

Northwest Telecommunications Association

Shaping A Future In Transition

Prepared Remarks of Andrew Isar
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Thank you, Dan. I have already enjoyed meeting Greg Palser, Joe Franell, and Mark Scully. I met Mark some time ago and know him from his work at CalTel, going back at least 15 years. His enthusiasm is boundless.

Good Afternoon! It is a privilege to join you. THANK YOU! I am impressed by what I have seen. At a time of significant change in our industry – whatever that industry may now be - the benefits are significant for a collaborative Northwest industry group.

I commend your active participation in NWTa. You indeed serve as the “common voice that stands united to strengthen the competitive local exchange carriers” in the Northwest as the NWTa web site states.

In recent remarks, FCC Chairman Wheeler quoted Abraham Lincoln, who told us, “As our case is new, so must we **think** anew, and **act** anew.”

We do need to think and look at things differently and importantly **act** anew in this latest technological revolution, lest we find ourselves in passive roles overcome by technology,

commercial challenges, and those forces that have otherwise shaped the playing field for us.

Thinking and acting anew certainly applies in technology deployment strategies and looking for how to best serve markets and protect commercial interests in these fast-paced times.

Yet thinking and acting anew also applies to the process of shaping public policy and the regulatory framework that impacts what we do every day. Shaping public policy is every bit as much a part of the competitive landscape and business strategy, and that is what I wish to focus on with you today.

NWTA members have a unique story to tell. It's about helping underserved communities, building network infrastructure, employing skilled workers, and making investments in your communities. It's a story that legislators, regulators, the media, and the public seldom hear, but one that needs to be told now in a period of major transition, as Joe Franell's recent NARUC experience underscored for me when he and I spoke in February. This **story** is what impressed me so much the first time I learned of the Association more than a year ago.

We are in an exciting period of significant transition that we have not experienced since the enactment of the Telecommunications Act of 1996. It is a period of seismic change.

You might recall the Brian Adams song “Summer of ’69.” In the summer of 1969, I laid awake one night in Pennsylvania listening to the Swiss Broadcasting Company on a shortwave radio my friend lent me. Shortwave was a big deal then. Most international long distance calls were rated at more than thirty cents a minute depending on the country. The concept of an Internet was a dream in some visionary’s mind.

Regulators exercised strict control on franchised monopolies who in turn held tight reign over their networks and the rate payers who paid for them. And “things” seemed to work. Every organization had its specific territory and the relationship between people, enterprises, and governments, remained fixed, not unlike the role of the aristocracy in the world of Downton Abbey.

What a sea of change we have experienced since. Gamers now freely communicate real time all over the world through their computers at no cost. Our smart phones and other personal mobile devices offer instant access to information and entertainment – the realm of the networks in former years, and the Internet of Things stands to revolutionize our interaction with the world.

The “telecommunications industry” many of us grew up with can no longer be easily defined nor is it clearly recognizable, particularly when Google, Facebook, Microsoft, and others are poised to provide communications services and historic telecommunications providers are morphing into media

content providers. AT&T has been dropped from the Dow Jones and replaced by Apple. Verizon remains the sole former monopoly on the exchange – a far cry from the days when AT&T-Bell System was the stock of “widows and orphans.”

With the blending of technologies and industries, legislators and regulators are streamlining regulations often at the behest of the former monopolies - and dominant players; reducing or eliminating many of the regulations that protected consumers and controlled service at a time when regulation rather than competition was needed. Market-based regulation has become a guiding principle. And yet too “regulatory lag” is also pervasive as regulators struggle to keep up with the staggering advances of technology.

Indeed we are witnessing the unfolding of a technological revolution that rivals the speed of change that former generations experienced during the industrial revolution. Your companies are not just witnessing this revolution, but are living it. We are indeed fortunate to live in these times.

