

PREPARED REMARKS

“America’s Broadband Regulators: Charting the Right Course for Success”

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Thank you for the kind introduction, Kathleen. I am delighted to be here today with Commissioner Carr and all of you. And I would like to thank the Washington Legal Foundation for hosting us today. Your work in support of free markets, accountable government, and the rule of law helps keep America competitive, and people like me on the straight and narrow.

I cannot think of a better venue than this one to discuss the FTC. This building was once home to Alice Roosevelt Longworth, the eldest daughter of President Theodore Roosevelt, America’s most famous “trustbuster”. Alice lived here from 1925 until her death in 1980.

President Roosevelt was an advocate for a strong federal antitrust agency.² But he also recognized the importance of private enterprise to the American economy. In his 1905 State of the Union, in words that ring true today, he said: “[w]e should... recognize in cordial and ample fashion the immense good effected by

¹ The remarks I give today are my own and do not necessarily reflect the views of the Federal Trade Commission or any of my fellow Commissioners.

² Marc Winerman, *The FTC at Ninety: History Through Headlines*, 72(3) ANTITRUST L. J. 871, 873-874 (2005).

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corporate agencies in a country such as ours, and the wealth of intellect, energy, and fidelity devoted to their service, and therefore normally to the service of the public, by their officers and directors. The corporation has come to stay, just as the trade union has come to stay. Each can do and has done great good. Each should be favored so long as it does good. But each should be sharply checked where it acts against law and justice”.³ Ten years later, President Woodrow Wilson signed the Federal Trade Commission Act into law.

Just over a century later, now is an exciting time at the Federal Trade Commission. Four commissioners—myself included—were installed in early May, and I was privileged yesterday to attend the swearing in of the fifth commissioner, Christine Wilson. This is the first time since the FTC’s founding that the agency is comprised of all new members. While we ourselves may be new to some of the many issues the FTC tackles, such as broadband regulation, the agency itself has a long history of examining competition and consumer protection issues in this space.

The FTC first waded into these waters in 2006, with the formation of the agency’s Internet Access Task Force, and a 2007 workshop that brought together stakeholders to explore competition and consumer protection issues relating to broadband internet access. The resulting report, on Broadband Connectivity Competition Policy, identified principles that continue to frame a useful analysis. In particular, as the Report concludes, “in evaluating whether new proscriptions are

³ President Theodore Roosevelt, Jr., State of the Union Address (Dec. 5, 1905) (transcript available at <http://www.presidency.ucsb.edu/ws/index.php?pid=29546>).

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necessary, we advise proceeding with caution before enacting broad, *ex ante* restrictions in an unsettled, dynamic environment.”⁴

Fast forward to the present: the FTC has brought numerous cases relating to broadband access and consumers’ use of the Internet. Take our two recent throttling cases. In 2015, the FTC settled charges that TracFone, a large prepaid wireless provider, failed to disclose that it throttled the speeds of consumers on “unlimited” data plans. The company paid \$40 million in consumer refunds.⁵ The FTC is currently in litigation against AT&T Mobility, in which we allege that the company unfairly throttled the speeds of consumers on plans advertised as “unlimited.” The complaint also alleges that AT&T failed to disclose this practice.⁶

Under the recently modified the Transparency Rule, broadband ISPs now must disclose, on the web, certain network management practices, commercial terms, and performance characteristics, identifying (if they occur) practices like throttling, blocking and prioritization.⁷ The FCC will ensure that companies make the disclosures, the FTC will investigate whether companies do what they say; and if they are not, the FTC will bring enforcement actions.

As Commissioner Carr mentioned, the rollout of 5G will accelerate trends of interconnection, data collection, and use. This will benefit consumers, but it will also raise continued and increasing privacy and data security concerns. This

⁴ FTC Staff Report, Broadband Connectivity Competition Policy (2007), at 9.

⁵ Stipulated Order for Permanent Injunction and Monetary Judgement, *FTC v. TracFone Wireless, Inc.*, 2015 U.S. Dist. LEXIS 42805 (N.D. Cal. 2015) (No. C15-0392 EMC).

⁶ Complaint for Permanent Injunction and Other Equitable Relief, *FTC v. AT&T Mobility LLC*, 87 F. Supp. 3d 1087 (N.D. Cal. 2015) (No. C-14-4785 EMC).

⁷ 47 C.F.R. § 8.1 (2018).

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requires us, the FTC, to continue to be an active law enforcer in the broadband space.

The Commission also is continuing its policy work. Two weeks ago, we began a series of public hearings, hosted by the FTC at locations around the country, which will delve into a variety of competition and consumer protection issues, including broadband competition and consumer protection.⁸ I hope these hearings will be able to enable us to consider, over a decade later, issues and evidence relating to broadband access, and continue to inform our understanding of the broadband space.

Thank you very much.

⁸ See U.S. Fed. Trade Comm'n, *FTC Announces Hearings on Competition and Consumer Protection in the 21st Century* (June 20, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/ftc-announces-hearings-competition-consumer-protection-21st>.