Statement of Commissioner Susan P. Kennedy

CENIC "One Gigabit or Bust" Roundtable
Marina del Rey, California

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Thank you very much for giving me the opportunity to speak with you this morning.

I wanted to be here today because I feel very strongly that CENIC's "One Gigabit or Bust" initiative is exactly the type of work that California needs to be doing.

I read the Gartner Group report commissioned by CENIC and released last year. It recognized the potential for a $376 Billion increase in Gross State Product and the creation of 2 million new jobs by 2010 as the result of a focused Broadband deployment initiative in the state. That's when I decided I wanted to be a part of CENIC. Not only is this the type work that California needs to be doing – it's the type of work that California can't afford not to do.

But a concerted push for ubiquitous Broadband deployment is critical not only for the California economy – it is also one of the most significant public policy questions facing the state today.

Much has been said of the "digital divide" – it's certainly a reflection of a more fundamental divide in our state and our country between the "haves" and the "have-nots" – between the economically advantaged and the disadvantaged; between the educated and the uneducated. Often, this divide cuts along lines of race, citizenship, and between the urban/suburban and the rural. That alone is reason enough to focus on this issue.

Yet, not only is the digital divide a reflection of fundamental divides in our society, technology is advancing so rapidly that – **it also promotes and creates new divides.**

Because the simple truth is this – those without high-speed access to the internet are going to be left behind as never before.

Despite the conventional wisdom of the naysayers who became so popular following the implosion of the .com boom, it is very clear to me that **the arrival of the internet heralded a second industrial revolution in this country**.

And while a business model founded on a sock puppet selling 80-pound bags of dog food on the net may never be viable…I mean there are limits – make no mistake – the internet **changed everything in our world in less than a decade** by allowing us to communicate around the globe in real time.

And Broadband will bring changes just as fundamental in this decade.

You'd think that California, recognized worldwide as the breeding ground for innovation, would be leading the charge.

But it's painfully clear that we have our work cut out for us – especially when compared with other parts of the country and the world.

A study in the fall of 2003 conducted by the International Telecommunication Union showed that the U.S. lags behind South Korea, Japan, Sweden, Belgium – behind 10 countries over-all, in Broadband penetration. We ranked 11th. And that's not even considering the fact that the speeds that we're calling Broadband here in the U.S. would be considered laughable compared to the Broadband speeds in those countries. In Silicon Valley, it's called "dribble band," not Broadband.

California is far from being the leader in the United States. I was appalled when TechNet's Broadband Index of 2003 listed California 14th in the nation in its efforts to make Broadband available to its citizens.

California – the home of Silicon Valley, the entertainment capital of the world, the world's 6th largest economy – 14th? We've got a lot of work to do.

That's why CENIC and the "One Gigabit or Bust" initiative is so important, and why the proceeding I'm currently leading as Assigned Commissioner is, I believe, such a great opportunity. I want to take a sleepy study ordered by the Legislature and turn it into a plan that matches the cutting edge goals outlined by CENIC.

Senate Bill 1563 requires the CPUC to identify factors preventing the ubiquitous availability and use of "advanced communications services" and to develop a plan to address these barriers. The report is due to the Governor and the Legislature no later than December 31st of this year. That's all well and good, but we need a lot more than a report. We need a comprehensive state-wide policy to advance the deployment of Broadband. We need a plan of attack for California to make sure that this state doesn't just address a list of barriers but leads the nation – and the world – in Broadband deployment and usage.

We're in the information-gathering stage of the advanced services proceeding right now. We've held public participation hearings in various parts of the state, where we've sought input from community-based organizations, civic leaders and other organizations on how we can remove barriers to deployment throughout the state. I intend to look closely at the work CENIC is doing and tap into your leadership.

We're in a very important and difficult phase in the proceeding – we're obtaining the data necessary from providers to map the state's existing Broadband availability. Much of this data is proprietary, so this isn't easy. But we feel it's critical to get an accurate picture of where the barriers are.

The first step, however, is to define "Broadband." It's a word that is thrown around all the time, but as you know with very little agreement on what it means.

We know the FCC defines it as data transmission of 200 KB per second in both directions.

Although I leave aside – for now – the question of Broadband's definition for purposes of the CPUC proceeding, I will say with

certainty that 200 KB per second should not be our goal. 200 KB per second is inadequate for many of the applications currently available online – streaming video, for example – let alone what may be available in a year or so.

And that's why I applaud the way CENIC has chosen to frame the question – ubiquitous Broadband, yes. But let's not settle for just that. Let's look to the future and figure out a goal that puts us where we think we'll want to be in 2010, not just simply adopt a goal that is antiquated before we even achieve it.

South Korea, Japan, Europe – they haven't settled for 200 KB per second – and neither should California. 1 gigabit – that's a goal that makes sense for the future and for California.

So how do we get California to the place it should be – the place it **needs** to be – if it is going to continue to be the center of the technological revolution?

Here are some thoughts on how we start moving in the right direction:

First, as I said earlier, California needs to develop a comprehensive, state-wide policy to advance the deployment of Broadband.

