

REMARKS OF
THE HONORABLE ROBERT M. MCDOWELL
COMMISSIONER
FEDERAL COMMUNICATIONS COMMISSION
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*AN UNFETTERED AND MOBILE INTERNET:
THE BEST ENGINE FOR GLOBAL ECONOMIC GROWTH*

Muchas gracias a GSMA por invitarme a hablar ante el Mobile World Congress y felicitaciones por otra exposición sin precedentes. La semana pasada en Madrid, tuve la oportunidad de conversar con los nuevos funcionarios del gobierno español y con representantes de la industria de la telecomunicación. Fue un diálogo muy productivo. Me alegra visitar este país otra vez, y quiero decirles que, según la leyenda familiar mis padres viajaron por España unos nueve meses antes de mi nacimiento...así que, quizá yo debiera decir: ¡Qué bueno es regresar a casa! Les dejo el resto de esa interpretación a su criterio.

Es un gusto enorme para mí volver a la magnífica Barcelona. Aunque he aceptado la oportunidad brindada de hablar en español, creo que ustedes estarán de acuerdo conmigo en que tal vez sea mejor, por el bien de todos nosotros y de las relaciones internacionales, que continúe esta charla en inglés.

It is exciting to be here at the GSMA Mobile World Congress. Exploring the exhibits at this show gives us all a chance to peer into the future of wireless technologies. What was mere science fiction a few years ago is now affordable for mass markets around the globe and across income levels. Mobile Internet connectivity is improving the human condition more rapidly and fundamentally than any other disruptive technology in history.

In the United States, a lightly regulated and competitive wireless market has sparked a sustained cycle of investment, innovation and job growth, as well as lower prices and increased functionality for consumers. Sophisticated devices and complex mobile applications are tugging hard on present day spectrum availability. Recognizing the need for spectrum to flow toward its highest and best use, just over a week ago the U.S. Congress passed legislation that some estimate could place up to an additional 80 megahertz of prime television broadcast spectrum into American consumers' hands.¹ It

¹ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402-6404, 126 Stat. 156 (2012). The Senate and House of Representatives voted on the conference report accompanying H.R. 3630 on February 17, 2012. H.R. REP. NO. 112-399, at 69-76 (2012) (Conf. Rep.).

is now up to the FCC to implement Congress's intent for what will be the most complicated spectrum auction ever conducted.

Before the ink on the new law has even dried, however, a debate has escalated over whether or how the government should shape the outcome of this upcoming 700 MHz auction. Time and again, history has proven that regulators' attempts to over-engineer spectrum auctions result in harmful, unintended consequences.

For instance, before the 700 MHz auction of 2008, over my partial dissent, the FCC placed onerous encumbrances on spectrum that promised to: 1) attract a new national wireless competitor through what became known as the "C Block"; 2) increase the number of small business licensees; 3) create a nationwide, interoperable public safety network through a new public/private partnership for use of the "D Block" spectrum; and 4) generate additional revenue for the U.S. Treasury.² In reality, what those complex auction rules and conditions produced was: no new entrant in the C Block; *fewer* small business licensees overall; not even a serious bidder for the public/private partnership to build a public safety network; and *reduced* revenue for the U.S. Treasury.³ In short, the U.S. government's attempt at central planning failed.

The lesson learned from that auction and others is that when governments attempt to conduct social and economic engineering by foisting unnecessarily complicated mandates on the use of spectrum, their efforts frequently backfire. Private sector actors have a difficult enough time trying to predict market trends. Governments shouldn't make matters worse for them. If nimble entrepreneurs swimming in the whirlpool of a dynamic marketplace have difficulty keeping pace with the rapidly shifting currents of consumer tastes and new innovations, how are inherently slow moving and inefficient governments better equipped to do so?

As the FCC implements Congress's vision for incentive auctions, I will work with my colleagues to ensure that our auction rules are minimal and "future proof," allowing for flexible uses in the years to come as technology and markets change. Furthermore, I am optimistic that we can create band plans that offer opportunities for small, medium and large companies to bid for and secure licenses without having to exclude *any* player from the auctions. In 2007, I proposed a band plan that would have done just that in lieu of the counterproductive conditions that were eventually adopted. I am confident that the FCC can get it right this time. And "getting it right" means avoiding regulatory hubris by keeping governments' hands off of the marketplace's steering wheel as much as possible.

