

UNITED STATES OF AMERICA

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FEDERAL COMMUNICATIONS COMMISSION

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SPECTRUM POLICY TASK FORCE

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SPECTRUM RIGHTS AND RESPONSIBILITIES
PROTECTION PUBLIC WORKSHOP

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FRIDAY,
AUGUST 9, 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The workshop was held at 9:00 a.m. in the Commission Meeting Room of the Federal Communications Commission, 445 12th Street, S.W., Washington, D.C.

Present:

- Michael Calabrese, New America Foundation
- Martin Cave, Warwick Business School (U.K.)
- David Farber, University of Pennsylvania
- Michele Farquhar, Hogan & Hartson
- Bruce Fette, General Dynamics
- Joe Gattuso, NTIA
- Tom Hazlett, Manhattan Institute
- Thomas Krattenmaker, Mintz, Levin, Cohn, Ferris, Glovsky & Popeo
- Michael Kurtis, Kurtis & Associates
- Larry Miller, LMCC/AASHTO
- Peter Pitsch, Intel
- Charla Rath, Verizon Wireless
- David Reed, Reed.com
- Gee Rittenhouse, Lucent
- Steve Sharkey, Motorola
- David Siddall, Paul, Hastings, Janofsky & Walter
- Steve Stroh, Focus On Broadband Wireless Internet Access
- Victor Tawil, MSTV
- Jennifer Warren, Lockheed-Martin
- David Wye, AT&T Wireless

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Present From the FCC:

Michael Powell, Chairman
Kathleen Abernathy, Commissioner
David Furth, SPTF Member
Paul Kolodzy, SPTF Director
Lauren Van Wazer, SPTF Deputy Director

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P-R-O-C-E-E-D-I-N-G-S

(9:10 a.m.)

1
2
3 MS. VAN WAZER: Good morning. My name
4 is Lauren Van Wazer and I'm Deputy Director of the
5 Spectrum Policy Task Force. Welcome to the fourth
6 in a series of four workshops on spectrum policies.
7 This workshop will address issues related to
8 spectrum rights and responsibilities.

9 We are fortunate this morning to be
10 joined by Chairman Powell and Commissioner
11 Abernathy who will deliver some opening remarks,
12 but first I wanted to mention that we have the
13 availability of sign language interpretive services
14 for anyone who needs them and if you could identify
15 yourself, we'd appreciate it.

16 With that, I'd like to introduce
17 Chairman Powell.

18 CHAIRMAN POWELL: Good morning.
19 Welcome to all of you. I want to take this
20 opportunity to thank all of you for your
21 participation and thank you in advance for your
22 public service which is desperately needed and I
23 also want to thank Lauren Van Wazer and Dr. Kolodzy
24 and the others, leaders of the task force who have
25 put this function together and have continued to be

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1 invaluable assets as at least this branch of
2 government continues to struggle to try to make
3 some sense of spectrum management reform. It seems
4 to me that's kind of what we're all trying to do.

5 I thought about my first point in my
6 talk this morning. It's sort of what is it all
7 about? I have never worked on an issue that has so
8 much smoke and nobody can find the fire.

9 (Laughter.)

10 Since Professor Kolodzy's first similar
11 article, we have had academic conferences, economic
12 papers, academics debating the merits of FCC
13 spectrum policy and only a modest amount has ever
14 changed and I think that that is a great
15 frustration to many of us who continue to see the
16 obvious merits of the need for change, but yet the
17 inability to somehow transform mere academic or
18 conceptual thought into pragmatic changes in policy
19 and in the markets.

20 But I think that somehow as we all sit
21 here this year, there's a sense, a feeling that
22 somehow the stars may have aligned and I think that
23 I believe that as well. I think things have
24 finally started to come together in a way that
25 presents a unique and important opportunity to

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1 exploit some of the changes that have provided a
2 chance to put some of those concepts into practice.

