

Chairman David Armstrong
Kentucky Public Service Commission
Murray State University
Dick Anderson Telecommunications Systems
Management Leadership Award
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Thank you. It is certainly my great pleasure to be back at my alma mater today. Every visit I make to Murray State brings back great memories of my college years and reminds me of what a wonderful educational institution has been created here.

I am deeply honored that you have selected me as the sixth recipient of the Dick Anderson Telecommunications Systems Management Leadership Award.

I would be remiss if I did not offer my congratulations to Dick Anderson on his appointment as chief operating officer for the Board of Governors of the Federal Reserve. That is a particularly daunting job at this time in our nation's history, but I know that Dick – as a Murray State graduate twice over - is more than capable of rising to the challenge.

I have been involved with telecommunications policy in one way or another for many years, first as Kentucky's attorney general and then as Jefferson County Judge/executive and mayor of Louisville.

But my nearly three years as chairman of the Kentucky Public Service Commission have brought me a much greater depth of understanding of the complex and rapidly changing telecommunications regulatory environment. So today I would like to share with you my perspective on how that environment has evolved, where it is today and some of the challenges it will pose in the coming years.

In the last thirty years, we have seen two deregulatory upheavals in the telecommunications industry. The first of these cataclysmic events was the breakup of the old AT&T, or "Ma Bell," near-monopoly over local and long-distance telephone service. This created the seven regional operating companies – the so-called "baby Bells" - and allowed competitors such as Sprint and MCI to enter the long-distance market.

The 1996 Telecommunications Act further deregulated landline service, creating more competition at both the local exchange carrier level and in the realm of long distance service. But the act barely touched on the roles in the marketplace of the then-nascent technologies of wireless phone service and internet service.

Perhaps nobody could have anticipated the breathtaking pace of technological change in telecommunications. But the fact is that telecommunications technology has far outpaced the ability of legislators and regulators to craft responses to it. Faced with the impossibility of staying ahead of, or even keeping up with, the changes wrought by new technologies, both federal and state governments have responded by taking the quickest and easiest path – which is to simply further deregulate existing technologies as they evolve and not regulate at all the new ones.

That impulse toward deregulation and non-regulation has, in many respects, brought us to where we started three decades ago, with one or two entities dominating the market.

In landline service, the baby Bells have grown into adolescence by absorbing some of their siblings – leaving only two major national entities: the “new” AT&T and Verizon. Furthermore, traditional landline service – both for local and long-distance calls – seems to be on a trajectory towards irrelevance, which is prompting surviving companies to start offering bundled landline and wireless service, with additional advanced services, in packages designed to strike at some of the competitors who have been eroding their business – principally cable television providers, who not coincidentally are themselves almost entirely unregulated.

Meanwhile, wireless is rapidly becoming the dominant voice communication technology, and the default option for younger consumers. It is also well on its way to competing with land-based broadband services.

But concentration of market power is also a trend in the wireless sector. With the proposed AT&T acquisition of T-Mobile, the wireless industry is starting to look much like the US auto industry did in the 1960s – two dominant companies, a single second-tier entity and a bunch of little guys trying to pick up whatever scraps of business might be left over.

The regulatory changes I have noted thus far have occurred at the federal level. More recently, Kentucky has followed suit.

In 2002, the Kentucky General Assembly gave local governments with planning and zoning authorities the final say on cell tower locations. That struck scores of cases a year from the PSC's docket.

More significantly, in 2004, state lawmakers passed legislation that removed nearly all broadband service from the jurisdiction of the Kentucky Public Service Commission. Although the PSC had not been regulating the cost and terms of service of any retail broadband providers, the effect of the new law was to eliminate whatever leverage the PSC had over telephone companies with respect to extension of broadband service into new areas.

Two years later, the Kentucky General Assembly effectively removed nearly all of the PSC's remaining regulatory authority over telephone service by giving telephone companies the option of opting out of PSC oversight. The major carriers have done so. The PSC has been left with jurisdiction over consumer issues such as billing and over agreements and arrangements between telecommunication providers.

These regulatory and technological changes have produced mixed results. On the positive side, almost all of us have available a range of telecommunication options and sources of information that we could not have envisioned thirty – or even fifteen – years ago. And there is, at least for those of us in larger metropolitan areas, some real competition among service providers and some consequent downward pressure on prices.