Fundamental to that state-wide policy is addressing municipal and other public rights-of-way. The top three states in the TechNet report – Michigan, Florida, Missouri – all have in the common the fact that they dealt with rights-of-way permitting and fees as a state policy issue, and ensured that those permits and fees were reasonable and uniform. It is ironic to note that access to rights-of-way was the very same issue that led the state to take regulatory responsibility over telephony at the turn of the 20th Century from municipalities and assign it to the Public Utilities Commission, which is not known for its nimble, cutting edge decision-making. But we solved this problem once, and we should be able to do it again.

In <u>everything</u> we do, we have to be on the look out for potential barriers to Broadband deployment.

But it's going to require an attitude change at my own Commission. Let me give you an example:

Recently, PG&E added fiber optic cable on utility towers carrying electricity across San Francisco Bay, parallel to the San Mateo Bridge. The Bay Conservation and Development Commission – a regional governmental entity responsible for reviewing the environmental impacts of such an action – found that such a minor change to existing structures warranted a categorical exemption from CEQA requirements.

Despite that fact, an Administrative Law Judge at the Commission recently issued a Proposed Decision denying PG&E this categorical exemption. This Proposed Decision contradicts the explicit language of state CEQA guidelines, the Commission's own precedent, and the actions of the lead environmental agency. If it is adopted, every utility that attempts to upgrade its copper wires to fiber will require a full scale, multi-month CEQA review, despite the fact that it was never the intention of CEQA to review such minor changes.

If the Proposed Decision is adopted by the Commission, it will be yet another hurdle to the goal of Broadband deployment, and will further complicate and impede investment in the state's information infrastructure.

I've drafted an Alternate Decision, finding the CEQA exemption to be applicable. The purpose of my Alternate is to basically prevent California from shooting itself in the foot. I wish I could tell you that I am confident my Alternate Decision will prevail when this issue comes up for a vote before the Commission on April 1. I expect a close vote. And, if my Alternative fails – it will give new meaning to April Fools Day.

And this is just one example of how important the regulatory environment is in the state to the broad policy goal of Broadband deployment.

If we get regulation right – or at least right enough – we can make great strides. When we get regulation wrong – we do a tremendous amount of harm. We discourage investment. When we discourage

investment, we take away consumer choices and we stifle innovation – and all these things – innovation, market forces, investment – are what we need to be encouraging if California is going to get from "here" to "there" on Broadband.

Because it is innovation and the private sector that will be the driving forces of Broadband deployment – not government.

And we are at a major crossroad today in telecom regulation. VoIP changes everything we know about telecommunications today – the technology, the regulations, the economics – even the language.

I believe VoIP will provide the keystone of a killer application for Broadband by setting off a fierce battle for the triple-play – Video, Internet and Voice. But the regulatory structure is stuck on definitions that are 30 years old.

There is no more line between "telecommunications" and "information" services as defined by current law. There is no longer any relevance to the "total element long-run incremental cost" of replacing a 100-year-old infrastructure. There is no difference between interstate and intrastate; between local, long distance and international. The only distinctions that exist now are those that are created by and for regulators to facilitate the status quo.

Our whole regulatory structure – decades of federal law, case law and state regulation – is built around the provision of voice services over copper lines. Intercarrier comp, universal service, 911, provider of last resort – everything revolves around who provides, and who pays, for voice services.

With the commercialization of IP-based telephony we are rapidly moving to a world in which voice services is nothing more than another application that will travel over any medium that today can carry an instant message.

And it will be ***free***. Let me give you some examples:

- Intel is developing a prototype for cell phones that can support three wireless radios in the same device – Wi-Fi, Bluetooth and

GSM/GPRS. Voice applications will be able to travel seamlessly between all sorts of mediums and devices – cell phones, PDAs, laptops. WiFi hotspots to cellular networks.

- T-Mobile and Comcast have entered into a strategic alliance marking the first time a cable company and a wireless carrier have joined forces.

- Time Warner Cable is also considering including wireless phone service as part of its bundled package for customers.

- OnStar Corp. is forming a partnership with a leading cellphone company to offer handsfree phone service through its embedded auto technology.

- Vonage announced a deal with Circuit City. For $100, every customer with a Broadband connection will get all the equipment they need for voice service, free activation and two months of local, long-distance service for free. They are in negotiations with Best Buy and Radio Shack for similar agreements.

- And of course, you have the explosively popular peer-to-peer services through Skype, Net2Phone and a host of others that allow users to make totally free computer-to-computer phone calls carried over the Internet. Just 10 weeks after it was started, Skype attracted nearly 2.6 million users.

The bottom line is that voice services are going to be basically free add-ons to bundled packages and Broadband will become indispensable. Faster speeds will be imperative.

Instead of seeing this new world as the gateway to Broadband deployment, the immediate reaction of many state regulators, including here in California, is to try to "preserve jurisdiction" – finding a way to contort existing regulations to fit this new technology.

