

Text As Prepared

Remarks of Kevin J. Martin Commissioner Federal Communications Commission At the National Summit on Broadband Deployment October 26, 2001

“Framework for Broadband Deployment”

Encouraging broadband deployment should be a fundamental priority of the Commission and government in general. The availability of advanced telecommunications is essential to the economy in the 21st century, dramatically reducing the costs of exchanging information and allowing previously local businesses to serve the world. Telecommunications has been responsible for much of this nation’s economic growth in recent years. 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.

I am not speaking of making industrial policy. Rather, I think the government should be focusing on eliminating disincentives to broadband deployment that already exist. Many have said that we need to be cautious so that we, as regulators, do not stymie the deployment of broadband services and technologies. But I do fear that, in many unintended ways, we already are. Specifically, I believe the government needs to change the way it taxes and regulates the provision and consumption of broadband services.

Remove Financial Disincentives to Deployment

There are several different legislative proposals for providing direct and indirect financial incentives for broadband deployment. I share Chairman Powell’s skepticism and concern for using such tools of industrial policy. I also 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. 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.

Focus on Facilities-Based Competition

Similarly, 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 some disincentive to build new facilities, since they must share them with all their competitors.

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 facilities investment. Moreover, as we saw on September 11, there are network reliability and security advantages to having multiple facilities-based competitors.

Contrary to what some may argue, I believe such a framework would not favor any particular industry. For example, to facilitate CLEC deployment, more detailed and strict enforcement of collocation rules would be required. Such rules are necessary for CLECs to gain access to incumbent offices in order to deploy their own facilities, and I was pleased

to support the Commission's collocation order at my first open meeting. In the same vein, I believe the Commission needs to establish additional guidelines and performance measures for provisioning elements of the incumbent's network that are essential for competitors, such as the local loop. On the other hand, the Commission might reconsider how it should apply the necessary and impair standard used to determine which elements must be unbundled. This will be particularly important when considering how this standard should apply to elements that are readily available from CLECs and to new facilities and infrastructure being built by the ILECs.

Establish Stable, Reliable, and Fast Regulatory Environment

Finally, I believe more needs to be done to establish a stable, reliable, and speedy regulatory environment. At every level of government, we ought to work to remove regulatory underbrush – burdensome regulations that may be impeding deployment. For competitive carriers, many of these hurdles occur at the state and local levels. These include local rights of way, permits for zoning and tower siting, and franchise fees that I have already discussed. 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. I have recently learned that there are several state PUCs who are evaluating and publishing a list of their own local communities 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.

And at the FCC, we, too, need to critically reevaluate our rules to determine whether they are necessary in today's regulatory environment. For example, our accounting and auditing rules serve little purpose in a price-cap regulatory framework. And why should the FCC separately regulate depreciation rates for common carriers? I supported our recent efforts to streamline these regulations and believe the Commission must continue to identify anachronistic regulations that may be stifling competition generally.

Moreover, we need to focus not only on changing our regulations, but also on changing the regulatory environment. Regulatory uncertainty and

delay function as entry barriers, limiting investment and impeding deployment of new services. We should work to be faster and more reliable in our decisionmaking. Prolonged proceedings, with shifting rules – for example our recent proceedings on reciprocal compensation – ultimately serve no one’s interest, regardless of the substantive outcome.

Thus, we ought to complete the cable open access proceeding. Personally, I would be very cautious about applying that type of legacy regulatory regime to a new and innovative service. I believe that we should be striving to achieve regulatory parity by providing deregulatory relief. But regardless of the outcome, I believe it is incumbent on the Commission to provide regulatory certainty and finish that proceeding in the near future.

We should also consider changing our enforcement procedures to make an effective and reliable rocket docket – that all parties can use to resolve disputes quickly.

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.