

## **Text As Prepared**

**Remarks by Kevin J. Martin  
Commissioner  
Federal Communications Commission  
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### **I. Introduction**

Thank you Lila for that kind introduction, and thank you very much for inviting me to speak with you today. As a native North Carolinian, it is good to be back amongst my fellow Southeasterners.

And its especially nice to be in South Florida. My wife was raised in Miami and we love to return to see her mother and her sister's family.

In fact, my career began here in Miami as a law clerk for Federal District Court Judge William Hoevler. As a proud member of the Florida Bar, let me say that I always enjoy a chance to get back here and thank you for inviting me.

A special word of thanks to SEARUC President Commissioner Baez, Chairman Lila Jaber and the entire Florida Commission and staff for their hard work in organizing today's conference.

Chairman Jaber serves with me as co-chair of the Federal State Joint Conference on Advanced Services. Thank you Lila for your dedication, leadership, and keen insight. Your efforts have been key in ensuring that the Joint Conference remains focused on the ultimate goal - - promoting the deployment and availability of advanced services for all Americans.

The conference agenda "Regulation and Competition: Navigating Uncharted Waters" is ambitious and timely. With panels on Broadband Deployment and National Broadband Policy, Universal Service, and the Telecom marketplace - it looks like today you will cover the waterfront on many of the core and complex telecom issues currently facing the FCC and state commissions.

### **II. Washington knows best.**

By inviting an FCC Commissioner to speak here today, you may have hoped to hear a cogent overview of what is going on in Washington, combined with current analysis of the key issues be it broadband, local competition or universal service, and some on the money, sure fire predictions on who the survivors in the telecom world might be at the end of the day.

Those predictions, however, will not be coming from me. I suggest sticking around for the Wall Street analysts panel scheduled this afternoon and wait for their special insight. Although, if recent history is indication I don't know how helpful that will be either.

All kidding aside, in attending regulatory gatherings similar to this one- I am sure you have heard federal regulators review:

- 1) what's on the Commission's plate;
- 2) how the FCC is diligently analyzing the record on a particular proceeding; and
- 3) how Washington, after much difficult deliberation, ultimately has the right answer to whatever telecom dilemma is present at the moment.

On the eve of my first anniversary as FCC Commissioner, I have learned that in reality, the FCC does not always have all the right answers. I have also learned that the Commission is more likely to come up with the wrong solution, if it decides to tackle and resolve difficult issues on its own.

Certainly, since the advent of the 1996 Telecommunications Act, we have seen many well intentioned, but poor policy choices result from a "go at it alone" strategy.

In my opinion, this approach leads to poor policy decisions. And the consequences of ill-advised regulations are often burdens on the economy and industry, which ultimately result in higher costs for consumers. Take for example, the previous federal approach to "numbering" issues.

I believe that federal numbering policy is a prime example of how previous Commissions have failed to secure state and local input early in the decision making process-to the ultimate detriment of the consumer.

## **1. The Numbering Crisis-Success of Increased Federal/State Cooperation**

South Florida, as well as many communities throughout the country are well aware of the costs that resulted from regulatory inertia and the lack of better federal/state cooperation on telephone number policy.

Area code changes-whether it be area code splits or overlays-- have a direct impact on local businesses and the daily lives of residential consumers. Consumers get frustrated as they or their friends and families are shifted into a new area code. Businesses are hit with a direct cost to change area codes on advertising, stationary and equipment. Area code splits impact the geographic identity of the community. And, as you are aware, even when you add or overlay an additional new area code into a community - - requiring callers to dial 10 digits for all local calls has increased the level of consumer confusion and frustration.

And in all of these circumstances it is you all at the state commissions who are at the front lines dealing with consumers. It is state commissions who bear the initial burdens of consumer complaints. It is you that end up taking their calls, fielding their questions, and trying to explain why 10-digit dialing is ultimately where we will all end up.

If my parents initial experience in North Carolina and my in-laws initial frustrations are any indications-I am very glad I am at the federal commission and not a state commission left holding the bag as they are required to implement federal policy.

Simply put, I believe that my predecessors initially underestimated the impact that area code changes have on local businesses and consumers, as well as the positive role that state commissions could play in helping to solve the crisis.

Less than a decade ago it was unthinkable that we would run out of telephone numbers. Recall that from 1984 through 1994, only 9 new area codes were activated nationwide.

Since 1994, we have witnessed an explosive growth in the use of pagers and wireless telephones. We have seen the introduction of competition for local telephone service, as well as a general increase in the demand for second phone lines for fax services and Internet access. Other new services that were introduced also required new numbers, for example, locational services such as ON-STAR and new point-of-sale devices, such as electronic gas pumps.

Combined, this explosive demand for telephone numbers resulted in over 120 new area codes being created since 1995.

In fact by 1999, the FCC and state commissions had a numbering crisis on its hands. In that year, the FCC received official estimates that the North American Numbering Plan would run out of telephone numbers, or exhaust, by the year 2007. Many area codes throughout the country were also on the verge of exhaust.

Despite this looming crisis, the Commission initially rejected several state commission's calls for changes in the way numbers were assigned-for example refusing to allow states to require technology specific overlays-even for automated services that were not even receiving calls such as ATMs and gas pumps.

Throughout this crisis, many state regulators took the bull by the horns and used their limited authority to address the crisis locally by implementing number conservation measures such as rate center consolidation.

More importantly, however, state regulators spoke with a unified voice to encourage the FCC to address number conservation and utilization on a national basis. And some even called for more explicit authority, resulting in 30 states requesting additional delegated authority.