Yet this revolution, like others, does not occur in a vacuum, and there are powerful forces that are shaping the revolution. Companies like Apple, Microsoft and Google that formerly eschewed the lobbying process, have engaged banks of lobbyists to help secure their own futures and set up shop on K Street in D.C.

In the early 1990's our firm was engaged to represent fledgling non-facilities-based providers – resellers – to state regulators and legislators through the new “Telecommunications Resellers Association.” If you were a reseller back then, you will recall that resellers were not viewed with particularly high regard by regulators and a skeptical public. Instead, resellers were seen as “arbitrators,” not real service providers. Resellers were in it for a buck. They were upstarts without a clue of about the sanctity of telecommunications.

Yet as this fledgling, if not “disruptive” resale segment of the industry began to flourish, consumers found that they could save money, get better service, and loosen the grip of incumbent carriers.

I am pleased to report that many of these companies are still going strong more than 25 years since long distance resale began. One is a \$1B a year company. Another company we work with has leveraged its subscriber base to become a facilities-based carrier, as have others. I would like to believe that these successes are a testament to an active shaping of perception and public policy in part by the Association **and its members.**

Nothing has changed in the need to shape public policy, and the technological revolution we face underscores this necessity. Many, if not all of your companies are CompTel members. CompTel is doing a great job of shaping the legislative and regulatory debate at the federal level. Yet that there **is** an

NWTA is also testament to your recognition that public policy, like politics, has a decidedly regional component and flavor.

Today's telecommunication revolution has several forms. Let's talk about two significant shifts we are experiencing specifically: TDM to IP Transition, and FCC Open Internet Regulation.

The federal Telecommunications Act offered a Holy Grail to incumbent local exchange carriers; entry into the lucrative interexchange market and the ability to pursue out of region opportunities. In return, the incumbents were required to open their local networks to competitors.

Before the Act was signed into law and for the subsequent years after its enactment, the incumbents fought their network obligations in the courts, before the FCC and state regulators, and with the individual interconnecting carriers. And the fight continues today before the FCC regarding issues such as Special Access and now the classification of broadband services.

History repeats itself. The TDM to IP transition gives incumbents an opportunity to rid themselves completely of any obligation to provide last mile connectivity, assume carrier of last resort responsibilities, or otherwise have to provide interconnection under the guise of intermodal competition.

We began seeing signs of this with implementation of Fiber to the Home where copper networks are replaced by fiber and

incidents like Hurricane Sandy where the copper network that existed was replaced by fiber. The incumbents made clear that no interconnection obligations under the Act applied in these instances.

Strong opposition from competitive providers to incumbents bypassing interconnection obligations when engaging in copper network replacement undermined the incumbents' efforts to free themselves from the Act's interconnection obligations, at least so far. In Michigan, at the insistence of the competitive industry, the Public Service Commission compelled AT&T to provide IP interconnection as part of an interconnection agreement required by the Telecommunications Act of 1996.

Yet change is coming fast. AT&T's Alabama and Michigan IP trials and CenturyLink's Nevada IP trial before the FCC have been crafted to create data on the transition from conventional TDM to IP networks that the ILECs can use in support of less regulation.

Already nearly half the states have successfully enacted legislation that explicitly precludes any form of IP enabled service regulation, thanks in no small part to the incumbents' lobbying efforts.

The incumbents offer persuasive competitive arguments for a relaxed regulatory environment in an IP centric world. They point to competition from IP-enabled, cable, and wireless services, despite the fact that they provide these services

themselves. And it does not hurt their cause that Google and Microsoft are also considering entering the former “telecommunications” space.

Competition arguments have also won the incumbents reduced regulation in the TDM arena. AT&T reported that company-wide, voice line subscribers declined 11.5 percent year-over-year in the fourth quarter of 2013. As a result of these declines to intermodal competition, the incumbents have scored major successes in achieving reduced TDM regulation in Texas, New Mexico, Kentucky, Pennsylvania, and Colorado, among a host of states on the basis of the growth and broad penetration of competitive alternatives such as VoIP and wireless services.

