

**Michael K. Powell**  
**Chairman**  
**Federal Communications Commission**  
**Press Conference**  
**October 23, 2001**  
**[as prepared for delivery]**

**“Digital Broadband Migration”**  
**Part II**

INTRODUCTION

Just before becoming FCC Chairman I introduced my vision of the central challenge facing the communications industry and communications policy. I described it as the “Digital Broadband Migration.”

The metaphor was intended to highlight two points: First, that breakthroughs in technology would drive an exodus from existing analog-optimized architecture to digital-optimized architecture. The new networks would be more efficient and provide opportunities for an expanded array of applications and communications services for consumers. Second, the notion of migration was that the transition would be long, and perhaps arduous, but was nonetheless essential for survival.

In the speech, I outlined a number of very broad regulatory principles that would shape the development of a more specific agenda. Today, I want to articulate the next installment of this vision and outline the five specific areas that will guide the Commission’s agenda. These areas are intended to comprehensively focus the Commission’s work and identify where and how key policy questions will be debated and resolved.

The five areas are (1) Broadband Deployment, (2) Competition Policy, (3) Spectrum Allocation Policy, (4) Re-examination of the Foundations of Media Regulation, and (5) Homeland Security.

## I. BROADBAND POLICY

The widespread deployment of broadband infrastructure has become the central communications policy objective today. It is widely believed that ubiquitous broadband deployment will bring valuable new services to consumers, stimulate economic activity, improve national productivity, and advance many other worthy objectives – such as improving education, and advancing economic opportunity for more Americans. We share much of this view and intend to do our part in advancing reasonable and timely deployment. We will set out a comprehensive framework to give targeted attention to issues that affect broadband deployment.

### Principal Objectives

- The Nation should commit to achieving universal *availability* of broadband.

I emphasize availability, because there are many questions that remain as to what services consumers will value, and to what degree they will be willing to subscribe. I am hesitant to let adoption rates drive government responses, for a developing market needs the cues provided by consumer free choice.

- Broadband service should exist in a minimally regulated space.

Substantial investment is required to build out these networks and we should limit regulatory costs and regulatory uncertainty. We should guard against regulatory creep in order to encourage investment by avoiding the threatening overhang of future regulation. Additionally, very substantial questions remain as to consumer demand for new applications. Innovation is critical and can be stifled by regulation. Our regulatory focus should be on demonstrable anticompetitive risks and discriminatory provisioning.

- There should be multiple broadband platforms.

We should try to avoid the “one-wire” problem that has precipitated heavy regulation and confounded competitive objectives in telephony. Broadband is a functionality, not a particular platform. Broadband data capability will infect all communications medium, including telephone, cable, and wireless/satellite systems.

- Promote universal service objectives in economically sound ways.

The universal service goals of ubiquity and affordability remain paramount. However, we have an opportunity to advance these goals while avoiding the uneconomical attributes of the current system that dampen competitive opportunity.

■ Do not let definitional battles define regulatory treatment.

Battles rage over how to classify broadband infrastructure and services. What is really being fought out is what regulatory treatment will befall a service. This should not be an automatic consequence of an existing regulatory label. Broadband regulation must be thoughtfully crafted to account for new characteristics and the state of the market.

### **Commission Actions**

■ Study/Understand the Market

Broadband deployment is in its infancy. The supply (technology and providers offering service) and demand (what consumers want) environments are constantly evolving. Deciding what government actions to take, if any, must be based on the best information available about market developments.

- **Section 706 Report** – use to create a top-notch repository of information about the developing market. With specific focus on looking for patterns that reveal shortfalls in deployment that may require additional effort.
- **Joint Federal-State Conference** – a partnership that can be used to assess data collection experiences, develop federal-state cooperative solutions and address local issues such as rights-of-way challenges.

■ Clarify Regulatory Classification and Access Obligations

- The Commission needs to consider expeditiously how to classify the various forms in which these services are provisioned and consider what the access obligations will be for them.
- Three major sets of proceedings will provide the vehicles for considering many of these questions. Each will be used as a vehicle for clarifying regulatory treatment of broadband infrastructure and service:
  1. The New Networks Proceeding;
  2. The Cable Open Access Proceeding; and
  3. The 3G Spectrum Proceedings

■ Aggressively Examine other Regulatory Barriers to Deployment

- The Commission will examine many of its rules and consider additional vehicles for stimulating deployment. There are a number of proceedings we are considering in our Local Competition efforts that will provide opportunities to examine broadband deployment issues.

## II. COMPETITION POLICY

The 1996 Act spoke loudly in favor of a competitive environment. I remain resolutely committed to competition. Much has occurred, however, in the years since the passage of the 1996 Act, and it is time to re-consider the best approach to achieving meaningful competition.

