

## Remarks by S. Derek Turner at the Free Press Summit

Thank you Josh, and a very warm welcome and thanks to all of you who have taken the time to be here today.

The enormity of the Newseum and all it contains reminds me of Marshall McLuhan's famous saying that "the medium is the message."

And while McLuhan's theory underlying this turn of phrase is a bit controversial, there is certainly some truth to it when it comes to the news.

The meaning and impact of an individual news event will be conveyed differently on the 11 o'clock news than it is in a column in the morning paper, or a news flash on talk radio.

But the media that are the focus of much of the exhibits here at the Newseum, as different as they are, all have one thing in common:

Be it TV, newspapers, magazines, or radio -- they are all one-way communications media.

And one-way media are inherently limited.

So for much of our history, the way in which we consumed news and information was passively – we received information, but we didn't share it.

But the Internet has now changed all of that – allowing us to not only receive information,

but also send information out to the entire world via audio, video and text.

As a two-way communications platform, the Internet has the power to shatter the barriers to entry present in traditional media markets.

Content producers no longer need to negotiate with powerful cable providers to get their work out to the masses -- the Internet has an unlimited amount of "channels."

A citizen wishing to express an opinion about a pressing issue no longer needs to write a letter to the editor -- they can reach far more readers online.

And politicians no longer need to rely on the short-attention-span and policy-phobic media to get out their message -- they can use the Internet to speak directly to voters.

The economic and societal impact of the convergence of our old one-way media onto this two-way platform is why we at Free Press put so much emphasis on Internet issues.

It is also why so many policymakers here in DC focus on the Internet.

Now I certainly wouldn't characterize many of the politicians in this town as futurists, but they are certainly not Luddites either.

At many points over the past several decades, policymakers have been right in the middle helping to seed and grow the information revolution.

Case in point.

Thirteen years ago, just about a mile from here at the Library of Congress, President Bill Clinton made history by signing the Telecommunications Act of 1996 into law.

Now, this was historic because of the law itself, but also because it was the first signing to be streamed live over the Internet.

This symbolism was intended to capture the legislation's promise of bringing the information revolution to the doorstep of every American.

As President Clinton signed the bill, which he described as "truly revolutionary" and one that would "protect consumers against monopolies," he spoke of the future the law would bring.

He said, "Soon, working parents will be able to check up on their children in class via computer. On a rainy Saturday night, you'll be able to order up every movie ever produced or every symphony ever created in a minute's time."

But here today, over a dozen years later, Americans are still waiting on the promise of this digital revolution.

The story of how this digital promise was broken is a tale of typical Washington politics.

Before the ink was even dry on the 1996 Act, the powerful telecommunications giants and their army of lobbyists went straight to work obstructing and undermining the competition the new law was intended to create.

By the dawn of the 21st century, what they could not get overturned in the courts was gladly undone by a new FCC eager to deregulate these corporate giants.

All in the name of the free market.

So instead of “protection against monopolies,” consumers have been left with high prices, few choices and a duopoly of cable and phone companies.

Instead of “every American child” being connected, today we have more than 20 million school-age kids without home Internet connections.

And instead of every American being able to order up a movie in “a minute’s time,” today less than 5 percent of Americans have a home Internet connection capable of downloading a movie in less than 30 minutes.

Worst of all, the promise of the Internet as a democracy-enhancing, free-flowing communications conduit is now in serious jeopardy.

So in other words, policies enacted in the name of the free market gave us the exact opposite.

But the story of promise turned to peril actually begins long before the 1996 Act came into being.

There is a widely held belief, particularly among D.C. policymakers and corporate lobbyists, that the Internet has never been regulated.

In reality, the Internet as we know it likely would not exist if it were not for regulation.

Since the birth of the Internet, the FCC put in place clear rules of the road to ensure that it would grow and flourish into a competitive marketplace.

This all started in the mid-sixties when computers began to “talk” to one another over the same infrastructure used to make telephone calls.

At the time, this infrastructure was regulated as a government-sanctioned monopoly.

The FCC was concerned that AT&T and other local monopoly phone companies might use their market power to stifle or unfairly control the emerging computing industry.

This concern was not without merit.

To offer their services, computing companies were completely dependent on phone companies granting them access to the network.

So the FCC established a bold series of safeguards through the so-called “Computer Inquiries” that would protect competition on the Internet.

Though the Commission would modify these safeguards over the following decades, the approach was always consistent:

the FCC protected the free market online by prohibiting anticompetitive abuses by network owners.

In other words, they made rules to prevent AT&T from controlling the Internet.

They did this by requiring phone companies to sell nondiscriminatory access to their network.

Companies had to offer the same prices, terms and conditions to all competitors that they charged their own affiliated ISP business.

This policy framework allowed dial-up ISP competition to flourish during the late nineties.

Without these regulations, it is almost certain that the phone companies would have made their Internet service the only game in town.

So these regulations -- imposed during the market's infancy -- were not a "solution in search of a problem," but were safeguards that turned the monopoly-owned communications infrastructure into an open platform for competition and innovation.

But just as the Internet was becoming an essential technology for the average American, the vigilant regulator that had once protected it from incumbents was captured by those very same companies.

