REMARKS OF
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TELECOMMUNICATIONS COMMITTEE
PORTLAND, OREGON
JULY 29, 2002

Good afternoon. I want to thank Bob Nelson for arranging this discussion today. I am always delighted to join my state colleagues, either at NARUC meetings like this, or in the states or at my office to share ideas on how we can best serve the telecommunications priorities of the American people. And I am so pleased that Russell Frisby and Ed Young could be here today to contribute their vast experience and knowledge to this panel.

This afternoon, you have already spoken about two critical objectives of Congress' telecom policy. Universal service is a core principal at the very heart of the public interest. And broadband is already becoming the key to our nation's system of education and commerce and jobs and entertainment, and therefore, key to America's future. Today, access to broadband is as important as access to basic telephone services was in the past. Indeed, the futures of both universal service and broadband are tied to – and in my mind are dependent upon – competition. And that is the topic for this third session of the afternoon.

These are tough times for competition. Strange sounds emanate from many directions; new and novel explanations are being advanced to tell us how we got here and

where we should be heading; untested medicines are being prescribed for all out telecom ills.

One refrain I hear is this: "It's the recession, stupid. Don't be talking about competition. In these times that try men's souls, our only hope is bigness, the efficiencies of scale from the mega-corporation." It's that old siren song that accompanies every economic downturn – the siren song of consolidation.

Or, we hear: "It was that '96 law. What a flop! If Congress won't change it, maybe you regulators at the FCC can. So get on with the job – go ahead and reclassify services, and cut back the oversight. It's OK to play musical chairs with the titles of the Act because it might just work. Besides, it'll be fun."

Or: "Nice try on competition. But you know what? It was a natural monopoly to begin with; that's what it is now; so will it always be. So wake up and smell the coffee. You could as easily change the course of the Mississippi River as you could foster competition in a natural monopoly environment, and the sooner you realize it, the sooner our economy will recover."

There are other variations on these themes, but I think you get the picture.

Where to begin and what to say in the few minutes that I have to open this up? With all these strange songs being sung, I decided I could go to a strange resource, too. I recently began reading a book that one of my kids gave me on the writings of the great

German philosopher Immanuel Kant. Little did I think that Kant would ever be relevant to our musings on telecom! But Kant's philosophy basically posits three questions: "What do I know?" "What ought I to do about it?" And "What can I hope for?" So I thought maybe we should apply these questions to telecoms and competition.

Let's start with what we know. We know that the mission of facilitating competition in all communications markets became the law of the land in 1996. Personally, I don't think we should have expected the Act to usher in Nirvana is five short years. The Act wasn't supposed to be the 100-yard dash to the brave new world of 21st century telecom. The more sober of its authors probably saw it as the long, hard struggle of endurance and hard work rather than the quick sprint to the finish line. Perfect act? No. Perfect flop? Far from it. For under the Act, we grew to 300 competitors and to 16 or 17 million CLEC-switched access lines before the wizards of the market, and their friends, talked us into a recession.

But you know what? The figures out just last week show an increase in CLEC-switched lines of 14 per cent over ***what*** period?—the last six months of 2001, when not many companies of ***any*** size were performing in exactly stellar fashion. That translates into nearly 20 million competitive lines now.

Yes, a lot of companies have dropped by the way, some of whom had, no doubt, lousy business plans. In spite of that, in spite of recession, in spite of all sorts of obstacles thrown in their way, in spite of regulatory uncertainty, and in spite of

considerable judicial uncertainty, too – competition is still in there, fighting. I think the announcement of its death was premature. And upending everything now because of the natural monopoly rapturizing that we are hearing is not only premature – it's downright wrong.

One other thing I know – if we are going to change signals ***that*** dramatically, you will have to give this Commissioner a new and different law to implement. I can't get there on this one!

On to Kant's second question – what ought we to do? I have already indicated that what we ought to do is what we must do, under the statute, and that is to implement competition. But let me be a little more specific, and a little more timely, in light of the recent depredations in the marketplace.

