

Evercore Tech Change Conference
Remarks of Ruth Milkman, Chief of Staff
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Thank you to Evercore for inviting me to speak. It's a pleasure to be with you.

This is a special time for me, and not just because it's the quadrennial period when my home state of Iowa is rightly the center of the universe. This week marks my two-year anniversary as Chief of Staff at the FCC. I'm not saying the job has been hard on me, but when I started I was 6 feet tall.

You don't need a behind-the-scenes look to know how the Wheeler FCC makes policy. The Chairman has been up front about his guiding principles since Day One, and I can honestly say that he's held true to those principles without exception.

In his very first speech as Chairman, he said that the FCC's two primary responsibilities were, and I quote, "facilitating dynamic technological change to ensure the U.S. has world-class communications networks [and] ensuring that our networks reflect our civic values."

He went on to spend the bulk of his remarks discussing how he viewed competition as the best way to achieve those goals.

The FCC's approach on competition is clear. Where competition exists, we will work to protect it. Where greater competition can exist, we will encourage it. Where competition cannot be expected to exist, we will not hesitate to act to protect consumers and advance the public interest.

Having made clear that he sees competition as option A for promoting innovation and investment and the lack of competition as cause for possible FCC action, Chairman Wheeler believed it was essential to have a clear-eyed view of the true state of competition for high-speed Internet access. To do that, the benchmark for broadband must reflect today's consumer demands. At 4 megabits per second down, the definition for broadband we inherited fell short of that standard. So the Commission raised the benchmark to 25 megabits per second down, 3 up.

At those speeds, how much choice do consumers have for broadband? For most Americans, the answer is not much. About 70 percent of Americans have either one or no choice for Internet service at 25 mbps.

With a lack of meaningful competition for broadband, the FCC can't afford to just sit back and trust the markets to take care of everything.

Let's look at a few examples of the FCC's competition policy in practice.

Consider some of our transaction reviews.

When reviewing major deals, the Commission works extremely closely with the Justice Department's Antitrust Division. In order to approve a transaction, the FCC must determine that the transaction will further the public interest.

We have two recent high-profile transaction reviews with divergent outcomes – Comcast/Time Warner Cable and AT&T/DIRECTV. Why did we arrive at different conclusions on these two deals?

As you know, Comcast, the nation's largest cable company, proposed acquiring Time Warner Cable, then the nation's second-largest cable company.

At the outset of this merger review, some commenters said there could be no competitive issues given there was minimal horizontal overlap between the applicants in the local markets for residential broadband and pay TV service.

But, step one of our merger review is a collection of the facts and an economic analysis to see what they tell us. One key fact stands out: 2014 was the first year in which cable companies had more broadband customers than video customers. So the term "cable industry" is a bit of a misnomer.

Now, couple this with the fact that online streaming has been transformative for video programming, giving rise to new forms of video delivery. While this transaction was under consideration, the landscape for online video delivery changed markedly. We've seen the emergence of a variety of business models offering different flavors of over-the-top programming delivered over broadband.

For example, in 2014, there were 27 original scripted series delivered exclusively through online services compared to two in 2009. Owners of programming like CBS and HBO have since launched stand-alone online services.

So we're seeing the video distribution market and the high-speed Internet access market become increasingly intertwined. Against this backdrop, the new Comcast would have ended up with nearly 30 percent of all pay TV households and nearly 60 percent of high-speed broadband subscribers.

The core concern came down to whether the merged firm would have an increased incentive and ability, by exercising its enhanced bargaining strength, to safeguard its integrated pay TV business model and video revenues by limiting the ability of content providers to compete effectively, especially through the use of new business models.

The question was not only whether a single action, such as access to devices, data caps, or video programming terms, would by itself degrade competition. It was also whether the merged company would possess a toolkit that would allow it to put sand in the gears of competition through the totality of its efforts.

In a recent speech, Bill Baer, the head of DOJ's Antitrust Division, summed it up by saying that "Putting Comcast and Time Warner together risked disproportionately increasing the merged firm's bargaining leverage. . . . This leverage would have left Comcast with too much control and with too few competitors when shaping the future of video competition and broadband Internet service. Coupled with Comcast's understandable incentive to reduce the competitive threat posed by over-the-top programmers or streaming services, consumers would have been at risk."

We often say that you shouldn't use the outcome of previous transaction reviews to predict future transactions. And, of course, a few months after Comcast withdrew its bid for Time-Warner Cable, the Commission approved the AT&T-DIRECTV deal.

The merger of AT&T and DIRECTV will result in a loss of horizontal competition in video distribution in the 21 states where AT&T offered its U-Verse service. So why did we approve this deal?

The parties argued that their merger would result in more and better, integrated bundles of broadband and video that could better compete against incumbent cable companies. Underlying their conclusion was a view that as standalone companies, neither had the necessary assets to compete over the long term. In other words, this transaction was a bet on competition.

But we also concluded that the transaction created the potential for public-interest harms in two important respects. First, there was the obvious loss of pay TV competition in areas where AT&T and DIRECTV overlapped. Second, we concluded that post-transaction AT&T would have an increased incentive to use its broadband assets to discriminate against competing online video distributors like Netflix or Hulu.

To address these public-interest harms, the Commission imposed conditions that combine to ensure more, faster, and open broadband. First, AT&T will deploy fiber-to-the-home to 12.5 million locations within four years, which will increase the entire nation's residential fiber build by more than 40 percent. To prevent discrimination against online video competition, AT&T is prohibited from engaging in practices that favor its affiliated video services and content over content from online competitors. To bring greater transparency to interconnection practices, the company will be required to submit all completed interconnection agreements to the Commission.

Of course, the Commission's work to promote and protect competition is not limited to our transaction review authority.

