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Thank you Stuart. It is a privilege to speak today at the Duke Law School Center for Innovation Policy conference on Internet Regulation 2020.

Does everyone remember the scene in "Annie Hall," where Woody Allen is walking down a hallway in a home in Los Angeles? He passes Jeff Goldblum on a telephone call, saying, urgently, "I forgot my mantra."

At the FCC, the Commission staff always remembers the Chairman's mantra: It is competition, competition, competition.

The Chairman took office just about a year ago, and in that year, competition has been the continuing theme. To take two examples, competition theory was the basis of the Commission's structuring of the Mobile Spectrum Holdings order, and it supports orders that impact the way that television stations can -- and cannot -- collaborate with other television stations in a local market.

If a mantra can also be a meme -- the irreducible unit for carrying ideas -- then competition is <u>the</u> meme and mantra of Chairman Wheeler's tenure.

Since Labor Day, the Chairman has given four speeches spelling out his Agenda for Broadband Competition -- the ABCs of the Commission's competition policy.

First, he described the challenge of competition in fixed broadband, explaining that 25/3 Mbps bandwith is table stakes for the 21st Century. In a speech at the tech incubator "1776", he focused on the competition challenge that exists when -- in a time of heavier and heavier video use -- 75% of American homes have no choice or only one choice for that kind of high-speed broadband.

Second, he talked about mobile. The Chairman praised existing competition and new marketplace initiatives but he also asked a fundamental question: Should mobile broadband be subject to the kinds of Open Internet rules that ensure, for example, that a downstream network cannot artificially disadvantage an upstream company with which it is also competing? That question remains on the table.

Third, he focused on reducing barriers to entry for competitive broadband providers. Because the best cure for limited competition is more competition. The Chairman urged local governmental officials to take steps to incent broadband deployment and explained why the Commission would vote -- and this morning has voted -- on federal policies that govern the siting of wireless facilities.

Finally, he turned to last-mile competition as it affects business customers, especially small and medium-sized businesses whose demand for bandwidth in a single location does not always justify the construction of new facilities to their doorsteps. With the approval of Howard Shelanski's office in OMB, the Commission is collecting data on the market for special access -- dedicated, high-capacity lines to businesses. Those data will allow the Commission to identify where there is market power. Just as importantly, the Commission can identify where competition exists, and thus where regulation should be abolished.

A core conclusion, articulated in his 1776 speech, is this: "Communications policy has always agreed on one important concept: the exercise of uncontrolled last-mile power is not in the public interest. This has not changed as a result of new technology."

I've labeled this this talk C^3 to reflect three dimensions of the Chairman's Agenda for Broadband Competition.. First, how the Commission might be able to incent more competition. Second, how the Commission can protect competition where it exists. And, third, to identify the scope and contours of competition as administered under the FCC's public interest standard.

Let's begin by asking how can the Commission incent competition? We start by understanding that competition isn't limited to technology. Consider Apple's iPhone launch in 2007. That market-changing event wasn't only about better technology. Instead, the magic of the original iPhone was a result of innovation in product design and business models. The same is true of the first Apple App Store in 2008; technology was important, but the surprising innovation was the creation of a marketplace for mobile apps.

Business model innovation is particularly important in times of dynamic competition, as firms experiment with ways to provide differentiated forms of value.

The marketplace for video programming is a good starting point. Tremendous innovation, bringing competition to facilities-based cable services, has been introduced by Over-The-Top video providers. Netflix has as many as 36 million subscribers in the United States. And video traffic has become the majority of the downstream Internet traffic during peak periods. Choices of on-demand services are flourishing -- Amazon, Apple, Hulu, YouTube, to name a few.

Just this week, both HBO and CBS announced new streaming services separate from cable subscriptions. The New York Times this morning called these developments a "watershed moment for web-delivered television."

And there are additional forms of business-model innovation in the offing.. DISH has publicly stated its intention to expand into streaming TV video in a different way -- by providing packages of channels that look a lot like traditional video programming. Sony as well has confirmed its plans to deliver more than 20 linear networks. This is business model innovation.

Of course, the Commission doesn't root for one business model over another. But it does -- and it should -- look to see if any of its rules should be updated to facilitate the innovation that is occurring in the marketplace.

Which brings us to the Commission's definition of an MVPD – short for multi-channel video programming distributor. Congress told us that a cable system must be facilities-based. But an MVPD need not be a "cable system" -- these are two very different terms as created by the Communications Act.

