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Presentation Outline
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Without question, there are numerous structural problems with telecoms markets worldwide. When it comes to many foreign countries, however, these structural problems are exacerbated because there often is very little culture that genuinely believes that market forces and economic theory can actually work. Instead, many people in these countries sincerely believe that state ownership for key sectors of the economy (*e.g.*, telecoms and electric utilities) are best left in the hands of the government. The biggest issue in international telecoms liberalization and restructuring, therefore, has been to convince incumbent policy-makers that competition and good economic market performance - rather than state run monopolies (and the large amount of employment and subsidized service they provide) - is the best way to maximize consumer welfare in the long-run.

Given the huge inexperience of the international regulatory community, this community often looks to the FCC - with its long-history of telecoms restructuring - for guidance. The big problem, however, is that over the last several years, the FCC has not set a very good example for the international regulatory community to emulate.

To wit, on the international side, the FCC - despite its rhetoric - has engaged in a systematic pattern of behavior to deter foreign entry into the United States and to abrogate its commitments in the WTO. Such entry-deterring policies range the full gamut, including but certainly not limited to the FCC's *Foreign Participation Order*, universal service, international cable landing authority, international satellite spectrum, and certainly last but not least, mergers and acquisitions.

Yet, perhaps more egregiously, the FCC has done an extremely poor job of promoting competition in its own markets (terrestrial and wireless) at home, thus forcing the US telecoms sector into a financial meltdown.[1] While these policies are bad enough for American consumers, what makes matters even more distasteful is that the FCC hypocritically has engaged in a sustained pattern of forcing its dogmatic view of regulation upon the rest of the world in a mercantile game of "Do as I Say, Not as I Do." Unfortunately, however, *two wrongs still do not make one right*.

As a result, while we may be in the process of a "telecoms revolution," recent US telecoms policies have turned this revolution into a "telecoms trade war" that is dangerously close to spinning out of hand.[2] Thus, while we may not see any overt or direct retaliation against US firms, the FCC's

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1 For example, some of the major US telecoms policies that have actually *increased* - rather than appropriately reduced - entry costs for new firms include, but a certainly are not limited to: (1) Permitting the near total reconcentration (*i.e.*, state-sponsored horizontal market allocation) of the US incumbent telecoms, cable and radio industries; (2) Failing to take unbundling and collocation efforts seriously (only a pathetic amount of all US access lines have been made available on an unbundled network element basis to date); (3) Prematurely permitting dominant incumbents to re-vertically integrate in several states before local markets are competitive (*i.e.*, the incumbent is unable to engage in strategic, anticompetitive conduct, even if it tries); (4) Politicizing universal service programs to protect pet constituencies (thus making these programs a self-defeating exercise); (5) Engaging in numerous clandestine "back room deals" among major industry players (*e.g.*, access charge reform via the so-called "CALLS" proposal), thus depriving the public of procedural due process (indeed, former FCC Chairman Reed Hundt's book is nothing but a walking *ex parte* violation - *and he is actually proud of it*); and (6) acting as a "frequency monopolist" and therefore choosing to sacrifice the efficient allocation of spectrum in favor of naked revenue raising - resulting in the delay of a significant chunk of radio spectrum deployed for use.

2 *See* Mark Naftel and Lawrence J. Spiwak, THE TELECOMS TRADE WAR: THE UNITED STATES, THE EUROPEAN UNION, AND THE WTO (Hart Publishing 2001). To see a preview - as well as the scholarly and press reviews - of this book, please go to http://www.phoenix-center.org/telindex.html.

hypocritical and mercantile conduct has created a more subtle but nonetheless significant entry deterring result – *i.e.*, the US' actions over the last several years have provided foreign NRAs with little incentive (actually, to be more accurate, a huge *disincentive*) to move restructuring forward constructively and aggressively in their home markets. Indeed, by failing to take the analytical "high-ground" in favor of economically flawed power-politics, the US has lost much of its credibility in the international telecoms community. In so doing, the FCC's ostensible "pro-competition" policies over the past several years therefore have become, in reality, a self-defeating exercise.[3]

This observation is now becoming widely recognized even among senior US policy officials. For example, Federal Reserve Chairman Alan Greenspan recently took the unusual step of criticizing these policies publicly, describing them as "essentially adversarial" and therefore antithetical to US consumer welfare. According to Chairman Greenspan,

> [D]espite the remarkable success over a near-half-century of GATT, the General Agreement on Trade and Tariffs, and its successor, the World Trade Organization, in reducing trade barriers, *our trade laws and negotiating practices are essentially adversarial.* They presume that a trade concession extracted from us by our trading partners is to their advantage at our expense, and must be countered. Few economists see the world that way. And I am rash enough to suggest we economists are correct, at least in this regard: *trade is not a zero-sum game.* If trade barriers are lowered by both parties, each clearly benefits. But if one lowers barriers and the other does not, the country that lowered barriers unilaterally would still be better off having done so. Raising barriers to achieve protectionist equality with reluctant trading partners would be neither to our benefit, nor to theirs. The best of all possible worlds for competition is for both parties to lower trade barriers. The worst is for both to keep them up. *For these reasons, I am concerned about the recent evident weakening of support for free trade in this country.* Should we endeavor to freeze competitive progress in place, we will almost certainly slow economic growth overall, and impart substantial harm to those workers who would otherwise seek more effective longer-term job opportunities. Protecting markets from new technologies has never succeeded. Adjustments to newer technologies have been delayed, but only at significant cost. *Even should our trading partners not retaliate in the face of increased American trade barriers, an unlikely event, we do ourselves great harm by lessening the vigor of American competitiveness.* The United States has been in the forefront of the post-war opening up of international markets, much to our, and the rest of the world's, benefit. It would be a great tragedy were that process reversed.[4]

Like it or not, regulation and trade policy seek to promote *very* different goals. Economic regulation – just like antitrust and competition law – focuses on *consumers*, not competitors. Trade policy, on the other hand, by its very definition, seeks to promote *competitors* (*i.e.*, competitors of the "domestic" sort). For this reason, nowhere in the Communications Act of 1934 or in the 1996 Telecoms Act is trade even mentioned. If the growing hostility and resentment towards the United States is ever to change and tensions mitigated, therefore, then – as US President George W. Bush instructs – the US Government must approach its trading partners with humility, not hubris and, moreover, set an example worth emulating in its own house first.

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3 Indeed, the far more constructive measure would be to help these countries approach the structural problems of telecoms restructuring within the unique contexts of their respective home markets *See, e.g., eEurope Means Nothing Without eEntry: Regulatory Harmonisation, Subsidiarity and the Realisation of the Information Society*, PHOENIX CENTER POLICY PAPER SERIES NO. 8 (October 2000) (http://www.phoenix-center.org/pcpp/PCPPP8.pdf).

4 Remarks by Chairman Alan Greenspan before the Dallas Ambassadors Forum, Dallas Texas (April 16, 1999) (emphasis supplied).