

Remarks of FCC Chairman Kevin J. Martin
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Since arriving at the Commission, I have made broadband deployment my highest priority at the Commission. Broadband technology is a key driver of economic growth. The ability to share increasing amounts of information, at greater and greater speeds, increases productivity, facilitates interstate commerce, and helps drive innovation. But perhaps most important, broadband has the potential to affect almost every aspect of our lives. It is changing how we communicate with each other, how and where we work, how we educate our children, and how we entertain ourselves.

During my tenure as Chairman, the Commission has worked hard to create a regulatory environment that promotes broadband deployment. We have removed legacy regulations, like tariffs and price controls, that discourage carriers from investing in their broadband networks, and we worked to create a regulatory level playing-field among broadband platforms.

We have begun to see some success as a result of the Commission's policies. High-speed connections to the Internet have grown over 400% since I became Commissioner in July 2001.

This data is reinforced by a recent report from the Pew Internet and American Life Project on Home Broadband Adoption.

According to this independent study, one year after I became Chairman in 2005, broadband adoption had increased by 40% - twice the growth rate of the year before (from 60 million in March 2005 to 84 million in March 2006).

And, according to this same study, the price of broadband service has dropped in the past two years. Home broadband users' prices had fallen to on average \$36 per month from \$39 per month the year before. For example, DSL monthly bills reportedly fell from 38 to 32 U.S. dollars. This is good news for consumers and good news for the country.

But perhaps most important, the study found that the significant increases in broadband adoption were widespread and cut across demographics.

According to this independent research:

- Broadband adoption grew by almost 70 percent among middle-income households (those with incomes between \$40,000 and \$50,000 per year).
- Broadband adoption grew by 120 percent among African Americans.
- Broadband adoption grew by 70 percent among those with less than a high school education.
- Broadband adoption grew by more than 60 percent among senior citizens.
- And broadband growth in rural areas was also brisk (39 percent), although overall penetration rates in rural areas still lag behind those in urban areas.

But there is still more that needs to be done to facilitate broadband deployment. For example, the ability to deploy broadband networks rapidly and the ability to offer video to consumers are linked intrinsically. Indeed, in a 2005 Policy Paper, the Phoenix Center found that: “With the marginal cost of providing a telephone call in free-fall, video is now the key driver for new fiber deployment in the residential market.” The Phoenix Center went on to say that: “If a new entrant cannot readily provide consumers multichannel video over an advanced network, then the prospects for success will be diminished substantially due to a reduction in the entrant’s potential revenues. Quite simply, the ability to sell video services over these fiber networks may be a crucial factor in getting those fiber networks deployed.”

The Commission has noted that telephone company entry into the video marketplace has the potential to advance both the goals of broadband deployment and video competition.

Specifically, the Commission has stated: “The construction of modern telecommunications facilities requires substantial capital investment and such networks, once completed, are capable of providing not only voice and data, but video as well. As a consequence, the ability to offer video offers the promise of an additional revenue stream from which deployment costs can be recovered.”

Greater competition in the market for the delivery for multichannel video programming is also a primary goal of federal communications policy. Increased competition can be expected to lead to lower prices and more choices for consumers.

And competition is desperately needed in the video market. Just last week Communications Daily reported that cable providers plan to raise rates in many cities early next year. According to the article, one company’s rates will increase 5.4% in a dozen locales and another company’s rates will go up in one area by over 6%.

This upward trend is consistent with the FCC's own research, which has found that from 1995 to 2005 (the last year we have data for,) cable rates have risen 93%. In 1995 cable cost \$22.37. Last year, cable cost \$43.04.

The trend in pricing of cable services is of particular importance to consumers. Since 1996 the prices of every other communications service have declined while cable rates have risen year after year after year.

But video competition can impact cable bills. According to our annual price survey, where there is no competition, the average price for cable programming was \$43.33 in January 2005. But in areas where there was competition from a second cable operator however, the average price for cable programming decreased to \$35.94.

Competition from satellite providers did not have the same effect. In areas with competition from DBS alone, there is only a one cent difference in the price of cable from when there is no competition at all. (With competition from DBS, cable cost one cent more.) The FCC's data indicates

that only competition from a second cable operator has a downward impact on prices.