Could the definition of MVPD be technology-neutral, so that OTTs that choose to offer multiple streams of prescheduled video programming would qualify for the programming rights created by the Communications Act? Let me emphasize that such a definition would not include on-demand video providers like Netflix, Hulu, Amazon, or Apple.

Think for a moment about the critical inputs to a business that wants to use the Internet to deliver linear channels of video programming in competition with traditional cable systems. The OTT must be able to reach its customers over broadband transmission. That's a question for the Open Internet proceeding.

Such a business also must obtain video programming. As a general matter that is resolved via private negotiations in the marketplace. But Congress, in Title VI of the Communications Act, recognized that cable companies that own programming might refuse to supply that programming to competitors. The theory was that when cable companies own content, they may raise artificial barriers to entry by refusing to let their video competitors have access to the programming they own. In doing so, they could harm satellite providers. Would OTTs using broadband transmission face the same threat today? Would providing to some OTTs the programming rights of MVPDs spur competition by helping to reduce this risk? And would the public benefit if those same OTTs and broadcast stations had the Congressionally-granted right and duty to negotiate in good faith?

The prospect here is not just that consumers would have more individual choices. But, as in other technology sectors, they would be able to mix-and-match those choices in order to create individualized packages – think broadband, various slices of video programming, different mobile and fixed devices – of their own making.

The Chairman recently confirmed that Commission staff is looking anew at an issue first raised in the complaint filed in 2012 by Sky Angel—that is, whether it should define an online video provider that delivers multiple streams of linear programming as an MVPD. We have put that specific complaint to the side to consider more generally whether this definition is technology-neutral, so that the statutory rights would be available regardless of the transmission technology, and that it is narrow -- applicable only to those companies that choose to deliver multiple streams of prescheduled programming.

At recent meetings with the Commission, Aereo, which has been in the news a lot this year, stated that this approach would "create regulatory parity…, increase investment and competition in the video programming market, and provide consumers with attractive competitive alternatives to existing MVPD services."

Such action would not regulate the Internet. Indeed, the whole point of the inquiry is to apply the Act on a technology-neutral basis so it would make no difference whether the Internet did or did not serve as the means of transmission.

To aid the Commission's analysis, the Media Bureau issued in March 2012 a Public Notice to obtain additional comment on these difficult issues. It is, of course, the Media Bureau, led by Bill Lake, that is the Commission's expert on video competition. If I could add a parenthetical thought: The first job I had in communications law was when I was a summer associate working for Bill Lake. His leadership in this, and other media issues, is critical to the success of the Commission.

So Commission staff is considering questions like these: Should we prefer technology-neutral over technology-specific applications of the law? Would business model innovation in the delivery of video packages like these serve the public interest by providing more competitive choices for consumers, and the benefits that competition provides? How might this help over-the-air television? Would television stations and studios have more potential customers, thus introducing greater competition in the B2B market for programming distribution?

There is also the question whether this action would help boost horizontal competition in the deployment of broadband networks -- exactly the challenge the Chairman identified in his "1776" speech.

The Commission continues to hear about the importance of video programming to broadband deployment. As consumers increasingly consume video content over the Internet, that drives greater demand for broadband -- the demand for video and broadband go hand in glove. Could a technologically-neutral definition of MVPD boost broadband deployment by giving new and growing broadband networks the boost in demand that will make that deployment profitable? For example, demand for broadband might increase if consumers knew they could use broadband connections to access MVPD services regardless of whether the broadband network itself provided video programing.

And one more important question. Some might say that the video market is already so dynamic that the Commission should watch and wait. I believe that the Commission -- like everyone else in the world -- can't see the future perfectly and so should proceed with care. But if a Commission rule can help unleash new business models that private capital is willing to fund, entrepreneurs are willing to bet on, and consumers are poised to select, shouldn't it consider doing so?

This is not the only example of incenting competition.

Building out wired and wireless broadband networks is a national priority. Making available the infrastructure -- such as conduit, rights of way, and poles -- necessary for those build outs must likewise be a priority, which is why the Commission adopted updated policies to facilitate the deployment of wireless infrastructure, including small cells, today.

The second theme is this: How does the Commission protect competition? An obvious way is through its merger review. The Communications Act instructs the Commission to review transactions involving licenses and authorizations and to determine whether such a transaction would serve "the public interest, convenience, and necessity."