First, we must use our current FCC authority to reduce the chance that, in a competitive market, accounting irregularities, marketplace misdeeds, and corporate mismanagement will injure American consumers or the competition that Congress sought to promote in the 1996 Act.

This does not mean that we must mimic the job of the SEC to protect against securities irregularities. But just as we share anti-trust responsibilities with other government agencies on mergers and acquisitions so as to ensure competition and protect the public interest, so do we ensure competition through our own accounting and audit

responsibilities. Our FCC accounting rules and audit authority are critical to our job of protecting consumers through ensuring telecom competition. The data we thereby collect enables us to make sure consumers are not overcharged, and it enables us to set network element rates and determine universal service payments.

Right now, I believe we need to examine if we need to ***expand*** the scope of our rules in order to carry out our statutory duties. Instead, we have been heading in exactly the opposite, and I think the wrong, direction. We have rolled back our accounting requirements. Indeed, we now have a notice out that proposes to roll back further, and even eliminate, important accounting requirements. That very notice also proposes that we should no longer collect information for the state commissions. Talk about going the wrong way! I didn't like that notice at the time, that's why I voted against it, and I like it even less now. We need to be working ***more, not less*** closely with our state colleagues, rather than telling them to go hunt down their own data. You asked us months ago to establish a Joint Conference on Accounting to discuss these issues. I strongly supported that, but the Commission has yet to act on the request. That's not right. I am told that you may have some new ideas to announce here in Portland … we need new ideas.

We have relied increasingly on self-reported industry data or Wall Street analysts for information to make critical decisions. We have to reexamine our too often unquestioning trust in these sources. We must commit to doing the hard work of collecting our own data rather than relying on potentially dangerous financial, accounting, and market information produced by corporate sources with clear biases and

under mind-numbing market pressures. And we must step up our own independent analyses of the industries we regulate.

These efforts should include better follow-up on what happens in a state following a successful competitive application. Our data on whether competition is taking hold is sketchy and non-integrated and we therefore lack good information for judging the process and evaluating future applications that are coming our way. We need to ensure that carriers continue to comply with their obligations after the grant of a 271 application, just as Congress required. Again, we should work closely with the State commissions to examine our experience and determine what works to promote competition. Where is competition growing and where has it yet to take hold? Are complaints increasing or decreasing in states where long-distance authority has been granted? Are all consumers able to take advantage of quality services at reasonable prices?

The recent creation of a Section 271 Compliance Review Program is a good step forward. This is something I had been advocating for months and I am glad the Commission is moving forward. Now comes the hard part – making this program work. These are critically important issues. I don't want a hit-or-miss approach to this, not an occasional *ad hoc* inquiry – I want a formalized, systematic and comprehensive post-271 monitoring process. It is only with good data and continued vigilance that we can ensure that consumers reap the benefits of competition -- greater choice, lower prices, and better services

Next on the “What ought we to do?” list, we must be increasingly focused on enforcement. The 1996 Act developed a bold vision for a vastly different telecommunications world, one in which the vitality of competition was to replace the heritage of monopoly. We were given a short time -- and I mean short -- to develop implementing rules and regulations for the Act, and the rest was up to… enforcement. Talk about a challenge!

So we must always strive to make our enforcement more efficient, more effective, and more broadly reaching. As competition grows and regulation is reduced, enforcement remains key. We must use the tools we have. And if we need more authority to improve our enforcement efforts, let’s go ask for it.

This is another area in which the importance of Federal-State cooperation cannot be overstated. The Telecom Act is very much a federal activity, using the term “federal” in the historical context of state and national governments working together. The law instructs us to work together. Resource constraints make it prudent to do so. Plus there is such a vast array of talent, experience and judgment in the state regulatory bodies that we would be just plain dumb to avoid coordinating our efforts.

The Act contains more than a dozen provisions charging us with enforcement. In addition to the broad enforcement authority given to the Commission in Section 4, the statute gives the Commission the authority to conduct inspections and investigations, to issue subpoenas, to perform audits, assess forfeitures, issue cease-and-desist orders, and

revoke licenses. We have an obligation to use this enforcement authority aggressively. Cutting back on something so basic as audits does not send a good signal about our enforcement efforts.

