

**Remarks By Commissioner Kevin J. Martin
Federal Communications Commission
To The Alliance for Public Technology and The High Tech Broadband
Coalition Policy Breakfast
September 18, 2002**

“Framework for Broadband Deployment”

Good morning. Thank you Rhett and Paul for that kind introduction and for inviting me to speak with you here this morning. I appreciate the invitation and am excited to be here. I am also pleased to see so many familiar faces in the audience.

The Alliance for Public Technology and the High Tech Broadband Coalition do great work, and I hope that you will continue to push for great strides in broadband deployment in the months to come.

As you know, the potential benefits that broadband connections can bring to every American are substantial. As demonstrated in APT’s recent case studies, progress in distance learning, public safety and emergency response, telemedicine, and rural development are just a few of the ways that continued broadband deployment can enrich our lives.

The Alliance for Public Technology has been a vocal advocate of Section 706’s call for deployment of advanced services to all Americans in a reasonable and timely fashion. As the chair of the Federal State Joint Conference on Advanced Telecommunications Services, I appreciate your commitment to Section 706’s goals. The Joint Conference has been working hard to identify ways to further deployment, especially to rural and traditionally underserved areas.

In fact, we held a Joint Conference town meeting in Greenville, North Carolina last spring to examine broadband deployment in rural areas. As a part of the program, we visited the East Carolina University Medical Center in Greenville.

Their telemedicine capabilities were very impressive. We saw a doctor diagnose and treat a patient across the state using a high speed

connection. He was able to listen to the patients' heartbeats, look into their ears and throats, and prescribe medication for the symptoms despite being miles away. I look forward to further development in telemedicine so that all Americans can enjoy the highest quality medical services. But telemedicine is only one of the potential benefits Americans can experience from greater high-speed connections.

In fact, telecommunications has been responsible for much of this nation's economic growth during the past decade. The availability of advanced telecommunications is essential to the economy in the 21st century, dramatically reducing the costs of exchanging information, improving efficiency and productivity, and allowing previously local businesses to serve the world. I am confident that broadband deployment will lead to a new period of growth, and I believe we need to make broadband deployment a national priority.

Last October, I set out several core principles that I believe should govern our broadband and competition framework. In my view, these principles still remain relevant today.

Let me review those principles and discuss how you can help me and my colleagues take quick action on advancing broadband deployment and facilities based competition:

I. Establish Stable, Reliable, and Fast Regulatory Environment

These are turbulent economic times for the telecom industry. The Commission can contribute to market stability by establishing a more stable and reliable regulatory environment. Broad proceedings that remain pending for extended periods can contribute to uncertainty. Protracted uncertainty could prolong the financial difficulties. Regulatory uncertainty and delay can function as entry barriers in and of themselves, limiting investment and impeding deployment of new services.

Particularly given the current financial conditions, we should act quickly on our major pending rulemakings. Prompt decision making will provide greater certainty and stability to the marketplace.

We should work to be faster and more reliable in our decision making. Prolonged proceedings with shifting rules ultimately serve no one's interest, regardless of the substantive outcome. It is time for the Commission to take action on the UNE Triennial, performance measures, and broadband proceedings.

II. Focus on Facilities-Based Competition

I believe the government – particularly the Commission – should place a higher priority on facilities-based deployment and competition.

In the past, the Commission adopted a framework that may have discouraged facilities-based competition, allowing competitors to use every piece of the incumbents' network at super-efficient prices. This regime creates significant disincentives for the deployment of new facilities that could be used to provide broadband. Under such a regime, new entrants have little incentive to build their own facilities, since they can use the incumbents' cheaper and more quickly. And incumbents have less incentive to build new facilities, since they must share them with all their competitors at regulated prices.

The goal of the Telecommunications Act was to establish a competitive and deregulated environment. But to get to true deregulation, we need facilities-based competition. Without it, you will always need a regulatory body to set wholesale and retail prices.

Thus, I believe we need to evaluate the broadband deployment issues with an eye toward what decisions, within the framework of the Act, will help spur investment in facilities.

Contrary to what some may argue, I believe such a framework would not favor any particular industry. For example, to facilitate CLEC deployment, detailed and strict enforcement of collocation rules is required. In the same vein, additional guidelines and performance measures for provisioning elements of the incumbent's network that are essential for

competitors, such as the local loop, are required. Such rules are necessary for CLECs to gain access to the incumbent's network needed to deploy their own facilities

On the other hand, the Commission needs to finish its reconsideration of how to apply the necessary and impair standard used to determine which elements must be unbundled.

As many of you know, the U.S. Court of Appeals for the DC Circuit recently remanded the *UNE Remand Order* – the FCC's most recent effort to set out a list of network elements that incumbent local exchange carriers must make available on an unbundled basis to competing carriers. The Commission sought rehearing of the DC Circuit's decision, but that was denied a few weeks ago.

