

Text As Prepared

**Remarks by Kevin J. Martin
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Federal Communications Commission
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I. Introduction

Thank you, Margaret, for that kind introduction, and thank you very much for inviting me to speak with you today. I am honored to be a member of such a distinguished group, and I am flattered to have been asked to address you this afternoon. The members of the FCBA no doubt make innumerable contributions to the telecommunications industry every day. But its members also make generous contributions of their time and talent to charities and our local community. It is the FCBA's commitment to both of these priorities that makes me proud to be a member of this organization.

II. Youth Slides

Now, as I believe some of you may have noticed, I am not the most stately, gray-haired Commissioner the Commission has ever seen. I concede that I am one of the younger Commissioners to join the FCC, but my problem seems to be not that I am younger than most, but rather that I don't look as old as I actually am. For example, when I was nominated, Variety wrote that "the new Republican leadership at the Federal Communications Commission is shaping up to be downright baby-faced." And while "Martin and Powell have roughly the same level of experience, Powell has a certain advantage that Martin doesn't; he looks older than his age, with most guessing he is in his mid-40's." Well, I guess I will pass on that advantage.

But whatever the reason for my youthful appearance, quite a few of you seem to have noticed. In fact, Brooks Boliek of the Hollywood Reporter recently wrote that I bear a distinct likeness to another famous youngster – Harry Potter. I am not so sure. But I have noticed that Dick Wiley bears a striking resemblance to the headmaster at Hogwarts School of Witches and Wizardry, Professor Dumbledore. Unfortunately, I seem to look just as much like the actor chosen for Harry Potter, the movie, as well.

But it is not just the characters from Harry Potter that may seem to look like one of your friendly Commissioners. I would like to draw your attention to the striking resemblance between my fellow Commissioners and the characters of one of last year's other hit films. Take a look at these pictures and see if you don't agree with me.

First, we have our faithful Chairman Powell... and his "Knight in Shining Armor" stunt double, the lovable ogre (otherwise known as Republican), Shrek. Now the whole premise of the movie is that poor Shrek is upset because countless fairy-tale creatures (i.e. you FCC lobbyists) have invaded his swamp (now known as the Portals) and are infringing on his precious private time. Next there is our esteemed Commissioner Cops... and his cartoon double, the scheming Lord Farquaad. Now, Lord Farquaad desperately wants to be in charge of the kingdom. But he can only do so (i.e. become chair) by winning the favor (i.e. vote) of the stunning Commissioner Abernathy... who bears a striking resemblance to our lady in distress, Princess Fiona. But, as those of you who have seen the movie know, it turns out the Princess is not really so distressed, and is actually another ogre (i.e. Republican), just like the Chairman. Now, the only problem with this analogy is that it leaves me—the only other member of the Ogre's team—as the endlessly talking sidekick and one of those many intruding fairy-tale creatures, Shrek's donkey. Maybe the Harry Potter comparison wasn't really so bad. In any event, I think that this picture captures the current Commission as well as any other I have seen.

III. All I Really Need to Know to Be an FCC Commissioner I Learned in Kindergarten

Since I cannot seem to shake my youth, I am going to continue to rely on it instead. Many of you may recall Robert Fulghum's book which was published a few years ago, All I Really Need to Know I Learned in Kindergarten. You remember: "Don't hit people, " "Warm cookies and milk are good for you." I believe many of Mr. Fulghum's insights are also applicable to some of the issues we all deal with everyday and to many of the issues currently facing the Commission. In fact, Mr. Fulghum challenges his readers to "Take any one of his [insights] and extrapolate it into sophisticated adult terms and apply it to family, life, work, or government, [and see if] it holds true, clear, and firm. Everything you need to know is in that list somewhere." After giving this some thought, I agree

with Mr. Fulghum's premise. Much of his simple advice can provide keen insight into the challenges facing the Commission. So, please allow me to present to you: All I Really Need to Know to Be an FCC Commissioner I Learned in Kindergarten.

