My View from the Doorstep of FCC Change

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I. INTRODUCTION

As a new commissioner at the Federal Communications Commission ("FCC" or "the Commission"), I have developed five key principles that inform my regulatory philosophy and that will serve as guideposts during my tenure at the FCC. This Article defines and gives context to those principles.

First, Congress sets the FCC's responsibilities in the Communications Act, and the Commission should faithfully implement those tasks rather than pursuing an independent agenda. Second, fully functioning markets deliver better products and services to consumers as compared to markets regulated by the government. Unless structural factors prevent markets from being competitive, or Congress has established objectives (such as universal service) that are not market-based, government should be reluctant to intervene in the marketplace. Third, where the FCC promulgates rules, it should ensure that those rules are clear and vigorously enforced. Efficient markets depend on clear and predictable rules, and a failure to enforce rules undermines the agency's credibility and effectiveness. Fourth, a regulatory agency—particularly one with jurisdiction over a high-tech sector like communications—cannot possibly duplicate the resources and expertise of those it regulates. Therefore, the FCC must be humble about its own abilities and must reach out to consumer groups, industry, trade associations, and state regulators to maximize the information available in the decision-making process. Finally, as a government agency supported by taxpayers, the FCC should strive to provide the same degree of responsiveness and effectiveness that would be expected of an organization in the private sector.

These principles are the product of my experiences in government and the private sector. I have previously served at the FCC as a legal advisor under two respected and dedicated commissioners, and I have worked for an array of businesses representing a broad spectrum of the

communications industry, including providers of satellite, wireless, and wireline communications services. I have also served in a variety of leadership capacities for the Federal Communications Bar Association, including a term as its president.

While I am fortunate to have learned a lot from these diverse experiences, no set of experiences can fully prepare a commissioner to address all of the complex technical and legal issues the Commission faces on a daily basis. But I am confident that, by relying on the principles discussed in this Article, I will help the Commission deliver to consumers the benefits envisioned by Congress in enacting the Communications Act. While we have many hard problems to address, I look forward to working with my fellow commissioners, the talented and hard-working agency staff, state regulators, consumers, trade associations, businesses, and the Bar to meet these challenges.

II. GUIDING PRINCIPLES

A. The FCC Should Focus on Implementing the Agenda Set by Congress in the Statute

The FCC is an independent agency created by Congress, and as such, its priorities are defined not by the predilections of the commissioners but by the text of the Communications Act. Like any institution, the FCC has a finite amount of resources. We should expend those resources implementing congressional priorities, and only after those are fulfilled should we pursue objectives that lie within our discretionary authority.

Statutory language at its best provides a clear guide for the Commission's priorities. Landmark legislation like the Telecommunications Act of 1996 ("the 1996 Act" or "the Act") serves as an excellent example. In many of the Act's provisions, Congress set forth explicit timetables for the FCC's execution of statutory mandates, including a six-month deadline for implementing the market-opening duties in section 251[1] and a two-year deadline for overhauling the universal service subsidy scheme in section 254.[2] In these sections, Congress decreed that the FCC "shall" implement specific provisions of the Act.[3] Other

1. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 47 U.S.C. § 251(d)(1) (Supp. V 1999).

2. *Id.* § 254(a)(1)-(2).

3. *See id.* § 251(d)(1) ("[w]ithin 6 months after . . . [the date of enactment of the Telecommunications Act of 1996], the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section."); *id.* § 254(a)(1) ("the Commission shall institute and refer to a Federal-State Joint Board . . . a proceeding to recommend changes to any of its regulations in order to implement sections 214(e) . . . and

provisions, by contrast, state that the FCC "may" take certain actions.[4] I believe the FCC should concentrate on fulfilling specific mandates (the "shalls"), even where Congress did not impose a specific timetable for doing so, before it devotes resources to proceedings that are purely discretionary (the "mays"). And the agency should certainly address specific statutory responsibilities ("shalls" and "mays") before launching any public policy initiatives in areas where the statute is silent.

I acknowledge that the statutory scheme dictates the FCC's priorities only to a point. That is, although the statute creates tiers of responsibilities (the "shalls," "mays," and silence), it does not often indicate which "shall" should be tackled first or with the most resources. It is in this prioritization that the Commission is required to exercise its judgment as an expert independent agency. The President has appointed each of us as commissioners—assisted by the expert staff at the Commission—to make these judgments. I am concerned that, at times, prior commissions may have viewed this discretion to prioritize among congressional mandates as a license to modify the mandates themselves.

Indeed, the FCC has damaged its credibility and prestige on occasion by focusing on discretionary acts to the detriment of implementing statutory mandates. For example, at a time when the Commission was overwhelmed with mandatory proceedings arising from the 1996 Act, the FCC spent a considerable amount of time exploring a proposal to compel broadcast networks to provide free advertising time to political candidates.[5] Devoting resources to the pursuit of such a proposal should occur only to the extent that it does not burden or interfere with the fulfillment of Congress's express statutory directions.

Such freelancing is particularly questionable in light of the FCC's failure in recent years to fulfill all of its statutory obligations. For example, in 1992, Congress enacted the Telephone Consumer Protection Act

this section"); *id.* § 254(a)(2) ("[t]he Commission shall initiate a single proceeding to implement the recommendations from the Joint Board . . . and shall complete such proceeding within 15 months . . . .").

4. *See, e.g.*, *id.* § 273(c)(3):

> The Commission may prescribe such additional regulations under this section as may be necessary to ensure that manufacturers have access to the information with respect to the protocols and technical requirements for connection with and use of telephone exchange service facilities that a Bell operating company makes available to any manufacturing affiliate or any unaffiliated manufacturer.

See also id. § 316(a)(1) ("[a]ny station license or construction permit may be modified by the Commission . . . if in the judgment of the Commission such action will promote the public interest, convenience, and necessity . . . .").

5. *See, e.g.*, Brooks Boliek, *FCC Divided But Is Prepared for Airtime Debate*, HOLLYWOOD REP., Jan. 29, 1998, at 1.

(TCPA), which prohibited, among other things, unsolicited faxes.[6] One does not need to be an FCC Commissioner to recognize that, for over a decade, American consumers have fought a losing battle with fax advertisers. Despite the obvious pervasiveness of the problem, it took the Commission no less than seven years to bring its first enforcement action.[7] Unsolicited faxes certainly do not grab headlines in the way free political advertising does, but that is not the standard by which we should assess the FCC's job performance. Therefore, I believe that the Commission should devote additional resources to enforce our rules prohibiting unsolicited faxes. I have been heartened by the Commission's increased enforcement efforts in this area over the past few years.[8] In addition, the FCC should step up its efforts to inform consumers of their rights under the TCPA. Only with these efforts will the Commission fulfill the statutory mandate and the prioritization inherent in the TCPA.

