

KEYNOTE REMARKS OF FCC COMMISSIONER BRENDAN CARR
AT THE PHOENIX CENTER'S 19TH ANNUAL U.S. TELECOMS SYMPOSIUM
"KEEPING PACE WITH DYNAMIC INDUSTRIES"

WASHINGTON, D.C.

DECEMBER 3, 2019

It is an honor to receive the Jerry B. Duvall Public Service Award. I want to thank you Larry, George, and the whole Phoenix Center team for this great privilege. Your colleagues and Phoenix Center scholars provide a unique and important perspective in policy debates. You turn down the rhetoric and focus on the facts, the law, and the economics. So thank you for your many contributions. The work that we do at the FCC is better because of it.

It is also an honor to receive an award named after Jerry Duvall who is here today. As most of you here know, Jerry has had a long and distinguished career as an economist at the FCC. And he has recently taken his talents to the FCC's new Office of Economics and Analytics. OEA and the FCC are lucky to have you, Jerry.

I have to admit, though, when Larry told me that I would receive this award for political courage, I assumed it was for the frequent and cavalier way I've disregarded the first rule in politics—often referred to as the Dukakis Doctrine: never get photographed wearing an ill-fitting hard hat. Well, thanks to the time I've spent with tower hands and construction crews around the country, I've now violated that rule more times than I can count. Thankfully, I'm still standing.

But in all seriousness, spending time with America's tower crews has been one of the best parts of this job, and I've been glad to put a spotlight on their efforts. They are the ones who show real courage, and without them, none of the cutting-edge wireless services we enjoy today would exist.

The FCC has an important role to play in supporting those infrastructure builds. To encourage that investment and the fast Internet access it provides, the Commission has modernized our infrastructure rules. That required fighting regulatory inertia—the temptation just to keep doing things the way we always have—and to take a hard look at whether our 3G rules fit a 5G world. It may not surprise the people in this room that the old rules did not fit the new technology. The lengthy environmental reviews, historic preservation studies, zoning determinations, and heavy fees associated with 300-foot macro towers spaced every five miles might have been defensible for those large structures. But applying all that red tape to small cells the size of backpacks spaced one-fifth a mile apart is unreasonable given their impact and unconscionable if we're serious about America leading the world in 5G.

Reforming infrastructure rules to match new technology may seem obvious to people not involved in the day-to-day churn of a regulator. But path dependency is real, and especially so for large, rule-bound institutions not known for their speed. This problem is all the more important to solve for competition regulators and antitrust authorities because they are charged with blocking or permitting conduct based on their predictive judgments of what will happen.

As with infrastructure, the challenge on the competition policy side is not to see the world as it was in the 3G past or even how it is today, but to anticipate where competition is going. Put simply, competition authorities must keep pace with the industries they regulate. Failing to do so risks turning the

authorities themselves into restraints on competition and denying the public the full benefits that the free market can deliver.

I want to mention today one example of fresh thinking being brought to competition policy. Broadly, it's about how competition authorities, whether at the FCC, the Department of Justice, or state antitrust agencies should upgrade their approaches from 3G to 5G. And it's about how we had some success and some missed opportunities at the FCC in doing this in the context of the T-Mobile/Sprint transaction.

As everyone here knows, 5G is a disruptive new service that promises 10 times more responsive networks, at 100 times current speeds, that can serve 1,000 times more devices. All the life-changing technologies we hear about—from autonomous cars to smart cities, from remote surgery to virtual reality—won't work or won't work well without 5G.

5G isn't just an upgraded version of 4G. 5G's performance characteristics and how it is built blur the distinctions between wired and wireless industries. 5G will enable more choice as previously siloed industries compete, which we know will decrease prices and improve quality.

Right at this moment of immense transition and convergence, the FCC reviewed the merger of T-Mobile and Sprint. Part of the companies' argument for the merger was that it will allow them finally to have the scale and assets to compete against the wireless market leaders, Verizon and AT&T. The two biggest have built leading national networks, they have dominant coverage and capacity, and they generate almost all of the industry's profits. This argument, in my view, shows that the merger is more than sufficiently pro-competitive to merit approval, regardless of the particular antitrust methodology you use.

But in performing a competition analysis, it would be a mistake to look backwards at the wireless industry as it is constituted today. It would be a mistake to lock the status quo in place and assume it's as good as we can hope. We are not yet living in the "golden era" of wireless. Fundamentally, our job at the FCC—and the job for competition authorities more broadly—is to see clearly the generational upgrade in communications that is taking place before us. It would be unwise for the expert telecom agency to blinker itself to the coming 5G convergence and what that means for everyday Americans. Analysis that looks backwards to the age of talk-and-text may prolong those dying use cases, but it lacks relevance to how consumers use high-speed connections today and, certainly, tomorrow.

From this perspective, the FCC didn't get the merger completely right. Because while we formally approved it earlier this year, our analysis too often looked backwards and failed to see where the market is going.

You can see this error in our failure to update the relevant market definition in our competition analysis. We defined the market as one for "mobile telephony/broadband services," which is a market definition that the Commission created way back in 2008. In 2008, we were more than two years away from any nationwide provider launching 4G LTE. In 2008, only about six percent of mobile consumers had smartphones compared to over 90 percent today. And in 2008, we did not envision the trillion-dollar app economy. The world has changed but our market definition has not. This meant that when we analyzed the transaction, we could not count new in-home broadband competition from New T-Mobile in our main competition analysis, but instead we mentioned it as an additional benefit of the transaction.

Mobile broadband increasingly is substitutable for fixed broadband. With 5G, the performance of the two siloed services will be similar, and it won't matter much to consumers whether they get their broadband from a "wireless" company, a "cable" company, or a company with an entirely different label.

Updating our market definition would not have been a stretch. The Commission did not have to rely on its predictive judgment about 5G to re-orient our view of the market, because we see 5G convergence already. Right now, 5G is being deployed in more than three dozen communities. Verizon's first 5G offering is for in-home broadband, taking on cable. Cable, in turn, is offering wireless service and building wireless infrastructure in the process. Wireless, cable, and satellite companies are offering next-gen smart city and IoT applications. Rather than picking a market and then conducting our analysis through that lens, we should have reviewed the competitive effects first and then let that analysis determine the market.

So the lesson for competition authorities should be this: Technology is now creating and disrupting on shorter and shorter cycles. To keep pace, we must bring fresh thinking to competition policy and in particular to how we define relevant product markets. We must have the courage to break free from the restraints of the past and adopt approaches that reflect the realities of the marketplace as it is today and will be tomorrow. If we cling too long to decades-old market definitions, we will fail to see clearly a transaction's benefits and costs. And there is nothing pro-consumer about that. So I want to welcome Larry, George, and the Phoenix Center scholars to help contribute to this discussion.

After all, tech and telecom are increasingly important to our lives—how we provide for our families, help our kids learn, and connect to one another. It's a dynamic sector, and if you spend enough time around it, you can't help but be optimistic about the new opportunities that exist around the corner. As regulators, we need to help drive that competition, not inadvertently restrain it.

In the meantime, I want to thank you again for the award and commend the Phoenix Center for its continued efforts to bring analytical rigor and solutions-based advocacy to tech policy. And I welcome the chance to answer your questions.