

**Text As Prepared**

**Remarks by Kevin J. Martin  
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Federal Communications Commission  
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And  
The Texas Chapter of the Federal Communications Bar Association  
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**I. Introduction**

Thank you for that kind introduction, and thank you very much to the Texas Law School and the Texas chapter of the FCBA for inviting me to speak with you today. I am very excited to return to Texas; I lived in Austin for nearly two years during President Bush's campaign and I really enjoyed the time that I spent here. My wife and I miss lots of things about Texas: the friendly people, the countryside, the warm weather, and no doubt, the Mexican food. Additionally, I grew in North Carolina and received my undergraduate degree from the University of North Carolina at Chapel Hill. While North Carolina was sorry to lose him, I enjoyed having Mac Brown as my hometown coach for a few extra years while in Austin, as well. Thank you for inviting me back.

I am also pleased to be speaking to the Texas Chapter of the FCBA, as I am proud to be a member of such a distinguished organization. It is an honor to speak to members of the bar who live and work in a city and state at the cutting edge of the communications industry, as well as communications policy. As to policy, I know I speak for the entire FCC in expressing our sincere gratitude to the Texas PUC Commissioners and staff. Their groundbreaking work on local competition led the way for Texas to be one of the first states to allow Bell Company entry into the long distance market. In clearing the path and establishing key pro-competitive safeguards, Texas created the model now used by many states to secure the same benefits of greater competition in their local and long distance markets.

Texas should also be proud of its communications industry. Texas is home to the nation's largest local telecommunications company in San Antonio; home to a vibrant high-technology corridor consisting of the nation's best

computer, telecom, and other technology related manufacturers and service providers in Plano; and is also home to the competitive and entrepreneurial spirit that is the hallmark of Texas and the communications industry.

One shining example of this spirit is Allegiance Telecom, a facilities-based CLEC headquartered here in Dallas and led by its founder, Royce Holland. Under Royce's leadership, Allegiance has invested in key infrastructure to provide small and medium customers with a choice in competitive telecommunications and high-speed data services in Texas and in 36 other cities throughout the nation.

Allegiance has focused on building a business that adheres to the letter of the Telecom Act while leveraging the entrepreneurial spirit of the law, as well. Today, Allegiance stands as a model of what Congress intended in 1996, and what we hope to achieve in years ahead – new entrants that have the opportunity to continue to invest in infrastructure, bring innovation, and new service offerings to consumers in local markets that are open to fair and robust competition.

## **II. Harry Potter Slides**

I have been asked to speak to you this afternoon about “The View From the FCC.” As I am sure you are aware, this is a relatively green Commission, with three of the four Commissioners just appointed last summer.

Now, as some of you may have noticed, among them I am not the most stately, gray-haired Commissioner either. I concede that I am one of the younger Commissioners to join the FCC, but my problem seems to be not that I am younger than most, but rather that I don't look as old as I actually am. For example, when I was nominated, Variety wrote that “the new Republican leadership at the Federal Communications Commission is shaping up to be downright baby-faced.” And while “Martin and Chairman Powell have roughly the same level of experience, Powell has a certain advantage that Martin doesn't; he looks older than his age, with most guessing he is in his mid-40's.” Well, I guess I will pass on that advantage.

In fact, Brooks Boliek of the Hollywood Reporter recently wrote that I bear a distinct likeness to another famous youngster – Harry Potter. I am not so

sure. Unfortunately, I seem to look just as much like the actor chosen for Harry Potter, the movie, as well.

### **III. All I Really Need to Know to Be an FCC Commissioner I Learned in Kindergarten**

Since I cannot seem to shake my youth, I am going to continue to rely on it instead. Many of you may recall Robert Fulghum's book which was published a few years ago, All I Really Need to Know I Learned in Kindergarten. You remember: "Don't hit people, " "Warm cookies and milk are good for you." I believe many of Mr. Fulghum's insights are also applicable to some of the issues we all deal with everyday and to many of the issues currently facing the Commission. In fact, Mr. Fulghum challenges his readers to "Take any one of his [insights] and extrapolate it into sophisticated adult terms and apply it to family, life, work, or government, [and see if] it holds true, clear, and firm. Everything you need to know is in that list somewhere." After giving this some thought, I agree with Mr. Fulghum's premise. Much of his simple advice can provide keen insight into the challenges facing the Commission. So, please allow me to present to you: All I Really Need to Know to Be an FCC Commissioner I Learned in Kindergarten.