The same theme holds true for Internet governance. This year is pivotal for the Internet's future and, therefore, the global economy. Industrialized and developing nations alike are awash in debt and face flat growth curves, or worse, shrinking GDPs. Not only must governments, including my own, tighten their fiscal belts, but they must

² See generally Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, 22 FCC Rcd 15289 (2007).

³ See generally Auction of 700 MHz Band Licenses Closes, *Public Notice*, 23 FCC Rcd 4572 (WTB 2008).

also spur economic expansion. An unfettered mobile Internet offers the brightest ray of hope for growth during this dark time of economic uncertainty.

As we head towards the World Conference on International Telecommunications (WCIT) in Dubai in December, we should study and appreciate how we got here – how we created an environment that allowed for Internet connectivity to penetrate faster than any technology in human history. It started with the 1988 adoption of the International Telecommunication Regulations (ITRs).⁴ Then, 114 countries gathered in Melbourne, Australia to put into motion a positive and constructive liberalization of the international telecom market. Insulating computer-to-computer communications – and what we would later call the “Internet” – from traditional telecom regulation allowed for a massive explosion of investment and entrepreneurial brilliance.

Shortly after the Internet was privatized in 1995, a mere 16 million people were online worldwide.⁵ By the beginning of this year, approximately 2.3 billion people were using the Net.⁶ Internet connectivity quickly evolved from being a novelty in industrialized countries to becoming an essential tool for commerce – and sometimes basic survival – in all nations, but especially in the developing world. In fact, developing nations stand to gain the most from the rapid pace of deployment and adoption of Internet technologies.

A McKinsey report released last month examined the Net’s effect on the developing world, or “aspiring countries.”⁷ In 30 specific aspiring countries studied, including Malaysia, Mexico, Morocco, Nigeria, Turkey and Vietnam,⁸ Internet penetration has grown 25 percent per year for the past five years, compared to only 5 percent per year in developed nations.⁹ Obviously, broadband penetration is lower in aspiring countries than in the developed world, but that is quickly changing thanks to mobile technologies. Mobile subscriptions in developing countries have risen from 53 percent of the global market in 2005 to 73 percent in 2010.¹⁰ In fact, Cisco estimates that

⁴ International Telecommunication Union, Final Acts of the World Administrative Telegraphy and Telephone Conference, Melbourne, 1988: International Telecommunication Regulations (Geneva 1989), available at http://www.itu.int/osg/csd/wtpf/wtpf2009/documents/ITU_ITRs_88.pdf (last visited Feb. 21, 2012).

⁵ Internet Growth Statistics, INTERNET WORLD STATS, <http://www.internetworldstats.com/emarketing.htm> (last visited Feb. 21, 2012).

⁶ *Id.*

⁷ See McKinsey High Tech Practice, *Online and upcoming: The Internet’s impact on aspiring countries*, MCKINSEY & CO. (Jan. 2012) (“*McKinsey Aspiring Countries Report*”), http://www.mckinsey.com/Client_Service/High_Tech/Latest_thinking/Impact_of_the_internet_on_aspiring_countries (last visited Feb. 21, 2012).

⁸ *Id.* at 22 (categorizing the following as aspiring countries: Algeria, Argentina, Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Iran, Kazakhstan, Malaysia, Mexico, Morocco, Nigeria, Pakistan, the Philippines, Poland, Romania, the Russian Federation, Saudi Arabia, South Africa, Taiwan, Thailand, Turkey, Ukraine, Venezuela, and Vietnam).

⁹ *Id.* at 1, 3-4, 23.

