

Improving Federal/State Collaboration and Other FCC Priorities

NARUC Annual Meeting Remarks of Commissioner Kathleen Q. Abernathy November 13, 2001 - Philadelphia, PA As prepared for delivery.

Let me start by thanking NARUC for having me here today. I find these gatherings extremely valuable and interesting because of the diverse group of people this organization brings together. I was able to attend the NARUC meeting this summer in Seattle shortly after I was sworn in, and it was great to catch up with so many old friends and find out what's going on outside the beltway.

I have already found in my relatively short time at the Commission that it's critical for federal and state regulators to work closely together to ensure that our policies are coordinated. We may not always agree on everything, but I am confident that, by working together, we can forge lots of compromises. And where we can't, our decisions at least will be better informed.

A case in point is our recently released accounting reform order. My staff and I spent many hours speaking with state commissioners and their staff to understand their views on the various accounting and reporting rules. My fellow commissioners and I changed our minds about a number of issues because of this input. To the extent that there was such a thing as a consensus "state commission view" — and I don't think there was — I did not *always* agree with it. But I have no doubt that our order, in the end, was stronger because of the close coordination we had with our state colleagues.

I am pleased to be able to report that we are also building a solid working relationship on the Federal-State Joint Board on Universal Service, for which I am currently the Chair. And I look forward to better coordination on a wide range of other issues.

My Goals for the Upcoming Year, and Beyond

Chairman Powell recently spoke about his priorities for the Commission, and it's hard to disagree with his assessment of the important issues facing us. He is committed to focusing on (1) Broadband Deployment, (2) Competition Policy, (3) Spectrum Allocation Policy, (4) Reexamining the Foundations of Media Regulation, and (5) Homeland Security. My goals overlap substantially with these broad areas, so I am pleased that the Chairman has recognized their importance.

But one of the first things I learned as a commissioner is that it's very difficult to be proactive about substantive policy goals. We are confronted with a dizzying array of proceedings that we have to decide, and, with the exception of the Chairman's office, we have little control over the timing of these proceedings.

So, when it comes to setting goals, I have spent most of my time thinking about how it is that we should set priorities in the first place, and the processes the Commission follows in pursuing those goals. I have spoken several times about my thoughts on these issues, so I won't go on at length about them here. But let me briefly summarize my principles that I rely on to guide my decisionmaking.

- *First*, I believe that we should look to the text of the Communications Act to determine our agenda. The Act contains a number of specific mandates, and I am continually surprised to learn that we have yet to implement a fair number of them, even years after they were enacted. We should make certain that we fulfill all our statutory mandates before we act in areas where we have only discretionary authority. And we should be wary of taking action where the statute is silent, because our job is to implement the statute, not to pursue our own policy preferences.
- *Second*, where the Act gives us discretion, we should rely wherever possible on market forces, rather than prescriptive regulation. My experiences in the public and private sectors have convinced me that markets do a better job of maximizing consumer welfare than regulators can hope to achieve. Market forces encourage innovation and spur firms to offer better services and lower prices. However well intentioned, regulations always impose costs, many of which cannot be anticipated ahead of time — and some of which outweigh the benefits intended by the regulation. Therefore, to the extent we can do so consistent with the statute, my preference is to rely on market forces instead of prescriptive regulation.
- *Third*, we should regulate with enforcement in mind. This means adopting a small number of clearly written rules and enforcing them vigorously. It means we should not adopt rules that we are not prepared to enforce, because doing so seriously harms our credibility and effectiveness. At the same time, I do not want to suggest that our enforcement policy should be *overzealous*: If we have adopted only a broadly worded rule, we cannot punish firms for engaging in conduct that is inconsistent with expectations that were never put into the text of the rule. I believe that the NPRM on performance metrics we adopted last week takes an appropriate enforcement-oriented approach: The Notice asks about a relatively small number of core measurements that are sufficiently clear and concrete to allow us to step up our enforcement activities when firms engage in discrimination.
- *Fourth*, the FCC needs to be humble and recognize the limits of what it knows and can achieve, particularly during this time of rapid technological change. We need to maximize the amount of information flowing into the agency by reaching out to a wide range of interested parties, including our state colleagues, carriers, trade associations, consumer groups, and others. We also need to make our decisionmaking processes more transparent by providing better information about the status of proceedings, including the level of the agency that is working on an item.

- *Finally*, the FCC is a service-based organization and should act like it. This means that we should provide more timely and responsive service, because, as I learned when I was in the private sector, there is nothing worse for business than regulatory uncertainty. We may not always come up with the right answer, but I am committed to ensuring that we resolve issues more quickly.

The Commission's Organizational Reform

I am very supportive of our ongoing organizational reform. Every regulatory agency has to reorganize itself periodically to keep pace with the changing complexion of the industry it regulates.

The Commission has recognized that, in response to Congress's call for a procompetitive, deregulatory national framework, we can no longer do business as we always did. Over the last few years, the Commission appropriately established separate Bureaus for Enforcement and Consumer Information, since these functions take on added importance in a competitive environment.

We are now engaged in further, incremental steps aimed at creating a structure that better reflects our current mission. We are consolidating in ways that reflect industry convergence: For example, we have proposed to combine the cable and mass media bureaus. We have also proposed to combine several of the functions of the common carrier bureau.

I don't think we'll end up with anything radically different from what we have now: We'll still have separate bureaus for international, wireless, wireline, and mass media. Over time, we will have to consider more fundamental changes as competition and convergence increase. But for now, we are making modest changes that should enable us to work more efficiently and to provide more responsive service.

Enhancing Federal-State Cooperation

As I stated in my introductory remarks, it is imperative for federal and state regulators to work together closely. One of the simplest, but most important, things we can do is to ensure that we keep communication lines open. I make it a priority to make myself or my staff available whenever state commissioners want to share their views on an FCC proceeding, and I especially like it when I get to talk informally with state commissioners at NARUC or when they are in Washington.

Let me assure you that we listen carefully to what you say. In the Accounting Reform proceeding, some of us had very different ideas about the need for various accounting and reporting requirements. But the order we adopted represented a compromise based on very close federal-state cooperation. I ultimately agreed to the creation of various new accounts that I was not initially inclined to support, primarily because many state commissioners convinced me that they need this information to do their jobs — at least at this point in time, in the absence of other information-gathering mechanisms. So, we should keep talking to each other whenever FCC

proceedings present issues of concern to the states.

Another important means of improving federal-state collaboration is the Joint Board process. We have Joint Boards on universal service and separations. As Chair of the Joint Board on universal service, I am encouraged by the commitment of the members and staff to dealing with hard questions like the definition of supported services.

The Joint Board met yesterday and discussed possible referrals of some upcoming proceedings. I hope that the Board proves itself an invaluable resource, so that the Commission is inclined to refer an increasing number of proceedings that affect the interests of the states. Commissioner Nan Thompson and I have been working with our colleagues on a set of procedures that we hope will enable us to work more efficiently so that the Joint Board can work on a number of proceedings simultaneously.

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For more information on the speech above, or any of the Commissioner's past remarks, please email Bryan Tramont at btramont@fcc.gov.