

# ASSESSING THE COMMUNICATIONS MARKETPLACE: A VIEW FROM THE FCC

---

---

## HEARING

BEFORE THE

COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION  
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

---

FEBRUARY 1, 2007

---

Printed for the use of the Committee on Commerce, Science, and Transportation



U.S. GOVERNMENT PRINTING OFFICE

72-250 PDF

WASHINGTON : 2012

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

DANIEL K. INOUE, Hawaii, *Chairman*

JOHN D. ROCKEFELLER IV, West Virginia	TED STEVENS, Alaska, <i>Vice Chairman</i>
JOHN F. KERRY, Massachusetts	JOHN McCain, Arizona
BYRON L. DORGAN, North Dakota	TRENT LOTT, Mississippi
BARBARA BOXER, California	KAY BAILEY HUTCHISON, Texas
BILL NELSON, Florida	OLYMPIA J. SNOWE, Maine
MARIA CANTWELL, Washington	GORDON H. SMITH, Oregon
FRANK R. LAUTENBERG, New Jersey	JOHN ENSIGN, Nevada
MARK PRYOR, Arkansas	JOHN E. SUNUNU, New Hampshire
THOMAS R. CARPER, Delaware	JIM DEMINT, South Carolina
CLAIRE McCASKILL, Missouri	DAVID VITTER, Louisiana
AMY KLOBUCHAR, Minnesota	JOHN THUNE, South Dakota

MARGARET L. CUMMISKY, *Democratic Staff Director and Chief Counsel*

LILA HARPER HELMS, *Democratic Deputy Staff Director and Policy Director*

MARGARET SPRING, *Democratic General Counsel*

LISA J. SUTHERLAND, *Republican Staff Director*

CHRISTINE D. KURTH, *Republican Deputy Staff Director*

KENNETH R. NAHIGIAN, *Republican Chief Counsel*

## CONTENTS

---

	Page
Hearing held on February 1, 2007 .....	1
Statement of Senator Boxer .....	47
Statement of Senator Cantwell .....	59
Statement of Senator Dorgan .....	44
Statement of Senator Inouye .....	1
Statement of Senator Klobuchar .....	3
Statement of Senator Lautenberg .....	3
Statement of Senator McCaskill .....	3
Statement of Senator Pryor .....	57
Statement of Senator Rockefeller .....	53
Statement of Senator Smith .....	50
Statement of Senator Stevens .....	2
Prepared statement .....	2
Statement of Senator Sununu .....	3
Statement of Senator Thune .....	3
Prepared statement .....	3

### WITNESSES

Adelstein, Hon. Jonathan S., Commissioner, Federal Communications Commission .....	21
Prepared statement .....	23
Copps, Hon. Michael J., Commissioner, Federal Communications Commission .....	18
Prepared statement .....	20
Martin, Hon. Kevin J., Chairman, Federal Communications Commission .....	4
Prepared statement .....	13
McDowell, Hon. Robert M., Commissioner, Federal Communications Commission .....	28
Prepared statement .....	30
Tate, Hon. Deborah Taylor, Commissioner, Federal Communications Commission .....	24
Prepared statement .....	26

### APPENDIX

Kerry, Hon. John F., U.S. Senator from Massachusetts, prepared statement ...	61
Response to written questions submitted to Hon. Kevin J. Martin by:	
Hon. Maria Cantwell .....	92
Hon. Jim DeMint .....	116
Hon. Byron L. Dorgan .....	85
Hon. Daniel K. Inouye .....	61
Hon. John F. Kerry .....	79
Hon. Amy Klobuchar .....	98
Hon. Frank R. Lautenberg .....	94
Hon. Mark L. Pryor .....	95
Hon. Gordon H. Smith .....	107
Hon. Olympia J. Snowe .....	104
Hon. Ted Stevens .....	101
Hon. John Thune .....	112
Hon. David Vitter .....	117
Response to written questions submitted to Hon. Michael J. Copps by:	
Hon. Maria Cantwell .....	125
Hon. Jim DeMint .....	137
Hon. Byron L. Dorgan .....	121
Hon. Daniel K. Inouye .....	118

# IV

	Page
Response to written questions submitted to Hon. Michael J. Copps by—	
Continued	
Hon. Amy Klobuchar .....	129
Hon. Frank R. Lautenberg .....	126
Hon. Mark L. Pryor .....	127
Hon. Gordon H. Smith .....	133
Hon. Olympia J. Snowe .....	132
Hon. Ted Stevens .....	130
Hon. John Thune .....	135
Hon. David Vitter .....	138
Response to written questions submitted to Hon. Jonathan S. Adelstein by:	
Hon. Maria Cantwell .....	149
Hon. Jim DeMint .....	167
Hon. Byron L. Dorgan .....	145
Hon. Daniel K. Inouye .....	138
Hon. Amy Klobuchar .....	156
Hon. Frank R. Lautenberg .....	151
Hon. Mark L. Pryor .....	153
Hon. Gordon H. Smith .....	163
Hon. Olympia J. Snowe .....	160
Hon. Ted Stevens .....	159
Hon. John Thune .....	165
Hon. David Vitter .....	168
Response to written questions submitted to Hon. Deborah Taylor Tate by:	
Hon. Maria Cantwell .....	175
Hon. Byron L. Dorgan .....	172
Hon. Daniel K. Inouye .....	169
Hon. Amy Klobuchar .....	178
Hon. Frank R. Lautenberg .....	176
Hon. Mark L. Pryor .....	177
Hon. Gordon H. Smith .....	183
Hon. Olympia J. Snowe .....	181
Hon. Ted Stevens .....	180
Hon. John Thune .....	183
Hon. David Vitter .....	184
Response to written questions submitted to Hon. Robert M. McDowell by:	
Hon. Byron L. Dorgan .....	189
Hon. Daniel K. Inouye .....	185
Hon. Amy Klobuchar .....	197
Hon. Frank R. Lautenberg .....	194
Hon. Mark L. Pryor .....	194
Hon. Gordon H. Smith .....	203
Hon. Olympia J. Snowe .....	201
Hon. Ted Stevens .....	199
Hon. John Thune .....	204
Hon. David Vitter .....	205

## **ASSESSING THE COMMUNICATIONS MARKETPLACE: A VIEW FROM THE FCC**

---

**THURSDAY, FEBRUARY 1, 2007**

U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:05 a.m. in Room SR-253, Russell Senate Office Building. Hon. Daniel K. Inouye, presiding.

### **OPENING STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII**

The CHAIRMAN. Chairman Martin and members of the Commission, I believe it is appropriate that we hear from all five members of the Federal Communications Commission today, on the eve of Superbowl Sunday, since it was the 2004 Superbowl with that extraordinary halftime program that brought us together here the last time.

A lot has happened since that hearing, and the Committee appreciates the willingness of the Commission to speak with us today about the state of the industry and what we must do, as a Nation, to ensure that the benefits of the new communications technologies are shared by all Americans regardless of income or geography.

The Commission is charged with acting in the "public interest." It is an important mandate, and we look forward to participating in discussions with the Commission as to how we can advance such goals.

In 3 years, we have seen the mergers of the two largest Bell companies, with the two largest long-distance companies. This was immediately followed by AT&T's acquisition of BellSouth. Meanwhile, technology has fueled change, and simple-purpose networks have given way to new multi-purpose platforms that can support all measures of applications and services, including voice, video, and email services.

But the communications revolution does not come without risk. As public servants, both here in Congress and on the Commission, we must be vigilant in our oversight to ensure that the communications industry evolves in a manner that does not harm consumers.

Consumers must have confidence that dialing 9-1-1 means getting emergency help, whether that call is made over a traditional phone line, a wireless phone, or a Voice-over-Internet-Protocol service. They must be confident that their private, personal information will be protected from abuse. Further, consumers must be assured

of evenhandedness from network operators so that consumers reap the full benefits of competition.

We must encourage continued innovation in the industry. I am troubled that other countries are leapfrogging the United States in the deployment of broadband access. As policymakers, we must ask ourselves whether companies have the right incentives to invest in this technology, and what we can do to keep the United States competitive with the rest of the world.

While private industry has brought to the marketplace many wonderful innovations that improve our lives at work and at home, I want to be certain that the FCC has the tools it needs to carry out its mission of protecting the public interest and consumers.

And now it is my privilege to call upon the Vice Chairman, Senator Stevens.

**STATEMENT OF HON. TED STEVENS,  
U.S. SENATOR FROM ALASKA**

Senator STEVENS. Thank you very much, Mr. Chairman. In view of the timeframe today, we have several votes starting right before noon, I would defer my statement until the time for questioning.

I appreciate very much your having this hearing, and obviously there's a great interest in the community concerning issues pertaining to the FCC. Thank you.

The CHAIRMAN. Your statement will be made part of the record.  
[The prepared statement of Senator Stevens follows:]

PREPARED STATEMENT OF HON. TED STEVENS,  
U.S. SENATOR FROM ALASKA

It has been ten months since all five of you last appeared together before the Committee. There have been a number of regulatory proposals that have drawn national attention. Some of those issues have been resolved, but other issues important to consumers remain.

As February 17, 2009, approaches, much remains to be done to assure a smooth digital television transition. Plans are in place to achieve the goal, but coordination, outreach and execution is needed on the local level to make sure that all consumers are informed. What broadcast TV means to parts of Alaska is different from what it means to Manhattan. How to get a converter box to remote Alaska villages is also different. Because of unique needs rural America should be a top priority for the digital transition.

The 700 MHz spectrum auction for the DTV transition takes place next year. This spectrum represents great opportunities to bring new consumer services, including additional broadband. And the auction will fund a number of public safety programs that have already been put into place.

Deployment of broadband also is an important priority. The Commission has indicated that steps to provide a more accurate picture of the marketplace will be taken, and it is my hope that these actions will be taken soon. Universal service is the most important element for the communications infrastructure our country needs in rural areas. I was glad to see that the Joint Board has outlined proposals for comprehensive reform. While Alaska is unique, it is not alone in needing universal service programs to deliver the benefits of broadband, telemedicine and distance learning. Universal service has a central role in the continued development of this country's resources in rural America and any reform efforts should reflect this important role.

The CHAIRMAN. Senator Sununu?

**STATEMENT OF HON. JOHN E. SUNUNU,  
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator SUNUNU. I'm certainly not going to speak any longer than my Ranking Member. I look forward to the testimony of all of the Commission.

The CHAIRMAN. Senator Klobuchar?

**STATEMENT OF HON. AMY KLOBUCHAR,  
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Thank you very much, Chairman, and I'd like to hear the testimony as well. I have some questions, and will speak a little after they are done with their comments.

The CHAIRMAN. Ms. McCaskill?

**STATEMENT OF HON. CLAIRE MCCASKILL,  
U.S. SENATOR FROM MISSOURI**

Senator MCCASKILL. I'll forego giving a statement, Mr. Chairman. I look forward to questioning. Thank you.

The CHAIRMAN. Thank you very much.

Senator Thune?

**STATEMENT OF HON. JOHN THUNE,  
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. Thank you, Mr. Chairman.

I, too, want to welcome the Commissioners before us this morning. I look forward to hearing from them.

I will apologize in advance, for we have General Casey in front of the Armed Services Committee today, so I'll probably be going back and forth, but I look forward to getting a chance to question our panels today.

Thank you.

The CHAIRMAN. Thank you very much.

[The prepared statement of Senator Thune follows:]

**PREPARED STATEMENT OF HON. JOHN THUNE,  
U.S. SENATOR FROM SOUTH DAKOTA**

Mr. Chairman, Vice Chairman Stevens, thank you for holding this hearing today. Conducting oversight of our Nation's regulatory agencies is an important duty of Congress. We must ensure that agencies, such as the FCC, are implementing the law and being responsive as they can to the needs of consumers and other stakeholders.

It is my hope that this hearing proves constructive and that the needs of telecommunications consumers, who also happen to be our constituents, are the focus of today's questions and answers. Thank you to the Commission for coming before the Committee today.

The CHAIRMAN. Senator Lautenberg?

**STATEMENT OF HON. FRANK R. LAUTENBERG,  
U.S. SENATOR FROM NEW JERSEY**

Senator LAUTENBERG. Mr. Chairman, I will refrain from reading my interesting statement.

[Laughter.]

The CHAIRMAN. And now it's my privilege to call upon the Chairman of the Commission, the Honorable Kevin J. Martin.

**STATEMENT OF HON. KEVIN J. MARTIN, CHAIRMAN,  
FEDERAL COMMUNICATIONS COMMISSION**

Mr. MARTIN. Thank you.

Good morning, Chairman Inouye, Vice Chairman Stevens, and members of the Committee. Thank you for the opportunity to be here today to discuss the state of the telecommunications industry.

I have a brief opening statement, and then I look forward to answering any questions that you may have.

I have had the privilege of serving at the Federal Communications Commission for over 5 years, including almost 2 years as the agency's Chairman. During this period, my colleagues and I, following guidance from this Committee and Congress, have overseen a telecommunications industry undergoing rapid and unprecedented change.

These changes have seen the telecommunications industry transition from a period of sharp decline to one of significant growth. Companies and consumers alike have finally found the promised land of convergence. Telephone calls are now being made using the Internet and cable systems. Television programs are increasingly available on the Internet and are watched when and where we want them.

Cell phones are mini-computers. They take pictures, play songs and games, send e-mail, and hopefully soon will send and receive emergency messages.

Teens ignore the television and stereo, downloading songs to their MP3 players and posting videos on YouTube. The Internet has become an invaluable tool for educating our children, treating patients, and giving a voice and creative outlet to individuals from all walks of life.

Faced with such fast-paced technological change, the Commission has tried to make decisions based on the fundamental belief that a robust, competitive marketplace—not regulation—is ultimately the greatest protector of the public interest. Competition is the best method of delivering the benefits of choice, innovation, and affordability to American consumers. Competition drives prices down and spurs providers to improve service and create new products.

Government, however, still has an important role to play. The Commission has worked to create a regulatory environment that promotes investment and competition. We must also set the rules of the road so that players can compete on a level playing field.

For instance, shortly after I became Chairman, we removed legacy regulations like tariffs and price controls that discourage providers from investing in broadband networks. Since then, broadband penetration has increased while the prices of DSL and cable modem service have decreased.

Government also must act when necessary to achieve broader social goals. Thus, while I support eliminating many economic regulations, I recognize there are issues that the marketplace alone might not fully address.

For instance, the government should ensure that the communication needs of the public safety community are met and that new and improved services are available to all Americans.



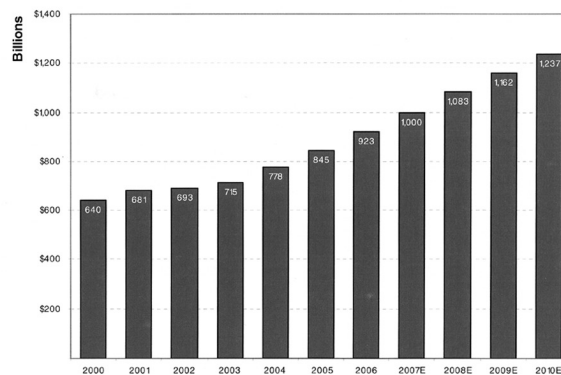
The title of this hearing is Assessing the Communications Marketplace, A View from the FCC. I am pleased to report that the state of the communications industry today is strong.

When I first came to the Commission, the communications sector was in decline. In 2006, the communications industry experienced record growth. Last year, the S&P 500 telecommunications sector was the strongest performing sector. As displayed here in the first chart, TIA reported the U.S. telecom revenue rose to \$923 billion last year, which is the most growth in a single year since 2000.

[The information referred to follows:]



### U.S. Telecommunications Revenue



Source: TIA's 2007 Telecommunications Market Review and Forecast.

Americans are reaping the rewards of this growth. As you can see in this slide, in almost all cases, vigorous competition—resulting from free market deregulatory policies—has provided the consumer with more, better and cheaper services to choose from. By 2005, the price for long distance service was two-thirds of what it was in 2000, wireless phone service was half of what it was in 2000, and the price for placing an international call was a quarter of what it was then.

Almost all of today's innovation is enabled by broadband deployment. Broadband deployment has been our top priority at the Commission. And we have begun to see some success as a result of our efforts.

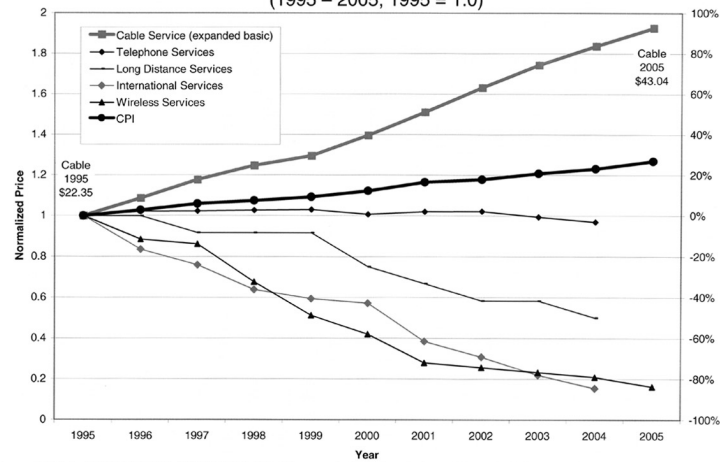
[The information referred to follows:]



Chairman Kevin J. Martin

### Prices for Communications Services

(1995 – 2005, 1995 = 1.0)



Sources: BLS, Series ID CUUR0000SA0 & CUUR0000SEED; IATD, Telecommunications Industry Revenues 2004; 1<sup>st</sup> CMRS Competition Report; Report on Cable Industry Prices, FCC 06-179 (rel. Dec. 27, 2006)

In 2005, the Commission created a deregulatory environment that helped fuel private-sector investment. Since then, companies have begun racing to lay fiber to our homes. From March of 2005 to the end of last year, the number of homes passed by fiber increased from 1.6 million to 6.1 million.

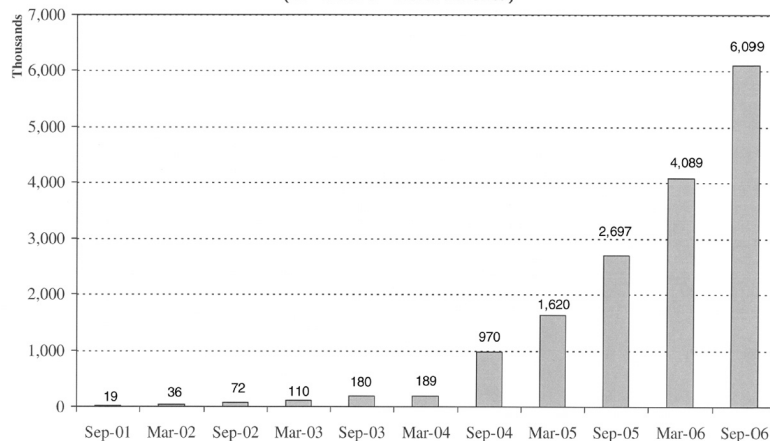
[The information referred to follows:]



Chairman Kevin J. Martin

### FTTH Homes Passed

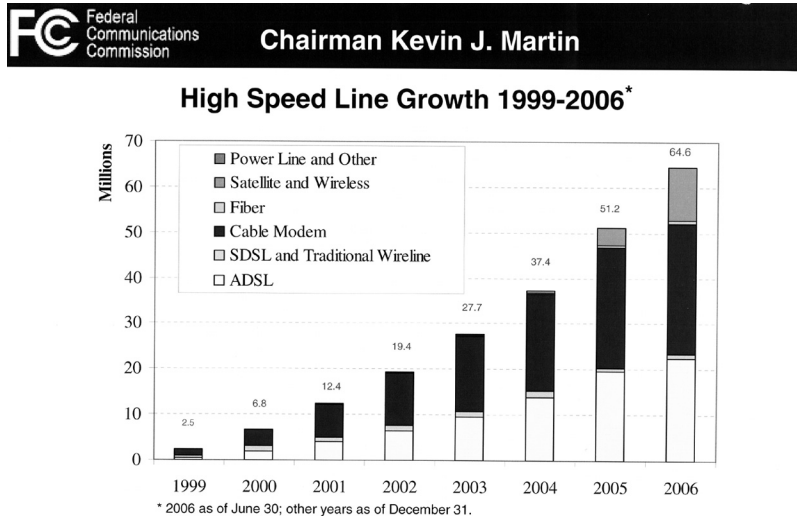
(Cumulative – North America)



Source: RVA Render & Associates, LLC 2006

Just as significant for consumers, the average price of broadband has dropped in the past 2 years. The Pew Internet and American Life Project found that, from February of 2004 to December of 2005, the average price for home broadband access fell from \$39 per month to \$36 per month. And for DSL, the monthly bills fell from \$38 to \$32, almost a 20 percent decrease.

[The information referred to follows:]



Source: FCC's High Speed Services for Internet Access Report, January 2007

The decline in price was accompanied by an increase in the number of Americans subscribing to high-speed connections to the Internet. Such connections have grown by nearly 600 percent since 2001. And according to the Commission's most recent data, high-speed connections increased by 26 percent in just the first half of 2006 and by 52 percent for the full year ending June 30, 2006.

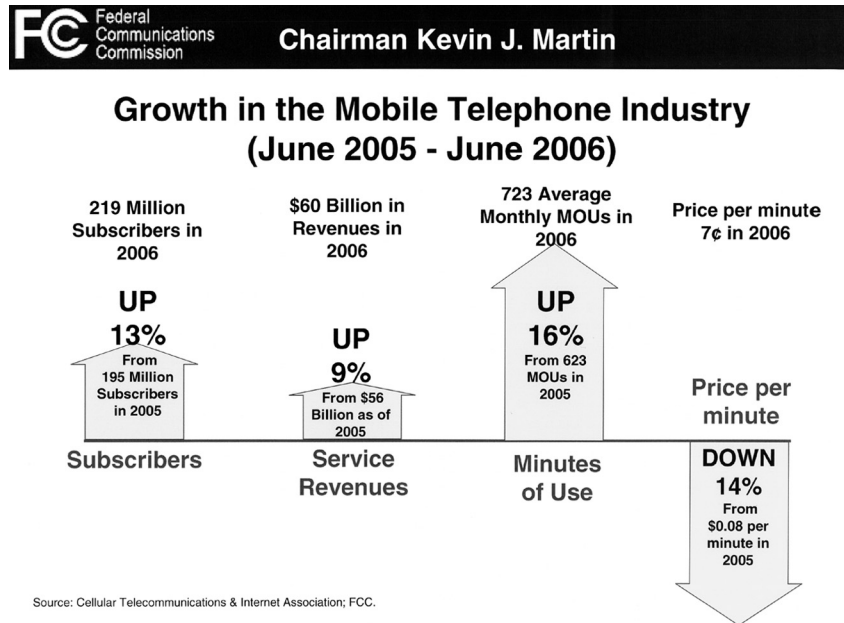
The independent Pew study also confirmed this trend, finding that from March of 2005 to March of 2006, overall broadband adoption increased by 40 percent—from 60 to 84 million—twice the growth rate of the year before. The study found that, although overall penetration rates in rural areas still lags behind urban areas, broadband adoption in rural America also grew at approximately the same rate (39 percent).

Perhaps most importantly, the Pew study found that the significant increase in broadband adoption was widespread and cut across every demographic. According to their independent research: broadband adoption grew by almost 70 percent among middle-income households, it grew by more than 120 percent among African Americans, by 70 percent among those with less than a high school education, and by 60 percent among senior citizens.

Today, wireless service is becoming as increasingly important as another platform to compete with cable and DSL as a provider of broadband. The demand for wireless service continues to grow at a rapid rate.

In 1986, there were only 500,000 wireless subscribers. Today there are 219 million subscribers generating \$60 billion in revenue. Moreover, wireless rates have continued to decrease, falling 82 percent since 1996 and 14 percent just last year.

[The information referred to follows:]



The Commission is making available as much spectrum as possible to put the next generation of advanced wireless devices into the hands and homes of consumers. In September the Commission closed its largest and most successful spectrum auction, raising almost \$14 billion. The spectrum offered was the largest amount of spectrum suitable for deploying wireless broadband ever made available in a single Commission auction.

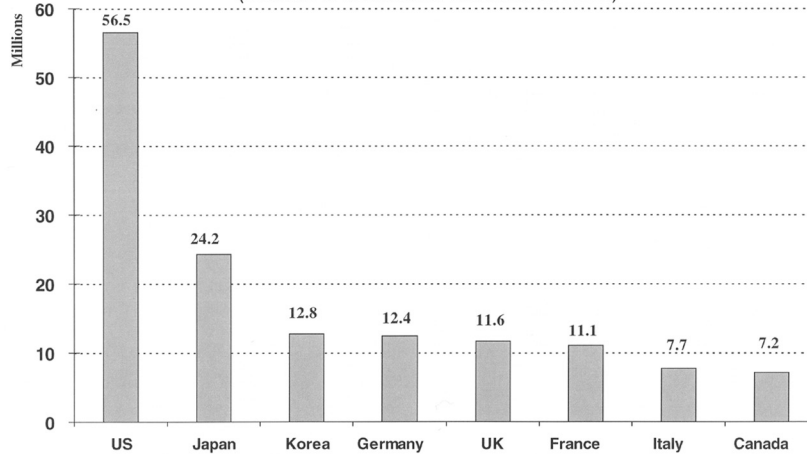
And we are currently preparing to auction 60 MHz in the 700 MHz band. This spectrum is also particularly well-suited for the provision of data and wireless broadband services.

In sum, the United States is the largest broadband market in the world with over 56 million broadband subscribers, according to the OECD. I am proud of the progress we have made in broadband deployment by creating an environment that better facilitates infrastructure investment. I also hear, however the voice of my colleague Dr. Copps spurring us on, reminding us we can do better. And I agree.

[The information referred to follows:]

## Largest Broadband Markets in the World

(Millions of broadband subscribers-2005)



Source: OECD.

This Committee explicitly asked how the United States compares with other industrialized nations. The OECD currently ranks the United States as 12th in the world in terms of broadband penetration, behind Korea, the United Kingdom, and even Belgium.

