Remarks by Commissioner Kevin J. Martin
Federal Communications Commission
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Introduction

Thank you Andy for that kind introduction.

A special word of thanks to New Mexico State University's Center for
Public Utilities Advisory Council for inviting me to speak, and for bringing
this stellar group of state regulators-- and industry expertise-- together to
discuss some of the critical issues facing the telecom and energy industries.

The conference agenda "Current Issues 2003" is ambitious and timely. With
panels on Broadband Regulation, Universal Service, and the state of the
Telecom marketplace - it looks like you will cover the waterfront on many
of the core and complex telecom issues currently facing the FCC and state
commissions.

I would like to share some of my thoughts on these and some other topics
that I believe will involve and impact states and local carriers.
This morning I would like to focus on Broadband, universal service and
public safety.

Triennial Proceeding

Let me start with the proceeding that has gotten the most attention recently –
the Triennial Review. In particular, today I would like to focus in on an
aspect of the decision that has received less attention – broadband
deregulation.

I believe that the Triennial Review decision achieves a principled, balanced
approach. It ensures that we have competition and deregulation. We
deregulate broadband, where there is competition from cable, making it

easier for companies to invest in new equipment and deploy the high-speed services that consumers desire. We preserve existing competition for local telephone service, the competition that has enabled millions of consumers to benefit from lower telephone rates.

And we accomplish these goals in a manner that is consistent with the statute and the rulings of the courts. Where facilities-based competition exists, for example, from cable modems in the broadband market or competitors in the business market, the Order deregulates. Where competition is still dependent on use of the incumbent's network, the Order requires that competitors be allowed access to the necessary parts of that network so that they can continue to provide phone service to consumers.

I believe these steps will benefit consumers and the industry.

Broadband

I have long advocated making broadband the Commission's top priority. In fact, the very first conference I participated in was hosted by Ray Gifford, where Tom Tauke first proposed the "old wires, old rules; new wires, new rules" framework that shaped so much of the broadband debate.

During the following year and a half, carriers and equipment providers argued for the need to create a regulatory environment that encourages new investment and the deployment of new broadband infrastructure. In providing ubiquitous high-speed connectivity, broadband technology would make possible the next generation of IT innovation and productivity.

Some even estimated that accelerated broadband deployment could provide hundreds of billions of dollars worth of economic benefits through increased efficiencies, as well as through new investment in fiber, switches, software, and processors. Such economics benefits would be critical to get the telecommunications, technology, and manufacturing sectors back on their feet.

Many argued that the Commission's rules were a barrier to such development, creating an unlevel playing field which favored cable. Indeed, Cable operators and DSL providers compete vigorously for residential broadband consumers. In fact, unlike in the voice market, phone companies

are not the predominant providers of residential broadband service; cable operators are. Yet the incumbent phone companies—not the cable operators – were the ones that had to unbundle their networks to competitors.

To address this disparity, some advocated changes to our rules based on several core principles:

> First-- that narrowband voice rules should not be applied to broadband data.
> Second - - that the government should not pick winners and losers among rival technologies or industries. (i.e., telco's and cable)
> Third - - that without incentive, private enterprise will not assume risk.

In the end, the Commission agreed with these principles. It agreed to refrain from applying voice rules to broadband data. It agreed to level the playing field between phone companies and cable companies competing to provide broadband services. And it agreed that phone companies, like cable operators, should have the proper incentives to invest the capital necessary to make 21st century broadband capabilities available to all American consumers.

In our recent decision in the *Triennial Review* proceeding, the Commission tried to create a National broadband regulatory framework that would stimulate and promote deployment of broadband infrastructure.

The decision frees incumbent LECs from unbundling requirements on all newly deployed fiber to the home. It provides relief for new hybrid fiber-copper facilities and thus removes disincentives for incumbent LECs to deploy next-generation broadband networks. It frees incumbent LECs from unbundling requirements on providing line sharing access. And, it adjusts the "wholesale" prices for all new investment. In fact, the Commission's decision endorses and adopts in total the High Tech Broadband Coalition's proposals for the deregulation of fiber to the home and any fiber used with new packet technology.

In last month's decision we altered the regulatory landscape for broadband facilities. We provided sweeping regulatory relief to promote new

investment. The deregulation and the related investment incentives many called for has arrived.

I remain hopeful that our Broadband decision will lay the foundation to help restart investment in next-generation networks and facilitate the deployment of advanced services to all consumers.

Universal Service

In my view, Universal Service reform appears as one of the next important telecommunications issue facing the Commission.

Universal Service and the issues confronting rural America are of a special personal interest to me. I grew up on a gravel road outside of Charlotte, North Carolina. My address was simply Rural Route 3 and I can remember when it was a long distance call for my mother to call her sister who lived in the same town. So I understand the importance of having telecommunications and advanced services for folks that live in rural and remote areas.

Ensuring that all Americans have access to affordable basic telecommunications and advanced services is a critical mission. It should be -- and is -- a fundamental priority for our government.

Telecommunications has been responsible for much of this nation's economic growth in recent years. And hopefully, continued broadband deployment will lead to a new period of growth.