Don’t get me wrong. Reduced regulation is good if done intelligently. As someone who has spent a professional career in the regulatory arena, I appreciate how regulations adversely impact company operations and the bottom line and divert precious resources. But I also understand how the devil is in the details; how reduced regulation can create competitive advantages for certain companies – typically the incumbents – over smaller competitors.

Remember it was a little more than a year ago that the NWTAA made its first filing opposing an Oregon Telecommunications Association Petition to Amend the Definition of Basic Telephone Service to Include Access to Broadband. Though ostensibly a harmless request to include broadband in the definition of basic services, when digging into the details the

potential for OTA members to gain competitive advantages were significant. NWTAs comments helped prevent that from happening, while giving a voice to service providers that the Commission has seldom heard from. It was a successful initiative.

Yet in late March, the Oregon Commission announced an April 16 workshop in Phase II of its universal service fund proceeding. Among the issues: What constitutes available basic telephone service? And at the Federal level, the FCC's Title II "Open Internet" order now stands to unravel the states' regulatory role. We cannot rest on our laurels.

Also in late March, a proposed West Virginia Senate resolution called for a study on the development, funding, and construction of a statewide fiber optic broadband infrastructure network, or the "broadband middle mile," to be owned by the state. We may see a continuing fight between government and commercial telecom interests that require an informed legislature and regulations.

Generalized concepts such as "deregulation" or "streamlined" regulation have broad implications. A shaping of those implications is critical, and best done by those who are most impacted by them, particularly when the legislators, regulators and their staffs do not always understand all of the implications.

Nowhere is this shaping of public policy more visible than in the recent Open Internet debate.

A February 25 *Time* magazine article on the debate highlighted Lincoln's "thinking anew" when it came to net neutrality, calling the debate a "movement." According to the article "The net neutrality movement pitted new media against old and may well have revolutionized notions of corporate social responsibility and activism. Top-down decisions by executives investing in or divesting themselves of resources, paying lobbyists and buying advertisements were **upended by the mobilization of Internet customers and users.**"

The article quotes Liba Rubenstein, director of social impact and public policy at the social media company Tumblr - a Yahoo company - as saying "We don't have an army of lobbyists to deploy. We don't have financial resources to throw around... What we do have is access to an incredibly engaged, incredibly passionate user base, and we can give folks the tools to respond."

The Commission's February 26 *Open Internet Order* essentially "regulated the Internet" in an effort to keep it free from corporate prioritization potential.

The issues surrounding implementation of the new rules are significant and have wide impact on all of us as providers and consumers. The FCC will have to defend its decision to forbear from mandatory tariffing of retail broadband service and for

the terminating access service needed by edge providers to reach customers. In the past, the Commission granted forbearance from price regulation based only when effective competition exists. In finding a lack of competition in this instance, it has uniformly denied forbearance from rate regulation.

Under its Open Internet rules, the FCC rejected the notion of competition in the relevant markets. Previously the FCC defined - and the D.C. Circuit in *Verizon v. FCC* upheld - the relevant product market for net-neutrality regulation as “terminating access” and the relevant geographic market as each individual [broadband service provider]. Thus, as Chairman Wheeler has reminded us, each [broadband service provider] is a “terminating monopolist.”

As to the retail market, the FCC’s decision to change the definition of broadband by raising the threshold speed to 25 Megabits per second now results in half of U.S. households having access to a single broadband provider. In the presence of these new broadband market monopolists, how will the commission convince the courts that forbearance does not abandon the principles of “just and reasonable” and not “unduly discriminatory” rates?