It is important to note, however, that the OECD does not adjust for factors including density, which puts a country as large as ours with sizable rural areas at a significant disadvantage.

For instance, New Jersey has a similar population density as Korea, which is ranked fourth in the OECD rankings. Yet, New Jersey has a higher penetration rate, with 30 subscribers per 100 residents, versus just 26 for Korea.

And Vice Chairman Stevens, you will be proud to know that Alaska, with one person per square mile, still has a higher broadband penetration rate than France.

Given the geographic diversity of our nation, the United States is doing well. Nevertheless, we all agree that our current standing of 12th is not good enough. We must continue to build on our efforts to encourage competition, speed broadband deployment and lower prices for consumers.

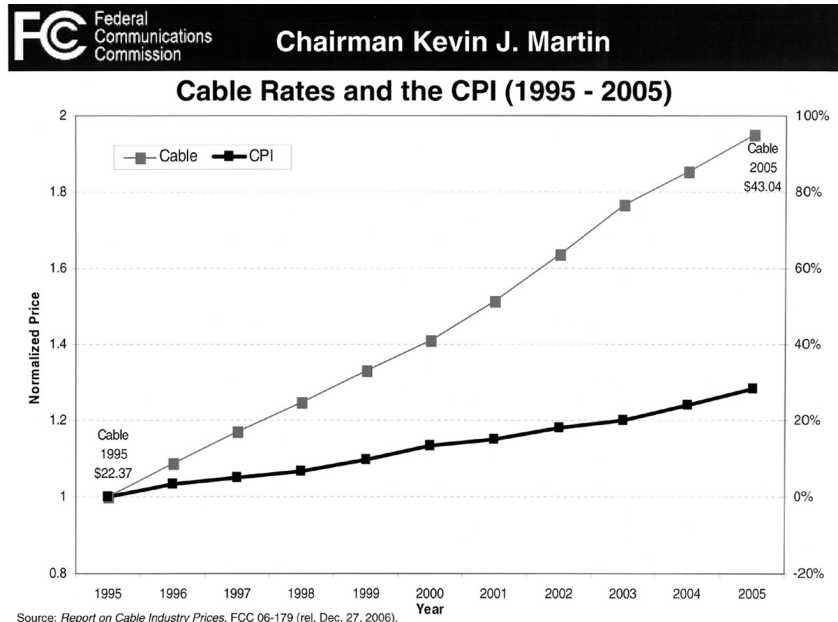
As is the case with the telecommunications sector, consumers and companies are benefiting from technological developments and innovation in media. DVRs, video-on-demand, and HD programming offer more programming to watch at any time, than ever before. Thanks largely to new services like these, cable operators' total revenue grew from \$65 billion to approximately \$73 billion last year.

While consumers have enormous choice among channels, they have little control over how many channels they are able to buy. For those who want to receive 100 channels or more, today's most popular cable packages may be a good value. According to Neilson,

however, most viewers watch fewer than two dozen channels. And for them, the deal isn't as good.

The cost of basic cable service has gone up at a disproportionate rate—38 percent between 2000 and 2005 when compared against other communications sectors. The average price of the expanded basic cable package, the standard cable package today, almost doubled between 1995 and 2005, increasing by 93 percent.

[The information referred to follows:]

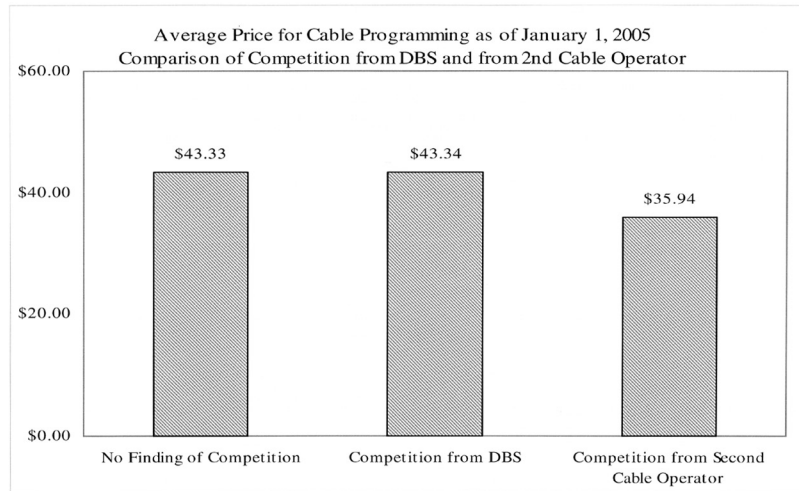


The increase in cable prices appears even more dramatic when viewed relative to the prices for a number of other communications services: prices for telephone, long distance, international, and wireless telephone service have all decreased dramatically during this same time frame.

Ten years ago, the satellite industry was nascent. Today, Direct Broadcast Satellite (DBS) provides consumers an important competitive choice. And satellite offerings are sometimes the only multi-channel video option for rural Americans.

But as you can see, the Commission and the GAO have found that only in areas where there is a second cable operator did average prices decline.

[The information referred to follows:]



Source: *Report on Cable Industry Prices*, FCC 06-179 (rel. Dec. 27, 2006).

Between 2000 and 2006, DBS subscribership grew 100 percent and average revenue per user grew 32 percent. And like DBS, satellite radio also has experienced significant growth, with subscriptions increasing from 1.6 million in 2003, to 13.6 in 2006.

The transition from analog to digital technology poses both opportunities and challenges for the broadcast sector. New and better services that digital technology enables are good for consumers, who will have access to more news, information and entertainment. With digital technology, television broadcasters can offer high-definition programming, multiple programming streams, data services, and even video over mobile devices.

However, many broadcasters' business plans are in their infancy. Their revenue streams are uncertain while the costs of the transition are large and immediate.

While we have made significant progress in creating an environment that facilitates investment and ensures the American people realize the full benefits of our world-class communications system, there is more to be done. I see four areas that deserve particular attention.

First, we must continue to increase access to communications services. I will continue to make broadband deployment the Commission's top priority and we will continue to encourage deployment of broadband from all providers using a variety of technologies.

For example, the Commission is currently considering an order that would classify wireless broadband Internet access service as an information service. This action would eliminate unnecessary regulatory barriers for wireless service providers and is particularly important with the upcoming spectrum auctions.

It is critical that all Americans stay connected to state-of-the-art communications services. The Universal Service Fund is the lifeblood of this goal. Changes in technology and increases in the number of carriers who are receiving Universal Service support have placed significant pressure on the stability of the fund. We need to move to a contribution system that is technologically neutral and a distribution system that is more efficient.

Second, we must continue to promote real choice for consumers in all of the sectors we regulate. We need to build on our efforts to create a regulatory environment that encourages entry into the video market and more choice for consumers. This includes making sure that competitive providers have access to “must-have” programming and ensuring that consumers living in apartment buildings are not denied a choice of cable operators.

Additionally, we need to continue to ensure that new entrants are able to compete with incumbents for telecommunications services. New telephone entrants need access to local telephone numbers and the ability to interconnect with incumbents to deliver those local calls to them.

We also need to ensure that existing service providers are not standing in the way of the innovations currently occurring in the consumer electronics space. Consumers want to be able to walk into a store, buy a new television or a TiVo, take it home, and plug it in as easily as they do today with a telephone.

Third, we must continue to protect consumers. The Commission intends to strengthen its privacy rules for the handling of call records by requiring providers to adopt additional safeguards to protect this information from unauthorized access and disclosure. And we must make sure that consumers have the benefits of a competitive and diverse media marketplace.

Fourth and finally, we must enhance public safety. Public safety has been and will continue to be one of the Commission’s and my top priorities. We must make sure that the public has the tools necessary to know when an emergency is coming and to contact first responders. And we must enable first responders to communicate with each other.

As Chairman Inouye and cosponsors Senators Stevens, Kerry, Smith, and Snowe of S. 385, obviously recognize, one of the most pressing public safety problems is the need for interoperability within and among public safety systems. I thank the Chairman for his efforts in this regard, and look forward to any guidance that the Congress may provide.

As you can see, on the whole, the state of the communications industry is strong, and growing stronger. Innovation in all sectors, is back, and competition has enabled consumers to get newer and more innovative technologies and communications services at declining prices.

Sadly though, one service has gone the way of the dinosaur this past year. 2006 marked the end of an era, when Western Union discontinued its telegram delivery service, which it began in 1856.

Thank you, for your time and attention. I appreciate the opportunity to share with you some of the recent progress the Commission has made. With that, I would be happy to answer any questions you may have.



[The prepared statement of Mr. Martin follows:]

PREPARED STATEMENT OF HON. KEVIN J. MARTIN, CHAIRMAN,  
FEDERAL COMMUNICATIONS COMMISSION

Good morning Chairman Inouye, Vice Chairman Stevens, Members of the Committee. Thank you for the opportunity to be here with you today to discuss the state of the telecommunications industry. I have a brief opening statement and then I look forward to answering any questions you may have.

I have had the privilege of serving at the Federal Communications Commission for over 5 years, including almost 2 years as the agency's Chairman. During this period, my colleagues and I, following guidance from this Committee and Congress, have overseen a telecommunications industry undergoing rapid and unprecedented change.

These changes have seen the telecommunications industry transition from a period of sharp decline to a time of significant growth. Companies and consumers alike have finally found the promised land of convergence, ushered in by the broadband revolution. Telephone calls are now being made using the Internet and cable systems. Television programs are watched when and where we want them, and they are increasingly available on the Internet. Cell phones are mini-computers. They take pictures, play songs and games, send e-mail, and hopefully soon will send and receive emergency messages in times of disaster. Teens talk to one another over IM, SMS and MySpace, not the telephone. They ignore the TV and stereo, downloading songs onto MP3 players and watching and posting videos on YouTube instead. The Internet has become an invaluable tool for educating our children, treating patients, and giving a voice and creative outlet to individuals from all walks of life. As Time Magazine recognized, 2006 was the year of the individual, thanks in large part to how communications technologies and innovations have empowered us all.

Faced with such fast-paced technological change, the Commission has tried to make decisions based on a fundamental belief that a robust, competitive marketplace, not regulation, is ultimately the greatest protector of the public interest. Competition is the best method of delivering the benefits of choice, innovation, and affordability to American consumers. Competition drives prices down and spurs providers to improve service and create new products.

Government, however, still has an important role to play. The Commission has worked to create a regulatory environment that promotes investment and competition, setting the rules of the road so that players can compete on a level playing field. For instance, shortly after I became Chairman, we removed legacy regulations, like tariffs and price controls which discouraged providers from investing in broadband networks. Since then, broadband penetration has increased while the prices of DSL and cable modem services have decreased.

Government also must act when necessary to achieve broader social goals. Thus, while I support eliminating economic regulations, I recognize that there are issues that the marketplace alone might not fully address. For instance, government should ensure that the communications needs of the public safety community are met and that new and improved services are available to all Americans, including people with disabilities, those living in rural areas and on tribal lands, and schools, libraries, and hospitals. For example, we expanded the ability of the deaf and hard of hearing to communicate with their family, friends and business associates by requiring Video Relay Services (the preferred method of communication) to be offered 24 hours a day, 7 days a week, and by recognizing IP Captioned phone service as a form of Telecommunications Relay Service.

Against this backdrop of unprecedented change, I will give a short overview of the industry and briefly discuss my priorities for the next few years.

#### **State of the Industry**

I am pleased to report that the state of the communications industry is strong. As you no doubt remember, in the year 2000, the communications industry began a precipitous and far-reaching decline. Capital spending by companies followed this market decline, innovation disappeared and companies went out of business taking jobs with them.

What a difference 6 years make. In 2006, the communications industry experienced record growth and, by most measures, almost all sectors have rebounded remarkably. In 2006, the S&P 500 telecommunications sector was the strongest performing sector, up 32 percent over the previous year. Consumers and businesses—big and small—are reaping the rewards of these positive developments. According to the Telecommunications Industry Association's latest report, U.S. telecom revenue rose to \$923 billion in 2006, representing a 9.3 percent increase since 2005—

the most growth since 2000. TIA attributes the growth to the demand for broadband services, which has spurred providers to invest in fiber, IP technology and wireless infrastructure.

Americans are reaping the rewards of this revolution. Markets and companies are investing again, job creation in the industry is high, and in almost all cases, vigorous competition—resulting from free-market deregulatory policies—has provided the consumer with more, better and cheaper services to choose from. Consumers are certainly paying less for more. In 2005, the price for long distance service was two-thirds of what it was in 2000, wireless phone service was half its 2000 level, and the price for placing an international call was a quarter of what it was in 2000.

### Telecommunications

Almost all of today's innovation is enabled by broadband deployment. Broadband technology is a key driver of economic growth. The ability to share increasing amounts of information, at greater and greater speeds, increases productivity, facilitates interstate commerce, and helps drive innovation. But perhaps most important, broadband has the potential to affect almost every aspect of our lives. It is changing how we communicate with each other, how and where we work, how we educate our children, and how we entertain ourselves. Broadband deployment has been our top priority at the Commission, and we have begun to see some success as a result of our efforts.

In 2005, the Commission created a deregulatory environment that fueled private sector investment. Since then, companies have begun racing to lay fiber to our homes. From March of 2005 to the end of September 2006, the number of homes passed by fiber increased from 1.6 million to 6.1 million.

Just as significant for consumers, the average price of broadband has dropped in the past 2 years. The Pew Internet and American Life Project (Pew) found that, from February 2004 to December 2005, the average price for home broadband access fell from \$39 per month to \$36 per month. For DSL, monthly bills fell from \$38 to \$32 (almost 20 percent), while cable modem users reported no change from \$41 during the same period.

The decline in price was accompanied by an increase in the number of Americans subscribing to high-speed connections to the Internet. Such connections have grown by nearly 600 percent since 2001. And according to the Commission's most recent data, high-speed connections increased by 26 percent in the first half of 2006 and by 52 percent for the full year ending June 30, 2006.

The independent Pew study confirmed this trend, finding that from March 2005 to March 2006, overall broadband adoption increased by 40 percent—from 60 to 84 million—twice the growth rate of the year before. The study found that, although overall penetration rates in rural areas still lags behind urban areas, broadband adoption in rural America also grew at approximately the same rate (39 percent).

Perhaps most importantly, the Pew study found that the significant increase in broadband adoption was widespread and cut across all demographics. According to their independent research:

- broadband adoption grew by almost 70 percent among middle-income households (those with incomes between \$40,000 and \$50,000 per year);
- broadband adoption grew by more than 120 percent among African Americans;
- broadband adoption grew by 70 percent among those with less than a high school education; and
- broadband adoption grew by 60 percent among senior citizens.

Wireless service is becoming increasingly important as another platform to compete with cable and DSL as a provider of broadband. The demand for wireless services continues to grow at a rapid rate. In 1986, there were only 500,000 wireless subscribers generating only \$670 million in revenue. Today there are 219 million subscribers generating \$118 billion. Moreover, wireless rate have continued to decrease, falling 82 percent since 1996 and 14 percent from 2005 to 2006.

The Commission is making available as much spectrum as possible to put the next generation of advanced wireless devices into the hands and homes of consumers. In September the FCC closed its largest and most successful spectrum auction, raising almost \$14 billion. The spectrum offered was the largest amount of spectrum suitable for deploying wireless broadband ever made available in a single FCC auction. And we are currently preparing to auction 60 MHz in the 700 MHz band, spectrum that is also well-suited for the provision of wireless broadband.

Moreover, the number of consumers who receive their broadband connection through satellite or wireless will continue to increase, as new satellite services are launched, rural wireless Internet service providers continue to grow, and Wi-Fi

hotspots continue to sprout up across the country. Indeed, there are nearly 50,000 Wi-Fi hotspots throughout the United States, more than three times the number of any other country.

Another potentially innovative means of providing high-speed data communications is Broadband over Powerline (BPL), which uses existing electrical infrastructure to provide broadband services. BPL is a potentially significant player due to power lines' ubiquitous reach, allowing it to more easily provide broadband to rural areas. The United Power Council reports that there currently are at least 38 trial deployments and 7 commercial trials.

In sum, the United States is the largest broadband market in the world with over 56 million broadband subscribers according to the Organization for Economic Co-operation and Development (OECD). I am proud of the progress we have made in broadband deployment by creating an environment that better facilitates infrastructure investment. I also, however, hear the voice of my colleague Dr. Copps spurring us on to do better. I agree.

This Committee explicitly asks how the U.S. compares with other industrialized nations. The OECD currently ranks the U.S. as 12th in the world in terms of broadband penetration, behind Korea, the United Kingdom, and even Belgium. It is important to note that the OECD does not adjust for factors including density, which puts a country as large as ours with sizable rural areas at a significant disadvantage. For instance, New Jersey has a similar population density as Korea, ranked 4th, yet has a higher penetration rate (30 subscribers per 100 residents, versus 26 for Korea). Nevertheless, we all agree that our current standing of 12th is not good enough. We must continue to build on our efforts to encourage competition, speed broadband deployment and lower prices for consumers.

#### **Media**

As is the case with the telecom sector, consumers and companies are benefiting from technological developments and innovation in media. DVR's, VOD and HD programming offer them more programming to watch at any given time than ever before. Thanks largely to new services like these, cable operators' total revenue grew from \$65.7 billion to approximately \$73 billion last year.

While consumers have enormous choice among channels, they have little control over how many channels they are able to buy. For those who want to receive 100 channels or more, today's most popular cable packages may be a good value. But according to Nielson, most viewers watch fewer than two dozen channels. For them, the deal isn't as good.

The cost of basic cable services have gone up at a disproportionate rate—38 percent between 2000 and 2005—when compared against other communications sectors. The average price of the expanded basic cable package, the standard cable package, almost doubled between 1995 and 2005, increasing by 93 percent. The increase in cable prices appears even more dramatic when viewed relative to the prices for a number of other communications services: prices for long distance, international, and wireless telephone service have all decreased dramatically during this same timeframe.

Ten years ago the satellite industry was nascent. Today, Direct Broadcast Satellite (DBS) provides consumers an important competitive choice. And satellite offerings are sometimes the only multi-channel video option for rural Americans. Between 2000 and 2006, DBS subscribership grew 100 percent and average revenue per user grew 32 percent. Like DBS, satellite radio also has experienced significant growth. Subscriptions have increased from 1.6 million in 2003 to 13.6 million subscribers in 2006.

The transition from analog to digital technology poses both opportunities and challenges for the broadcast sector. The new and better services that digital technology enables are great for consumers, who will have access to more free news, information and entertainment. With digital technology, television broadcasters can offer high-definition programming, multiple programming streams, data services, and video over mobile devices. Radio broadcasters can offer crystal clear sound (even on the AM band), as well as data such as local traffic and weather, stock updates and news, and artist identification. But many of these business plans are in their infancy, with revenue streams uncertain, while the costs of the transition are large and immediate. And those costs come at a time of increased competition for advertisers from other media—many of which, unlike broadcasters, have a subscription revenue stream in addition to advertising revenue.

#### **Looking Forward**

While we have made significant progress in creating an environment that facilitates investment and ensures the American people realize the full benefits of our

world-class communications system, there is more to be done. I see four areas that deserve particular attention.

*First, we must continue to increase access to communications services.*

I will continue to make broadband deployment the Commission's top priority. As I previously touched upon, the ability to share increasing amounts of information—at greater and greater speeds—increases productivity, facilitates interstate commerce, and encourages innovation.

We will continue to encourage deployment of broadband from all providers using a variety of technologies. As wireless technologies become an increasingly important platform for broadband access, it is critical to ensure that there is adequate spectrum available for providing broadband service. Spectrum auctions will continue to be an important part of our strategy for facilitating the build-out of mobile broadband networks. We are working to ensure that our upcoming auction of the 700 MHz spectrum meets the needs of both large and small rural companies and proceeds in an efficient, effective and timely manner.

The Commission is also considering an order that would classify wireless broadband Internet access service as an information service. This action would eliminate unnecessary regulatory barriers for service providers. This classification also would clarify any regulatory uncertainty and establish a consistent regulatory framework across broadband platforms, as we have already declared high-speed Internet access service provided via cable modem service, DSL and BPL to be information services. This action is particularly timely in light of the recently auctioned AWS-1 spectrum for wireless broadband and our upcoming 700 MHz auction.

The United States and the Commission have a long history and tradition of making sure that rural areas of the country are connected and have the same opportunities for communications as urban areas. In the 1996 Act, Congress explicitly required that the Commission ensure that consumers in all regions of the Nation have access to services that “. . . are reasonably comparable to those services provided in urban areas.” Specifically Congress required the Commission to establish Universal Service Fund mechanisms that are “. . . specific, predictable and sufficient . . . to preserve and advance universal service.”

It is critical that all Americans stay connected to state-of-the art communications services. The Universal Service Fund is the lifeblood of this goal. Without this source of funding we cannot continue to meet these commitments. But this system is in need of reform. Changes in technology and increases in the number of carriers who are receiving universal service support have placed significant pressure on the stability of the fund. We should improve the way the Commission administers the fund and reform the collection and disbursement systems. We need to move to a contribution system that is technologically neutral and a distribution system that is more efficient.

The Commission will also do its part to ensure that all Americans, including those who live in the most remote areas of the country, receive first-rate medical care. We recently took action, through our adoption of a Rural Healthcare Pilot Program, to support the construction of state and regional networks dedicated to health care. In the first half of 2007, the Commission will be selecting participants for the pilot program, and in 2007 and 2008, the Commission will oversee the program. The deployment of such a network will create numerous opportunities for delivering telehealth services, including telemedicine applications that have the potential to revolutionize the current healthcare system throughout the Nation. This is particularly true in rural and underserved areas, where distance often separates patients from the medical care they need. Under the pilot program we adopted, patients anywhere on the network will have greater access to critically needed specialists in a variety of specialties.

*Second, we must continue to promote real choice for consumers.*

In December of last year, we took steps to implement Section 621 of the Communications Act, which prohibits local authorities from unreasonably refusing to award a competitive franchise. We will continue to take steps to remove regulatory impediments to the entry of new service providers into the video market by, for instance, ensuring that consumers living in apartment buildings are not denied a choice of cable operators.

Competition and choice in the video services market will benefit the consumer by resulting in lower prices, higher quality of services, and generally enhancing the consumers' experience by giving them greater control over the purchased video programming. We need to continue our efforts to create a regulatory environment that encourages entry into this market and more choice for consumers. This includes making sure that competitive providers have access to “must-have” programming that is vertically integrated with a cable operator.

Promoting competition and choice must be our priority in the voice arena, as well. We need to continue to ensure that new entrants are able to compete with incumbents for telecommunications services. For example, new telephone entrants need access to local telephone numbers and the ability to interconnect with incumbents to deliver local calls to them.

We also need to ensure that existing service providers are not standing in the way of the innovations currently occurring in the consumer electronics space. Consumers want to be able to walk into a store, buy a new television set or TiVo, take it home, and plug it in as easily as they do with a telephone.

*Third, we must continue to protect consumers.*

We must always be on alert for companies intentionally or unintentionally harming consumers. Among the issues the Commission must turn its attention to is the ability of unauthorized users to gain access to callers' phone records, or pretexting. The Commission intends to strengthen its privacy rules by requiring providers to adopt additional safeguards to protect customers' phone record information from unauthorized access and disclosure. Specifically, the Commission would prohibit providers from releasing call detail information to customers except when the customer provides a password. Similarly, we propose to modify our current rules to require providers to obtain customer consent before disclosing any of that customer's phone record information to a provider's joint venture partner or independent contractor for marketing purposes.

Recently, concerns about preserving consumers' access to the content of their choice on the Internet have been voiced at the Commission and Congress. In its Internet Policy Statement, the Commission stated clearly that access to Internet content is critical and the blocking or restricting consumers' access to the content of their choice would not be tolerated. Although we are not aware of current blocking situations, the Commission remains vigilant and stands ready to step in to protect consumers' access to content on the Internet. Moreover, to better assess how the marketplace is functioning and address any potential harm to consumers, I have proposed the Commission examine this issue more fully in a formal Notice of Inquiry which is presently pending before my colleagues.

Perhaps no other issue before the Commission garners more public interest than our quadrennial review of our media ownership rules. This attention is understandable given that the media touches almost every aspect of our lives. We are dependent upon it for our news, our information and our entertainment. Indeed, the opportunity to express diverse viewpoints lies at the heart of our democracy. We must make sure that consumers have the benefit of a competitive and diverse media marketplace. At our public hearings, the Commission has heard a consistent concern that there are too few local and diverse voices in the community. Certainly, we need to protect localism and diversity in the media. We must balance concerns about too much consolidation and too little choice, however, with appropriate consideration of the changes and innovation that are taking place in the media marketplace.

Critical to our review of our media ownership rules is the collection of objective facts and an open dialog with the public. We have commissioned multiple economic studies and are engaging in hearings across the country in a range of markets. The goal of these hearings is to fully and directly involve the American people in this process. We held our first hearing in Los Angeles, where we focused on the ability of independent television producers to gain access to distribution. We also held a hearing in Nashville, in which we focused on the concerns of the music industry. The Commission's efforts to collect a full public record will continue in the months ahead, with five more hearings, including one specifically focused on localism.

*Fourth and finally, we must enhance public safety.*

The events of September 11, 2001 and the 2005 hurricane season underscored America's reliance on an effective national telecommunications infrastructure. Thus, public safety has been and will continue to be one of the Commission's and my top priorities. We must make sure that the public has the tools necessary to know when an emergency is coming and to contact first responders. And we must enable first responders to communicate with each other and to rescue the endangered or injured. And the public and private sectors must work together so that our communications system can be repaired quickly in the wake of a disaster so that affected people can reach out to locate or reassure one another. We recently created a Public Safety and Homeland Security Bureau to focus exclusively on this important need.

As Chairman Inouye and co-sponsors Senators Stevens, Kerry, Smith, and Snowe of S. 385 obviously recognize, one of the most pressing public safety problems is the need for interoperability within and among public safety systems. I thank the Chairman for his efforts in this regard, and look forward to any guidance the Congress may provide.

The Commission recently asked for comments on creating a nationwide, interoperable broadband network for public safety officials in the 700 MHz band. In the meantime, technology is available now that could provide a temporary solution to the need for more interoperability. By adding IP-based technologies to existing public safety network equipment (a so-called "IP patch") and deploying portable IP-based network equipment where necessary, public safety officials would achieve functional, if not full, interoperability. If Congress made sufficient funds available now, such functional interoperability for public safety communications systems could be available in selected areas in the near term and throughout most of the Nation within 4 years.

