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Repurposing The FCC

by

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Pardon my French, but it's *de rigueur* these days to talk about "repurposing" spectrum to address what Federal Communications Commission Chairman Julius Genachowski calls the coming "spectrum crunch" for wireless operators.

The need for more spectrum capacity for mobile broadband services is real. Hence, the need for repurposing spectrum is real too.

So here's an idea: The FCC should repurpose itself in order to more effectively accomplish repurposing of spectrum.

"Repurposing" spectrum refers to the FCC taking action to allow spectrum currently used for one purpose, say, broadcasting, to be used for another purpose, say, wireless mobile. The spectrum incentive auctions Congress just authorized, and which the FCC must now implement, are intended to repurpose some spectrum currently used for broadcast TV for use by mobile services.

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The FCC's recently released [Strategic Plan](#) emphasized that "rulemaking proceedings will be conducted to enable more flexible operations, and allow for repurposing of spectrum."

Repurposing the FCC would mean the agency, as an institution, would refocus itself in a meaningful way to accomplish, more effectively and more promptly than presently, the repurposing of spectrum that all agree is needed.

What would this agency repurposing entail? In the main, simply this: The Commission should substantially reduce the substantial resources it has been devoting for the past several years to considering the competitiveness of the wireless market, and redirect those resources to taking actions that will increase the amount of spectrum available for use by wireless operators.

I want to make it clear I am not suggesting the competitiveness of the wireless marketplace is not a legitimate government concern, even if I and many other observers assert the market is presently competitive. I am suggesting, however, that any such competitive concerns ought to be left primarily in the hands of the antitrust authorities for resolution under economically rounded antitrust jurisprudential principles, rather than under the FCC's indeterminate — and therefore easily manipulated — public interest standard.

There is a fairly broad consensus that a substantial overlap exists in the competition examinations of the FCC and the Department of Justice. In light of this acknowledged overlap, many argue the FCC should rely more heavily on DOJ to carry out this competitive analysis work, especially with respect to the evaluation of proposed transactions. If the FCC, in an exercise of regulatory modesty that I have urged for years, would follow this self-restraining approach, the agency could devote the freed-up staff time and other resources to focusing much more single-mindedly on repurposing spectrum.

In a recent [statement](#), Chairman Genachowski pointed to several different actions the Commission has taken to "address the spectrum crunch, and to enable the continued acceleration of the mobile revolution that is driving economic growth, investment, and valuable new services for consumers and businesses."

While I could criticize some of Chairman Genachowski's policies and positions, for present purposes I am happy to credit him for the specific actions of which he takes note, as well as for creating an [Incentive Auction Task Force](#) to coordinate the agency's work implementing the newly authorized auctions.

The fact of the matter is that repurposing the FCC so the agency then can more effectively repurpose spectrum will require active, ongoing leadership on Chairman Genachowski's part.

And there is much work to do. At the top of the action item list certainly should be the speedy processing of the applications resulting from Verizon Wireless's proposed acquisition of spectrum from SpectrumCo and Cox Communications. The spectrum that Verizon seeks to acquire from the SpectrumCo cable companies currently lies unused. Verizon is not proposing to acquire a competitor, so if the transaction is approved, there will be no fewer competitors.

In my view, the commercial side agreements associated with the Verizon-SpectrumCo transaction are likely to benefit consumers by making available additional service options in a convenient, consumer-friendly way. But I understand concerns have been raised by some regarding the potential competitive impact of the commercial sales and agency agreements that allow cross-selling of video and wireless services by the cable companies and Verizon Wireless. To the extent these concerns have any merit at all, this is a perfect example of an instance in which the FCC ought to defer to the antitrust authorities. The Department of Justice is fully capable of examining the merit of claims concerning competitive impact. The FCC traditionally has not even reviewed these types of commercial side agreements.

So, if the FCC is as serious about repurposing spectrum as it claims to be — and as it should be — it should repurpose itself to get the job done. A key element of such repurposing is reorienting itself, institutionally, so that it relies primarily on the antitrust authorities to address supposed competitive concerns regarding the wireless marketplace. Then, the Commission will be in a position to devote the freed-up resources — and its full attention — to acting in ways that will actually free up additional spectrum for mobile broadband.

And, after all, that's the whole purpose of repurposing, isn't it?

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