- 1.) **“Wash your hands before you eat.”**: I guess that bit of advice is a little late at this point in the lunch. You should remember that one for dinner tonight, though.
- 2.) **“Share everything.”**: This simple mandate underlies much of how the Commission will need to resolve the growing demand for spectrum. Since its inception, one of the Commission's core functions has been to set the rules of spectrum sharing (or non-sharing) through allocation, creating interference parameters and then acting as the referee. In some respects, the allocation of specific services into their own dedicated pockets of spectrum has fostered a “fiefdom” mentality. The Commission, then, gets bogged down in debates over what is “harmful interference” – wrangling over whether certain interference gains outweigh other interference costs. This process inherently causes underutilization of spectrum – wasting a precious natural resource that can never be recaptured.

But recent technological changes allow us to take sharing to new levels. Satellite and terrestrial sharing scenarios, once believed impossible, are now becoming more realistic. Sophisticated ultrawideband technology – promising to deliver data at faster speeds and lower power – can potentially co-exist with spectrum users in any frequency. Software defined radios allow quick modification to transmit and receive on any frequency and in any desired transmission format. Priority access capability allows for flexibility for a higher valued use some of the time, without having to dedicate specific frequencies to those uses all of the time. And DoD's “XG” program – which focuses on Next Generation communications devices to support military deployment - seeks to produce even further advances in spectrum sharing technology through dynamic assignment of frequency, time and space.

Our spectrum management objective should be to create incentives for the efficient utilization of this valuable resource at every given point in time, by both established users and new entrants. What the Commission can do now to further these goals is set policies that make sharing easier,

and even desirable. For example, a robust secondary market for spectrum and flexible allocations can create strong incentives for making use of excess capacity.

I also believe that recent and future technological developments provide the Commission with the opportunity to insist on even more efficient use of current spectrum. While ultimately, the amount of available spectrum and our ability to use it is perhaps limited only by technology, we must first act within the constraints we have today. The challenge is to employ a model of spectrum management now that will most likely lead to the marketplace developments we'd like to see tomorrow.

- 3.) **“Don’t take things that aren’t yours.”**: I can only say NextWave. The Commission seems to have gotten itself in a little bit of trouble ignoring this rule.
- 4.) **“Say you’re sorry when you hurt somebody.”**: The Commission has an important role to play in helping people say they’re sorry when they hurt somebody. David Solomon and the Enforcement Bureau will certainly make wrongdoers apologize for any wrongs they commit. In the past year, he and his team have almost eliminated its backlog of formal complaints and dramatically reduced the time it takes to act on formal complaints. They have issued or proposed over \$13 million in fines in major local competition and consumer protection matters. Certainly there are a lot of people who are sorry, whether or not they are saying so.

However, there is no doubt that we can – and should – do a better job on enforcement. Right now, it still takes over a year to resolve a formal complaint. Such delays make it difficult to provide regulatory certainty, as market conditions may change before the Commission has acted.

I think we need to commit to acting faster. The Commission just announced that it will resolve National Environmental Policy Act matters within six months. And, the Commission has promised to act on mergers within 180 days. Given how fast we are ruling on these other matters, I believe we should be able to rule on complaints regarding our core functions within a similar time frame. I propose that we commit to having draft orders on formal complaints circulate on the eighth floor within eight months of their filing. This is certainly a reasonable goal in

light of how fast we move in other areas. And it would be a dramatic improvement over where we are now.

- 5.) **“Play fair.”**: As you know, the Commission’s commitment to competition policy is steadfast and we will continue to encourage everyone to play the telecommunications game fairly. I believe that the central tenet of fair play is facilities-based competition. Without it, we will always need government regulators to manage and control the game, setting wholesale and retail prices. But with facilities-based competition, prices can be set and innovation can occur through the market to the benefit of players and consumers alike.