1.) **"Share everything."**: This simple mandate underlies much of how the Commission will need to resolve the growing demand for spectrum. Since its inception, one of the Commission's core functions has been to set the rules of spectrum sharing (or non-sharing) through allocation, creating interference parameters and then acting as the referee. In some respects, the allocation of specific services into their own dedicated pockets of spectrum has fostered a "fiefdom" mentality. The Commission, then, gets bogged down in debates over what is "harmful interference" – wrangling over whether certain interference gains outweigh other interference costs. This process inherently causes underutilization of spectrum – wasting a precious natural resource that can never be recaptured.

But recent technological changes allow us to take sharing to new levels. Satellite and terrestrial sharing scenarios, once believed impossible, are now becoming more realistic. Software defined radios allow quick

modification to transmit and receive on any frequency and in any desired transmission format. Priority access capability allows for flexibility for a higher valued use some of the time, without having to dedicate specific frequencies to those uses all of the time. DoD's "XG" program – which focuses on Next Generation communications devices to support military deployment - seeks to produce even further advances in spectrum sharing technology through dynamic assignment of frequency, time and space. We are also seeing incredible innovations in the unlicensed spectrum arena – the “wild west” of the spectrum landscape and arguably the epitome of adaptation in the face of forced sharing. Bluetooth and 802.11 applications will allow users to set up flexible short range wireless networks. Sophisticated ultrawideband technology – promising to deliver data at faster speeds and lower power – can potentially co-exist with spectrum users in any frequency.

Our spectrum management objective should be to create incentives for the efficient utilization of this valuable resource at every given point in time, by both established users and new entrants. What the Commission can do now to further these goals is set policies that make sharing easier, and even desirable. For example, a robust secondary market for spectrum and flexible allocations can create strong incentives for making use of excess capacity.

I also believe that recent and future technological developments provide the Commission with the opportunity to insist on even more efficient use of current spectrum. While ultimately, the amount of available spectrum and our ability to use it is perhaps limited only by technology, we must first act within the constraints we have today. The challenge is to employ a model of spectrum management now that will most likely lead to the marketplace developments we'd like to see tomorrow.

- 2.) **“Say you’re sorry when you hurt somebody.”**: The Commission has an important role to play in helping people say they’re sorry when they hurt somebody. As we move towards a more competitive and deregulated environment, enforcement of our rules becomes even more important. In the past year, the Commission’s Enforcement Bureau has almost eliminated its backlog of formal complaints and dramatically reduced the time it takes to act on formal complaints. In addition, the

bureau has issued or proposed over \$13 million in fines in major local competition and consumer protection matters.

However, there is no doubt that we can – and should – do a better job on enforcement. Right now, it still takes over a year to resolve a formal complaint. Such delays make it difficult to provide regulatory certainty, as market conditions may change before the Commission has acted.

I think we need to commit to acting faster. The Commission recently announced that it will resolve National Environmental Policy Act matters within six months. And, the Commission has promised to act on mergers within 180 days. Given how fast we are ruling on these other matters, I believe we should be able to rule on complaints regarding our core functions within a similar time frame. I propose that we commit to having draft orders on formal complaints circulate before the Commission for decision within eight months of their filing. This is certainly a reasonable goal in light of how fast we move in other areas. And it would be a dramatic improvement over where we are now.

- 3.) **“Play fair.”**: The Commission is committed to promoting competition and fair play in telecommunications. I believe that one of the central tenets of fair play in telecommunications is the development of facilities-based competition. Without it, we will always need government regulators to manage and control the game, setting wholesale and retail prices. But with facilities-based competition, the market determines prices and the pace of innovation to the benefit of players and consumers alike.

