

**REMARKS OF
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“In Defense of the Public Interest”

I have been looking forward to being with you today to visit with old friends, hopefully to make some new ones, and to talk about my new job. I was so excited about coming here that I flirted briefly with the idea of somersaulting onstage, a la my usually restrained and normally distinguished Chairman. But when I mentioned this plan to my wife, she indicated that such an action on my part would do nothing to advance the public interest and would likely have highly detrimental effects on my personal interest, convenience and necessity. There were some other threats, too; I dropped the idea. So you'll just have to take my word for it that I am fully capable of doing a triple tumble and of setting a new marker for a FCC Commissioner.

Where do you start a speech after what this country went through on September 11? Everyone is saying that things will never be the same again – and they won't. Most of us have gone through some personal reassessment and probably some rearrangement of our own individual priorities. Most of us have pondered, and perhaps changed, how we go about our workaday lives, too. There are new concerns and precautions: where we go; where we don't go; even if we travel. How do we open our mail? Shouldn't we buy each of the kids cell phones? Should they really go to school downtown? The list goes on. And, I suppose, most of us have done some stocktaking about our job priorities. Maybe for some it's business as usual, but I suspect most of us are weighing our

professional priorities on a more sensitive scale than before. Congress is. The media is. I think most of us are.

Some of us in government are also beginning to think anew about our priorities and how our agencies go about our business. We are sometimes a little slower than our business colleagues -- but we're climbing out of old boxes, too. What does September 11 mean for how the FCC does business?

I believe the Federal Communications Commission has a larger job to do in the months and years ahead than we thought just five weeks ago. If September 11 was about anything other than evil, it was about communications. Communications from hijacked airliners and doomed buildings to loved ones on the ground; communications between emergency care, law enforcement providers and public safety workers; communications between the leaders of our federal, state and local governments; communications among our military forces around the world; communications by the media to viewers around the globe; and desperate outreach from each of us as citizens to find out what was going on, where our loved ones were, what other threats were coming our way.

Let me say at the outset that, in the wake of the terrorist attacks, our telecommunications and media industries performed well and even nobly. They mobilized immediately. They made an absolutely heroic effort to keep us in touch with one another on our phones and cell phones, in spite of an incredible and totally unprecedented volume of demand and in spite of damage to their infrastructures.

As directly affected by the attack as the phone system were the broadcast stations in New York. Stations were able to continue broadcasting, even after their towers collapsed, because their signals were actually carried by their competitors – by cable systems and DBS providers who worked side by side to get information out to the American people.

Radio, television and cable – locally, nationally and internationally – worked around the clock and shared scarce resources and precious information. Revenue consequences – which turned out to be tremendous – were swept aside in favor of informing the citizenry. Newspapers and newsmagazines produced special editions and began providing information and perspective from the outset. Satellite communications were critical as we all struggled to make sense of, and react to, the horrors that had been inflicted upon us. And the Internet provided a critically important new channel of communication, connecting many of us when other means were made unavailable. So we owe the men and women of all these industries a huge debt.

Just as communications was at the epicenter of September 11, so will communications inevitably be front-and-center as we prepare for the future. That means preparing for the worst. Indeed, this is our clear responsibility under the public interest mandate. We must set about the task of prioritizing what we do and of allocating resources toward new ends.

First we need to identify which parts of our networks performed well and which require more work. We must work to repair the damage done to our infrastructure and

then work to achieve redundancy and security in all those places where infrastructure is critical. We have already begun the effort of improving our CALEA systems so law enforcement and industry can work together; our E911 system so public safety and wireless providers can react even more effectively; and our preemption protocols so that the most important calls always go through.

But we need to go beyond even this. There is more to be done. The Commission must be in the vanguard of our homeland security efforts. The FCC is, of course, an independent agency. But it *is* a part of government, its expertise is extensive and unique, and my personal judgment is that its participation in the homeland security effort is not only logical but also imperative. Truly secure and reliable telecommunications and cyberspace systems are no longer a luxury after September 11th. Nor is action on convergence. This is the time to stop theorizing about technological and industry convergence and to start dealing with it. In one area, Congress is already acting: the people's representatives are demanding electronic surveillance capabilities across technologies, be they telephone lines or Internet pathways. The events of September 11 will move such public policy and regulatory questions front-and-center. The Commission needs to be there.

Through these and other actions, America will mobilize the great power of its communications and broadcast and information systems to serve the safety and security of all our people. In the final analysis, the safety of the people is the first and foremost responsibility of government. It is the ultimate public service criterion.

Indeed, the very first sentence of the Communications Act states that the Act was written to make “available ... a rapid, efficient, Nation-wide and world-wide telecommunications service ... for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication.” This nearly-seventy-year-old statutory provision couldn’t be more timely than in these trying days since September 11th.

Recent events do not change the nature of our public interest obligation; rather they force us to focus on its fundamental pillar -- the safety and security of the people. The statute not only permits us to do what needs to be done in the wake of September 11 -- it compels us to do it.

