

REMARKS OF
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A Spectrum Policy to Promote American Economic Growth

Thank you, Grant, for that kind introduction. It is terrific to be here at TIA2012. It's also fun to return to Grapevine, Texas, bringing me back to my family's Texan roots. For those of you who missed last year's talk by Bill Tate, the Mayor of Grapevine, you missed some classic and unforgettable Texas humor.

I hope everyone here at TIA2012 is having a good show and that you're inking lots of deals. America's economy, as well as the world's market place, needs you to succeed. As the makers and vendors of the complex equipment that literally makes communications networks such as the Internet work, if you're prospering it probably means that the international communications economy is prospering as well. Increasingly, it is your equipment on which global commerce rides.

Unfortunately, international news stories are telling us that the world economy is in for yet another possible contraction. Monday's *Wall Street Journal* led with the following headline: "Investors Brace for Slowdown, Pressure Builds for Action by Policy Makers as Global Economic Worries Deepen." Investors are spooked and are keeping their money on the sidelines until government policies create a reliably business friendly climate. None of the world's major economies seem to be immune from this latest recessionary contagion.

American economic growth has slowed to a near-standstill - with leading indicators looking increasingly pessimistic: unemployment and underemployment are higher; purchasing is slowing; and the equity markets are frightened. Whether it is here, Europe or elsewhere, government actions to borrow and print money while expanding the reach of regulations are shrinking economies. This trend must be reversed. If not, we could find ourselves wandering through a global lost decade.

Of course, these larger economic and regulatory trends are affecting telecom capital expenditures. It is troubling that American telecom cap ex has been flat for the past two years: it has been stuck at \$66 billion per year since 2010.¹ I'm sure TIA's members would like to see policies adopted that would make that figure spike upward. Time and again, however, business leaders tell me that policies that grow government instead of the private sector are inhibiting investment. Overall, they say, increased regulation coupled with uncertainties over monetary and other government policies are to blame for flat growth curves.

But it doesn't have to be that way. America has a historic opportunity not only to maintain our leadership in the communications sector, but to increase our lead even further. With almost 24 million Americans either unemployed or underemployed, and that number is on the rise again, plus a national debt that increases by \$4 billion per day, we cannot afford to make the wrong decisions. We must promote economic growth.

One person who is not on the unemployment line is my eldest son, Griffin. Yes, my 12 year old got a job. Starting last Saturday, he entered the work force for the first time to become a little league umpire. And get this: he can earn up to \$30 per game! He pursued this all on his own. His motivation? He wants to save his money so he can buy his own iPad. Like tens of

¹ See Patrick Brogan, *Updated Capital Spending Data Show Continued Significant Broadband Investment in Nation's Information Infrastructure*, USTELECOM, at 2, Chart 1 (April 20, 2012).

millions of other Americans, virtually his entire communications world is, and always has been, wireless. In fact, being tethered to a wireline connection for anything is at best an annoyance to him and his younger siblings, Mary-Shea and Cormac, and at worst such a scenario is a frustrating relic from a bygone era.

But after Griffin umps another 19 games or so (actually it will take much more than that after he discovers the joys of tax withholding – but I’ll let him discover that unique pleasure on his own) he will have a new device and be consuming spectrum at an even faster clip than before. This chain of events, multiplied by millions of his cohorts, will help grow our economy and increase our competitiveness.

But in all seriousness, in scenarios like this, I see great hope for America, and the world. Wireless broadband is revolutionizing the human condition like no other technology in history. And America is leading the way as it *always has*. We have led because long ago we adopted a lightly-regulated framework for the wireless sector. One of the brightest rays of hope to strengthen our economy and increase our advantages over international competitors is with wireless technologies. As America ventures forward, we should keep in mind that we start from a position of strength.

For example, the United States has approximately 21 percent of the world’s 3G and 4G subscribers, and approximately 69 percent of the world’s LTE subscribers, even though the U.S. is home to less than five percent of the global population.² American wireless providers are also investing more in their infrastructure than their international counterparts. In 2011, over \$25

² See INFORMA TELECOMS AND MEDIA (WCIS Database) (Dec. 2011).

billion was invested in the United States' wireless infrastructure³ versus \$18.6 billion invested in 15 of the largest European countries combined.⁴

Furthermore, the American mobile market enjoys more competition than most international markets. According to the most recent FCC statistics, nine out of ten American consumers have a choice of at least *five* wireless service providers.⁵ In Europe, that number is around three.⁶ As a result, American consumers enjoy lower prices and higher mobile usage rates compared to consumers in the European Union (EU) – 4 cents per minute in the U.S. versus 17 cents generally in the EU.⁷ Wireless subscriber usage on average in the United States is often three to seven times more than some countries.⁸ At the same time, American consumers pay at least one-third less for their more enhanced wireless services than consumers in many other parts of the world.⁹ A minimal amount of regulation created the climate for the American private sector to achieve these impressive results.

