

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*

I support the Commission's determination that advanced telecommunications capability is being deployed on a "reasonable and timely basis."¹ I write separately to emphasize that, while broadband deployment is occurring reasonably, that is no reason to rest on our laurels. To the contrary, I am committed to remaining vigilant in our monitoring efforts and I am encouraged that, notwithstanding our generally positive assessment of broadband deployment, the Commission has recently launched a number of rulemaking proceedings to explore how to eliminate barriers to infrastructure investment and to accelerate broadband deployment.

The Commission has appropriately been concerned about the deployment of broadband facilities in rural areas and other underserved areas. But our most recent data suggest that the digital divide is *narrowing*. The deployment gaps between urban and rural areas and between high-income and low-income households have narrowed significantly since the issuance of our last Report.² To be sure, deployment still needs to improve in rural areas and among low-income households. But given our conclusion in the *Second Report* that the deployment of advanced telecommunications capability was occurring on a reasonable and timely basis, the significant improvement since that Report demonstrates that such deployment — while not perfect — remains "reasonable and timely."

As the foregoing Report recognizes, our information concerning broadband deployment is imperfect. To avoid imposing undue burdens on providers, the Commission permitted providers to report subscribership (which in turn reflects their deployment of facilities) at a highly aggregated level. While the Commission's data-collection requirements prevent us from assessing the full extent of subscribership or facilities deployment within particular zip codes, third-party data confirm the conclusion that providers are continuing to deploy facilities throughout the country.³ Moreover, the Commission already has launched a proceeding seeking comment on the efficacy of our data-collection requirements, so if there improvements we can make without imposing undue burdens on providers, we are well-positioned to do so.⁴

In addition, there are strong indications that the gap between broadband "haves" and "have-nots" will continue to shrink as a result of technological developments. Perhaps most

¹ See Telecommunications Act of 1996, § 706, Pub. L. 104-104, Title VII, 110 Stat. 153 (Feb. 8, 1996) (reproduced in the notes under 47 U.S.C. § 157).

² See Report, *supra*. at ¶¶ 35-39.

³ See *generally id.* at ¶¶ 89-124.

⁴ See *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Second Notice of Proposed Rulemaking, 16 FCC Rcd 2072 (2000).

promisingly, high-speed satellite services are now available in all 50 states.⁵ Local exchange carriers also appear to be making progress in extending the reach of their DSL services through new technologies.⁶ And other service providers, such as electric utilities, are developing innovative means of reaching rural consumers.⁷

Despite this evidence of reasonable and timely deployment — particularly in comparison to the rollout of other new technologies and services⁸ — the Commission is considering an impressive array of actions to encourage further broadband deployment. Indeed, having made broadband deployment a top priority, the Commission is leaving no stone unturned in its consideration of measures that will encourage the deployment of advanced telecommunications capability to all Americans as soon as possible. Thus, the Commission is proceeding as if the existing pace of deployment *weren't* reasonable, making the Report's assessment of reasonableness academic. As the Report details, the Commission has launched or soon will launch rulemakings that explore (a) the impact of our section 251(c) unbundling obligations on telephone companies' incentives to deploy new facilities; (b) the appropriate regulatory treatment of incumbent LECs' broadband transmission services and Internet access services; and (c) the appropriate regulatory treatment of cable operators' broadband Internet access services.⁹ I enthusiastically support the Commission's further decision to consider, in consultation with industry and our state and local colleagues, possible means of removing barriers to deployment associated with local right-of-way regulation.¹⁰ And the Commission has identified a range of other actions that have the potential to promote broadband deployment.¹¹

Finally, I recognize that subscription rates lag far behind our estimates of infrastructure investment and facilities deployment. Many commenters are discouraged that the “take rate” for broadband remains less than 10 percent, even as estimates of availability approach 80 percent. But we must keep in mind the Commission's role under the 1996 Act. Section 706 directs us to encourage the deployment of advanced telecommunications *capability* — not to ensure that consumers purchase particular services. As one competitor put it, convincing large numbers of consumers to purchase broadband services “is an issue for sales and marketing arms of broadband providers, not for regulators.”¹² I am confident that, as providers continue to introduce new applications and better educate consumers about the many benefits of broadband, subscribership figures will increase. But my job as a regulator is to ensure only that the necessary facilities are being deployed. As the Report demonstrates, such deployment is occurring on a reasonable and timely basis.

⁵ See Report, *supra* at ¶ 115.

⁶ *Id.*

⁷ *Id.*

⁸ See *id.* at ¶ 124 (comparing rollout of the telephone and television).

⁹ *Id.* at ¶¶ 151-54.

¹⁰ *Id.* at ¶¶ 166-68.

¹¹ *Id.* at ¶¶ 169-77.

¹² Covad Comments at 3.