3 Those changes have been in the
4 technology and in the markets and politically. I
5 think there is a sense that with the explosion of
6 wireless services, a certain mass consumer
7 acceptance and growing demand for new and
8 innovative wireless services, we suddenly have a
9 fourth man on the field and that man is the grass
10 roots consumer who increasingly screams out not
11 only to their neighbors which are often me in my
12 neighborhood why can't my phone do this, why does
13 my WiFi network do that? But as a grassroots
14 constituency increasingly are a powerful element in
15 trying to energize the political process in the
16 Congress to be much more intently focused on issues
17 dealing with wireless spectrum and I think that has
18 been a very important development that suddenly
19 wireless is not a foreign thing to the average
20 consumer. It's becoming an indispensable thing to
21 the average consumer and that changes minds and
22 changes policy. I think that's really, really
23 important.

24 We also finally have what I think is
25 unequivocally a market environment of strong

1 competition and strong growth. There is a very
2 serious and aggressive amount of innovation going
3 on, competition going on, all of the factors are
4 very positive and I think that's brought a lot of
5 wireless services to the attention of many of the
6 people in the know. And I also think that the pace
7 of innovation in wireless technologies is
8 accelerating, that is, even in the five years that
9 I've been here, I have been astonished about the
10 number of breakthroughs in the area of spectrum
11 just in that short period. I remember hearing that
12 satellites could never provide video services on an
13 effective basis until they started doing it. I
14 heard frequently that you couldn't do broadband or
15 wireless connections. It was physically impossible
16 in certain ways being done on a commercial basis
17 today. Devices like the Ipac sitting here on the
18 desk that are receiving signals or wireless
19 networks, all of this is stuff that's come into our
20 knowledge horizon only recently and I think that
21 again that accelerating innovation gives a sense of
22 excitement and in political and in policyspeak that
23 means in a sense of momentum and I think it is
24 momentum that brings about change in the political
25 process. And you've seen that manifested,

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1 obviously. You've seen that manifested in a number
2 of Congressmen and women and Senators who suddenly
3 want to be spectrum management reform guys. The
4 problem is they don't really know what that means.

5 And then an Administration who
6 increasingly is focused on it as well. I think we
7 have an NTIA in the Commerce Department who is
8 extremely focused and active and aggressive in
9 trying to bring about change in this area and of
10 course, here at the Commission as well.

11 But going back to the point about
12 everybody wants some spectrum management reform,
13 but they don't really know what that is. I spend
14 many days talking about legislators and they want
15 to champion this and then you say Senator, what do
16 you mean? I don't know, but something is wrong,
17 right? Yes, something is wrong and they realize
18 that the mission of both this task force and all of
19 the other entities that are working on this which
20 is to begin to give some meaning and understanding
21 to what we're talking about, help define what the
22 spectrum management reform exercise is in the first
23 place, not only in the sense of what incrementally
24 needs to change, but with some focus on what much
25 more boldly and dramatically needs to change. And

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1 then to try to convert those concepts and
2 principles which are sort of at a 50,000 foot level
3 at many of the conferences I go to into practical
4 principled solutions and proposals for specific
5 kinds of changes. You can't go to a legislator and
6 say well, there ought to be more market based
7 policies in this way. You have to say here's the
8 language, here's what ought to change, here's what
9 words you change in Section 309(j)(4), whatever.
10 And that's what we have to start to do is convert
11 policies and principles and theoretics into
12 pragmatic principles, specific proposals for
13 change. It's one of the reasons we founded the
14 task force. It's one of the reasons we're excited
15 about it and if this group does its job, which it
16 seems well on course to do, we will begin to have
17 grist, something to focus the debate and discussion
18 that hopefully transforms into things we can
19 actually propose and hopefully advocate.

20 And then we also need to build the
21 institutions and the platforms for which those
22 changes will be launched. It is still somewhat
23 murky to me, exactly where reform comes from. It's
24 clear to me that it will require some legislative
25 change. Will there be a congressional major

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1 initiative. Will there be an Administration-
2 sponsored initiative. Will the FCC be the champion
3 of it. The FCC will be the champion of it, but
4 always curtailed and constrained by the legal
5 regime in which it operates. So clearly it will
6 have to partner. It will have to partner with
7 other aspects of the government to make anything
8 happen in a more bold and dramatic way that will
9 continue to work incrementally.

