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The Honorable Michael K. Powell
Chairman, Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Docket No: 01-338; 96-98; 98-147

Dear Chairman Powell:

Last week I had the pleasure to speak at a Policy Forum we sponsored on Capitol Hill that provided Nortel Networks with a timely opportunity to comment on the important role of government policy and FCC regulation in stimulating sustained investment and innovation in telecommunications. We were pleased that a number of your colleagues from the FCC staff were on hand to hear our views.

As a follow up to the forum, I want to provide you with background for the policy recommendations I made on behalf of Nortel Networks regarding government regulation, including major policy reviews currently under consideration by the FCC and referenced above.

It's evident from conversations we had at the forum with FCC staff members that you and your colleagues are well aware the telecommunications industry is characterized equally these days by uncertainty and promise. The industry is undergoing a severe correction and, as you have pointed out, it is unclear to any of us when the downturn will end. Because the telecommunications industry plays an important role in the U.S. economy, this setback has had serious effects in terms of jobs lost and eroded market value of companies. Yet, even in the face of the present situation, the tremendous promise of telecommunications still holds. New services such as broadband, IP telephony, optical Ethernet and wireless technologies will bring about significant gains in business productivity and growth as well as real value in the daily life of consumers.

In this climate, companies that succeed will have realized that the industry is in the midst of an important structural transformation with new dynamics. Gone are the days of a guaranteed rate of return and liberal spending. Instead, most companies today have put renewed emphasis on business models that deliver value to both customers and investors, and that are based on sound economic fundamentals.

Given these critical changes, I was encouraged by your remarks at this week's Goldman Sachs Communicopia conference in New York on the need to change policies to suit the times. At the federal and state levels, government policy plays a critical role in helping create a favorable environment for renewed growth, continued innovation, and competition in the telecommunications industry. We agree with the view you expressed in New York that "times have changed and policies must change."

Like you, we believe that government regulation should be realigned to reflect economic and market fundamentals. Regulation that helps stimulate capital investment in telecommunications and that fosters healthy market competition will ensure sustained progress in innovation and result in greater choice of services for consumers.

As detailed below, Nortel Networks advocates policy recommendations based on the significantly changed dynamics of the telecommunications industry. Policy should support facilities-based competition because this is more likely to draw capital investment and provide consumers with more choice.

Government regulation should be minimal, reasonable and equitable. Regulation of legacy framework should not be applied to new technologies. In fact, policy should be technologically neutral. Finally, we know from discussions we had at our Policy Forum that you and your colleagues are well aware that regulatory uncertainty inhibits investment, and we trust that the FCC will act prudently, yet expeditiously.

I'd like to add a final comment on the Commission's unbundled network element policies presently under review. In my view, this is an example where policy has contributed to – rather than helped alleviate – the depressed state in infrastructure investment.

Service providers will not invest in infrastructure when regulatory burdens adversely affect the viability of business cases and shareholder return on investment. Without such investment, the equipment suppliers and solutions providers that create innovation are unable to sustain their research-and-development efforts. The present unbundling and pricing rules result in disincentives to investment on both sides—for incumbent carriers because they are required to unbundle, and for emerging competitors because, under the current regulatory scheme, they stand to gain by waiting for incumbents to construct facilities instead of building their own.

We have a shared goal of creating a regulatory environment that stimulates investment and fair competition in the telecommunications industry. Government policies such as this one interfere with the free operation of market forces and act as disincentives to investment that would help revitalize the industry. Reforming this policy is in keeping with the intent of the Telecommunications Act of 1996 for fair and equitable competition, and better aligned with economic fundamentals and market forces.

In that regard, we support your position that "federal and state policy-makers must implement reform to create genuine and viable economic and regulatory foundations for communications services, growth and competition."

Your assurance that this is where the FCC is headed is welcome and regarded by Nortel Networks as in the interests of effecting regulatory reforms that will contribute to the recovery of our industry. Creating a favorable regulatory and policy environment is critical for an industry that in your description is "in real trouble" and whose difficulties are having an adverse and pervasive effect on the U.S. economy.

We appreciate the opportunity to pass along our recommendations for your consideration. We look forward to continuing to work with you and the FCC staff on issues pertaining to the regulation and health of the telecommunications industry.

Sincerely,

Frank Dunn
President and Chief Executive Officer
Nortel Networks

Attachment

Recommendations Concerning Government Policy Regulating the Telecommunications Industry

We advocate policies that reflect the following principles:

1. **Marketplace competition benefits all constituents: consumers, service providers, solutions providers, and the U.S. economy as a whole.**

2. **Facilities-based competition should be the ultimate policy goal in the provision of telecommunications services.**

   - Facilities-based competition provides consumers with a choice of providers and ensures market-based pricing of services.
   - Facilities-based competition encourages infrastructure investment by carriers, and provides incentives for technology innovation on the part of solutions providers and equipment suppliers.
   - Facilities-based competition enhances homeland security by providing multiple facilities options.

3. **Government policies should emphasize appropriate regulation that is equitable, minimal, and certain.**

Pertaining to Equity

- Government policies should be technologically neutral, rather than try to pick winning and losing technologies.
- Current FCC rules on the unbundling of local networks and the pricing of unbundled network elements are a disincentive to infrastructure investment. Current state and federal pricing policies act as a deterrent to facilities-based investment.
- The FCC must consider whether the unbundling of each network element is encouraging investment and innovation and whether it is rationally related to the goals of the Telecom Act and the transition to facilities-based competition.
- Consistent with the goals of the Telecom Act, current UNE/UNE-P users should be required to transition to facilities-based investments through the use of a sunset mechanism of the FCC's current regulatory regime that would provide certainty to the UNE-based carriers and their customers while providing clarity to the UNE providers in terms of assessing returns on their investments.
- The decision to provide telecommunications services on leased infrastructure rather than on provider-owned infrastructure should be financially neutral and not driven by artificially low prices imposed by regulators to "jump start" competition.
- UNE/UNE-P users must transition to facilities-based competition in accordance with the goals of the Telecom Act.

- The FCC should, however, avoid flash cut changes, determine the length of transition and ensure that it takes into account the needs of UNE providers, UNE users, and consumers of UNE-based services.

Minimal Regulation

- A legacy regulatory framework should not be applied to new technologies.
- The wireless and long-distance sectors have flourished with minimal regulation while emerging technologies are threatened by a complex regulatory framework designed for the local telephone market.
- Nortel Networks recommends that the current UNE, UNE-P, and TELRIC pricing regime not be applied to new infrastructure investment.
- Current FCC rules regarding the unbundling of packet switching should be extended to recognize the distinction between packet networks that deliver next-generation services and circuit-switched networks that deliver telecommunications services.

Certainty

- Clear rules are imperative in order to build and sustain viable business cases.
- Regulatory uncertainty inhibits rational investment decisions.

4. Considering the crisis in the telecommunications sector, regulatory policies need to be adopted carefully and as expeditiously as possible.

- Policies should be carefully considered and drafted so as to withstand the inevitable court challenges that will follow. These court challenges extend uncertainty in the sector with deleterious effects.