I consider proposals like the push for free political ads ill-conceived not only because they divert Commission resources away from statutory priorities, but also because the FCC should be wary of adopting significant new regulations in areas where Congress has not spoken. The statute gives the FCC broad general rulemaking authority on matters that are "necessary" to the execution of its functions (e.g., section 4(i)), but this is a weak reed on which to base a major policy initiative.[9] Similarly, in the recent debate over whether to mandate "open access" to the network infrastructure of cable operators providing high-speed Internet access, some proponents of such access argued that the FCC has the requisite statutory authority under section 4(i),[10] even if the FCC lacks authority to impose such a requirement under Title II or Title VI of the TCPA. I believe that the FCC rarely, if ever, should reach out to assert authority in this manner; nor are the courts likely to bless such efforts. The FCC should exercise restraint—we should not grant ourselves the authority that a fair reading of the TCPA denies us.

6. Pub. L. No. 102-556, § 402, 106 Stat. 4194 (1992) (codified at 47 U.S.C. § 227(b)(1)(C) (1994)).

7. *See generally* Get-Aways, Inc., *Notice of Apparent Liability for Forfeiture*, 15 F.C.C.R. 1805, 18 Comm. Reg. (P & F) 1282 (1999) [hereinafter Get-Aways, Inc.].

8. *See* US Notary, Inc., File No. EB-00-TC-011, *Notice of Apparent Liability*, 15 F.C.C.R. 16999, 21 Comm. Reg. (P & F) 951 (2000); *Tri-Star Marketing, Inc.*, File No. EB-00-TC-009, *Notice of Apparent Liability*, 15 F.C.C.R. 11295, 21 Comm. Reg. (P & F) 37 (2000); Get-Aways, Inc., *supra* note 7.

9. *See, e.g.*, FCC v. Midwest Video Corp., 440 U.S. 689, 709 (1979) (stating that authority to impose broad new obligations on cable operators, beyond those that are reasonably ancillary to core jurisdiction, "must come specifically from Congress.").

10. 47 U.S.C. § 154(i) (1994).

B. Fully Functioning Markets Invariably Make Better Decisions than Do Regulators

My second core principle derives from my faith in the ability of market forces to maximize consumer welfare. Despite the noblest of intentions, government simply cannot allocate resources, punish sloth, or spur innovation as efficiently as markets. The history of our nation, and the demise of those that have adopted centrally planned economies, makes this proposition indisputable. While there is a critical role for regulation—as I discuss below, ensuring that markets are open to competition, limiting licensees' ability to impose costs on others, and achieving specific congressional objectives—we should rely on market forces in lieu of regulatory mandates wherever we can do so consistent with Congress's explicit instructions.

1. Placing Trust in Market Forces

Regulators should have a healthy skepticism towards any attempt to displace market forces with regulation. Therefore, in each case, I will ask: Is this regulation truly necessary? Is there a market failure? Will the burdens imposed by the proposed regulation outweigh its anticipated benefits? Will it preserve incentives for companies to innovate, and thereby deliver better services and lower prices to consumers? Would a less regulatory approach, paired with an emphasis on strict enforcement of existing rules, produce greater consumer welfare? Similarly, I will continually examine our existing regulations to ensure that the original justification for regulatory intervention remains valid.

My experience in both the private and public sectors leads me to believe that, more often than not, the answers to these questions will indicate that prescriptive regulatory intervention in the marketplace is *not* warranted. Even if a proposed regulation appears to have sound justifications, we must keep in mind that all regulations produce unanticipated consequences. And in many cases, those consequences are sufficiently negative as to outweigh the benefits that regulators originally envisioned. I believe that consumers are usually better served if regulators shift their emphasis from imposing prescriptive rules—which by their very nature are inflexible and overbroad, and therefore tend to hamper innovation—to relying on a regime with fewer rules and a greater emphasis on enforcement mechanisms. Enforcement mechanisms have the advantage of being narrowly tailored to specific anticompetitive practices, thus leaving companies free to engage in other procompetitive conduct that may have been barred by a prescriptive rule.

Several examples inform my skepticism about relying on regulatory mandates as a means of promoting consumer welfare. Historically, where the FCC has eschewed a heavy regulatory hand in favor of market forces, the results generally have been beneficial for consumers. The explosive growth of the wireless sector provides perhaps the best example. When Congress passed section 332 in 1993, the Commission faced a key choice of how to regulate Personal Communications Services ("PCS") and other new wireless services.[11] As some argued, the FCC could have imposed strict Title II common carrier regulatory constraints on pricing and service terms and conditions, based on the supposed entrenchment of incumbent cellular providers. Instead, it forewent traditional regulatory constraints on pricing and service offerings.[12] The consequence has been that consumers now enjoy unparalleled choice, dramatically lowered prices, and improved calling plans and service quality.[13] Similarly, the Commission's approach to Part 15 unlicensed services is instructive.[14] By designating certain spectrum bands for unlicensed use, the Commission has effectively created a hotbed of wireless innovation, freed from the transaction costs and confines of spectrum licensing.[15] The FCC likewise has exercised restraint in its approach to most Internet access services. By refraining from imposing complex and burdensome regulations on providers of dial-up Internet access and cable modems, the Commission has allowed these services to flourish.[16]

11. 47 U.S.C. § 332 (1994).

12. *See generally* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Second Report*, FCC 97-75, at 3 (rel. Mar. 25, 1997), *available at* http://www.fcc.gov/wtb/reports/documents/cmrscomp.pdf.

13. Sixth Annual CMRS Competition Report, Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Sixth Report*, 16 F.C.C.R. 13350, 34 Comm. Reg. (P & F) 170 (2001).

14. *See* 47 C.F.R. § 15 (Dec. 18, 2001).

15. *See, e.g.*, Amendment of Part II of the Comm'n's Rules to Allocate Spectrum Below 3GHz for Mobile and Fixed Servs. to Support the Introduction of New Advanced Wireless Servs., Including Third Generation Wireless Sys., *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, ET Docket No. 00-258, para. 9-13 (rel. Aug. 20, 2001). Unfortunately, the "unlicensed" PCS licenses have never enjoyed this success based on a number of factors, including premiums associated with relocation of incumbents from the band, distinct spectrum etiquette for each of the 10 MHz sub-bands, the temporary ban on nomadic devices, the narrow bandwidth available, and the lack of internationally harmonized rules. None of these factors were present for Part 15 devices at 2.4 GHz.

16. By contrast, the Commission's heavy regulation of DSL-based Internet access services arguably has hampered deployment of those services.