But any attempt to simply graft on some new definition or category to try to fit VoIP into the current regulatory scheme will fail and it will

strangle the most promising driver of Broadband deployment in its cradle

With voice traveling over any IP platform the opportunities for Broadband are limitless.

Yet we regulators can't even begin to respond to these competitive market conditions without jeopardizing the entire system of subsidies for high cost areas and price caps on basic service – the Third Rail of Telecommunications.

We have a small window of opportunity, to develop a new regulatory structure. We have no time to waste debating whether VoIP is a telecommunications service or an information service.

It is both. It is neither. And it doesn't matter anymore.

That is why I strongly support the action taken by the FCC to wall off IP-telephony from state regulation because I hope it forces us to focus our efforts on developing a *new* framework for an IP-centric world. It is my hope that the VoIP proceeding initiated by the California Commission, for which I am also a co-Assigned Commissioner, will open up a dialogue about what that future should look like.

We must start by identifying some fundamental principles and key elements on which a new framework must be based.

- A new framework must be technology-neutral and not discriminate against any platform. We should not be picking winners and losers through regulation. We must think beyond DSL and cable, for example, to embrace the capabilities and the promise of wireless, satellite and Broadband over power line, or BPL, technology. These are incredibly exciting new technologies **that have the potential to change everything, all over again.**

- It must include a broad-based system of support for high cost areas, lifeline service, and access for the disabled. That also means, I believe, expanding the use of universal service funds

beyond basic wireline service and redefining Provider of Last Resort. Someday Broadband will be considered an essential service like telephones are today.

- It must provide basic standards for public safety and consumer protection regardless of platform. That includes 911 capability, reasonable access for law enforcement, and consumer privacy such as non-disclosure of personal financial data and adherence to the Do-Not-Call/Spam/Fax or Bother Me mandate. I have no idea how broadly these standards should apply, but uneven application defeats their purpose and distorts competition.

- Finally, in a new framework, the current intercarrier compensation system must be scrapped and replaced with something more simple and rational. We should eliminate dual jurisdiction for pricing. We should explore one price for interconnection, perhaps based on the capacity of the pipe, with all else being some form of "bill and keep." Universal service support would have to be weaved into this new system in some explicit way. This is critical to encourage investment in Broadband.

These are difficult subjects, no doubt. But they are all solvable problems, and completely unavoidable.

In order to even have this discussion states must be willing to forgo any litigation over what is a telecommunication service versus an information service using the current definitions. <u>The distinction between them may not even be salvageable in a new framework</u>.

Since voice applications over an IP platform will soon be indistinguishable from virtually all other information services, we need a new way to determine who should bear the responsibility of meeting important public policy objectives like 911 and universal service.

Without a new designation, the lines and responsibilities will continue to blur as VoIP and other essential Broadband services become more ubiquitous and available through every conceivable device and medium.

We have to think far enough ahead or we'll be right back here in a few years having this same debate: What is an essential communications service? Who should provide 911?

I believe we should use phone numbers as the demarcation line for determining who should provide essential services today.

We could designate any voice service that uses phone numbers from the North American Numbering Plan as a primary voice communication medium. All primary voice communication as such would be subject to 911 requirements, CALEA, and pay into the universal service fund on a per number basis (in addition to whatever other explicit charges we apply through intercarrier compensation).

This may not be perfect, but it would shift the trigger away from the particular *platform* being used – which will be unsustainable as the other platforms for voice services mature – to a common element in *all* major voice services – at least the ones that are viewed as a potential replacement for Plain Old Telephone Service. This would allow other Broadband services to flourish without inviting regulatory intrusion.

Finally, if we want to encourage investment in Broadband, regulators should not be wasting one more minute on enforcing anachronistic regulations that no longer serve any useful purpose. We need to eliminate the Byzantine and costly layers of regulation on wireline services and focus our regulatory efforts instead on just four principle areas:

- Market power over last-mile physical infrastructure;
- Affordable access to essential services in high cost areas and for low-income consumers;
- Policies that are technology-neutral and continually encourage deployment of advanced services; and
- Monitoring for anti-competitive behavior and arbitrage.

That is perhaps the greatest challenge of all for regulators – eliminating regulations that are no longer useful. It's just not what we do. But it is essential if we are to unleash private investment in Broadband.

But it makes absolutely no sense in this new world for us to be counting how many seconds it takes SBC to answer their customer service lines, or how many days it takes Verizon to respond to a billing inquiry. They are a hell of a lot more afraid of what the cable company is going to do to them if their service quality drops than they are about what the CPUC will do to them.

And it is just absurd for companies like Verizon to have to come to the PUC 30 days in advance to get permission to change their service offering – like adding a dinner time call blocking feature. And then allow us to subject them to cost studies and delays while we think about their petition.

And it would be ridiculous and destructive to apply these and other costly regulations on fiber, wireless or Internet backbones. So I strongly support that aspect of the FCC's Triennial Review Order.

It's a new world, and we need a new attitude and a new approach to regulation and if we're going to make California a leader in Broadband deployment. We need the help of Californians like you, who are committed to the dreams that have always been the hallmark of this state.

Thank you.