

**SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

Re: *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, CC Docket No. 98-146

Encouraging the deployment of broadband services to all Americans should be a national priority. Such services are essential to the economy of the 21st century, dramatically reducing the costs of exchanging information and allowing previously local businesses to serve the world. Broadband services are especially important to rural America, providing business, educational, and healthcare opportunities to remote parts of the country. I am hopeful that, just as rapid developments in telecommunications and technology have driven much of this nation's economic growth in recent years, broadband deployment will lead to a new period of growth. I thus believe that all levels of government should work to eliminate barriers to infrastructure investment and to accelerate broadband deployment.

Under the Chairman's direction, the Commission has sought to promote broadband deployment through a variety of efforts, including (i) proceedings on performance measures for unbundled network elements and special access, (ii) examination of the impact of unbundling obligations on telephone carriers' incentives to invest in new facilities, and (iii and iv) consideration of the appropriate regulatory treatment of broadband transmission services and Internet access services provided over cable and telephone infrastructure. These proceedings are positive steps, and I am pleased to support them.

I write separately to emphasize my belief that there is some urgency to the need for continued efforts. I agree with the Commission's conclusion that "advanced telecommunications capability" is currently being deployed on a "reasonable and timely basis." The availability of that capability is increasing, and I am pleased that subscribers to services the Commission characterizes as "high-speed" were reported in 78 percent of all zip codes in the United States.

I am concerned, however, that deployment of such services still lags in rural and other underserved areas. Our data show that fewer than 40 percent of the most sparsely populated zip codes have at least one subscriber to "high-speed" services while more than 90 percent of the most densely populated zip codes have at least one such subscriber. While that gap is narrowing, there is no question that the continued lag is far from ideal. Moreover, the fact that a particular zip code contains one subscriber to a service does not necessarily indicate that the service is widely available.

More fundamentally, however, I am concerned about the transmission speed of the services that are available to most subscribers. In making our determinations of the availability of "advanced telecommunications capability," we measure the deployment of services that offer transmission speeds of at least 200 kbps. Many argue that Internet access services at such speeds are merely transitional and that true broadband services

should be defined at a much higher speed. As we acknowledge, many of the most exciting applications, such as video-on-demand, require transmission speeds significantly in excess of 200 kbps. There are strong arguments that such applications, or others that require higher speeds, offer the kind of content that consumers truly demand, and will ultimately drive much higher adoption rates. I thus am pleased with this report's recognition that the speed at which we define "advanced telecommunications capability" is an evolving measure and particularly support the report's commitment to reevaluate the appropriate transmission speed in the future. I expect that in the next 706 inquiry, we will ask more in depth questions on the appropriate transmission speed that should mark "advanced telecommunications capability" and will seek specific information on the deployment of and subscription to higher speed services.

In the mean time, I believe that government, at all levels, should continue to play an important role in promoting broadband. While I am cautious of avoiding industrial policy, I think the government can, and should, focus on removing barriers to infrastructure investment and eliminating disincentives to deployment, both financial and regulatory.

For example, I believe the government should commit to exercising self-restraint in placing financial burdens on broadband. Currently, at every level, government too often sees broadband deployment as a potential revenue stream. Telecommunications services are subject to federal and state excise taxes – the kind of taxes traditionally reserved for *decreasing demand* for products such as alcohol and tobacco. New entrants to the broadband market face federal, state, and local rights-of-way management fees and franchise fees, which are sometimes intended to generate revenue rather than recover legitimate costs. All of these financial burdens discourage deployment and should be minimized.

Government should also endeavor to remove regulatory underbrush – burdensome regulations that may no longer serve compelling purposes. Some state and local governments – and the federal government with respect to federal lands – maintain onerous permitting processes for rights of way, zoning, and tower siting, which may be significant impediments to new entrants' ability to provide broadband. I am pleased to say that some states have begun to address these problems. For example, the Michigan Public Service Commission evaluates how open Michigan local communities are to broadband deployment, including the time it takes them to provide rights-of-way permits and the amounts they charge in franchise fees. I hope that this kind of effort to spotlight local communities that may be impeding deployment and those that are facilitating it will spur all officials to take a more critical look at their existing regulations.

Moreover, we need to focus not only on changing our regulations, but also on changing the regulatory environment. Regulatory uncertainty and delay function as entry barriers, limiting investment and impeding deployment of new services. We should work to be faster and more reliable in our decisionmaking and in our enforcement efforts. Prolonged proceedings, with shifting rules, ultimately serve no one's interest, regardless of the substantive outcome.

Finally, at the Commission, we need to place a high priority on facilities-based competition. In the past, the Commission adopted a framework that may have discouraged facilities-based competition, allowing competitors to use every piece of the incumbents' network at super-efficient prices. This regime creates significant disincentives for the deployment of new facilities that could be used to provide broadband. Under such a regime, new entrants have little incentive to build their own facilities, since they can use the incumbents' cheaper and more quickly. And incumbents have little incentive to build new facilities, since they must share them with all their competitors. Under the current Chairman, we have begun several important proceedings that may change this regime. In particular, we will examine how our unbundling and/or pricing rules should apply to incumbent deployment of new facilities. Nevertheless, there is still significant work to be done. I look forward to working on these issues and hope to ensure that advanced telecommunications capability continues to be deployed on a reasonable and timely basis.