In the years following the statute, the Commission worked to implement its key provisions. Much of this “Phase One” exercise was theoretical – attempting to make policy judgments and set conditions for activity that had yet to take place. We now have almost six years of real-world experience and can take stock of those judgments. It is time to make prudent course corrections in our policies.

I believe it is time for the second analytical look at regulatory implementation of the Act. This “Phase Two” will attempt to evaluate what is working and what is not. It also will take account of market experiences and judicial parameters that have changed the landscape.

In addition, we will more fully consider the real competitive choices that have been introduced through alternate platforms, particularly wireless and cable telephony services that may be the best hope for residential consumers. The impending arrival of IP telephony further may provide a real set of choices for consumers through alternate platforms, and Commission policy must consider those implications.

We will define a number of key proceedings in which these pivotal questions can be considered.

### Principal Objectives

- Facilities-based competition is the ultimate objective.

I believe that other methods of entry are useful interim steps to competing for local service, but Commission policy should provide incentives for competitors to ultimately offer more of their own facilities. This would decrease reliance on incumbent networks, provide the means for truly differentiated choice for consumers, and provide the nation with redundant communications infrastructure.

- Competition in the digital broadband world should come from many platforms.

Competition will be both intra-modal and inter-modal. Competition will come from carriers providing choice through similar platforms and interconnection with incumbents. A great deal of competition, however, particularly for residential consumers, will come from other platforms such as cable and wireless systems.

- Simplified, Enforceable Interconnection Rules.

Where interconnection is required, performance measures should be concise, clear and rigorously enforced. Such rules should provide incentives for investment in facilities.

- Universal service should be preserved in a manner that provides meaningful opportunities for competition.

Universal service is a cherished principle. Yet, many cite shortcomings in the current system as one factor undermining economic viability of competition and new entry. FCC must continue to reform universal service so that it is sufficient, explicit and portable.

### **Commission Actions**

- Expediently conclude outstanding “Phase One” proceedings

- Identify and study lessons learned from “Phase One” exercise

- Initiate a set of “Phase Two” proceedings – working closely with State Commissions, over the next six months – that will provide vehicles for re-thinking our current framework. The major ones will be:

- The Triennial Review: This will be the principal docket for evaluating unbundled network policy, including access, ordering and pricing.
- Performance Measurement and Enforcement Proceeding: The Commission will attempt to streamline the essential performance measures used for making judgments about compliance with the local competition obligations. We believe a dozen or so measures can truly reflect the essentials for a meaningful opportunity to compete. Moreover, a clearer and more concise list will allow the Commission and the States to more effectively enforce these obligations. Success will give incumbents a clearer understanding of their obligations and a surer path to compliance, and entrants will gain greater confidence that they will get what they need to viably compete in the market. This effort will try to limit regulatory burdens on carriers and not add to them.
- Dominance/Non-Dominance Proceeding: Given the gradual development of competition in the local exchange and for advanced services, the Commission needs to consider whether to develop a comprehensive and coherent means of measuring market power in the provision of services. In general, this proceeding would ask how we could develop a new framework that might be used to deregulate on a carrier-specific, or service-specific basis depending on the level of competition and market power. Such an approach might be used

in making judgments about deregulation of advanced services and the appropriate point for sun setting 272 long distance requirements.

### III. SPECTRUM ALLOCATION POLICY

Put simply, our Nation's approach to spectrum allocation is seriously fractured. There have been dramatic changes in spectrum requirements and technology and services that use spectrum since 1934. Yet, while we have made some major strides in how we assign spectrum (principally through auctions), allocation policy is not keeping pace with the relentless spectrum demands. The spectrum allocation system is not effectively moving spectrum to its highest and best use in a timely manner.

The central problem with our current approach is that it is a command and control approach that requires government officials to determine the best use for spectrum and to constantly change the allocation table to accommodate new spectrum needs and new services. This is becoming an impossible task in today's dynamic environment.

The consequence of our current system is that it is entirely reactive. With new emerging uses, the Commission must not only evaluate and react to the new services, it must also deal with the conflicting set of legacy allocation decisions. New services are forced to demonstrate demand for the service to justify modification of the allocation table. Lack of proof, however, makes it hard to do so and unleashes a highly politicized process. Existing users move to block new uses and line up support for their position, and the new providers are forced to do the same. The ultimate decision is reached as a result of a politicized reactive process.

Additionally, spectrum allocation policy provides few incentives for using spectrum efficiently. Existing holders have little incentive to consider using their spectrum for more valuable uses, since allocation restrictions will prevent consideration of alternative uses. Moreover, once a carrier obtains spectrum it has little incentive to use it efficiently where there is no flexibility.