³ See CTIA-THE WIRELESS ASSOC., CTIA SEMI-ANNUAL WIRELESS INDUSTRY SURVEY (2012), <http://www.ctia.org/advocacy/research/index.cfm/AID/10316>; see also CTIA-THE WIRELESS ASSOC., SEMI-ANNUAL 2011 TOP-LINE SURVEY RESULTS 10 (2012) (last visited May 14, 2012), http://files.ctia.org/pdf/CTIA_Survey_Year_End_2011_Graphics.pdf (providing cumulative capital investment numbers) (last visited May 14, 2012).

⁴ See BOA /MERRILL LYNCH EUROPEAN TELECOMS MATRIX Q112 (Mar. 30, 2012) (GLOBAL TELECOMS MATRIX Q112) (estimating €4,368 YE 2011. Conversion at \$1.2948/1€). The European countries included in the Matrix: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and UK; there are 27 members of the European Union (EU).

⁵ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services*, WT Docket No. 10-133, Fifteenth Report, 26 FCC Rcd 9664, 9669 (2011).

⁶ See GLOBAL TELECOMS MATRIX Q112.

⁷ Roger Entner, *The Wireless Industry: The Essential Engine of U.S. Economic Growth*, RECON ANALYTICS, at 1 (May 2012), <http://reconanalytics.com/wp-content/uploads/2012/04/Wireless-The-Ubiquitous-Engine-by-Recon-Analytics-1.pdf>) (last visited May 14, 2012).

⁸ See GLOBAL TELECOMS MATRIX Q112 at 71.

⁹ See *id.*

Policy makers should keep these important factual snapshots in mind when contemplating the wireless industry's regulatory future. Here are some of the very latest projections from TIA member Cisco:¹⁰

- IP traffic per capita will reach 15 gigabites in 2016, up from four gigabites per capita in 2011.¹¹
- Last year, only six percent of consumer Internet traffic originated with non-PC devices; by 2016, this number will grow to 19 percent.¹²
- Between 2011 and 2016, mobile traffic will grow by 62 percent.¹³
- By 2016, it will take one person over six million years to watch the amount of video that will cross global IP networks each month. That is, by 2016, 1.2 million minutes of video content will cross the Internet every second.¹⁴

As these statistics illustrate, more powerful 4G networks, sophisticated devices and complex mobile applications are taxing spectrum availability. Recognizing the need for spectrum to flow toward its highest and best use, in February, Congress passed legislation that some estimate could place up to an additional 80 megahertz of prime television broadcast spectrum into American consumers' hands. I congratulate all involved, and I am eager to get started on implementing the new statute.

Given the pressing need to free up spectrum to satisfy seemingly insatiable consumer demand, we must ask: What is happening in the meantime? Is government doing all that it can to put more spectrum into the hands of consumers as quickly as possible? During this process,

¹⁰ Cisco Visual Networking Index: Forecast and Methodology, 2011-2016 (rel. May 30, 2012).

¹¹ *Id.* at 1.

¹² *Id.* at 2.

¹³ *Id.* at 10.

¹⁴ *Id.* at 2.

will policy makers attempt to over-engineer the spectrum marketplace? Unfortunately, Washington, DC has been slow to deliver more spectrum for America's frustrated consumers.

Against this backdrop, I will discuss four broad initiatives that, if pursued effectively and aggressively, will encourage America's impressive trajectory in mobile broadband deployment and use:

- First, the FCC should implement the new spectrum law with humility, simplicity and regulatory restraint;
- Next, the Executive Branch should be far more aggressive in identifying and relinquishing for private sector use spectrum held by the federal government;
- Third, the FCC should do more to encourage a free-flowing secondary spectrum market by completing transaction reviews more quickly and with a minimal amount of conditions; and
- Finally, the FCC should provide local public safety entities the flexibility and certainty necessary to leverage economies of scale by continuing to operate, build and deploy interoperable LTE networks pursuant to waiver on a case-by-case basis.

