

Remarks of
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National Association of Regulatory Utility Commissioners

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Introduction

Thank you, Commissioner Nelson for that kind introduction. And thank you all for inviting me to speak with you today. It is a pleasure to be here today among my friends from the State Commissions. I've met many of you over the years, and it is great to finally be able to put faces to the some of the others I've heard on our conference calls over these last several weeks. As you know, we've been doing some heavy lifting at the Federal Communications Commission. Our most recent decision on the Triennial Review will add to the heavy lifting that I know you do in your states every day. I guess that this might be an example of that old adage "be careful of what you ask for, because you just might get it!" But I know you are prepared and up for the task.

Triennial Review

Let's chat a bit about the Triennial Review and how we arrived here. Some of you heard me testify before the Senate Commerce Committee that I view our relationship in implementing the Act of 1996 as a "partnership." When I look at the Act, I recognize so many places where Congress clearly intended to involve the States in implementing both its competitive and universal service provisions.

On the competition side of the coin, under Section 251, you serve as the arbitrator for interconnections when the negotiating parties can't, or I suppose, won't, reach agreement. In a hard-fought judicial battle, the Supreme Court clarified that yes, you do have the ratemaking authority over the unbundled network elements, or UNEs. Under Section 271, you have a consultative role in determining whether it is appropriate to grant long distance relief to the requesting Bell Company. You clearly are integral to the process of implementing competition policy.

The FCC has ultimate responsibility for determining how the interconnection process will work. The 1996 Act places in our hands the responsibility for determining what elements of the incumbent LECs' network competitive local exchange carriers must have access to. We determine what are the elements without which they would be impaired in their ability to provide services. The Act clearly also allows us to delegate authority to the State Commissions. It is clear to me that section 251(d)(3) of the Act, "Preservation of state access regulations," actually encourages a strong role for the states. As all of you probably know by now, if you have had a

chance to review the Commission's press release on our Order, you will have a major role in this process.

I've been accused of being a "big fan" of UNE-P. That is not the case. I am a big fan of the statute. The statute directs us to assure that if any competitors are impaired without access to particular network elements then they remain available until the impairment no longer exists. And I am a big fan of the states. I trust you to help us make that determination in as precise a manner as possible.

The USTA Court required us to be "granular" in our findings. Some elements require a greater deal of up close and personal oversight, and that is where State Commissions come in. I strongly believe that the State Commissioners are, in fact, closer to the ground and should play a key role in determining if access to a particular network element is necessary. You are best positioned to determine whether a carrier is impaired in delivering a service without access to a particular network element. I must emphasize that the delegated role that you will have in the process isn't about finding perpetual impairment. I fully expect you will surprise a lot of your skeptics that claim this is simply an exercise in keeping UNE-P alive forever. You will prove it is an exercise in getting it right and providing a smooth transition to facilities-based competition. It is about making the best decision regarding whether competitors will be impaired without access to particular elements. I expect many of you will find many areas with no impairment where we have made a presumptive finding of impairment. I welcome your expert decision-making. This allows for the meaningful participation of the states in the development of local competition as Congress intended.

Universal Service

Let's turn our attention to universal service and talk about our partnership there. As I said earlier, you are also critical participants on the universal service side of the coin. We use a 410(c) Federal-State Joint Board process to address universal service issues. That gives us the opportunity to work together to solve many challenges.

As many of you know Commissioner Copps and I began a rotation schedule on the Federal-State Joint Board on Universal Service that allowed me to join it recently. Commissioner Copps has done an outstanding job of leading the fight for Rural America and for universal service, so it's a great honor to follow him. Since there is only one slot for a Democrat, Commissioner Copps and I agreed to rotate so that I could join this year and he will return at some point in 2004. Regardless which one of us officially sits on the Joint Board, we'll confer closely on this issue. We already held an informal meeting already last weekend, and I look forward to more opportunities to sit down and address issues such as portability with your colleagues Nan Thompson, Bob Rowe, Thomas Dunleavy, and Lila Jaber, and with consumer advocate Billy Jack Gregg.

As you will know, Congress also gave you specific roles outside of the Joint Board process. States are required, under the law, to ensure that carriers requesting eligible telecommunications carrier (ETC) status make such designations only if they serve the public interest, convenience and necessity. That applies in areas served by both non-rural carriers and rural carriers, in

addition to a more rigorous public interest determination for areas served by rural carriers, before granting ETC status.

As we all know, this fund is growing. And it is true that its growth has allowed for some fantastic things to happen. We've succeeded in wiring the classrooms through the Schools and Libraries program. And I understand from USAC that the Rural Health Care program has turned a corner and is becoming the wonderful program it was intended to be. We've helped low income and rural customers acquire and retain access to the best communications network in the world. But the job is never done. The fund continues to grow, and we must remain vigilant about that.

The problem is that the fund is growing, while the current revenue source is shrinking. That is why under the current contribution mechanism and although we do not yet have the current revenue figures before us for the second quarter, we estimate that the contribution factor for the second quarter of 2003 might be 8.75%. So end users are seeing larger and larger line items on their bills to support this fund. In fiscal year 2002, the total USF was \$5.3 billion dollars. Don't get me wrong, I believe that we all should pay our fair share to ensure that all Americans have access to the best quality services at reasonable rates. But there are a few things we can do.

One step we are taking is to determine whether the current contribution mechanism, based on the revenues of the carriers, is the best way to fund the universal service mandate. I have not made any decisions on this issue, but look forward to seeing the comments and replies that are currently being filed in this open docket. Another thing we might consider is whether to include other providers in the category of contributors.

We also must remember the public interest in the ETC process. At the very least, we must ask whether granting ETC status to a competitive carrier will bring benefits to a community that it does not already have and what effect it will have on the overall size of the fund, and thus on the consumers' bills. So, a threshold question is, does the benefit to the consumer outweigh the ultimate burden on the consumer? Although our decisions regarding access to funding must be competitively and thus technologically neutral, we cannot be neutral when it comes to the protection of the public interest. And I'm concerned that we haven't been careful enough in ensuring that end users are not ultimately paying extra for forced or artificial competition.

I view the Act as ensuring that all Americans, both urban and rural, receive access to the best network in the world at reasonable and affordable rates. There are two ways to get there: universal service and the competitive marketplace. We should not advance one to the detriment of the other. This is the construct of the Act, and it is the philosophical construct I will use as a basis for approaching the universal service issues as a member of the Joint Board and as a member of the FCC.

To wrap it up, I don't agree with those who charge you can't or you won't be up to the task of carrying out the roles Congress or the FCC delegated to you. You are outstanding, dedicated public servants. You and your predecessors have a long and proud history of successfully integrating the market-opening provisions of the Act. I fully expect you will succeed once again

in fulfilling the challenges before you in implementing competition and universal service policies.

I look forward to working with all of you as we tackle together the challenges ahead in a true partnership.