FCBA Chicago Address
October 24, 2001
As prepared for delivery.

Thank you so much for the opportunity to be here with you to celebrate the 10th anniversary of the FCBA's Chicago Chapter.

As a former President of the FCBA, it is a particular honor to be here with one of our premier chapters. There is so much important and interesting communications law work that gets done outside the beltway, as trips like this always remind me.

As a Commissioner, getting out of Washington also gives me an opportunity to meet folks who are doing the real work in the continuing communications revolution. And it helps me focus on the important aspects of our work that have significant impacts in the lives of everyday Americans – as opposed to DC lobbyists (not that there is anything inherently bad about DC Lobbyists, after all that's how I made my living before I got this job!)

Before getting to the policy substance of my remarks, I would be remiss if I did not speak briefly about the tremendous importance of the FCBA – both in my

personal career, for lawyers in the field, and for the Commission.

Personally, the FCBA has made a tremendous difference in my career – helping me to meet people, learn about new topics, and develop leadership skills. And I think for many lawyers – both here in Chicago and around the country – the FCBA continues to serve those functions.

It also is a very closely knit bar – almost like a large extended family. That FCBA family has long rallied together to support charitable causes and to engage in meaningful community service projects. We also rallied together in the wake of the September 11 attacks. Those attacks took a tremendous toll on our nation and indeed our Bar Association. But I have been struck by the degree to which our country and the FCBA have supported one another in this time of need as well.

Finally, the Bar has an important symbiotic relationship with the Commission. Indeed the members of the Bar – and the wide range of individuals, organizations, and companies that you represent – are some of our primary "customers." We rely on you to let us know what we are doing well and how we can do our jobs better. And we rely on

you to provide us with information of the quality and reliability necessary for us to render rigorous decisions.

With the FCBA's role as a backdrop, I would like to outline a bit of my regulatory philosophy and then apply those principles to three important issue areas the Commission has been working on: public safety spectrum, ownership spectrum caps, and consumer issues.

As will be described in more detail in a forthcoming FCBA Law Journal article, I have developed five key principles that will shape my policy approach at the FCC.

First, Congress defines the FCC's mission through the statute. I am not elected – and my job is not to second-guess policy decisions made by the legislative branch.

Second, within the discretion afforded under the statute, I am inclined to defer to market forces rather than prescriptive regulation. Markets are the most effective way of delivering quality services to the American people at the lowest costs. And equally important, they also punish and reward faster than a regulator could even dream of.

Third, the Commission should aggressively enforce well-crafted rules. While I am generally deregulatory – to the extent we maintain rules – it must be because we are prepared to enforce the ones we keep. Thus, while we may say less, I expect that we will mean it more.

Fourth, government should be humble in regulation (particularly in the technology sector). We cannot possibly duplicate the knowledge base and expertise of industry; therefore we must make an extra effort to reach out to consumer groups, the Bar, industry, state regulators and academia to develop the most comprehensive record possible in advance of our decisions.

Fifth, and finally, the FCC is a service-based organization, and we should act like it. This means well-conceived decisions in a prompt fashion. It means phone calls returned, meetings taken, and transparent processes.

Over the past three months, I have attempted to hire a staff that reflects these values and create an office consistent with these goals. In this regard I would like to introduce my Senior Legal Advisor Bryan Tramont, who handles wireless and international

issues in my office, and Stacy Robinson, my mass media advisor. Their e-mail addresses and phone numbers are available on my website. Please feel free to contact them or me if we can be of any assistance. Over the course of my term – and working with Chairman Powell and my colleagues – I hope that these priorities will be reflected in the agency writ large.

With that, let me turn to a few issue areas that have been in the headlines over the past couple weeks – and give you my current thinking.

First, September 11 has given renewed impetus to the Commission's efforts to ensure that public safety has adequate spectral resources to respond in a crisis. In this regard, the most important spectrum issue presented by public safety is the interoperability spectrum that Congress directed us to allocate in the 700 MHz – more commonly referred to as the TV Channels 60-69 band. The National Coordinating Committee (or NCC) has been hard at work developing a band plan, crafting technical criteria, and molding other policy recommendations regarding the important future uses of this band.

Public safety has a tremendous need for this spectrum because it provides for nationally harmonized

interoperability channels. That is, a Wisconsin fire department responding to a disaster in Chicago would be able to readily communicate with local emergency response personnel, as well as those from Indiana and down state.

Despite everyone's best efforts that type of communication was not always possible at the World Trade Center. We need to move promptly to make sure it is reliably available in future crises. The primary barrier to public safety use is the statutorily defined incumbent broadcasters' rights to remain in this band until 2006 or later.

As I set out above, my first principle is that Congress through the statute defines the FCC's obligations. In this case, Congress directed the Commission to set aside 24 MHz in the 60-69 band for public safety – and to auction the remaining 36 MHz. Yet the public safety allocation and the auction was to occur years in advance of the mandatory relocation date for the incumbent broadcasters – who retained a statutory right to remain in the band, in their market, until whichever occurs later, 2006 or when 85 percent of the public have digital television sets.

In light of this statutory scheme, it seems the Commission lacks authority to require broadcasters

to leave the band early, even if it were to pave the way for important public safety uses.

However, this situation could be amenable to a private market based solution – as the prior Commission found – and I agreed in a recent order. Such an approach is consistent with my second regulatory principle – that is, trusting the marketplace to solve some public policy issues.

