

**STATEMENT OF
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FEDERAL COMMUNICATIONS COMMISSION
BEFORE THE SENATE COMMITTEE ON
COMMERCE, SCIENCE, AND TRANSPORTATION
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Mr. Chairman, Senators, I am honored to appear before you today. I always appreciate the opportunity to return to the Senate where I spent many years working with my mentor and friend, Senator Hollings. And I am pleased to note also that I have been privileged to know Chairman McCain for many years and I look forward to continuing to work with him as he reassumes the Chairmanship of this distinguished Committee.

This is the first time that I have appeared before you as a Commissioner of the Federal Communications Commission. I want to thank you for the privilege of being an active participant in the deliberations of the FCC as the telecommunications revolution transforms our lives and remakes our world. It is a responsibility that I undertake with the utmost seriousness.

When I appeared before this Committee in 2001 at my confirmation hearing, I told you that I was an optimist about the future of telecom and about communications technologies generally. A year and a half later, tough times though these are, I remain an optimist. It was just a couple of years ago that all the analysts were in high orbit over anything even remotely related to telecom. You'll remember how they pitched prosperity forever, with telecom leading the way into some brave new world that would no longer be subject to the vagaries of the business cycle. Then recession hit, and all those experts went -- on the turn of a dime -- from irrational exuberance to equally irrational pessimism.

I think they were wrong on both the upside and the downside. Sure, the business plans of some companies were faulty, but the technologies behind them not only remain -- they proliferate. Plus, this "boom-and-bust-and-boom-again" cycle that we have lived through in telecom is really nothing all that new -- it has accompanied other great technology and infrastructure rollouts throughout our history. Excess enthusiasm and risky investment at the outset, the bubble bursts, and then -- if the infrastructure need endures and the technology is viable -- growth returns. I think the same will happen here. While no technology will ever lay the business cycle to rest -- I think we all understand that now -- a technology as substantive and transformative as telecommunications is not going to remain fallow for long. I am encouraged that, at long last, some of the experts are beginning to see the end of the telecom downturn. I'm encouraged by the more balanced approach that a few of these experts are beginning to show. Because, in fact, what's coming down the road is going to make all of the dramatic telecommunications changes of the past century -- and they *were* dramatic -- pale by comparison. Communications technologies will not only be a part of America's 21st century prosperity. They will lead the way. Broadband, wireless, Wi-Fi, digital broadcasting and

interactive media, telemedicine and telecommuting are already joining the parade, and around the corner where we can't see yet will be much, much more.

There is another factor at work here. Part of the market's problem is uncertainty about policy directions on such things as competition and broadband deployment. This hearing takes place at the start of what promises to be a truly momentous year at the Commission, going to the heart of competition in many industries. In 2002, we teed up issues that have the potential to substantially remake the communications landscape of America for many years to come. Two thousand two was, in many ways, prologue, because voting on the issues comes in 2003. I am pleased to participate in this discussion today and obtain the guidance of the Committee as we begin this critical year.

At all times, I strive to maintain my commitment to the public interest. As public servants, we must put the public interest front and center. It is at the core of my own philosophy of government. More germanely, it permeates the statutes which the Commission implements. Indeed, the term "public interest" appears over 110 times in the Communications Act. The public interest is the prism through which we should always look as we make our decisions. My question to visitors to my office who are advocating for specific policy changes is always: how does what you want the Commission to do serve the public interest? It is my lodestar.

My overriding objective as an FCC Commissioner is to help bring the best, most accessible and cost-effective communications system in the world to all of our people – and I mean *all* of our people. That surely includes those who live in rural communities, those who live on tribal lands, those who are economically disadvantaged, and those with disabilities. Each and every citizen of this great country should have access to the wonders of communications. I really don't think it exaggerates much to characterize access to communications in this modern age as a civil right.

