

The Free State Foundation

A Free Market Think Tank For Maryland...Because Ideas Matter

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On October 30, 2007, the Free State Foundation and the Institute for Policy Innovation sponsored a major policy conference entitled “The Federal Unbundling Commission?” on Capitol Hill. The following is a slightly edited version of the Keynote Address delivered by Representative Marsha Blackburn (R-TN) during the conference luncheon.

Hold the Line on Light Touch Regulation by Rep. Marsha Blackburn

It is truly an honor to be here with you. And I do thank Commissioner Deborah Tate for those kind words. She and I have known one another for a long time, including working together in Nashville on some of those not-for-profit ventures that Randy mentioned. I thank you also Randy for the opportunity to be here. I appreciate the Institute for Policy Innovation and the Free State Foundation for their continued good work on all of these communications policy issues.

I love the title of today’s conference which I think is so appropriate: “The Federal Unbundling Commission?” I think that’s such a good title for a debate on telecom policy today. And I understand that you heard from my friend Senator Jim DeMint this morning. I think he and I probably will hit some similar themes.

Your discussion today really does highlight a couple of different competing visions, if you will, for the future of the telecom industry, of consumer access to technology, free market principles, and the expansion of freedom. And we’re in a town that has an unsettling recent urge to regulate.

We have these two different visions. The first is more of a market-driven vision unfolding in the private sector. Technology-driven companies are rolling out products and services that bring Americans closer together. And they deliver products to a market that is really hungry for choice, for quality, and for advanced new features in their products.

Traditionally consumers can choose a cable provider for video, a local wireline provider for voice, or an ISP provider for their broadband internet services. In many communities consumers can purchase the triple play package from their old telephone provider. Or voice service from their cable company. And either way consumers have a choice. And some of our constituents who are getting these new offers are asking: How in the world is all of this possible? How in the world has all of this come to be? And really the answer's pretty simple. It is because of light touch regulation policies adopted by Congress and carried out by the FCC. That is what spurs and stimulates innovation. It has allowed for advances in technology. It has delivered unparalleled opportunities for consumers and for businesses alike.

I find it so interesting that last year in our committee we looked at the 1996 Telecom Act. We read it through, and it only mentions the Internet eleven times. Eleven times. So eleven years ago policymakers really could not even begin to comprehend and get their arms around the future power of the Internet. Because they were in a world that dialed up and jumped online at 14 kilobytes a second. Yet that same Congress did something right. It delivered a landmark regulatory regime that now enables my son's favorite band, Radiohead, to introduce and distribute its entire new album online.

So the Internet has gone through many lifecycles, and it continues to do so. And all the devices and products that associated with it will continue to do so. And the '96 Act provided the foundation for what Americans and the world enjoy today.

Let's look at what this second vision is. There seems to be a growing trend in this second vision that does not view the telecom world through the same lens that we have just heard about. Indeed, for some critics, the current regulatory structure in place at the FCC is fraught with danger, restriction and handcuffs that prevent innovators from doing what they do best.

Unfortunately, that perspective seems to be gaining a little bit of momentum here in Washington through the leftist-center blog community. And right here on Capitol Hill. These voices are calling on Congress and the FCC to double back on progress of the past decade. And to force the communications industry to unbundle what is, and what has yet been brought to the marketplace. Unbundlers even speak a common language that always sounds good. It always sounds like it's focused on freedom.

You will hear “open access.” You will hear “a la carte.” You will hear “consolidation in media ownership.” And you will hear “net neutrality.” They all sound good. These policies carry different names, and they are cleverly crafted names and terms. And, unfortunately, they have the tendency to mislead a lot of our constituents. But, more importantly, these terms are all spawned from a common mindset. And that common mindset is focused on re-regulation and increased regulation. And, unfortunately, the folks who are currently wielding some of the gavels here in Congress and at the FCC are listening to the ideas and considering a move from light touch regulation to increased regulation.

Take the upcoming 700 MHz spectrum auction for example. All of you know that Congress authorized this as part of the Deficit Reduction Act of 2005. If executed correctly the upcoming auction would achieve two separate goals. First, to help our first responders fully put in place an interoperable communications system for their disaster response. Second, to lease what many call “beachfront property” for wireless providers that will move into analog spectrum abandoned by broadcasters, spectrum that is likely to accommodate new and innovative services that many of you are going to be the creators of.

However, Congress authorized the auction for a more precise purpose. And that is raising money for deficit reduction. Congressional budget office estimates that under conservative circumstances the spectrum auction may raise 10 to 12 billion dollars. Experts in the field believe that we’re going to see that more like 15 to 20 billion dollars.