In passing the 1992 Cable Act, Congress recognized that competition between multiple cable systems would be beneficial. Now, Congress also recognized that local franchising authorities have played, and would continue to play, an important role in the cable franchising process. But Congress restricted their authority in this area in order to promote cable competition. Indeed, Congress specifically encouraged local franchising authorities to award competitive franchises. Section 621 of the statute reads, “A franchising authority may not grant an exclusive franchise and *may not unreasonably refuse to award an additional competitive franchise.*”

Telephone companies are investing billions of dollars to upgrade their networks to provide video. As the telephone companies and others began actively seeking to enter video markets in late 2004 and 2005 however, we began to hear from some providers that local authorities were making the process of getting franchises unreasonably difficult. In response, the Commission instituted a proceeding to determine how the local franchising process is working and what actions, if any, the Commission should take to

ensure that franchising authorities do not unreasonably refuse to award additional competitive franchises.

The Commission developed an extensive record on the franchising process. That record indicates that the process can pose an unreasonable barrier to entry. There are steps that we can take, however, to address some aspects of the franchising process that have proven most problematic for new entrants – for example, LFA inaction, franchise fee issues, and unreasonable build-out requirements.

When LFAs unreasonably delay action on a franchise application, they obstruct and in some cases completely derail a new entrant's attempts to bring video competition to an area. The Phoenix Center has published several studies on the potential for franchise processes to inhibit competition. To ensure that delays in action do not negatively impact the development of video competition in any area, the Commission should set time frames for local franchising authority to act on a new entrant's franchise application. Many new entrants already have access to the community's rights-of-way. It should take a franchise authority less time to review the application of a company that already is authorized to access the

community's rights-of-way. Thus the time frame for action on those applications should be shorter than the time frame for action on the applications of others. It would seem reasonable to expect a LFA to take action on an application for those entities that are already authorized to access a community's rights-of-way within 90 days and within six months for action on other applications.

There also should be a limit on what localities can reasonably require new entrants to pay in the form of franchise fees. Many franchise negotiations get hung up over disputes about what revenues are properly included in franchise fee calculations. Oftentimes these disputes center on revenues from non-cable services. The Commission should reiterate its previous finding that it is unlawful for any community to tax revenues from non-cable services.

Additionally, some in-kind contributions required by localities that are unrelated to the provision of video service can hinder new entrants. In comments filed with the Commission, one company reported a locality's request for a new recreation center and a swimming pool. And according to the FTTH Council, one new entrant was asked for a franchise fee of \$1

million and a \$50,000 scholarship - - with annual contributions. If localities continue to make requests that are unrelated to the provision of video service, these payments should count towards the 5% cap on franchise fees.

Finally, the record indicates that, in some cases, build-out requirements impose unreasonable barriers to entry. Unreasonable build-out requirements can make it economically and/or technologically unfeasible for a new entrant to provide service to a community. For example, it would appear unreasonable to require a new entrant to do more than was required of the incumbent cable operator in that community. A build-out requirement that provides a new entrant less time to build-out its facilities than an incumbent seems unreasonable.

There are other potential barriers to increased video competition as well. Access to the programming that consumers want is also critical to new entrants. Today, the Commission's program access rules generally prohibit exclusive contracts between cable operators and programmers in which the cable operators have an attributable interest. Unless the Commission takes action, this prohibition will sunset next year.

To evaluate the importance of these rules for video competition, I have proposed that the Commission initiate a rulemaking proceeding to examine the issue to enable us to act prior that sunset.

Another important issue faced by new entrants is access to consumers living in apartments, or “multiple dwelling units” (MDUs). We are hearing from new entrants that they are being unreasonably foreclosed from providing service to these consumers. I have asked the staff to look at what we can do to ensure that all consumers – including those living in MDUs – benefit from video competition.

In sum, in many instances, the franchising process appears to be unreasonably hindering competitive entry. The Commission can take steps to further this entry and ensure the benefits of increased video competition, namely lower prices for consumers, are available to as many Americans as possible as quickly as possible.