Any policy change must respect that spectrum is a public resource and must be employed for the benefit of consumers.

#### **Principal Objectives**

##### ■ Market-oriented Allocation Policy.

It is important that the Commission move from its traditional spectrum management paradigm of "command and control" to a paradigm of market-oriented allocation policy to provide more flexible allocations that allow multiple uses so that spectrum can be put to its highest and best use.

■ Interference Protection.

In moving toward a market-oriented allocation policy, it is vital that we carefully consider technological boundaries and that we clearly define spectrum interference limits and usage rights. It is imperative to carefully consider where best to set limits: transmitters, receivers, or both.

■ Aggressively Promote Spectral Efficiency.

We must aggressively promote spectral efficiency to ensure that we maximize the use of available spectrum to the extent technically possible. Through this, we must continue to highlight and advance new spectrum efficient technologies and explore the possibility of expanding use of experimental licensing. We must play a key role in supporting spectrally efficient technologies and explore new solutions such as spectrum leasing.

■ Reserve and protect spectrum for public safety.

It is paramount that we keep the increasing needs of the public safety community at the forefront of any new thinking in spectrum allocation policy.

### **Commission Actions**

■ Study/understand existing spectrum use and market conditions

- Identify and map allocated/unallocated and assigned/unassigned spectrum
- Identify and map current rules associated with each band/service
- Identify and map licensees and users

■ Continue strong support for unlicensed bands where feasible

■ Strengthen FCC technical capability

■ Establish a partnership with the Defense Advanced Research Projects Agency (DARPA) to facilitate transfer of defense-developed technology to the private sector

■ Use the Technical Advisory Committee to develop recommendations to promote spectral efficiency and to complete its work on the noise floor

#### **IV. REVIEW FOUNDATIONS OF MEDIA REGULATION**

I do not support deregulation for its own sake. The traditional goals of diversity and competition remain vital.

I do believe, however, that the basis and form of media regulation is in dire need of being re-initialized. The underpinnings of the current regulatory regime for media are dated. Much of the regulatory structure and analytical foundations that exist today were built around television and radio as it existed in the “golden age.” The current rules, standards and principles do not take account of very dramatic changes in the media landscape. Consider this list of just some of the inadequacies of this outdated thinking:

- Current policy focuses on free broadcasting in a world in which most Americans pay for television.
- Media markets are analytically segregated when they have converged from the perspective of consumers. Rules and policy debates are centered around “broadcasting” or “cable” rather than as an integrated media landscape.
- Diversity values employed in current framework do not take account of the actual trends toward greater choices and ultimate individual diversity through personalized offerings. Diversity remains a vital objective but the instruments for preserving it must be re-considered.
- There has been no empirical examination of actual market experiences with long-standing rules.
- Rules do not take into account the viability of business models.
- Rules do not take account of incentives to harness breakthrough innovations in media technology.

#### **Policy Objectives**

- Build a solid factual foundation to form the basis and form of media regulation.

The time has come to re-examine and rebuild the factual foundations that support a contemporary regulatory regime for media. We must strive to understand the vast changes in the media marketplace and determine the outcomes these changes have produced.

- Ensure that the traditional goals of diversity, competition and localism are met.

## Commission Actions

We intend to embark on a very comprehensive examination of the media marketplace in order to build a stronger foundation for considering the regulatory scheme for the media industry.

- Inventory all existing ownership rules

This inventory will include an examination of the public interest and policy goals that led to the adoption of the rules, as well as an examination of the media market at the time each rule was adopted (and amended).

- Study/understand the mass media market today

- Conduct short-term studies by markets/cities

- Study the various measures of the definitions of the long-standing policy goals of diversity, localism, and competition

- Apply fact gathering and analyses to a review of the current ownership restrictions

## **V. HOMELAND SECURITY**

With the events of September 11<sup>th</sup>, it has become imperative that the communications community come together to determine our role in ensuring homeland security. We must be aggressive in ensuring that our policies maximize the many efforts being made to make our nation safe. We will work with industry to ensure the reliability and security of our nation's communications infrastructure.

### **Principal Objectives**

- Securing Our Nation's Communications Infrastructure.
- Enhancing Emergency Response through Communications.

### **Commission Actions**

- Re-charter the Network Reliability and Interoperability Council (NRIC) to focus on lessons learned and existing vulnerabilities
- Consider a media counter-part to NRIC
- Work with other agencies to ensure network protection, reliability and redundancy
- Engage in a concerted effort to solve remaining public safety spectrum issues
- Continue to work on interoperability restraints
- Continue to push aggressively on E911
- Work with other agencies on wireless priority access that balances the need for government response and critical needs of subscribers (including 911)