I am gravely concerned that, as currently written, the rules to govern the 22 megahertz spectrum block will not achieve these important goals for the American taxpayer. And it is very important to us that those be achieved. The spectrum auction process enacted by Congress and implemented by the Commission has a proven track record of success. Over the past decade plus, wireless licenses were granted to entities and those businesses provided billions of dollars for the United States Treasury.

The market, not the federal government led the way. And that is the way it ought to be in a free enterprise system. We need the market to lead, not the government to lead.

These auctions were successful due to an FCC-governed process that did not saddle licensees with burdensome regulations and with additional requirements. And I am not talking about ancient history on this one. We all know that Phase 1 of the AWS auction generated billions of dollars last year. What has changed since that time, except the expansion of the wireless market, increased competition in the regional and local consumers, and lower prices increase service for consumers?

What else has changed? Well, with the new rules adopted by the FCC to govern the 22 MHz block of the 700 MHz auction, the FCC is essentially asking

leaders in the wireless industry to play by a different set of rules. In my opinion these new rules are bad for business, bad for the economy, and, most importantly, bad for the consumer.

The Commission made its decision. However the 37 bipartisan members of Congress who joined me in asking the FCC to take a different approach will be watching this process very, very closely. Should the auction fail to yield the Chairman's target price in the 22 MHz block we will be back on the FCC's doorstep to demand a policy change and to revisit that decision.

We also understand that the Commission is closely examining an a la carte programming policy to govern the video market. Now "a la carte" is another of those terms that sounds really appealing. And like something you would like. After all, who wouldn't want to pay for only what they're using? But what proponents fail to mention, however, is that the video market is not like Aisle 3 of the supermarket, or like the buffet at the Bonanza.

In fact, a recent Government Accountability Office report notes that a la carte requirements would result in higher rates per channel and increased rates for some consumers. Under this policy, ESPN and other popular channels would come with a premium price tag. A Bear Sterns analysis found a la carte pricing would even impact popular channels like Disney, Fox News, and TBS. In my home state of Tennessee we have a vibrant, creative community. And we have a vibrant production community. That includes CMT, TNN, and HGTV. These companies provide quality programming that is independently produced; and they need access to larger networks and outlets in order to reach a wider market and have their finished product actually viewed. An a la carte regime would deny this important market access, which, in turn, would yield less choice and higher prices for consumers. It simply does not make sense to revert to such practices.

Smaller channels, including the Food Network, Lifetime, Discovery, and Oxygen, would not exist if a la carte programming was in place before their launch. Without bundled packages that offer popular networks such as ESPN, CNN or even MTV, channels with less market penetration, such as the History Channel, might have a hard time generating enough revenue to survive, or even to begin to offer network programming.

According to the Consumer Electronics Association, 87% of American homes have access to cable or satellite service. I cannot believe how high that number is actually getting. Reversing the current regulatory model would put the video market at risk and ultimately give consumers less choice in viewing diverse programming, not more choice.

That is not the policy road that the FCC or policymakers should be traveling on. However, the Commission should expeditiously move to adopt a regulatory framework that will allow cutting edge wireless devices to operate in the white spaces of the soon-to- be dormant analog spectrum.

Though device testing is currently underway to ensure that consumers and the live performing arts industry are not put at risk – and this is important – it is equally important for the FCC to move forward with a plan that will allow technologists to take advantage of that fallow spectrum.

My constituents in middle and west Tennessee crave alternative access to broadband internet service on the go. And these next generation devices that are currently under development will provide them exactly what they need and want.

President Ronald Reagan once used a quote that I think is so apropos as we talk about the unbundling policy. He said the nine most feared words in the English language are: “I’m from the government and I’m here to help.” The fast-paced technology-driven industry, if it is to succeed in the 21st century, it needs room to grow. Some things are going to work. Others are not going to work. There are going to be some products that are successes. There are going to be some that are just abject failures.

But it should be the free market that decides what works and what does not work, not government intrusion. And, as the process unfolds, it is going to be critical for the United States Congress and for the Commission to hold the line on light touch regulation. And to resist the urge to unbundle what is already working in the free market system. Let’s give technology the time to grow.

I appreciate all that you all do. I have said many times, and Randy has heard me say so often, that truly your technologies are what is fostering the economy, helping small businesses to grow in this country. We appreciate your innovation, your intellect and your commitment to the U.S. economy. Thank you so much.