Fundamental to this concept of playing fair is the requirement that incumbents give new entrants the facilities they need in a reasonable and timely manner. Thus, I supported the adoption of detailed and strict enforcement of collocation rules that we approved at my first open meeting. In the same vein, I strongly support the Commission’s recent efforts to establish performance measures for network elements and special access. Targeted performance measures can enable us to know whether new entrants are receiving access to necessary facilities in a reasonable and timely manner. Coupled with effective enforcement, they should ensure that incumbents live up to their obligations.

At the same time, playing fair means that new entrants should borrow from incumbents only those facilities that are truly necessary for new entrants to provide service. That does not mean that we should allow incumbents to stop providing any elements overnight, but we need to – and we are -- reexamining how our unbundling and pricing rules apply today.

Finally, playing fair also means that building owners should not discriminate against telecommunications carriers that seek to offer services to tenants in their buildings. As you know, Texas has set “play fair rules” that ensure building access to competing telecommunications carriers and guarantee that consumers have choice of services. I applaud Texas for establishing these pro-competitive building access rules which bring more innovation and quality of service options to consumers.

- 4.) **“Put Things Back Where You Found Them.”**: This principle exemplifies what should be the Commission’s over-riding goal for the digital transition. We need to finish the transition, and have broadcasters put the 6-MHz of spectrum used for analog back where they found it.

No, this isn’t because the federal government wants the money that would result from the auctions—although that’s a nice benefit. We want broadcasters to return that spectrum because it will signify the end of the digital transition—and the dawn of the age when consumers across the country have access to the many benefits digital will bring: a markedly sharper picture resolution and better sound; an astounding choice of video programming, including niche programs and movies on demand; CD-quality music channels of all genres; interactivity; sophisticated program guides with parental control capabilities; and innovative services like Clear Channel Wireless’s Delta V, a new high speed Internet service using the digital television signal of existing stations.

The good news is that progress is being made. Local broadcasters are investing billions of dollars in new equipment and facilities to make free digital television available to all Americans. The National Association of Broadcasters reports that DTV signals are now being transmitted by 272 broadcast stations reaching 77% of U.S. TV households. In Texas, 16 stations are on air with digital signal, reaching 64% of Texan TV households. In fact, this progress is due in large part to the leadership of this community – of Mike McCarthy and his team at Belo. Belo’s

WFAA-TV here in Dallas-Forth Worth was the first VHF digital television signal on the air, on February 17, 1998. And Belo's KHOU-TV studio in Houston was the first all-digital television studio in the country.

But significant hurdles remain (as the many build-out waivers awaiting me back in Washington attest). So what can we at the Commission do to overcome these hurdles—and hasten the day when broadcasters start putting spectrum back where they found it? Here are a few thoughts:

**1. Finalize Copy Protection Standards.** Part of what the transition needs is for consumers to demand the ability to receive digital content. But until digital content is out there—in particular, high definition programming—consumers will have little incentive to pay the still-high prices for television sets that can receive those signals.

Is digital content availability the magic bullet? Probably not, but it certainly will help. However, digital content will remain limited until copy protection issues are resolved. The various industries and consumer groups must agree on technical standards that both protect content from mass reproduction on the Internet, and retain consumers' rights to make personal recordings. We at the FCC have had several industry-wide meetings on this issue that have brought the sides closer together, but they're not there yet. If further progress is not made soon, the Commission may need to become more directly involved.

**2. Explore Digital Must Carry Rights.** How we define broadcasters' must-carry rights in the digital world will have a significant impact both on the availability of compelling, innovative digital content—and how quickly broadcasters make that content available.

As an initial step, we should quickly conclude the rulemaking we began last January regarding what “program related” means in the digital world. Broadcasters argue that a broad interpretation would provide an increased incentive to use their digital spectrum to deploy innovative and interactive programming. Of course, it is an open question whether a broad interpretation of this term would be consistent with Congressional intent. Nevertheless, regardless of the outcome, merely concluding the proceeding will help the transition by providing certainty to the industry.