10 And we somehow have to figure out how
11 to do this by resisting the pressures of self
12 interests, but quite bluntly. Let me tell you
13 something which everybody knows. Companies don't
14 like competition. It's the biggest red herring and
15 garbage I've ever heard in my life. They like to
16 not have to compete. They like to be able to sit
17 quietly where they are and go home at 4 if they can
18 get away with it, cash their check and go to the
19 golf course. I like that world too, if I could
20 achieve it.

21 And so you will find constantly a lack
22 of principle at times in the context of the course
23 of this debate. I've seen many both companies and
24 policy makers are taking very principled positions
25 at the academic conference until it's time to

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1 change the rule and it moves from the academic to
2 the self-interested and suddenly principles of
3 competition and market use a spectrum that seems so
4 meritoriously are suddenly the end of the universe
5 as far as that particular company or set of
6 companies are concerned.

7 That's not to be disparaging of them.
8 It's only to be challenging to those of us in
9 policy to try to look past that and if you really
10 mean change you're going to look past the short-
11 term self-interest of people whose change will
12 ultimately provide difficulty or compromise or
13 nobody likes change. And so that will be
14 difficult.

15 So I don't know. What does it consist
16 of. That's what I and others will turn to you, but
17 I thought I'd give to you at least four points that
18 seem to me to be meaningful.

19 More efficient use of what we've got.
20 I start with this and not with more spectrum. I
21 think the time has come to realize there ain't a
22 whole lot of spectrum in the closet back here that
23 we have at the FCC that hasn't been put out yet.
24 If there was, I assure you, we'd roll it out here
25 and get it out of here. The problem I think

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1 increasingly is the demand and the kinds of
2 innovative uses that are coming and far outstrip
3 the amount of spectrum available and just like IP
4 technology and burstiness, the real challenge is
5 how to get more use out of spectrum that 80 percent
6 of the time lies fallow.

7 And I think that the answer there
8 relies on the empowerment of technology that will
9 allow for more innovative uses of existing
10 technology like software-defined radios, like
11 perhaps receiver standards, like perhaps other ways
12 to use technology to use the same amount of
13 spectrum in a better way.

14 Sharing. We have had a major
15 ideological struggle this year with very different
16 constituencies, Department of Defense and others
17 about the basic notion that somebody can be in your
18 backyard and that is okay, as long as you can
19 protect against the kind of technical interference
20 which often is true, but often is a huge red
21 herring which really masks the objection to the
22 basic principle that anybody would have to share my
23 stuff. It's important to remember it's the
24 public's stuff at the end of the day.

25 And the unlicensed band which has been

1 an incredible font of not only innovation, but a
2 way of showing us a vision of the way, alternative
3 ways that spectrum can be used that are outside the
4 traditional service provider or command and control
5 model.

6 Secondly, there is no question we have
7 a problem that we need to be able to deal with
8 unpredictable and dynamic change. How do you get
9 spectrum once used for one thing to a higher and
10 better use quick enough to be meaningful in the
11 market and to consumers? Right now, the laborious
12 process of government command and control which has
13 served the country well up to a point is just
14 futilely too slow to rapidly move things to new and
15 better and innovative uses. I don't think this is
16 ideological, to then say you have to look at market
17 mechanisms which is the only thing in the history
18 of the world that I've discovered in my reading of
19 history that has been effective in dealing with
20 rapid changes in uses and moving things more
21 quickly to new uses. So it necessarily means more
22 market-based mechanisms and less command and
23 control.

