

**WRITTEN STATEMENT**

**Of**

**DR. ROBERT PEPPER**  
**Chief, Policy Development**  
**Federal Communications Commission**

**Hearing**

**on**

**The Regulatory Status of Broadband Services: Information Services,  
Common Carriage, or Something in Between?**

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

**July 21, 2003**  
**3:00 p.m.**  
**2123 Rayburn House Office Building**  
**Washington, D.C.**

Good afternoon, Mr. Chairman, Ranking Member Markey and distinguished Members of the Subcommittee. It is my pleasure to come before you today on behalf of the Federal Communications Commission to discuss broadband policy. There are three essential points that I would like to make.

First, we believe that widespread broadband deployment will bring valuable new services to consumers, stimulate economic activity, improve national productivity, and advance economic, educational and social opportunities for the American public. Recognizing this, Chairman Powell has noted that the development and deployment of broadband infrastructure is the central communications policy of the day.

Second, the Commission has taken a number of actions to foster investment and innovation in competitive broadband platforms.

Third, we are beginning to see the positive results from the direction of our broadband policies.

#### Goals for Broadband Policy

The Commission's broadband policy is guided by several principles and policy goals. First, it is the Commission's primary policy goal to encourage the ubiquitous availability of broadband to all Americans. Indeed, Congress has explicitly charged the Commission to "encourage the deployment on a reasonable and timely basis" of

broadband capabilities to “all Americans.” In addition, Congress has expressly stated that it is the policy of United States to “promote the continued development of the Internet and other interactive computer services and other interactive media.”

Second, the Commission is committed to promoting competition across all platforms for broadband services. The Commission’s regulatory framework conceptualizes broadband to include any and all platforms capable of combining the power of communications and computing to carry bandwidth hungry applications and offer access to the Internet. The migration to broadband is occurring across multiple electronic platforms including traditional telephone, cable, and mobile wireless providers, as well as those developing new technological architectures using unlicensed wireless devices such as WiFi, digital television and even electric power lines. Broadband is based upon a digital migration from traditional technical/industry/legal silos in which the platform on which a communications traveled was integrated with and optimized for a specific service such as voice or video. In the future broadband world, any of the competitive broadband platforms can support any of these services and emerging broadband applications—no platform will be tied to a particular service or application.

The third goal of the Commission’s broadband policy is to promote investment and innovation in a competitive market by ensuring that broadband services exist in a minimal regulatory environment. We recognize that substantial investment is required to build out the networks that will support future broadband capabilities and applications. Therefore, our policy and regulatory framework is designed to foster investment and

innovation by limiting regulatory uncertainty and unnecessary or unduly burdensome regulatory costs. The need for regulation greatly diminishes as the new and multiple platforms described above develop. At the same time, however, the Commission remains alert and ready to act against anticompetitive behavior by industry players that result in consumer harm. Regardless of the paradigm, the Commission will remain vigilant in monitoring for such behavior.

Fourth, the Commission is striving to develop an analytical framework that is consistent, to the extent possible, across multiple platforms. As service providers re-engineer their systems to provide broadband services, we recognize that because these legacy networks have historically been regulated differently, the migration to digital broadband platforms may raise different questions for different platforms. Stemming from these differing legacies, a consistent analytical framework may or may not lead to identical regulatory models across all platforms. It is entirely plausible that legal, market, or technological distinctions may require different regulatory requirements between platforms, or between certain types of providers of one particular platform. At the same time, there are overarching policy objectives that are similar regardless of platform and should be harmonized to the greatest extent possible.

The technological changes driving the broadband digital migration are unrelenting. With this approach the Commission's aim is to ensure that this migration serves the public interest and that all Americans can benefit from advanced services. Universal service has been very successful in bringing telephone service to Americans,

including dial-up Internet service. The Commission remains committed to promoting the enormous value of universal service. Creating incentives for innovation and investment in the broadband digital migration stands as a companion alongside our traditional universal service goals.

### Implementing the Policy

Over the past two years, the Commission has taken a number of important steps to implement its broadband policy, focusing particularly on creating incentives for the development and deployment of multiple new facilities-based broadband platforms and services. The first group of proceedings focus on authorizing new, potential broadband technologies/platforms while the second group of actions fashion better incentives for additional investment in broadband platforms by reducing unnecessary regulatory costs.

Among the Commission's actions authorizing new technologies/platforms are efforts to reform spectrum policy and to authorize new power line and wireless communications networks.

- *Broadband Over Power Line Notice of Inquiry (NOI)*. The Commission is seeking comment to evaluate the current state of using existing electrical power lines to provide Internet and broadband services to homes and offices and to evaluate whether rule changes may be plausible to facilitate the deployment of this technology.

- *MMDS/ITFS*. The Commission initiated a proceeding to facilitate the provision of fixed and mobile broadband access and other advanced wireless services by encouraging more efficient use of the 2500-2690 MHz bands.
- *Spectrum Policy Task Force/Secondary Markets*. The Commission completed first phase of its “Secondary Markets” proceeding, which will provide more flexibility for non-licensee broadband providers to lease spectrum for last-mile connections to homes and businesses, as well as backhaul connections to fiber/broadband networks.
- *Ultrawideband*. The Commission modified Part 15 rules to permit marketing and operation of certain types of new products incorporating ultrawideband technology, including short-range, high-speed data transmissions such as high-speed home and business networking devices.
- *3G/Advanced Wireless Services*. The pending allocation and service rule proceedings will clear the way for auctions (involving, in part, former government spectrum) to provide significant opportunities for high-speed wireless data communications.
- *Additional Unlicensed Spectrum*. The Commission has initiated proceedings to provide more spectrum for the use of unlicensed devices in bands such as the 5.8

GHz band for WiFi, as well as using new and innovative concepts such as “spectrum easements” to enable operation of low-powered unlicensed devices in unused portions of the spectrum.