The events of the last month demonstrate very dramatically that concepts like the safety of the people and the public interest are not mere abstracts, not just theories to endlessly debate. They are instead the real time, real life bedrock that undergird our national life. I am, as many of you know, committed to the concept of the public interest. It is at the core of my own philosophy of government. More germanely, it permeates the statutes that the Commission implements. Indeed, the term “public interest” appears, according to our quick count, about 110 times in the Communications Act. And in case you think this is a recent phenomenon, “public interest” appeared some 75 times prior to the 1996 Act. The term wasn’t slipped in during dark of night by some power-grabbing young regulator-gone-wild; it was laid as cornerstone for the law of the land. And there it remains. I don’t know what 110 times means to you – to me it means “mandate.”

Some question the relevance of the public interest standard. “It can’t be quantified,” they say. Or “It’s never really defined.” Or “It’s just abstract theory devoid of real-world application.” Some people may even be saying, right here, right now -- “Oh God, spare us another Democratic Commissioner’s public interest musings.”

Well, many of life’s good things aren’t quantifiable; most are not defined for all time; and many of them, like “public interest,” can be abused, no question about that. But they are no less real for all of that.

Let me tell you briefly how I see the public interest. And let me say at the outset that, for me, the public interest has an important pro-business component. The public interest is served when business can do its business with a minimum of confusion and delay and question marks from government. The public interest is served when regulatory regimes are open, transparent and predictable. The public interest is served when the needs and concerns of business are thoroughly considered and vetted by those agencies that regulate.

Recently, there has been some debate about the Commission’s obligation to consider the public interest in its decisions. Some have suggested that because divining the public interest is sometimes difficult, the Commission should not rely heavily on public interest analysis and that perhaps the public interest is nothing more than enforcing the number limits or other concrete limitations provided in the statutes.

I disagree. First, the Commission does not merely have the directive to *consider* the public interest in its decisions – it has the statutory obligation, pursuant to the Communications Act, to *take only actions that are in the public interest*. And not only has Congress made this obligation abundantly clear for us in the Telecommunications Act and elsewhere, but the Supreme Court has repeatedly affirmed the viability and importance of the public interest obligation in relation to broadcast and communications regulation.

Congress did not say that we should follow our public interest mandate only if we are satisfied that we can quantify exactly what the public interest is for any possible situation. Congress did not say that if some people struggle with what they believe the public interest contains we should suspend or reduce our adherence to the mandate. Congress told us to meet our public interest responsibility. Congress made very clear that the public interest is the prism through which we should look as we make decisions. If the Commission stops making decisions based on public interest because it is difficult to pinpoint the exact parameters of public interest, it will be breaking the law. I didn't take an oath to do that.

I also don't buy the argument that the public interest is an empty vessel. Look no further than to the central pillars of the Communications Act and you will understand that Congress itself filled the vessel. We need look no further than the Act to find more than enough content to make the public interest a substantive and vibrant concept. The "Good Ship Public Interest" carries a full hold.

I want to focus for a moment on two goals of Congress, and thus, of the public interest, going beyond the public safety imperative that we have already discussed. They are promoting consumer choice through competition and ensuring access to the communications networks for all Americans.

The mission of facilitating competition in all communications markets became the law of the land in the 1996 Act. Congress, however, did not seek to establish competition merely for competition's sake. Rather, it recognized the power of competition to give choices to consumers – choices of services, choices of providers, choices of technology, and choices of sources of content. When consumers have more options, they reap the benefits -- better services, greater innovation, higher technology, and more robust discourse.

As examples, I would point to two areas in which this goal of consumer choice plays itself out. In the area of media ownership, the statutes focus on diversity and localism to ensure competition and choice among sources of content.

In a market-based democratic society, Americans are entitled to a variety of sources of ideas. I like the concept of the “marketplace of ideas.” It is in this marketplace where the values of a democratic society can best be exchanged. For each American to benefit from the marketplace of ideas, there must be a diversity of sources of programming available in each community. Not just a variety of stations and formats, because variety and diversity are not the same thing, but diversity of ownership and diversity of programming reflecting the increasing diversity of our society. An informed

citizenry, cognizant of the complexity and diversity of opinions on the issues of the day, is part and parcel of the public interest. And part and parcel of that informed citizenry are localism and the avoidance of excessive market power.

In a second example of consumers reaping the benefits of choice, we are now seeing competition not only *within* delivery platforms, but also *among* delivery platforms. This is the convergence of industries, of services and of markets that I mentioned earlier. Companies have been rushing to deploy advanced technologies in response to competition from other broadband providers. As Congress predicted, the competition resulting from the 1996 Act is unleashing an unprecedented investment in 21st-century communications infrastructure.

I share with most of you, I believe, a strong conviction that the role of government is not to pick winners and losers. Business plays the critical role in innovation and investment. Our job is to eliminate barriers to competition so that companies have the incentive to invest and innovate.