24 Third, unquestionably, the government
25 and the commercial sector have to improve both the

1 balance and the processes used for reconciling
2 critical governmental uses with commercial uses.
3 There has to be at a minimum better process for the
4 management of those challenges. I think there has
5 to be a more unified consensus about what the
6 concepts and principles of the use of that spectrum
7 are. Is sharing off the table or part of what will
8 always be a legitimate consideration? I think we
9 have fought for the principle that has to be part
10 of a general governmental understanding that
11 sharing is not an
12 off-the-table thing, for example. But that has to
13 be improved and I would applaud NTIA who I think
14 has taken on some nasty challenges in the last
15 year, everything from 3G to ultra-wide band and I
16 have been in those meetings and there's blood on
17 the floor in an effort to find the handle and a
18 process to improve that. I think that needs to
19 continue.

20 And finally, where I always like to
21 end, with hopefulness about the future, there
22 always has to be air for innovation. There has to
23 be oxygen for the things that none of us can
24 predict right now, have no ability to foresee and
25 as sure as I'm standing here, before my next

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1 birthday, somebody is going to have something we
2 hadn't quite thought of and there always has to be
3 a home for that person, that kid in the garage has
4 to be able to come out and find a place and I think
5 that we need to think more aggressively about how
6 we accommodate that in a system that has a tendency
7 to move toward established users and I think we
8 have to have a serious consideration of everything
9 from how do you expand and exploit the values of
10 the unlicensed band, as we've seen in some ways or
11 maybe even other newer and innovative ways to
12 promote innovation that we have yet to think of.

13 If we don't do that, I think that all
14 you do is freeze yourself in time to the detriment
15 of the market, the technology and our citizens. So
16 that always has to be at the top of our list too.

17 So we're really excited. I thank Paul
18 and all of you for coming. I really, really look
19 forward to reading the product of this group and I
20 look forward to being a champion for what it
21 proposes to change.

22 Thank you very much and have a great
23 day.

24 (Applause.)

25 MS. VAN WAZER: Thank you, Chairman

1 Powell, for sharing your vision with us. We
2 certainly do have some tough challenges ahead. I
3 was happy to find out that we do have a few months
4 before your next birthday, so I think we have time
5 to make some headway.

6 I'd like to introduce Commissioner
7 Abernathy.

8 COMMISSIONER ABERNATHY: Thank you very
9 much. It's always a pleasure to be here talking
10 about spectrum issues. As I look out at everyone
11 who's been intimately involved in these issues for
12 so long, I think well, why are we in such a mess
13 today and why are we really needing to revise and
14 revamp the way we look at spectrum? And I think
15 it's because, I used to think it's because it's
16 mostly guys.

17 (Laughter.)

18 I thought well that is the problem. If
19 we were in charge of it -- but then the Chairman
20 comes out and he lays out this great vision --

21 CHAIRMAN POWELL: That's my feminine
22 side.

23 (Laughter.)

24 COMMISSIONER ABERNATHY: And he creates
25 this task force which is fabulous. He's got Lauren

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1 and Paul working on it. So I have hope now that we
2 will be able to address many of these issues.

3 As you know and as the Chairman
4 mentioned, spectrum policy continues to challenge
5 this Agency to be at our best, to work our hardest,
6 to be our most innovative and I appreciate that
7 spectrum is so critical to the jobs that all of you
8 are out there trying to perform because for much of
9 my career I have worked in businesses that rely on
10 spectrum to survive, to compete. The first
11 satellite and then the wireless phone business
12 without spectrum, there simply was no product,
13 there was no service to offer. And both of those
14 traditional spectrum-based services which are very
15 much with us today are only part of the challenge.

16 Today, unlicensed services have begun to assume an
17 even more prominent role in the lives of Americans.

18 I can remember when he'd give speeches about
19 unlicensed devices and it was baby monitors, pretty
20 much, and garage door openers. That was about it.

21 And now we know there's just so many other
22 products and services out there that are beneficial
23 to consumers.

24 Now over the past few months, I've laid
25 out my views on the future of spectrum policy and

1 the licensed and the unlicensed bands and there's
2 widespread agreement, I think, in this Agency that
3 flexibility and allocations and service rules
4 absolutely advance the public interest. And the
5 Commission has substantial discretion in
6 formulating the bundle of rights that are
7 associated with that flexibility.