#### **Conclusion**

As you can see, on the whole, the state of the communications industry is strong, and growing stronger. Innovation, in all sectors, is back, and competition has enabled consumers to get newer and more innovative technologies and communications services at ever-declining prices.

Sadly though, one service has gone the way of the dinosaur. 2006 marked the end of an era, when Western Union discontinued its telegram delivery service, which it began in 1856.

Thank you for your time and attention today. I appreciate the opportunity to share with you some of the recent progress the Commission has made. With that, I would be happy to answer any questions you may have.

The CHAIRMAN. Thank you very much, Mr. Chairman.  
And now, may I call upon Commissioner Copps?

#### **STATEMENT OF THE HON. MICHAEL J. COPPS, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION**

Mr. COPPS. Thank you, Mr. Chairman, Mr. Vice Chairman, Members of the Committee, I welcome the opportunity, always, to return to the Senate which was home to me for so many years. It was actually almost 37 years ago when I first started walking the halls of the Russell Senate Office Building. I welcome the chance to share some thoughts with you over the state of our communications industry, which is such an important part of our economy, and an even more important part of our society, and of our culture.

I think we have some serious work to do to ensure that these industries are making their maximum contribution to our Nation. We have a media environment that, while impressive in many ways, is not fully serving American democracy, or the American public. We have a telecommunications marketplace that, without some serious thought, will never extend the wonders of the Internet to millions of Americans. And despite the lessons of 9/11 and Katrina, we still are not ready for the next man-made, or natural, disaster. Perhaps our Nation's unreadiness on 9/11 can be explained by ignorance. If we're not prepared next time, that will be dereliction.

Let me begin with the issue which you know is closest to my heart, the broadcast media. I know that many local broadcasters strive mightily to serve the public interest. But, increasingly, the public-spirited part of the profession is being squeezed out. Too much of TV and radio today is homogenized, often gratuitously, violent programming. Even worse is what we don't see enough of—the community and civic affairs coverage that is democracy's lifeblood. I've traveled all over the country, to a dozen media hearings just in the last year, and I have seen people's impatience with the status quo. It is time for the FCC to focus not only on avoiding bad new rules, but to revisit the bad old rules that got us into this mess in the first place. I am very pleased that Chairman Martin has committed to complete our long-dormant localism proceeding before

moving forward on media ownership. Going beyond that, we need to find a way to bring public interest standards back to broadcasting and the spirit of public interest to other media, too.

Turning to telecommunications, I think the FCC's, and the nation's, greatest challenge is to bring the wonders of modern technology to all our people; to the inner city and to our distant farms and ranches, to tribal lands, to our disabled and challenged fellow citizens, to our poorest citizens and to our oldest citizens. We simply cannot afford to leave anyone behind without leaving America behind. Right now, your country and mine is 21st in the world when it comes to broadband digital opportunity and that's according to the International Telecommunications Union. How can we expect a generation of students to enter the digital classroom at dial-up speed? How will they compete as individuals? But wait a minute, we're paying a business, and a competitive cost here, too. Fewer Americans with broadband means a smaller Internet marketplace and a glass ceiling over the productivity of small businesses especially and entrepreneurs in too much of our great land. But, then again, what did we expect without having a real broadband strategy?

I hope this Congress will push the FCC to be a more proactive participant in developing a strategy and developing solutions. Have us gather better statistics about our country's woeful broadband situation. Set our nation's talented engineers and policy gurus to work writing reports and teeing up options for you to consider about how we can inject life back into our nation's stagnant broadband market. Keep our feet to the fire to encourage innovation, competition and the provision of advanced telecommunications to all of our people. The present situation is far too grave to let the great technological resources of the FCC be anything less than 100 percent engaged in their project.

The FCC also faces a daunting challenge in improving our disaster readiness. I believe that in the aftermath of 9/11, this agency, which employs the greatest concentration of telecommunications experts in the Nation and has statutory responsibility to secure non-military communications in time of emergency, allowed its expertise and authority to be marginalized. Chairman Martin has moved to make public safety and homeland security a higher and top priority, even creating a separate bureau this year. But the job is still far from done and our role is still not what it should be. One initiative we have adopted, and I think it is of particular importance, is using the FCC as a clearinghouse for public safety and homeland security ideas. Small businesses, charities, hospitals, and other entities that lack the resources to develop complex emergency plans should have someone they can contact. I suggest the FCC and learn what has worked for others and what hasn't. It will take money, staff time, and serious dedication to get us there, but the safety of the people is always the first obligation of the public servant and the agency is capable of doing more to keep America safe. Rightly done, this initiative can save the nation time, money, and possibly even save it lives.

Turning to one of those smaller issues that doesn't usually get much attention, let me make one minor, but I think important suggestion: modify the closed meeting rule so that we can talk to each

other at the FCC. I can't think of any recent proceeding that wouldn't have benefited from a full and frank exchange of ideas among the principal decisionmakers. Every other institution encourages discussion among its members, whether it's Congress, the courts, or the College of Cardinals. You know, if it's good enough for Holy Mother Church, of which I am a member, it ought to be good enough for the FCC.

I want to finish by stating my firm conviction that the issues the FCC faces in the next 2 years are far too important and complex to be reduced to simple debates between regulation and deregulation or pro-business and anti-business. Our job is to make sure the people's business gets done. We need to find ways for stakeholders to work together, to combine the genius of our great enterprise system with the things people expect government to do. Partnership is how we built this great country of ours. Working together, building together, recognizing our interdependence one upon the other, those have been the best moments in our Nation's passage to greatness, and therein is the key to our future.

Mr. Chairman and Members, thank you and I look forward to our conversation this morning.

[The prepared statement of Mr. Copps follows:]

PREPARED STATEMENT OF HON. MICHAEL J. COPPS, COMMISSIONER,  
FEDERAL COMMUNICATIONS COMMISSION

I welcome this opportunity to return to the Senate—which was “home” to me for so many years—and to share some thoughts with you over the state of our communications industries which are so important a part of our economy and an even more important component of our society and culture. I think as a nation we have some serious work to do to ensure that these industries are making their maximum contribution to our Nation. We have a media environment that is not fully serving American democracy or the American public. We have a telecommunications marketplace that, without significant reform, will never extend the wonders of the Internet to millions of Americans. And despite the searing lessons of 9/11 and Katrina, we still are not ready for the next man-made or natural disaster.

Let me begin with the issue which you know is closest to my heart: the broadcast media. I know that many local broadcasters strive mightily to serve the public interest. But increasingly the public-spirited part of the profession is being squeezed out. Too much of TV and radio today is homogenized, often gratuitously violent programming. Even worse is what we *don't* see enough of—the community and civic affairs coverage that is democracy's lifeblood. I've traveled all across the country—to a dozen media hearings just in the last year—and I've seen people's impatience with the status quo. It is time for the FCC to focus not only on avoiding bad *new* rules, but to revisit the bad *old* rules that got us here in the first place. I am very pleased the Chairman has committed to complete our long-dormant localism proceeding before moving forward on media ownership. Going beyond that, we need to find a way to bring basic public interest standards back to broadcasting and the spirit of public interest to other media, too.

Turning to telecommunications, I think the FCC's—and the nation's—greatest challenge is to bring the wonders of modern technology to *all* our people: to the inner city and to our distant farms and ranches, to tribal lands, to our disabled and challenged fellow citizens, to our poorest citizens and our oldest citizens. We simply cannot afford to leave anyone behind without leaving America behind. Right now, your country and mine is *21st in the world* when it comes to broadband digital opportunity and that's according to the International Telecommunications Union. How can we expect a generation of students to enter the digital classroom at dial-up speed? How will they compete as individuals? But wait a minute—we're paying a business, competitive cost, too. Fewer Americans with broadband means a smaller Internet marketplace and a glass ceiling over the productivity of small businesses and entrepreneurs in too much of our great land. But, then again, what did we expect without having a real broadband strategy?



I hope this Congress will push the FCC to be a more proactive participant in developing a strategy and developing solutions. Have us gather better statistics about our country's woeful broadband situation. Set our agency's talented engineers and policy gurus to work writing reports and teeing up options for you to consider about how we can inject life back into our Nation's stagnant broadband market. Keep our feet to the fire to encourage innovation, competition and the provision of advanced telecommunications to all our people. The present situation is far too grave to let the great technological resources of the FCC go untapped.

The FCC also faces a daunting challenge in improving our disaster readiness. I believe that in the aftermath of 9/11, this agency—which employs the greatest concentration of telecommunications experts in the Nation and has statutory responsibility to secure non-military communications in time of emergency—allowed its expertise and authority to be marginalized. Chairman Martin has moved to make public safety and homeland security a top priority, even creating a separate Bureau this year. But the job is still far from done and our role is still not what it should be. One initiative we have adopted, and I think it is of particular importance, is using the FCC as a clearinghouse for public safety and homeland security ideas. Small businesses, charities, hospitals, and other entities that lack the resources to develop complete emergency plans should be able to contact the FCC and learn what has worked for others and what hasn't. It will take money, staff time, and serious dedication to get us there, but the safety of the people is always the first obligation of the public servant—and the agency is capable of doing more to keep America safe. Rightly done, this initiative can save the Nation time, money and possibly even lives.

Turning to one of those smaller issues that doesn't usually get much attention, let me make one minor but I think important suggestion: Modify the closed meeting rule so that we can talk to each other at the Commission. I can't think of any recent proceeding that wouldn't have benefited from a full and frank exchange of ideas among the principal decision-makers. Every other institution encourages discussion among its members—whether it's Congress, the courts, or the College of Cardinals. You know, if it's good enough for Holy Mother Church, of which I am a member, it ought to be good enough for the FCC.

I want to finish by stating my firm conviction that the issues the FCC faces in the next 2 years are far too important and complex to be reduced to simple distinctions between regulation and deregulation or pro-business and anti-business. Our job is to make sure the people's business gets done. We need to find ways for stakeholders to work together, to combine the genius of our great enterprise system with the things people expect government to do. Partnership is how we built America. Working together, building together, recognizing our inter-dependence one upon the other—those have been the best moments in our Nation's passage to greatness—and therein is the key to our future.

Mr. Chairmen and Members, thank you and I look forward to our conversation this morning.

The CHAIRMAN. Thank you very much, Mr. Copps.  
We now call upon Mr. Jonathan Adelstein.

**STATEMENT OF THE HON. JONATHAN S. ADELSTEIN,  
COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION**

Mr. ADELSTEIN. Thank you, Mr. Chairman, Mr. Vice Chairman, Members of the Committee.

As we're in the middle of what passes for deep winter here in Washington, I'm reminded of what I learned growing up as a fourth-generation South Dakotan. My great-grandmother homesteaded near the Badlands, a very rugged area that Senator Thune knows very well. What she learned was that—along with so many other pioneers that were scattered over the long and wide distances there—you really made it by staying connected with each other, and by pulling together. And today, we have the opportunity, through technology, to connect this country in ways that are more profound than my great-grandmother ever could have imagined.

We need that same spirit, through telecommunications to provide for all of our neighbors, including those in rural and insular areas,

other high-cost areas, Native Americans, residents of our inner-cities, minorities, those with disabilities, non-English speakers, and low-income consumers. We should upgrade the telecommunications infrastructure in every corner of this country, and make new technologies more widely available and affordable to everyone. All of our citizens should have access, no matter where they live, or what challenges they face.

To better serve everyone in this country, we should focus on improving access to broadband, modernizing Universal Service, and promoting the public interest in our media.

As a Commissioner, I've traveled to a lot of unique parts of our country, such as Alaska and Hawaii. I'll never forget my visit to the Gulf Coast of Mississippi shortly after the devastation of Hurricane Katrina. Enormous damage there reminds us of the needs of our public safety community and our national security communities. We have to keep those foremost in our minds and in our efforts.

One of our central national priorities is promoting the widespread deployment of broadband. Even though we've made strides, we're not keeping pace with our global competitors. This is more than a public relations problem. Citizens of other countries are simply getting more megabits for less money. That's a productivity problem, and our citizens deserve better. We must restore our place as the undisputed world leader in telecom. It warrants a comprehensive national strategy.

And as has been mentioned, the ITU found that digital opportunity afforded to our citizens is 21st in the world. It's not enough of a national strategy just to fight our way back to 20th; we have to fight our way back to the top.

We should start by improving our data collection so that we can better ascertain our current problems, and develop better responses. We must increase incentives for investment and promote competition. We've got to make broadband truly accessible to everyone—even if that means communities tapping their own resources to build broadband systems.

We must also work—as many members of this committee, including Senator Dorgan and Senator Snowe have done to preserve the open and neutral character of the Internet that has always been its hallmark.

Some have argued that our low broadband ranking is due to our rural population. Well, if that's the case, then we'd better redouble our efforts to make sure that we get rural broadband every bit as efficiently deployed as it is anywhere else in the country. We can't afford to leave any part of our country behind.

In that sense, it is vital to keep our Universal Service programs on sound footing. As voice becomes just one application over broadband networks, we should ensure that Universal Service evolves to promote advanced services, a priority that this committee, in particular, made a real priority in the 1996 Act.

And we've got to do more to stay on top of the latest spectrum developments. Recent years have seen an explosion of new wireless opportunities for consumers, but we have to take creative approaches—technical, regulatory and economic—to get spectrum into the hands of all types of operators, particularly as we prepare for

the critically important 700 MHz auction that you all made possible.

As for media, let's never forget that the airwaves belong to the American people. With our ownership rules, we should take far greater care than in the past before allowing any further concentration. We need to open our airwaves to community-based and minority voices. And we need to establish public interest obligations for broadcasters as they enter the digital age.

Finally, we're charged by Congress to perform as a law enforcement agency. We should be rigorous in enforcing all of the laws under our jurisdiction. We have a lot of complaints before us, including those regarding the Do-Not-Call Registry, the junk fax rules, indecency, payola, video news releases, and our sponsorship identification rules. We should address all of them, and enforce all of the laws vigorously.

Mr. Chairman, I will carry out Congress's charge to keep the American public well-connected and well-protected. I thank you for this opportunity to testify, and look forward to addressing any concerns or questions you may have.

[The prepared statement of Mr. Adelstein follows:]

PREPARED STATEMENT OF HON. JONATHAN S. ADELSTEIN, COMMISSIONER,  
FEDERAL COMMUNICATIONS COMMISSION

Mr. Chairman, Mr. Vice-Chairman, and Members of the Committee, as we are in the middle of what passes for deep winter in Washington, I am reminded of what I learned growing up as a fourth-generation South Dakotan. My great-grandmother homesteaded near the Badlands, and thrived, along with so many other pioneers who were scattered over large distances, by staying connected and pulling for each other.

Today, through vast technological progress, we have the opportunity to connect this country in ways more profound than my great-grandmother could have ever imagined. It will take the same American spirit to provide for all of our neighbors, not just those in rural, insular and other high-cost areas, but Native Americans, residents of our inner cities, minorities, those with disabilities, non-English speakers, and low-income consumers.

We must upgrade our communications infrastructure in every corner of this country. And we must do a better job of making innovative communications technologies more widely available and affordable to everyone. All of our citizens should have the opportunity to maximize their potential through communications, no matter where they live or what challenges they face. To promote the communications needs of everyone in this country, we should focus on improving access to broadband services, modernizing universal service, and protecting diversity, competition, and localism in our media.

Understanding the many facets of the communications landscape requires us to take account of the rapidly-changing marketplace and to reach out to diverse communities. As a Commissioner, I have traveled to many unique parts of the United States, including Alaska and Hawaii, and I have learned of the distinctive challenges each state faces. I visited the Gulf Coast of Mississippi shortly after the devastation of Hurricane Katrina. The enormous damage to the entire region was unforgettable and remains a painful reminder that the communications needs of our public safety and national security communities must remain at the forefront.

One of our central challenges is promoting the widespread deployment of broadband facilities to carry these innovative services. This must be a national priority. Even though we have made strides, I am concerned that the U.S. is not keeping pace with our global competitors. Each year we slip further down the regular rankings of broadband penetration. This is more than a public relations problem. Citizens of other countries are simply getting more megabits for less money. That's a productivity problem, and our citizens deserve better.

We must engage in a concerted and coordinated effort to restore our place as the undisputed world leader in telecommunications. An issue of this importance warrants a comprehensive national strategy to ensure that affordable broadband is available for all Americans. According to the ITU, the digital opportunity afforded

to U.S. citizens is not even near the top, it's 21st in the world. So, it is not a national strategy just to overtake Estonia. It will mean taking a hard look at our successes and failures, and improving our data collection so that we can better ascertain our current problems and develop responsive solutions. We must re-double our efforts to encourage broadband development by increasing incentives for investment and promoting competition. We must also work to preserve the open and neutral character that has been the hallmark of the Internet, maximizing its potential as a tool for economic opportunity, innovation, and so many forms of civic, democratic, and social participation.

It will also mean being creative and flexible in our approaches. Some have argued that the reason we have fallen so far in the international broadband rankings is that we are a more rural country than many of those ahead of us. If that is the case, we should strengthen our efforts to address any rural challenges head-on. We have got to make broadband truly affordable and accessible to everyone, even if that means communities tapping their own resources to build broadband systems.

The Commission also must do more to stay on top of the latest developments in spectrum technology and policy. Spectrum is the lifeblood for much of this new communications landscape. The past several years have seen an explosion of new opportunities for consumers, like Wi-Fi, and more advanced mobile services. But, we have to be more creative with a term I have coined "spectrum facilitation." That means looking at all types of approaches—technical, economic or regulatory—to get spectrum into the hands of operators ready to serving consumers at the most local levels. Wireless broadband has been a top priority for me while at the Commission. And I truly believe that our preparation for the upcoming 700 MHz auction is one of the most important undertakings the Commission will conduct in all of the time I have served.

Universal service continues to play a vital role in meeting our commitment to connectivity. I have worked hard to preserve and advance the universal service programs as Congress intended. It is vital to keep them on solid footing. Increasingly, voice, video, and data will flow to homes and businesses over broadband platforms. In this new world, as voice becomes just one application over broadband networks, we must ensure that universal service evolves to promote advanced services, which is a priority that Congress, and this Committee in particular, made clear.

As for the media, we should never forget that the airwaves belong to the American people. It is critical to preserve their access to what the Supreme Court has called the "uninhibited marketplace of ideas." First, with our ownership rules, we should do no harm; we should take far greater care than we have in the past before proposing any changes in our media ownership rules. Further, to make the media landscape look and sound like America, we need to open our airwaves to community-based and minority voices. And we need to establish public interest obligations on broadcasters as they enter the digital age.

Finally, we are charged by Congress to perform as a law enforcement agency, and we should be rigorous in enforcing all of the laws under our jurisdiction. We have numerous issues before us regarding consumer complaints about the Do-Not-Call directory and our Junk Fax rules, indecency, payola, video news releases and our sponsorship identification rules. All of these laws are important, and all allegations of wrongdoing demand our resolute attention.

Congress has charged the Commission with ensuring that the American public stays well-connected and well-protected. I will do everything in my power to carry out the law to promote these goals. Thank you for the opportunity to testify.

The CHAIRMAN. All right, thank you very much, Mr. Adelstein. Now, may I call upon Commissioner Deborah Tate, Ms. Tate?

**STATEMENT OF THE HON. DEBORAH TAYLOR TATE,  
COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION**

Ms. TATE. Good morning, Mr. Chairman, Mr. Vice Chairman and honored Members of the Committee. And, welcome to the new members, I look forward to working with you all in the future.

We are, indeed, implementing many of the Acts that you passed, the WARN Act, and the Call Home Act, and I look forward to working on other issues with you in the coming year.

I'd like to first commend Kevin Martin for his effective and strong leadership as Chairman of the FCC and do appreciate all of

my fellow commissioners this past year as we've tried to work cooperatively to build consensus on complicated and challenging issues. And I agree with Commissioner Copps that it would make it a lot easier if all five of us could work and meet together.

This is the first opportunity that I have had to appear before the Committee since my confirmation, and as you've already heard—what a year it has been.

Incredibly advanced technologies, new consumer products, services, and bundles that we read about on the front page almost daily, as the Internet and the digital age affect all of us. The foundations of the old order are challenged, not only for the industry, but for government, policymakers, and consumers alike.

Converging technologies are blurring platforms. Such dynamic technological changes create both opportunities and challenges, not only for the industry, but also for us. And while my philosophy is to encourage commercial negotiations and a light regulatory touch so that we can provide more incentives to continued investment and growth, while encouraging extraordinary innovations at the same time, we do need to be careful of social policies, and especially public safety concerns, which are paramount to protecting consumers, and indeed, our entire nation.

One significant challenge that the other commissioners have noted is our review of the remanded broadcast ownership rules. As you know, we've held two of the six hearings that we've committed to. One was appropriately, I think, in my hometown of Nashville, Tennessee. Given the important role that the broadcast media plays in our society's marketplace, I am committed to ensuring the touchstone goals of competition, localism and diversity.

As we review the rules, however, we do have to be mindful of the ongoing, dramatic changes in the way that we receive our news and information, and entertainment, taking into consideration the explosion of new sources. Especially, for instance, the way that my children receive their information—"generation-i" as I call them—the ones that were raised with the Internet where they access all types of information and content over the Internet.

As many of you know, most of my professional life has been spent working on issues of significance to children and families, and that didn't change when I came to the FCC. Although most of the visibility does surround our enforcement of Congressional restrictions on the broadcast of indecent programming, I'm also pleased that we're taking a leadership role in addressing the national epidemic of childhood obesity, the effect of increasingly violent programming through our study, soon to be released, and the manner in which children's programming rules will be applied as we move to the new digital, multi-cast world.

I join you also, and all of my colleagues, in working to ensure that broadband is, indeed, available to all Americans. The exciting news is that we're seeing continued increased take rates, over 50 percent from a year ago.

My work, both as a state commissioner, and also now as Chairman of the Federal-State Joint Board on Universal Service Fund has made it clear that the growth has become untenable. We must begin to take action to reform the fund, in order to save it. And, therefore, we have begun to look at reforms on both the contribu-

tion and the distribution side. Next month, we will have an en banc hearing with many of our state colleagues, and of course, I welcome your input—at that time or at any time—to discuss any ideas that you may have about ways to reform universal service.

Like you, I've witnessed first-hand how incredible the possibilities and the innovations from the E-Rate fund are. Tennessee was the first state to connect all of its schools and libraries. And then, of course, on my visit to Alaska, I saw how important it is to connect to health care back on the mainland. It's essential, though, that we utilize technology-neutral, fair, and understandable systems, to both sustain and stabilize the Universal Service Fund.

The Commission, like Congress, has also been active in helping to increase the protection of confidential and delicate consumer information. Thank you for your pretexting legislation, and we will be acting shortly to guard against unauthorized access to customer phone and call-detail information.

Last, but of course, most important, I'd like to touch on and also say that we were pleased to launch the Homeland Security Bureau at the FCC. And, like my colleagues, after attending our Katrina hearings in Mississippi, heard first-hand how important the words redundancy and interoperability are during disasters. I continue to want to work with you all as we move forward on those issues.

Again, I appreciate the invitation to be here, and will be glad to take questions. Thank you, Mr. Chairman.

[The prepared statement of Ms. Tate follows:]

PREPARED STATEMENT OF HON. DEBORAH TAYLOR TATE, COMMISSIONER,  
FEDERAL COMMUNICATIONS COMMISSION

Good morning, Chairman Inouye, Vice Chairman Stevens, and distinguished Members of the Committee. As I begin, I especially want to thank you, Chairman Inouye and Vice Chairman Stevens, for your leadership on these critical communications issues that affect our economy, our safety, and our ability to stay in touch with those we love. I am particularly glad that we have begun implementing the Call Home Act of 2006, reducing phone rates for our military families stationed around the world.

I appreciate your invitation to participate in this hearing. As a commissioner at the Federal Communications Commission ("FCC" or "Commission"), it is my role to implement the laws passed by Congress, and I welcome the opportunity to hear directly from you regarding issues facing the FCC, the industries we impact and, indeed, all Americans.

First, I would like to commend Kevin Martin for his strong and effective leadership as Chairman of the FCC. Commissioner Copps, Commissioner Adelstein, and Commissioner McDowell also deserve praise for their commitment to building consensus, and working cooperatively as we balance competing interests to shape our communications policies.

The communications marketplace continues to evolve daily, as convergence shakes the foundations of the old order for industry, for government, and for consumers alike. Converging technologies are blurring the lines between traditional communications platforms: we make telephone calls through our cable system, watch television on IPTV, and get Internet access from our electric company. Who would have imagined that wireless connections would have surpassed landlines or provide unbanked citizens access to capital or even enhance the gross national product of developing nations. While this convergence creates real benefits for consumers through the introduction of new services and increased competition among service providers, it also challenges us to adapt our regulations to these market changes. In doing so, whenever possible, I believe we must maintain a light regulatory touch in order to provide incentives to investment and encourage innovation.

One current challenge of this new digital age involves our review of the Commission's broadcast ownership rules. Given the important role that the broadcast media play in our democratic society's marketplace of ideas, I am committed to working

with my FCC colleagues and members of this Committee to ensure that our actions further the touchstone goals of competition, localism, and diversity. Currently, we are in the process of hearing from the public and have held two of our planned six hearings across the country; one of which was in my hometown of Nashville, Tennessee. As we review our rules, however, we must be mindful of the ongoing, dramatic changes in the ways we—especially “generation-i,” those raised with the Internet—receive our news, information, and entertainment, anytime, anywhere. For example, increases in broadband penetration have transformed the Internet into a viable platform for streaming full-length video programming, with more content moving online daily at sites like YouTube; XM and Sirius have signed up millions of satellite radio subscribers, and iPods and other digital music players are used by millions more, including one in five people under the age of 30; and our mobile phones now provide us with stock quotes and e-mail updates from sources across the globe. We must make sure that we account for these effects of the digital age, because, from a regulatory standpoint, the media marketplace of tomorrow is being shaped by our actions today.