The flip side of these success stories is the drag on competition and innovation that sometimes has resulted from the FCC's *over*-regulation of other services. I believe that has been the case with respect to some of the FCC's efforts to jump-start local telephone competition. This is undoubtedly a complicated issue. Local telephony is an arena in which incumbents previously held state-sanctioned monopolies, and Congress has charged the FCC with introducing competition where many economists have asserted it could not flourish. But I believe that, in its zeal to facilitate competition by new entrants against incumbent local telephone companies, the FCC has erected an overly complex regulatory regime that has impeded, rather than facilitated, competition.

The Supreme Court's review of the FCC's first local competition order is telling. In vacating the FCC's initial interpretation of the 1996 Act's unbundling provision, the Court chastised the Commission for adopting a standardless approach that led to the forced sharing of virtually every network facility.[17] To be sure, some degree of forced sharing is plainly necessary, both under the test of section 251 and as a matter of public policy. Without forced sharing, competitive local exchange carriers ("LECs") simply could not enter the market, given the rational business incentives of incumbent LECs to resist competitive entry. Indeed, the experience of the last five years—countless incidents of foot-dragging, protracted litigation, and the like—confirms that the incumbent LECs have been anything but eager to see their local markets opened to robust competition. But as Justice Breyer's separate opinion in *Iowa Utilities Board* cogently noted, there is a risk of relying too heavily on forced sharing as a means of facilitating competition.[18] Excessive sharing of facilities destroys the investment incentives of both incumbents and new entrants alike: rational incumbents avoid risking capital on new facilities if rivals can get a free ride, and rational entrants will refrain from deploying their own facilities if they have unrestricted access to incumbents' networks at cost-based rates.[19] This stifling of investment incentives is all the more problematic where supposedly "cost-based" rates are, as in some cases, based on a model that makes unrealistic economic assumptions and accordingly turn out to be *below* actual cost. In striving to stimulate *some* form of local telephone competition, by creating expansive resale and unbundling opportunities, we have adopted rules that have failed to engender, and may have actually hampered, *facilities-based* competition—which is the most viable strategy in the long term and the one most likely to

17. AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366, 386-92 (1999).
18. *Id.* at 428-431 (Breyer, J., concurring in part).
19. *Id.*

benefit consumers.

I believe that the FCC should have resisted competitors' demands to unbundle each and every piece of the incumbents' networks. At the very least, the FCC should have considered attaching sunset provisions to some of its more expansive unbundling rules in an effort to prompt a transition to facilities-based competition. Instead, the FCC initially construed the impairment standard—which Congress intended as a *constraint* on unbundling—as covering any circumstance where a new entrant's lack of access to the network element in question caused *any* increase in cost or decrease in quality to the competitor's service.[20] In the long term, however, incumbents and new entrants alike—and, most importantly, consumers—will be better off in a market that is less dependent on shared network facilities. We can best promote competition by imposing an "impairment" threshold that recognizes the costs of forced sharing in addition to the benefits. By limiting the availability of unbundling to the smaller set of circumstances where the lack of access to network facilities causes a *material* degree of impairment, the agency could have done more—and will do more going forward—to spur the deployment of facilities by competitors and, in turn, the development of more robust and resilient competition.[21]

The FCC's regulation of the Local Multipoint Distribution Service ("LMDS") provides another cautionary tale. When the FCC licensed LMDS providers, it categorically barred incumbent local telephone companies and cable operators from obtaining licenses within their operating regions, notwithstanding that these providers might have used LMDS spectrum to provide consumers with a host of innovative new services.[22] Because these major players were kept out of the game, equipment manufacturers may have been less inclined to devote substantial

20. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 F.C.C.R. 15499, para. 285, 4 Comm. Reg. (P & F) 82 (1996).

21. *See Iowa Utils. Bd.*, 525 U.S. at 389-90.

> [T]he Commission's assumption that *any* increase in cost (or decrease in quality) imposed by denial of a network element renders access to that element "necessary," and causes the failure to provide that element to "impair" the entrant's ability to furnish its desired services, is simply not in accord with the ordinary and fair meaning of those terms.

Id. (emphasis in original). *See also id.* at 430 (Breyer, J., concurring in part) (criticizing FCC decision to force an incumbent "to share virtually every aspect of its business" and noting that excessive unbundling frustrates competition).

22. *See* Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, 12 F.C.C.R. 12545, para. 13, 6 Comm. Reg. (P & F) 1291 (1997) [hereinafter *Order on Reconsideration*].

resources toward the development of LMDS devices, and the service has never really gotten off the ground. The FCC ultimately recognized the problem and agreed to lift the ownership restriction,[23] but it may have done so too late. Thus, out of a fear that incumbents would harm competition, the FCC issued prophylactic regulations that may have precluded *any* competition.

In sum, prescriptive regulation is sometimes necessary, but there is a significant risk of construing the Act's provisions too broadly—i.e., so broadly as to undercut the marketplace. The lesson we take from these examples should be a commitment to rely on market forces unless there is a clear and convincing case for *ex ante* regulatory intervention—as opposed to mere speculation about potential anticompetitive effects. I describe below three categories of instances where this presumption against intervention is likely to be overcome.

2. Where Does Regulation Remain Necessary?

While reluctant to intervene in the marketplace, I recognize that there are certain critical functions that regulators must perform, even in a competitive marketplace, in furtherance of the public interest. These functions largely fall into three overarching categories of regulations: those that (a) ensure that markets are free of structural barriers to competition; (b) prevent licensees from imposing costs on consumers and competitors, and address other market failures; and (c) implement specific congressional policy choices that are not market-driven and may be unrelated to the advancement of competition. In assessing the continued efficacy of our rules that perform these functions, the FCC is greatly assisted by Congress's creation of a biennial review process and forbearance authority, which require us regularly to reexamine our rules to ensure that they remain necessary in the face of increasing competition.

a. Regulations Aimed at Eliminating Structural Barriers to Competition

Since a regulatory model that relies predominantly on market forces presupposes the existence of competition, we must resort to regulatory intervention if structural barriers impede competition from developing in the first instance. For example, achieving competition in local wireline telephony requires governmental intervention because the incumbent LECs' control of essential network facilities, and their business incentives

23. *See* Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules, *Third Report and Order and Memorandum Opinion and Order*, 15 F.C.C.R. 11857, paras. 1, 15, 24, 15 Comm. Reg. (P & F) 1 (2000).