THE FCC SHOULD IMPLEMENT THE NEW SPECTRUM LAW WITH HUMILITY, SIMPLICITY AND REGULATORY RESTRAINT

As mentioned previously, as the FCC moves forward to implement the new incentive auction law, I will work with my colleagues to ensure that our auction rules are minimal and "future proof," allowing for flexible uses in the years to come as technology and markets change.

I am a veteran of the two largest auctions in FCC history, and, while I know my colleagues and I will do our best, the reality is that this process will be complicated, full of surprises and rife with uncertainty. Many variables will affect the final results.

For instance, how many broadcasters will volunteer to participate in an incentive auction? At what prices? Where will they be located? In the most congested markets or in rural areas where spectrum is more abundant anyway? Will the Commission receive enough volunteers in the larger markets where the need for additional spectrum is most acute? How will the Commission repack those broadcasters that do not participate in an incentive auction? How will repacking implicate our commitments to our neighbors, Canada and Mexico?

In order to create greater certainty and thus a higher participation level, I hope that we will implement the law with humility, simplicity and restraint. Congress clearly expressed its intent that no entities should be excluded from participating in these auctions. Keeping in mind that overly-complex rules governing the C and D Blocks of the 700 MHz auction produced several harmful unintended consequences, as we go forward, we should learn from the past and keep new auction rules minimal. Otherwise, the main goals of the new law, putting more bandwidth into the hands of consumers as quickly as possible and maximizing revenue at auction, may not be attained.

THE EXECUTIVE BRANCH SHOULD ACT MORE AGGRESSIVELY TO IDENTIFY AND RELINQUISH SPECTRUM HELD BY THE FEDERAL GOVERNMENT

As you know, in March, our colleagues at the National Telecommunications and Information Administration (NTIA) released a report opining on the viability of accommodating commercial wireless broadband in the 1755-1850 MHz band.¹⁵ This report was written as a

¹⁵ See An Assessment of the Viability of Accommodating Wireless Broadband in the 1755-1850 MHz Band, U.S. Dept. of Commerce (Mar. 2012),

result of President Obama's June 2010 memorandum, "Unleashing the Wireless Broadband Revolution."¹⁶ The NTIA report concluded that while it is possible to repurpose all 95 megahertz of the band, various agencies allege it would cost about \$18 billion and take over ten years to move current government users off of that spectrum. I thank my friend, Larry Strickling, and his team at NTIA for their thoughtful and comprehensive report. They are dedicated public servants and they deserve our gratitude.

That said, the underlying message emanating from the report is disappointing in several regards primarily because other Executive Branch agencies did not provide NTIA with sufficient data to support many of the assumptions and conclusions. The thrust of the report seems to indicate that the Executive Branch is going to resist relinquishing more spectrum. For starters, the report does not discuss how efficiently, or inefficiently, the federal government uses spectrum.

Keep in mind that the federal government occupies about 60 percent of the best spectrum. Federal users have *no* incentive to move off of this prime real estate but *do* have an incentive to keep the rest of us in the dark about how much it really would cost to move them and how long that task would really take. All too often, inertia rules the day within government bureaucracies.

My disappointment with the Executive Branch in its failure thus far to find a way to liberate more spectrum to auction for private sector uses is further deepened in light of the fact that Congress updated the National Telecommunications and Information Administration

http://www.ntia.doc.gov/files/ntia/publications/ntia_1755_1850_mhz_report_march2012.pdf (last visited June 5, 2012).

¹⁶ See President Barack Obama, Presidential Memorandum: Unleashing the Wireless Broadband Revolution (June 28, 2010), <http://www.whitehouse.gov/the-press-office/presidential-memorandum-unleashing-wireless-broadband-revolution> (last visited June 5, 2012).

Organization Act as part of the recent spectrum law to accommodate reimbursing federal spectrum users willing to move.¹⁷

I therefore respectfully reiterate my call for the West Wing of the White House to demand that Executive Branch agencies redouble their efforts to find spectrum to bring to *auction* by a date certain.