Most of my professional life has been spent addressing issues of significant impact to children and families and certainly that did not stop when I arrived at the FCC. Although most visibility surrounds our enforcement of congressional restrictions on the broadcast of obscene, indecent, and profane programming, other issues that we are addressing include the national epidemic of childhood obesity, the effect of violent programming and advertising on children as well as how our children’s programming rules will be applied to the new, digital multicast world. These are important issues, and I am pleased that the FCC is taking a leadership role in addressing them.

Of course, the issues we must address as the result of convergence and the developments of the digital age are not limited to the media. One structural change evident in the local communications marketplace is the proliferation of bundled service packages: “all-in-one” triple or quadruple play, including wireline and wireless voice, video, and Internet access for a single price. However, we will see whether this business model ultimately prevails in the marketplace—its test will be whether it provides what consumers want and need.

Whether in the merger context or in response to a forbearance petition, we have recently reviewed the competition in several specific telecommunications markets. For example, responding to a petition for forbearance from network sharing obligations, we recently analyzed the state of competition in Anchorage, Alaska, carefully applying the competition, consumer impact, and public interest standards in the Communications Act to find that calibrated regulatory relief was warranted. Looking ahead this year, the Commission faces a number of other forbearance petitions and we will continue to apply a rigorous analysis to the cases presented.

Broadband deployment is essential for the future of our country, not only for the communications industry but also for every business in America and for our place as a global leader. It is extremely important that the Commission continue to promote the deployment of advanced networks capable of providing broadband and video services. Broadband promises unprecedented business, educational, and healthcare opportunities for all of us, no matter where we choose to live. The convergence of services and platforms—from cable modem and DSL to fiber-optics, satellite, and wireless—will only help to further drive the need for better and more ubiquitous broadband throughout the country. Over 50 million users had broadband connections in 2005, rising over 33 percent, and with rural Americans doubling their broadband connections since 2003. While the United States has over 31 percent of all broadband connections in the Organisation for Economic Co-operation and Development, we still have more to do. I am committed to working with my FCC colleagues and Members of this Committee to encourage the further deployment of new and innovative services and to foster competition. Participation in the digital age requires broadband, and it is essential that we create an environment that maximizes its deployment. In addition, I also note that I support the Commission’s *Internet Policy Statement*, and believe it is important, among other things, that “consumers are entitled to access the lawful Internet content of their choice.”

While I believe the marketplace can best address many of the economic issues we face at the FCC, I am pleased that we continue to ensure that the critical needs of consumers are addressed. My work as a state commissioner as well as the Chair of the Federal-State Joint Board on Universal Service has made it clear to me that the Universal Service Fund is a critical program for ensuring access for consumers in rural and high-cost areas, and for promoting access to advanced services for schools, libraries, and rural health care providers. I have witnessed first-hand the benefits of the E-Rate program—in fact, Tennessee was the first state to connect every school and library—and how connecting healthcare facilities by broadband

makes a vital difference in peoples' lives in some of the most remote areas of Alaska. The FCC recently announced a rural healthcare broadband pilot program which will explore the utility of connecting health facilities in a state or region, linking rural health facilities with university and research hospitals. I support the entire universal service program, and I remain committed to promoting the availability of quality, affordable telecommunications services to the people of the United States. It is essential that as the converging communications landscape changes, we recognize how technological changes are putting strains on the mechanics of our distribution system and must be addressed by technology-neutral policies that avoid subjecting the program to unsustainable growth.

The FCC also continues to improve access to communications services for persons with disabilities by requiring interoperability among competing video relay service providers, and approving innovative new services like IP-captioned telephone that improve access to communications for many Americans. Of course, more work lies ahead to ensure that we responsibly manage our obligations to achieve functional equivalence for all Americans.

Along with Congress, the Commission has also been active in helping protect the privacy of confidential and delicate consumer information. Last year, we opened a rulemaking to address the abhorrent practice of pre-texting to obtain consumer's private phone records, and we are now poised to issue final rules designed to ensure the privacy of consumer information maintained by telecommunications carriers. And, I am grateful that the Congress passed legislation last year making the practice of pre-texting illegal and giving our law enforcement agencies the resources necessary to enforce the prohibition.

Last, but possibly most important, I would like to touch on the issue of public safety and homeland security. While we continue to mourn the innocent lives lost and honor the brave and selfless acts of the first responders on September 11, 2001 and during the Hurricane Katrina and Rita disasters, we must also learn from our experience and equip the Nation and our citizens to be able to communicate more effectively in such times. In March 2006, at the second meeting of the FCC Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks in Mississippi, I heard personal accounts of the devastation. The one clear message I heard was the need for redundancy in communications networks. I applaud the collaborative efforts and contributions of the communications and public safety industries, which have worked hard to address the policy goals and technical issues that make these necessary improvements possible.

My colleagues and I are keenly aware of how critical reliable communications technologies are when public safety or homeland security concerns become paramount and, therefore, launched our new Public Safety and Homeland Security Bureau. This action underscores the fact that the dissemination of vital information and interoperable communications at every level are the backbone of our defense against natural disasters, attacks on our homeland, and even the possibility of a pandemic, health-related, or environmental attack. I am confident that the Commission will continue to do all it can to strengthen and protect our Nation's communications infrastructure and I am eager to work with this new Bureau and all Members of Congress as we continue to address policies that will help improve our public safety and homeland security.

Again, I appreciate your invitation to be here with you today. I look forward to hearing from you, and I will be pleased to answer any questions.

The CHAIRMAN. Thank you very much, Commissioner Tate.  
And now may I call upon Commissioner Robert McDowell?

**STATEMENT OF THE HON. ROBERT McDOWELL,  
COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION**

Mr. McDOWELL. Thank you, Mr. Chairman, Senator Stevens and distinguished members of the Committee. Thank you so much for having us here this morning.

Eight months ago today, I was sworn in as an FCC Commissioner. My short tenure here has exceeded all of my expectations. It has been a great honor to serve the American people in this way. I am also immensely fortunate to work under Chairman Martin's leadership, and with such a talented team of commissioners.



This is an exciting time to be at the FCC. Revolutionary technological developments are yielding new opportunities for consumers to improve the quality of their lives and for businesses to improve their efficiency. This dynamic disruption transcends traditional regulatory boundaries.

The issues addressed by the FCC touch the lives of every American: from broadband availability, to the incredible proliferation of wireless technologies; from Universal Service, to localism and diversity in broadcasting; from wireless medical devices that improve thousands of lives each day, to the greatest entrepreneurial explosion in history known as the Internet. I endeavor to approach each issue with a consistent regulatory philosophy; one that has served our Nation well since its inception; one that trusts competitive free enterprise to serve consumers best. I trust free people acting within free markets to make better decisions for themselves than those of us in government. As we commemorate the 400th anniversary of the founding of the Jamestown settlement in Virginia this year, we should remind ourselves that free markets and free ideas are the essence of our free society, and promoting freedom is the FCC's core mission.

The Commission is adopting policies to encourage increased broadband deployment for all Americans. While America's rate of broadband deployment has more than doubled during the Martin Chairmanship (from 20 percent growth and penetration per year to over 40 percent growth), no one at the Commission is resting on those laurels. In fact, we are making it easier for entrepreneurs to construct new delivery platforms more quickly. The resulting new surge in capital investment will stimulate our economy, and will give American consumers new tools to strengthen their freedom by enhancing their ability to choose. All of us will benefit as a result.

Among the highlights of my first 8 months was our Advanced Wireless Services auction last summer. It was phenomenally successful and brought in nearly \$14 billion to the U.S. Treasury. New uses in this spectrum will yield untold benefits. Our Video Franchising Order adopted in December will enhance video competition, and accelerate broadband deployment. And much more lies ahead, including the 700 MHz auction, white spaces management, adoption of the digital audio broadcast standard for HD radio, Universal Service reform, and much, much more.

In sum, from my new perspective at the FCC, America's future has never looked more promising. Consumers have never been more empowered—or more savvy. The marketplace is teeming with more brilliant entrepreneurial ideas than ever before. And the FCC is working hard to create an environment where private enterprise can meet an ever more-sophisticated consumer demand as quickly as possible, thus promoting more freedom.

I look forward to meeting these challenges in partnership with Chairman Martin and my colleagues on the Commission, and I look forward to your continued direction and to your questions this morning.

Thank you very much.

[The prepared statement of Mr. McDowell follows:]

PREPARED STATEMENT OF HON. ROBERT M. McDOWELL, COMMISSIONER,  
FEDERAL COMMUNICATIONS COMMISSION

Good morning, Mr. Chairman, Senator Stevens, and distinguished Members of the Committee. Thank you for providing us with this opportunity to appear before you this morning. Eight months ago today, I was sworn in as an FCC Commissioner. My short tenure here has exceeded all of my expectations. It has been a great honor to serve the American people in this way. I am also immensely fortunate to work under Chairman Martin's leadership and with such a talented team of Commissioners.

This is an exciting time to be at the FCC. Revolutionary technological developments are yielding new opportunities for consumers to improve the quality of their lives and for businesses to improve their competitiveness and efficiency. This dynamic disruption transcends traditional regulatory boundaries. I cannot imagine a more interesting time to be here.

### **Regulatory Philosophy**

The issues addressed by the FCC touch the lives of every American: from broadband availability, to the incredible proliferation of wireless technologies; from universal service, to localism and diversity in broadcasting; from wireless medical devices that improve thousands of lives each day, to the greatest entrepreneurial explosion in history known as the Internet. This diverse array of issues, and many more, are within the FCC's purview. While advances in technology and competitiveness defy labeling under the regulatory stove pipes of old, I endeavor to approach each issue with a consistent regulatory philosophy; one that has served our Nation well since its inception; one that trusts competitive free enterprise to serve consumers the best.

This year, in Virginia, we are celebrating the 400th Anniversary of the founding of the Jamestown Settlement. That event sparked a chain of events that led to the creation of the freest nation in the history of the world. Free markets and free ideas are the twin cornerstones upon which we built America. My approach to each issue that comes before the Commission is to focus on my belief that the fundamental mission of the FCC is to promote freedom. I want consumers to have the freedom to have their demands satisfied. And I want entrepreneurs to have the freedom to innovate and bring their products and services to market so they can satisfy those consumers' demands. I trust free people acting within free markets to make better decisions for themselves than those of us in government. Government should not adversely interfere with the relationships between consumers and entrepreneurs. Rather, government should try to remove barriers to entry and allow competition to flourish. There are circumstances, however, when the government should address market failure so new entrepreneurial ideas have a chance to compete in the marketplace, and succeed or fail on their own merits—and their own merits alone. Any remedies applied to market failure should be narrowly-tailored, and sunsetted, to maximize freedom for all market players.

Today, disruptive new technologies pose challenges to existing providers of products and services—and to regulators and legislators. One of the most exciting aspects of the job of an FCC Commissioner is to help open windows to provide entrepreneurs new opportunities for these technologies to compete in the marketplace. Given this disruption, the FCC has to adapt and make a transition from legacy regulations that govern individual industries, to more nimble rules that ensure fair opportunities for all competitors. As regulators, we must be careful to avoid inhibiting innovation and technological advances. The FCC must continue to tear down barriers to entry and clear out unnecessary regulatory underbrush. The marketplace, rather than the Commission, should pick the winners.

As the Commission analyzes these regulatory questions, we of course are mindful that we operate within the parameters that you, Congress, have established for us. On every issue, I first look to the relevant statute to determine whether the Commission has the authority to take the action proposed or implement a new policy.

### **A Record of Accomplishments**

The Commission is adopting policies to encourage increased broadband deployment for all of America's businesses and citizens. While America's rate of broadband deployment has doubled during the Martin chairmanship (from 20 percent growth in penetration per year to over 40 percent), no one at the Commission is resting on those laurels. Accordingly, we are making it easier for entrepreneurs to construct new delivery platforms more quickly. Additionally, our policies are paving the way for the owners of existing platforms to upgrade their facilities. The resulting new surge in capital investment will stimulate our economy and will give American con-

sumers new tools to strengthen their freedom by enhancing their ability to choose. All of us benefit as a result.

In my 8 month tenure, the Commission has taken important steps to promote competition in a number of areas. I believe that our actions will foster the ability of American consumers and businesses—whether located in urban or rural areas—to have access to new, advanced delivery platforms.

Last summer, the Commission completed an auction for spectrum for Advanced Wireless Services in the 1710–1755 and 2110–2155 MHz bands, which are ideal for the delivery of bandwidth-intensive wireless applications. One hundred four entities placed winning bids, and over one-half of those were small businesses. In fact, forty winning bidders identified themselves as rural telephone companies. Wireless growth is rising rapidly due to robust competition and technological innovation. What was unimaginable just 10 years ago is now part of the daily routine of tens of millions of Americans. Innovative broadband services using advanced technologies allow customers to use new multimedia phones to watch TV, download songs, receive information and access content, such as sports, news and weather, at broadband speeds. In recognition of the importance of the wireless industry to America's continued economic competitiveness across the globe, the Commission is quickly granting applications, and releasing this spectrum to the winning bidders. In fact, in November, we granted 550 licenses won in the AWS auctions. In December, we granted another 357 licenses. This means that we have already granted 907 of the 1,087 licenses, and have brought in \$13.1 of the \$13.7 billion in total net high bids. All of this activity should be put in the context of an already competitive wireless marketplace.

Over the last 13 years, since the Commission issued its first Wireless Competition Report, wireless subscriber growth has grown exponentially and competition among numerous providers has flourished. The overall wireless penetration rate in our country is now at 71 percent—and our most recent report, released in September, notes that an overwhelming majority of consumers between the ages of 20 and 49 has a wireless phone. At the same time, prices are decreasing. Our report estimates that revenue per minute (RPM) declined 22 percent last year alone. RPM currently stands at \$0.07, as compared with \$0.47 in December 1994—a decline of 86 percent. (That \$0.47 in 1994 equates to \$0.60 today.) This is great news for American consumers.

The Video Franchising Order the Commission adopted in December advances the pro-consumer goals of enhancing video competition and accelerating broadband deployment. The Order strikes a careful balance between establishing a deregulatory national framework to hasten deployment of advanced services while preserving local control over local issues. It guards against localities making unreasonable demands of new entrants, while still allowing those same localities to protect important local interests through meaningful negotiations with aspiring video service providers.

While I would have liked to have provided the deregulatory benefits granted to new entrants to all video providers, be they incumbent cable providers, over-builders or others, the record in this proceeding did not allow us to create a regulatory parity framework just yet. I am pleased that the Commission has committed to release an order addressing parity for all cable competitors no later than 6 months from the release date of the Video Franchising Order. Resolving these important questions soon will give much-needed regulatory certainty to all market players, spark investment, speed competition on its way, and make America a stronger player in the global economy.

While we have worked hard to help foster the rollout of new delivery platforms, we have also endeavored to continue to make available to all Americans affordable telecommunications services. The Universal Service system has been instrumental in keeping Americans connected and improving their quality of life. This system is in dire need of comprehensive reform, however. In June 2006, we adopted interim changes to the Universal Service contribution methodology that were designed to help bridge the gap between the deteriorating status quo and a more sustainable Universal Service system of the future. The changes raised the interim wireless safe harbor and required VoIP providers to contribute to the Fund. By setting appropriate safe harbors and allowing wireless carriers and VoIP providers, in determining their USF contribution, the option of either using the safe harbor, utilizing traffic studies, or reporting actual interstate revenues, we provide the right balance of administrative ease and incentive to contribute based on actual interstate and international revenues. These interim measures also ensure that the Fund remains solvent for the near term and serve as an important first step toward broadening the Fund's contribution base to ensure equitable and nondiscriminatory support of the Fund in an increasingly digital world. In October, we also instituted a 2-year

rural health care pilot program to determine the extent of the need for advanced services to meet the rural health care objective, pursuant to Section 254(h)(2)(A) of the Communications Act, and how we can tailor the rural health care support mechanism toward that end.

Universal Service is intertwined with intercarrier compensation. We have to reform the current access regime; otherwise, it won't survive. I believe that all carriers should be compensated for the costs of carrying others' traffic on their networks. Today is the deadline for submitting reply comments to the Commission on the Mississippi Plan that was submitted by a NARUC Task Force last June. I look forward to reviewing those comments. There are a lot of stakeholders and no one plan is going to make everyone happy. We need to step back and see how competition and technology are changing the marketplace and examine where the current regime is in need of reform. We also need to promote efficiency, competition and technological innovation. It will be a long, cooperative process, but I look forward to working with everyone on this challenge.

### **Future Challenges**

Looking ahead, this year in particular we have our work cut out for us. We are currently in the process of analyzing the record and finalizing the rules for the commercial portion of the 700 MHz spectrum band. Our work is especially time-sensitive given Congress's recent mandate that we commence auctioning this spectrum no later than January 28, 2008, less than 1 year away. I am hopeful that we will complete our work and release these rules early this spring.

We are also moving forward to create the opportunity for additional unlicensed operation in the white spaces of the TV broadcast bands. I am hopeful that our actions will foster a chain of events that will lead to an explosion of entrepreneurial brilliance toward creative uses for these bands. Mindful of our obligation to protect all users from harmful interference, our Office of Engineering & Technology is already working hard to analyze and test new devices and associated standards. I am pleased that our timetable aims to ensure that new consumer equipment for these bands will be market-ready as soon as possible.

This year, we are also advancing our comprehensive review of the Commission's broadcast ownership rules and are busy building a record. As you know, these rules must strike a difficult balance. They must take into account the dramatic changes that have occurred in the media landscape in recent years and at the same time, continue to promote our long-standing values of diversity, localism and competition. We must also carefully address the issues presented to us by the Third Circuit in the *Prometheus* decision. I hope we can develop a reasoned approach that resolves the regulatory uncertainty that followed the appeal of the order the Commission issued in June 2003.

I look forward to continuing our review of competition and the effects of consolidation among traditional media companies, as well as the emergence of new competing services. I also am eager to attend more field hearings around the country to learn more about competition, diversity and localism from the perspective of people with first-hand knowledge of the realities of their local market—be they consumers, broadcasters, programmers, artists, economists or academics. With respect to diversity, I am particularly concerned about the decline in female and minority owners of broadcast properties. I anticipate learning about the causes of this situation, especially as compared with other industries requiring similar amounts of capital investment.

### **Conclusion**

In sum, from my new perspective at the FCC, America's future has never looked more promising. Consumers have never been more empowered or savvy. The marketplace is teeming with more brilliant entrepreneurial ideas than ever before. And the FCC is working hard to create an environment where private enterprise can meet ever-more-sophisticated consumer demand as quickly as possible, thus promoting more freedom.

I look forward to meeting these challenges in partnership with Chairman Martin and my colleagues on the Commission and I look forward to your continued direction. Thank you.

The CHAIRMAN. All right. Thank you very much, Commissioner McDowell.

Because of the time limitation imposed on us by the impending votes, we'll have to insist that we follow the 5-minute rule.

I will be submitting my questions for the record, but I have one question.

Mr. Chairman, late last year, after considerable negotiation, the Commission reached an agreement on the AT&T/BellSouth merger. At that time, Chairman Martin, you and Commissioner Tate both stated that if, had the decision been yours to make, you might not have adopted some of the conditions.

I understand that independent commissioners have independent views, that is to be understood. But, what I find difficult to understand is you also included language in your separate statement, and you said that you do not intend to stand by the deal that was reached. If you felt so strongly about this condition, do you think you had an obligation to withhold your vote and continue further negotiations?

Mr. MARTIN. Thank you for the question, and the opportunity to clarify our positions.

I don't believe that either Commissioner Tate or I said that we wouldn't stand by the deal, so to speak. What we actually indicated was that the company had voluntarily agreed to certain kinds of commitments, and that the Commission would enforce their commitments. But those commitments couldn't change Commission policy, or Commission rules or regulations.

So, for example, AT&T had voluntarily agreed to abide by certain net-neutrality requirements that they were going to impose upon themselves. And since they volunteered to do that, we would enforce that. But that did not mean we were changing our policies, and we were going to enforce those same kind of net-neutrality requirements on others.

In addition, the company had agreed that they would offer to lower some of their special access prices, but only to some companies. The Commission has had a long-standing practice in this area, you're not allowed to discriminate among the different companies in terms of to whom you're going to offer discounted prices. And what I said at the time, and what, I believe Commissioner Tate said—what we said in our joint statement—was that the Commission wasn't altering the law here. And that if the policies that they were going to try to implement would be invalid, the Commission wouldn't approve them, to the extent that they required subsequent Commission approval.

We made that clear at the time. So I don't think that we were saying we wouldn't stand by the deal. The company would have to continue to offer the services that they said that they would in their voluntary conditions.

But to the extent any of those conditions required subsequent government action, where the Commission was going to have to affirmatively take action to enforce those on someone else, we said, "No." We would have hesitation doing that, because we weren't changing our underlying policies or rules.

The CHAIRMAN. Thank you very much, Chairman Martin.

But, Commissioner Copps and Commissioner Adelstein, the record shows that you both fought very hard for this condition. Why was this condition necessary, and consistent with the law?

Mr. COPPS. I think this whole special access area has been identified as very problematic, I think it has been identified as an area

where a few companies have tremendous market power over this whole range of services.

We recently had a GAO report which pointed out the high cost of these services, we also had a report saying that competition was virtually non-existent, most of the businesses in this country get their special access from a couple of firms, and AT&T, of course, is a huge provider of that.

So, there was a problem, and I think the commitment that AT&T made was, indeed, one that was much to be desired, in the interest of small business, in the interest of consumers, in the interest of the country, generally, dealing with a serious problem.

I think the approach we took was, indeed, a legal approach. Section 202 prohibits any unreasonable discrimination in prices, I think our case law and the courts and all kinds of authoritative legal treatises over the years make clear that 202 permits different prices for similarly situated consumers, if there's a good reason for the distinction.

Is it really unreasonable to say to Verizon that, for example, to get this they must use price caps in their own territory? The choice is theirs, it's a choice that they can make. It's parity. Is it really unreasonable to differentiate here, when CLECS are not under price caps, it's a differently regulated classification, entirely. And I think, we have long-noted at the Federal Communications Commission differences between dominant incumbents and new entrants. So, I'm comfortable with the commitment that the company made here. This was all part of a larger package, we can talk later about the larger package, and I think it was a modest victory, on balance, for American consumers, it's not something that I would have leaped at to support in the first instance, and certainly not as it came to us, as a condition of this merger, with no Department of Justice conditions, no conditions at all in the order that we were first given. But, I think the end-result is a modest victory for consumers, a modest victory for those of us who believe in the freedom of the Internet, and net neutrality, and I think there were several other benefits from it, too.

But, I think with regard to your question on special access, I think it was necessary, I think it dealt with a specific problem that was costing businesses—especially small businesses, too much, and I think the outcome was generally positive.

The CHAIRMAN. Thank you very much, Commissioner. I'm sorry my time is up, I wanted to hear Mr. Adelstein. Do you have any views?

Mr. ADELSTEIN. Well, in response to your initial question, I swore to this Commission when I was confirmed that I would always try to uphold the law. I have never voted and will never vote for any item that I consider to be unlawful.

There are a lot of concerns that were raised about competition and the loss of it due to the size of the new merged entity. The GAO, even before the merger, indicated that special access was not a particularly competitive market. We tried to tailor all of the special access conditions to particular concern raised by GAO.

There have been concerns raised about the legality of the reciprocal discounts provision, a provision that was suggested by AT&T. I think that it's perfectly lawful, as Commissioner Copps laid out,

AT&T's lawyers have agreed as well with its legality. We have done our own review of the provision, and believe that it is reasonable, and that there is sufficient case law to support that position.

Certainly, if there are concerns that are raised—though, I didn't hear about any concerns until after I had voted the item, which is disappointing—I think they're very easy to resolve. There are a number of ways that we can easily address any legal concerns with the provision. Even if I don't necessarily agree with the concerns, I would be happy to work with the Chairman and my colleagues to adjust the item to address their concerns.

The CHAIRMAN. Thank you, Commissioner.

Vice Chairman Stevens?

Senator STEVENS. Thank you very much, I'll have some questions that I'd like to submit for the record, also. Time is limited, so I'd hope that you'd be very short in your responses.

We've introduced a new Universal Service bill this year, but it seems to me that there's more that the Commission can do to protect the universal service concept, despite some of the limitations in the law that prohibit you from dealing with some of the communications entities, as far as universal service is concerned. What can you do without further legislation?

Mr. Martin?

Mr. MARTIN. Well, I think that we've taken several steps to try to help stabilize the Fund within our current authority, and I think that we can continue to try to look at issues—in ways that potentially try to assess carriers on a more technology-neutral basis, such as telephone numbers today. But, as I understand it, the bill that you've introduced would give the Commission some additional tools, so that we could look at some other options, as well. For example, intrastate authority, or clarifying that we have the authority to impose some other kinds of contribution mechanisms. So I think it would give the Commission additional tools, but I think the Commission can take some steps today, with its current authority.

Senator STEVENS. Mr. Copps, you mentioned a strategy for broadband, does that strategy envision any change in Universal Service?

Mr. COPPS. Yes, sir, it does. I think that we have to make crystal clear that broadband is integral to the system of Universal Service. This is the great infrastructure challenge of our time, I think, to get this technology, to get these services out to all of our people. And it's very difficult to get them out to some places, as in your states of Alaska and Hawaii and in many of the other states represented by Senators in this room today.

So, reasonably comparable services at comparable prices are the mantra of Universal Service for all of our citizens. Broadband is going to be the driver of so much of our economy in the next few years, we've got to make sure that everybody understands it's part of Universal Service.

Senator STEVENS. We all speak of telecommunications, but what we're dealing with is the whole concept of communications, and I worry that some of the impediments of existing legislation will prevent you from going forward and having a level playing field, and having equal treatment for all of the communications providers.

One of the things I've come across recently is Internet2 which we thought was just going to be for the universities and a tool for education. Now it seems to be expanding throughout the economy. What are you going to do about Internet2? Mr. Martin?

Mr. MARTIN. We have tried to develop a pilot program on the rural health care side, where we've allowed for some of the companies to come forward and apply for some additional funds to develop state-wide networks to deliver healthcare services, and connect, explicitly, into Internet2 and some of the other advanced backbones that are developing. So, that's the one step that most directly changes our current Universal Service program to try to take advantage of Internet2.