to resist making those facilities available to competitors, would preclude competition from other wireline carriers absent such intervention. Congress accordingly enacted section 251(c)(3) of the Communications Act, which directs the FCC to ensure unbundled access to incumbent LECs' network facilities where an absence of such access would "impair" a competitor's ability to provide service.[24] In the same vein, section 251(c)(6) grants competitors the right to "co-locate" equipment in incumbents' central offices to the extent necessary for interconnection or access to unbundled network elements.[25] Similarly, Congress has mandated the provision of nondiscriminatory access to utilities' telephone poles, ducts, conduits, and rights-of-way, recognizing that market forces are unlikely to induce a monopoly owner of such rights-of-way to provide access on nondiscriminatory terms and conditions.[26] The key to our implementation of these mandates is to preserve the balance struck by Congress between opening formerly closed markets, on the one hand, and maintaining incentives for carriers to invest in facilities, on the other. I believe we can best accomplish this goal by adhering closely to the precise language in the statute—and refraining from broadening (or constricting) rights based on our own policy preferences.

b. Regulations that Limit Negative Externalities and Address Other Market Failures

A similar need for intervention arises where, notwithstanding the existence of competition, competitors can externalize costs on other actors or where other market failures occur. A textbook example of a negative externality is spectrum interference. Where one service provider's use of spectrum—say, to provide a wireless communications service or a broadcast service—causes interference to another licensee's spectrum band, the FCC must intervene to ensure that each licensee remains able to enjoy the full bundle of rights granted by an FCC license.

In other instances, the justification for intervention is not a negative externality, but the occasional service that in Congress's judgment does not

24. 47 U.S.C. § 251(c)(3), (d)(2) (Supp. V 1999). As discussed above, the statutory language leaves open the question of how broadly the sharing requirements should be construed—i.e., how the statutory term "impair" should be defined. I am guided in this respect by my preference for market forces over prescriptive regulation. Thus, while the FCC is statutorily obligated to mandate sharing to the extent required to facilitate competition, I believe it should be circumspect and avoid imposing unnecessary obligations, because excessive sharing destroys the investment incentives of incumbents and new entrants alike. *See Iowa Utils. Bd.*, 525 U.S. at 430 (Breyer, J., concurring in part).

25. 47 U.S.C. § 251(c)(6).

26. *Id.* § 224(f)(1).

lend itself to a market-based solution. For example, Congress has mandated that manufacturers of telecommunications equipment and service providers ensure that their equipment and services be "accessible to and usable by individuals with disabilities, if readily achievable."[27] Thus, while one could posit that market forces generally should determine the availability of such equipment and services to individuals with disabilities, Congress has determined that access for individuals with disabilities is too important to defer to the market. Where these situations do arise and require intervention in the marketplace, we should adopt clearly focused and narrowly tailored rules.

c. Regulations Implementing Congressional Policies Unrelated to Competition

Of course, not everything the FCC does (or should do) relates to greasing the wheels of competition. The 1996 Act sets forth various policy goals that are independent of—or even in tension with—the development of competition. One such goal entails the preservation and advancement of universal service support for consumers living in high-cost areas, for schools and libraries (the "e-rate" program), and for underserved areas such as Indian tribal lands.[28] Congress has called on the FCC to implement many other policies distinct from advancing competition: it enacted the Communications Assistance for Law Enforcement Act, or CALEA, to ensure that carriers cooperate with law enforcement investigations;[29] it acted to preserve video programming diversity by imposing public interest obligations on broadcasters and "must carry" requirements on cable and satellite operators, among other requirements;[30] and it enacted provisions to protect consumers from unauthorized changes in their long-distance service ("slamming").[31] Regardless of the role of market forces, the Commission has an obligation to carry out its statutory responsibilities.

3. Eliminating Unnecessary Regulations Through the Biennial Review Process

Equally important to viewing proposed new regulations with skepticism is an ongoing commitment to review existing regulations for

27. *Id.* § 255(b)-(c).

28. *See id.* § 254.

29. *Id.* §§ 1001-1010 (1994 & Supp. V 1999).

30. *See, e.g.*, 47 U.S.C. § 309(k) (Supp. V 1999) (broadcast licensing standards), § 338 (Supp. V 1999) (satellite "must carry" requirements), § 534 (1994 & Supp. V 1999) (cable "must carry" requirements).

31. *Id.* § 258.

obsolescence. There is a tendency for regulators to expand and defend their turf, even after the narrow justification for regulatory intervention in the marketplace has long since disappeared. Because of this tendency, I believe it is important for the FCC to re-examine continually all of our regulations with an eye toward eliminating those that no longer serve the public interest.

Congress recognized that inertia and the press of new business make such review efforts unlikely when agencies are left to their own devices. Congress therefore mandated, in section 11 of the 1996 Act, a comprehensive biennial review of all FCC rules that apply to telecommunications service providers.[32] If the FCC determines that a regulation no longer is necessary in light of competitive developments, it is required to eliminate or modify the regulation.[33] With a few exceptions, Congress also directed the FCC, in section 10 of the 1996 Act, to forbear from enforcing any regulation or provision of the Act where: (a) such enforcement is not necessary to prevent unjust charges or practices or discrimination; (b) such enforcement is not necessary to protect consumers; and (c) forbearance is consistent with the public interest.[34]

Forbearance and the biennial review process are critical components of Congress's vision of a procompetitive, deregulatory telecommunications marketplace. My hope is that we use these vehicles to eliminate many of the complex and outmoded regulations that constitute much of the five thick volumes of Title 47 of the Code of Federal Regulations.

The fruits of the initial biennial reviews and forbearance actions have been modest, but offer some basis for optimism. One significant cut arising from the 2000 Biennial Review was the elimination of significant portions of Part 68 of the FCC's rules, which governed the connection of customer premises equipment to the telephone network.[35] The FCC wisely recognized that the detailed regulations establishing technical criteria and requiring registration with the agency were unnecessary in light of the ability of private standards organizations to perform these functions.[36] Another important recent streamlining effort entailed an overhaul of myriad application procedures for wireless and broadcast services. The FCC established an electronic universal licensing system and searchable

32. *Id.* § 161(a)(1).

33. *Id.* § 161(a)(2)-(b).

34. *See id.* § 160(a).

35. 2000 Biennial Reg. Review; Part 68 of the Comm'n's Rules and Regs., *Report and Order*, FCC 00-400 (rel. Dec. 21, 2000).