Fundamental to this concept of playing fair is the requirement that incumbents give new entrants the facilities they need in a reasonable and timely manner. Thus, I supported the adoption of detailed and strict enforcement of collocation rules that we approved at my first open meeting. In the same vein, I strongly support the Commission’s recent efforts to establish performance measures for network elements and special access. Targeted performance measures can enable us to know whether new entrants are receiving access to necessary facilities in a reasonable and timely manner. Coupled with effective enforcement, they should ensure that incumbents live up to their obligations.

At the same time, playing fair means that new entrants should borrow from incumbents only those facilities that are truly necessary for new entrants to provide service. That does not mean that we should allow incumbents to stop providing any elements overnight, and we need to acknowledge the distinctions between what different competitors may need to compete for small and medium-sized businesses or residential customers.

Finally, we ought to reexamine how our unbundling and/or pricing rules apply to incumbent deployment of new facilities. For example, once we have determined that a particular state’s market “is fully and irreversibly open to competition,” how is access to yet-unbuilt new facilities at super-efficient prices necessary to enable a new entrant to compete? — especially if existing facilities or their equivalent capacity are maintained at current prices. I look forward to examining these issues in our triennial review proceeding.

6.) **“Put Things Back Where You Found Them.”**: This principle exemplifies what should be the Commission’s over-riding goal for the digital transition. We need to finish the transition, and have broadcasters put the 6-MHz of spectrum used for analog back where they found it.

No, this isn’t because OMB wants the money that would result from the auctions—although that’s a nice benefit. We want broadcasters to return that spectrum because it will allow new entities to provide high quality, innovative programming and services to consumers across the country.

So what can we at the Commission do to overcome the significant hurdles that remain—and hasten the day when broadcasters start putting spectrum back where they found it? Here are a few thoughts:

1. Copy Protection. The movie studios, broadcasters, cable industry, and consumer electronics industry need to reach an agreement on how digital content will be protected, and what rights consumers will retain to make personal recordings. With Ken Ferree and Rick Chessen’s leadership, we’ve had several industry-wide meetings on this issue that I understand brought the sides closer together. But they’re not there yet, and the lack of progress is seriously impeding the availability of digital content—and thwarting any progress in the transition. If further progress is not made soon, the Commission may need to become more directly involved.

2. Explore Digital Must Carry Rights. How we define broadcasters’ must-carry rights in the digital world will have a significant impact both on the availability of compelling, innovative digital content—and how quickly broadcasters make that content available.

As an initial step, we should quickly conclude the rulemaking we began last January regarding what “program related” means in the digital world. Broadcasters argue that a broad interpretation would provide an increased incentive to use their digital spectrum to deploy innovative and interactive programming. Of course, it is an open question whether a broad interpretation of this term would be consistent with Congressional intent. Nevertheless, regardless of the outcome, merely concluding the proceeding will help the transition by providing certainty to the industry.

In addition, the Commission has before it a petition to reconsider its conclusion regarding what “primary video” means in the digital world. There may be an argument that the statutory language and legislative history support an interpretation of primary video that allows broadcasters “must carry” rights not just for one programming stream, but for any video that is provided for free—consistent with broadcasters’ primary purpose. Whether that argument ultimately should carry the day, I’m not yet sure, but I think the potential consumer benefits of a broadened interpretation warrant further consideration of this issue.

3. Cable Compatibility. Finally, we need to address cable compatibility. Cable operators need to make firm commitments to technical standards for a plug-and-play set—and the consumer electronics industry needs to accept those commitments and start building. Ultimately, if consumers know that when they buy a HD set, they’ll be able to take it home and have the set work with their local cable system, they’ll certainly be more likely to pay the set’s high price. And of course, the more people that buy these sets, the more quickly that high price will fall.

I would much prefer the various industries involved reach agreement on technical standards on their own. But the need for standards is so pressing and so critical to the transition that I fully recognize that at a certain point—perhaps soon—Congress or the Commission may be forced to step in and enforce a standard on all involved.