Senator STEVENS. Well, it seems that Internet2 will not be equally available to all Americans, is that your feeling?

Mr. MARTIN. I think that we're constantly struggling to try to make sure that all of the services that are available to consumers in urban areas are going to be available to those in rural areas. And, I think the current Telecommunications Act gives us the authority to do that. But I think that our problem is how we will make sure we have sufficient funds to pay for the kind of support that Commissioner Copps is referencing. Expanding the Universal Service Fund to pay for broadband connections would be a significant increase, and we already have a very large Universal Service Fund.

Senator STEVENS. That's the other thing about this right now, and I don't want to go into it too much, but we have not revised the schedule for the fees and payments that should be made by end of—elements of the communications industries that do utilize the majority of your services. Have you looked at the quality of charges and fees that are out there? Until this committee got involved, we had no income at all from new spectrum. We used to have a lottery system, as everyone knows. Now we have this bid system for new spectrum that's available. But, are there other areas where we should look to change the fee schedule? Should more payment be due to the Commission for those activities that take so much of your time?

Mr. MARTIN. Well, I would say first that the money that the Commission raises through its spectrum auctions actually goes directly the Treasury. It doesn't go to any of our Universal Service Funds. But, the Commission does periodically adjust its fees that are paid to the Commission.

As far as Universal Service payments, we have looked at trying to stabilize the fund in terms of reaching out and broadening it to try to make sure that everyone who is utilizing the underlying telecommunications network is paying into it. I continue to believe that trying to move to a system, something like a numbers or connections-based system, would broaden the pool of supporters, and it would allow for that to be done on a technology-neutral basis, as opposed to only the interstate services that contribute today.

So, I think there are some steps that we can take to try to both broaden the contribution to the system and make it more fair, so to speak.

Senator STEVENS. I have only got a minute left here, but let me ask this—do any of the Commissioners disagree with our Universal



Service Fund bill that we introduced last year and reintroduced this year? I understood that the Commission generally supported it. Is there any opposition from the Commission to the Universal Service bill that the Chairman and I introduced this year?

[No response.]

Senator STEVENS. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator SUNUNU?

Senator SUNUNU. Can we go to the other side? Do we want to go to Senator Dorgan first; or whoever the next person is on the Democratic side?

The CHAIRMAN. No, no. We're just going by who came in first.

Senator SUNUNU. Once again, I feel like I've been put in an odd position. Most of the people here don't realize, I was asked to speak before Senator Inouye at an event recently, and I was quick to point out that that was highly inappropriate, so I apologize to my Democratic colleagues if they think that I'm cutting into line.

I want to apologize to the Commissioners in that my staff and I have drawn up a list of highly confrontational questions, but I misplaced them this morning.

[Laughter.]

Senator SUNUNU. So, if you or your staff feel somehow short-changed by the wonkish or technical nature of the inquiries I have, I promise I'll make it up to you the next time, or invite you into my office for an argument, whatever you might find to be most entertaining.

I want to begin with white spaces. In the bill we had last year, there were some provisions to deal with the white space issue, to better use spectrum that has already been issued, licensed or somehow already being used, but is under-utilized in certain places of the country. One of the charts that Chairman Martin distributed showed the enormous growth in broadband access through wireless, and of course, white space spectrum that has been discussed would be extremely useful for continuing that growth.

I've introduced legislation on this, and worked with Senator Allen and others last year, in crafting our proposal. The question I have deals with the issuance of white space spectrum. One, you could just make it available for unlicensed use, but we could also, certainly auction off some of that. And my question is, what values or tradeoffs might we unlock, or have to deal with, depending on whether we choose to issue it as unlicensed spectrum or through an auction? Why don't we start with the Chairman, and if you want to keep your answers reasonably brief, I'd like to, at least, hear from a couple of the other commissioners as well.

Chairman Martin?

Mr. MARTIN. Well, generally trying to use the white spaces is trying to use, as you said, the underutilized spectrum in between other license holders. While the Commission could try to identify exactly the full extent of those white spaces and license it, most of the focus has actually been trying to develop an unlicensed approach to the use of this spectrum. In large part, because many of the uses would be secondary to the primary users there. And it would be more difficult. Potentially, it could actually, delay a little bit, the full utilization of the white spaces, to try to license the

white spaces, because it would first require us, from a technical standpoint, to identify exactly where all the white space is. Whereas, if we could adopt general rules which said, "We think you can operate under these parameters without causing interference," then you could do so, as long as you're not causing interference. This would more easily enable the technological innovations that are occurring and allow unlicensed devices to more fully utilize that spectrum.

Senator SUNUNU. Commissioner Copps?

Mr. COPPS. I think there really is amazing potential here. We have a proceeding on this matter to try to balance some of those questions you just asked, and I really think it is a matter of balance between the licensed and the unlicensed. And licensed is obviously important. We have just done a lot of licensing in the AWS band, we've had licenses in the 3G band, and we'll have a 700 MHz license auction, too. Should we have a presumption in favor of unlicensed? I think that strikes me as not a bad idea. But we certainly need to look carefully at the suggestion being made for how much licensing we should do in this particular band.

Senator SUNUNU. Let me move to a second question, which deals with Universal Service and one of the proposals that was put out for discussion and comment by Chairman Martin, and that is the concept of a reverse auction. I'm pleased to hear people talk about the need for reform on distribution as well as revenue collection. I have spoken time and again about the importance that the program be focused on rural areas, and those in an economic disadvantage. That's what the program is for, that's where we should spend all of our time, ensuring better performance.

Chairman Martin, could you talk about how a reverse auction might improve, in your opinion, the program's operation and efficiency, especially where those two goals are concerned?

Mr. MARTIN. Well, one of the concerns that I have is that we've seen extraordinary growth in other companies coming into rural areas and trying to provide what we might call competitive-eligible communications services. When I arrived at the Commission, these other companies were receiving about a million dollars worth of Universal Service support. This past year, they will receive just under a billion dollars of Universal Service support. That is in addition to the \$2.25 billion Universal Service support that is already going out to the schools and libraries, the rural health care program, and the incumbent wire line carriers.

The problem is that I don't think that kind of continued growth is sustainable. Instead, what we need to do is identify rural areas that are high-cost, and then try to move forward with a mechanism where we say, "Who wants to provide that service?" And "how little Universal Service subsidy can you do that for?" (As opposed to, "how much can you do that for?") And allow for multiple kinds of technologies to come forward and say, "I think I can provide service in this rural area more efficiently with wireless technology, for example, than wireline." This would allow for us to decrease our Universal Service Fund, instead of continuing to increase it at the current rate.

As I said, I'm very concerned that the current rate of growth won't be sustainable for very much longer. And so, I think that

we've got to find some other, more efficient, means of distributing that Universal Service money.

Senator SUNUNU. I know my time is up—would any one of the other commissioners like to comment on this?

Mr. COPPS. I'd like to make a brief comment, if I could. This is something that the Universal Service Joint Board that Commissioner Tate chairs, and that I'm a member of, is looking at. We'll be having an en banc hearing, as she mentioned, soon.

I always worry a little bit about the law of unintended consequences, and what might be involved in this. I think it's an interesting idea, I agree with what the Chairman says, we have to look at the sustainability of the Fund. It's also true that the Commission looked at this back in the 1990s, and rejected it.

I think some people maybe see it too much as a "silver bullet" approach, thinking this is going to solve all problems. Some of the comments that have come in already seem to indicate that there are some real concerns here. You might have to have a very active FCC to administer this program. Then, what are the standards going to be? What happens to carrier of last resort obligations, if the person who wins the auction is no longer there?

So, we're going to be looking at all of those things, I know Commissioner Tate wants to look at all of those things. Meanwhile, though, I think our Joint Board has lots of other items that it needs to report back on, also.

The CHAIRMAN. Thank you very much.

Senator Klobuchar?

Senator KLOBUCHAR. Thank you, Chairman.

Thank you for being here today, Commissioners.

It's a little known fact is, that before I was elected prosecutor, I spent 13 years practicing in the telecommunications area. I mostly represented competitive carriers getting into the market, and for the most part, we were on the side of consumer groups, and attorney general's offices, and I was proud of the results with the rates going down for consumers in the long-distance and local market. But it also gave me a sense of the need of strong government regulation, to foster that competition, and to make sure that the interests of consumers were always paramount.

And, along those lines, I wanted to ask about the "digital divide" and the need to make sure that we have broadband service throughout our country.

You know, I always believe that kids that grow up in rural America, should be able to live in rural America. Yet, in recent reports, we've seen in May of 2006 the GAO reported that 70 percent more suburban and urban homes than rural homes have broadband, roughly 25 percent of rural Minnesota households report connecting to the Internet.

Franklin Deleanor Roosevelt brought us rural electrification, Eisenhower brought us the interstate highway system, and I believe it's now our job to help deliver fast and fair access to the information highway to every American home.

And, I do have some concern with the efforts so far. As you know, in September 2004, the FCC released its fourth report on the deployment of telecommunications capability. Like the previous three reports, this report stated that broadband deployment was "reason-

able and timely.” Two of you—Commissioner Copps, and Adelstein—dissented from the conclusion that broadband deployment is going well. You two have talked about the low global ranking of the U.S. in this regard, as you mentioned today, as well as problems with defining and measuring broadband service. It’s my understanding, if there is one customer with broadband in a certain zip code, say, in a zip code, in say Kandiyohi County, Minnesota, that’s one customer, it’s counted as that zip code has broadband.

And so many questions are along the lines of what Congress and the FCC can do, if anything, I guess, starting with the two of you, to help bridge the digital divide, and to make sure that all Americans—including those in our rural areas—get this service as soon as possible?

Mr. ADELSTEIN. Senator, I couldn’t agree with you more. I’m from next door in South Dakota, and I really think we need to take a more aggressive approach to broadband since other countries are leapfrogging us. Customers in these countries get more megabits for fewer dollars. In the U.S., we have rural areas that are left behind. We use our rural markets as an excuse, but it’s not acceptable to make that excuse any more. We need to undertake a multi-pronged approach to make sure that we get broadband deployed everywhere.

The first step is to acquire better data. The FCC conducts as you mentioned, just a terrible report that says if one person in a zip code has broadband, then everybody in the zip code has it. Some States have done a much better job. For example, Kentucky has shown that, through a more thorough study, far fewer people have broadband than our data would indicate.

I think that we need to have a national broadband strategy with benchmarks, deployment timetables, and measurable thresholds. The private sector, of course, is going to be the primary engine of deployment, but I think we need to create incentives for investment, and create healthier competition.

As you know, there’s nothing like competition to drive broadband. One of the best ways to do so is through wireless deployment. We are making more spectrum available through our upcoming 700 MHz auction. We need to make sure that the license blocks for that auction are made available in such a way that real competition can result. We want small and local community-based providers to get access to that spectrum. We also need to commit to broadband connectivity through the Universal Service Fund. It is clear to me that Congress envisioned that Universal Service would be an evolving standard. Section 254 of the Act actually mentions “advanced services” five times. The FCC has the authority now to move towards a broadband system, and use the existing Universal Service system to really build a nationwide broadband network.

Senator KLOBUCHAR. Mr. Copps?

Mr. COPPS. I’m so happy that you brought the subject of the “digital divide” up, because it doesn’t get as much discussion as it formerly did.

I am really worried that we could go into the 21st century and have a bigger digital divide in this country, between urban and

rural America, between rich and poor America, even with all of these wonderful technology services, than we had back in the days of plain old telephone service in the 20th Century.

We cannot allow that to happen, and this just isn't about feel-good liberal theory, or something like that. We're talking about the competitiveness of the United States of America. If we don't get that broadband out everywhere, yes, it's the young kid out there, maybe he has no access to broadband or dial-up—I wouldn't want my kids competing against the kid in the city, or the kid in Japan or Western Europe who really has advanced speed—but it's got a business application, too. Suppose you're trying to start a small business out in Missouri or Minnesota, or South Dakota—anywhere in rural America. And you don't have access to high-speed service, and all of your competitors do. This is costing our country billions and billions of dollars, right now. I'm absolutely convinced of that.

And just to put this in perspective? Somebody told me something the other day—if you want to download a movie on the Internet in Japan where 50 megabits is common and you can download that movie in 4 minutes. Four minutes. If you want to download that movie in the United States at what we call broadband, 200 kilobits, up and down, do you know how long it would take? Seventeen and a half hours. So, this has real-world application.

Senator KLOBUCHAR. Well, thank you, I think my time is up. Hopefully, in the future we can talk again. Despite my newness to the Committee, I might be able to match you with knowing telecommunications acronyms. Thank you.

Senator STEVENS. Mr. Chairman, can I interrupt? I've got to go to another meeting, but I do want to indicate that we, the Chairman and I, will introduce that sunshine bill again. I do think we should have greater dialogue between those on this committee and the full FCC, as we try to go into this new era. There are lots of things we could do to foul up your system if we're not careful. I think there needs to be greater communications between you and between us.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Lautenberg?

Senator LAUTENBERG. Mr. Martin, one of the things that troubles us in my state of New Jersey, is that we have one commercial VHF station, it's WWOR, Channel 9. It calls itself, "My Nine New York." And in September, you told me that as we reviewed WWOR's renewal application, we will review its service obligations to northern New Jersey.

Now, in terms of staffing and local news coverage, what can you tell me about how the FCC will analyze the problems for New Jersey?

Mr. MARTIN. Well, as you know, WWOR has some special obligations, because of the concern that people in New Jersey have raised. So the Commission has placed some unique obligations on that station saying they've got to demonstrate that they are actually serving the interests of northern New Jersey.

Senator LAUTENBERG. How do you measure that?

Mr. MARTIN. Well, we will measure that in the license renewal process. Their application for renewal is due today. We'll have to

see how much service they have provided, specifically to northern New Jersey about northern New Jersey issues, separate and apart from providing service in general. That's one of their unique obligations. Unlike other broadcasters, where they have this particular obligation to demonstrate that they are covering the issues of concern to people in that area. They'll have to demonstrate that they are doing that.

Senator LAUTENBERG. Forgive me, but in order to move the process.

Mr. MARTIN. Sure.

Senator LAUTENBERG. Can the FCC make these provisions explicit to the license renewal in New Jersey?

Mr. MARTIN. Yes, and actually, we've said that in the past, both in my letters back and forth with you, and Chairman Powell also indicated that's exactly the framework that we would use in reviewing their license renewal.

Senator LAUTENBERG. Then FCC Chairman Powell said it would be useful and began a review of localism to advise the Commission on steps it can take, and if warranted, make legislative recommendations to Congress, which strengthen localism in broadcast. Now, what kind of regulatory and legislative changes might the FCC consider in order to accomplish this broader exposure to local needs?

Mr. MARTIN. To local news?

Senator LAUTENBERG. Localism.

Mr. MARTIN. Oh, localism. Well, you know, the Commission hasn't finished undergoing its localism review, that's what we're going to be doing. The Commission did not complete that, as you said, Chairman Powell—

Senator LAUTENBERG. But, it started in 2003.

Mr. MARTIN. It started it. It started and then that localism review was dropped and not completed. Indeed the final hearings were never held. I've committed that the Commission will go back and finish. We've got two localism hearings that we need to complete, one of which we've committed to do in Maine, and we've been working on trying to complete it along with the other media ownership hearings that we've committed to hold. And after those hearings are done, then we will put forth a report that says what we've found, including concerns that were raised and any recommendations that we could make on improving—

Senator LAUTENBERG. I know the intent is there, but since 2003 the pledge was made to do that. What do we have to do now to give us a date certain that this will be done? Is there a specific timetable for this?

Mr. MARTIN. We started the ownership hearings last fall. We had two last fall, and frankly since I've become Chairman, I think I've worked hard, to make sure we attend all of the hearings—

Senator LAUTENBERG. I hear you've started, it's the finish I'm interested in.

Mr. MARTIN. I think that we should be trying to do hearings on a timeframe of about one every other month. I think that we've got about six hearings that we need to try to do this year, when you include the four remaining media ownership hearings, and the two on localism. And I think that means that we've got to be doing one

about every other month this year. And so we want to complete those hearings this year, which would put us in the position to be making reports to Congress on localism——

Senator LAUTENBERG. Mr. Copps, you look like you're anxious to answer.

Mr. COPPS. I am, I appreciate that. I'll try to be brief, but I think there's three areas. Number one, we have to really tackle this consolidation issue, and it's not just about beating back harmful new rules, but it's revisiting some of the old rules that have got us in this mess in the first place.

Specifically, you talked about the explicit expectations, localism. We don't have a viable license renewal procedure at the Federal Communications Commission anymore. It used to be, back in the sixties and the seventies, a broadcaster had to come in every 3 years, and we had a list of 12 or 14 rather explicit guidelines, and we would make the determination if they were going to get their license renewed, that they were actually doing it. Were they going out and talking to members of the community? This was one question. We used to require that when the broadcaster lived in the town that he served. When he went to the barbershop and the church and the bakery. Now, he may live 3,000 miles away. Do we still require that? No, we don't require that.

And then, other than getting a good license renewal where the Commission affirmatively responds—not once every 8 years to a postcard—but once every 3 years or 5 years, and based on some specific obligations. And then we have to really get serious about determining what those public interest obligations are going to be. We're going into the digital age now, we're giving broadcasters the right to use that spectrum to broadcast six—or if you have a duopoly—twelve program streams in a community. And we've done good on the mechanics of that, but the big question is, what do the American people have the right to expect from that? Can't they get more community affairs? Local affairs? And the things you're talking about?

Senator LAUTENBERG. Mr. Chairman, can we revert back to a more thorough system in terms of these license applications and the obligations they have for service for the community?

Mr. MARTIN. Well I'm hesitant to actually put specific requirements on the type of programming that broadcasters have to put on. There have been several proposals that have been put forth, for example, that we should require individual broadcasters to provide free air time, make a specific amount of free airtime available to political candidates. There have been those that have come forward repeatedly, in the context of the digital transition, saying we should make television broadcasters provide free air time to political candidates. I'm hesitant to say that we should require broadcasters to provide free air time.

I do think that we can do more in gathering information though. I actually have been supportive of saying that we should increase the reporting requirements——

Senator LAUTENBERG. Chairman, forgive me, I don't want to extend my time too far.

But, we have a problem here, obviously. And I would simply ask—do you have the people and the resources to do these things, if we get more thorough and more detailed about this? Yes or no?

Mr. MARTIN. Yes.

Senator LAUTENBERG. Then, let's do it.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Dorgan?

**STATEMENT OF HON. BYRON L. DORGAN,  
U.S. SENATOR FROM NORTH DAKOTA**

Senator DORGAN. Mr. Chairman, this is one of the most important hearings we will have, and there's barely time to scratch the surface in 5 minutes. And I understand your point, we have three votes starting soon.

But, I want to simply mention three things, and then ask a question. Number one, I heard a lot about free markets. I love the free market, but the fact is more concentration means less competition, and then these markets are less free than they should be. And this Commission is about regulation, regulators. I always worry a little when I hear regulators shy away from regulation talk. The market, from time to time, needs a referee—it's the job of the FCC, in my judgment.

Second, spectacular failure on the last opportunity to do media ownership rules, a spectacular failure. The Commission decided that in the largest cities in the country it was okay to have one owner own eight radio stations, three television stations, the dominant newspaper, and the cable system. That was a spectacular failure. And Senator Lott and I led the fight in the Senate, and we did a rule veto by the majority of the Senate. And I don't see how you can do ownership issues again before you finish localism. You shouldn't even start ownership issues until you've finished the localism proceeding, that's the second part.

Third part—in a city with six radio stations all owned by the same company, when owned by local folks, having at least three news men and women gathering news for that community, and then when purchased by one company, thousands of miles away, they go from three news people to one newsperson, I'm wondering how that relates to the issue of localism and public interest? And, I'm wondering whether there's any attention to those issues at the Federal Communications Commission?

Now, having said all of those things, let me ask you about the issue of public interest standards. It seems to me the public interest standards have been nearly completely emasculated, and I'm hoping that you will start a notice of proposed rulemaking on public interest standards. I would ask, Mr. Chairman, would you intend to do that? And I would ask others—I can't have all five of you answer—Mr. Chairman, would you be interested, and would you be willing to start a notice of proposed rulemaking on public interest standards? And do you think it's necessary?

Mr. MARTIN. I'm never afraid of starting any kind of a proceeding, so that if people want to end up have a notice of proposed rulemaking on public interest standards, and they think that's important, I'm never opposed to starting any kind of proceeding.



Senator DORGAN. Do you think there's a need for additional public interest standards?

Mr. MARTIN. I'm not convinced, yet, that we need to have the kind of requirements that some people put forth when they say that. Some people have urged us to adopt specific requirements about explicit kinds of programming that we should be expecting of our programmers—that they would have an obligation to put on certain kinds of programming. I'm hesitant.

I do think it's important, and I have been supportive, of adopting more explicit reporting requirements. Because the broadcasters are claiming that they are already doing a lot of these kinds of public interest programming, and I've said, if they are, then they shouldn't be opposed to reporting it. Which, I think, is different from mandating it. So I'm supportive of—and have been—of reporting requirements.

Senator DORGAN. You're talking about programming, I hate to interrupt—you're talking about programming. Let me ask you about the six stations that go from three news people to one, because one owner bought all six of them. Is that in the public interest?

Mr. MARTIN. I wasn't just talking about programming, I was talking about the reporting requirements on what kind of—what are they doing on these localism issues, including on the local news that they're providing. I'm willing to do that reporting, but I'm hesitant about adopting explicit requirements on what programming they should put on.

Senator DORGAN. Let me say that I think it is urgent that this Commission sink their teeth into the issue of public interest standards sooner rather than later, and I hope you will do that.

Let—I will ask someone else to comment in a moment, but let me also get to net neutrality, or what I call Internet freedom and the issue of non-discrimination.

If the description of the Federal Communications Commission is to decide that the Internet issue does not related to non-discrimination rules because of the common carrier judgment that's been made—if you eliminate the non-discrimination requirement, does that mean you favor discrimination? And if not, then how do you make certain that there is no discrimination, by eliminating the standard?

Mr. Chairman Martin, would you answer that? Then I'm going to ask Mr. Copps to answer it.

Mr. MARTIN. Sure. I think that there's been a lot of emphasis placed upon a non-discrimination requirement, and I think it's important to talk about what we mean by "non-discrimination." Traditionally, by non-discrimination the Commission has meant that if you offer a service to one, you have to offer that same service to all. So that if I am a carrier and I offer a deal to Dr. Copps, then I have to offer the same deal on the same terms and conditions to Jonathan Adelstein. And I think that there's some benefit in that approach and I've talked about how that that kind of an approach might be important. And I actually proposed that that is how we address non-discrimination in the context of the recent mergers.

What others have put forth is a requirement that prohibits any carrier that owns an underlying infrastructure from charging any content provider. That's what they mean by non-discrimination.

And I've said that I'm concerned about that approach because it could actually deter some investment in underlying infrastructure.

So, when you say, am I in favor of a non-discrimination requirement, it depends on exactly what non-discrimination means.

Senator DORGAN. Might I ask Mr. Copps and Mr. Adelstein to comment on the issue of a notice of proposed rulemaking on the public interest standards, and also non-discrimination?

Mr. COPPS. I share your sense of urgency on the public interest standards. We ought to—for example—be looking at licensing. We ought to put that out for comment, and let's get serious on re-licensing. We ought to complete the proceedings that have already begun. We have had, since 1999, a pending proceeding on the public interest obligations of DTV broadcasters. And, we've done the children's programming out of that, but all of the other things are lying fallow. So, we really need to tee that up and get done with it.

So, I absolutely share your sense of urgency. There is no higher priority, I think, that the Commission has.

Mr. ADELSTEIN. I agree with Commissioner Copps with respect to our open proceeding. The proceeding has been pending since 1999, and we still have not adopted a Notice of Proposed Rulemaking. On radio, we have an item pending before us in which we are trying to get a Notice of Proposed Rulemaking just to ask the question on applying any additional public interest obligations to broadcasters as they get additional spectrum to broadcast on the radio. We want to know if, with additional spectrum, and the opportunity to take one channel and turn it into three or four channels, are there any public interest obligations that should be proposed? So far, we don't have a majority to support a Notice of Proposed Rulemaking, even to ask the question: "Should we do a rule?"

So, I think it's urgent. With regard to non-discrimination on the Internet, I'm not aware of any current FCC rule that prevents discrimination of Internet content, services or applications. In fact, the FCC has ruled that the longstanding non-discrimination safeguards under Title II, no longer apply to broadband services, which I think, underscores the need for us to address this issue.

Senator DORGAN. Mr. Chairman, telecommunications is such a significant part of our challenge in this Congress, and because we are really only scratching the surface and being able to superficially question here, and we have three votes, I understand all that.

I'm wondering if, at least, we could have a discussion at some point of finding another venue or another time or some other circumstance in which we can continue this discussion. I think it would be helpful for the Commission, I know it would be enormously helpful for this Congress, and—

The CHAIRMAN. I can assure you, it's now under progress.

Senator DORGAN. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Boxer?

**STATEMENT OF HON. BARBARA BOXER,  
U.S. SENATOR FROM CALIFORNIA**

Senator BOXER. Thank you so much, Mr. Chairman. I would like to associate myself with the comments of Senator Dorgan. You know, the sense of urgency that he brings, I share.

I don't know if I could be as articulate as he's been, but I'm going to focus in on the issue of localism.

It's been almost 2 years since we last had the full panel of commissioners here to discuss the FCC's work in regulating interstate communications and implementing the laws Congress has passed, so I want to welcome you all back.

And I just want to say this as straight from the heart as I can, because I see your responsibility as protecting the public interest, period. Period. That's what you're supposed to do. And I hope that before you make any decisions, that that's what runs through your mind. It's certainly what I try to do every time an issue comes before me, because that's why I was elected.

And so, when a big business comes to me with an issue—they often do—I always say to them, "I understand your position from your pocketbook, but how does that serve the public interest?" And if they convince me it does, I'm willing to listen.

Now, I think communication companies sometimes forget they're not the owners of the spectrum, that they have obligations to the public. And it's your duty to ensure that the public is protected.

