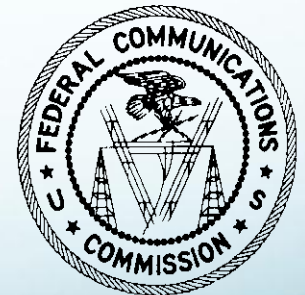


Competition Policy: Understanding the FCC's Overall Approach to Competition in the Context of a “Light- Touch” Regulatory Framework

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Note: The views expressed in this presentation are those of the author and may not necessarily represent the views of the Federal Communications Commission.

Overview

- The FCC's regulatory approach and competition
- The FCC's light touch regulation
- The FCC's competition goals:
 - Fostering competition
 - Removing regulatory barriers
 - Promoting innovation
 - Protecting consumers
- Overview of competitive carrier regulation

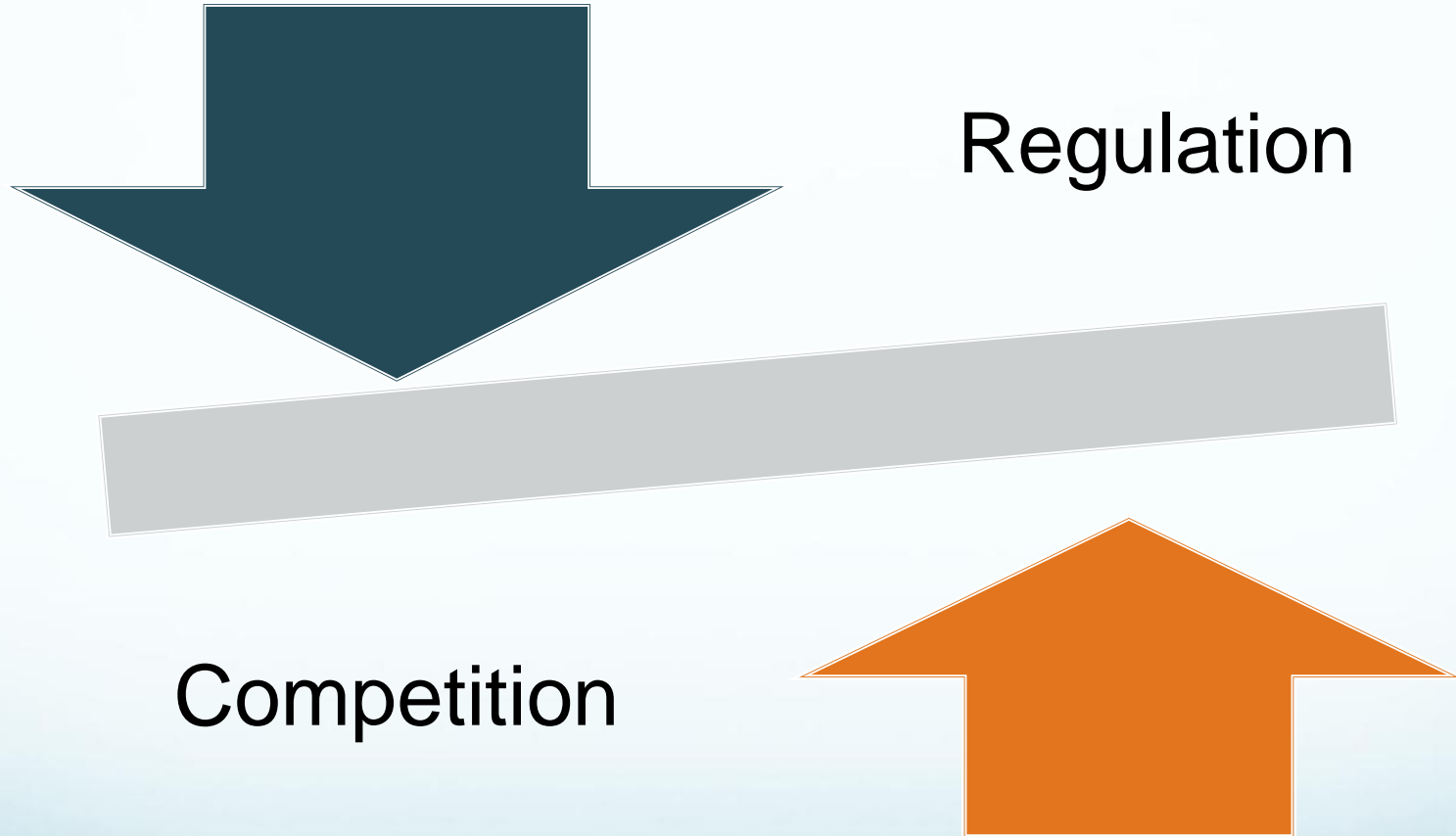
Regulatory Approach and Competition

- **Guiding principles:**
 - Competition → “regulatory see-saw”
 - Promote innovation
 - Consumer protection
- Our regulatory approach emphasizes:
 - **A light-touch**
 - **An open, transparent, and collaborative process**
 - “Notice and comment” rulemaking
 - **Fact-based, data-driven decisions**