36. *See* 2000 Biennial Reg. Review of Part 68 of the Comm'n's Rules and Regs., *Report and Order*, 15 F.C.C.R. 24944, para. 4, 22 Comm. Reg. (P & F) 1117 (2000).

database that dramatically improved the speed, efficiency, and reliability of the application-filing process for wireless telecommunications services,[37] and it similarly streamlined mass media application processes.[38] The FCC's detariffing of international long-distance services provides another promising example of one potential role for biennial review. The Commission held that, as a result of competition, the tariff-filing requirements that were designed for the old-world-style "dominant carriers" are no longer necessary to ensure just and reasonable rates.[39]

Looking ahead, I anticipate that there may be other regulations that will not warrant preservation in their current form under the "necessity" standards in sections 10 and 11 of the 1996 Act. One candidate consists of the myriad cost accounting and reporting requirements that apply to local exchange carriers; the FCC has recently streamlined these rules, and is continuing its review to determine whether additional changes are appropriate.[40] Another area due for review is the newspaper/broadcast cross-ownership rule.[41] Although such rules have been in place a long time, it is not clear to me that, in their current form, they continue to serve the goals they were adopted to promote. In the case of accounting and reporting requirements, these goals include the prevention of cross-subsidies and other anticompetitive conduct; in the case of the broadcast ownership restriction, they are the preservation of competition, localism, and diversity. These goals undoubtedly remain important, but I believe we are overdue in re-examining whether the complex and burdensome regulatory regimes adopted in the last century continue to serve those goals in the twenty-first century.

37. *See* Biennial Reg. Review; Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Comm'n's Rules, *Report and Order*, 13 F.C.C.R. 21027, para. 4, 13 Comm. Reg. (P & F) 1207 (1998).

38. *See* 1998 Biennial Reg. Review; Streamlining of Mass Media Applications, Rules, and Processes, *Memorandum Opinion and Order*, 14 F.C.C.R. 17525, para. 1, 17 Comm. Reg. (P & F) 970 (1999).

39. *See* 2000 Biennial Reg. Review; Policy and Rules Concerning the Int'l Interexchange Marketplace, *Report and Order*, 16 F.C.C.R. 10647, para. 28, 23 Comm. Reg. (P & F) 607 (2001).

40. These requirements are found in numerous sections of the FCC's rules, including Parts 32, 36, 43, 64, 65, and 69 of Title 47 of the Code of Federal Regulations. The FCC's most recent streamlining effort was part of the 2000 Biennial Review proceeding. *See* 2000 Biennial Reg. Review; Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers Phase 2, and Amendments to the Uniform System of Accounts for Interconnection, FCC 01-305 (Nov. 5, 2001), *available at* http://www.fcc.gov.

41. *See* 47 C.F.R. § 73.3555(d) (2000). The Commission launched a proceeding seeking comment on this rule on September 13, 2001. *See* Cross-Ownership of Broadcast Stations and Newspapers; Newspaper/Radio Cross-Ownership Waiver Policy, FCC 01-262 (Sept. 20, 2001), *available at* http://www.fcc.gov.

C. We Should Ensure that Our Regulations Are Clear and Vigorously Enforced

1. The FCC's Rules Must Be Clear

Despite our general efforts to deregulate portions of the communications industry, the FCC will continue to adopt a significant number of new rules in the foreseeable future. My goal is for these rules to be as streamlined and clear as possible to advance the public interest.

I was often frustrated in private practice when I encountered needlessly complex rules that were difficult even for experts to decipher. The FCC's implementation of the key provisions in the 1996 Act is a prime example of good intentions—an apparent desire to address every imaginable issue and subissue—gone awry. The FCC's first order implementing only *some* of the local competition provisions in section 251 was 752 pages long.[42] The initial universal service order also was a behemoth—and there have been dozens of subsequent orders released in that docket.[43] What's more, those remarkably detailed orders tell only part of the story: the FCC devised a forward-looking cost model (along the lines of the TELRIC model used to price network elements) to determine universal service subsidies that has so many inputs and lines of code that some carriers have reported it taking about eight days just to run the computer program.[44]

While an order's length and complexity is not *necessarily* a vice, I believe that the effort to micromanage every aspect of the pathway to competition was misguided. The FCC's rules should address our core priorities—in this context, ensuring that incumbent telephone companies comply with the market-opening duties set forth in the 1996 Act—as concisely as possible. Our rules should not address every conceivable

42. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 F.C.C.R. 15499, 4 Comm. Reg. (P & F) 1 (1996).

43. *See* Fed.-State Joint Bd. on Universal Serv., *Report and Order*, 12 F.C.C.R. 8776, 7 Comm. Reg. (P & F) 109 (1997). The FCC recently released its *fourteenth* substantive report and order and *twenty-second* order on reconsideration. *See* Fed.-State Joint Bd. on Universal Serv., *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256*, 16 F.C.C.R. 11244 (2001).

44. Worse, there is broad consensus that the complexity has not helped performance—the model produces unreliable results with respect to certain areas, particularly rural service territories. *See, e.g.*, Fed.-State Joint Bd. on Universal Serv., CC Docket 96-45, Rural Task Force Recommendation to the Fed.-State Joint Bd. on Universal Serv., at 18 (rel. Sept. 29, 2000) ("[W]hen viewed on an individual rural wire center or individual Rural Carrier basis, the costs generated by the Synthesis Model are likely to vary widely from reasonable estimates of forward-looking costs.").

situation that may arise, particularly where Congress envisioned a system based on private negotiations, backed by mediation and arbitration before the state public utility commissions.[45]

2. Stringent Enforcement Is a Critical Component of a Deregulatory Approach to Governance

An important corollary of my preference for a regime with fewer, clearer rules is my belief that the FCC needs to place greater emphasis on enforcement of the basic rights afforded by the statute. We cannot rely on competition to allocate resources and maximize consumer welfare if particular entities are able to gain advantage by violating our rules with impunity. Penalties for such violations must be swiftly administered and must be sufficiently severe to deter anticompetitive conduct. Failure to engage in stringent enforcement breeds disrespect for the FCC's authority and undermines the agency's credibility. Years of inaction in the face of repeated complaints regarding unsolicited faxes—in violation of section 227—provides a perfect example: until the Commission's recent enforcement proceedings, such faxes could be sent without any fear of penalty.

Effective enforcement mechanisms also have the advantage of being narrowly tailored. As I have explained, relying on prescriptive rules to foster competition has the disadvantage of prohibiting conduct that may benefit consumers. In other words, fixed rules are by their nature overbroad. By relying more on enforcement mechanisms, the FCC can tailor its intervention to particular circumstances, thereby allowing markets to operate with minimal regulatory distortion.

A tension exists between crafting more streamlined rules and beefing up our reliance on enforcement mechanisms: the same absence of granularity that makes a rule streamlined creates gray areas that make enforcement of unarticulated expectations unfair. I believe we can resolve this tension in large part by crafting our rules with enforcement in mind. Adopting such a mindset has two key components. First, if the FCC determines that fulfilling congressional mandates requires us to promulgate relatively complex and detailed rules, the agency should be prepared to commit the necessary resources to enforce every component of those rules. Second, if the FCC decides to adopt broad rules setting forth only general parameters, we must be prepared to accept a broad range of conduct that satisfies the general intent of such rules. We cannot insist on detailed and specific forms of compliance based on a generally worded rule.

