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FCC En Banc Hearing on the Telecommunications Industry
October 7, 2002

The Mural Is More Important Than Snapshots

Chairman Powell, commissioners, my name is Kim Wallace. I am the chief political analyst for Lehman Brothers equity research division. Thank you for the opportunity to add my perspective to the views presented today.

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The theme of my observations center on the universal experience of policymaking bodies: planning for the future is only part science, and by nature is an iterative process. My remarks hopefully will share some insights on the signals policymakers give markets and how these events may affect investors' behavior.

My sense is that perceptions and realities of the telecom industry are underpinned by three phenomena: the proprietary interests of service providers and their investors; consumer demands; and public policies. The current state of the industry is owed to actions taken by service providers, equipment manufacturers, investors, and customers in response to perceptions of the future. To the credit of the entire system, including policymakers, the vast majority of customers have more choice today than any other time in our history without any tangible diminution in the reliability of the services upon which they rely.

Any question of whether policymakers have a role in commerce is esoteric. Most participants at the Constitutional Convention were persuaded by the notion that the Republic would easily falter if what we now call interstate and international trade was not managed at the federal level.[1] More recently and more to the point, Justice Scalia in 1999 completely put to rest any idea that Congress overstepped it authority in enacting the Telecommunications Act of 1996 or in assigning the Commission the duty of enforcing its sections with the help of state regulators.

All questions about what the FCC should do to restore health to the telecom market must be weighed in light of several macroeconomic developments: the recession, the nearly three-year-old bear market, widely reported corporate scandals, and geopolitical worries that affect a range of investment judgment. Each affects business and residential consumer behavior, and all will play a role in economic recovery.

The vagaries of the business cycle and the 1990's bull market led to many of the ills confronting the industry you regulate. At the same time, that period saw a good amount of progress – much of it capitalized by market participants now derided. Dr. Alan Greenspan a few weeks back told the Society of Business Economists that "we cannot realistically project future innovations and the potential for those innovations to create economic value."[2] Often said to speak in obscure phrases, The Fed chairman could not have been more unequivocal. He went on to say that regulation is necessary in efficient, competitive markets. Too little can be as destructive as too much.

Sparse is the history of telecommunications legislation. The 1996 Act is by far the most expansive since governments awarded franchise licenses to what we now know as Bell companies in the late years of the 19th century. Coupled with the 1992 Cable Act and the 1999 Satellite Home Viewer's Act, the national Legislature in the last decade reacted to both consumer and marketplace pressures to create an environment in which competition was embraced as a method for reducing outmoded regulatory structures and maintaining minimal, but necessary consumer protections. The resultant system is a tribute to our imperfect national forefathers: a unique brand of democracy and regulated capitalism.

The first sentence of the conference report to the Telecommunications Act of 1996 states Congress's purpose to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate private sector deployment of advanced technologies and services to all Americans. From this straightforward guidance flowed a significant assignment to the Commission and several years of regulatory and legal interpretations that have sent signals to the industry, its customers and investors, and the capital markets.

The fact that perceptions lead to action is replete throughout history. As it pertains to telecommunications policy and investment, I recall reading the quotations of an exuberant CEO of a dominant local exchange carrier, who, in the second quarter of 1996 told the Washington Post editorial board that his company was pleased to negotiate the legislation because of the Act's perceived benefits. "It's very simple. We're going to be an international network company. And we're going to market the applications that go with that network." Whether that vision is ever realized and on what scale has more to do with international and macroeconomic trends, and decisions made by residential consumers, business managers, and investors than the rulings of regulators – presuming that protecting consumers interests, spurring competition, and remaining agnostic on which 'platform' distributes content continues to guide regulatory decision making.

The Acts mentioned along with several court decisions over the past six years support the Commission's recent history of allowing market forces to roam a little more unfettered than 20 years or more ago. At the same time, a longer view of history cautions against rulemaking targeted at current circumstances because technology, capital formation, and private decisions are factors that cannot be controlled but that influence real outcomes often in way one cannot contemplate at the time.

Conclusion

Arguably, when the current macroeconomic business cycle runs it course, the state of the industry will change along with the economy. This is especially true of dominant LECs that are on a pace to soon complete the 271 process. The danger of attempting to adapt microeconomic policy to current conditions is that such policies always lag real world events and invite high risks of unintended consequences. Likewise, policy intended to or that by default props up diseconomic business models should not be an impediment to the iterative process. As depicted in the triangular graph Chairman Powell presented the Senate Commerce Committee on July 30th, protecting consumers' diverse interests is job one of the Commission. Decisions guided by this mandate from Congress obligate the FCC to act as it determines to further the public interest.

As competition grows in telecom and media markets, or in markets such as wireless services where competition is robust, the agency could justifiably act to deregulate. Consolidation is another method for rationalizing scarce resources in vibrant markets. Based on the economic theories of substitution, price competition, quality of services, some of the sectors for which the FCC is responsible for ensuring pro-consumer outcomes, would seem ripe for action without significantly risking consumer choice.

[1] *The Federalist Papers*, numbers 6, 11, 22, and 56.
[2] Dr. Alan Greenspan, *Regulation, Innovation, and Wealth Creation*, Before the Society of Business Economists, September, 25, 2002. London, U.K.