

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

Thank you for that kind introduction, and thank you very much for inviting me to speak with you today. Although I'm a native Southerner, at speaking engagements up here I always feel a certain type of kinship with New Yorkers - - this is one of the few places in the country where my tendency to speak too quickly is actually appreciated.

I would like to spend a few minutes speaking with you about some of the issues we are facing down in Washington. I would also like to take any questions you may have. I find that your questions are extremely helpful to better understand your viewpoint and concerns.

II. September 11th Remembrance and Public Safety's Critical Role

I know that you are all anxious to hear my views on the current turmoil facing the telecom industry, but before addressing that, we should spend a few minutes remembering an even greater crisis that this country and New York faced. Next week, we will pay our respects to the innocent victims and fallen heroes of the tragic events of September 11th. On that day and in the months that followed -- the nation witnessed the true character of our country and this city and its people. In the face of evil, this community responded with acts of bravery, valor, and selflessness. It showed the world its resolute spirit to persevere.

Beyond remembrance, our greatest tribute and responsibility to the fallen must be vigilance and preparedness. Every level of government can and must contribute to this effort, including the FCC. At the FCC, it is also part of our statutory mandate.

The Commission was created in 1934. In so doing, Congress made it crystal clear that one of the Commission's primary purposes is to make communications services available to all in order to "promote safety of life and property."

Under Chairman Powell's leadership during the past year, the FCC has taken several steps to strengthen our communications infrastructure for homeland security. We have also taken steps to ensure that public safety, public health, and other first responder

emergency personnel have effective communications services available for any public emergency.

Of the actions we have taken, the most important has been to improve communications among public safety personnel.

Since September 11, we have learned that communications failures between firefighters and police helicopters may have contributed to the tragic deaths of many firefighters at the World Trade Center.

This type of failure is unacceptable and cannot happen again. Emergency personnel deserve reliable communications to carry out their missions.

The FCC is currently addressing the problems faced by public safety radio communications.

A. Interoperability

For example, we are trying to improve “interoperability”-- which is the coordination of communications between public safety personnel from different departments and jurisdictions.

Today, interoperability is a real challenge because the public safety networks used by many different organizations are not integrated. It is key to managing any future large-scale emergency where multiple response teams must be deployed.

If New York City Police cannot talk to the Levittown fire department, we lose the benefit of bringing these different groups together. And such inability to communicate could even cause additional unnecessary danger.

We must solve this problem.

The Commission is moving forward to make sure that there is adequate spectrum available for interoperability purposes. We have begun to adopt rules to make this spectrum usable and to permit shared use of public safety systems by different jurisdictions.

B. Interference

Another communications problem that public safety personnel face is interference. Public safety systems in the 800 MHz band, one of the most important bands available for use by public safety, have been subjected to increasing instances of harmful interference from certain types of cellular phones. This happens because the

FCC made public safety channels and cellular communications channels very close spectrum neighbors when they assigned this spectrum many years ago.

Such interference makes public safety communications difficult, and in some cases, impossible. There are several comprehensive proposals currently on the table, and we hope to resolve this issue as soon as possible.

C. E 911

In addition to improving the ability of public safety personnel to communicate with each other, the Commission has worked hard to ensure that public safety can respond quickly to citizens in an emergency.

The FCC's enhanced 911 (or "E911") rules require wireless carriers to provide public safety officials not only the phone number of a 911 caller, but also information on a caller's physical location. This information will also allow emergency personnel to locate people who have been trapped or abducted. Such information is crucial to the success of rapid responses in an emergency.

So far, several nationwide carriers are well on their way to making E911 operational, and I applaud their efforts. At the same time, other carriers have fallen behind.

The Commission has made clear that wireless carriers must deploy 911 location capability in a timely manner. We will thoroughly scrutinize any additional requests for extensions to ensure that the carriers are doing all they can to provide E911 capability as soon as possible. If delays are truly beyond the carriers' control, the wireless carriers should not be penalized. Otherwise, enforcement action by the FCC may be necessary. We are examining whether manufacturers are meeting delivery dates and whether the incumbent carriers are updating their location information databases as necessary. In any case, we are committed to completing nationwide E911 deployment by 2005.

D. Reliability and Security

In the aftermath of September 11th, all segments of the industry played a crucial role in responding to the network failures in lower Manhattan. Working together, incumbent and competitive carriers were able to ensure that the City's critical communications were restored and maintained.

The events of that day taught us the value of having redundant and diverse facilities-based networks. New entrant carriers answered the call on that day and in the weeks that followed by making their wireline and fixed wireless backbone networks available for the City's communications needs.

September 11th has only reinforced the need to promote policies that advance local competition which enable facilities-based service providers to enter the market and invest in new infrastructure.

We hope to harness that spirit by rechartering NRIC – the Network Reliability and Interoperability Council. This industry group will develop recommendations to assure optimal reliability and security of our public communications systems.

In the same vein, the Commission established a new group – the Media Security and Reliability Council – to advise the Commission on homeland security issues for broadcast and multichannel video programming media.