45. *See* 47 U.S.C. § 252(a) (Supp. V 1999).

The first component of enforcement-oriented rulemaking—committing to enforce every aspect of our rules—might seem inconsistent with my overarching goal of having fewer, more streamlined rules; but in fact it should reinforce that goal. As an initial matter, most statutory provisions can be implemented with a small number of concise rules, particularly if we bear in mind that a regulatory agency should not micromanage the conduct of the entities it regulates. If the FCC adopts a skeptical view of prescriptive regulation and nevertheless perceives a need to adopt relatively complex rules, that perception presumably will reflect a judgment that the proposed regulations will be necessary to achieve congressional priorities. In such a scenario, a commitment to stringent enforcement should act as a check on any bureaucratic preference for complexity for its own sake. That is, recognizing that additional detail will lead to a vast increase in enforcement proceedings should provide an additional reason to question whether such detail is truly necessary.

For example, in license-transfer proceedings involving foreign entities, the FCC has adopted the practice of conditioning its approval of the transfer on the licensee's compliance with remarkably detailed side agreements between the parties and the Department of Justice (among other agencies) concerning law enforcement and national security.[46] The problem with such conditions is that, in actuality, the FCC has no input whatsoever into such side agreements and has neither the resources nor the expertise to give proper enforcement attention to these agreements—yet they are conditions on an FCC license. Moreover, by conditioning the license in this way, the FCC also is required to evaluate and approve each and every modification of the agreement between law enforcement and the licensee—another time-consuming task outside our core competency. I believe that our inability to enforce detailed agreements concerning national security and law enforcement should preclude us in the first instance from mandating compliance with such agreements as a condition of approving license transfers. Indeed, if committing to full enforcement were seen as a precondition to adopting rules, I am confident that we would be extremely reluctant to adopt them.

46. *See generally* Applications of Voicestream Wireless Corp. and Deutsche Telekom AG, *Memorandum Opinion and Order*, 16 F.C.C.R. 9779, 23 Comm. Reg. (P & F) 1089 (2001); Applications of SatCom Sys., Inc., *Order and Authorization*, 14 F.C.C.R. 20798, 20847, 18 Comm. Reg. (P & F) 1164 (1999) (separate statement of Commissioner Furchgott-Roth); AT&T Corp., British Telecomms., PLC, VLT Co. LLC, Violet License Co. LLC, and TNV [Bahamas] Ltd. Applications, *Memorandum Opinion and Order*, 14 F.C.C.R. 19140, 19222, 18 Comm. Reg. (P & F) 420 (1999) (separate statement of Commissioner Furchgott-Roth).

The second component of an enforcement-based approach to rule-making entails recognizing that broad rules require the Commission to permit a broad range of conduct. In other words, where the FCC makes the judgment that an open-ended rule is appropriate, it must be prepared to tolerate practices that comply with the rule, even if those practices conflict with the Commission's own expectations. Broad rules should not be treated as empty vessels to be filled in by subsequent commissioner policy preferences—or worse, ever-changing preferences based on staff turnover. For example, the Commission's rules require that AM, FM, and television broadcast stations maintain a "main studio."[47] Leaving aside the question of whether there is a sound reason to have such a rule, the rule itself is quite broad: it certainly does not set forth any specific requirements as to when and by whom such main studio shall be staffed. In its order addressing petitions for reconsideration and clarification of the rule, the Commission set forth in greater detail that, to fulfill the rule, a station must "maintain a meaningful management and staff presence."[48] The rule itself, however, was not changed. Not until the release of a later decision (finding a station not in compliance with the main studio rule) did the Commission clarify that, at a minimum, a main studio must maintain full-time managerial and full-time staff personnel.[49] In a footnote, the Commission further explained that management and staff must be present on a full-time basis "during normal business hours" to be considered "meaningful."[50] Once again, all of this elaboration did not modify the original rule.

Despite the fact that most of the guidance the Commission had provided was not set forth clearly in our rules, the Enforcement Bureau fined Queen of Peace Radio, Inc. $7,000 for willful and repeated violations of the main studio rule because the station's only full-time employee worked between 6:00 A.M. and 3:00 P.M. each day, and thus was away from the studio after 3:00 P.M.[51] Although the Commission, to its credit, canceled

47. 47 C.F.R. § 73.1125 (2000).

48. Amendment of Sections 73.1125 and 73.1130 of the Comm'n's Rules, *Memorandum Opinion and Order*, 3 F.C.C.R. 5024, para. 24, 65 Rad. Reg.2d (P & F) 119 (1988).

49. Application for Review of Jones Eastern of the Outer Banks, Inc., *Memorandum Opinion and Order*, 6 F.C.C.R. 3615, para. 9, 69 Rad. Reg.2d (P & F) 618 (1991) [hereinafter Application for Review of Jones Eastern]; Petition for Reconsideration and/or Clarification of Jones Eastern of the Outer Banks, Inc., *Memorandum Opinion and Order*, 7 F.C.C.R. 6800, 71 Rad. Reg.2d (P & F) 912 (1992).

50. Application for Review of Jones Eastern, at 3616 n.2.

51. Queen of Peace Radio, Inc., *Forfeiture Order*, 15 F.C.C.R. 1934, para. 1 (2000), *pet. for recon. denied*, *Memorandum Opinion and Order*, 15 F.C.C.R. 7538, para. 2, (2000), *app. for review granted*, *Memorandum Opinion and Order*, 15 F.C.C.R. 20909, para. 3 (2000).

this forfeiture on review, based on the station's good faith efforts to comply with the rule, this case demonstrates the need for an enforcement policy that matches the rule. A licensee should be able to consult the Commission's rules, without also needing to review the orders implementing and clarifying such rules and research all Commission decisions with respect to such rules, to understand the extent of its obligations; and, if the FCC adopts a general rule—like requiring a main studio—that should signify that the Commission established only a general policy and will not graft specific expectations onto the rule.

While this example illustrates the danger of enforcing general rules based on specific—and unarticulated—expectations, most of the recent history of the newly created Enforcement Bureau has been very positive. The Bureau handles formal complaints, occasionally on a "rocket docket" basis; offers a mediation program that has an increasingly high settlement rate; and conducts confidential investigations. While formal complaint proceedings still move too slowly, the Bureau has managed to diminish its backlog substantially. By negotiating substantial consent decrees—including a $3 million decree with Verizon concerning its New York section 271 compliance[52]—and issuing relatively large forfeitures,[53] the Bureau has taken important strides toward deterring anticompetitive conduct. While I would like to see faster resolution of complaint proceedings and increased penalties for instances of willful violations of our rules, I am encouraged by the Bureau's direction and I value the important role the Bureau plays in ensuring ongoing compliance by FCC licensees.