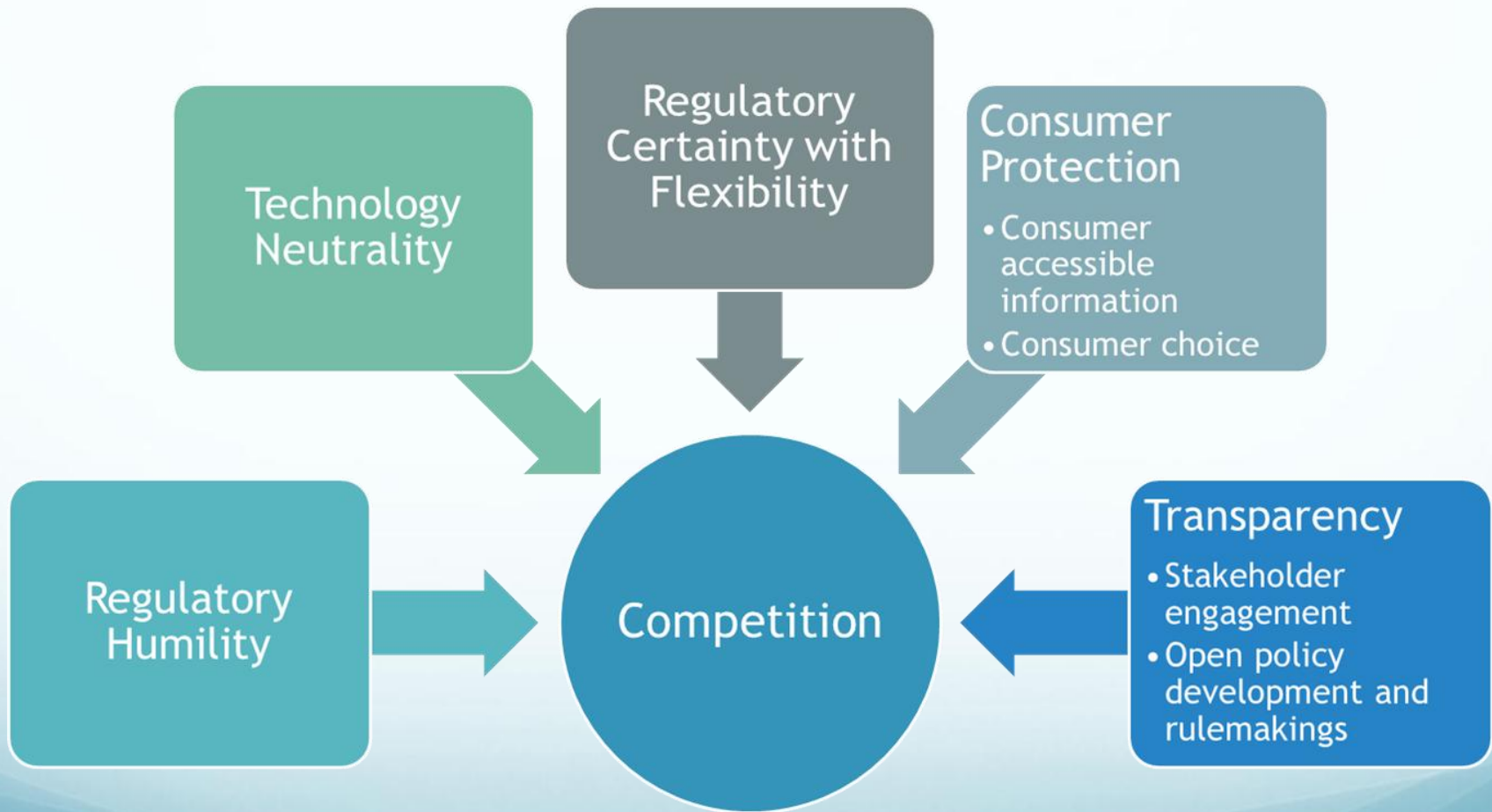
“I’m a fierce believer in the power of competitive free markets to maximize consumer welfare. As FCC Chairman, I have no intention of putting my thumb on the scale for any segment of the communications industry. Instead I see it as my job to insure a level regulatory playing field. It then falls to the American consumers to decide who wins and who loses with their ears, their eyeballs, their clicks and their wallets.”