But to fully recognize and take advantage of this growth, we must make certain that all Americans are given the opportunity to participate in the information revolution. And so, we must continue to encourage deployment to underserved and rural areas.

Joint Board/FCC Actions

For nearly 70 years--- the mechanism that has supported the deployment of infrastructure and connectivity to rural America has been this country's commitment to a policy of universal service.

Congress has made clear that this policy remains a fundamental priority. It has required the Commission to ensure that consumers in all regions of the Nation, including those in rural, insular and high cost areas, have access to telecommunications services that are reasonably comparable to those services in urban areas.

Here are some of the universal service issues the Commission is currently addressing.

<u>Universal Service—Definitions</u>

Last summer, the Joint Board adopted a recommendation on what services should be supported by the federal universal service program. That decision rejected calls to provide explicit support to advanced services. I generally supported the recommendation.

But, I also supported a proposal to gather more data on how the federal universal service program could assist the deployment of advanced services in rural and high cost areas of the country. I believe that the universal service program should continue to promote investment in rural America's infrastructure. Some have argued that the Commission should at least support the removal of barriers that hinder access to advanced services that are comparable to those available in urban areas.

Services designated for universal service support must reflect evolving technology. We can achieve this result by having the necessary data to help understand the state of technological developments, network infrastructure deployment, and any potential barriers that may exist. Without such data, the Commission will be hard pressed to address whether these are changes to the Universal Service program that could be made to facilitate deployment of advanced services and whether rural America could benefit from that support.

<u>Universal Service – Portability</u>

Another critical issue facing the Commission in this area is the availability of high-cost universal service support to Competitive Eligible Telecommunications Carriers (CETCs).

As you know, a previous Commission decided to allow federal universal service support to be made available, or "portable," to all eligible telecommunications carriers that provide supported services, regardless of technology used. Under these rules, a CETC serving customers in a rural company service area gets the same per-line amount of portable high-cost loop support that the incumbent would receive for serving that customer, based on the embedded costs of the ILEC, regardless of the competitors cost and sometimes even if the CETC is not providing the same service.

Although the Commission's rules limit the overall amount of high-cost loop support available to rural incumbents, they place no such limitations on the total amount of portable high-cost loop support to competitive ETCs. In addition, under the current rules, there is also no limit on the number of supported lines that an individual customer may have.

Finally beyond "portability," granting ETC status to existing carriers, particularly wireless carriers, raises what some call the "customer list" problem. That is, carriers that obtain ETC status and are already providing service to customers within the study area typically request funding for all of the existing customer lines.

When the FCC adopted its MAG order, I publicly questioned the use of universal service support as a means of creating "competition" in high cost areas. In expressing this concern, I questioned the wisdom of a policy that subsidized multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. I also warned that this policy may make it difficult for any one carrier to achieve economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning service fund.

Recent data appears to verify the urgency of this issue.

The number of companies eligible to receive funding during the past year has significantly increased, along with the subsidy. These data show that the amount of support payments to CETCs from the first quarter of 2001 to the fourth quarter of last year has increased from approximately $ 2 million dollars in the first quarter of 2001 to $14 million dollars by the third quarter of last year.

USF portability issues have been raised in several FCC proceedings and in a number of petitions filed at the Commission.

Last November, the Commission asked the Joint Board to review the Commission's rules on high cost support for CETCs, support for second lines, and to examine the process for designating ETCs.

Last month, the Joint Board released a public notice to initiate its review. That public notice seeks comment on several pending petitions that seek changes to the universal service portability rules.

Last month, the Commission also released a public notice seeking comment on the Joint Board Recommendation on the definition of supported services -- that I mentioned earlier – it had a 4-4 split on whether wireless ETCs should provide the same supported services, such as equal access, in order to receive the same high cost support as wireline incumbents.

Well, where does this leave us?

I believe that time is of the essence. I fear that without quick action by the Joint Board and the Commission on these fundamental portability issues, pressure on the fund will only increase.

Last fall, the Joint Board recommendation released a recommendation addressing the universal service support system for non-rural companies that serve rural areas. The recommendation essentially reaffirms the existing support mechanism that bases support on forward-looking costs determined by economic models.

I remain concerned that a mechanism based on costs may not meet the statutory mandate requiring a comparison of rates. I also question what impact, if any, this recommendation may have on policies regarding rural carriers when the Commission revisits the universal service support system for rural carriers.

At the end of the day, the Commission has a legal obligation to achieve reasonably comparable urban and rural rates.

Public Safety

Finally, I would also like to focus on public safety issues – and 9-1-1 in particular. These issues are fundamental priorities for me and require the joint efforts of both carriers and states to fully achieve our goals.

The role of public safety is more critical now than ever. From September 11, we have all become painfully aware of the need to be prepared for threats of terrorism. And we still have the kind of emergencies that have always made public safety critical to our country.

Every level of government must ensure that the public safety community has the resources it needs to meet these challenges. At the FCC, this is part of our statutory mandate. The Commission was created in 1934. In so doing, Congress made clear that one of the Commission's primary purposes is to make communications services available to all in order to "promote safety of life and property."

