Text As Prepared

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I. Introduction

Thank you Bob for that kind introduction, and thank you very much for inviting me to speak with you today. I would also like to take a moment to thank Bob Nelson and Stan Wise. During the past year, Bob and Stan have demonstrated great leadership in representing NARUC and the interests of states and consumers.

It's great to have another opportunity to address the Committee.

I truly value our frequent interaction. It gives us a chance to share valuable experiences and ideas on how to tackle our many common problems. It provides us a common forum to work to achieve common goals as well as tackle the difficult challenges that lie ahead, and it gives us the opportunity to review the Wall Street Journal's annual attacks on your "Balkanization" of Telecom Policy, and my encouragement of it.

In preparing for this morning's speech, I stayed up late last night and re-read all of the speeches that FCC Commissioners and Chairmen have given at NARUC since the 1996 Act. I was struck by several consistent themes.

First, by how much some things stay the same. From my former boss Harold Furchtgott-Roth to Susan Ness and Reed Hundt, one repeated theme was that ultimately the implementation of the 1996 Act is a joint effort between Federal and State regulators with common goals. Another was a consistent commitment to competition. As former Chairman Kennard said, "there will be only one way to manage the transition from monopoly to

competition: that way lies through a partnership between the states and the federal government…. Only by forging a partnership can we lay the basis for a successful transition."[1]

Second, I was struck by how much some things change. As I looked back in those speeches, I was reminded of the extremely antagonistic relationship that the Federal and State regulators often had. Indeed, much of the early debate seemed to be centered on the continuing fight over jurisdiction – over *who* had the right to decide issues. Indeed, Chairman Hundt in 1996 warned that if we did not agree to compromise our policy and jurisdictional disputes, "the FCC and the states will be doomed to repeat our jurisdictional debates in the litigation equivalent of the Bill Murray movie Groundhog Day: we will go over and over the same issues until years from now, with the help of the courts we finally learn how to work together."[2]

Does everyone remember Groundhog Day? Bill Murray wakes up everyday hearing the same song on the radio and reading the same story in the newspaper. Well, I have to admit that when I wake up and read the *Wall Street Journal*, I do feel like it's Groundhog Day. I keep reading the same story over and over.

But while Reed Hundt was right about the ongoing litigation efforts, he was wrong about our inability to work together. He was also wrong about those contentious battles being over who had the *right* to decide. Now, the battle is over who *must* decide. Indeed, if I had come to this committee in 1996 or 1997 and predicted (1) that the federal government would have had its rules thrown out because they involved the states *too much* in the regulatory process, and (2) that some states would have actually advocated that they not be involved at all, you would have told me I was crazy.

So with this ongoing but changing debate, I thought it would be instructive to turn back to some of those original debates regarding implementation of the '96 Act for guidance for how to proceed.

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[1] Remarks of William E. Kennard, Chairman, Federal Communications Commission to the National Association of Regulatory Utility Commissioners, San Antonio, TX, Nov. 10, 1999.
[2] Remarks of Reed Hundt, Chairman, Federal Communications Commission to the National Association of Regulatory Utility Commissioners, San Francisco, CA, Nov. 20, 1996.

II. Increased Cooperation

In 1996, Congress set forth a framework to promote local competition in the telecom market. At the heart of this framework, Congress envisioned the FCC and state commissions working together in a federal-state partnership to bring more choice, better services, and lower prices to American consumers.

During the past eight years, the FCC has worked closely with you in the states to promote competition.

Last week, the DC Circuit attacked this framework and failed to recognize the historical relationship that exists between state commissions and the FCC in developing local competition policy.

In striking down any state role, the court said that your are no different than any private organization. They said the fact that the FCC had involved state commissions rather than private organizations made no difference. In the DC Circuit's eyes, you are viewed like any other lobbyist.

I am troubled by their failure to recognize the traditional federal-state relationship. I think you are different; they did not.

But I am not alone. For example, when considering the state's role in the First Local Competition Order, Justice Thomas said:

"I do not know of a principle of federal law that prohibits States from interpreting and applying federal law. Indeed, basic principles of federalism compel us to presume that States are competent to do so."[3]

He went on to say:

"In 1996, Congress decided to attempt to introduce competition into the market for local telephone service, it deemed it wise to take advantage of the policy expertise that the state commissions have developed in regulating such service."[4]

I agree that states are competent to be involved in this process and that they have a unique expertise that we should take advantage of.

