Heeding the Lessons of Wireless Competition

Emerging Issues Policy Forum Remarks of Commissioner Kathleen Q. Abernathy

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As prepared for delivery.

Thank you very much for that kind introduction. It's wonderful to be here in this beautiful setting among so many good friends. I'll make some brief remarks, and then I understand we'll have a Q&A session. The focus of my prepared remarks will be what the FCC can do to promote local wireline competition based on the lessons learned in the wireless and long distance markets.

Those markets are robustly competitive, largely as a result of a deregulatory policy framework. The wireless and long distance experience persuades me that relying on market forces to the greatest extent possible offers the best means of delivering innovative services and lower prices to consumers. As I'll describe, relying on a small number of clear and narrowly tailored ground rules, backed by stringent enforcement mechanisms, will do more to boost competition than a heavy-handed regulatory approach.

Let me begin by providing some background on the status of wireless and long distance competition.

Wireless Competition

As the FCC's most recent CMRS report makes clear, the wireless marketplace is a hotbed of competition. There are six virtually national providers of mobile telephony in this country: AT&T, Cingular, Nextel, Sprint, Verizon, and VoiceStream. There are also a number of large regional competitors, such as Western Wireless, U.S. Cellular, Dobson Communications, and ALLTEL. With regard to resellers, or the non-facilities-based competitors, their market share in this highly competitive landscape remains low — less than 3% of the market — despite the current resale obligation, and despite the fact that the number of subscribers for this sector continues to rise. When you have a robust facilities-based competitive market there is clearly less of a market niche for resellers.

As a result of all this competition, an overwhelming majority of Americans have a choice of providers. In fact, 259 million Americans, or over 91% of the population, live in counties where three or more operators provide service. And Americans have continued to enjoy declining prices, more flexible pricing plans, better service, more innovative features, and other benefits.

What is responsible for this success, and how can we duplicate it in other contexts? Well, certainly one important piece of the puzzle is that wireless services offer tremendous advantages that improve our daily lives, which of course stimulates strong demand for these services. So this success is based, at least in part, on the existence of strong market demand. But offering desirable services is not enough. Regulators had to create policies that allowed competition to flourish while also intervening when necessary to achieve important public policy goals.

When Congress passed Section 332 in 1993, the Commission was at a key crossroads: It could have heeded calls to impose strict Title II common carrier regulations on incumbent cellular providers, based on their supposed entrenchment. That is, it could have imposed price regulation, service quality controls, mandated certain technologies or demanded tariffing. But the FCC instead let go of the reins and relied on market forces to govern pricing and service terms for PCS and other mobile services.

This is not to say, however, that there was no regulatory intervention. The FCC continued to place additional spectrum into the marketplace — thus allowing multiple players to pave their own wireless last mile and to compete with existing providers. Included in this policy was a spectrum cap that guaranteed, at least initially, that there would be at least four distinct providers in each market. The Commission also developed and enforced strict interference rules that prevented competitors from externalizing costs by interfering with their competitors.

So while the approach to wireless was largely deregulatory, the Commission also engaged in limited interventions to ensure, for example, that there was a diversity of providers of the "last wireless mile" and to prevent competitors from externalizing costs onto one another or consumers. In sum, the wireless experience illustrates how Commission policy ought to work: We establish policies that encourage entry into the marketplace; firms compete with one another based on price and service quality; and consumers make choices that maximize their welfare. In the end, some firms succeed while others fail, and it is the role of regulators to referee between carriers and consumers and among providers — not to pick winners and losers.

Long Distance Competition

Let's now turn to the long distance market. It is also robustly competitive — so much so, in fact, that many market observers have identified declining margins as a threat to the continued viability of long distance as a stand-alone business.

AT&T's market share has fallen from over 90% in 1984 to about 38% in 2000; WorldCom's share was 23%, Sprint's was 9%, and more than 700 other long distance carriers together served the remaining 30% of the market. As a result of this competition, prices have fallen to an average of less than 11 cents a minute, or almost 50% less than the average price from the early 1990s.

As with the wireless sector, the FCC's policy approach with regard to long distance carriers is largely deregulatory, as illustrated by our recent decisions to eliminate the tariff regime. Nonetheless, we must intervene in the market to a certain extent: For example, we must vigorously enforce our rules against slamming and cramming. It is essential to good competition policy to squelch such anticompetitive behavior.

It's also worth emphasizing that most of the successful long distance actors, as in the wireless industry, are facilities-based carriers. Although resellers have had some success in this market, by and large the low margins fostered by increased facilities-based competition have squeezed the margin for resellers even more tightly and diminished the attractiveness of that business strategy.