Some telecommunication services have undoubtedly dropped in cost and thus become more accessible. Long-distance voice service in all its forms – landline, wireless, voice-over-Internet or Skype – is perhaps the best example. Broadband service has not necessarily become less expensive. But while you may be paying about as much as you did fifteen years ago, you are now paying for high-speed service over fiber optics rather than dial-up service over a copper wire.

But, at the same time, the price of conventional landline service has increased. And, despite efforts to promote equal access to telecommunication services, consumers in metropolitan areas have a decided advantage over those living in more rural communities. This is true in Kentucky as well as nationally.

Rural consumers generally have fewer options when it comes to landline service providers, wireless telephone service and broadband service, both in terms of DSL over phone lines or high-speed fiber optic service from either a phone or cable company. Because deregulation has removed any obligation to serve for all but basic telephone service, rural consumers are dependent on providers whose decisions are generally based purely on economic considerations. In other words, non-basic service is provided only where it is profitable to do so.

Furthermore, some of the transparency that comes with regulation has been lost. For example, telephone companies no longer have to submit their tariffs for non-basic services – the statements of rates and services – to the PSC. Thus, those tariffs are no longer available to the public on the PSC website.

As you would expect, perspectives on the current situation diverge considerably. Consumer advocates argue that purchasers of telecommunication services today – while enjoying more choices - have less access to reliable information on which to base buying decisions and less recourse if they believe that a company has not treated them fairly. Proponents of a deregulated system counter that the plethora of choices available to most consumers gives them unprecedented ability to shop for the best deal and to switch providers on the basis of price and service.

As regulators, the Kentucky Public Service Commission holds no brief for either side in the debate over deregulation. Rather, we are charged with carrying out those duties that are assigned to us through state and federal statute and legal precedent.

At present, those include:

- Providing assistance in resolving disputes between retail consumers and telephone service providers.
- Enforcing provisions against fraudulent practices in the marketing and sale of telephone service.
- Assisting in the resolution of disputes between telecommunication providers, notably in review and arbitration of interconnection agreements.
- Reviewing and ruling on applications for cell towers in areas without local planning and zoning authorities.
- Setting basic service rates for telephone companies that remain under PSC regulation
- Examining larger questions within the PSC's regulatory footprint. The PSC last year opened a proceeding to examine whether intrastate switched access rates – the rates charged by one telephone company to carry traffic to and from another company's system – constitute a subsidy for some carriers, notably those operating in mostly rural service territories.

But even in these remaining areas of regulation, ambiguities arise. The proceeding on switched access rates has been complicated by a legal challenge to the PSC's authority over such rates charged by carriers that have opted out of PSC regulation. Conversely, with respect to cell towers, there is a lawsuit in progress that contends that the PSC has applied its authority too narrowly.

As long as such questions arise, we will continue to see further alterations to the regulatory landscape in telecommunications at both the state and federal levels. Some changes will be made in order to clarify areas of uncertainty. But I suspect most will be attempts to adjust to new technologies or changing usage patterns. I think the current debate at the federal level over net neutrality – the issue of equal access to bandwidth for Internet users – is a harbinger of the issues we will face in coming years.

And I think we cannot underplay the importance of those issues. One of the philosophical underpinnings of utility regulation has been that access to certain services – most notably electricity and telephone – is, if not a fundamental right, certainly a fundamental necessity. It seems to me that we are soon going to have to make a decision as a society as to whether near-universal access to high-speed information services is equally important. If we decide that it is, then we will have to determine how that access will be implemented, and what sort of regulatory scheme – if any – will be necessary to insure that it is provided.

How that debate will play out is impossible to predict. If we have learned anything in the last thirty years, it is that new technologies will emerge and alter circumstances in ways that we cannot now envision.

But it is clear that we will be discussing the appropriate role of government regulation in the telecommunication sector for some time to come. As an alumnus and a utility regulator, it is gratifying to me that Murray State University is engaged in that discussion and is educating and training future leaders in the telecommunications field. I wish you all success in those endeavors.

Thank you again for honoring me with this award.