III. New York City’s Fiscal History

Turning away from public safety concerns to the financial heartbeat of the industry:

High debt payments, fear of bankruptcy, flight of capital, restructuring and reorganization, survival, renaissance, and prosperity. Newspaper headlines read:

- “Time of Reckoning Nears for Billion in Debt”
- “After Years of Massive Spending, Road Back to Solvency Formidable.”

Does this story sound familiar? It should. But no, I am not talking about the telecom industry.

Instead, I am talking about the history of New York City.

Some here may be old enough to remember – present company excluded – but just over a quarter of century ago, New York City stood on the brink of bankruptcy.

After years of imprudent expenditures, increasing debt, and declining tax revenues, New York faced the likelihood of bankruptcy by the mid 1970s.

The fiscal crisis shook New York to its core. Facing a declining tax base, nearly crippled by huge debt payments, and witnessing the flight of human and economic capital - - the City could not continue with business as usual.

New York City and State tackled the impending crisis by instituting numerous fiscal and budgetary reforms. Government also turned to expertise from the private sector. They sought the assistance of a Wall Street investment banker (Felix Rohatyn) who helped to successfully restructure New York’s debt and slowly guide it back to financial health.

Such quick action provided the necessary foundation for market stability. In turn, greater marketplace certainty allowed for capital creation and private sector development, which led to the slow and gradual path back to full economic recovery and prosperity.

New York City's renaissance rising from the ashes of the financial crisis of the mid 1970s is a testament to the policies that promoted fiscal responsibility and created greater market stability and certainty.

While not exactly identical situations, the telecom industry today faces many similar challenges. Excess expenditures, increased debt, and declining revenue are all challenges facing the telecom industry today. As we confront the telecom industry's current financial crisis, we in Washington should learn from the lessons of New York City's experience.

IV. Current State of the Industry

During the past year, many industry executives have shared their concerns with me regarding the state of the telecom industry, as well as the near term challenges facing them in these very uncertain times.

The industry's current troubles are well documented. I'm sure many of you complain that they are too well documented. As we look into the rear view mirror we can now see with greater clarity how we got here.

During the late 90's, the promise of competitive markets in the Telecom Act of 1996 along with the developing internet -- created aggressive demand projections for network traffic and bandwidth.

As traffic grew, both incumbent and competitive telcos raced to deploy infrastructure to meet expected demand. The capital markets, in turn, willingly provided the funds necessary to fuel this aggressive nationwide facilities deployment. Most of the investment was predominantly in backbone facilities, leaving the last mile alone in the hands of the incumbent LECs.

The law of supply and demand, however, ultimately kicked in. There is an abundance of excess capacity in fiber. Such excess capacity has depressed bandwidth pricing. These falling prices have negatively impacted revenue growth of both incumbents and new entrant carriers.

Unfortunately, the aftermath of the infrastructure boom has also left many companies with a heavy debt burden. Today, the total U.S. telecom industry debt level is estimated at over 200 billion dollars.

In the shadows of the “dot.com” bust, telecom stock prices tumbled as revenue growth projections flattened and debt levels continued to climb. Wall Street and investors reacted quickly by turning off additional sources of funding.

As alternative sources of capital dried up, bankruptcy and reorganization was the only option for many carriers. In the past year we have seen many large communications companies seek Chapter 11 bankruptcy protection. Certain analysts predict that many more publicly traded communications companies are at risk of filing for bankruptcy in the coming months.

V. Corporate Responsibility and Transparency

In these turbulent financial times, I believe we can draw on the New York experience to chart our course.

We must first acknowledge that no magic bullet exists. Restructuring and economic recovery of the industry will happen—maybe not overnight—but I am confident it will come about.

But we can also help speed this process. Joint government and industry efforts to restore investor confidence and public trust in our markets is a critical first step.

Corporate responsibility and corporate accountability are the keys to a sound American economy. Of equal importance, the private sector should be able to expect and rely on a transparent and efficient government process.

These are not new expectations. As Teddy Roosevelt, a former New York City Police Commissioner, once said: “We demand that big business give the people a square deal; in return we must insist that when anyone engaged in big business honestly endeavors to do right, he shall himself be given a square deal.”

Wall Street and the telecom industry must recognize that the integrity of the financial market is its most precious commodity. The success our nation has had in attracting capital to our markets--from both at home and overseas--is based primarily on our system of disclosure and veracity. Only by adhering to this strict code of conduct and corporate responsibility will we be able to retain investor confidence, thus ensuring the continued flow of capital in the future.

As for the Commission’s processes, I have often expressed my strong belief that the FCC must conduct its reviews and make its decisions in a more transparent and reliable fashion. In turn, regulated parties must assist the Commission in its work by providing accurate information regarding their businesses and practices.

Indeed, we could not function effectively without a certain level of trust that regulated entities will give us good information. Incorrect or unreliable information cripples our ability to ensure open markets and free competition. It hinders our ability to conduct our work in an efficient and effective manner.

