On this front, we spend a great deal of time searching for areas where competition may be lacking, which is appropriate and necessary. But we must balance that inquiry with a real appreciation for the amount of voice, video, and broadband competition we have today and the promise for even more going forward.

Cable providers are top 10 voice providers, and telephone companies are top 10 video providers. We have broadband to over 95 percent of U.S. households. 80 percent of those households have real choice between robust terrestrial providers, let alone rapidly improving mobile and satellite options. 93 percent of consumers are satisfied with their broadband service, and 91 percent with their broadband speed. A recent report found that price per megabit for broadband has dropped in half since 2008. Our actions should be focused on promoting continued investment in the competitive marketplace that is so clearly working.

So let's view today's panels through the regulatory guidelines I just outlined. Net Neutrality is 0 for 4 on guiding principles, and spectrum reform would be 4 for 4. I have already spilled so much ink on Net Neutrality, I'll defer to the great panel you have on the topic. I will only observe that my biggest concern is what lies ahead for Net Neutrality at the Commission.

I share the Chairman's desire to get beyond Net Neutrality and focus on our collective priorities, but I fear that the decision in December was only a first step. Parties are pushing to expand the scope of that decision into new markets and to erode the roadblocks built into the Chairman's approach for wireless, prioritization, and managed services. We can't let our debate within the FCC be hijacked by Net Neutrality for another year.

Looking Forward

The good news is that our agenda for this year looks far more encouraging. Long-term spectrum reform and universal service/intercarrier compensation reform are the twin pillars of our focus. I think the Chairman's direction on both sets of issues is promising.

Both areas are clearly within our statutory authority and we have not pursued comprehensive reform in both areas for too long. For universal service and intercarrier compensation, the old ways will not do. We must resist the urge to shoehorn broadband into a broken system, and our IP future into our POTS past.

We must provide certainty to all providers that universal service will be available in those areas where market forces alone will not allow broadband deployment and upgrades. We must streamline these programs and systems to make them more efficient without depriving providers overnight of revenues critical to private investment in our broadband infrastructure. We must find the means to learn from today's programs to better target support and control costs. We will begin that process next week. The talking points are easy, but the actual detailed reforms will be extremely difficult.

But back to spectrum. We must have the discipline to address the many challenges before us, from finding more spectrum, to updating interference rules or promoting mobile broadband deployment in the context of a comprehensive spectrum strategy, rather than as one-off problems. I agree with Senator Snowe's call for a more comprehensive spectrum reform agenda.

We need this reform because of the many ways our current approach is seriously out of step with our new technical realities. There are clear signs that tomorrow's technologies will have features and capabilities that can transform the way we use spectrum. They will incorporate innovations like dynamic frequency access for greater spectrum flexibility, channel bonding to make the most of available spectrum, and self forming network capabilities, to allow for more flexible deployments while improving quality of service. The new technologies will have low latency and they will be very fast. To bring all of this to the full benefit of consumers, our rules can no longer be burdened with artifacts from the narrow-band analog world. Our rules must be smarter and more flexible. Our allocations must emphasize larger blocks of spectrum harmonized for international usage and our focus must be always on encouraging its most efficient use.

Rather than look at spectrum issues comprehensively, I fear that spectrum reform has devolved into two narratives; neither of which is beneficial or accurate. First, there is the race to get 500 MHz of spectrum reallocated for broadband. If all we do is reallocate the easiest 500 MHz to shift towards broadband, we have done future generations a disservice. Unquestionably, we need more spectrum, but I want us to focus on getting the right spectrum, the right way, and not merely the easiest way.

The second narrative is broadband versus broadcast, and that incentive auctions equals spectrum reform. I reject the idea that we have to choose between broadcasting and broadband. And while I wholeheartedly support incentive auctions as an additional tool in our spectrum toolbox, it is insufficient alone to address our spectrum challenges.

I also believe that too much of the debate has become whether or not there is a spectrum crisis. I think we are using the wrong labels. Let's call it spectrum exhaustion. Today's networks are already strained to capacity, and that is before the mobile revolution truly

begins. We need to address our policies to mitigate spectrum exhaustion and the profound impact it will have on mobile broadband users.

What's driving us to spectrum exhaustion? CES this year tells the story. Streaming video was everywhere. At least 80 different types of tablet devices were on the floor. Smartphones were in—or looking at—every booth. The average smartphone (like iPhone, Droid, EVO or Fascinate) uses around 250 megabytes per month. Tablets and netbooks use four to five times that data, with average consumption exceeding 1 gigabyte per month. That's what spectrum exhaustion begins to look like today. And it is getting worse.

Cisco recently released its current projections on mobile data, and they only go to reinforce how critical real reform on spectrum is today. Last year alone, mobile data grew at a multiple of 2.6 times, a growth rate faster than predicted. This trend line will only grow each and every year. To keep customers happy, you know network engineers have to be working nights and weekends.

One area that warrants greater attention in Washington is the increasingly hybrid nature of mobile broadband networks. Many of our devices have the capability through Wi-Fi and femtocells to expand the power and reach of our communications by offloading mobile data onto our terrestrial networks as quickly and efficiently as possible.

Last year 21 percent of smartphone traffic in the United States was offloaded, relieving one-fifth of the congestion pressure on our wireless networks. Other nations are seeing much higher levels of offloading. As this figure grows significantly over time, we need to address it head-on. For policymakers, we need to make sure our policies promote the most efficient use of wired and wireless broadband, and that we embrace new technologies that place a premium on efficiency.

We need to start having discussions about networks as the true hybrids they are. Whether home or on the road, we incorporate both wired and wireless technologies on a daily basis, and sharing of the terrestrial foundation is critical to address spectrum exhaustion.

The other area that warrants closer FCC attention is cord cutting 2.0. We are still struggling as regulators to deal with the realities of mobile-only households cutting the wireline voice cord. Advances in 4G technology promise a similar trend for the home broadband connection.

While only 2.6 million consumers in North America were mobile-only Internet users this past year, that number promises to be 55 million by 2015. To put that in perspective, the top 4 ISPs today have only 50 million total broadband subscribers. Our adoption efforts should recognize that mobile-only adoption may be the preference of many non-adopters. We should not make decisions to define broadband in a way to exclude the future mobile broadband choices of many Americans.

As we move forward with long-term spectrum reform, I think our short-term reform efforts should be driven by 4G deployment challenges. What will encourage faster deployment of the most advanced technologies deeper into our nation? How do we reach the mountains of West Virginia, the plains of West Texas, the upper peninsula of Michigan, and the islands of Maine? This will require us to listen to and partner with those investing billions in our collective broadband futures. That is the last topic I want to address this morning, the need to listen.

We must recognize that we do not have unlimited financial and human resources, and that we have significant power to help galvanize efforts across groups, highlight areas of public concern, and drive resolution. We need to partner more closely with those with the power to invest. On broadband deployment in particular, we need to do a better job listening. We are having a workshop on broadband investment challenges next week.

I hope this workshop is a good first step in terms of working more collaboratively with the providers we want to build out to more communities. Private risk capital got us broadband choice for the vast majority of consumers, even before we introduce 4G options in earnest this year. We want providers to pour billions more to expand and improve tomorrow's network, and we need to make sure we understand what drives their investment decisions and future plans.

I remain encouraged by the road that lies ahead for the Commission and more broadly for the communications industry as the engine for economic growth that it represents. When you look at the volume of innovation it generates every year, it is impossible not to be encouraged—and humbled about our role as regulators.

Thank you.