¹⁰ *Id.* at 1.

the number of mobile-connected devices will exceed the world's population sometime this year.¹¹ Increasingly, Internet users in these countries use *only* mobile devices for their Internet access.¹² This trend has resulted in developing countries growing their global share of Internet users from 33 percent in 2005, to 52 percent in 2010, with a projected 61 percent share by 2015.¹³ The 30 aspiring countries mentioned before are home to one billion Internet users, half of all global Internet users.¹⁴

The effect that rapidly growing Internet connectivity is having on aspiring countries' economies is breathtaking. The Net is an economic growth accelerator. It contributed an average 1.9 percent of GDP growth in aspiring countries for a total of \$366 billion in 2010.¹⁵ In some developing economies Internet connectivity has contributed up to 13 percent of GDP growth over the past five years.¹⁶ In just six aspiring countries studied by McKinsey in 2010, 1.9 million jobs were associated with the Internet.¹⁷ And in other countries, the Internet creates 2.6 new jobs for each job it disrupts.¹⁸ Don't we want such trends to continue?

While we are enjoying the Mobile World Congress here in Barcelona, 624 kilometers away in Geneva, the ITU's Member States¹⁹ are convening to take the ITR negotiations a step further in this diplomatic journey toward Dubai. We are at a crossroads for the Internet's future. One path holds great promise, while the other path is fraught with peril. The promise, of course, lies with keeping with what works, namely maintaining a free and open Internet while insulating it from legacy regulations. The peril lies with changes that would ultimately sweep up Internet services into decades-old ITU paradigms. If successful, these efforts would merely imprison the future in the regulatory dungeon of the past. Even more counterproductive would be the creation of a new international body to oversee Internet governance.

¹¹ *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2011-2016*, CISCO, at 3 (Feb. 14, 2012), http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.pdf (last visited Feb. 21, 2012).

¹² *McKinsey Aspiring Countries Report* at 1.

¹³ *Id.* at 3-4, 23.

¹⁴ *Id.* at iv, 4, 23. And 73 percent of Internet users do not speak English as a first language. *Id.* at iv.

¹⁵ *Id.* at 2, 8-9, 26-27.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at v.

¹⁸ McKinsey Global Institute, *Internet Matters: The Nets Sweeping Impact on Growth, Jobs, and Prosperity*, MCKINSEY & CO., at 3, 21 (May 2011), http://www.mckinsey.com/Insights/MGI/Research/Technology_and_Innovation/Internet_matters (last visited Feb. 21, 2012).

¹⁹ ITU's membership includes 193 Member States, along with information and communication technologies regulators, leading academic institutions and some 700 private companies. Overview, ITU, <http://www.itu.int/en/about/Pages/overview.aspx> (last visited Feb. 21, 2012).

Some of the arguments in support of such actions may stem from frustrations with the Internet Corporation for Assigned Names and Numbers (ICANN).²⁰ Whatever the complaints are regarding ICANN, they should not be used as a pretext to end the multi-stakeholder model which has served all nations – and the developing world now more than ever – so well. Constructive reform of the ITRs may be needed, but they should be limited to traditional telecom services. Modification of the multi-stakeholder Internet governance model may be necessary as well, but we should all work together to ensure no intergovernmental regulatory overlays are placed into this sphere. Not only would nations surrender some of their national sovereignty in such a pursuit, they would suffocate their own economies as well, while politically paralyzing engineering and business decisions within a global regulatory body.

It would be a travesty to create a world where the Internet is partitioned between countries that live under an intergovernmental regulatory regime and those Member States who decide to opt out. A balkanized Internet would be devastating to global free trade and rising living standards. It would also render an engineering morass. Nations that value freedom and prosperity should draw a line in the sand against new regulations while welcoming reform that could include a non-regulatory role for the ITU. Venturing into the uncertainty of a new regulatory quagmire will only undermine developing nations the most. As a world community, we cannot afford to make that mistake.

Thank you for having me, and I look forward to listening to this impressive panel.

²⁰ Internet Corporation for Assigned Names and Numbers (ICANN), which was formed in 1998, “is a not-for-profit public-benefit corporation with participants from all over the world dedicated to keeping the Internet secure, stable and interoperable. It promotes competition and develops policy on the Internet’s unique identifiers.” About, ICANN, <http://www.icann.org/en/about/> (last visited Feb. 21, 2012).