Local Competition

Well, this brings me to local competition. I think our regulatory approach to local telephony could benefit greatly from the lessons learned from wireless and long distance competition. Of course, long distance services do not have the same last mile bottleneck barriers that exist in the local wireline market and to a lesser degree in the wireless world. So the wireless and long distance experiences are not analogous in all respects. But they still provide valuable insights.

The distinguishing feature of the local wireline market — and one that makes local competition one of the most difficult problems facing the FCC — is that the last-mile connection to consumers' homes and some businesses appears to be a true bottleneck. Another major barrier is that residential rates in many areas — particularly in high-cost rural areas — continue to be set well below cost, but that is something the FCC has little power to change. So I'll focus today on the bottleneck issue, rather than retail pricing.

As Congress recognized in section 251 of the Act, incumbent LECs' control over the last-mile infrastructure clearly requires *some* regulatory intervention for robust intra-platform competition to develop. But we cannot ignore the fact that there are risks associated with *too much* regulation, as well. If we micromanage every aspect of negotiations between competitors and incumbents, and we force incumbents to share each and every element of their networks, we'll get stuck in a regulatory morass so thick that competition will *never* emerge. And it's a regulatory morass that we largely avoided in the wireless and long distance markets by focusing on narrow market intervention and vigorous enforcement.

The Commission is now engaged in an effort to restore the incentives for facilities-based investment that Congress intended. The same facilities-based competitive model that has driven the success of the wireless and long distance marketplaces. This means a shift away from policies that actively encourage resale as a long-term business strategy and force the unbundling of virtually every network element at TELRIC rates. As the Supreme Court recognized in the *Iowa Utilities Board* decision, too much sharing destroys the investment incentives of both incumbents *and* CLECs: Incumbents have little incentive to deploy fiber to the curb, for example, if they will have to turn around and hand that fiber to their competitors at TELRIC rates. And CLECs will have little incentive to deploy their own networks when they can get access to incumbents' facilities at cost-based rates.

The FCC appropriately recognized this risk of overregulation when it declined to force the unbundling of packet switches. But in other respects, I think the FCC's initial implementation of the 1996 Act was focused too much on the purported benefits of unbundling and did not adequately consider the long-term consequences on investment incentives and the growth of viable long-term competitors. The Commission recently launched a comprehensive review of UNEs, which will carefully consider the impact of our regulations on carriers' investment incentives, especially with respect to broadband facilities. The Commission also will explore whether a more granular approach to the impairment analysis is warranted — one that proceeds a service-by-service and market-by-market basis, to ensure that we do not mandate more unbundling than is necessary to enable competitive entry.

I think such a circumspect approach to intervention in the marketplace is the central teaching of the wireless and long distance competition revolutions. Had the Commission chosen a heavily regulatory route in 1993 (for wireless) or 1984 (for long distance), I don't think we'd have the widespread deployment or low prices that we enjoy today.

That is not to say we should walk away from market intervention altogether. Quite the contrary, we must remain engaged. Unlike in the wireless context, where our bright-line rules prevented incumbents from gaining exclusive access to each last mile (through the cap and eligibility restrictions), here we are statutorily obligated to pry the last mile open. My point is that we'll do more to facilitate competition if we resist the urge to micromanage *every* aspect of the relationship between incumbents and new entrants — and instead, as in wireless, focus our attention on that very last mile.

Thus, we should limit ourselves to promulgating a small number of core rules, and we should enforce them vigorously. The complaint I hear most from CLECs isn't that we need more rules; it's that we don't enforce the basic nondiscrimination requirements we do have. Our recently released NPRMs on performance metrics should aid our enforcement policy significantly. If we establish a core set of performance metrics concerning ordering, provisioning, and maintenance and repair, that should make enforcement far more straightforward than it is today, when allegations of discrimination are difficult to substantiate. Once we make the costs of noncompliance significant enough, ILEC provisioning delays and other impediments to competition should decrease markedly.

I don't want to give you the impression that the FCC can bring about vigorous local competition simply by narrowing the scope of its unbundling regulations and adopting performance metrics. I do think, however, that such measures should have substantial competitive benefits in the long run, particularly as we work together with the states to continue our reforms in the areas of universal service and access charges.

There is no question that encouraging the growth of wireline competition presents unique obstacles not encountered in the wireless and long distance markets, and unique challenges to regulators. But I believe that we will increase our chances of creating the appropriate regulatory environment — one that stimulates competition and maximizes consumer welfare — by incorporating lessons learned from our success in promoting competition in the wireless and long distance sectors.