8 In developing these rights, however,
9 interference protection remains one of our most
10 paramount concerns because once the allocation of
11 service rules have been developed, consistent with
12 interference protections, we then have to determine
13 how to distribute that bundle of rights and that's
14 when I think it's safe to say we've got the
15 heaviest lobbying from all parties because everyone
16 wants a piece of the pie.

17 So what should be our licensing goal as
18 an Agency? I think it is to maximize the
19 efficiency of commercial spectrum used by promptly
20 getting as many rights as possible into the
21 marketplace while protecting the licensed user from
22 harmful interference. And I think when you look at
23 this distribution of rights, the spectrum can be
24 analyzed as a continuum between two paradigms.
25 We've got the full property-like rights model to a

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1 pure commons model on spectrum and I think the
2 private

3 property-like model is basically a lawyer's dream.

4 It's a distribution of all spectrum rights like
5 any other piece of property that we might have.
6 Ideally, this occurs mostly in a secondary market
7 with limited government intervention. The
8 Commission has, in recent years, utilized the
9 flexibility granted in the Act to move towards a
10 quasi-property rights model and under this
11 approach, maximizing flexibility and service rules
12 and allocations serves the public interest by
13 allowing the property to be developed to the
14 greatest degree. And there's limitations on this
15 model because of statutory language that goes back
16 to who actually owns the spectrum and it's never
17 owned by the licensed entities. But it's a model
18 that we've used and I think it's been very
19 effective.

20 In contrast to the private property
21 approach, there is the pure commons approach and
22 this is more of an engineer's dream. These are the
23 unlicensed bands, and as you know, they do not
24 provide for any real interference protection or for
25 any exclusive licensee rights to the spectrum.

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1 It's a big free-for-all in some respects. So
2 guided by technical limitations, the bands are open
3 to all comers, so long as they operate approved
4 equipment. And this openness eliminates the entry
5 barrier that can be created by an auction price,
6 but it also creates a different kind of barrier by
7 imposing more detailed technical rules on common
8 use of the spectrum. So that's what we've been
9 using in the past.

10 And in light of these two kinds of use,
11 what's our regulatory response, what are we
12 supposed to do? I think at this point, we're well-
13 served by utilizing both the property-like rights
14 approach and the commons model. It's no different
15 than a city that has private land that's linked
16 together by common roads and parks. So I think
17 too, that the spectrum community can enjoy and
18 fully utilize both the property, the private
19 property approach and a commons approach. But the
20 key to making this work is an effective regulatory
21 regime that defines and vigorously enforces the
22 spectrum rights and the responsibilities and
23 creates a framework for allocating this very
24 valuable resource. And that's why the work that
25 all of you are doing today is so very, very

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1 important to us. We need to improve on that. We
2 need to get more rational about how we do it and as
3 the Chairman mentioned, there are limitations in
4 the Act. We may end up needing some legislative
5 help too.

6 I look forward to hearing more about
7 what you guys accomplish today. You can rest
8 assured that the product of these sessions will
9 significantly influence and shape my consideration
10 of future spectrum issues because it's one of the
11 most critical areas that we are addressing as a
12 Commission. So thank you very much for taking a
13 lot of your free time, on a Friday in August, to
14 work on these issues.

15 Thank you.

16 (Applause.)

17 MS. VAN WAZER: Thank you, Commissioner
18 Abernathy for your thoughtful remarks.

19 And now I'd like to introduce Tom
20 Krattenmaker of Mintz Levin who will be giving us a
21 historical overview of spectrum rights and
22 responsibilities.

23 Tom?

24 MR. KRATTENMAKER: Thanks, Lauren. Mr.
25 Chairman, Commissioner Abernathy, nice to see you

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1 all here this morning.

2 I'm not sure why I was selected for
3 this task, although of course, I will try to rise
4 below it.

5 (Laughter.)