The Commission also has reformed certain rules and proposed to modify others in order to reduce regulatory costs and uncertainty to investment in new broadband networks and services. These decisions include:

- *Cable Modem Declaratory Ruling and Notice of Proposed Rulemaking (NPRM).*

In March of last year, The Commission determined that cable modem service is appropriately classified as a Title I interstate information service under the Communications Act, and does not include a separate offering of a telecommunications service, and therefore, is not subject to Title II common carrier regulation. Historically, the Commission has refrained from regulating services it has classified as interstate "enhanced" or information services. In a companion NPRM, the Commission sought comment on the regulatory implications of this determination and sought comment on (1) legal and policy reasons that might justify different regulatory treatment of cable modem and wireline broadband Internet access services; (2) any constitutional limitations to the Commission’s authority to regulate these services; (3) on whether it is appropriate to require multiple ISP access; and (4) the scope of state and local authority to regulate cable modem service.

- *Wireline Broadband NPRM.* In February of last year, the Commission tentatively concluded that wireline broadband Internet access service – whether provided over a third party’s facilities or self-provisioned facilities, is an “information service.” It also tentatively concluded that, when a provider is self-providing the transmission component of wireline broadband Internet access, this transmission component is properly classified under the Act as "telecommunications," as opposed to a "telecommunications service." The Commission requested comment on this tentative conclusion and whether the Commission’s Computer Inquiry requirements be maintained, modified or eliminated and whether important national security, network reliability, and consumer protection obligations should apply to providers of wireline broadband Internet access services.
- *Dominance/Non-Dominance NPRM.* The Commission is seeking comment on what regulatory changes, if any, should apply to the provision of wireline broadband telecommunications services, including whether dominant carrier safeguards should govern incumbent LEC provision of such service, based on an assessment of incumbents’ market power in any relevant product or geographic market.
- *Triennial Review of Unbundled Network Elements Order.* Although the final Order has not yet been released, the Commission’s press release at the time of adoption was clear that a key component of that decision provides substantial

broadband unbundling relief, particularly the determination that fiber-to-the-home loops would not have to be unbundled.

### Broadband Deployment

The Commission's broadband policies are beginning to have results in the marketplace. According to the most recent data available, as of the end of March this year, nearly 20 percent of U.S. households subscribed to a broadband service which represents about 30 percent of Internet households. A little less than 2/3 of these broadband subscribers use cable modem service while the remaining 1/3 subscribe to a digital subscriber line ("DSL") service. The number of zipcodes with at least one broadband provider grew from 81 percent to 88 percent (representing 99% of the population) in 2002.

A recent Nielsen/Net Ratings Report found that broadband's acceptance is growing dramatically. The report states that nearly 40 million people use broadband connections, 49 percent more than a year ago. The fastest growing group of broadband subscribers are seniors over 65, increasing 64 percent over the last year, and broadband use by students grew by 51 percent in the same period.

Although these levels of broadband adoption indicate a strong appetite for broadband service, they also indicate a need to foster broadband deployment to those households that have either no or limited broadband service available. In addition, the

success of first generation broadband adoption is a clear indicator that there is a need for incentives for investment in the next generation of broadband technologies that will support and stimulate higher capacity services and applications.

Recent developments appear to be strong indications that competition in broadband is heating up with consumers as the ultimate beneficiaries. First, the recent announcement by incumbent local exchange companies (“ILECs”) that they are coalescing around a single fiber to the home architecture/standard is an indication that they are putting new emphasis on lowering fiber deployment costs in order to deploy fiber more ubiquitously. Second, while it is too soon to tell how adoption rates will be affected, several of the largest ILECs, including Verizon, have lowered their DSL retail prices by more than 40 percent in an effort to stimulate demand and gain market share on cable operators. And third, new wireless ISPs (“WISPs”) are emerging using unlicensed devices to provide WiFi-based broadband service to areas not served by either cable modem or DSL service or only one of the two. In time, these kinds of unlicensed wireless services appear to be emerging as some of the most exciting and potentially viable competitors to existing broadband providers. In addition to providing competition to cable modem and DSL providers, WiFi is proving to be an important broadband driver in another respect. Home WiFi networks are proving to be significant drivers for cable modem and DSL broadband subscriptions.

## Conclusion

First generation broadband deployment and adoption has been successful to date in large portions of the United States but the job is not done. Not everyone yet has access to even one, let alone multiple, broadband service providers. Using existing copper network architectures and technology, it's been estimated that DSL will probably not be available to about a fifth of U.S. households. In addition, while the experience with first generation broadband indicates a substantial appetite for high speed Internet access, today's broadband networks will not support the kinds of bandwidth hungry applications now being contemplated by application developers. Therefore, the Commission has undertaken actions and is pursuing policies that create incentives for innovation and new investment in multiple competing advanced broadband platforms that will benefit American consumers.

Thank you.