Senator BOXER. I thank you very much.

And, I want to talk to you, Chairman Martin, and then ask others—it was only 4 months ago that you sat before the Committee during your confirmation hearing, although it seems like longer—as I'm sure you remember, I presented you with a copy of a news media localism study prepared by the FCC staff at taxpayer expense, that was shoved in a drawer, because its conclusions apparently ran counter to some interests who want to allow more media consolidation, and who believe that such consolidation leads to more—not less—local news, at least that's what they say.

I was further troubled when I learned of the suppression of a second FCC study—this one related to radio stations—only days later. You and I talked about it, publicly, privately. And as a result of this, I—along with Senators Dorgan and Wyden—called for the Inspector General to investigate the suppression of these studies. And I'm anxiously awaiting this report that's due in the spring.

Now, I had hoped that the revelation of these suppressed studies would have led to greater transparency and openness at the FCC. Unfortunately, published news reports, and even comments by some of the commissioners here today indicate that a culture of secrecy is still pervasive at the FCC.

It is sadly ironic, that an agency dedicated to promoting free and open communications would operate in the dark.

For example, the Associated Press recently published a story about the investigation of the suppressed media ownership studies. According to the AP report, the Inspector General has not interviewed two key witnesses, and I trust he will do so before he completes his report, and I really think this is important.

Also, it's reported that during a Bar Association dinner recently, Chairman Martin, you joked that the "KGB-like atmosphere over

at the FCC grows on the staff.” This is your words, “the KGB-like atmosphere.” Now, I do believe that many times truth is often said in jest. So, Chairman Martin, for the sake of the staff and the public, I hope we’re going to see some changes that are long overdue.

Now, Chairman Martin, I know you can’t comment on the ongoing Inspector General investigation. But when these two reports came to light you told me, and I quote, “I want to assure you that I, too, am concerned about what happened to these two draft reports.” So, I’m asking you—after learning of the suppressed studies—did you perform your own internal investigation to determine why these studies were not disclosed? Why they were shoved in the drawer? Who shoved them in the drawer? Did you do anything internally?

Mr. MARTIN. Yes.

Senator BOXER. What did you do?

Mr. MARTIN. First, I just wanted to clarify one thing you said that I said recently, the statement about the “KGB-like atmosphere,” that was actually over 18 months ago. But I did joke about that at the FCBA dinner.

Senator BOXER. Well, let it stand, that you did say that, “the KGB-like atmosphere” and everybody knows what the “KGB-like atmosphere” is, if you want to go into it, you know?

Mr. MARTIN. I did, at the FCC Chairman’s dinner.

Senator BOXER. It’s kind of a sick thing to say, but that’s your choice of joke.

Mr. MARTIN. It was in jest in talking about the Complaints—about the fact—that I had been too, actually, hands-on and controlling of the Commission’s policies, versus the staff. But, I don’t think it was meant in terms of suppressing the study.

And the reason I wanted to clarify when, is because it was done prior to any of the issues that you raised.

Senator BOXER. I know, but it gets to an atmosphere. An atmosphere over there, I’m trying to get to that.

But, if you could just tell me, what exactly did you do?

Mr. MARTIN. I know, sure.

Senator BOXER. After we spoke, and you said, “I’m going to get to the bottom of this.” What have you done? Because I haven’t heard of anything that you’ve done. Tell me.

Mr. MARTIN. I’m sorry, but the very first thing that we did is—and I promised you that I would—was make sure that I uncovered any other studies that anybody had claimed they had done but that had not been released to the public. So, I had every bureau chief in the agency go forward and say to all of the staff members who had worked on anything related to media ownership or localism to provide copies of anything they had done that they thought was a study that had not been provided. We then made copies of all of that, I shared that with all of the commissioners. Our general counsel’s office had gone through them and identified that there were a few that were emails, that weren’t even studies, and we provided copies of all of those to Congress, to the committees, including the ones that the General Counsel’s office didn’t want to be released to the public, because they were emails, and then we released all of that to the public and put it—

Senator BOXER. Well, I have just one more question, and Mr. Chairman, my time is up, but I want to follow up—it's my understanding that, in fact, you did look back, that the FCC has withheld 1400 pages. Why have these pages been withheld? And I would like to ask, after you answer, Commissioner Adelstein and Copps to respond.

Mr. MARTIN. In relation to the request that I made, after your inquiry at my confirmation hearing, that everything anybody had ever done in relation to any studies that had been produced relating to media ownership (or any concerns they had) to provide them, we've provided all of them to Congress already.

There was a separate FOIA request—

Senator BOXER. Right.

Mr. MARTIN. That was made by some outside groups that asked for things that were much beyond the other studies, including other, all, any information, anything the Commission had on ownership. This involved emails, documents, draft documents that hadn't been produced. That was handled by the General Counsel's office, as all FOIAs are, where they say that there's deliberative privileges that the Commission has about internal documents and internal drafts before they're released.

But, anything that anybody has produced that was any kind of study—

Senator BOXER. OK, OK, OK. I want to get to this 1,400 pages, though.

Mr. MARTIN. The 1,400 pages, many documents were produced in that FOIA production, but it was a standard FOIA production that the Commission always—

Senator BOXER. OK, I just want to ask the commissioners if they agree, Commissioners Copps and Adelstein, if they know about the 1,400 pages? And if you agree with that, because it's important to me. If you do, that would be one thing, if you don't, it would be another.

Mr. COPPS. I have heard about the 1,400 pages, I have not seen the 1,400 pages, and I don't know what they contain. I think Chairman Martin is correct in what he just said about his sharing the information and trying to uncover additional studies.

The final comment I would make is that research that took place under the previous regime—not only what was suppressed, but the studies that were done which weren't very good—really puts the onus on us now, to make sure that our new studies are done really well. That they're peer-reviewed, and that they're put out for public comment at the end of the day. Because this is terribly important decision-making that we're dealing with, it's the whole future of our media, and before we vote next time, I want to make sure that we have the benefit of a lot better—

Senator BOXER. Right. Well, I appreciate your—but you haven't seen the 1,400—the reason I raise it is, I'm a believer in openness. And when an outside group—they're paying the taxes that pay all of our salaries. It think, unless it's national security, they have a right to see it. I just wondered—Commissioner Adelstein, if you had anything to add? Do you know anything more about the 1,400 pages?

Mr. ADELSTEIN. Well, I agree that we should always err on the side of disclosure. Openness is preferred, particularly in an area of such concern to the public. I have been concerned with the way that the studies were commissioned. I did not have any input into how they were structured, or who was selected to do the studies. I think it is very important now that the studies be done correctly, and that there be adequate peer review. Going forward we really need to have an open process and a process that tries to get to the truth.

Senator BOXER. Thank you.

The CHAIRMAN. Senator Smith?

**STATEMENT OF HON. GORDON H. SMITH,  
U.S. SENATOR FROM OREGON**

Senator SMITH. Chairman Martin and Commissioner Copps, as I try to understand this emerging public interest standard that we may be working on and that you may be working on, I want to ask you two, briefly, does that mean content or does that mean ownership, or both?

Mr. MARTIN. I think when you're talking about the public interest standards that apply in the context of the public interest broadcasting, we've tried to look at trying to foster both competition and diversity. And in the context of having diversity, we would mean viewpoint, which would involve content. But, we've tried to make sure that there's an emphasis on both competition and diversity, so I think in that sense, it's ownership and content.

Senator SMITH. Mr. Copps?

Mr. COPPS. I would agree that it's ownership and it's content. And obviously, when you say content, that's kind of a charged term, because it's not our business to regulate content, but is it really regulating content if—at re-license time—you say, "Have you teed up programs that are of interest to minority communities here?" or, "Have you afforded an opportunity for the clash of antagonistic opinions on public issues?" So, we're not regulating what's said, or what the specific content is, but you're making sure the kind of content the American people need to see and hear is coming on the American people's airwaves.

Senator SMITH. I regularly listen to talk radio when I drive to and from work. And I hear my colleagues regularly excoriated on them from the right and the left. Just a hypothetical, I recently—for a Republican—took an unusual position on the war in Iraq. I was driving home and I heard a conservative commentator taking my hide off, and I thought, "Well, I'll switch to a liberal station and see what they say," and they just said, "He's just doing that for politics." I don't think either of those views are in the public interest, but they have the right to say that. So, I'm really troubled as we get into this, you know, one was owned by a conservative man or corporation, and one was owned by a very liberal organization. And I just want to say, that as you get into content, it really does trouble me, because they have the right to say what they say, as I have the right to say what I say, and let the public decide.

Mr. COPPS. But maybe the answer there was let a thousand flowers blossom, and let's have diversity of ownership and let's have a

number of people who have various viewpoints that would reflect what you're talking about more accurately.

Senator SMITH. Well, you know, and one of the concerns that I have, living in a very rural part of Oregon, is that media outlets struggle to make any money, or to survive, and they often get gobbled up by bigger companies, just as a matter of pure economics. Does that enter into this decision of the public interest?

Mr. MARTIN. Sure. I think it's critical that we make sure that as the technologies are changing and there's increasing competition and pressure from an economic standpoint, we want to make sure that some of the smaller ones are able to survive as well. And that's one of the balances that we try to find in how our ownership rules should work. And we have also been trying to move forward in making sure that our rules don't inadvertently suppress the opportunity to put forth different viewpoints as well. That was one of the justifications previously when the Commission eliminated, for example, its Fairness Doctrine—when it used to say, if you put one particular view out, you had to put the other out. The Commission eliminated that rule, in part, to try to foster an environment in which people were being more willing to put out their views, on radio, for example.

Senator SMITH. Well, I'm glad to hear you say that economics is a factor in the public interest. Because if a rural area has all of their media go broke because they don't have any advertising to sell, it doesn't much serve the public interest. And sometimes they don't have a choice.

But my other question—and I apologize—this is the third committee meeting I've had to be to this morning, according to my staff, this is a particularly important one, and I grant that, I know people have been waiting a long time to be in here for this.

But Chairman Martin, one of the concerns that I have as a rural Oregonian and some of my other colleagues have spoken to this in rural states, is simply broadband deployment. I know you've probably already plowed this field, but for my sake, I wonder if you can speak to really specific things that you're doing, or specific examples of how we could help you to increase broadband penetration, increase broadband speeds, to lower consumer pricing for broadband, and to promote deployment in rural areas. Because, I think as I heard Commissioner Copps say when I came in, you know, we're losing a lot of money because it isn't deployed. What specific things can we do, that we can get through this Congress. This committee operates on a fairly bipartisan basis—at least on most issues, not net neutrality, apparently, but on many issues we do. What can you tell me to be for in this Congress to make progress on deployment? Because, according to the OECD, we're 12th among nations, right in the middle.

Mr. MARTIN. Well, I think there are some things the Commission has done, but there are some things that Congress could end up doing to further help with broadband deployment. The Commission has certainly tried to remove regulatory barriers and encourage competition among companies. That's the most important thing that we can try to do to foster further broadband deployment. And, we've also tried to remove barriers to getting into the video services, for additional video competition. One of the things that is im-

portant to remember is that as this broadband infrastructure is deployed, one important avenue to recoup the significant financial resources would be to offer video services as well. That's the reason why trying to lower the barriers to providing video alternatives was critical—not only for increasing video competition, but for broadband deployment.

Congress last year had legislation that lowered those barriers to allow other companies to provide video service, and I think that would be important for broadband. What Congress can do in this area is more, is beyond what the Commission can do. We have limitations on our current authority for franchising reform. I think we've done what we can, but I think that Congress could do more in that regard.

The Commission also needs to make sure that, in terms of wireless services, we are auctioning off smaller wireless areas, to make sure that rural areas are getting the kind of attention they deserve. And we need to have stronger build-out requirements on the wireless side. I think that will help on the wireless front. And on the wire line front, I think we can try to facilitate further video deployment. That would be important.

Senator SMITH. Anybody else have a comment?

Mr. ADELSTEIN. Well, in terms of competition, I am not so sure there is a lot of it in rural areas. I am not sure there are a lot of these big companies that are itching to deploy video services or put something like FIOS into Bend, Oregon.

Senator SMITH. That's why maybe the free market—as good as it is—may not help rural folks.

Mr. ADELSTEIN. Right, that's why this Committee has been so effective over the years in implementing Universal Service and directing the FCC to make sure that Universal Service has an evolving definition, which evolves to cover advanced services at the appropriate time. I think it's not a question of if it evolves to advanced services, but when. That is likely to happen very, very soon.

We need to think about how we evolve our Universal Service Program as voice becomes just one application over a broadband network. We need to find the will to have Universal Service broadly supported through all of the different connections that feed into the system, and we need to make sure that the program is as ubiquitous as possible, particularly in rural areas. I think broadband deployment in rural America is critical to future economic development, and to the ability of people to stay and learn and thrive in rural parts of Oregon, and around the country.

Senator SMITH. Well, thank you, gentlemen.

Mr. Chairman, I think my time is up, but let me just say, I would love at some point in the near future to visit with you all. One of the issues I've struggled mightily over is net neutrality as it affects this issue. And how it affects deployment. And I would love to get your views. I have a feeling that maybe the fears on both sides of that issue may be overstated, and I keep looking for some common sense ground that we can find some way to understand the values that are in competition here.

The CHAIRMAN. I can assure you that we will have those meetings.

Senator Rockefeller?



**STATEMENT OF HON. JOHN D. ROCKEFELLER IV,  
U.S. SENATOR FROM WEST VIRGINIA**

Senator ROCKEFELLER. Thank you, Mr. Chairman. I want to pick up on a previous point, and that is the public interest test. Because it's my view that the FCC over the years has kind of wandered away from concern about that, and particularly cable and satellite television really can have anything they want, FCC has been really friendly to them. And I find that regrettable. I think television is in the worst state that I've ever seen it—commercial television is in the worst state that I've ever seen it. I barely watch it, I hope my children don't. They couldn't when they were growing up. You know about my indecency and my violence bill, you may or may not like it, I like it, and I've introduced it and we'll have more to talk about.

But on this business of public interest, I mean, they—commercial broadcasters do, after all, use what belongs to the American people, for free. So, we used to have a test when the renewal came up, and 14 different points, which I won't go into, were asked. They were very, very pertinent. As Commissioner Copps has said, now it's very different, and the process of renewal is so pro forma that it's known as "postcard renewal" that's the term of art. It just sort of, boom, you have it.

So broadcasters are given, commercial, that is, access to the public airwaves, it's for free, and in return, I think, I have a very strong feeling that they have to live up to their obligations. And I think that's going to be the change of this last election, there's going to be a lot more attention on the Federal Communications Commission and what they are and are not doing about critical areas in broadcasting.

I don't really believe, as I've said, that the FCC is conducting appropriate oversight of the public interest obligations of commercial broadcasters. Again, in an effort to minimize government regulation, the FCC has so reduced the commercial broadcast renewal license that I believe the agency has, in effect, abandoned its core responsibility to the public interest. That's a pretty strong thing to say, and I say it without any hesitation whatsoever.

We live in such complicated times, people have to know what's going on. Nobody watches news anymore because there really isn't any news. Cable is just, who can kill who quicker, verbally. Junk, sex, scandals—it's just totally different than when I grew up, so is America.

Can I allow for that? No, I don't have to on something which is publicly owned, and call broadcasting.

And I also want to point out, and I won't cite the statistics, you all know them, but they—and some people criticize this group, but I don't, because nobody's challenged their statistics—Parents Television Council—167 percent increase in violence since 1998, prime time slots. ABC, a 309 percent in violent content overall, since 1998. For each hour of prime time, CBS has the highest percentage of deaths depicted at various levels, and that's gone up by 68 percent.

Now, the commercial broadcasters love to talk about their voluntary efforts, they raise money—actually they didn't raise money, they just took a little less advertising—and said, "Well, we'll get

people to do this voluntarily.” Chairman Martin, can you honestly say to me that you think that is working, or could work?

Mr. MARTIN. Their self-regulation implementation they’re proposing, you’re talking about?

Senator ROCKEFELLER. Correct.

Mr. MARTIN. No. I’ve continued to say that I think that there’s a lot of problems with the content that’s on not only on broadcast, but on cable television as well. And I think that a lot of these education efforts that they’ve funded have been insufficient to fully address those issues.

Senator ROCKEFELLER. Mr. Copps?

Mr. COPPS. I think any voluntary codes that survive in this day and age are a pale and shallow representation of what the industry used to have.

You know, from the 1920s to the 1980s for radio, and from the fifties to the eighties for television, we had voluntary codes of broadcaster conduct, and broadcasters subscribed to them. It may not have been a golden age, but it was a serious effort at self-discipline. And I’ve been begging them to get back to meaningful, voluntary codes, and it seems to me that would be the best way for them to go, if they wanted to avoid some of the more stringent actions you are talking about. So, that’s my reaction on that.

On the previous subject, how did we get away from these public interest obligations? You’re right, your statement was strong, but I agree with it. We had a Chairman of the FCC one time that made a strong statement. His wasn’t right, it was wrong. He said, “television is a toaster with pictures.” And that’s how we started treating the people’s airwaves and the television. And then we sit around and wonder what happened to the public interest obligations that began to disappear in the eighties, and that process hasn’t abated.

Senator ROCKEFELLER. I have four more questions to ask, I’ll submit them by writing, because I don’t want to get in the way of Claire McCaskill.

The CHAIRMAN. Thank you very much.

Senator McCaskill.

Senator MCCASKILL. Thank you, thank you, Mr. Chairman.

First, a simple question for Chairman Martin. Will you issue new media ownership rules without seeking comment on regulatory language?

Mr. MARTIN. I’m sorry, what was that?

Senator MCCASKILL. Your new media ownership rules, that you’ve announced. That you’ve announced that you’re going to be changing.

Mr. MARTIN. Yes.

Senator MCCASKILL. Will you issue those without seeking comment on the regulatory language?

Mr. MARTIN. Well, we haven’t announced any of the new rules, what we’ve started is the proceeding.

Senator MCCASKILL. Right.

Mr. MARTIN. And we’ve actually already sought comment on the proceeding. So, we’ve begun the——

Senator MCCASKILL. But what——

Mr. MARTIN. We've begun the process of saying, "Should we make any changes to the rules?" And indeed, the courts have actually instructed us that we have to make some changes to the rules.

Senator McCASKILL. Correct. But, my question is, as this process goes along, will you be seeking comment on the regulatory language that you may propose?

Mr. MARTIN. We already are, seeking comment on how we should be reforming those rules. The Commission doesn't always—and some have proposed—that we should actually seek, again, comment on the specific rule before we adopt it, somehow release it to the public so that people can see what that is.

Senator McCASKILL. That's my question.

Mr. MARTIN. Right. And since we've just begun the process, I don't even know what we would change. I don't think I can commit to how we will undergo that process. And I don't think—and until we get further along, I'll know if we're going to make any changes. I'm not sure that I can comment on what we're going to do going forward.

Senator McCASKILL. Commissioner Copps?

Mr. COPPS. You can count me as one of those who so propose, and I understand that in all cases, we don't put out the final proposed rule for public comment, but this is so profound, and so important, and involves the whole future of our radio, and our television, and our media, that I think it's absolutely imperative that we put it out before the final vote is called.

Senator McCASKILL. I agree with you—yes, Commissioner Adelstein?

Mr. ADELSTEIN. I also agree. I think the public has the right to see the rules before they are finalized. All the Commission has released to date is a broad, general statement of: "What do you think of our media ownership rules?" But the public has no idea what we are actually going to do. If we decide to make changes, I think the public has a right to see them before we finalize them, not after we do so.

Senator McCASKILL. I agree. I think this is incredibly important. What you're embarking upon, as it relates to the future of broadcasting, and I think it's incredibly important, that before any rules are adopted that there is public comment on the rules that are being proposed. And I wanted to speak to that first.

I also wanted to ask, I was interested in the process of the merger decisions, and I know that you all were stalled at a 2-2 tie, and Commissioner McDowell, you had recused yourself because of potential appearance of conflict because of your previous job.

And then, when it got to a stalemate, there was actually an opinion by your counsel, that at that point, had you wanted to weigh in on the decision, you could have. That the counsel said you weren't barred. I found that ironic that you would have been originally recused, and then, when it was really close and tied, we're going to say that you can come on back in now and make a decision.

I appreciate the decision you made, in terms of not participating because you did not have enough confidence in the opinion, that it was clear. I guess my question to the panel is, do you need an Act, a law, to clarify the situation in those instances, so that there

aren't future commissioners that are faced with the difficult decision, and the pressure-filled decision that you faced, Commissioner McDowell?

Mr. MCDOWELL. Thank you, Senator. And obviously, that was a difficult time for everyone involved.

Actually, the system worked in that regard. The way the system works, there are a number of layers of ethical protection, if you will, one of which was my Ethics Agreement with the Office of Government Ethics, that was filed with this committee, on February 14 of last year. There's the Code of Federal Regulations. There are, of course, the ethics rules under my home state bar, the Virginia State Bar, and many other levels of protection there.

The Chairman, I think, exercised his prerogative to ask the General Counsel of the FCC for his legal opinion, given that there may have been a compelling governmental interest. The system, I think, actually worked. At the end of the day, it became my decision, which is what Mr. Feder's memo said—this is my decision to make. He surveyed the landscape, he wrote a thorough memo, for the most part, and at the end of the day, I disagreed that in an ethical close call, or an ethical coin toss—as I called it at the time—that I should venture into the gray area, that I should stay on the white side of gray. But, I don't think we need additional legislation.

Senator MCCASKILL. But, do you understand my concern? I mean, if you had decided to not stay on that side of the ethical grayness of the situation, we would have had a situation where there could have, potentially, there was going to be a 3-2 vote where the deciding vote was cast by someone who had originally recused themselves? And that's my concern, if this were to happen again, I think we're going to see potentially more situations, because the people who join your Commission have background in the field, and I—if any of you have, my time is up and I don't want to go over, but if any of you have specific ideas about that, I would appreciate you directing them to my office, so that I could look at it.

And finally, I just want to make one comment, with the permission of the Chairman. I—there's a lot of talk about public participation in our democracy by the airwaves, and in my state, broadcast media and cable received over \$20 million in political advertising, between the months of August and November. An incredible amount of money was spent. I think we had maybe 3 hours of debate that was aired on those same—they got a great deal, they made a lot of money, and there wasn't a lot—now, there was a lot of news coverage, in fairness, there was a lot of news coverage in the race. But, for the person who challenges me, and I'm sure there will be someone—I want to make sure they have a fair shot. I want to make sure that the system is not so overloaded toward my benefit that someone can't effectively challenge me. And I would ask you all to look at the requirements of airing debates and political campaigns during prime time on broadcast media. If you all did a chart of the income that has gone to broadcast media from political advertising over the last two cycles, it would be jaw-dropping. And, I think that in light of that, it's really important that we continue to put pressure on broadcast media, and cable, to air political debates.

Thank you very much.

The CHAIRMAN. Thank you, Senator Pryor?

**STATEMENT OF HON. MARK L. PRYOR,  
U.S. SENATOR FROM ARKANSAS**

Senator PRYOR. Thank you Mr. Chairman. We're about mid-way through a roll-call vote on the floor, so I will try to be quick with my questions, and I'd appreciate quick responses, because at some point we're going to have to run over there and vote.

Mr. Chairman, let me ask you, Chairman Martin, let me ask you about the 700 MHz auction. A couple of basic questions, is the geographical size of the blocks that are being auctioned—I guess you call them blocks, I don't know what you call them—but the geographical areas that are being auctioned, and the timing of the auctions, exactly when they will take place. So, on the geographical size, as I understand it, they're fairly large geographical areas, is there any consideration, is the FCC considering shrinking those, making those smaller? My concern there would be if they're smaller, more companies would be able to make bids, especially smaller and local phone companies.

Mr. MARTIN. There is. We do have a proposal to make them significantly smaller in the upcoming auction compared to what we've done in the past. In the past, the Commission had actually had very large geographic areas. We made them somewhat smaller, in the auction we just completed this past fall, and we have proposals to make the geographic areas even smaller. In large part, to try to help smaller companies be able to get in, and also because if you make the geographic area smaller, it's more likely that people will be able to focus on providing rural service in smaller rural areas. People that are really interested in providing that service, as opposed to just buying a larger block that has rural areas encompassed in it, will be able to do so. So, that's actually one of the things that I will propose the Commission do.

Senator PRYOR. Bingo, that's one of the things—did you have a comment on that?

Mr. ADELSTEIN. I agree with the Chairman. I think it is very important that we offer different sizes of auction areas, so that large and small companies can get engaged, particularly those companies that want to serve on the local level. So, as we look at the band plan—it's not a free market, we establish what the market is—it is critical that we design the plan so that there can be new opportunities for small companies, and designated entities, new businesses, and large businesses.

Senator PRYOR. And, Mr. Chairman, I guess this is best for you—what's your timeframe on making a decision on how large these markets will be?

Mr. MARTIN. Well, we need to do that fairly soon. We have an obligation to conduct the auction by the beginning of next year, and we have to turn over the proceeds in the middle of next year. We need to conduct auctions sometime this fall. So, we need to get those rules in place sometime this spring.

Senator PRYOR. So, your plan is to conduct the auction sometime this fall. Another concern I might have is if you make it too near in time to the auction that we just had, for capital reasons, et

cetera—I was just wondering if you could put that off a few months, or if that matters, or—?

Mr. MARTIN. We have to have it started by the beginning of next year. And we have to actually deliver the proceeds to the Treasury by the middle of next year. So, our staff would like to be able to start it sometime in late fall to make sure that we have enough time to complete it and meet those statutory requirements. We're required by law to meet certain deadlines.

Senator PRYOR. OK, great. Let me change direction completely here—the V-Chip? In the law that passed back in 1996, Section 551, the V-Chip law, which basically directs the Commission to take action on alternative blocking technology, as it is developed. Do you have any ongoing matters now where you're looking at alternatives for a next generation V-Chip?

Mr. MARTIN. Not anything in particular right now. There have been advances in some of the blocking technologies like the V-Chip, but part of the difficulties we've determined is the effectiveness of the ratings that are required for the content of the programs. For the V-Chip, or any blocking technology to be effective, you have to have very effective rating systems. And we've found that's been somewhat problematic.

