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COMMISSIONER KEVIN J. MARTIN'S PRESS STATEMENT ON THE TRIENNIAL REVIEW

I support this item because it achieves a principled, balanced approach. It ensures that we have competition and deregulation. We deregulate broadband, making it easier for companies to invest in new equipment and deploy the high-speed services that consumers desire. We preserve existing competition for local service – the competition that has enabled millions of consumers to benefit from lower telephone rates. And we continue the strong role of the states in promoting local competition and protecting consumers. Finally, we accomplish these goals in a manner that is consistent with the statute and the rulings of the courts.

Deregulating Broadband and Attracting New Investment

This Order takes important steps toward deregulating broadband and encouraging new investment. I have long believed that the Commission should make broadband its top priority and create proper incentives for new investment in advanced services. The action we take today provides sweeping regulatory relief for broadband and new investments. It removes unbundling requirements on all newly deployed fiber to the home. It provides regulatory relief for new hybrid fiber-copper facilities, while ensuring continued access to existing copper. And, it adjusts the "wholesale" prices for all new investment. In fact, we endorse and *adopt in total* the High Tech Broadband Coalition's proposals for the deregulation of fiber to the home and any fiber used with new packet technology.

Companies desiring to push fiber further to the home will now be able to make a fair return on their investment. And more consumers will be able to enjoy the fast speeds and exciting applications that a true broadband connection offers.

I hope this relief will jump start investment in next-generation networks and facilitate the deployment of advanced services to all consumers, including rural America. Our actions could then revitalize the advanced services market, leading to a new period of growth in telecommunications and most importantly manufacturing.

Preserving Local Competition

This Order also works to preserve local competition. The Telecommunications Act requires that competitors have access to pieces of the incumbents' networks when they are

"impaired" in their ability to provide service. The Court of Appeals has made clear that in analyzing impairment, "uniform national rules" may be inappropriate. Rather, the Commission should take into account specific market conditions and look at specific geographic areas. Today's item follows these admonitions, putting in place a granular analysis that recognizes that competitors face different operational and economic barriers in different markets. For example, the barriers competitors face in deploying equipment and trying to compete are different in Manhattan, Kansas than in Manhattan, New York.

Although some of my colleagues disagreed with certain aspects of this analysis, this disagreement primarily concerns the switching network element for residential customers, a small piece of the puzzle. We all agree that states should play a significant role in determining whether impairment exists for transport. We all agree that states should play a significant role in determining whether impairment exists for loop facilities. And, we all agree that incumbents should no longer be required to unbundle switching for business customers.

Some of my colleagues also wish to end the unbundling of all residential switching immediately. I believe such action would be inconsistent with recent court decisions and the state of competition in the market. It is true that there are now a significant number of residential telephone customers that receive service from a CLEC, but *the overwhelming majority of these customers is currently served through an incumbents' switch*. To declare an immediate end to the unbundling of all switching in every market in the country would ignore the Court's mandate for a more granular analysis and effectively end residential competition. Accordingly, I support the item's approach to treat residential switching as we do other network elements, removing unbundling obligations only after a fact specific market analysis.

Maintaining a Role for State Authorities

In establishing a market-specific impairment analysis for unbundling network elements, this item provides an important role for the states. During my time at the Commission, I have witnessed first hand the helpful role that the states have played in our mutual goal of implementing the Telecommunications Act. I believe that the states are best positioned to make the highly fact intensive and local "impairment" determinations required by the Court of Appeals.

All of my colleagues agree with this principle when applied to the unbundling of transport and other network elements. Some felt, however, that we should not allow the states a role in determining the unbundling of switching. In my view, the item correctly treats switching as it does other network elements, recognizing that the states are better able to make individual, factual determinations about particular geographic markets than are federal regulators in Washington. And, just as we do for other network elements, the Commission provides the states detailed guidelines of what constitutes impairment. For example, we specifically require states to consider and resolve problems with provisioning – the so-called "hot cut" problem. We also require states to consider whether competitors have been successfully able to deploy their own switching facilities. We provide a roadmap for states to use in making their analysis, putting us on the road to facilities-based competition.

Conclusion

I believe we have crafted a balanced package of regulations to revitalize the industry by spurring investment in next generation broadband infrastructure while also maintaining access to the network elements necessary for new entrants to provide competitive services. This Order adopts clear rules and immediate regulatory relief for broadband deployment and new investment; it removes the obligation to unbundle switches for business customers immediately; and it provides a detailed roadmap for eliminating the remaining unbundling obligations for network elements.

I believe in limited government. I believe that competition – not regulation – is the best method of delivering the benefits of choice, innovation, and affordability to consumers. The 1996 Act puts in place a policy that requires local markets be opened to competition first, and then provides for deregulation. I believe we have faithfully implemented this policy today. Where there is facilities-based competition, for example from cable modems n the broadband market or CLECs in the business market, we have provided deregulation. That is what the law and the courts require.

In sum, this Order achieves a balanced approach that provides regulatory relief for incumbents' new investment in advanced services while ensuring that local competitors will continue to have the access they need to provide service to consumers. I believe these steps will benefit consumers and the industry, and I support this Order.

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