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[3] *AT&T v. Iowa Utilities Board*, 525 U.S. 366, 411 (Thomas, J. dissenting in part and concurring in part).
[4] *Id* at 412.

Indeed, this cooperative partnership between the FCC and the states has been important – and continues to be important not only in local competition policy but also in other areas of telecom policy.

As you are aware, the Commission will soon take action on a Joint Board recommendation regarding Lifeline and Link-Up.

These are two federal support programs used to advance universal service and ensure that telephone service is available to low-income consumers at just, reasonable and affordable rates.

Under the current program, the federal government makes a baseline amount of federal support available to all states irrespective of whether the state implements its own state program or provides any funding.

Without specific statutory authority, the Commission has provided minimal eligibility criteria and delegated general administration of the program over to the states.

In fact, when we established the current program in 1997, we said that "it is important for states to retain a role in assessing and responding to low subscribership levels…" because "states may have greater familiarity than we with income levels, demographic patterns, and factors affecting low-income subscribership."[5]

Following this approach, last April, the Joint Board, led by Commissioner Abernathy, stated that it did not recommend "that the Commission mandate any federal criteria for states because we believe states should maintain the flexibility to respond to their constituents."[6] The Board also declined to recommend that the Commission set a mandatory national eligibility standard for receipt of federal Lifeline/Linkup funds.

Even though the Joint Board acknowledged that a mandatory federal standard would "bring a level of uniformity among states" it stated that it believed that "states are in a better position than the federal government to target the needs of their own consumers."[7]

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[5] *Federal-State Joint Board on Universal Service*, Report and Order, FCC 97-157, 12 FCCR 8776, 8965 (rel. May 8, 1997).
[6] *Federal-State Joint Board on Universal Service*, Recommended Decision, FCC 03J-02, para. 25 (rel. Apr. 2, 2003)
[7] *Id* at para. 26.

Today, there are over 7.8 million subscribers to the Lifeline and Link-up programs. According to USAC estimates, by the end of this year funding for these federal programs will exceed $706 million.

The Commission must decide the future of the Lifeline and Link-up programs by April 2.

I fear that the longstanding federal-state partnership in the federally supported Lifeline and Link-up program is now at risk given last week's DC Circuit decision.

Cooperation between federal agencies and the states also goes beyond telecommunications. The DC Circuit's decision may also be troubling to other federal-state partnerships that exist in other areas of government. Let me just mention a few examples.

First, a federal/state partnership exists in the energy context. Under the Public Utility Regulatory Policies Act of 1978 ("PURPA") the FERC delegated implementation of rules governing contracts between "qualifying cogenerators" and utilities to the states. States are responsible for the issuance of regulations, for resolution of contract disputes, and for setting purchase rates.

Another example is the Work Incentive Program ("WIN"), financial assistance to families of those without work. The Department of Health and Human Services has delegated to the states the determination of when there is "good cause" for late assistance applications.

In transportation, the federal Office of Pipeline Safety ("OPS"), has delegated to the states the authority to inspect and regulate the safety of oil, gas, and hazardous liquids pipelines and related facilities.

Finally in the worker health and safety area, the Department of Labor and OSHA had express statutory authority over the development and enforcement of State occupational safety and health standards. OSHA, however, delegated this oversight authority to 21 state body affiliates.

These are just a few examples of existing federal-state partnerships – I am sure that there are others as well.

III. Increased Competition as a Result of the Telecommunications Act

I am also troubled by some people's failure to recognize the success of federal-state efforts to spur competition.

The 1996 Telecom Act intended to spur investment in communications – including in new lines of business; create competition; and deregulate where competition has taken hold.

[Slide #1—New Customers]

In the 1996 Act, Congress established a careful balance: if incumbent monopolists opened up their local voice telephone market to competition, in return, they would receive the opportunity to compete for new revenue streams in new markets. By demonstrating the existence of competition, the RBOCs would be allowed to enter new markets and provide services subject to less regulation. Competition first, then deregulation.

The framework created by Congress necessarily required the loss of the incumbents' exclusive monopoly franchise. I frequently am struck by analyst reports that cite unexpected line loss by the incumbents. By definition, opening their markets to competition would result in access line loss and a potential decrease of market share for local voice services. However, those losses would be offset by entrepreneurial opportunities created in new markets, such as long distance and data.