No one should underestimate the force of the Congressional commitment to universal service. A critical pillar of federal telecommunications policy is that all Americans should have access to reasonably comparable services at reasonably comparable rates. Congress has been clear – it has told us to make comparable technologies available all across the nation. Many carriers serving rural America have made, or plan to make, significant investments in communications infrastructure. But they need certainty and stability to undertake the investment to modernize their networks, including investment in broadband. Rural carriers face unique and very serious challenges to bring the communications revolution to their communities. As we move forward on all of our proceedings, including, among others, universal service decisions, broadband policy, access charge reform, and intercarrier compensation, we just must do everything we can to make certain that we understand the full impact of our decisions on rural America. If we get it wrong on these rural issues, we will consign a lot of Americans to second-class citizenship.

Today, having access to advanced communications – broadband – is every bit as important as access to basic telephone services was in the past. Providing meaningful

access to advanced telecommunications for all our citizens may well spell the difference between continued stagnation and economic revitalization. Broadband is already becoming key to our nation's systems of education and commerce and jobs and entertainment and, therefore, key to America's future. Those who get access will win. Those who don't will lose. I want to make sure we all get there.

I sympathize with the concerns about the lack of regulatory clarity in this area, but I question whether we are in fact heading in the direction of providing greater certainty. The Commission has already placed cable modem services into Title I. We reached a similar but tentative conclusion for wireline DSL providers in an NPRM last year. My worry is that we are taking a gigantic leap down the road of removing core communications services from the statutory frameworks intended and established by Congress, substituting our own judgment for that of Congress, and playing a game of regulatory musical chairs by moving technologies and services from one statutory definition to another.

Before we move all the chairs, we had better understand the potentially far-reaching implications of our actions for such issues as homeland security, universal service and ensuring that all Americans, including those living in rural and high-cost areas, have access to advanced services. Law enforcement has raised concerns about the implications of this decision on its ability to protect our citizens. And the Federal-State Joint Board on Universal Service recently concluded that a Title I decision would mean that the universal service fund could never support broadband access. Additionally, rural carriers have expressed concerns about cost recovery for broadband deployment. We need to provide carriers with the certainty and stability to undertake investment to modernize infrastructure in rural communities.

We had also better understand the impact on a second pillar of the Act – competition. Competition has the power to give choices to consumers – choices of services, choices of providers, choices of technology, and choices of sources of content. When consumers have more options, they reap the benefits -- better services, greater innovation, higher technology, and more robust discourse.

We need to talk also about the intersection between competition and deregulation. As competition develops, we are enabled to meet another core goal of Congress – deregulation. The 1996 Act is at base a deregulatory statute. Not deregulation all at one fell swoop, but over time, as, step-by-step, competition takes hold. So the Act clearly envisions deregulation as competition expands to replace monopoly. Where markets function properly, we can rely more on market forces -- rather than legacy regulation -- to constrain anti-competitive conduct. Where competition does not exist or market failures arise, however, we must respond with clear and enforceable rules tailored to serve the public interest. The choice is not between regulation and deregulation; it is a question of responsible versus irresponsible deregulation. And the public interest never goes away.

As Congress foresaw, we are now seeing competition both *within* delivery platforms and *among* delivery platforms, with increasing convergence of industries, of

services, and of markets. Facilitating competition both within and across platforms -- and **both** are important in the statutory framework -- presents great challenge to a regulatory agency like the FCC. Managing the transition from monopoly to competition is tricky. To assume that a simple hands-off approach can be the midwife for a brave new competitive world is to ignore the facts of life. Promoting competition is a hands-on, not a hands-off, job. Each day, every day, we need to be about the job of pursuing Congress's goal of competition and consumer choice.

First, we must use our current authority to reduce the chance that, in a competitive market, corporate misdeeds and mismanagement will injure American consumers or the competition that Congress sought to promote in the 1996 Act. In light of all the accounting deprecations we have witnessed in the financial world regulated by the SEC, we need to reassure ourselves that our own accounting procedures and requirements are in good stead. Our accounting data inform our decisions about the reality of competition and the protection of consumers. Some traditional FCC accounting rules may be good candidates for extinction -- and the Commission has already done a good bit of extinguishing -- but it may be that the new times in which we live demand some new procedures. In that regard, I am pleased that the Commission and the States have come together in a new Joint Conference on Accounting to look at these challenges, I hope from the bottom up. I am also pleased that Chairman Powell designated me as a member of this Joint Conference.