In addition, the Commission has before it a petition to reconsider its conclusion regarding what “primary video” means in the digital world. There may be an argument that the statutory language and legislative history support an interpretation of primary video that allows broadcasters “must carry” rights not just for one programming stream, but for any video that is provided for free—consistent with broadcasters’ primary purpose. Whether that argument ultimately should carry the day, I’m not yet sure, but I think the potential consumer benefits of a broadened interpretation warrant further consideration of this issue.

**3. Address Cable Compatibility.** Finally, we need to address cable compatibility. If consumers know that when they buy a HD set, they’ll be able to take it home and have the set work with their local cable system, they’ll certainly be more likely to pay the set’s high price. And of course, the more people that buy these sets, the more quickly that high price will fall. Cable operators need to make firm commitments to technical standards for a plug-and-play set—and the consumer electronics industry needs to accept those commitments and start building.

I would much prefer the various industries involved reach agreement on technical standards on their own. But the need for standards is so pressing and so critical to the transition that I fully recognize that at a certain point—perhaps soon—Congress or the Commission may be forced to step in and enforce a standard on all involved.

5.) **“Be aware of wonder.”**: The Commission faces a world that is rapidly evolving, with new technologies constantly springing up and replacing older ones. In addressing this world, the Commission must not be afraid of change. It should welcome change, and promote an environment that fosters innovation, technological advances, and the digital revolution.

In order to welcome and foster innovation, the Commission must provide a stable regulatory environment. Regulatory uncertainty functions as an entry barrier, limiting investment and impeding deployment of new services. We should work to be faster and more reliable in our decision-making. Prolonged proceedings, with shifting rules – for example our recent proceedings on reciprocal compensation – can bring stagnation and dampen investment in new technologies.



Equally important to fostering innovation, we must resist the temptation to apply old, legacy regulations to new technologies. For example, if we apply our mountains of common carrier regulations, with their attendant costs, to broadband services, we risk stifling innovation and deployment. Similarly, I am extremely wary of calls to extend universal service obligations to cable and other broadband service providers. We should be looking for ways to remove current regulatory impediments, not creating additional financial disincentives for broadband deployment.

- 6.) **“Look.”**: Both the Commission and the industry need to look for opportunities to encourage change for the better. In that vein, I was heartened when the City of Laredo submitted a proposal to create a cross-border calling area with the city of Nuevo Laredo, Mexico. I am very supportive of the efforts being made by the Texas PUC, Laredo and Nuevo Laredo to find a creative and effective solution for lower communication costs between the two cities, which share a strong community of interest. As anyone who has visited there knows, Laredo and Nuevo Laredo are located directly opposite each other on the Rio Grande, and have extensive economic and social ties that generate substantial communications across the border. However, the cost of calls between those two cities is much higher than would be between adjacent cities in the same country.

The Commission issued a declaratory ruling last month encouraging alternative settlement rates for telecommunications traffic between the cities. I recognize that such an arrangement requires the cooperation of COFETEL and Mexico’s foreign carriers. I am hopeful that the Texas PUC, COFETEL, and U.S. and Mexican carriers will be able to continue working together to achieve this goal.

It is important to continue looking for ways to push prices toward cost-based levels. Not only would residential and business customers on both sides of the border benefit directly from such an arrangement, but public safety operations stand to benefit as well. The absence of such a calling area has contributed to the use of illegal radio facilities that seem to be causing interference with Laredo’s emergency and safety communications.

I understand that since the Commission's ruling there has been an increased interest in the proposal by various civic organizations in the City of Nuevo Laredo. I also understand that the Texas PUC has been spearheading efforts to identify and help resolve potential technical issues, and coordinating the cities and the carriers in an effort to keep moving the project forward. I applaud these efforts, and look forward to continuing to do everything I can to help lower the cost of service within this community.

#### **IV. Conclusion**

As you can see, there are many challenges currently facing the Commission, and Texas is – and will continue to be – at the forefront of many of these issues.

Thank you for your time and attention this afternoon.