FCC Chairman Ajit Pai

Regulatory See-Saw: A Light Touch Approach



Regulatory Principles



Approach to Competition

“Our goal is to foster a competitive, dynamic and innovative market for communications services through policies that promote the introduction of new technologies and services.”

FCC Chairman Ajit Pai

Foster Competition

Regulatory Humility

- Transparency
- Open Rulemaking Process
- Technology neutrality
- Example
 - Licensing and Spectrum Auctions for Broadcast and Wireless

Preserve and Enhance Competition and the Public Interest

- Transaction Review
 - Serve "the public interest, convenience, and necessity"
 - Fact-based and data-driven
 - Examples
 - Century Link/Level 3
- Enforcement Authority

Remove Regulatory Barriers

- Ensure FCC's actions and regulations reflect the realities of the current marketplace, promote entrepreneurship and remove barriers to entry and investment.
- Regulations have a disproportionate affect on small businesses, who are the linchpin of a competitive marketplace.
 - Relieved small Internet service providers from costly and burdensome reporting requirements.
 - Streamlined accounting requirements for wireline carriers which required two sets of books.
 - Eliminated broadcaster filing requirements.
- Removed regulatory barriers to the siting of physical infrastructure so that 5G wireless networks can densify.

Promote Innovation

- A competitive free market is critical to unleashing private sector ingenuity.
- The FCC should favor permissionless innovation and rely on consumer choice to sort out what innovations best serve the public interest.
- Eliminate unnecessary barriers to investment that could stifle new discoveries and services.
 - Minimize regulatory uncertainty which can deter long-term investment decisions.
- Examples:
 - Broadcast → Authorizing broadcasters to use ATSC 3.0, the next-generation television standard, on a voluntary market-driven basis.
 - Wireless → Authorized the first LTE-unlicensed devices in the 5 GHz band.
 - Broadband → Encourage facilities-based broadband competition by eliminating network sharing obligations that depressed investment.

Consumer Benefits and Protections

- Consumers will benefit from competition when there are rules that keep costs low and encourage deployment.
- The most effective tool for protecting consumers is a competitive marketplace.
 - If competition is not enough to protect consumers from telecommunications fraud and scams, the FCC will step in → example: robocalls.
 - Fines.
 - Seeking to give providers more leeway in blocking calls that use a spoofed caller ID.

Overview Of Competitive Carrier Regulation

- The relevance of market power to telecommunications regulation
- Dominant carrier regulation in the United States:
 - Shift in overall approach
 - Classification and regulation of dominant vs. non-dominant carriers (*Competitive Carrier Proceeding*, 1980-1984)
 - Examples of competitive safeguards

Market Power

- **Definitions of market power:**
 - The ability to raise price by restricting output.
 - The ability to profitably raise and maintain prices above competitive or efficient levels.
 - The ability to price services unreasonably, to discriminate among customers unjustly, to terminate or reduce service unreasonably or to overbuild competitor's facilities.
- **Monopoly is wasteful.**
- **Analysis of market power is critical:**
 - Determining whether to regulate a carrier;
 - Determining what type of regulations to impose on a carrier;
 - Evaluating transfers of licenses (mergers); and
 - Determining whether to permit a carrier to acquire additional spectrum.

U.S. Dominant Carrier Regulation

Monopoly and regulation:

- For decades, telephony was viewed as a natural monopoly that needed to be regulated → goal: universal service at a reasonable cost.
- Traditional monopoly regulation addressed classic monopoly market power:
 - Retail rates were regulated
 - Undue discrimination was prevented, often through equal access and tariffing requirements
 - Capital investments were reviewed to prevent gold- plating (under rate of return regulation)
 - Accounting requirements imposed

U.S. Dominant Carrier Regulation

Introduction of competition:

- Goal of regulation in transition to competition → protect against discrimination and cross subsidization.
- When competition is introduced into telecommunications markets, two types of regulatory changes are required:
 - Regulations for new entrants (streamlined or eliminated)
 - New regulations for dominant carriers:
 - Safeguards for new competitors
 - Regulations to address Exclusionary Market Power

U.S. Dominant Carrier Regulation

Classifying carriers:

- Dominant vs. non-dominant carriers → *Competitive Carrier Proceeding* (1980-1984)
 - The FCC distinguished between dominant carriers (those possessing market power) and non-dominant carriers (those that lacked individual market power).
 - Control of bottleneck facilities treated as prima facie evidence of market power.
- Carriers classified as ***dominant*** included:
 - AT&T Long Lines Department (long distance service), based on its overwhelming share of the long distance market.
 - AT&T's local operating companies, based on their control of the bottleneck local loops.
 - Independent incumbent local exchange carriers, based on their control of the bottleneck local loops.