Finally, although I am pleased that NTIA has begun to discuss spectrum sharing in a meaningful way, the term “sharing” is amorphous. The notion of “sharing” has not been defined in the context of current deliberations. Over the years, I have consistently encouraged FCC efforts to promote different forms of spectrum sharing – for instance, in the “TV white spaces” within the 700 MHz Band,¹⁸ the 400 MHz Band,¹⁹ and the 5 GHz Band.²⁰ At the same time, however, these projects have been complex and time consuming. Moreover, the operations permitted in these bands are secondary, meaning that they must accept harmful interference from other users, and are limited to discrete uses at very low power levels. Before implementing any new spectrum sharing policies, we should analyze how these limited spectrum rights under various sharing scenarios would play out at auction. For instance, would bidders at auction really be interested in situations where federal government users could terminate the connections

¹⁷ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6701-03, 126 Stat. 156, 245-255 (2012) (Subtitle G-Federal Spectrum Relocation).

¹⁸ See, e.g., *Unlicensed Operation in the TV Broadcast Bands, ET Docket No. 04-186, Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, ET Docket No. 02-380, Second Memorandum Opinion and Order, 25 FCC Rcd 18661 (2010) (using unused and under-used spectrum held by licensed and unlicensed commercial incumbents for the purpose of developing new low power wireless services).

¹⁹ *Amendment of Parts 2 and 95 of the Commission's Rules to Provide Additional Spectrum for the Medical Device Radiocommunication Service in the 413-417 MHz Band*, ET Docket No. 09-36, Report and Order, 26 FCC Rcd 16605 (2011) (sharing spectrum with federal government users for the purpose of developing and employing implantable medical devices that have a wide range of operations, including restoring movement to paralyzed limbs).

²⁰ See, e.g., *Revision of Parts 2 and 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) devices in the 5 GHz Band*, *Memorandum Opinion and Order*, ET Docket No. 03-122, *Memorandum Opinion and Order*, 21 FCC Rcd 7672 (2006) (sharing spectrum with federal government users for the purpose of developing and employing Unlicensed National Information Infrastructure (U-NII), which provides short-range, high-speed wireless connections).

of private sector customers with little to no notice? Would investors and financiers perceive these restrictions as an attractive value proposition? Would the FCC maximize auction revenues for the benefit of American taxpayers? These and many more questions abound and we don't have much time to give consumers some constructive answers.

THE FCC SHOULD DO MORE TO ENCOURAGE SECONDARY MARKETS FOR SPECTRUM

I have long expressed my strong support for thorough but speedy transaction reviews given that delay and uncertainty surrounding the Commission's current process may have the unintended consequence of chilling investment that could benefit consumers. This is an issue that has invited congressional scrutiny spanning two decades. So let's walk through a little history:

After the SBC/Ameritech merger took 439 days for the FCC to review and Bell Atlantic/GTE took 623 days,²¹ Members of Congress introduced a number of proposals to either eliminate FCC merger review authority altogether or to establish a fixed review timetable, as short as 60 days.²² In response to this pressure, in early 2000, the Commission established a 180-day merger "shot clock."

But, let's be honest: the term "shot clock" is a euphemism. While the Commission "endeavor[s] to meet its 180-day goal," it is under no obligation – statutory or otherwise – to do so.²³ As a preliminary matter, the clock does not even begin until a Public Notice is released,

²¹ See *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712 (1999); *GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032 (2000).

²² Telecommunications Merger Review Act of 1999, S.1125, 106th Cong. (1999); HR.2533, Fairness in Telecommunications License Transfers Act of 1999, H.R. 2533, 106th Cong. (1999).

²³ Federal Communications Commission, Informal Timeline for Consideration of Applications for Transfers or Assignments of Licenses or Authorizations Relating to Complex Mergers, <http://www.fcc.gov/encyclopedia/informal-timeline-consideration-applications-transfers-or-assignments-licenses-or-autho> (last visited June 5, 2012).

and that step alone can take from a couple of weeks to several months after the initial transaction paperwork is filed with the FCC. Moreover, the Commission staff retains the discretion to stop the clock at will, and does so frequently. (Yes, apparently the FCC has the power to stop time itself.) This means that the 180-day goal is rarely, if ever, met for major deals.