The Commission will also have a difficult time defending the use of section 706 to what could be interpreted as preemption of state laws. Republican Commissioner Michael O’Rielly, who dissented from the decision, has stated often that he does not

believe that section 706 gives the FCC affirmative authority to do anything, D.C. Court of Appeals decisions notwithstanding. He believes that the Commission's interpretation will be overturned by the courts. The Commission's decision to make Mobile Internet Access a title II service opens up new regulatory implications, presuming the decision stands up to Administrative Procedures Act compliance challenges.

State authority under Section 706 of the Act has never been tested. Reclassification of broadband Internet under Titles II and III may embolden state commissions to assert jurisdiction over broadband services.

Unless the FCC exerts exclusive interstate authority, we may well see not only state regulation – The California Commission asserted Section 706 authority over broadband components of the proposed Comcast-Time Warner Cable transaction - but state taxation, such as New York's Gross Receipts tax asserted on telecommunications services. I expect municipalities to join the fray. If they have a tax on "telecommunications services", it would be easy for them to pull broadband services under their tax authority.

No matter where you stand, the reality is that public policy participation got the attention of the Commission, Congress and the Administration. Such participation will also shape the outcome of how the rules are implemented at the state level, barring Congress or the D.C. Court of Appeal – or even the

Supreme Court - gutting the rules. We shall see if the rules survive.

Adoption of Open Internet rules are only the beginning of the debate over Internet access and what rules, if ultimately any, apply particularly as usage escalates.

The Internet represents the new technological revolution rife with major public policy issues. Public policy and the resulting laws and regulations, challenges will be shaped by those with a stake in the outcome.

The take away from this discussion is to underscore the importance of your involvement in the public policy arena. Indeed the net neutrality issue struck a nerve. Fueled by the use of technology, public comment resulted in more than four million comments filed with the FCC, according to President Obama. Those impassioned by the issue got involved. Perhaps you and your company were one of them.

The need for active involvement here at home is apparent. It was recently reported by *The Oregonian* that Google told lawmakers that the state's proposed tax changes will make it "extremely unlikely" the service provider will bring its service to the Portland area. The Oregon House of Representatives apparently overlooked or ignored a letter the service provider sent them last Thursday, prompting it to vote 52-2 to approve the new law.

The ease in which the public can now express opinions openly, whether on Yelp to tell the world how bad a restaurant's food may be, or the FCC's electronic comment filing system in the net neutrality and other regulatory matters, with a few key strokes has forever changed the lobbying and public policy playbook. Everyone can make a difference with sufficient likeminded voices if they get involved.

So what does all of this specifically mean for NWTAs members?

For some of you perhaps just a reminder of how important a role you can play - and perhaps already do - in building relationships with state and local government representatives, and expressing your views on issues that affect your companies and end users. Those of you who are actively engaged in the public policy process already know the importance of active involvement and its results.

For others the recent actions before the FCC and its wide potential ramifications should underscore just how important public policy involvement is and how much a part of your competitive strategy this involvement is.

This is a process of education; education of legislators, regulators, their staffs, AND your employees, vendors, and your subscribers – the stakeholders of your companies.

We are all busy and the thought of taking time out to discuss issues with state legislators and regulators, local officials, and

the media, may appear to use up valuable time better used to run your business. But is it? Or is your involvement indeed part of protecting your business' interests? Can you afford to let the major players shape the debate the way OTA attempted to do in the Oregon basic service definition proceeding or how the major incumbents and cable companies shape discussions at the state and federal level?

The NWTa was formed among other things, to serve as a resource for its membership and to help be their voice in the Pacific Northwest, as CalTel does for its members in California and CompTel, does at the federal level.

Yet NWTa's success depends on a reciprocal relationship that relies on member support and involvement.

With the backdrop of the transformational issues we face in our business, the limited understanding that legislators and regulators have of the implications of their actions, and major competitors poised to maintain their market dominance, now is the time to redouble your commitment to public policy. This is a core element of your business. Engage on a personal, corporate, and association level, and contribute to making our communities, region, and states a better place to live.

Thank you again for your invitation and allowing me to contribute at least in some small way to your successes.