And in just a few short years, nearly all of the important safeguards established by Congress and by the FCC were removed.

The results? Well, they were as predictable as they were disappointing.

America has lost its position as a global technology leader, falling from 5th to 22nd in the world in broadband adoption.

American consumers pay far too much each month for their broadband connections, putting us just ahead of countries like Poland and Hungary.

And our services are not only expensive; they are also incredibly slow, particularly on the upstream side.

A full third of residential American broadband connections have upload speeds that are essentially no better than dial-up.

The human side of our broadband problems is also very real.

We have a growing economic digital divide.

Just 29 percent of homes with incomes below \$35,000 dollars a year have broadband.

That is less than half the rate of those above this level.

Just 40 percent of minority homes have broadband versus 55 percent of non-Hispanic white households.

And many of those living in rural America have also been left behind.

Only about a third of rural homes are connected, versus 54 percent of urban households.

So how did all of this happen? How could we fall so far, so fast?

How did we end up in this embarrassing state of digital mediocrity?

The answer is simple, and frustrating.

The blame for the failure to bring the benefits of the Internet to all Americans falls squarely on the shoulders of the Federal Communications Commission.

With the 1996 Act, Congress gave the FCC a blueprint for achieving universal access, openness and competition.

These are the three pillars that the Act is built around, and are the principles that guide all of our communications policies.

Today I'm mainly going to focus on competition, but in the book we extensively examine the FCC's handling -- or rather mishandling -- of the openness and universal access provisions in the 1996 Act.

I say "mishandling", because the FCC did not follow Congress' broadband blueprint.

Instead, it chose to follow the wishes of the industries it regulates, largely ignoring the deliberative judgment of our elected representatives.

The path taken by the Commission over the past several years indicates an agency indifferent to the plight of consumers.

One eager to declare "mission accomplished" on the goal of competition before the mission had even begun.

In short, the FCC dismantled the basic legal framework responsible for creating the open Internet and left nothing in its place but thin assurances that what once was, would always be.

America's broadband failures are the result of policy failures.

Over the past decade, while other countries properly implemented the national broadband policies that we

once championed, America's policy was just to cross our fingers and hope for the best.

Hope that new platforms would emerge and compete with the duopoly phone and cable providers.

Hope that providers wouldn't abuse their market power to raise barriers to entry for new competitors.

And hope that the duopoly providers wouldn't use their control over the "pipes" to also control the content flowing over those pipes.

These hopes were based on the belief that the invisible hand of the free market would work its magic if the agency would only get out of the way.

But the FCC's deregulatory approach actually stifled, not freed, the forces of the free market.

Our regulators forgot that market forces do not work when markets are highly concentrated.

They didn't grasp the basic idea that failed markets won't fix themselves without any intervention.

Of course, the FCC could never come out and directly say that the duopoly was good enough.

But every major decision made over the past eight years served only to strengthen the duopoly and undermine competition.

Case in point, in 2003 the FCC eliminated an open access policy known as “line sharing.”

As the name indicates, this policy required incumbent phone companies to share the line running into a customer’s home with competitors.

The competitors would offer broadband, while the incumbent would use the same line to offer plain old telephone service.

This policy was remarkably successful in helping to accelerate broadband deployment and adoption.

And when it was eliminated, the consequences were severe.

Countries committed to competition implemented policies like line sharing.

As a result, they have broadband penetration levels nearly twice that of countries like ours, who do not have these policies.

And citizens in countries with line sharing and other open access policies get more broadband bang for their buck.

They pay half the amount per megabit than those living in countries without these policies.

Now one Commissioner was very opposed to the FCC’s elimination of this policy.

Speaking before Congress, this Commissioner stated, “I fear that the majority’s elimination of the line sharing... flies in the face of the explicit Congressional goals of bringing the American public new infrastructure investment and innovation and meaningful competition.”

Perhaps illustrating that these issues transcend partisan politics, the Commissioner that made these remarks was none other than then-FCC Chairman Michael Powell, who we are very excited to have with us here today.

With this decision -- and those that followed -- the FCC eliminated rules that promoted “intra-modal” competition, or competition from multiple providers all using the same line into the customer’s home.

At the core of these decisions is the Commission’s belief that the mere presence of more than one provider is proof alone that the market is, or might someday in the future become competitive.

The FCC accepted a duopoly in the emerging broadband market because it believed that on their own, incumbents would offer their competitors access at reasonable rates.

But they didn’t.

Just ask the ISP Earthlink, whose broadband business cratered after the FCC eliminated the last of the open access rules, a decision that took effect in 2006.

The FCC also believed that the duopoly would be short lived, because new “inter-modal” or “platform” competitors would surely emerge.

This simply means the FCC thought that emerging platforms like broadband over powerline, satellite and other wireless technologies would emerge to challenge cable and DSL providers.

This was the “holy grail” of competition that the FCC in decision after decision promised consumers was right around the corner.

However, predicting a future of competition and then regulating like it’s already in place is not good public policy.

If the Commission was going to knowingly kill off competition from ISPs like Earthlink, and hope that platform competition would offset this, then it should have done something to turn that hope into reality.