Thankfully, at the states encouragement, the FCC took several measures, such as:

1. Adopting a Numbering Plan Exhaust Study;
2. Allowing state thousand-block number pooling trials for LNP capable carriers and later mandating the role out of National number pooling; and
3. Imposing number utilization thresholds -that require carriers to use a certain percentage of assigned numbers before getting more.

I believe that the FCC did not go far enough in giving states latitude to design and implement number conservation strategies. In my view, you -our state colleagues-- were in a better position to understand the local environment and the potential effects that result from implementing new area codes.

Therefore, during the past year at the FCC, I have pushed hard for additional delegation of numbering authority to state government. I was pleased to support lifting the ban on service-specific and technology-specific area code overlays. States now have the authority, on a case-by-case basis, to implement this area code relief option.

Thanks to the actions and encouragement of state regulators, the numbering crisis that appeared in 1999 has faded. Given the most recent estimates, implementation of federal and state telephone number utilization and conservation strategies, such as thousands-block number pooling, will extend the life of the North American Numbering Plan out until sometime between the year 2025 and 2034. However, if we had cooperated with states early we could have achieved some of these same results with less consumer frustration and confusion.

Our number utilization and conservation efforts should not stop there. As you know, all carriers are required to be number pooling and number porting capable on November 24, 2002. The Commission should hold fast to the number pooling requirements because they are critical to the number conservation efforts we have initiated. We currently have a petition at the FCC requesting total forbearance from imposing wireless local number portability requirements that are scheduled to take effect on November 24, 2002.

I am sympathetic to NARUC's concerns regarding the impact that permanent forbearance from local number portability requirements would have on competition on wireless telephony and on the efficient use of numbering resources.

## 2. The Road Ahead - - Federal/State Cooperation on Competition Policy

Lessons regarding federal/state cooperation should not begin and end with numbering policy.

As you are aware, by year's end the FCC will act on several rulemakings designed to address local competition and broadband service offerings. We are examining:

- whether to adopt performance measurements for evaluating a LEC's performance in provisioning facilities and services to competitors;
- incumbent local exchange carriers' obligations to make their facilities available as unbundled network elements; and
- the appropriate regulatory framework for wireline broadband Internet access.

In my opinion, your input in each of these areas is invaluable as we initiate the first major re-examination of the implementation of the 1996 Telecom Act.

### Performance Measures

On performance measures, I believe that a competitive market is not viable unless new entrants to the local telephone market can obtain the facilities they need in a nondiscriminatory, reasonable and timely manner. Just as in the numbering area, the FCC is not the first out of the gate to address performance standards. State Commissions, such as Texas and New York, have long been at the cutting edge of studying and implementing performance standards and metrics. We need your expertise and experience in this area and I encourage you to share your input and expertise with your federal colleagues.

### UNE Triennial Review

As many of you know, the U.S. Court of Appeals for the DC Circuit just remanded the *UNE Remand Order* - the FCC's most recent effort to set out a list of network elements that incumbent local exchange carriers must make available on an unbundled basis to competing carriers. The Court criticized the FCC's unbundling requirement as being overly broad. The Court found the FCC had failed to take into account the competitive nature of particular geographic and customer markets, and reflected an open-ended notion of what kinds of cost disparity are relevant to whether an element is suitable for competitive supply.

Before the Court's recent decision, the FCC had already started a proceeding to review how incumbent carriers should provide network access to requesting carriers on an unbundled basis consistent with the requirements of the Telecom Act.

Last week, the Commission released a public notice requesting comment on the impact of the Court's decision on the UNE triennial review proceeding.

I am sympathetic to the requests made by several states, including Florida, that if the FCC chooses to establish geographic, more granular unbundling standards that we adopt broad rules that will afford state commissions some flexibility to customize the level of granularity based on market conditions within the states.

In general, states are better positioned to conduct fact-specific inquiries. They can best judge the level of competition and the system of retail price regulation that applies to incumbent carriers in their respective states.

### Wireline Broadband Access

As many of you know, another of our more controversial proceedings is the Wireline Broadband Access proceeding. While I am generally supportive of the Commission's tentative conclusion to classify broadband Internet access as an "information service" I have some concerns with this approach.

For example, I do not support the FCC's proposal to extend universal service contribution obligations to other providers of broadband Internet access such as wireless, cable and satellite providers.

In my view, the contribution requirement is essentially an Internet access tax that represents an unnecessary financial burden on service providers and actually creates a barrier to broadband deployment.

I also believe that the Commission must carefully consider the impact of a change in regulatory classification on the ability of competitors to enter new markets. For example, some states have expressed their concern that a "change" in regulatory classification could adversely impact some state efforts to ensure that all telecom carriers have easy access to local rights of way and to building access.

I believe it is critical for the Commission to hear from you on the impact that these proceedings will have on local competition and consumers in your states.

For example, recently concerns have been raised about the impact that our cable modem proceeding may have on the ability of local governments to respond to consumer complaints.

### **III. Conclusion**

In conclusion, when I appeared before the Senate Commerce Committee for my confirmation hearing, I informed the Senators that to be an effective Commissioner it was important to be a good listener. Just as I believe the Commission must listen carefully to Congress, we must also listen carefully to our state colleagues. While we will not always agree on every issue, your insights and input about the impact of our policies at the local level are an invaluable part of our decision making process.

I look forward to discussing these issues with you on a more personal basis throughout the day, and encourage you to continue to be active in working with the Commission. Particularly in these challenging financial times, regulations can have an even greater impact on the competitive environment. And we need your assistance.

Thank you for your time and attention this morning.