This FCC standard complements, while being different from and broader than, the antitrust agencies' standard. The Commission analyzes competition much like the Department of Justice and the Federal Trade Commission. Like the antitrust agencies, the Commission considers a transaction's competitive effects and its potential to harm consumers, and the Commission staff bases its recommendations on market-related facts and economic data. This rigor ensures that we make even-handed and well-reasoned decisions supported by the law.

So our starting point is the same. And -- as evidenced by the FCC and DOJ's respective reviews of NBC/Comcast, ATT/T-Mobile, and Verizon SpectrumCo -- we work to move in harmony with antitrust agencies.

Our view of competition in the wireless industry is a good example. Both the DOJ and the FCC leadership expressed their skepticism about a potential merger of Sprint and T-Mobile. The market conditions in the wireless sector led Chairman Wheeler to conclude that "four national wireless providers are good for American consumers," and to state upon the merger's demise "Sprint now has the opportunity to focus their efforts on robust competition." It seems the Chairman was right. Soon after publicly announcing the abandonment of their merger plans, Sprint unveiled subscriber plans that offer more data and incentives to lure competitors' customers. T-Mobile responded with a referral program of its own. Reports suggest that these pricing strategies are pressuring Verizon and AT&T to lower prices. We have seen a lot of evidence that having four major players in the wireless industry results in more competition and lower prices for consumers -- protecting competition at its best.

We also have sought to protect competition before and after the ongoing tech transitions. An important aspect of network competition is access to copper plant. Providers are investing billions of dollars in fiber networks every year, and we support that.

Nonetheless, even in a high-speed, fiber-driven world, the last-mile delivery is often over copper pair. But technological advances are making copper-based DSL a powerful means of supplying broadband in some places for some purposes, at a fraction of the cost. The ubiquity of copper creates competitive opportunity for business and other enterprise customers: these advances in copper technology can deliver high-speed broadband over those networks -- especially over short distances, as is the case in serving business office parks and downtown buildings. Thus, in his Comptel speech, the Chairman focused attention on four critical issues impacting last-mile competition: Completion of our special access proceeding; examining whether contractual provisions used by incumbents -- such as lock-up clauses -- impede competition and facilities-based entry; the rules governing the retirement of copper networks; and the future of VOIP interconnection in an IP world.

Finally, the last, or third, dimension -- the unique role of the Commission in expanding the contours of competition to include broader public interest considerations.

As is well-understood, the FCC's standard of review in the merger context instructs the Commission to consider whether a transaction is in the "public interest." This, of course, includes an analysis of competition consistent with the antitrust law and its modern-day emphasis on economic efficiencies. But the public interest standard also supports the pursuit of values that do not stand or fall on efficiency gains. The Commission considers, as it has said, the "broader aims of the Communications Act".

At a recent FCC roundtable, Tim Wu, for example, emphasized that the FCC's public interest standard allows us to be sensitive to non-economic concerns such as free speech and innovation. He cited as examples the creation of Skype, Google Maps, social media in general, all of which resulted from innovations that stand for the overall improvement in consumer's everyday lives -- a focus on those broader goals is what makes the FCC's aperture encompass a broader view of innovation.

Free expression is a very, very important value. The Commission has quoted from Justice Holmes' famous dissent in *Abrams v. United States*, where he wrote: "The ultimate good desired is better reached by a free trade in ideas -- that the best test of truth is the power of the thought to get itself adopted in the competition of the marketplace." The marketplace of ideas is an important metaphor because it highlights the importance of speech to listeners -- the consumers of ideas -- as well as to the speakers -- the producers of ideas.

Although the Commission's regulatory and legal authority is broad, the Commission remains disciplined in its focus on solid outcomes. While it can consider more than just antitrust economic principles, the Commission remains grounded in the facts and marketplace realities.

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That takes us to where we started, one lawyer's interpretation of the Chairman's mantra and where Commission staff finds support for that mantra in the law.

A colleague of mine suggested that this speech be entitled "C^3: Protecting Opportunity". Good title, but I was reluctant to give a speech whose abbreviation spells out "C3PO". Ambitious the Commission may be, but the Commission staff doesn't wield light sabers. Instead, our goal is to provide the Commissioners with additional tools for competition. Even dynamic markets don't move faster than the speed of light, but, as a small, green Jedi Master might say: "Competition the future is. Help you it will."

Thank you.