In a competitive environment, we must also establish a concrete plan for how we will protect consumers in the event a carrier ceases operations or otherwise disrupts service.

It is not acceptable to figure this out as we go. A central responsibility of the FCC is to protect the network from dangerous disruption, not only to consumers, but for critical public safety, military, and government users. We cannot afford to get this wrong because we didn't think it through before hand.

That means reexamining our discontinuance procedures to make sure that we are getting notice of service disruption early enough. We need to make sure we do all we can to protect consumers and ensure that they do not face such disruptions. We should make sure we have adequate discontinuance procedures in place ***before*** an imminent shutdown, and not be scrambling to figure out what to do in the middle of a crisis.

We should know what critical infrastructure each major carrier has and there should be a plan for keeping them up and running in any circumstance.

We should determine the extent of authority now over each class of company. These include cable companies, wireless companies, Internet backbone companies, satellite companies. We need to figure this out before we face the problem.

Critically important -- and I have already alluded to this but I want to repeat it here -- we need to figure out the impact of our deregulation decisions on competition and on our ability to protect consumers in a time of crisis. For example, as we push more and more services into Title 1, we need to understand what regulatory requirements apply. Otherwise we are moving into a house that has no floor plan.

It is difficult to over-estimate the importance of the decisions that are going to be made on the competition issues. In the coming months, we will decide whether to keep, modify, or scrap many of our competition rules, particularly those that apply to broadband services and network elements. Talk about important decisions – there is the potential here to remake our entire telecommunications landscape, for better or for worse. The stakes are enormous. At some point, the vote is going to be called on these issues.

So, Kant asks, what can we hope for? Well, I guess that depends on whether you are an optimist or a pessimist. I am an optimist. I start from the premise that the Communications Revolution is alive and, if not entirely well, still strong enough to survive and strong enough to be the engine that will power America's growth in the Twenty first century. Even though recent headlines have the whole pack of pundits and analysts questioning the very foundation of this industry, you can mark me down as an

optimist about our communications future. The revolution will endure because its technologies are transformative – they are going to change the ways we live, work, play, care for ourselves, govern ourselves, you name it. What's coming down the road is going to make all the dramatic communications changes of the past century -- and they were dramatic -- pale by comparison.

When the dust settles and the smoke lifts and prosperity returns, the technologies will still be there, and they will proliferate. The demand for new applications will similarly grow.

We've seen this before in our history -- this "boom-bust-and-grow-again" cycle has accompanied other great technology and infrastructure roll-outs throughout history, canals and railroads being two examples. There's excess enthusiasm and risky investment at the outset and the bubble bursts, but the infrastructure need endures, the technology is viable, and growth returns. It may not be tomorrow, but I think it will be sooner than many of the pundits predict. So I believe America's communications future is bright. It's sunrise out there, not sunset.

So I hope for that, and I expect it. I also hope for strong leadership and a commitment to competition in these difficult times. And I hope that NARUC will be leading the charge. But let me be very frank -- if you want your desired outcome, if that's what you really, really want, realize at the outset that it's not going to happen without an intense and unparalleled effort on your part. Like nothing else you've ever

done. Sitting on the sidelines at this critical juncture is not an option. Nor is a half-hearted or three-quarters or seven-eighths-hearted effort. No, the votes are going to be called on these issues, and if you want a majority thinking your way, you've got a ton of heavy-lifting to do.

I think that, together, we can do it. As I said before, I am an optimist.

In the little more than one year that I have been on the Commission, I have come to see very clearly that, by combining our resources and working together, we can make more progress by far than can either of us acting along. NARUC has championed a multitude of good and worthy causes. It has a record to be proud of. But your greatest challenges -- and mine -- are still ahead.

Kant concluded his philosophical musings with something he called the "categorical imperative." I never claimed to understand all complexities he placed within that term. To my simple mind, I think he was telling us to do what we have to do. And what we have to do is work together to protect consumers, grow competition and safeguard the public interest. Hard work – but not a bad challenge! I look forward to working with you to make it happen.

Thank you.