NEWS

Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

News media Information 202 / 418-0500
TTY 202 / 418-2555
Fax-On-Demand 202 / 418-2830
Internet: http://www.fcc.gov
ftp.fcc.gov

FOR IMMEDIATE RELEASE:
February 14, 2002

NEWS MEDIA CONTACT:
Sam Feder at 202-418-2100

PRESS STATEMENT OF
COMMISSIONER KEVIN J. MARTIN

Re: *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers*, Notice of Proposed Rulemaking, CC Docket No. 02-33

I dissent from this item's discussion of universal service obligations of providers of broadband Internet access. In particular, I object to its determination that we will consider imposing what is essentially an Internet access tax, extending universal service contribution obligations to non-wireline broadband Internet access providers, such as wireless, cable, and satellite providers.

Unlike wireline providers, these providers have not been required to make universal service contributions on the basis of their broadband services. This item finds that, because wireline broadband Internet access providers may compete with these other kinds of providers, the principle of competitive neutrality suggests that we should consider extending the same universal service contribution obligations to them. The item asks, among other things, whether non-wireline facilities-based providers of broadband Internet services may, as a legal matter, or should, as a policy matter, be required to contribute; whether all facilities-based broadband Internet access providers should be subject to the same contribution obligations; and whether the public interest requires exercise of our permissive authority to extend universal service obligations to non-wireline providers. In my view, we should not undertake such an inquiry at this time.

Broadband deployment is vitally important to our nation, as new, advanced services hold the promise of unprecedented business, educational, and healthcare opportunities for all Americans. The Commission thus recently affirmed that "the further deployment of advanced services is one of the Commission's highest priorities." *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Third Report, FCC 02-33, ¶ 6 (Feb. 6, 2002) ("*706 Report*"). The Commission further made clear that it is "actively engaged in removing barriers and encouraging investment in advanced telecommunications." *Id*.

Placing additional financial burdens on broadband providers only creates barriers to deployment. Such burdens raise costs and decrease demand for broadband, constraining the flow of capital investment and chilling innovation. Thus, I have repeatedly advocated that all levels government should exercise self-restraint in placing financial burdens on broadband. *See*, *e.g.*, *706 Report*, Separate Statement of Commissioner Kevin J. Martin; Kevin J. Martin, *Framework for*

Broadband Deployment: Remarks at the National Summit on Broadband Deployment (Oct. 26, 2001).

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.

The Commission itself has recognized the potential harms from using broadband as a revenue stream, devoting several pages of its recent 706 Report to considering the impact of local rights-of-way fees on broadband deployment. *See id.* ¶¶ 166-168. And keeping the Internet free of taxation has been a national policy for several years. Indeed, Congress recently extended the moratorium on Internet taxation through November 1, 2003.

In this time of protecting the Internet from taxation – of "removing barriers and encouraging investment" – it is troubling to announce that we will consider placing new taxes on broadband providers. While announcing our consideration of the issue is not the same thing as enacting the obligations themselves, the uncertainty created by the announcement – particularly for wireless, cable, and satellite providers – will make deployment only more difficult. Moreover, why even consider the issue if we are ultimately not going to put such obligations into effect? Only compelling reasons should justify such an inquiry. And I do not believe there are compelling reasons at this time.

For example, there has been no finding that the current contribution mechanism is insufficient to meet the needs of the universal service fund. Even so, today we adopt, with my support, a further notice to consider changing the universal service contribution mechanism in other ways to ensure its continued viability. It is thus unclear to me why the Commission feels it necessary to bring broadband Internet access into the funding question at this time.

In my view, the principle of competitive neutrality invoked here is not a compelling reason either. While the call to "level the playing field" has some appeal, we are limited by the Communications Act, which imposes different regulatory regimes on different types of providers. In addition, we must remember that we can level the field by working in either direction. The Telecommunications Act of 1996's explicit goal is to foster a *deregulatory* environment. The better way to address disparities, then, is not to extend government imposed costs or regulations to new providers, but to reduce and remove such costs and regulations from their competitors.

Moreover, in this context, leveling the playing field is not a simple matter of equalizing universal service contribution obligations. Different kinds of providers have different advantages and burdens. For example, cable providers have been required by some local franchising authorities to pay franchise fees equal to five percent of their gross revenues on their cable modem service, to adhere to franchise obligations, and to obtain specific authorization to initiate cable modem service. While wireline broadband Internet access providers are also subject to fees and regulations – some similar and some different – this item does not propose to avoid all such regulatory inequities.

For these reasons, I am troubled by this item's suggestion that broadband providers previously not subject to universal service obligations may now be required to contribute to universal service. The danger here is that, as new technological innovations bring new competitors to the market, we will continue to expand the pool of contributors, whether or not we need additional contributors to keep the fund sufficient. Even worse, by continuously expanding the pool of contributors to encompass new entrants, we may discourage such entry.

I want to make clear that I am committed to ensuring that we maintain a sufficient base of funds to support universal service. Indeed, I strongly support the other item we adopt today concerning reforming the universal service contribution methodology. I simply believe that, without some indication that fund requirements necessitate an extension of contribution obligations to additional broadband providers, we ought to hesitate to cast a cloud of uncertainty over them. Thus, I would have preferred to wait to initiate this inquiry, focusing at present on promoting broadband deployment and making other changes to the universal service contribution mechanism.

Finally, I wish to note an additional consequence of extending universal service contribution obligations to wireless, cable, and satellite Internet access providers. In my view, if we require these providers to pay into the universal service fund, the public interest may weigh in favor of allowing them to be recipients of the fund as well. Whatever contribution obligations we impose on these providers may impact our consideration of whether and how to change the definition of the services supported by universal service.