D. Government Must Be Humble in the Face of Rapid Change

Government must find new ways to adapt to the pace and complexity of those it seeks to regulate, particularly in the technology sector. The FCC faces tremendous challenges as it attempts to manage the increasingly fast-paced telecommunications industry. The challenges we face today—E911 deployment, broadband access, the demand for 3G spectrum, "open access" to cable modem systems, and the nature of the DTV transition—all were barely known three short years ago. The complexity and speed with which these issues arise, and with which the FCC must respond, further inform

52. *See generally* Bell Atl.-New York Authorization Under Section 271 of the Comm. Act, *Order*, 15 F.C.C.R. 5413, 19 Comm. Reg. (P & F) 1254 (2000).

53. *See* FCC Press Release, FCC Proposes $1.12 Million Forfeiture Against Coleman Enterprises d/b/a Local Long Distance, Inc., and $1 Million Forfeiture Against Vista Group International, Inc., for Apparently Slamming Consumers, Report No. CC 99-37, (Aug. 19, 1999) *available at* http://www.fcc.gov/Bureaus/Common_Carrier/News_Releases/1999/nrcc9059.html.

my approach to regulation. Thus, my fourth basic regulatory principle is that government must be humble about what it "knows" and what it can achieve.

Government humility should manifest itself in two areas: (1) a reluctance to regulate new technologies and services that fall outside the scope of our statutory mandates; and (2) where limited intervention is required, an eagerness to reach out to a broad array of groups to maximize the information available to decision makers. The FCC should be reluctant to intervene in the marketplace where emerging technologies are concerned because government is a very poor predictor of the direction of industry and technology. For example, when the FCC licensed PCS, it envisioned the wireless business as a highly segmented and localized operation amenable to small business preferences and set- asides. As a result, the FCC designed an auction to accommodate a small business model by creating 493 small geographic segments, setting aside certain spectrum for small businesses, and granting bidding credits and installment payments to other small entities.[54] Government guessed exactly wrong: wireless turned out to be generally a national business with now six national megacarriers vying for the consumer dollar. The "small business" set-aside program combined with installment payments unfortunately has resulted in bankruptcies and underutilized spectrum.[55] Similarly, when the Commission launched its LMDS service, it barred cable and telephone companies from buying the spectrum in their home regions because it envisioned that the spectrum would be used for telephone and cable competition.[56] LMDS turned out to provide neither; in fact, the spectrum has languished, plagued by a lack of technology and capital. To the extent that LMDS has provided service at all, it has been in the broadband arena—a market not even fully appreciated when the ownership restrictions were imposed.

It is not that government is ill-intentioned; rather, it is extremely difficult to predict the twists and turns of the marketplace. In light of this fundamental difficulty, I believe government should humbly recognize its limits and exercise restraint. Of course, the FCC is an expert agency and should always strive to attract talented and knowledgeable staff. In this regard, I applaud Chairman Powell's efforts to recruit top-flight engineers,

54. *See* Implementation of Section 309(j) of the Comm. Act; Competitive Bidding, *Fifth Report and Order*, 9 F.C.C.R. 5532, para. 7, 75 Rad. Reg. 2d (P & F) 859 (1994).

55. *See, e.g.*, Nextwave Personal Commun., Inc. v. FCC, 254 F.3d 130 (D.C. Cir. 2001).

56. *See Order on Reconsideration*, *supra* note 22, at paras. 170-75.

economists, and technologists.[57] But there is little doubt that, even with a staff that is second-to-none, the FCC will not be able to predict how technologies will evolve and how the marketplace will adapt.

Government's humility also must extend to the deliberative process itself. Government simply cannot replicate the vast knowledge base of all those it regulates. Government in general, and the FCC in particular, should strive to create procedures that maximize the flow of information to and from the regulator. These procedures include a commitment to the transparent gathering and dissemination of information to all interested parties. On the government side of the ledger, the FCC can aid the information-gathering process through more open and transparent proceedings. More tangibly, the Commission should only reluctantly invoke its authority to make proceedings "restricted," or closed to *ex parte* presentations. Correspondingly, the FCC should require that outside parties file more comprehensive and meaningful notices of *ex parte* presentations, rather than the cursory filings that we routinely permit today in apparent violation of our rules.[58] Transparency also would be aided by an Internet docket-tracking system that would allow parties to learn the procedural status of a given draft order (i.e., whether the item is being considered in the division, the bureau front office, or by the commissioners). In the end, quality decision making requires timely information, and the FCC must ensure that it maximizes its ability to obtain that information at every turn.

E. The FCC Is a Service-Based Organization

The FCC is a service-based organization and it should act like it. The American taxpayers—our bosses—should expect prompt and well-reasoned decisions from the Commission. Similarly, the Commission should manage its resources efficiently to maximize public benefits. Government should structure its operations and mission to achieve these goals.

The Commission too often has failed to deliver prompt decisions, which results in public harm based purely on inaction. In many cases, as a businessperson, I would have preferred an answer contrary to my regulatory position rather than no decision at all. As an economic matter, the uncertainty created by indecision is perhaps the most damaging and

57. *See* FCC Chairman Michael K. Powell, Keynote Address at SUPERCOMM 2001 (June 6, 2001), *at* htttp://www.fcc.gov/Speeches/Powell/2001/ spmkp104.html.

58. 47 C.F.R. § 1.1206(b)(2) (2000) (requiring the memoranda to "contain a summary of the substance of the ex parte presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.").

frustrating outcome conceivable.

In the controversial WQED license transfer case, for example, the station's transfer application languished in the Commission for nearly three years.[59] Although the deal was ultimately approved, the delay, combined with the regulatory uncertainty caused by issuing and then rescinding "additional guidance" on what constituted the requisite noncommercial educational programming on the station, resulted in the parties backing away from the business deal. WQED was left at square one. Although not as draconian in result, I released a separate statement to express my disappointment that our review of the Fox/Chris-Craft license transfers took ten months to complete.[60] The delay and uncertainty harmed the business plans of all parties concerned. Similar delays have accompanied other license transfers. Unfortunately, the need for more prompt resolution of outstanding issues has by no means been limited to license transfers. The Wireless Bureau just completed its well-documented backlog reduction project.[61] Similar efforts are underway in the Cable Services and International Bureaus.