Senator PRYOR. Well, I would encourage the Commission to consider putting something on the agenda, because you do have Section 551 which basically says you need to continually look at new technology, next-generation V-Chip.

Also, with regard to adult domains, I know that ICANN has been looking at a .XXX domain, just very brief question for the Chairman on this—are you all taking a position on adult domains? Or trying to have a porn-free Internet?

Mr. MARTIN. NTIA is the agency that ends up having the responsibility over ICANN, so they've been the ones that have been more involved in that issue.

Senator PRYOR. And, last, and this may be a sore subject with some, and I know our time is very limited, we have to run over and vote, so maybe I may get you to submit at least a longer answer for the record, but I know during the AT&T/BellSouth merger, we all know there were a lot of events throughout that merger as it related to the Commission, but one thing I'm concerned about is after the conditions were put on and the, you know, merger was approved by the FCC, apparently Mr. Chairman, you—I believe it was Ms. Tate, Commissioner Tate—you all basically indicated that you may not enforce some of the provisions of what was just done. And, the question that I would have, fundamentally, is what is your legal authority as Chairman or as the Commission to not enforce something that you just did?

Mr. MARTIN. It's not that we wouldn't enforce, we actually would enforce the conditions that were proposed. One of those conditions was that AT&T would have to put forth a tariff to be subsequently approved by the Commission. And that tariff actually had some components that I believe are actually illegal under the Commission precedent. And I said, at the time, they can file it, but I'm not committing to approving something that would be in violation of our precedent. And, indeed, several companies have already gone

to court and said that condition is illegal for the very reason I identified.

Our tariffing rules require AT&T to provide, when they file a tariff, to allow anybody to take from that tariff. And the condition that was imposed actually restricted several companies from being able to participate in that option, and we don't allow for that kind of discrimination.

Senator PRYOR. Does anybody else have any comment on that?

Mr. ADELSTEIN. I would just say that the Order was adopted unanimously. It was a 4-0 vote, so it's hard for me to understand why we can't implement an Order that was adopted unanimously. If some of us did not consider the Order legal, I don't understand why there wasn't dissent and negotiation to deal with that issue before adoption.

Personally, I think the item is completely legal. I do not see any problem with it. The AT&T lawyers feel that way, as well as a number of other commenters. But if there is a legal concern with the Order, it's very easy to address.

Now, no concerns were raised to my attention before the Order was adopted. But I'm willing, nevertheless, to address these concerns and ensure that the provision at issue is satisfactory to everyone. I think we should be able to work that out before we finalize the Order, and should get that done in short order.

The CHAIRMAN. Thank you very much.

Senator Cantwell?

**STATEMENT OF HON. MARIA CANTWELL,  
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman. I will be quick because we are out of time, and if I could just get yes or no answers or something as succinct as that—on the cross-ownership analysis and the work that's being done by the contractor, and the context, should that complete study be subject to public comment so that we're not caught off guard?

I should preface by thanking you for coming to Seattle for the second time, I'm sure you get an earful every time you visit our state. Should this information be subject to public comment?

Mr. COPPS. Yes.

Mr. MARTIN. We've already committed to saying all of the studies that we put out should be for public comment.

Senator CANTWELL. And second, on the 900 MHz rules, you know, we're having discussions here in the U.S. Congress about energy security and dealing with global warming. There are a lot of devices that will be part of our energy-efficiency strategy that use that 900 MHz. So can we get some consultation with this committee, or are we going to precipitously see those rules come out without dialogue?

Mr. MARTIN. I'd be happy to, and always will consult with the Committee.

Senator CANTWELL. Great, thank you.

And then the last question, I know we had some comments on white space but when can we expect a decision as it relates to portable devices?

Mr. MARTIN. On the white space?

Senator CANTWELL. Yes.

Mr. MARTIN. We actually have equipment that is being tested already in our labs that we could end up approving. The remaining issue that we have to determine is whether it should be unlicensed or licensed, and that should be a decision that we need to make, sometime in this spring and early summer, so that the devices that are being tested could be put out in the marketplace.

Senator CANTWELL. OK, again, very important decision. But thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

The record will remain open for 1 week for submission of questions, and I hope the commissioners will be able to respond within 2 weeks of receipt.

The CHAIRMAN. And, I'd like to announce that the next hearing is on Wednesday, February 7 at 10:00 a.m., and the subject will be climate change research and scientific integrity. The hearing is adjourned.

[Whereupon, at 12:104 p.m., the hearing was adjourned.]



## A P P E N D I X

PREPARED STATEMENT OF HON. JOHN F. KERRY,  
U.S. SENATOR FROM MASSACHUSETTS

Mr. Chairman, I thank you for holding this hearing. There is such a large variety of issues that impact our communications market—mergers that are almost incomprehensible in scope; a vastly changing media market; technological changes that lead to stunning new consumer services.

It is too much to handle in 1 day. But I'd like to focus on a couple of key priorities.

First is broadband deployment. The Chairman will produce statistics today that paint a portrait of rapid progress in broadband deployment. Yet it remains the case that many people either do not have access to broadband Internet service or simply cannot afford it.

It is still too expensive and still too slow for advanced applications. Despite President Bush's promise of ubiquitous broadband by 2007—we remain well short of that goal. I don't see much of an Administration strategy at all. And I am concerned about it.

Senator Smith and I have introduced a bill to make new spectrum available and encourage greater deployment. Our legislation will enable entrepreneurs to provide affordable, competitive high-speed wireless broadband services in areas that otherwise have no connectivity. There is a proceeding pending at the FCC, and I am not satisfied with the pace of this measure. I will seek an explanation from the Chairman.

I remain concerned about emergency communications. I am pleased to join the Chairman and Senators Stevens, Smith and Snowe on a \$1 billion grant proposal that will enhance our communications. I thank you for your leadership Mr. Chairman and with your guidance I know we can address this critical need.

Lastly, I am concerned about access to television programming. I find disheartening the increasing phenomenon of exclusive carriage deals and vertical integration in the media industry that have one result—the business firms get wealthy and consumers have fewer choices—and fewer sports fans having access to their favorite teams.

I understand Major League Baseball will soon cut an exclusive deal with DIRECTV that will eliminate out-of-market baseball packages for Dish and Cable subscribers. I hope I am wrong, because this is audacious move. It will mean that out-of-market baseball fans that pay for a premium package to see their team will lose access to those games.

That is wrong. Major League Baseball and DIRECTV need a reality check—more eyeballs, not fewer, on your games enhances your sport, strengthens fan loyalty and serves the public. I am interested in the Chairman's views about this. I want to look at this entire picture—there are other practices in the industry that are equally disturbing. We need to take a look at the carriage system to ensure consumers are protected and independent programming is supported. Thank you Mr. Chairman.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO  
HON. KEVIN J. MARTIN

*Question 1.* In March, 2005, the FCC allowed a Verizon forbearance petition to become effective by operation of law. Because there was a vacancy on the Commission at that time and a 2–2 split among Commissioners, Verizon was able to gain regulatory relief through Commission inaction.

- Does the current process regarding the disposition of forbearance petitions in the absence of a Commission majority essentially allow petitioners to write the terms of their relief?

- Is it fair in such situations to allow petitioners to amend the scope of their requested relief after the period for comment on the original petition has concluded?
- Should forbearance petitions be denied in the absence of an order approved by a majority of Commissioners?
- What effect will government recusal rules have on the ability of Commissioner McDowell to participate in other pending or future forbearance proceedings in which his former employer, Comptel, is a party or otherwise participates?

Answer. Section 10 of the Act sets forth the standard by which the Commission is directed to evaluate petitions for forbearance. Section 10 also establishes a process by which petitions under this section “shall be deemed granted if the Commission does not deny the petition” within a maximum of 15 months. I believe that it is preferable for the Commission to reach a majority view on any forbearance petition and issue a decision affirmatively granting or denying it, in whole or in part. Such official action should be in the form of a written decision issued by a majority of Commissioners.

Since I became Chairman, the Commission has resolved seven forbearance petitions by unanimous Commission action. Although the Commission generally has been able to reach majority decisions on orders disposing of forbearance petitions, my colleagues and I were unable to do so with regard to the petition that Verizon had filed. The statutory deadline on that petition was March 19, 2006. More than 3 weeks prior to the deadline, I shared with my fellow Commissioners a draft order that would have granted in part and denied in part Verizon’s Forbearance Petition. The Commission was engaged on this issue but, by a recorded 2–2 vote, did not adopt the draft order. Without a majority of the Commission agreeing to an order disposing of Verizon’s Forbearance Petition, the petition was “deemed granted” on March 19 because the Commission had not taken any action on that petition. On March 20, the Commission issued a News Release memorializing the effect of its inability to agree to an order disposing of the petition. At that time, all of the Commissioners took the opportunity to issue statements explaining their reasoning.

In the absence of an order disposing of a forbearance petition approved by a majority of Commissioners, a petition is deemed granted pursuant to section 10(c) of the Act. The forbearance petition defines the outer scope of the relief that a petitioner may receive through a grant that is deemed to occur through operation of law. A petitioner may narrow its request for relief through its subsequent submissions.

The grant of Verizon’s petition by operation of law is currently on appeal before the United States Court of Appeals for the District of Columbia Circuit. Subject to the outcome of that appeal, the Commission will apply the statutory forbearance criteria as written.

The 2–2 vote in the Verizon Forbearance Proceeding occurred before Commissioner McDowell joined the Commission, so the government recusal rules had no bearing on the outcome there.

*Question 2.* One of the biggest challenges we face over the next 2 years is moving our Nation from analog to digital television with minimal consumer disruption. I understand that the FCC is currently receiving comment on its Proposed Final Table of DTV allotments, proposing final digital channels for TV broadcast stations. However, even after that is final, additional actions will be needed to complete the transition.

- Given the enormity of the task before us, what action is the Commission taking and what action should it take to ensure that our country is ready in February 2009?
- Would you be willing to provide the Committee with quarterly reports on actions taken by the FCC to prepare for the digital transition?

Answer. One of the most important things the Commission can do to prepare for the digital transition is to ensure that all cable subscribers are able to view the signals of broadcast stations after the transition.

The Commission has completed several important steps to accomplish the digital television (“DTV”) transition, and we are continuing to take actions to help ensure that Congress’s deadline of February 18, 2009 is achieved with minimal consumer disruption. First, the Commission established deadlines by which all television stations must build their digital broadcasting facilities. As of February 2007, 93 percent of full-power television stations are on the air with a digital signal. Second, the Commission established channel election procedures by which stations determine their post-transition channels. Third, the Commission mandated that, as of March

1, 2007, all television receivers manufactured in the United States or shipped in interstate commerce must have an integrated digital tuner.

As you note, the Commission's next objective is to adopt the final DTV Table of Allotments, which will provide all eligible stations with channels for DTV operations after the transition. This rulemaking proceeding is underway, and reply comments were filed on February 26, 2007. We also are initiating the final steps for full power stations to complete construction of their digital facilities in preparation for the termination of analog service on February 17, 2009. In addition, Commission staff continues to support NTIA in its implementation of the digital-to-analog converter box coupon program.

The Commission also recognizes the importance of helping inform the American public regarding the DTV transition. To that end, the Commission has undertaken consumer education efforts and worked with broadcasters, manufacturers, retailers, consumer organizations, and state and local governments to encourage their voluntary efforts to inform consumers about the DTV transition. We have a website dedicated to the digital transition (<http://www.dtv.gov>) which provides information about the transition, equipment needed, and programming available, and also serves as a clearinghouse with links to broadcast, cable, satellite, consumer electronics manufacturing and retail. Our consumer education activities also include publications, participation in public exhibits and community and consumer-oriented events. The Commission also has developed an "Outreach Toolkit," available on our website, for consumer and community organizations to use in conducting their own local DTV consumer education programs. Our publications provide a range of information, from a booklet with general background information, DTV: What Every Consumer Should Know, to a brief Shopper's Guide and Tip Sheet. Most of our DTV consumer information also is available in Spanish. The Commission staff also has participated in exhibits and presentations to a number of groups including AARP, the National Council of La Raza, the NAACP, educational institutions, and others.

We would be happy to provide quarterly reports to the Committee on the Commission's actions and efforts to prepare for the digital transition.

*Question 3.* A recent study conducted by Free Press entitled, *Out of the Picture: Minority & Female TV Station Ownership in the United States*, contained some sobering statistics.

Women comprise 51 percent of the entire U.S. population, but own a total of only 67 stations, or 4.97 percent of all stations.

Minorities comprise 33 percent of the entire U.S. population, but own a total of only 44 stations, or 3.26 percent of all stations.

Latinos comprise 14 percent of the entire U.S. population, but own a total of only 15 stations, or 1.11 percent of all stations.

African Americans comprise 13 percent of the entire U.S. population but only own 18 stations, or 1.3 percent of all stations.

Asians comprise 4 percent of the entire U.S. population but only own a total of 6 stations or 0.44 percent of all stations.

Do these facts trouble you as they do me, and what action should the Commission take to promote greater diversity of ownership?

Answer. These are troubling statistics. One of the three core goals that the Commission's media ownership rules are intended to further is diversity. We need to try to find more opportunities for diverse viewpoints to be heard.

Part of the problem is the limited number of channels available on broadcast television and radio and the high start-up cost of building your own station. The Commission has taken some important steps to provide more opportunity in radio with the advent of the Low Power FM (LPFM) service. LPFM provides a lower cost opportunity for more new voices to get into the local radio market.

Another idea for helping small and independently owned businesses overcome financial and resource constraints is to allow them to enter the broadcast industry by leasing some of an existing broadcaster's spectrum to distribute their own programming. Conversion to digital operations enables broadcasters to fit a single channel of analog programming into a smaller amount of spectrum. Often, there is additional spectrum left over that can be used to air other channels of programming. Small and independently owned businesses could take advantage of this capacity and use a portion of the existing broadcasters' digital spectrum to operate their own broadcast channel. This new programming station would then obtain all the accompanying rights and obligations of other broadcast stations, such as public interest obligations and carriage rights.

The Commission has before it for consideration a Notice of Proposed Rulemaking that would allow small and independently owned businesses and licensees of digital

television stations to enter into agreements by which the stations share some of their digital capacity with these entities. The entities would be treated the same as operators of other television broadcast stations and would provide their own over-the-air programming to viewers as a new television station in the market. An example of this type of arrangement is the deal reached by Latino Alternative TV (LATV) and Post-Newsweek that provides for carriage of LATV programming on the multicast channels of Post-Newsweek stations in Miami, Orlando, Houston, and San Antonio.

I also look forward to continuing to work with the re-chartered Federal Advisory Committee on Diversity in the Digital Age to further enhance the ability of all Americans, including minorities and women, to participate in the communications industry.

*Question 4.* On November 22, 2006, the day before Thanksgiving, the FCC released a list of economic studies to be performed in the media ownership proceedings. How did the Commission choose the economic studies to be performed in the media ownership proceedings? Who at the Commission or elsewhere was consulted for input on the topics chosen?

Answer. In its media ownership Further Notice of Proposed Rulemaking, the Commission committed to initiate comprehensive studies on a variety of topics including: how the public gets its news and information, competition across media platforms, marketplace changes since we last reviewed our ownership rules, localism, minority participation in today's media environment, independent and diverse programming and the production of children's and family-friendly programming.

Shortly after release of the Further Notice, I invited each of my fellow Commissioners to give me his or her thoughts on possible media ownership studies to be performed. I received some feedback from several Commissioners at that time which was then incorporated into a written proposal. I provided a copy of this proposal to every Commissioner's office. I again solicited their feedback and comments. I again received no written feedback but did receive additional comments from several Commissioners, which I attempted to incorporate and address. For example, at the suggestion of a fellow Commissioner, I ensured that the study on how people get news and information would include specific questions about local news. In response to other suggestions from my colleagues, I also added separate studies on the issues of vertical integration and minority ownership, and ensured that the impact of ownership structure on religious, indecent and violent programming would be separately examined and studied.

*Question 4a.* How were parties selected for the studies done outside the Commission, and what is the cost of these contracts?

Answer. The studies are primarily empirical in nature and require a specific skill set, including a strong understanding of Industrial Organization. A majority of the individuals who were selected to perform the studies are economists with a specialty in Industrial Organization and/or Econometrics. The economists (Gregory Crawford, Tasneem Chitty, Jeffrey Milyo, Arie Bersteanu, Paul Ellickson, and Austan Goolsbee) were chosen based on academic reputation and expertise either on a particular topic or literature or with specific econometric techniques. The only non-economists selected (Allen Hammond, Barbara O'Conner, and Tracy Westen) were suggested by my colleagues.

The Commission has contracted for Study 1 (How People Get News and Information) to be performed for \$58,000, Study 3 (Ownership Effect of Ownership Structure and Robustness on the Quantity and Quality of TV Programming) to be performed for \$25,000, Study 5 (Station Ownership and Programming in Radio) to be performed for \$60,000, Study 6 (News Coverage of Cross-Owned Newspapers and Television Stations) to be performed for \$54,500, Study 7 (Minority Ownership) to be performed for \$10,000, Study 8 (Minority Ownership) proposed to be performed for \$55,000, and Study 9 (Vertical Integration) proposed to be performed for \$60,000. Studies 2 (Ownership Structure and Robustness of Media), 4 (News Operations) and 10 (Radio Industry Review: Trends in Ownership, Format, and Finance) will be performed by Commission staff.

*Question 4b.* Would the Commission consider seeking public comment on what other studies might assist the Commission in its review of ownership rules?

Answer. We currently have 10 studies that are in the process of being completed. Once the studies are finished, they will be put out for public comment. At that time, parties can address, among other things, whether or not they believe that other studies are necessary.

*Question 5.* In November 2006, the Government Accountability Office (GAO) issued a report concluding that the cost of special access has gone up—not down—in many areas where the FCC predicted that competition would emerge. To address

this error, the report recommended that the FCC develop a better definition of “effective competition” and monitor more closely the effect of competition in the marketplace. Do you agree with these findings? What action should the Commission take in response?

Answer. As you note, on November 30, 2006, the U.S. Government Accountability Office (GAO) released a report entitled *Telecommunications FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services* (GAO-07-80). On January 29, 2007, I provided my written response to the GAO conclusions and recommendations contained in this report to the Chairman and Ranking member of the U.S. Senate Committee on Homeland Security and Governmental Affairs and the Chairman and Ranking Member of the U.S. House of Representatives Committee on Oversight and Government Reform. In that letter I outline in detail my concerns with the GAO’s findings and the steps the Commission will take to respond to the recommendations contained in the report. I have attached a copy of that letter for your review.

[The information referred to follows:]

January 29, 2007

Hon. TOM DAVIS,  
Ranking Member,  
Committee on Oversight and Government Reform,  
U.S. House of Representatives,  
Washington, DC.

Dear Congressman Davis:

On November 30, 2006, the U.S. Government Accountability Office (GAO) released a report entitled *Telecommunications FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services* (GAO-07-80). This letter provides the Federal Communications Commission’s (FCC) written response to the GAO conclusions and recommendations contained in the GAO Report.

As the Commission’s Managing Director, Anthony Dale, explained in written comments on an earlier draft, the GAO Report, taken as a whole, appears to imply the need for a return to price control policies that the Commission abandoned in 1999 during the previous Administration.<sup>1</sup> Since 1996, the Commission has followed the direction found in the Telecommunications Act of 1996 to foster policies and rules that “promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.” In 1999, the Commission specifically recognized the significant costs associated with direct price regulation (including regulation of wholesale prices) of special access services. The Commission recognized that special access price regulation “imposes costs on carriers and the public.”<sup>2</sup> Moreover, in granting pricing flexibility for special access services to price-cap incumbent LECs, the Commission explicitly found that the cost of further delaying regulatory relief was greater than the cost of granting relief prematurely. The Commission determined that “the public interest is better served by permitting market forces to govern the rates for the access services at this point.”<sup>3</sup>

In that order, the Commission explained:

“[W]e will not require incumbent LECs to demonstrate that they no longer possess market power in the provision of any access services to receive pricing flexibility . . . [R]egulation imposes costs on carriers and the public, and the cost of delaying regulatory relief outweigh any costs associated with granting that relief before competitive alternatives have developed to the point that the incumbent lacks market power.”<sup>4</sup>

Thus, the Commission determined that, even if competition had not fully developed, the cost of regulating special access pricing was still greater than the benefits. So, even if GAO is correct that competitive alternative facilities have not developed as fast as the Commission had projected, the cost of price regulation to “carriers and the public” is still greater than the benefits.

Instead of requiring a disaggregated market power analysis, the Commission, in the *Pricing Flexibility Order*, determined to rely on more easily verifiable investment in collocation as a proxy for competition in access services. The Commission found that “collocation by competitors in incumbent LEC wire centers is a reliable indication of sunk investment by competitors.”<sup>5</sup> The Commission rejected any approach to price deregulation that relied on granular findings of “non-dominance” because “non-dominance showings are neither administratively simple nor easily verifiable.”<sup>6</sup> Indeed, the Commission reasoned that it was simply infeasible to rely on evidence of market share erosion or supply elasticity because such “analyses re-

quire considerable time and expense, and they generate considerable controversy that is difficult to resolve.”<sup>7</sup>

Moreover, the Commission explicitly recognized that Phase II pricing relief could lead to price increases for customers in some areas, but rationalized that such a result was still superior to continued price regulation for two reasons. First, the Commission recognized that our special access pricing rules “may have required incumbent LECs to price access services below cost in certain areas.”<sup>8</sup> Second, the Commission found that “When an incumbent LEC charges an unreasonably high rate for access to an area that lacks a competitive alternative, that rate will induce competitive entry, and that entry will in turn drive rates down.”<sup>9</sup>

In its review of the Commission’s decision, the United States Court of Appeals for the D.C. Circuit (D.C. Circuit) rejected arguments that the Commission should be required to measure actual competition before allowing incumbent carriers pricing flexibility. The D.C. Circuit found the Commission’s determination to use collocation as a proxy for competition to be reasonable.<sup>10</sup> In addition, both the Commission and the courts have determined that price regulation of incumbents’ network facilities imposes costs and creates significant disincentives—for both incumbent and competitive carriers—to invest in economically beneficial facilities and innovation. Thus, such price regulation should be used minimally in areas where sunk investment indicates that competition is developing.<sup>11</sup> The Commission is committed to continued implementation of policies that bring the benefits of competition—more and better services and lower prices—to all Americans.

The GAO Report contains factual findings which appear to be based primarily on two studies.<sup>12</sup> Significantly, the FCC was not provided the data used to perform these studies. Without access to the data used to perform these studies, the FCC cannot evaluate the reliability of the GAO studies or assess the validity of the conclusions drawn therefrom. For example, we do not know what rate elements the incumbent LECs included in generating their average revenue data and how that might have affected the estimates.<sup>13</sup> It is also not clear how differences in demand from one MSA to another may have affected the average revenue estimates. Although the GAO Report states that it attempted to address this problem by weighting the data, it is not clear how this was accomplished. Moreover, the GAO Report acknowledges that theirs was an “imperfect weight.”<sup>14</sup> Thus, we are unable to assess the reliability or relevance of these studies.

The GAO Report makes two specific recommendations. The GAO Report first recommends that the FCC “develop a definition of effective competition, or true customer choice, using an approach that evaluates the competitive nature of a market by accounting for the number of effective competitive choices available to customers.”<sup>15</sup> This recommendation seems administratively impracticable. First, there is no universally accepted, bright-line definition of “effective competition.” Second, before applying such a definition, it would be necessary to define the relevant product and geographic markets, which, as GAO suggests, are likely to be extremely narrow. For example, the GAO study seems to suggest that at least each individual building and perhaps each floor of a building needs to be considered a separate market.<sup>16</sup> As the Commission recognized, and as the D.C. Circuit has agreed, implementing national telecommunications price deregulation by counting the number of competitive alternatives available to individual consumers would be administratively infeasible.<sup>17</sup> Recognizing these difficulties as well as the need to adopt an administratively feasible methodology, the Commission, in the Pricing Flexibility Order, chose to develop triggers that would apply to MSAs. The Commission reasoned that “defining geographic areas smaller than MSAs would force incumbents to file additional pricing flexibility petitions, and, although these petitions might produce a more fine-tuned picture of competitive conditions, the record does not suggest that this level of detail justifies the increased expenses and administrative burdens associated with these proposals.”<sup>18</sup> Finally, the Commission recognized that it would “not delay . . . regulatory relief until access customers have a competitive alternative for access to every end user.”<sup>19</sup>

In affirming this order, the D.C. Circuit found that the choice of MSAs for pricing flexibility was reasonable because “the Commission considered alternatives to MSA-wide relief and determined that, on balance, these alternatives would be less beneficial to consumers and regulated entities.”<sup>20</sup> Similarly, in considering and rejecting a building-by-building approach to its impairment analysis, the Commission concluded:

[A] building specific impairment analysis would be impracticable and unadministrable. As noted above, it would be exceedingly difficult for us to conduct . . . nationwide, fact-intensive, building specific inquiries. . . . The record suggests that there are at least 700,000 commercial buildings, and perhaps as many as 3 million buildings, for which impairment would have to be evaluated. Such case-by-case eval-

uation would be impracticable even if the relevant evidence were entirely objective and readily forthcoming. Here, however, the difficulty would be magnified by carriers' disincentives to provide relevant data that is in their possession and by the subjectivity inherent in the interpretation of that data.<sup>21</sup>

Thus, we question whether the recommendation to measure effective competition on a granular basis is consistent with the deregulatory goals of the 1996 Act and court orders sustaining the Commission's implementation of the Act.