Today, under this framework, all the RBOCs in every state have the opportunity to offer bundled local and long distance service packages.

In this first slide, we see here that the competitive trade-off created by Congress appears to be working in the marketplace. In each quarter, CLECs continue to add new local voice customers through the use of unbundled elements. Today, more than 17 million local customers are using unbundled network elements.

RBOC access line loss, however, is more than offset by opportunities created in new markets, such as long distance and data. Since the first quarter of 2002, in each quarter the gain in the number of long distance customers is greater than the loss of local lines to CLECs through UNEs. In fact, for last year, on average the RBOCs gained 4 new LD customers for every one local customer they lost to CLECs using UNEs. (15.5 million to 3.6 million for 2003).

[**Slide #2 – Increased Bundles**]

Communications services are converging, and increasingly being offered in bundles.

Telecommunications companies are packaging local and long distance services, just like the Act envisioned, and consumers are buying these bundles. MCI's Neighborhood plan and Verizon's One Rate plan have been a phenomenal success, with 51 million customers now subscribing to bundled offerings. The RBOCs now offer LD/Local bundles in all of their states to almost 85% of all American households.

This trend is critical because the rates for these plans *are not regulated*. It indicates that where competition is strong, competition will deliver new services and better rates without the need for retail rate regulation.

Residential consumers are experiencing the price benefits. Many are paying 30% less for the same or similar telecom services--saving $15 per month on average, and consumers and small business are saving $10 billion per year because of local telecom competition. As in other markets, competitors are spurring the incumbents to provide better services, at low prices, in more attractive bundles.

[Slide 3 – High Speed Line Growth]

Since 1996, there has been a dramatic increase in investment in communications.

Telecom competition has created 77,000 new jobs and generated $150 billion of investment in the marketplace.

Investment in the Internet has exploded. Internet access has grown from 40 million households to more than 170 millions households. An astounding 99% of public schools have internet connections.

Investment in broadband in particular has been vigorous. As of June '03, 23 million high speed lines connected homes and businesses to the

internet, a 60% increase from just 2001. By the end of 2003, more than 24 million U.S. households had a broadband connection – an increase of almost 40% from just the previous year.

[Slide #4 – DSL Price Drop]

Similarly, the growth of cable broadband and DSL lines has resulted in fierce competition between these services, with cable still significantly ahead of its telco competitor. In each quarter for the last 4 years, 2/3 of new subscribers have gone to cable broadband. Cable currently has 65% of broadband subscribers. This vibrant competition is what enabled the Commission to deregulate the provision of DSL without risking an increase in DSL prices. Last year, when we deregulated Broadband and eliminated Line-Sharing many here and some at the Commission argued that DSL prices would rise. But, since February of 2002, prices of DSL have dropped about 40%.

[Slide #5 – Voice and Broadband Competition]

By contrast, ILECs still own the lion's share of residential and small business lines – an astounding 88% of the market. In short, wireline voice is not yet competitive.

IV. Conclusion

The 1996 Act has been successful in many areas. We have learned that where competition is vibrant, regulation is not necessary. This is why we have been able to deregulate broadband and still enjoy better service at lower rates.

Yet where competition is still taking hold, regulations need to be maintained.

Old wires, old rules. New wires, new rules.

And we have learned that we can't do it alone. Federal and State regulators need to continue to work together to bring the benefits of competition to consumers.

I believe since the early days of 1996 we have gained a mutual respect. And we must continue this spirit of teamwork as we face the next challenges.

In that vein, I urge you to continue this special partnership and move forward with your best efforts to gather the critical factual data necessary for whatever lies ahead. Many of you have already made significant progress in developing the underlying factual record.

I am confident that, irrespective of the final outcome, the relevant data and factual information you have and will gather as part of the competitive market analysis will be vital to advancing the cause of local competition in the next phase of the Commission's process.

I thank you for all that you have done, are doing, and continue to do to promote competition, new services and greater consumer choice.

Regardless of what anyone else says I believe you have a role beyond that of any other private lobbyist.

Thank you for inviting me to speak this morning. I look forward to answering your questions. Thank you for your efforts and keep up the good work.

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