Here the Commission retains authority over the table of allotments and station licensing. Indeed, the Commission has always entertained license modifications that would switch channel allotments or relocate transmitters. Therefore, in the current statutory context, the Commission could appropriately develop some general guidelines about its processing of voluntary commercial transactions in the Channel 60-69 band that would remove the incumbents prior to the date they are required to relocate. And that is what we have done.

Thus while no one will be forced to move before the statutory deadline, it will be possible for the band to be available to public safety licensees as well as commercial auction winners in some or all parts of the country prior to 2006.

There have been concerns raised about this process – that is, broadcasters will gain a windfall to be paid by the June 2002 auction winners. I appreciate this concern, but, without the authority to mandate relocation before 2006 and with a significant need for this spectrum by public safety, I am hard pressed to reverse the current policy approach.

Moreover, a change in the policy would seem to leave the Commission in the unfortunate position of denying petitions to relocate broadcasters out of the band, despite our ultimate desire to do so. It also would mean at least another five years – if not longer – before the interoperability bands would become available. And while the urgency is far less acute, the commercial bidders from the band also have an interest in deploying their services prior to 2006.

Now, if Congress determines that forced relocation of incumbent broadcasters by a specific date is the right policy, the Commission stands more than ready to implement that policy. However, the current statute has no such mandate.

I therefore have attempted to support an approach that achieves all of the congressionally mandated goals and the public interest as effectively as possible.

There are three other public safety issues I would also like to mention, before moving to caps. First, we are examining a promising possible allocation for public safety at 4.9 GHz; second, we may be called upon to revisit our priority access regime; and third, we are examining interference issues in the public safety bands. These items are all on our "to do" list and have gained added urgency over the past six weeks.

* * * * *

Another important issue area facing the Commission is the continued vitality of our ownership and spectrum caps. These are difficult and complicated issues, but they must be tackled promptly. As I described earlier, one of the difficult challenges for any regulatory agency is "keeping up with the times" – and we must be humble about our ability to stay current. That is, we must be prepared to accept the notion that regardless of how well intentioned initially, our regulatory policies will almost certainly become outdated. We must continually take a fresh look at our policies. Indeed, Congress mandated such an approach through the biennial review process.

In looking at the record in our ownership and spectrum cap dockets, I believe I should take a humble view of our abilities to develop prophylactic ownership or spectrum limits that maximize public welfare – is 30% of the markets or 55 MHz an appropriate cap or should those numbers be 40% and 70 MHz?

These are difficult decisions and in this regard I rely a great deal on my second principle – trust in the marketplace. Absent clear evidence of likely and significant competitive harm, I am reluctant to hinder the marketplace through prophylactic rules.

That is not to say these policies were not wholly justified at the time of enactment. Indeed, I believe the spectrum cap served a key role in limiting the ability of analog cellular providers to "block out" new PCS entrants. But the question we must answer is whether these policies make sense with today's facts – not yesterday's possibilities. And we must answer that question promptly, so that biennial reviews don't take six years to complete.

We also must remember that eliminating or modifying these caps does not mean the Commission surrenders its traditional bedrock authority to review license transfers and control auction rules. We retain

those key checkpoints on the competitive road and have an obligation to review each transaction under our public interest standard.

* * * * *

Finally, consumer issues – both from an enforcement and a policymaking point of view – are increasingly important at our agency. Dane Snowden is our new Chief of the Consumer Information Bureau, following up on the fine job done by Rod Porter on an acting basis. At a process level, CIB is actively moving to provide consumers with helpful information, resolve complaints, and develop more open lines of communications with our licensees.

Regarding enforcement, Dane and his team are stepping up efforts to enforce the consumer rules we have on the books. As I said, one of my key principles is that we must vigorously enforce the rules we have. Unfortunately, in the consumer area, this has not always been the case.

So today, we are moving aggressively to enforce our rules on slamming, cramming, do not call lists and unsolicited faxes.

We are improving our response times to consumer inquiries and getting carrier information back more promptly.

We are also moving faster – through the Enforcement Bureau – to punish those who violate our rules.

There should be no doubt that, going forward, if this Commission has a rule on its books, then it will be enforced vigorously.

On consumer policy issues, we are moving ahead to implement the Congressional mandates of Section 255 regarding communications access to persons with disabilities. As we develop a more market driven communications regulatory regime, we must continue to emphasize that along with licensees' ***rights*** as more deregulated actors, come statutory ***responsibilities***. Here those responsibilities include the obligation to respond to the needs of the disability community when the free market alone might not. And we – as regulators – must do our part to implement our Congressional mandates.

For example, in 1989, the Commission examined the mobile telephone handset exemptions under the Hearing Aid Compatibility Act and promised to reexamine those exemptions at least once every five

years. Yet nothing has happened since 1989. This is simply unacceptable. We will soon initiate a rulemaking to look at the rules. But going forward, we simply cannot fail to take on these difficult – yet so important – issues. Approximately 28 million Americans have hearing loss. Our policies must be responsive to their needs and Congress' direction.

Similarly, we are currently looking at the possibility of eliminating the requirement that cell phone carriers offer analog service. Analog is less vigorous than digital modulation and not as spectrally efficient. Moreover, the FCC is generally reluctant to mandate any particular technology. However, traditionally there has been no way for TTY to operate on a digital cell phone – and absent deployment of new technology, it is difficult to imagine compliance without the continued provision of analog service. So even as we strive to update our rules and deregulate where possible, we must keep in mind our statutory obligations to this community.

And at a larger level, we must remain vigilant that consumer enforcement concerns don't get lost in our efforts to promote competition and streamline our rules.

Well, those are three issue areas that have been getting a lot of my attention in recent weeks. I would be happy to open this up to questions from you all to see what is on your minds.