

**Opening Statement  
of  
Kevin J. Martin**

**Commissioner, Federal Communications Commission**

**Before the  
Committee on Energy and Commerce  
United States House of Representatives**

**February 26, 2003**

## **Summary of Opening Statement of Kevin J. Martin**

Thank you for this invitation to be here with you this morning. I look forward to listening to the insight you will provide and trying to answer any questions you might have.

In our just-concluded Triennial proceeding, we at the Commission faced an important, but difficult task. As always, our role as Commissioners is first and foremost to implement the Telecommunications Act of 1996 and its deregulatory and market-opening provisions. Yet, we needed to do so against the backdrop of the depressed telecommunications sector.

I believe the Order we adopted last week achieves a principled, balanced approach. It ensures that we have competition and deregulation. It adopts clear rules and immediate regulatory relief for broadband deployment and new investment; it removes the obligation to unbundle switches for business customers immediately; and it provides a detailed roadmap for eliminating the remaining unbundling obligations for network elements. The decision also preserves existing competition for local service – the competition that has enabled millions of consumers to benefit from lower telephone rates.

I believe in limited government. I believe that competition, not regulation, is the best method of delivering the benefits of choice, innovation, and affordability to consumers. The 1996 Act puts in place a policy that requires local markets be opened to competition first, and then provides for deregulation. The Commission's decision last week faithfully implemented this policy. Where facilities-based competition exists – for example, from cable modems in the broadband market or CLECs in the business market – we have provided deregulation. We also have preserved existing voice competition where competitors are impaired. That is what the law and the courts require.

In sum, the FCC's Order achieved a balanced approach that provides regulatory relief for incumbents' new investment in advanced services while ensuring that local competitors will continue to have the access they need to provide service to consumers. I believe these steps will benefit consumers and the industry.

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Thank you for this invitation to be here with you this morning. I look forward to listening to the insight you will provide and trying to answer any questions you might have.

As you know, the telecommunications industry has been responsible for much of the nation's economic growth during the past decade. The availability of advanced telecommunications is essential to the continued strength of the economy in the 21<sup>st</sup> century.

Today, however, the telecommunications sector is struggling. The bursting of the dotcom bubble coupled with the downturn in the overall economy have had a profound effect on the industry. Investors are reluctant to risk capital in the technology sector. Telecom and technology companies continue to struggle to get back on their financial feet. Carriers have postponed the purchase of equipment and infrastructure necessary to deploy advanced services to consumers, leaving manufacturers to suffer the consequences. And most importantly, hundreds of thousands of employees throughout the nation have lost their jobs.

In our just-concluded Triennial proceeding, we at the Commission faced an important, but difficult task. As always, our role as Commissioners is first and foremost to implement the Telecommunications Act of 1996 and its deregulatory and market-

opening provisions. Yet, we needed to do so against the backdrop of the depressed telecommunications sector.

Last week's decision regarding the future of local telephone competition was the most difficult of my tenure at the FCC. Throughout the decision making process, I believed we needed to craft a balanced package of regulations that would help revitalize the industry by spurring new investment in next generation broadband infrastructure while also maintaining access to the network elements necessary for new entrants to provide competitive service. We needed to create a regulatory environment that would help renew investment, promote competition, and deregulate where competitive forces prevail, thereby enabling competition to provide consumers with the benefits of greater choice and lower prices.

I believe the Order we adopted last week achieves a principled, balanced approach. It ensures that we have competition and deregulation. It adopts clear rules and immediate regulatory relief for broadband deployment and new investment; it removes the obligation to unbundle switches for business customers immediately; and it provides a detailed roadmap for eliminating the remaining unbundling obligations for network elements. The decision also preserves existing competition for local service – the competition that has enabled millions of consumers to benefit from lower telephone rates.

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### **Deregulating Broadband and Attracting New Investment**

I have long believed that the Commission should make broadband its top priority. It is critical to create a regulatory environment that encourages new investment and the deployment of new broadband infrastructure.

Today, cable and DSL providers compete vigorously for new residential customers. In fact, cable operators are the predominant providers of residential broadband; approximately two-thirds of all broadband consumers subscribe to cable, not DSL. Yet it has been the incumbent phone companies – not the cable operators – that have been required to unbundle their network to competitors.

Incumbents, like cable operators, should have the proper incentives to invest the capital necessary to make 21<sup>st</sup> century broadband capabilities available to all American consumers. This in turn would allow more consumers to experience the benefits of next generation services and applications that new broadband networks can offer.

The Commission's Triennial Review decision brings us closer to that goal by providing significant regulatory relief for broadband and new investment. It removes unbundling requirements on all newly deployed fiber-to-the-home, allowing for deployment of infrastructure to provide the broadband and video services of tomorrow. It provides significant regulatory relief for new hybrid fiber-copper facilities, deregulating the fiber and the new packet-based technologies used to provide broadband services today. In fact, our decision essentially endorses and adopts in total the High Tech Broadband Coalition's proposals for the deregulation of fiber to the home and any fiber used to deliver new packet-based technology.

The Commission's decision also adjusts the TELRIC, or "wholesale," prices for all new investment in equipment, even those used to provide telephone service.

Companies desiring to push fiber further to the home and deploy new infrastructure will now have the opportunity. And more consumers will be able to enjoy the fast speeds and exciting applications that a true broadband connection offers.

### **Preserving Local Competition**

The Commission's decision also works to preserve and encourage local competition. By maintaining the ability of new entrants to access elements of the incumbent network that are essential for competitive services, consumers can continue to receive the benefits of competition. Such an approach is crucial if we are to ensure that

all areas throughout the nation continue to have access to the benefits of competitive choice.

The 1996 Act requires that competitors have access to pieces of the incumbents' networks when they are "impaired" in their ability to provide service. The Court of Appeals has made clear that in analyzing impairment, "uniform national rules" may be inappropriate. Rather, one needs to take into account specific market conditions and look at specific geographic areas. The Commission's order follows these admonitions, putting in place a granular analysis that recognizes that competitors face different operational and economic barriers in different markets. For example, the barriers competitors face in deploying equipment and trying to compete for residential customers in Manhattan, Kansas are different from the barriers faced to compete for business customers in Manhattan, New York.

Although some of my colleagues disagreed with certain aspects of this analysis, this disagreement primarily concerns the switching network element for residential customers. We all agree that states should play a significant role in determining whether impairment exists for transport. We all agree that states should play a significant role in determining whether impairment exists for loop facilities. And, we all agree that incumbents should no longer be required to unbundle switching for business customers.

In the course of the debate surrounding this proceeding, some of my colleagues wished to end the unbundling of all residential switching immediately. I believe such

action would be inconsistent with recent court decisions and the state of competition in many markets. It is true that a significant number of residential telephone customers now receive service from a CLEC, but *the overwhelming majority of these customers is currently served through an incumbents' switch*. To declare an immediate end to the unbundling of all switching in every market in the country would ignore the Court's mandate for a more granular analysis and effectively end residential competition. Instead, the decision treats residential switching as we do other network elements, removing unbundling obligations after an analysis of the local market to determine whether competitors are impaired.

The Commission must faithfully implement the Act and be responsive to the courts. Our decision in the Triennial proceeding addressed the court's recent criticism of our existing unbundling framework, while still keeping our eye on Congress's goal of ensuring that local markets are truly open to competition.

## **Conclusion**

In sum, the FCC's Order achieved a balanced approach that provides regulatory relief for incumbents' new investment in advanced services while ensuring that local competitors will continue to have the access they need to provide service to consumers. I believe these steps will benefit consumers and the industry.

Again, thank you for inviting me and my colleagues to be here with you today.