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TELECOM EXPERTS CALL FOR LESS REGULATION AND REDUCED STATE INTERVENTION IN THE INTERNET PROTOCOL WORLD

Federal Preemption and Clear Demarcation of State Roles Would Spark Broadband Diffusion

(Washington, D.C.)//October 27, 2004 – Leading telecom scholars and policymakers from the FCC and state Public Utility Commissions today agreed that the pace of technological change in the industry has made many existing telecom regulations passé and the cross-border aspect of many new technologies reinforces the idea of regulating from a unified national perspective. The New Millennium Research Council (NMRC) event, ‘*The End of Regulation? Reforming Telecom Policy and Regulators’ Roles to Meet New Market Realities*’ brought 14 experts from across the country together to examine whether the current machinery of regulation is working and how best to improve the federal and state roles of regulation. Experts acknowledged that traditional telecom services are rapidly migrating to Internet protocol based technologies over broadband platforms and that this change requires policy makers to reconsider the worth of existing ‘rules of engagement’ for the telecom industry.

“New networks deserve new thinking,” said **Christopher Libertelli**, Senior Legal Advisor to FCC Chairman Powell. He said the FCC under Chairman Powell has accepted the changes brought about by IP technologies and the FCC has worked to limit government intrusion at both the state and federal levels. He said state and federal regulators needed to “share a common vision” for telecommunications and “why it is good to get there as soon as possible.”

While the telephone industry has been historically viewed as a monopoly power, there is a far greater degree of competition in the IP world, said **Matt Brill**, Senior Legal Advisor to FCC Commissioner Abernathy. “The goal of regulators should be to focus on social issues instead of economic regulation,” said Mr. Brill. Among those social issues is consumer protection, access to 911, access for people with disabilities, universal service, and assistance to law enforcement, he said.

Many of the panelists discussing “*A Fresh Look at Regulatory Models for the IP-Enabled Future*,” agreed that the current rules don’t work. “We should start with the notion that there is a national interest in promoting broadband,” said **Susan Kennedy**, a Commissioner with the California Public Utilities Commission. She outlined four areas where regulators could play a role: 1.) establishing the “rules of engagement” for the telecom sector; 2.) public safety issues; 3.) network rules such as interconnection requirements, interoperability; and 4.) consumer rights. “We also need a bright line [clear guidance] to determine what not to regulate,” she added.

“Continuing regulation will negatively affect the networks,” said **Connie Murray**, a Commissioner with the Missouri Public Service Commission. She recommended that there be complete federal preemption of all broadband services. **Bob Rowe**, Chairman of the Montana Public Service Commission, cautioned that there should be “practical federalism,” and that states should be facilitating competition in telecom markets. He suggested that a good approach would be to nationalize state “successes” but be careful not to nationalize the errors.

Randy May, Senior Fellow and Director of Communications Policy Studies at the Progress and Freedom Foundation, said that the role of regulators should be to protect consumers only if the market was inadequate. He rejected out of hand any idea of replacing the current “stovepipe” categorization of communications services based on function with a new “horizontal stovepipe” approach such as the MCI

Layers model. “The problems would be the same ones of definition,” he said. “Don’t replace [stovepipes] with another set of techno-functional pipes,” he said.

Speakers on the second panel, “*New Roles for Agencies and Regulators in Changing Times*,” held divergent views about the role of the FCC and state regulators in the new IP world. Overall, most agreed that there needed to be changes at both levels and in many cases state preemption. **Braden Cox**, technology counsel with the Competitive Enterprise Institute, called for complete state preemption of regulation and taxation of broadband services as well as preventing the FCC from regulating all IP-based services. He said that many of the FCC’s functions could be carried out under other agencies such as the Federal Trade Commission for consumer protection or the Department of Justice for disabilities and law enforcement issues. “By diminishing the role of the FCC, you would get a long-term benefit for consumers,” said Mr. Cox.

Charles M. Davidson, a member of the Florida Public Service Commission, said his state has moved in a deregulatory direction under strong leadership from Governor Jeb Bush. Regulators should address monopolies and market competition issues, which would require state regulators to acquire more skills in economics, finance, and antitrust regulation.

“States will continue to play a role as public service regulators for essential services” such as E911 and universal service, said **Paul Vasington**, Vice President of the Analysis Group and former Chairman of the Massachusetts Department of Telecommunications and Energy. “Economic regulation at the retail level should disappear,” he said. “There is no market power in retail pricing.”

Adam Thierer, Director of Telecommunications Studies at the Cato Institute, drawing on previous examples from the Reagan Administration in the 1980s, said that some issues should be dealt with at the federal level while others should be given back to the states. He said there should be clear distinctions on who is responsible for what. For example, price regulation of rates should be handled at the federal level while universal service issues could be entirely handled by the states.

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