I will strongly support backlog reduction efforts and encourage the Commission to develop a docket management tracking system that ensures decisions do not "fall through the cracks." I will encourage the use of short form orders to deal with pleadings that fail to raise new issues or are frivolous. The Commission also would benefit from exploring systematic ways to address petitions for reconsideration and applications for review more promptly. For example, petitions for reconsideration or applications for review that fail to raise any new issues or facts should be acted on within forty-five days or less. Similarly, I would favor exploring time limits or a system whereby petitions for reconsideration or applications for review pending longer than some predetermined period of time—perhaps six or nine months—are denied via a short form order. The irony of much of the backlog is that the pending decisions are often completely insignificant (i.e., a petitioner raises the same argument that has been rejected by the Bureau twice and the Commission once) and justifiably were placed at the bottom of the "to do" box. Unfortunately, however, our decisions on these

59. *See generally* Applications of WQED Pittsburgh and Cornerstone TV, Inc., *Order on Reconsideration*, 15 F.C.C.R. 2534, 19 Comm. Reg. (P & F) 241 (2000).

60. *See* Transfer of Control of Broadcast Licenses Held by Subsidiaries of Chris-Craft Industries, Inc. to Fox Television Stations, Inc., File No. BALCT-20000918ABB (Jul. 25, 2001), *available at* http://www.fcc.gov/Speeches/Abernathy/Statements/2001/stkqa102.html (separate statement of Commissioner Abernathy).

61. *See* FCC Press Release, Wireless Bureau Chief Declares Bureau's Backlog Reduction Program a Success; 99% of Backlog Eliminated (Mar. 17, 2000), *available at* http://www.fcc.gov/Bureaus/Wireless/News_Releases/2000/nrwl0010.html.

matters are often conditions precedent to judicial review. Over time, reducing the backlog soaks up vast Commission resources as years-old orders are reviewed and reanalyzed often long after meaningful relief is even available. Some presumptive rules and more effective tracking will greatly enhance our ability to be a more responsive agency.

The impact of delays in rule making can be equally debilitating. Following up on commitments made at the World Radio Conference in May 2000, the FCC initiated a study to consider the possibility of relocating incumbent MMDS/ITFS licensees in the 2500-2690 band to enable the introduction of advanced wireless services in those bands.[62] The months of uncertainty created by this proceeding essentially froze investment in this band. Soon after taking office on May 31, 2001, I called for the Commission to end the uncertainty and to assure these licensees that they will not be subject to forced relocation.[63] Similarly, a four-year delay in issuing rules regarding the technical parameters for the Digital Audio Radio Service's ("DARS") terrestrial repeater network wreaked havoc on those licensees as well as those in the adjacent Wireless Communications Service bands.[64] The Commission has an obligation to consider tough questions like MMDS/ITFS relocation and DARS repeater deployment, but we also have a corresponding responsibility to resolve those issues promptly.

In order to help deliver on the promise of prompt decisions, the agency also must focus its energy on its core mission and competencies. The FCC has a limited budget; every dollar spent on issues beyond our core mandates is a dollar not spent on resolving complaints, upgrading our electronic filing system, or implementing our mandate for biennial review. In assessing which problems to tackle, the FCC first should funnel its resources to those areas where the Commission occupies the field. For example, no other entity is responsible for preventing harmful radio interference to licensed radio services; the Commission therefore should fully fund those efforts. In contrast, the FCC should be reluctant to interfere in areas such as advertising regulation, where state and other federal

62. *See* Spectrum Study of the 2500-2690 MHz Band: The Potential for Accommodating Third Generation Mobile Systems, Final Report of the FCC Office of Eng'g and Tech., Mass Media Bureau, Wireless Telecomm. Bureau, and Int'l Bureau (Mar. 30, 2001), *at* http://www.fcc.gov/3G/3gfinalreport.pdf.

63. Commissioner Kathleen Q. Abernathy, Address to the Wireless Comm. Ass'n (June 25, 2001), *at* http://www.fcc.gov/Speeches/Abernathy/2001/kqa101.html.

64. *See generally* Establishment of Rules and Policies for the Digital Audio Radio Satellite Serv. in the 2310-2360 MHz Frequency Band, *Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 12 F.C.C.R. 5754, 6 Comm. Reg. (P & F) 978 (1997).

government entities have the jurisdiction, expertise, and resources to respond.[65] Nor should the FCC exhaustively duplicate the analysis of competitive issues undertaken by the Justice Department or Federal Trade Commission in merger proceedings; the FCC instead should focus on communications-specific issues within its core competency.

In attempting to provide the highest quality of service, the FCC also should look to private-sector efforts that achieve public interest goals without FCC funds. For example, for almost twenty years the United States Telecommunications Training Institute ("USTTI") has been offering significant training opportunities to telecommunications professionals in the developing world. To date, USTTI has trained approximately 6,000 graduates from 162 countries around the globe.[66] As a Commissioner, I hope to encourage the FCC to work cooperatively with nonprofits like USTTI to achieve common goals and to avoid duplicating their fine efforts. The Commission should always explore the availability of private sector solutions that will allow the agency to focus more specifically its resources on its core mission.

Finally, the notion of a service-based FCC extends to the way I believe my office should be run. I believe that my legal advisors and I should take all meetings, return all calls within twenty-four hours, and make ourselves available to Congress and the press. To facilitate access to my staff, we have posted each legal advisor's direct dial number on our Web site. My office will endeavor to vote items as promptly as possible and to move the decision making process along. In order for me to be an advocate for such an agency-wide approach, it is imperative that I conduct my dealings with the public in a way that is consistent with these principles.

III. CONCLUSION

Public service is a tremendous privilege. That privilege has corresponding responsibilities. The President selected me and the Senate confirmed me to execute those responsibilities consistent with my principles. The Commission faces immense challenges and the rapid pace of technological change only exacerbates their impact. As in all difficult things, however, the Commission should strive to establish and maintain

65. *See* Harold Furchtgott-Roth & Bryan Tramont, *Commission on the Verge of a Jurisdictional Breakdown: The FCC and Its Quest to Regulate Advertising*, 8 COMMLAW CONSPECTUS 219 (2000).

66. *See* Ambassador Michael R. Gardner, Chairman, USTTI, Opening Remarks at the CyberForum regarding the Role of the Regulator (Sept. 19, 2001), *at* http://ustti.org/forum/discuss.php3.

core, consistent guideposts along the policy path. For me, there are at least five such guideposts: (1) the Commission derives its mission first and foremost from the statute; (2) within the confines of the statute, the FCC should defer to markets and opt for regulatory intervention only when truly necessary; (3) we must promulgate clear and enforceable rules and ensure that they are followed; (4) government must be humble about what it "knows" and what it can achieve; and (5) the FCC should be a service-based organization. In the years ahead, the policy issues will no doubt evolve and the marketplace will be transformed. My hope is that these principles will survive intact.