

Remarks of Commissioner Mignon Clyburn (as prepared)
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Thank you, Chip, and good morning everyone! How great it is to take part in INCOMPAS' 2018 Policy Summit. I say this not just because of your fine leadership, but I can think of no other group nor a better place to talk about competition policy, than with an entity formerly known as COMPTel, and in a room chock-full of competitive carriers.

Competition policy underpins a lot of the work we do at the FCC. And in an industry characterized by high sunk costs and significant barriers to entry, it is appropriate for us to calibrate our policies to ensure that entities that are looking to enter the market for the very first time, or compete head-to-head with an incumbent, are not disincentivized from doing so. That is why at the FCC, with everything from pole attachment policy to merger review, I keep an eye out for the competitive impact of our actions.

This makes sense for a Commissioner who regularly attaches the hashtag #ConsumersFirst to her social media posts, because one of the basic tenets of market economics, is that competition can decrease the need for regulation. Competition also generally nets positive returns when it comes to consumer choice and the market prices they pay. Of course, there are always areas where we need and should have regulation, but sometimes putting #ConsumersFirst, means enabling competition and letting the market work. Unfortunately, despite the rhetoric coming from the FCC majority about free markets and enabling competition, policy-wise it pains me to say this morning, that they have fallen woefully short.

Today, allow me to highlight where the current Commission's competition policy needs a makeover, and round things out with a couple of bright spots that are ripe for addressing in a bipartisan way.

This Administration seems to only pay lip service, when it comes to ensuring competition, and, what is worse, it has a particularly creative view of what kind of services actually "count" as competitive. News flash: the sort of services that many of you in this room provide generally do not make the cut. The competition they view as legitimate is retail competition provided via a provider's own last-mile facilities. I find this particularly puzzling, because a free-market worldview would seem to embrace competition regardless of the source, and not set rigid parameters on where such competition originates. But for some reason, only facilities-based companies need apply to this FCC. Since competition of this sort comes with a high price tag for those with newer business models, this means that real competition in many areas of the country will never truly be realized and the dream of real choice will be deferred. When over half of Americans have one or fewer options when it comes to high-speed home broadband, the forecast is indeed not sunny and bright.

The current FCC's preference for "facilities-only" competition reared its head as it addressed business data services last year, where it did away with wholesale protections that eased retail market entry for non-facilities-based providers. This thumb on the scale was again

equally apparent when the Commission stripped away copper retirement and discontinuance protections for competitive carriers who rely on incumbent infrastructure. And if you failed to notice the signs in those two items, things became crystal clear in the pending Lifeline proceeding, where the Commission proposed a flat-out ban on all non-facilities-based carriers.

Even if I were to concede that facilities-based competition is the only “valid” form of competition, this Administration has put the cart before the horse. If you want to incent buildout, lowering barriers to infrastructure deployment should be the first thing that you do. Instead, they repeatedly take actions to make it more difficult to enter the market through wholesale arrangements: arrangements which can be an effective bridge to investing in infrastructure. While the majority is now turning to a “deployment” agenda, it is only after it has taken actions that incent market exits and consolidation by competitive providers. And it has taken actions to enable large wireless companies to grab even more spectrum, which decreases the prospects for robust wireless competition.

In the context of mergers, the agency has hamstrung itself once again. We have refused to review the AT&T-Time Warner merger, rammed through several other transactions, and have drastically changed the Commission’s merger review standards along the way so that the Commission will only intervene in the most dire contexts. That is not how we promote competition, and these actions stand in stark contrast to an Antitrust Division that has firmly announced that it intends to enforce structural remedies for transactions that run afoul of our nation’s antitrust laws in one way or another.

Strangely enough, the opposite holds true, when the current FCC majority analyzes markets. By their definition, just about anything will count as competition even if the quote unquote competitor is as real as a fifteen-dollar bill. I keep referring to the Business Data Services Order that used data where one consumer-grade broadband connection in a census block was a proxy for ubiquitous dedicated business services. Or in the same Order where the competitive market test attempted to measure actual competition by factoring in potential competition. This is the first time in the Commission’s history, that I’m aware of that this has been done. Likewise in its analysis of the mobile wireless market, the mere presence of multiple nationwide providers is apparently sufficient for the Commission to dispense with a more robust market analysis. No matter that many Americans still do not have wireless coverage, or that for those that do, they may only be covered by a single network. Worry not, because according to the majority’s analysis, that fifteen-dollar bill is real.

The Commission’s current approach when it comes to video competition also leaves much to be desired. While we rightly debate programming policies for pay-TV, video traffic continues to migrate online. Cisco projects that global video traffic will be 82% of all consumer internet traffic by 2021, and the number of U.S. adults who are cutting the cable cord continues to rise. eMarketer projects that by 2021 over 80 million Americans will have foregone a cable subscription which means we need a robust policy for video that travels over the internet. Unfortunately, we just handed over the keys to the internet to broadband providers by repealing net neutrality protections.

But I always seek out a silver lining no matter how gray or thick the cloud formation.

First, we can take action to unleash competition in multiple-tenant environments. This is an area ripe for bipartisan action. The last aggressive action to root out these barriers to competition occurred under Chairman Martin, and that current FCC leadership has at least adopted an NOI seeking comment on how we can remove these hyperlocal barriers bodes well. Particularly in urban communities, areas where the business case abounds for robust competition, there are issues due to exclusive arrangements between building owners and single providers. Residents pay higher prices as a consequence, while building owners and providers line their pockets. Not #ConsumersFirst.

Second, reducing barriers to infrastructure deployment. While this does not often make the frontpage headlines, reforming pole attachment timelines and standardizing rational fee structures can make a huge difference in both the cost-effectiveness of broadband deployment, and the timeliness of broadband deployment. I have heard stories of providers who have the capital, the fiber, and the construction crew ready to go, being forced to wait over a year to get through the application, survey, and make-ready process. That leaves communities wanting unnecessarily. And in many cases, these delays are both avoidable and unacceptable. That is why we have teed up comprehensive reform of poles: but how we go about it, is the key.

The clearest way to move forward on pole attachment reform is to adopt a federal-level one-touch make-ready approach. I called for an examination of one-touch make-ready in my #Solutions2020 plan last year. I understand that there are a variety of proposals on the table—some more controversial than others. But I am pleased that people understand the potential efficiency gains if one-touch make-ready is properly implemented. The topic has been taken seriously in our infrastructure rulemaking, and before the Broadband Deployment Advisory Committee. I hope that we can move expeditiously to Order on this, as we resolve other pending issues. To be sure, these are all thorny policy issues, but we must not avoid them, we must address them. There is a path forward when it comes to resolving deployment problems that enable robust competition, without state and local preemption.

Thank you again for having me here, and I look forward to answering any questions you may have.