They didn’t.

Optimism alone is not going to protect consumers and promote innovation.

Instead of nurturing platform competition, the FCC actually made decisions that undermined the potential of emerging technologies to challenge the broadband duopoly.

New entrants can put up wireless antennas, but they have to be able to move their customer's traffic between their local networks and the Internet backbone.

In many cases, the only available option for "middle-mile" transport is the high-capacity connection offered by the phone company.

So even if new broadband providers build their own local networks, they are still at the mercy of the large monopoly incumbents.

Many of these high-capacity lines are governed by the FCC's special access pricing rules.

These regulations are supposed to prevent the incumbents from squeezing out competitors who use these high-capacity lines.

But unfortunately, the Commission's record here at protecting consumers and promoting competition is just terrible.

The rates of return -- or profit margins -- for these critical connections were somewhat reasonable for much of the nineties.

But over the past few years, the FCC's blind eye has allowed these profits to become obscene.

The nationwide rate of return earned on these lines by AT&T, Qwest and Verizon is above 100 percent.

In some areas, the rates of return are well above 500 percent, a level that would make even the most stalwart monopolist blush.

Why are these returns so high?

Well, in many of these markets the FCC decided that the conditions for *potential* competition were so ripe that rules constraining incumbents' prices were not needed.

Not surprisingly, the GAO found that the prices in deregulated markets are higher than prices in markets still under regulatory pricing constraints.

And as a side note, in one last deregulatory kiss to the incumbents before the new Administration took over, the FCC got rid of the reporting requirement that produced the data showing these obscene profits.

So we'll have no idea if this trend gets any worse than it already is.

The sad fact is that the FCC got it wrong.

A new third-pipe broadband competitor never materialized.

The competing technologies the FCC bet the farm on today account for less than one percent of the residential broadband market.

And since they were no longer required to offer competing ISPs access under reasonable terms, the

incumbents raised their prices and wiped third-party ISPs out of the broadband market.

So we're stuck with a duopoly, with no relief in sight.

I think most of us can agree that this record of abject failure must end now.

But how do we pull our broadband market out of the ditch that the FCC drove it into?

Well, for starters, the Commission is under new management.

And they have been tasked by Congress to formulate a national broadband plan.

The new FCC must use this opportunity to signal a new direction.

The vision for our national broadband plan must be bold, comprehensive and ambitious.

The FCC needs to change course and turn away from the conventional political wisdom of complacent incrementalism.

It must embrace a policy agenda that finally turns the promise of the Communications Act into a reality for all Americans.

The FCC's overarching goal must be the promotion of broadband competition, openness and universal access and adoption.

In the book in front of you, we offer a series of recommendations for the Commission as it formulates the national broadband plan.

I'll mention a few here.

First, the Commission must begin by reviewing every major telecom-related decision since the 1996 Act and ask the basic question,

“Did what we say would happen, actually happen?”

Federal agencies almost never revisit past decisions to see if they were right.

Before you move forward, sometimes, you have to look back.

This self-reflection will enable the FCC to develop a data-driven standard to identify local areas where broadband providers are abusing their market power.

Second, the new FCC should reverse its decision to classify broadband as a pure information service.

This move was a radical end-run around all of the pro-competition provisions in the 1996 Act.

This mistake must be reversed.

A proper legal classification will allow the FCC to promote competition by reinstating open access rules where appropriate.

Third, the FCC should also make an honest assessment of broadband deployment in its congressionally mandated annual review on the state of the market -- the so-called "Section 706" report.

A clear finding that advanced broadband networks are not being deployed to all Americans in a timely fashion will trigger expansive authority to establish more rigorous competition policy.

Fourth, if the Commission is going to make platform competition a centerpiece of its national broadband plan, then it must be aggressive about helping new providers build viable businesses.

This can only happen if the FCC takes steps to curb abuses in the special access and middle-mile markets.

It's time to put an end to the high prices and obscene profits the monopolists earn on these lines.

Fifth, the FCC must do everything in its power to protect the open Internet, regardless of marketplace conditions or technology.

Network Neutrality and nondiscrimination should be the cornerstone of America's broadband policy.

While the Commission already has the clear authority to act on this issue, Congress should pass legislation to place these nondiscrimination protections in the Communications Act.

Finally, the FCC must transition the Universal Service Fund from supporting telephone service to supporting broadband infrastructure.

In the book, we outline a proposal that would bring next-generation broadband to rural America while over time reducing the size of the fund and increasing efficiency and accountability.

Not all of these changes will be supported by the incumbent industries.

But it is essential that the FCC recognize that short-term financial interests of dominant firms cannot overshadow the long-term national interest in charting a successful path for our digital future.

President Obama promised to bring change to Washington, and it appears that is already happening.

The very fact that the FCC is preparing a national broadband plan is in and of itself a huge step forward. However, this plan cannot be a long list of platitudes and bromides.

It cannot simply state goals that we all agree are noble.

It must contain policies that are truly transformative -- policies that atone for the FCC's past record of neglect and finally deliver on those promises made by our leaders more than a decade ago.

Thank you.