Since 2001, major transactions that received heavy scrutiny and media coverage took on average 321 days, almost double the goal.²⁴ The shortest review, Sprint/Nextel, just missed the goal at 181 days.²⁵ The longest were 505 days for XM/Sirius and 429 days for Adelphia/Comcast/Time Warner.²⁶ Amazingly, even transactions unwinding, or divesting, assets took almost as long, if not longer. Even a seemingly *pro forma* transaction, splitting Time Warner and Time Warner Cable, took 243 days.²⁷

Here's the bottom line: the lack of a fixed timetable increases the Commission's leverage to extract conditions from the merged entity. Effectively, all too often the parties must pick their poison: either swallow unpalatable conditions or face months of additional review. In the meantime, uncertainty is costly. Being suspended in regulatory limbo strains both the companies and their employees, and provides a government-created, and therefore artificial, competitive advantage for other industry players.

²⁴ See Federal Communications Commission, Mergers and Acquisitions, <http://www.fcc.gov/mergers> (last visited June 5, 2012).

²⁵ *Applications of Nextel Communications, Inc., and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, Memorandum Opinion and Order, 20 FCC Rcd 13967 (2005).

²⁶ See *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, MB Docket No. 07-57, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348 (2008); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses Adelphia Communications Corporation (and Subsidiaries, Debtors-In-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees, Adelphia Communications Corporation, (and Subsidiaries, Debtors-In-Possession), Assignors and Transferors, to Comcast Corporation (Subsidiaries), Assignees and Transferees*, MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203 (2006).

²⁷ *Applications for Consent to the Assignment and/or Transfer of Control of Licenses Time Warner Inc., and its subsidiaries, Assignor/Transferor To Time Warner Cable Inc., and its subsidiaries, Assignee/Transferee*, MB Docket No. 08-120, Memorandum Opinion and Order, 24 FCC Rcd 879 (2009).

By working under this unwieldy, time-consuming and unpredictable process, the Commission has essentially relegated the secondary market for spectrum transfers to the comparative hearing model of yore used to award broadcast licenses.

Does this construct speed the flow of spectrum to its highest and best use? Does such bureaucratic sclerosis quickly place new spectrum into the hands of consumers, as they are demanding? Or are we at a point where not only is the hope of more federal spectrum coming to market dimming, but the federal government is impeding the flow of already-licensed spectrum to its highest and best use? If these trends continue, today's consumer frustration may quickly turn to outrage while we lose our global lead in wireless. We can and should do better.

THE FCC SHOULD BE FLEXIBLE WHEN EXAMINING PUBLIC SAFETY WAIVERS

Finally, I'd like to talk about the 30 or so jurisdictions awaiting the Commission's decision on pending requests to build advanced public safety networks in the 700 MHz Band. Denying all of these waivers as a group – the oldest of which have been pending for more than two years – would force these jurisdictions to abandon their respective critical projects, stifle important innovation and growth, and strand hundreds of millions of dollars in investment not to mention countless staff hours. Why?

There is no question that the Commission has long had the statutory authority to facilitate early deployment of the public safety broadband network, to permit current waiver grantees to continue deployment, as well as to grant authority to additional jurisdictions seeking to start their early deployment. Moreover, the new spectrum law provides the Commission additional flexibility to allow jurisdictions that deploy early to take advantage of partnership opportunities

with secondary users, thereby maximizing existing infrastructure and revenue sources for early deployments and the forthcoming nationwide network.

Common sense dictates that the Commission handle these pending requests on a case-by-case basis rather than dismiss the lot out of hand. In my experience, one-size-fits-all policy making in this context rarely works, especially when we are working with jurisdictions that have unique characteristics. By examining each waiver request individually, we will not delay the deployment of broadband networks to the first responders in these communities. As TIA's members know well, the technology to knit the interoperable network together, should that be necessary, already exists thanks to private sector innovation. It's not clear to me why the Commission would want to stand in the way of early adopters and the beneficial economies of scale completion of these projects will bring to the public safety sphere. I hope that the Commission will think twice before wielding a meat cleaver here.

CONCLUSION

So to wrap it up, when governments attempt to conduct social and economic engineering by foisting unnecessarily complicated mandates on the use of spectrum, their efforts frequently backfire. Private sector actors have a difficult enough time trying to predict market trends and satisfy their customers. Governments shouldn't make matters worse for them.

If America sticks with what works, a light regulatory framework especially for the wireless sector, we can restore market confidence and spur new investment, innovation and job growth while strengthening our global competitiveness. Our future is bright if we make the right decisions.

Thank you again for having me here today. Enjoy the Lone Star State and I look forward to your questions.