- 7.) **“Be aware of wonder.”**: The Commission faces a world that is rapidly evolving, with new technologies constantly springing up and replacing older ones. In addressing this world, the Commission must not be afraid of change. It should welcome change, and promote an environment that fosters innovation, technological advances, and the digital revolution.

In order to welcome and foster innovation, the Commission must provide a stable regulatory environment. Regulatory uncertainty functions as an entry barrier, limiting investment and impeding deployment of new services. We should work to be faster and more reliable in our decision-making. Prolonged proceedings, with shifting rules – for example our recent proceedings on reciprocal compensation – can bring stagnation and dampen investment in new technologies.

Equally important to fostering innovation, we must resist the temptation to apply old, legacy regulations to new technologies. For example, if we apply our mountains of common carrier regulations, with their attendant costs, to broadband services, we risk stifling innovation and deployment. Similarly, I am extremely wary of calls to extend universal service obligations to cable and other broadband service providers. We should be looking for ways to remove current regulatory impediments, not creating additional financial disincentives for broadband deployment.

- 8.) **“Look.”**: Both the Commission and the industry need to look towards the future and encourage innovation. Look for opportunities to encourage change for the better. Look for means to bring the digital revolution to everyone’s doorstep.

- 9.) **“Live a balanced life.”**: As I alluded to at the beginning of my remarks, the FCBA truly exemplifies this particular insight. The FCBA is committed to balanced priorities, a lesson we should all take to heart. While not only supporting, educating, and advocating for its members, the FCBA Foundation awards scholarships, sponsors mentoring programs, holds its annual charity auction, and vigorously supports the efforts of Martha’s Table.

Last Sunday morning, I joined several FCBA members at Martha’s Table to help make tuna sandwiches. It was, of course, a humbling experience, but I am thankful for the opportunity to give back to the DC community, and I am thankful for the FCBA’s continued efforts to support Martha’s Table and its mission. We toured the facility, and Martha’s Table is doing great things for downtown DC. They not only operate the soup kitchen at the center as well as the mobile soup kitchen, but they offer daycare and pre-school for children as young as three months old so that their parents can go back to work. The center acts as an after-school program for kids up to the age of eighteen, serving every child a hot meal every night. And every classroom has several computers, almost all of which were donated by FCBA members. There is no doubt that Martha’s Table, and the FCBA’s support of the center, are making a difference.

I applaud the FCBA’s insistence on balanced priorities. We all face a delicate balance between the demands of work and family, between finding time for friends and service. But I urge everyone, including myself, to strive towards the kind of balanced life that the FCBA’s legacy

of service exemplifies and to become more actively involved in its service programs.

IV. Conclusion

Lastly, I would like to leave you with one final kindergarten wisdom: “When you go out into the world, watch out for traffic, hold hands, and stick together.” The FCBA has captured the spirit of this insight in its mentoring program. The mentoring program plays a crucial role in providing direction for many young people looking to start careers in telecommunications, and I applaud the FCBA’s efforts in this area. Thanks to several FCBA members, I personally know what a tremendous difference mentors can make. I certainly will participate in the FCBA’s upcoming mentor reception, and I encourage all of you to, as well.

Going back to the Variety article I mentioned earlier, the author asked whether as a Commissioner I would “be able to trust [my] own judgement, or [would I] have one or two silent mentors on the side?” As many of you know from meetings with me, I am not afraid to trust my own judgement. But I also know that I would be lucky to have a few silent mentors, as well. It is in this vein that I would very much like to thank my friend and mentor, Peter Ross, for the guidance and wisdom he has given me during the last several years. He has been, and continues to be, a great friend both to me and to the FCBA. I know that all of you join me in wishing him the best of health and the greatest of happiness for him and his family and thank him for all of his efforts on behalf of this organization and the FCBA Foundation.

Thank you for your time and attention this afternoon.