STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers (CC Docket No. 02-33), *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services* (CC Docket No. 01-337), *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements* (CC Docket Nos. 95-20, 98-10), *Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises* (WC Docket No. 04-242), *Consumer Protection in the Broadband Era* (WC Docket No. 05-271)

Three and a half years ago, my colleagues and I made a promise to the American people: we promised that efforts to deploy twenty-first century broadband technologies for public use would not be crushed by the weight of 1930s-era regulations. To that end, we initiated a series of proceedings designed to reevaluate the role of traditional common carrier regulations in the blossoming market for broadband Internet access services.

We quickly determined that cable modem services should be free from the heavy burdens of Title II regulation. That determination was soon subject to legal challenge, and the resulting litigation effectively prevented action with regard to similar services provided over wireline facilities. In June's *NCTA v. Brand X* decision, the Supreme Court brought that period of uncertainty to a close, validating the Commission's authority to classify a broadband Internet access service as a Title I information service.

Today, with the benefit of the Court's guidance, we extend similar relief to providers of wireline broadband Internet access. Specifically, we clarify that wireline broadband Internet access services – like the cable modem services at issue in *Brand X* – are "information services," and thus not automatically subject to the full range of Title II requirements designed for a narrowband, analog, one-wire world. We also lift the so-called "*Computer Inquiry*" requirements, which were crafted to prevent companies that exercised substantial market power in the provision of telecommunications from leveraging that dominance into the provision of enhanced services. Requirements such as these were never meant to apply in a competitive, multi-platform communications market such as the market for high-speed Internet access services.

And let there be no doubt: competition among broadband providers is flourishing. The Commission's most recent statistics show that over 80 percent of zip codes in America are served by two or more high-speed providers, about two-thirds are served by three or more, and over half are served by four or more. Moreover, I fully expect that providers taking advantage of new platforms will soon offer consumers even more choices in even more areas. Over 1.2 million high-speed lines in service today use wireless, satellite, fiber-optic, and powerline technologies; that number is poised to rise dramatically in the very near future. The result of such competition will be better and better services at lower and lower prices, with offerings designed to match customers' needs rather than regulators' preferences.

Today's decision is *not*, however, the end of the story. Wireline broadband providers are not subject to Title II or to the *Computer Inquiry* requirements, but that does not mean that they

are immune from *all* regulatory requirements. When the Commission first issued its tentative conclusion that these services were outside the scope of Title II, I emphasized my commitment to preserving any specific regulatory requirements that are necessary for the furtherance of critical policy objectives. In June, the *Brand X* majority made clear that the Commission retains the prerogative to exercise its Title I "ancillary jurisdiction" to do just that. The Commission has already made clear its intention to ensure access to emergency services as Americans transition to packet-switched communications technologies, irrespective of how those services are classified under the Communications Act. As we make clear in today's *Notice*, we will now turn our attention to other "social policy" requirements, such as those involving disability access, slamming, and consumer privacy. Where action is warranted, we will act.

There is still work to be done as we endeavor to establish a new, minimally regulated framework for the digital era. But however we address the issues that remain before us, I expect that our decision today will spur future investment in broadband infrastructure and provide the flexibility to which companies in a competitive market and their customers are entitled.

In short, I am confident that today's Order does much to fulfill our promise to the American people, and I am happy to support this item.