The Commission voted to advance competition by implementing a "market-based reserve" in the upcoming Incentive Auction of up to 30 megahertz of spectrum per geographic market. The Incentive Auction offers one of the last opportunities for competitors to acquire significant quantities of low-band spectrum. This spectrum is important because of its propagation characteristics, which allows it to travel farther and to penetrate buildings better. With more than 70 percent of low-band spectrum in the hands of just two providers, this reserve assures that multiple providers without significant amounts of low-band spectrum have a meaningful opportunity to compete to acquire these valuable airwaves.

I said earlier that where competition cannot be expected to exist, we will not hesitate to act to protect consumers and advance the public interest. Perhaps the best example of this principle in practice would be our universal service programs. The truth is that in many sparsely populated parts of the country, there is no business case to build private broadband networks. As a result, millions of Americans can't get broadband at any speed.

The Commission is in the midst of modernizing our telephone-era universal service programs for the Internet age. Our new Connect America Fund is moving forward with plans to invest \$9 billion over 6 years to preserve and expand broadband deployment to 7.3 million rural Americans. These investments are targeted and fiscally responsible. These contributions leverage investment from private ISPs. We will only fund one service provider per area, and we won't provide funding in areas where there is an unsubsidized competitor.

To this point, I've tried to give some insight on how the Commission promotes competition and how we arrived at certain previous decisions.

Now, let's look ahead. Without a doubt, the biggest item on the Commission's pending agenda is the upcoming incentive auction.

Spectrum is the invisible infrastructure of the mobile revolution. But spectrum is finite, and the demand for airwaves being created by data-hungry, Internet-connected devices has forced the Commission to think creatively about how we increase the supply of spectrum available for broadband.

The overarching goals of the FCC spectrum agenda are to maintain U.S. leadership in mobile innovation and to maximize the value of spectrum for the American people. And I would emphasize that when we talk about value, we're not just talking about raising money for the U.S. Treasury at auction, although

that's great. A wireless industry analysis released this summer estimates the consumer value unleashed by spectrum is 10 to 20 times greater than the market value. So while auctioning spectrum can raise tens of billions in revenue, if spectrum is put to the highest and best use it can unlock hundreds of billions in consumer benefits.

The incentive auction is central to the FCC's efforts to meet the demand for spectrum. It will utilize market forces to realign the 600 MHz band to meet 21st century consumer demands for broadband and video.

Broadly speaking, the incentive auction is a three-step process. First, broadcasters decide voluntarily whether to participate in a reverse auction by going off the air, moving from a UHF to a VHF channel, or sharing their spectrum. Second, the Commission will repack these airwaves and auction them to wireless carriers – and non-traditional bidders – which will use the airwaves to build out better, faster connectivity for consumers. Finally, broadcasters that submit winning bids in the reverse auction will receive part of the proceeds from the wireless auction, which is also sometimes called the “forward” auction.

Broadcasters that do not participate in the auction, or whose bids are not selected, will be assigned a channel that preserves their population and coverage area. Broadcasting will remain an important part of our future just as it has been an indispensable part of our past.

The auction is the last foreseeable opportunity for carriers to obtain significant low-band “coverage” spectrum. And broadcasters across the country are preparing to participate.

Last month, the FCC set the opening bid prices that will be offered to each TV station eligible to participate in the auction for each of that station's possible bid options: either relinquishing their license or moving to a different TV band. We also set the application deadlines for the reverse and forward auctions. This is big news – broadcasters now have all the information they need to say “we're in or out” on participating in the incentive auction by the December 18th deadline. Commission staff stand ready to educate and assist applicants during this critical juncture.

As important as it is, the incentive auction is just one part of our spectrum agenda.

And the next big thing you'll be hearing about in the months and years ahead is 5G. The U.S. led the way globally on 4G. We were the first to deploy LTE wireless networks at scale, making America the test bed for early 4G innovation. A key to America's head start was identifying spectrum and making it available – largely in the 700 MHz band, which was enabled by the digital television transition. Another key was allowing this spectrum to be used flexibly, as opposed to government dictates we saw in other countries.

In the competitive mobile marketplace, standing still means falling behind. We need to be looking to the future of wireless. We need to be looking at 5G.

The development of the next generation of wireless technology—commonly called the fifth-generation or 5G—is already underway around the world. Our expectation is that this new technology will enable a platform that can support multiple uses and users – including high speed fixed and mobile broadband to consumers – but also networked industrial applications, sensors, and an unknowable number of other wirelessly enabled devices.

Last month, the Commission initiated a proceeding that continues to leverage the Commission's flexible use spectrum policies and its efforts to make low-band, mid-band, high-band, licensed, and unlicensed spectrum available for 5G wireless broadband.

Continued U.S. leadership also requires international coordination. At the World Radiocommunication Conference (WRC), which started yesterday, the international community will be deciding which bands will be studied and later identified for advanced mobile use at the next WRC in 2019. The bands we propose are consistent with the U.S. position at WRC, and we are committed to working with domestic and international partners to develop rules for these bands and conduct sharing and compatibility studies.

Let me put this proceeding in perspective. We're talking about 3,800 megahertz of spectrum that we are going to look at. That's six times all of the commercial spectrum that the Commission has authorized for broadband. And we're potentially doubling the amount of high-band unlicensed spectrum. These comparisons are not linear, but they give you a sense of the potential opportunities this could create for U.S. companies that support the wireless ecosystem.

So those are two – and I would stress only two – of the big ticket items we will be focused on in the days ahead.

Thank you for this opportunity to discuss the Commission's efforts to maximize the benefits of broadband for the American people. It has certainly been an eventful two years, and we look forward to the challenges ahead.