Similarly, when the Commission's processes are opaque or clouded by bad information, the capital markets will respond accordingly. Only by demanding the highest level of transparency possible can we ensure the fairest decisions and create the most consistent and predictable regulatory environment for investors to make their decisions.

At the end of the day, we must have a rigorous system of transparency in our processes, as well as a proactive commitment from corporate officers to ensure our faith in the information they provide.

In this era of renewed emphasis on corporate responsibility and focus on public trust and the importance on proper accounting, allegations such as those that Qwest had entered into "secret agreements" giving preferential treatment to certain competitors and their failure to certify financial statements as GAAP compliant are of particular concern to me. The matter is currently before the Commission, and I plan to review these allegations very carefully.

To the extent the Commission appears to demand anything less than full compliance and integrity, it will be that much more difficult to restore investor confidence in the telecommunications markets.

VI. Responding Swiftly

Once the Commission has obtained accurate information, however, it can also contribute to market stability by establishing a stable and reliable regulatory environment. Broad proceedings that remain pending for extended periods can contribute to uncertainty. Regulatory uncertainty and delay function as entry barriers in and of themselves, limiting investment and impeding deployment of new services.

We should act quickly on our major pending rulemakings. Prompt decision making will provide greater certainty and stability to the marketplace.

I know there is great interest out there about the future "rules of the road" for the telecom sector.

Let me briefly highlight some of these proceedings and why we need quick action:

A. Performance Measures

On performance measures, I have heard from many of you regarding the critical need for national performance standards and metrics for UNE and special access facilities used to provide competitive local telephone service.

As I have said before, I believe that a competitive market is not viable unless new entrants to the local telephone market can obtain the facilities they need in a nondiscriminatory, reasonable, and timely manner.

As you know, State Commissions, such as New York and Texas, have taken the lead in analyzing and implementing performance standards and metrics. I have and will look to their experience as we move forward to craft national performance standards that will continue to spur facilities-based competition.

I strongly encourage you to share your input and expertise from the markets you serve with my colleagues at the Commission.

B. Enforcement

On enforcement matters, I have said before and repeat again - - the Commission can and should do a better job on enforcement and on being tougher on those that break our rules.

As many of you know, the rocket docket has not been as successful as the Commission hoped it would be. Because either party can opt out of this procedure, the process has thus far been relatively ineffective.

Today, it takes over a year to resolve a formal complaint. Such delays make it difficult to provide regulatory certainty in these rapidly changing markets.

We need to commit to acting faster. In my view, the Commission should commit to having draft orders on formal complaints before the Commissioners within eight months of their filing.

Committing to act within a specific time frame may allay the concerns of many of the competitors that any complaints they might file will never be acted upon if they or the defendants raise any novel issues. Such a public commitment would not only hold out feet to the fire, but might also encourage parties to take advantage of the complaint process.

C. Draw on Developed Expertise

Another lesson from New York's handling of the 1970s financial crisis is the importance of relying on others expertise.

As many of you know, the U.S. Court of Appeals for the DC Circuit recently remanded the *UNE Remand Order* – the FCC's most recent effort to set out a list of network elements that incumbent local exchange carriers must make available on an unbundled basis to competing carriers. The Commission has sought rehearing of the DC Circuit's decision.

The Court criticized the FCC's unbundling requirement as being overly broad. The Court found the FCC had failed to take into account the competitive nature of particular geographic and customer markets.

Before the Court's recent decision, the FCC had already started a proceeding to review how incumbent carriers should provide network access to requesting carriers on an unbundled basis.

The Commission has also sought comment on the impact of the Court's decision on the UNE triennial review proceeding.

Several states have requested that they become more involved in the process. For example, if the FCC chooses to establish geographic, more granular unbundling standards, we adopt broad rules that will afford state commissions some flexibility to examine market conditions within the states. I am sympathetic to their requests.

In my view, states are better positioned to conduct fact-specific inquiries. They can best judge the level of competition and the system of retail price regulation that applies to incumbent carriers in their respective states. To restore confidence and rebuild trust, we need a coordinated effort in which federal and state decision-makers work together to address our common concerns and to achieve our common goals.

Similarly, I believe we should listen carefully to the concerns that have been raised by our state colleagues with regard to the Broadband proceeding, I am generally supportive of the Commission's tentative conclusion to classify broadband Internet access as an "information service." However, I do have some concerns with this approach.

For example, I do not support the FCC's proposal to extend universal service contributions to providers of broadband Internet access.

In my view, the contribution requirement is essentially an Internet access tax that represents an unnecessary financial burden on service providers and actually creates a barrier to broadband deployment.

I also believe that the Commission must carefully consider the impact of a regulatory classification change on the ability of competitors to enter new markets. For

example, some states have expressed concern that a “change” in regulatory classification could adversely impact some state efforts to ensure that all telecom carriers have easy access to local rights of way and to building access.

VII. CONCLUSION

So as you can see, we are quite busy up in Washington. By the new year, I hope that I will be able to report to you that the Commission has taken significant steps towards resolving some of the issues we discussed. Thank you again for inviting me to speak with you this afternoon. Good luck with the rest of your conference. I am happy to take any questions you may have.