U.S. Dominant Carrier Regulation

Regulation of dominant carriers (*Competitive Carrier Proceeding*):

- Providers of local service must furnish service upon reasonable request, and interconnect with other carriers where the FCC finds such action necessary or desirable in the public interest.
- Local carriers must provide exchange access to all long distance carriers on equal terms, on an unbundled tariff basis, equal in type, quality and price to that provided to AT&T Long Distance.
- Local carriers cannot discriminate between a long distance carrier and AT&T Long Distance in interconnection or charges for each element of service.
- Pricing: local carriers can recover costs through tariffs. Access prices must be unbundled and competitive carriers should not pay for exchange access services not utilized. Price must be cost justified and not discriminate among customers.

U.S. Dominant Carrier Regulation

continued

Regulation of non-dominant carriers (*Competitive Carrier Proceeding*):

- Streamlined regulation for non-dominant carriers
 - No rate regulation.
 - Tariffs presumed reasonable and lawful and subject to shorter (one day) tariff filing requirements.
 - Streamlined requirements regarding the reporting of investment in new lines.
 - Eliminated accounting rules and other reporting requirements.

U.S. Dominant Carrier Regulation

Non-dominant regulation → required?

- Should carriers without market power ever be subject to regulation?
 - Tariffing requirements
 - Local number portability
 - Dialing parity/equal access
 - Requirement that all carriers interconnect, either directly or indirectly

Strengths and Limitations of Using Antitrust Laws to Promote Competition in Telecommunications Industry

- Antitrust laws are flexible, general-purpose statutes with detailed standards established through court decisions and agency guidelines
 - Address competition issues only; other agencies handle regulatory issues
- Agencies have strong investigative tools and economic and industry expertise
- Agencies can deploy powerful remedies
 - Criminal conduct: Large fines and/or jail for executives
 - Civil conduct/Mergers: Structural remedies (divestitures) or behavioral (less typical, usually in vertical cases)

Strengths and Limitations of Using Antitrust Laws to Promote Competition in Telecommunications Industry

- DOJ can use Section 1, which outlaws agreements in restraint of trade, to stop anticompetitive conduct among competitors
- Example: *United States v. DIRECTV*, 16-cv-8150 (C.D. Cal.)

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA	
UNITED STATES OF AMERICA, Plaintiff, v. DIRECTV GROUP HOLDINGS, LLC and AT&T, Inc. Defendants.	Case No. 2:16-cv-08150 COMPLAINT

- DIRECTV, a satellite TV provider, orchestrated a series of unlawful agreements to exchange information about plans to carry channel showing Dodgers baseball games
- DOJ filed a civil complaint alleging that these agreements to exchange information violated § 1
- Exchanges increased the companies' bargaining leverage and reduced risk that they would lose subscribers if their competitors carried the channel
- Case resulted in a settlement under which DIRECTV (now owned by AT&T) agreed not to exchange information about content plans with its competitors

Strengths and Limitations of Using Antitrust Laws to Promote Competition in Telecommunications Industry

- DOJ can also use Section 7 of the Clayton Act where mergers will likely substantially lessen competition
 - Remedies can include divestitures to preserve competition
- Example: *CenturyLink – Level 3 Communications*
- Proposed merger between two large telecommunications companies
- Horizontal overlaps on both long-haul fiber (needed to transport high volumes of data) and building-specific fiber connections in three cities
- DOJ approved merger, but parties agreed to divest:
 - Long-haul fiber on 30 intercity routes of competitive concern
 - Metro-wide telecommunications networks in three cities of competitive concern
- Divestitures permit merger but ensure consumers will still benefit from lower prices and higher-quality services for both local telecommunications services and long-haul fiber

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

<p>UNITED STATES OF AMERICA, United States Department of Justice Antitrust Division 450 Fifth Street, N.W., Suite 7000 Washington, DC 20530</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>CENTURYLINK, INC. 100 CenturyLink Drive Monroe, Louisiana 71203</p> <p style="text-align: center;">and</p> <p>LEVEL 3 COMMUNICATIONS, INC., 1025 Eldorado Boulevard Broomfield, Colorado 80021</p> <p style="text-align: center;"><i>Defendants.</i></p>	Civil Action No. _____
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COMPLAINT

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