Second, we need to gather more and better data to inform Commission decision-making. I would also note the need for such data to **sustain** our decisions legally once they are made, especially in light of the often activist approach of some of the courts who watch so zealously over the FCC and accord it such minimal deference. We have come to rely over the years perhaps too much on self-reported industry data or Wall Street analysts for information to make critical decisions. We must commit to doing the hard work of collecting our own data rather than relying on potentially misleading and harmful financial, accounting, and market information produced by corporate sources subject to clear biases and market pressures. And we must conduct more of our own analyses of the industries we regulate.

These efforts should include completing our proceedings on performance measurements that have been pending for over a year. And they should include better follow-up on what happens in a State following a successful application for long-distance authorization. One thing this Commission has done to promote competition is to move briskly ahead on Section 271 applications. No year comes close to matching the pace of 271 approvals -- many of which I supported -- during the past 12 months. But competition is not the result of some frantic one-time dash to check-list approval. It is a process over time. It is about -- or should be about -- creating and then **sustaining** the reality of competition. Our present data on whether competition is taking hold is sketchy and non-integrated. We need better data to evaluate whether and how approved carriers are complying with their obligations after grant of the application, as Congress required. I was troubled that the Commission recently moved forward with deregulation efforts by allowing the sunset of separate affiliate requirements without the benefit of such

information or analysis. It is only with good data and continued vigilance that we can ensure that consumers reap the benefits of competition -- greater choice, lower prices, and better services.

Third, we must be increasingly focused on enforcement. The 1996 Act developed a bold vision for a vastly different telecommunications world, one in which the vitality of competition was to replace the heritage of monopoly. As competition grows and regulation is reduced, enforcement becomes even more important. This Commission has taken forward steps on enforcement, but there still is the need to make our enforcement more efficient, more effective, and broader reaching. In addition to the broad enforcement authority given to the Commission in Section 4, the statute gives the Commission the authority to conduct investigations and audits, to issue subpoenas, assess forfeitures, issue cease-and-desist orders, and revoke licenses. We must use all of the tools we have. Revoking some wrongdoer's license would send a real wake-up call to those who seek to misuse the nation's spectrum.

Fourth, in a competitive environment, we must establish a concrete plan for how we will protect consumers in the event a carrier ceases operations or otherwise disrupts service. A central responsibility of the FCC is to protect the network from dangerous disruption, not only for consumers, but for critical public safety, military, and government users. We need to make sure we do all we can to protect consumers and ensure that they do not face service disruptions.

In all of these areas, as we make decisions in our proceedings this year, we must work closely and cooperatively with our colleagues at the State Commissions. The Telecom Act is very much a federal activity, using the term "federal" in its historical context of the state and national governments working together. The Commission and the State Commissions have a joint responsibility under the Act to ensure that conditions are right for competition to flourish. The path to success is not through preemption of the role of the States.

We rely on State Commissions for their efforts to open local markets to competition. We rely on State Commissions to evaluate the openness of local markets in applications for long-distance authorization under Section 271. Similarly, State Commissions are often best positioned to make the granular, fact-intensive determinations about any impairment faced by competitors in their local markets. The importance of Federal-State cooperation cannot be overstated. It would be worse than unfortunate if our decisions in the upcoming proceedings led to less cooperation with our State partners.

As we move forward at the Commission to consider these decisions, I would also encourage parties to work together to help us find constructive solutions. All too often, parties seem interested only in throwing the long ball in the legislative or the regulatory arena. But there is no simple panacea for all the ills that plague the telecom industries. My take is that everyone needs to take a deep breath, avoid knee-jerk reactions to each others' suggestions, and thereby lower the decibel level. We need to look for first small

steps. Incremental steps that can put us on the road to workable solutions. In this regard, I was pleased to learn of some incipient discussions among incumbents and competitors that began on the fringes of the recent NARUC Conference in Chicago. I congratulate everyone who is taking part in them and those who seized this opportunity to get a conversation going. There are those who remain skeptical that this process can accomplish anything, and they may be right, although their very skepticism only endangers those chances more. The discussions endure after the first couple of sessions, and I understand that they may even be making some progress. I hope all who are participating will make a New Year's resolution to keep the dialogue going. It would be helpful to hear some encouraging messages from the top of the industries participating in these discussions. Perhaps those in the business world who would like to see the Commission less involved in their daily affairs would be better off looking for collaborative solutions among themselves rather than getting so dug in that agency action becomes the only way out.