6 I've always wanted to begin addressing
7 a crowd in Washington with the phrase "I am not now
8 and never have been", so I will do that. I'm not
9 now and never have been an electrical engineer.

10 (Laughter.)

11 My capacity or my credentials in
12 electrical engineering extend to the fact that I do
13 know how to turn my television set. My wife claims
14 I don't know how to turn it off. But I still can't
15 figure out how those little tiny football players
16 get inside the tube. So I'm not going to try to do
17 that.

18 And as I guess I've already showed, I
19 just don't have the Chairman's capacity for staying
20 in touch with my feminine side, so I'll have to try
21 to play to some other strength. Therefore, what I
22 thought I would do is I do think I know something
23 about FCC regulatory history and something about
24 the economics of telecommunications policy. So I'm
25 going to try to suggest some basic principle that

1 history and economics teach us about spectrum
2 policy and since I did also used to work at the
3 Federal Trade Commission, that means you've now
4 been warned. A lawyer has gotten up and said he's
5 going to talk to you about economics and history.
6 So here goes and you'll be the judge.

7 A little bit about history. How did we
8 get where we are? Well, the way I think about
9 this, spectrum policy, together with just about
10 every other policy the FCC enforces, began in 1912.

11 And I think that's why when you walk inside the
12 Commission you see these big roiled waters that are
13 -- and you say why is that? That's the wake of the
14 Titanic when it went down.

15 (Laughter.)

16 In 1912, the Titanic sank and the
17 government seized the airwaves. The story that
18 went out and it may be true, I don't know how we
19 could verify it, is that the Marconi Wireless
20 Telegraph Company received signals of distress from
21 the Titanic, but was unable to relay those signals
22 to public safety personnel because there was so
23 much interference along the East Coast from nascent
24 commercial broadcasters who had heard about this
25 wreck and started putting out some chatter on the

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1 airwaves and so the rescue signals were to some
2 extent drowned out. As a result of that, whether
3 that story is true or not, Congress believed it and
4 they passed the Radio Act of 1912 which laid down
5 this very fundamental principle that no one could
6 broadcast without a federal license.

7 At the same time, I think the Radio Act
8 of 1912 inaugurated a series of spectrum policy
9 traditions that continued to the present day. Let
10 me mention a few of them.

11 The first several I want to mention, I
12 think we've come to regret, but not all of them.
13 One thing that traces all the way back to 1912 is
14 the fact that spectrum policy is largely reactive,
15 not planned. Again, both the Chairman and
16 Commissioner Abernathy have already sounded this
17 theme and I'm not going to apologize for repeating
18 some of the things they're saying. Maybe it would
19 help to underscore the wisdom that I believe they
20 brought to this matter.

21 For example, although it was a spectrum
22 crisis in common carrier type operations that led
23 to the Radio Act of 1912, by the time World War I
24 was over, all the spectrum policy issues were about
25 AM broadcasting. It has always been a reactive and

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1 never a planned system, spectrum policy in this
2 country.

3 Secondly, spectrum rules have been
4 typically been command and control rules. Do this,
5 don't do that, do it this way, don't do it that
6 way, use this kind of an antenna, point it in that
7 direction, not a rule that specifies you have a
8 certain kind of right or you have a certain kind of
9 duty not to interfere with someone else. Again,
10 Commissioner Abernathy, I think, already sounded
11 that theme.

12 Third, ever since the Radio Act of
13 1912, we've had an awkward and not carefully legal
14 worked out split between administration of the
15 spectrum for private sector needs and for
16 administration for public safety and national
17 security needs. It's still, at best, a very
18 informal, ad hoc, not legally structured process
19 for determining which spectrum gets used in which
20 of those two type baskets or three, if you prefer
21 to think of it that way.

22 Fourth, at least at the beginning a
23 complete disdain for markets. The Radio Act of
24 1912 had nothing to do with trying to facilitate
25 markets and spectrum and indeed, that tradition

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