Under Chairman Powell's leadership, the FCC has taken several steps to strengthen our communications infrastructure to promote public safety. We have also taken steps to ensure that public safety, public health, and other first responder emergency personnel have effective communications services available for emergencies.

Network Reliability and Security

First--- the Commission is moving forward on network reliability and security. In times of crises and in the interest of homeland security, we need to protect against the possibility of network failures. Incumbent and competitive carriers must work together to ensure that critical communications are maintained.

The Chairman has taken important steps to address this issue by rechartering NRIC, the Network Reliability and Interoperability Council. This industry group develops recommendations to assure optimal reliability and security of our public communications systems. NRIC has developed a set of network security best practices and will soon embark on a nationwide outreach program to share these best practices with stakeholders.

Second, the Commission is working hard to improve the ability of public safety officials to communicate effectively, particularly during an emergency.

This is a pressing problem. Indeed, some fear that communications failures between firefighters and police helicopters may have contributed to the tragic deaths of some firefighters at the World Trade Center on September 11.

We are trying to improve "interoperability" between public safety personnel from different departments and jurisdictions. If a city's police department cannot talk to its fire department, we lose the benefit of bringing these different groups together. And such inability to communicate could even cause additional unnecessary danger.

We are also trying to do our part to tackle the "interference" problems that public safety personnel frequently face. Such interference makes public safety communications difficult, and in some cases, impossible.

There are several comprehensive proposals currently on the table, and we hope to resolve this issue soon.

<u>911</u>

But one of our most important missions is to ensure that public safety can respond quickly to citizens in every-day, as well as national, emergencies. The universal emergency number -9-1-1- is a crucial part of that mission.

Our enhanced 9-1-1 or "E-9-1-1" rules require wireless carriers to provide public safety officials not only the phone number of a 9-1-1 caller, but also information on a caller's precise physical location. Carriers must have E-9-1-1 systems fully in place nationwide by 2005.

The importance of E-9-1-1 becomes clearer every day. I'm sure all of you have heard of the recent tragedy in New York. Four teenagers disappeared after their boat sank in the waters off the Bronx. One of the boys had placed a 9-1-1 call from his cell phone. Had there been an enhanced 9-1-1 system in place, emergency units may have been able to locate the boat.

Because of the complexity of deployment and the number of stakeholders involved, deploying E-9-1-1 nationwide by 2005 will take concerted efforts by all of the stakeholders. FCC action alone is not going to get the job done.

On behalf of the Commission, Dale Hatfield completed a comprehensive report on E-9-1-1 deployment at the end of last year. Dale's Report contains a number of important insights and proposals. Among other things, Dale found that "an unusually high degree of coordination and cooperation" will be required. I agree strongly with this point.

There are important roles that all stakeholders, both public and private, must play if we're going to deploy E-9-1-1 nationwide by 2005. In particular, local exchange carriers and states have a critical role to play going forward.

Call for Action

As Dale Hatfield pointed out in his report, some of the biggest operational problems for wireless 9-1-1 deployment concern wireline Local Exchange Carriers. LECs generally serve as 9-1-1 systems operators, providing trunks, facilities, and services necessary to connect to wireless carriers and PSAPS. They also provide Automatic Location Identification (ALI) databases that are used for wireline 9-1-1 and must be upgraded to accommodate wireless data.

Despite the important roles the LECs play, they are currently not addressed by our wireless E-9-1-1 rules. Recently, we have had some complaints of delays and financial difficulties associated with their role. In response, the Commission has made clear that the LECs have an obligation to facilitate wireless E9-1-1 deployment and that we will carefully monitor the situation.

As many of you know, I have been a vocal advocate of preserving the states' role in local telecommunications regulation.   Many of you in the audience have done a great job in these matters, in partnership with the FCC.

But with a significant role comes significant responsibility. And the states have important responsibilities for facilitating E 9-1-1.

First, the states must work cooperatively.

Some problems with E 9-1-1 deployment are not limited to state boundaries. Emergencies don't respect state lines, states must work together to address these problems.

Second, the states must ensure that Public Safety Answering Points or "PSAPs" have the financial resources they need to deploy E-9-1-1.

These are tough economic times for us all. And the budgets of many states and localities are seriously constrained. I know that in some places, funds explicitly collected to pay for E-9-1-1 deployment have been used for other purposes.

We must do better. Public safety is critical and one our most important priorities. We must ensure that public safety officials have the resources they need to do their jobs and protect the public. At the very least, we must maintain the public's trust and use money collected for E-9-1-1 deployment for those purposes.

And third, the states have an important responsibility with respect to the LECs.

The amounts LECs charge PSAPs for the inputs essential to E-9-1-1 generally come in the form of state tariffs. The states need to police these tariffs carefully. They must ensure these charges are fair and not prohibitively expensive.

In conclusion, I believe that we will make nationwide E-9-1-1 deployment a reality. But that requires all of us to work together, creatively and cooperatively.

And to help facilitate that cooperation, the Commission has announced that it will conduct a new coordinated initiative starting with a day-long conference on April 29th.

The Commission will bring industry, public safety and state and local officials together to discuss these issues.

Thank you for your time and attention this morning.