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February 10, 2003

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW, TW-B204
Washington, D.C. 20554

Re: LSGAC Ex Parte Filing / Advisory Recommendation No. 30
In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, CC Docket No. 02-33

Dear Ms. Dortch:

On behalf of the Commission's Local and State Government Advisory Committee, I am hereby submitting the LSGAC's Ex Parte Filing of Advisory Recommendation Number 30 with respect to CC Docket No. 02-33; In the Matter of Review of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities.

Very truly yours,

Kenneth S. Fellman
Chairman, LSGAC

KSF/eaj
Enclosure
cc: Hon. Michael K. Powell, Chairman (w/encl.; via email)
Hon. Kathleen Q. Abernathy, Commissioner (w/encl.; via email)
Hon. Michael J. Copps, Commissioner (w/encl.; via email)
Hon. Kevin J. Martin, Commissioner (w/encl.; via email)
Hon. Jonathan S. Adelstein, Commissioner (w/encl.; via email)
LSGAC Members and Staff (w/encl.; via email)
Kris Monteith (w/encl.; via email)

FCC Local and State Government Advisory Committee
Advisory Recommendation Number 30

In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, CC Docket No. 02-33

1. **Introduction.** Between December 2001 and March 2002, the FCC opened four rulemaking proceedings seeking comment on the proper regulatory treatment of broadband communications services.[1] Three of these emerged from a background of Communications Act Title II regulation of "common carrier" telecommunications services and focus on telephone broadband deployment, while the fourth sprang from the regulation of cable modem service under Title VI. This recommendation addresses the captioned telephone proceeding. A second recommendation addresses cable modem service.

2. **Background.** In its Notices of Proposed Rulemaking, the Commission expressed its belief that broadband (or high-speed) internet access did not easily fit into the classifications of common carriage or cable service. The FCC adopted for cable modem service and proposed for wireline DSL a new and common classification of these broadband offerings as "information services," subject only to the constraints of Title I. The FCC's stated goal was to establish a useful and consistent "parity" of regulation in aid of faster deployment and more facilities-based competition. The Commission asserted that accelerated deployment could be achieved through removal or reduction of the regulatory impediments to the construction and operation of these new services and their related transport platforms. Further, deregulation was anticipated to induce greater investor interest in financing the new systems. In other words, the Commission believed that supply-side constraints were holding back broadband service deployment and competition.

3. **Discussion.** Recently, the Commission's fundamental assumption expressed in the Notices of Proposed Rulemaking has been questioned. The Federal-State Joint Conference on Advanced Services released a report that claims the deployment problem is attributable to lack of sufficient consumer demand.[2] Specifically, the report suggests the following as appropriate for "Government's role in broadband":

> Regulatory policies or financial incentives that favor wireline

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[1] FCC 01-360, CC Docket 01-337; FCC 01-361, combining CC Dockets 01-338, 96-98 and 98-147; FCC 02-42, combining CC Dockets 02-33, 95-20 and 98-10; and FCC 02-77, combining GEN Docket 00-185 and CS Docket 02-52.

[2] "Broadband Services in the United States: An Analysis of Availability and Demand," October 2002, at 33 ("Demand appears to be weak when compared to the level of supply, or availability.")

services could end up embedding an expensive and inappropriate technology. The proper regulatory approach is one of technological and competitive neutrality. Given the state of the economy in general, and the telecommunications industry in particular, regulators should not hasten to select costly and perhaps irreversible solutions, when the problems may be temporary.

4. In the DSL docket, the wireline industry argues for regulatory treatment of internet access transport that would deprive competing service providers of equal and non-discriminatory access available to a telephone company's own content provider. These transport platforms have traditionally been open to all potential content providers. The wireline industry claims this new legal treatment will enhance profits and thus stimulate investment and deployment of the transport platforms. State regulators, potential content competitors, and consumer groups strongly dispute that this proposal is an appropriate regulatory approach for DSL.

RECOMMENDATION: The Local and State Government Advisory Committee recommends:

a. The Commission should reject its tentative conclusion that Title II regulation does not apply to wireline broadband transport systems and services. The record does not demonstrate that Title II treatment of DSL platforms has delayed or deferred deployment.

b. The Commission should not adopt the wireline industry's legal proposals to remove DSL platforms from Title II based on the record in this proceeding. The industry's regulatory proposals do not have substantial grounding in actual statutory authority granted the Commission by Congress. A faulty Commission decision that does not survive appellate court review will confuse and further delay deployment of DSL and other telephone broadband offerings.

c. The Commission should reconsider its assumptions underlying its tentative conclusions presented in the Notice of Proposed Rulemaking in light of the findings of the October 2002 Report from the Federal-State Joint Conference on Advanced Services.

d. The Commission should withhold further action in this docket until it consults with its fellow regulators in state and local governments to identify the current dominant impediments to DSL service expansion.

Dated this 10th day of February, 2003.

Kenneth S. Fellman
Chairman