Finally, let me mention something that we should *not* do. We should not use the current situation as an excuse to back away from competition. This is fundamental. Instead, we must renew our efforts to *promote* competition. It is during recessions and tough economic times when we hear the pleas for less competition and increased consolidation. But re-monopolization is not the cure for telecom's problems. Instead we should vigorously pursue Congress's goal of competition and consumer choice.

It is difficult to over-estimate the importance of the decisions that are going to be made on the competition issues. In the coming months, we will decide whether to keep, modify, or scrap many of our competition rules. Talk about important decisions – there is the potential here to remake our entire communications landscape, for better or for worse, for many years to come. The stakes are enormous.

This applies not only to telecommunications, but also to the media landscape. The Commission is currently reviewing virtually all of our media consolidation rules. These rules, among other things, limit a single corporation from dominating local TV markets; from merging a community's TV stations, radio stations, and newspaper; from merging two of the major TV networks; and from controlling more than 35% of all TV households in the nation.

At stake in this proceeding, as I see it, are core American values of localism, diversity, competition and maintaining the multiplicity of voices and choices that undergird America's precious marketplace of ideas and that sustain our democracy. At stake in this vote is how TV, radio, newspapers, and the Internet will look in the next generation and beyond. And at stake is the ability of consumers to enjoy creative, diverse and enriching entertainment springing forth from the well-springs of America's creative genius rather than from the surveys of Madison Avenue advertisers.

The elimination of radio consolidation protections in 1996 has already led to conglomerates owning hundreds (in one case, more than a thousand) stations across the country. More and more programming originates outside local stations' studios -- far

from listeners and their communities. Today there are 30 percent fewer radio station owners than there were before 1996. Most local radio markets are now oligopolies.

Some media watchers argue that this concentration has led to far less coverage of news and public interest programming and to less localism. Many feel radio now serves more to advertise the products of vertically integrated conglomerates than to inform or entertain Americans with the best and most original programming. Additionally, I am concerned that we have not analyzed the impact of consolidation on the increasing pervasiveness of offensive and indecent programming as programming decisions are wrested from our local communities and made instead in distant corporate headquarters. Is it simple coincidence that the rising tide of indecency -- whether sexual, profane, or violent -- is occurring amidst a rising tide of media industry consolidation?

I am frankly concerned that we are on the verge of dramatically altering our nation's media landscape without the kind of national dialogue and debate these issues so clearly merit. The stakes are incredibly enormous and we must, simply *must*, get this right. We need the facts. We need studies both broad and deep before we plunge ahead to remake the media landscape. And we need to hear from people all across this land of ours.

Suppose for a moment that the Commission votes to remove or significantly modify the ownership limits. And suppose, just suppose, that it turns out to be a mistake. How would we ever put *that* genie back in the bottle? The answer is that we could not. That's why we need -- truly *need* -- a national dialogue on the issue. We need it all across America with as many stakeholders as possible taking part. And in my book, *every* American is a stakeholder in the great Communications Revolution of our time.

Mr. Chairman, Senator Hollings, distinguished Members of this Committee, these are some of the major issues on our agenda. I approach these proceedings hopeful that the Commission will show proper restraint and will not presume to undercut the statutory competitive framework. Instead, the Commission should use these proceedings to understand the marketplace better in our role as policy implementers and not policy makers. And we must be at pains not to let a zeal to deregulate before meaningful competition develops cripple the very competition that Congress sought to engender.

Thank you for inviting me to appear before you and for the privilege of serving as a Commissioner of the FCC during these historic times. I look forward to working with each of you as we build a better future for all our citizens through communications.