The Court criticized the FCC's unbundling requirement as being overly broad. The Court found the FCC had failed to take into account the competitive nature of particular geographic and customer markets.

Before the Court's recent decision, the FCC had already started a proceeding to review how incumbent carriers should provide network access to requesting carriers on an unbundled basis.

The question is where do we go from here? How do we encourage the building of the next generation of networks, with even higher speeds – the kind of networks that can handle content such as video-on-demand, which are likely to lead to much greater adoption by the public? How do we continue to establish a framework that facilitates competition?

This calls for a delicate balance: We need to make sure that incumbent networks are open to competition, but, at the same time, provide incentives for both incumbents and new entrants to build new facilities.

For example, if the FCC chooses to establish geographic, more granular unbundling standards, should we adopt broad rules that will afford state commissions some flexibility to examine market conditions within the states?

What level of granularity is appropriate? To the extent an element is deemed no longer necessary, is that decision made nationally, regionally, or on a central office by central office basis?

How can we develop a transition for the impact that these rules may have? To the extent that some elements are no longer available (a switch, for example), should we slowly transition prices of those elements up to wholesale rates?

How should our standard apply to elements that are readily available from CLECs? Even if a switch is readily available from alternative carriers, is electronic loop provisioning necessary to ensure continued access? And how should our standard apply to new facilities and infrastructure being built by the ILECs?

These are the questions the Commission is currently grappling with. In assessing these issues, it is important that we at the Commission hear from you. We need a constructive dialogue with the industry to help us determine how we should be making these judgments. The next six to eight weeks are critical, and I encourage all of you to come see me and all of my colleagues to give us your insights into how we should be addressing these issues. What steps should we take to continue to foster competition, encourage deployment, and create a viable wholesale market?

III. Remove Financial Disincentives to Deployment

I also think the government should be focusing on eliminating other financial and regulatory disincentives to broadband deployment that already exist.

Specifically, I believe the government needs to change the way it taxes and regulates the provision and consumption of broadband services.

There are several different legislative proposals for providing direct and indirect financial incentives for broadband deployment. I agree that more targeted relief, such as much-needed reform and modernization of our depreciation schedules for investment in technology, could help spur deployment.

More importantly, however, I believe the government should first commit itself to exercising self-restraint in placing additional financial burdens on broadband.

Currently, at every level, government too often sees broadband deployment and telecommunications more generally as a potential revenue stream. In fact, one of the headlines in today's Wall Street Journal highlights the new taxes and fees that are assessed on broadband and telecommunications.

From federal and state excise taxes – the kind of taxes traditionally reserved for decreasing demand for certain products, such as alcohol and tobacco – to local franchise fees, which are sometimes designed to recoup more than the costs governments bear for such services as repairing streets, governments impose taxes that actually discourage demand and therefore deployment.

To truly help spur broadband deployment, every level of government should be committed to minimizing and eliminating these excess financial burdens. And this includes the FCC.

For example, I do not support the FCC's proposal to extend universal service contributions to providers of broadband Internet access.

In my view, the contribution requirement is essentially an Internet access tax that represents an unnecessary financial burden on service providers and actually creates a barrier to broadband deployment.

I know that APT has indicated some support for this idea as a way to advance broadband deployment. But I urge caution. I note that the Universal Service Joint Board rejected the idea of using universal service funding as a means of encouraging broadband deployment. Therefore, such broadband or Internet access “contributions” to the universal service program would be used to support the provision of phone service. They would not be used to support the deployment of broadband facilities. I do not believe that the Commission should be taxing the use of broadband services if we are not also using these funds to encourage further deployment.

IV. Remove Regulatory Barriers

For competitive carriers, many of the regulatory hurdles occur at the state and local levels. These include local rights of way, permits for zoning and tower siting, and franchise fees. Many of these local restrictions are the most cumbersome and difficult for broadband providers to navigate through. Some state and local governments – and the federal government with respect to federal lands – could be more proactive in facilitating deployment by streamlining these permitting processes.

In addition, several states are evaluating their own local communities to determine those that are more open to broadband deployment and those that are not. I hope that this kind of effort to spotlight local communities that may be impeding deployment and those that are facilitating it will spur all officials to take a more critical look at their existing regulations.

I hope that we will be able to continue to explore these issues at the Commission's upcoming forum on rights-of-way and broadband deployment in October.

Conclusion

By doing all of these things, we can begin to remove financial disincentives and regulations that discourage broadband deployment. I recognize that the steps I have outlined are no “silver bullet” solution. But by following all of them, and working together and with industry, I believe we can make an important difference in helping achieve our common goals, so eloquently stated by APT, of “connecting each to all.”

Thank you again for allowing me to spend a few minutes with you this morning. I am happy to answer any questions you may have.