As competition develops to replace monopolies, we should strive to meet another principle of the 1996 Act -- deregulation. Where markets function properly, we can rely on market forces -- rather than legacy regulation -- to constrain anti-competitive conduct. Where market failures persist or develop, however, we must respond with clear and enforceable rules tailored to serve the public interest.

Choice is important not just in the context of securing lower prices and greater quality services. As we saw recently, choice is important for redundancy in a time of crisis. In New York City, we saw wireline and wireless companies, competitors and incumbents alike, working to restore service and provide alternative sources of service to customers in damaged areas. In an example close to home for me, my son was in school just up the road from the Capitol at Gonzaga High. We were unable to reach each other by wireline or wireless phone, but he was able to use the school's Internet connection to communicate with us.

The third critical value at the core of the public interest mandate -- after public safety and the promotion of consumer choice through competition -- is universal service. The Act contains a number of principles to ensure access by all Americans to our nation's communications services. When I say universal service, I am not only speaking about telecommunications, although that is a critical component. I am also talking about such things as the preservation of free, over-the-air broadcast services that serve the needs of all Americans.

I want you to know that my overriding objective as an FCC Commissioner is to help bring the best, most accessible, and cost-effective communications system in the world to our people -- and I mean *all* of our people. Each and every citizen of this great country should have access to the wonders of communications -- whether they live in rural areas, on tribal lands or in our inner cities, whether they have limited incomes or disabilities, whether they are schoolchildren or rural health care providers. Their access

is essential. I really don't think it exaggerates much to characterize access to communications in this modern age as a civil right.

The historian in me recalls that, following the invention of the telephone, certain communities, especially those in the countryside, were often left behind – comparatively more isolated and with fewer economic opportunities than before. In response, although not quickly enough, we began to tackle the problem. With the public and private sectors working together, we went to work to bring access to basic communications technology to rural communities. That was good for them and good for all of us.

Access to telecommunications services reduced isolation and brought rural communities closer together. It fostered economic development. President Theodore Roosevelt's Country Life Commission was right on the mark in designating the telephone as a major problem solver for rural America.

Today, having access to advanced communications and information is every bit as important as access to basic telephone services was not so many years ago. As I was recently told, we need to insist not just on the "pots," but on the "pans," too: not just the pots of Plain Old Telephone Service, but the Pretty Awesome New Stuff, the pans, also.

With the communications transformations of this new 21st century, we will work differently, learn differently, play differently, and probably even govern ourselves differently. Our quest is to bring the benefits of the Information Age to all Americans. The digital tools of the Information Age are the keys to unlocking the doors of education

and jobs that our people must have. We must make sure that those doors are opened -- and remain open -- for all Americans, and not locked shut for some.

I have an unswerving belief that we, as Americans, progress together or we progress not at all. Our strength is our diversity -- a diversity of races and cultures and creeds and talents and interests that will determine our destiny. Unless we learn how to harness this amazing wealth of diversity, we will not -- we cannot -- realize our nation's potential.

I don't think that mine is a particularly expansive view of the public interest. After all, it wasn't Mike Copps who said: "...it becomes of primary public interest to say who is to do the broadcasting, under what circumstances, and with what type of material." Now there was a proactivist! That would have been Secretary of Commerce Herbert Hoover back in 1922 at the First Radio Conference. Well, I may not be as radical as Herbert Hoover, but the public interest *is* my lodestar as I wrestle with all the many issues coming before the Commission. I hope it is similarly important to you.

I will close by telling you that I am an optimist. I am an optimist about our country. I don't see how anyone could be otherwise after witnessing the unity, the compassion and the patriotism that have poured forth from every city, town, hamlet and farm in America over the past few weeks -- from sea to shining sea.

I am also an optimist about our communications industries and our economy. We've been in a period of shock and repair, understandably, but already we are seeing

signs of economic and commercial revival. It won't be easy and it may not be overnight, but I have no doubt – no doubt whatsoever – that the progress our country is going to make in this 21st century will make even the dramatic transformations of the last century pale by comparison. And the enterprises you represent -- in telecommunications, information industries and high technology -- are going to lead the way.

I'm relatively new to my job and I hope you can tell that I am excited about it. But I'm also humbled. The sobering part of being a Commissioner is that the office *is* a high public trust. Communications is the business of every American and every American is affected by what the Commission does. I want your input and I want your help in working through the challenges and the opportunities that we confront. I'm used to working with my friends in the private sector – I spent eight years working with them in the Commerce Department to develop private sector-public sector partnerships to make America more successful in the global economy. Working before that on Capitol Hill, running a Washington office for a large company, working in a trade association, I have relied heavily on members of the bar for advice, counsel and friendship. I want to continue this kind of close and ongoing relationship with each of you. My door is open. As we say in South Carolina, "Come see me."

Thank you very much.