Remarks by FCC Commissioner Kathleen Abernathy
National Summit on Broadband Deployment
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I am pleased to return to the Broadband Summit this year. This is an excellent forum for discussing what may be *the most important* policy issue facing regulators today. I was able to sit in on some of the prior sessions, and the speakers were extremely informative and provided valuable insights on a host of issues relating to broadband deployment.

When I participated in this Summit a year ago, I focused on the need to accelerate broadband deployment by removing regulatory impediments to investment. I am very pleased that, in the Commission's recent *Triennial Review* decision — which I hope will be released in a few weeks — we took bold action to improve incentives to invest in next-generation fiber loop facilities. The Commission also preserved existing access to high-capacity loops, thereby ensuring that facilities-based CLECs will be able to compete.

I thought it would be helpful if I provided a brief summary of this decision and explained my reasons for supporting it. I will then discuss what I think should be the next steps in advancing our national broadband policy.

Triennial Review

As most of you probably know, the Commission decided in the *Triennial Review* to refrain from imposing unbundling obligations on new investment in fiber loop facilities. Specifically, the Commission will not require incumbent LECs to unbundle fiber-to-the-home loops in "greenfield" — or new build — situations. Where the incumbent *overbuilds* existing loops with fiber to the home, or with fiber to a remote terminal, the incumbent will be required to provide only a narrowband capability as an unbundled network element. In other words, incumbent LECs will *not* be required to unbundle a *packetized* broadband channel over fiber-to-the-home loops or hybrid fiber/copper loops.

What this means as a practical matter is that CLECs will continue to get exactly the same UNEs they get today — access to copper loops and access to DS-1 and DS-3 loops over fiber, using a *non-packetized* technology called TDM. In addition, I want to make clear that when I say incumbents are not required to *unbundle* these fiber facilities, I mean that they need not provide them at TELRIC prices. But the Bell operating companies still must make the facilities available to competitors on a wholesale basis, because section 271 requires them to provide competitive access to their loops.

I believe this decision strikes the appropriate balance between the goals of removing disincentives to investment in new infrastructure and of giving competitors access to bottleneck facilities. As I mentioned, CLECs will not lose access to any existing UNEs. We have refused to *extend* new unbundling obligations to the advanced networks of tomorrow. Why? First, because I generally do not support adopting regulations based on what *might* happen, because it is difficult to make accurate predictions about impairment. Second, I believe that those next-generation networks may

never get built if incumbents are required to turn over the fruits of their investment at TELRIC prices.

I did disagree with one aspect of the broadband analysis, which was the decision by the majority to eliminate line sharing over copper loops. Unlike new fiber investment, copper loops are already in place. So giving facilities-based competitors like Covad the ability to share those loops does not deter investment at all. In fact, allowing competitors to offer DSL through line sharing promotes competition *and* investment. If the incumbent wants to find a way to differentiate its service offerings, it can build new fiber loop facilities without being subject to the TELRIC unbundling regime. I recognize that, in time, intermodal competition from sources like cable, wireless, satellite, and powerline platforms will be very beneficial for consumers, but in the short term, as some of these new broadband platforms are still getting off the ground, I think line sharing would have provided a valuable competitive alternative.

Next Steps

Now that we have decided what unbundling obligations apply in the broadband arena, what is next? I believe there are three primary tasks that the FCC should focus on.

1. First, the Commission should continue to promote the development of additional broadband platforms. While the growth in cable modem and DSL subscribership is encouraging, consumers will benefit most if other facilities-based providers enter the market. Economists agree that duopoly conditions generally are not sufficient to ensure the benefits associated with a robustly competitive marketplace — including choice, a high degree of innovation, improved services, and lower prices. The emergence of new broadband platforms will enable the Commission to minimize regulation in this arena, and thus fulfill Congress's goal of developing a procompetitive, deregulatory framework.

That is why I am very excited by the proceeding the Commission launched last week on powerline broadband systems. As many have noted, nearly every consumer has electric power and in the not-so-distant future may be able to obtain broadband service through ordinary power outlets. The Commission should expeditiously resolve any signal interference issues that arise and ensure that we have removed regulatory obstacles to the deployment of this exciting new service.

By the same token, the Commission is striving to facilitate the development of broadband platforms via wireless technologies. In November, in cooperation with NTIA, the FCC allocated 90 Megahertz of spectrum for 3G services, and we are working on licensing and service rules. In addition, the deployment of WiFi systems in the 2.4 Gigahertz unlicensed bands has been rightly hailed as a tremendously promising development. Thus far, WiFi systems complement, rather than compete with, last mile technologies. But experiments underway demonstrate that the next generation of WiFi systems may have much greater range, and eventually may serve as a last-mile replacement. I strongly support the Commission's plan to make 250 Megahertz of additional unlicensed spectrum available in the 5 Gigahertz bands. I also support granting providers flexibility to provide new services in existing bands, such as the ITFS and MMDS bands, and developing secondary markets so that consumers more rapidly will get the benefits of the explosion of innovation that is underway.

Satellite operators also are striving to be part of the broadband future. To date, satellite broadband providers have lagged far behind cable operators and wireline providers in most markets. But some companies and joint ventures are preparing to launch a new generation of satellites that will be capable of providing more robust broadband services, and such offerings might be particularly attractive in rural areas. I also believe that the Order adopted last week reforming the satellite licensing process will eventually help speed the delivery of new services to consumers.

2. A second area of focus for the Commission is clarifying the regulatory framework that governs the provision of broadband services. In the *Triennial Review* proceeding, we decided how to regulate the wireline *facilities* that are used to provide broadband; now we must complete our review of the statutory classification of broadband *services* and the appropriate regulatory requirements. The Commission is likely to adopt orders this summer in the *Wireline Broadband* and *Cable Modem* proceedings. These proceedings should determine which services fall under Title I and which fall under Title II. The Commission also should address the extent to which regulations are necessary to prevent cable operators and incumbent LECs from discriminating against unaffiliated ISPs or content providers, as well as questions about whether and how broadband service providers should contribute to universal service.

3. Finally, apart from unbundling rules and our regulatory framework for broadband services, the Commission should remain vigilant in its efforts to remove any *other* regulatory impediments to broadband deployment. For example, since I have been at the Commission, service providers have argued that right-of-way regulation can be a significant barrier to entry. Carriers and cable operators assert that some municipalities have subjected them to long processing delays and overly burdensome application processes, and some have charged excessive fees. The Commission held a right-of-way forum last year to bring stakeholders together and encourage cooperative solutions. NARUC also has been active on this front, and Nancy Victory has shown great leadership at NTIA, both in her initiation of a comprehensive review of right-of-way management on *federal* lands and in her attempts to bring state and local officials together to develop best practices.

While there has been a lot of work done in this area, the FCC should remain an active participant in the debate. For example, if providers and municipalities cannot agree on the lawfulness of fees, the FCC should be willing to exercise our statutory jurisdiction to resolve disputes under section 253 of the Act.

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In sum, I believe the Commission has taken many positive steps to promote broadband deployment, and I hope we will continue to make it a top priority to fulfill the congressional mandate to take all actions necessary to remove regulatory impediments. Thank you. I look forward to answering any questions about these issues.