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What Bill Kennard Said in 1999 and Why It Matters Today

by

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While I did not necessarily agree with all his decisions, I've long thought – and often said – that Bill Kennard, who was designated as Chairman of the FCC by President Bill Clinton, was an excellent leader of the agency. Here I want to highlight three reasons why this is so – with the latter two especially worth underscoring now.

First, pursuant to the Telecommunications Act of 1996, during Chairman Kennard's tenure the FCC was tasked by Congress with implementing a humongous number of rulemakings in a short time, and he ably met this difficult challenge in agency administration. In this institutional effort, it's worth acknowledging that he benefitted from the groundwork laid by Blair Levin, the agency's energetic Chief of Staff from before the 1996 Act's passage through 1997.

Second, Bill Kennard was prescient in understanding that it would be a mistake to regulate the then-emerging broadband services as common carriers – in other words, in a traditional public utility-like fashion. Hard pressed by pro-regulatory "consumer" and "public interest" groups, and competitors, to impose common carrier regulation on what were then called "cable modem" services (i.e., cable broadband), in a [1999 address](#) to the National Association of

Telecommunications Officers and Advisors, Chairman Kennard courageously resisted. And I've often not been able to resist repeating what he said in doing so:

"So, if we have the hope of facilitating a market-based solution here, we should do it, because the alternative is to go to the telephone world, a world that we are trying to deregulate and just pick up this whole morass of regulation and dump it wholesale on the cable pipe. That is not good for America."

Finally, also in 1999, Chairman Kennard released a white paper called a "[Strategic Plan: A New FCC for the 21st Century.](#)" Here too Mr. Kennard was prescient. The first two sentences of the Strategic Plan are as follows:

"In five years, we expect U.S. communications markets to be characterized predominately by vigorous competition that will greatly reduce the need for direct regulation. The advent of Internet-based and other new technology-driven communications services will continue to erode the traditional regulatory distinctions between different sectors of the communications industry."

The 1999 plan then continued:

"As a result, over the next five years, the FCC must wisely manage the transition from an industry regulator to a market facilitator. The FCC as we know it today will be very different in both structure and mission."

Recall that these statements were made over two decades ago – by President Clinton's Democratic FCC Chairman.

It is simply not debatable that, just as Bill Kennard predicted, U.S. communications markets are now "characterized predominately by vigorous competition that will greatly reduce the need for direct regulation." Whether or not you agree that this was true five years after 1999, as he suggested would be the case, it is indisputably true today. And it has been true for many years now.

I suggest it is important to recall this "ancient history" – it *is* ancient in "Internet time" – at the present moment. In the not-too-distant future, the Commission likely will have a Democratic majority. And there will be calls – there already are, of course – to once again regulate Internet access services as common carriage in a public utility-like fashion.

Just as Bill Kennard wisely resisted such siren calls in 1999 to default "to the telephone world" and its "whole morass of regulation," the Commission surely should resist them in 2022.

Whether under the guise of "net neutrality" or some other moniker, the Commission should resist going backwards into regulatory morasses. The public utility-like regime that characterized the monopolistic telephone world is wholly unsuited for the Digital Age. Above all, Internet access services, now provided competitively over fiber, cable, wireless, satellite, and mixed high-speed broadband platforms, should remain free from such public utility regulation, including all forms of rate regulation.

The guiding foundational principle in the Digital Age may be simply stated: Absent convincing evidence of market failure and consumer harm, marketplace freedom for broadband services should prevail. To paraphrase what Bill Kennard said in 1999: This would be good for America.

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