

A Regulatory Agency for a Competitive Age: Harnessing the Chaos

Remarks of FCC Commissioner Kathleen Q. Abernathy May 30, 2002 Press Breakfast

After a long period of stability in the 50s, 60s, and 70s, the role of the FCC has undergone a tremendous amount of change – particularly in the last 10-15 years. Our licensees have changed tremendously both in number and character. Twenty years ago, the federally regulated providers were a fairly discrete group: broadcasters (3 networks), wireline telephony (1 for all distances), wireless (effectively 0), cable (large numbers regulated at local and state level), satellite (INTELSAT). Today that landscape is vastly different: broadcasters (7 networks), wireline (RBOCS- 4, large IXCs – 3, CLECs), wireless (6 national mobile, dozens smaller/niche mobile, fixed, unlicensed), large cable players with broadband, satellite (DBS – 2, DARS – 2, MSS – 2 plus INTELSAT etc.) As a result, the consumer and licensee experiences have also changed dramatically. In 1982, most consumers received at most two communications bills (telephone and cable (33% penetration)). Today that number is at least five (local and long distance, wireless, cable or DBS (penetration of approximately 86%), an ISP) and maybe more (additional landlines, wireless phones, DARS). Similarly, a provider entering the market faces a vastly more complex world than it would have faced in 1982. For example, a new wireless provider in 1982 would have needed to interconnect with AT&T only. Today a new wireless provider needs to have a way to exchange traffic with dozens of local, long distance and other wireless providers. Thus, two sets of relationships – consumer/provider and provider/provider – that are essential to the FCC’s regulatory function have become dramatically more complex and contentious and show no signs of becoming less so.

Faced with this increasingly complex and contentious set of relationships, what is a modern regulator and regulatory agency to do to prevent harm and resolve disputes?

ROLE I – TRUST MARKETS – Best protection against harm to consumers and providers is a fully competitive market – not present in 1982, but increasingly present today. Regulators’ goal is to allow markets to work – which is the best way to maximize efficiency and the public interest.

- Regulator Role: Exercise restraint and let competition operate.

ROLE II – FACILITATE PARTY TO PARTY ENGAGEMENT — Best way to solve any problems that arise in any relationship is directly between the parties involved. Effectiveness of this approach depends on parties’ abilities to (1) identify one another and (2) clearly understand their respective rights. Government has a limited but critical role to play in (1) and (2). One of the reasons that I spend so much time on consumer issues – including education

efforts, like my Focus on Consumer Concerns – is the significant role government can play in educating parties about their respective rights. This education ultimately lessens the need for government to intervene via Stage III or IV.

- Regulator Role: Educate consumers, facilitate interaction between private actors.

ROLE III – REGULATORY ROLE IN DISPUTE RESOLUTION – When markets and private direct negotiation/dispute resolution fail, then regulatory enforcement becomes critical. Government may intervene to enforce rights provided by the statute or FCC rules. Role is not limited to federal authority – significant role for states and localities.

- Regulator Role: Prompt and stringent enforcement of rules, data collection.

ROLE IV – IMPOSITION OF REGULATORY RULES – In 1982, this role was the main tool in government’s arsenal to protect consumers and competitors. Today, other equally effective tools are available. Nonetheless, general rulemaking authority serves as a final bulwark against consumer or competitor harm.

- Regulator Role: Detailed regulatory intervention into relationships between and among parties where necessary.

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I believe there are four roles for government in a competitive environment. Each market we regulate falls in a different place on the competitive continuum – so they each require a different mix of the four roles. For example, the wireless industry likely best reflects the competitive market where Role I – the trust in market forces – is the most effective. Over time, as communications markets become more effective, I believe the FCC should appropriately migrate towards that regulatory role. Roles I and II were largely absent in 1982 from both the consumer and the service provider perspective, but they are increasingly present today and will become more important tomorrow. We must continually refine our mission at the Commission to best respond to changed conditions.