In addition, the Commission has reviewed market-specific data regarding special access competition in the context of the SBC/AT&T, Verizon/MCI, and AT&T/BellSouth merger proceedings over the last 2 years. Specifically, the Commission examined data on over 705,000 buildings in the SBC, Verizon, and BellSouth territories combined as part of its merger analyses.<sup>22</sup> These analyses focused on buildings where the data indicated that the merger would reduce the number of competitors with direct connections from two to one, and where competitive entry was unlikely based on estimates of the revenue opportunity associated with a particular building and the distance to the closest competitive LEC fiber. Where the data indicated that a merger would have resulted in buildings without competitive alternatives, divestitures were required. In the SBC/AT&T merger, the parties committed to divest facilities to only 384 of the more than 240,000 buildings in SBC territory.<sup>23</sup> In the Verizon/MCI merger, the parties committed to divest facilities to only 356 of the more than 246,000 buildings in Verizon territory.<sup>24</sup> In the AT&T/BellSouth merger, the parties committed to divest facilities to only 31 of the more than 219,000 buildings in BellSouth territory.<sup>25</sup> Moreover, in each of these mergers, the applicants made commitments, enforceable by the Commission, to implement a performance metrics plan, under which they will provide performance data on a quarterly basis.<sup>26</sup> As a result, special access performance metrics are in place for three of the four Bell regions.<sup>27</sup>

Notwithstanding these clear Commission and Court decisions, GAO argues that the Commission should develop a more granular definition of competition and then collect "meaningful" data, asserting that the Commission's comments on the draft GAO Report "suggest a preference for economic theory rather than empirical data." To the contrary, as explained in Mr. Dale's letter, the Commission balanced the need for a costly, burdensome, detailed empirical analysis with the benefits of having market forces (as identified through more objectively verifiable proxies for competition) govern the rates for special access services. The GAO Report also states that the Commission's comments on the draft report took the position that the data gathered in the special access rulemaking is "sufficient" and "adequate to monitor competition and that additional data collection is not needed." This mischaracterizes the Commission's comments, which simply noted that there is an open proceeding considering the competitiveness of special access markets, that detailed information had been requested in that proceeding, and that the Commission will use "all available data" to fulfill its obligations to foster competition in telecommunications markets. The Commission made no comments or suggestions regarding the "sufficiency" or "adequacy" of any information received by the Commission to date.

Nevertheless, I have asked Commission staff to take the following actions in response to the report's recommendations. First, I have asked staff to: (i) request access to all the data used by GAO to develop its conclusions in the GAO Report; and (ii) perform its own analysis of such data. To the extent that such data is covered by confidentiality or other agreements restricting access to and/or use of the data, we would agree to use the data subject to the same terms and conditions as agreed to by GAO and will sign any necessary confidentiality agreements. If such access is not possible, we would request that GAO provide Commission staff with the necessary contact information to acquire the data directly.

Second, I have asked staff to carefully examine the analysis GAO has performed and to consider GAO's analysis in the Commission's ongoing examination of competition in the market for all special access services. Finally, I have asked staff to determine if it is necessary to supplement the Commission's request for data in the Special Access proceeding discussed in Mr. Dale's November 13th response.<sup>28</sup>

The Commission appreciates the opportunity to report on its actions to implement GAO's recommendations in this important area. If I can provide additional information concerning this or any other matter, please do not hesitate to contact me.

Sincerely,

KEVIN J. MARTIN,  
*Chairman.*

cc: Director, Physical Infrastructure, U.S. Government Accountability Office, Office of Management and Budget

## Endnotes

<sup>1</sup>In the GAO Report, the GAO concludes that “facilities-based competition for [high capacity] dedicated access services exists in a relatively small subset of buildings” and that “prices and average revenues are higher, on average, in phase II [metropolitan statistical areas (MSAs)]—where competition is theoretically more vigorous—than they are in phase I MSAs or in areas where prices are still constrained by the price cap.” GAO Report at 12–13. The GAO Report finds further that the GAO’s analysis of “facilities based competition also suggests that the FCC’s predictive judgment [in the *Pricing Flexibility Order*]—that MSAs with pricing flexibility have sufficient competition—may not have been borne out.” *Id.* at 42.

<sup>2</sup>*Access Charge Reform*, CC Docket Nos. 96–262, 94–1, 98–157, CCB/CPD File No. 98–63, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14271–72, para. 90 (1999) (*Pricing Flexibility Order*), *aff’d*, *WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

<sup>3</sup>*Id.* at 14301, para. 155.

<sup>4</sup>*Id.*

<sup>5</sup>*Id.* at 14263–65, paras. 79–81.

<sup>6</sup>*Id.* at 14271–72, para. 90.

<sup>7</sup>*Id.*

<sup>8</sup>*Id.* at 14301–02, para. 155.

<sup>9</sup>*Id.* at 14297–98, para. 144.

<sup>10</sup>*WorldCom, Inc. v. FCC*, 238 F.3d at 459.

<sup>11</sup>See, e.g., *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 96–98, 98–147, 01–338, Report and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17150, para. 290 (2003) (*Triennial Review Order*) (“Section 706 requires the Commission to encourage deployment of advanced telecommunications services by using, among other things, ‘methods that remove barriers to infrastructure investment.’” (citation omitted)), *aff’d in part, remanded in part, vacated in part, United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (USTA II), *cert. denied sub nom. Nat’l Assn Regulatory Util. Comm’rs v. United States Telecom Assn*, 125 S.Ct. 313, 316, 345 (2004); see also *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*; *SBC Communications Inc.’s Petition for Forbearance Under 47 U.S.C. § 160(c)*; *Qwest Communications International Inc. Petition for Forbearance Under 47 U.S.C. § 160(c)*; *BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 U.S.C. § 160(c)*, WC Docket Nos. 01–338, 03–235, 03–260, 04–48, Memorandum Opinion and Order, 19 FCC Rcd 21496, 21505, para. 21 (2004) (*Section 271 Broadband Forbearance Order*), *aff’d*, *Earthlink v. FCC*, 462 F.3d 1 (D.C. Cir. 2006).

<sup>12</sup>First, using data from GeoResults providing building level estimates of demand for dedicated access services and from Telcordia and GeoResults concerning the extent to which competitive alternatives exist in particular buildings, GAO estimated the extent of facilities-based competition for end-user channel terminations in sixteen MSAs. Second, the GAO conducted an average revenue study to compare the rates paid for dedicated access services in MSAs where incumbent LECs have received pricing flexibility.

<sup>13</sup>It is not clear from the report whether non-recurring charges, early termination penalties, or other charges were included in the data.

<sup>14</sup>GAO Report at Appendix II.

<sup>15</sup>*Id.* at 37.

<sup>16</sup>*Id.* at 17.

<sup>17</sup>See *Pricing Flexibility Order*, 14 FCC Rcd at 14260, paras. 72–74.

<sup>18</sup>*Id.*

<sup>19</sup>*Id.* at 14298, para. 144.

<sup>20</sup>See *Worldcom, Inc. v. FCC*, 238 F.3d at 460–61.

<sup>21</sup>*Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04–313 & CC Docket No. 01–338, Order on Remand, 20 FCC Rcd 2533, 2620, para. 157 (2004) (*Triennial Review Remand Order*) *aff’d*, *Covad Communications v. FCC*, 450 F.3d 528.

<sup>22</sup>See *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05–65, Memorandum Opinion and Order, FCC 05–183 at para. 37 n.98 (rel. Nov. 17, 2005) (*SBC/AT&T Merger Order*); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05–75, Memorandum Opinion and Order, FCC 05–184 at para. 37 n.97 (rel. Nov. 17, 2005) (*Verizon/MCI Merger Order*); *AT&T Inc. and BellSouth*



*Corporation Application for Transfer of Control*, WC Docket No. 06-74, Application, Declaration of Dennis W. Carlton and Hal S. Sider at para. 112 (filed Mar. 31, 2006).

<sup>23</sup>*United States v. SBC*, Final Judgment, Civil Action No. 1:05CV02102 (EGS), App. A (filed Nov. 28, 2005) available at <http://www.usdoj.gov/atr/cases/f213300/213378.htm>.

<sup>24</sup>*United States v. Verizon*, Final Judgment, Civil Action No. 1:05CV02103 (HHK), App. A (filed Nov. 28, 2005) available at <http://www.usdoj.gov/atr/cases/f213400/213413.htm>.

<sup>25</sup>*AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Public Notice, App. at Attach. B (rel. Dec. 29, 2006) (*AT&T/BellSouth Merger PN*).

<sup>26</sup>*SBC/AT&T Merger Order*, para. 51; *Verizon/MCI Merger Order*, para. 51; *AT&T/BellSouth Merger PN*, App. at 4.

<sup>27</sup>See Industry Analysis and Technology Division, Wireline Competition Bureau, Local Telephone Competition: Status as of December 31, 2005 at Table 1 (rel. July 2006); RBOC Form 477 Data as of December 31, 2005, available at <http://www.fcc.gov/wcb/iatd/comp.html>.

<sup>28</sup>See *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) (*Special Access NPRM*).

The GAO Report appears to imply the need for a return to price control policies that the Commission abandoned in 1999 during the previous Administration. As was noted in the Commission's preliminary response to the Report, since 1996, the Commission has followed the direction found in the Telecommunications Act of 1996 to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."

The GAO Report contains factual findings which appear to be based on two studies. The Commission was not provided the underlying data for these studies, and thus cannot evaluate either the reliability of the studies or the validity of the conclusions based on these studies contained in the Report. We have requested this information and hope to receive it soon.

The GAO report suggests that a building by building (potentially floor by floor) analysis is necessary to determine whether competition is sufficient to constrain rates for special access service. As the Commission recognized, and as the United States Court of Appeals for the D.C. Circuit (D.C. Circuit) has agreed, implementing national telecommunications price deregulation by counting the number of competitive alternatives available to individual customs would be administratively infeasible. Recognizing these difficulties, the Commission, in the Pricing Flexibility Order, chose to develop triggers, based on collocation by competitors in incumbent LEC wire centers, that would apply to MSAs. The D.C. Circuit upheld the use of these triggers as a proxy for measuring the extent of competition in the market and rejected arguments that the Commission should be required to measure actual competition before allowing incumbent carriers special access pricing flexibility. Given the costs of regulation on carriers and the public, I question whether GAO's recommendation to measure effective competition is consistent with the deregulatory goals of the 1996 Act and Federal court orders sustaining the Commission's implementation of the Act.

In addition, I note that the Commission reviewed market-specific data regarding special access competition in the SBC/AT&T, Verizon/MCI and the AT&T/BellSouth merger proceedings over the past 2 years. Specifically, the Commission examined data on over 700,000 buildings in the SBC, Verizon, and BellSouth territories as part of its merger review and, where data indicated that a merger would have resulted in buildings without competitive alternatives, divestitures were required.

Moreover, in each of these mergers, the applicants made commitments, enforceable by the Commission, to implement a performance metrics plan and to freeze special access prices for a certain period of time. And, the Commission imposed special access performance metrics on Qwest as a condition of forbearance relief that it recently received. Thus, special access performance metrics are currently in place in all three Bell regions and special access price freezes are in place for two out of the three Bell regions.

With regard to the GAO's recommendation that the Commission consider collecting additional data and developing additional measures to monitor competition, I note that the Commission continues to monitor the extent to which markets are open to competitive entry. I take seriously the Commission's obligation to foster competition in telecommunications markets and will use all available data to fulfill its obligation.

*Question 6.* Last year, Congress passed legislation imposing a ten-fold increase in the size of maximum fines for indecency violations, to a maximum of \$325,000 per violation. At the time President Bush signed the law, he said “[t]he problem we have is that the maximum penalty that the FCC can impose under current law is just \$32,500 per violation, and for some broadcasters, this amount is meaningless. It’s relatively painless for them when they violate decency standards.” Should Congress similarly raise the statutory maximum fine for other violations? What other actions should be taken to promote swifter and more effective enforcement?

Answer. I recommend that Congress similarly increase the statutory maximum forfeiture amounts the Commission can impose for all violations of the Communications Act and the Commission’s rules and orders. The forfeiture limits set by Congress in Section 503 of the Communications Act have not been raised since 1989, other than to account for inflationary adjustments. Raising the maximum forfeiture penalties would assist the Commission in taking effective enforcement action, as well as act as a deterrent to companies who otherwise view our current forfeiture limits simply as costs of doing business. Even with increased forfeiture limits, the Commission would continue to have discretion to adjust forfeitures based on the specific circumstances of each case, consistent with the factors set forth in the Act and the Commission’s rules, for example, the degree of culpability, any history of prior offenses, ability to pay and such other matters as justice may require.

There are several changes that could promote swifter and more effective enforcement. First, the need to issue citations to non-licensees before taking any other type of action sometimes hinders the Commission in its investigations, and it sometimes allows targets to disappear before we are in a position to take action against them. This situation occurs in cases as diverse as junk fax violations, universal service non-payment, caller ID spoofing, and equipment manufacturing. Therefore, to enable streamlined enforcement, I recommend that Congress eliminate the citation requirement in Section 503 of the Communications Act of 1934, as amended, 47 U.S.C. § 503.

In addition, the one-year statute of limitations in Section 503 of the Communications Act has been a source of difficulty at times. In particular, when a violation is not immediately apparent, or when the Commission undertakes a complicated investigation, we often run up against the statute of limitations and must compromise our investigation, or begin losing violations for which we can take action.

*Question 7.* Recently, the FCC adopted an order to prohibit certain practices by franchising authorities that the Commission finds are unreasonable barriers to entry. One issue mentioned in that order, which is very important to the State of Hawaii, is the ability of the franchise authority to seek appropriate contributions for public, educational, and governmental (PEG) and institutional networks (I-nets). I understand that some parties have disputed the veracity of some claims made in this proceeding. What, if any, efforts did the Commission take to independently investigate and verify the claims of unfair demands made by many of the carriers in this proceeding?

Answer. The Commission followed its normal course of action in a rulemaking, adhering to APA notice and comment rulemaking procedures. These procedures are designed to help ensure public participation and fairness to affected parties. By allowing interested parties an opportunity to participate in the rulemaking through submission of written data, views, and arguments, and providing interested parties with an opportunity to respond to such submissions, the Commission obtains relevant information to render an informed decision. The Commission carefully reviewed the entire record presented in this proceeding, and took any conflicting claims or evidence in the record into account in making its decision.

The Commission has rules in place to ensure that the information it receives from participants in its proceedings is correct and supported by evidence. A person’s signature on comments constitutes a certification that “to the best of his knowledge, information, and belief, there is good ground to support it.” An attorney may be subject to disciplinary action for falsely verifying a filing with the Commission. Moreover, a licensee that submits false or misleading information to the Commission is subject to disqualification on character grounds. The Commission’s ex parte rules further enhance the transparency of the process by requiring any filings or presentations intended to affect the ultimate decision to be placed in the record of the proceeding, thereby providing interested parties an opportunity to respond.

*Question 8.* In 2004, the FCC adopted a plan to move certain licenses within the 800 megahertz band in order to eliminate interference problems that were being experienced by public safety communications systems. What is your assessment of the pace of progress in rebanding the 800 MHz band and what steps does the Commission intend to take in order to get this process back on track?

Answer. The Commission is committed to ensuring that 800 MHz rebanding is completed in a timely manner while, at the same time, protecting full continuity of public safety operations during the transition. To that end, the Public Safety and Homeland Security Bureau (Bureau) has worked closely with all 800 MHz stakeholders—public safety, Sprint Nextel, equipment vendors, and the Transition Administrator. In the last several months, the Bureau has issued multiple orders and notices resolving disputes and providing guidance to negotiating licensees that we expect to help speed ongoing negotiations. For example, in January 2007, the Bureau issued an order allowing public safety licensees to exchange information with one another about the terms of their respective agreements with Sprint Nextel, notwithstanding non-disclosure language added by Sprint Nextel to those agreements. Early reports indicate that this order has had a beneficial effect on the negotiation process. Nonetheless, significant work still lies ahead to ensure that the reconfiguration process is successfully and timely completed.

The 800 MHz band reconfiguration process is divided into two stages: Stage 1 involves relocation of licensees (both public safety and non-public safety) from Channels 1–120 in the 800 MHz band, while Stage 2 involves relocation of licensees in the NPSPAC band from their current spectrum to the spectrum vacated by Channel 1–120 licensees. Overall, significant progress has been made toward completing Stage 1. We anticipate that Stage 1 relocation in all non-border areas will be substantially complete later this year. Stage 2 relocation is proceeding more slowly. Negotiations between NPSPAC public safety licensees and Sprint Nextel have been more complex and time-consuming than similar negotiations in Stage 1. This is due in large part to the size and complexity of many NPSPAC systems and the numerous interoperability relationships among NPSPAC licensees. These factors require careful planning and implementation of the NPSPAC transition process to ensure that existing interoperability is maintained while each system is retuned. This has led to concerns regarding the feasibility of completing rebanding on the current timetable.

The Commission has also devoted significant resources to ensure that rebanding takes place as soon as possible in the border areas. Specifically, resolving international spectrum allocation issues as soon as possible with Mexico and Canada that affect 800 MHz rebanding in the U.S.-Mexico and U.S.-Canada border regions is a high priority. In coordination with the State Department, we are engaged in intensive dialogue with both Canada and Mexico on these issues. We are also working closely with public safety planning groups in the border regions to be sure their needs are given priority in our international discussions.

The Commission's priorities are to ensure that Stage 1 is timely completed, that Stage 2 moves forward quickly, and that we accelerate the process where possible—but not at the expense of maintaining full public safety readiness to respond to emergencies during the transition. In a recent letter, public safety leadership and Sprint Nextel have requested that the Commission direct the TA to develop a system-by-system schedule for implementation of Stage 2 rebanding that would take into consideration factors as such as licensee preparedness, status of plans for maintaining interoperability among NPSPAC systems during the transition, resources available for planning and implementation, and impact on all incumbent operators in each area.

*Question 9.* A number of wireless carriers have employed the use of high “early termination fees” to prevent wireless customers from switching to other carriers. In some cases these fees may be \$200 or more, and may apply regardless of whether the subscriber wishes to cancel on the first or last date of their wireless contract. Do you believe these practices promote or impede competition?

Answer. I am concerned that some practices relating to “early termination fees” may impede competition. I believe certain practices regarding “early termination fees,” whether employed by wireless providers or other communications service providers, may need to be examined. The Commission has received two related petitions seeking clarification of the Commission's jurisdiction over early termination fees in the wireless context. Should the Commission determine that it has jurisdiction over such early termination fees, it would address the appropriateness of certain practices regarding these fees.

*Question 10.* Given requirements imposed by General Services Administration to promote greater redundancy of communications, how would the retirement of copper facilities impact Congress' directive to promote the availability of alternate network facilities in federally owned and leased buildings?

Answer. In federally owned and leased buildings, it would be up to GSA to determine whether or not older facilities should be replaced and retired, or maintained to promote greater redundancy.

*Question 11.* Given the Commission's policy of promoting broadband deployment and eliminating regulations that treat competitors in the provision of broadband differently, how is this policy being implemented with regard to pole attachment regulations?

Answer. The Commission's pole attachment regulations, some of which predate the 1996 Act, currently reflect the historical differences between different networks and services. For example, the regulations have different rate structures for cable operators and telecommunications carriers seeking to attach to utility poles, with the carriers typically paying a higher rate. Notably, an entity that seeks to provide solely broadband services over its attachment currently is not subject to a regulated rate.

Several parties have asked the Commission to begin a rulemaking to change its rules to create more regulatory parity and encourage broadband deployment, including a request to assure incumbent LECs of just and reasonable rates, and to unify the rate that utilities charge for all attachments. The goals of promoting the deployment of broadband infrastructure and allowing competitors to compete on a level playing field are important, and I have instructed the Bureau to prepare a Notice of Proposed Rulemaking to examine existing regulations to promote parity among broadband providers using such pole attachments.

*Question 12.* Recently, a Virginia Federal court referred a matter to the FCC for review and clarification as to whether Internet Protocol Television or "IPTV" service meets the definition of a "cable service" under the Communications Act—a question that this Committee answered affirmatively during consideration of last year's telecommunications bill. How does the Commission intend to address this matter?

Answer. Section 621(b)(1) of the Communications Act provides that "a cable operator may not provide cable service without a franchise." The Communications Act defines a "cable operator" as "any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system." The Act excludes from the definition of a "cable system" "a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of this Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services."

To the extent that IPTV is provided by a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, the exception could apply. Thus, whether such video services are subject to the requirements of Title VI depends upon the characteristics of the video offering. To the extent that the offering involves solely "interactive on-demand services," the franchising requirements of the Act would not apply.

The Commission is currently considering the regulatory classification of IP-enabled services, including IPTV services, in its IP-Enabled Services rulemaking. No final determination on the appropriate classification of IPTV has yet been made.

*Question 13.* Traditionally, Bureaus and Offices at the FCC have provided to the Chairman, or his designee, reports of processing backlogs within the Bureau or Offices. Are these reports still created by the Bureaus and Offices? If so, to whom are they provided? Please provide the Committee with all such reports created during the last 6 months.

Answer. The Commission currently has 164 items that are on circulation as of March 16, 2007. These items are pending before the Commission for action now. The answers [to questions 13–24] below do not include these items that are pending before the Commission now.

Each bureau and office prepares a monthly report for the Chairman or his designee listing all open Commission-level items as well as those items that were completed within the previous 30 days. The last 6 monthly reports for each bureau and office are included in *Attachment to Question 13*, with the exception of the new Public Safety and Homeland Security Bureau which began preparing reports in December 2006.

[NOTE: All attachments to responses to Questions 13–24 will be retained in Committee files.]

*Question 14.* By Bureau or Office, please list the number of docketed proceedings in which the following period has elapsed since the Commission, Bureau or Office received the last formal round of public comments (i.e., comments for which public notice was given in the Federal Register or by Public Notice), without an inter-

vening Commission, Bureau or Office order addressing the merits of the proceeding? Please itemize these docketed proceedings in an attachment to your response.

- a. 6 months or more, but less than 1 year
- b. One year or more, but less than 2 years
- c. More than 2 years.

Answer. I would like to draw your attention to several notable items. First, questions 14 and 15 asked for docketed and non-docketed proceedings that were subject to public comment. In addition to our direct response, out of an abundance of caution, I included a category for those docketed and non-docketed matters that are pending at the Commission but were *not subject* to public comment (*e.g.*, investigations, consumer complaints, waivers, etc., with the exception of indecency complaints). Although the chart does not depict indecency complaints, I note that since 2002, the Commission has received more than 2.3 million complaints and resolved approximately 1.7 million. Since I became Chairman, the Commission has taken actions that addressed nearly 50 programs and nearly 1 million complaints. These actions are the subject of pending litigation in Federal court. There remain approximately 584,000 complaints pending before the Commission.

Bureau/Office	6 Months to 1 Year	1 Year to 2 Years	More than 2 Years	TOTAL
CGB	4	14	4	22
IB	2	2	5	9
MB	5	20	19	44
OET	2	2	2	6
PSHSB	2	3	2	7
WCB	27	49	37	113
WTB	2	4	4	10
TOTAL	44	94	73	211

In addition, for the sake of completeness, the chart below provides data on docketed filings that do not require formal public comment. These include adjudicatory administrative hearings, requests for waivers of rules, requests for declaratory ruling, and requests for clarification. (Itemized in *Attachment to Question 14.*)

	6 Months to 1 Year	1 Year to 2 Years	More than 2 Years	TOTAL
EB	0	0	5	5
PSHSB	1	4	2	7
WTB	0	2	0	2
TOTAL	1	6	7	14

*Question 15.* By Bureau or Office, please list the number of non-docketed proceedings in which the following period has elapsed since the Commission, Bureau or Office received the last formal round of public comments (*i.e.*, comments for which public notice was given in the Federal Register or by Public Notice), without an intervening Commission, Bureau or Office order addressing the merits of the proceeding? Please itemize these non-docketed proceedings in an attachment to your response.

- a. 6 months or more, but less than 1 year
- b. One year or more, but less than 2 years
- c. More than 2 years.

Answer. The Media Bureau receives approximately 10,000 applications related to non-docketed proceedings a year. Of the 1378 non-docketed Media Bureau proceedings over 2 years old, 752 are related to items currently circulating before the Commission and another 87 are awaiting international coordination. I also note that there are 5,390 pending wireless applications pending between 6 months and 1 year. This number represents only 1 percent of the approximately 520,000 license applications submitted annually. And, 4,991 of these applications are license applications associated with the AT&T/BellSouth merger transaction.

(Itemized in *Attachment to Question 15.*)

Bureau/Office	6 Months to 1 Year	1 Year to 2 Years	More than 2 Years	TOTAL
CGB	47	3	0	50
IB	3	3	2	8
MB*	578	463	1,378	2,419
OET	0	0	1	1
OGC	1	0	0	1
PSHSB	1	0	1	2
WCB	1	0	0	1
WTB	0	3	2	5
TOTAL	631	472	1,384	2,487

\*The Media Bureau receives approximately 10,000 applications related to non-docketed proceedings a year. Of the 1,378 applications more than 2 years old, 752 are related to items currently on circulating before the Commission and another 87 are awaiting international coordination.

In addition, for the sake of completeness, the chart below provides data on non-docketed filings that do not require formal public comment. (Itemized in *Attachment to Question 15*.) These include formal and informal complaints, complaints concerning junk faxes, and requests for waivers of some rules. As explained [above], this chart does not include pending indecency complaints.

	6 Months to 1 Year	1 Year to 2 Years	More than 2 Years	TOTAL
CGB	1,365	1,053	35	2,453
EB	581	63	19	663
PSHSB	6	48	5	59
WTB	19	10	18	47
TOTAL	1,971	1,174	77	3,222

The chart below provides data on pending applications. The FCC does not consider each of these applications to be a “proceeding.” For the sake of completeness, however, the table below shows the numbers of applications for which the referenced time periods have elapsed. (Itemized in *Attachment to Question 15*.)

	6 Months to 1 Year	1 Year to 2 Years	More than 2 Years	TOTAL
IB	109	82	46	237
PSHSB	49	37	17	103
WTB**	5,390	243	389	6,022
TOTAL	5,548	362	452	6,362

\*\*The 5,390 applications pending 6 months to 1 year represents 1 percent of the approximately 520,000 license applications submitted annually. 4,991 of the 5,390 applications relate to the AT&T/BellSouth merger.

*Question 16.* Please list the pending proceedings in which a court has remanded a matter to the FCC, but the Commission has not yet issued an order in response to the remand? Please indicate the decision and year in which the court remanded the matter to the FCC.

Answer. *BellSouth Telecommunications, Inc. v. FCC*, 469 F.3d 1052 (D.C. Cir. 2006) (mandate issued Jan. 25, 2007), remanding *In the Matter of AT&T Corp. v. BellSouth Telecommunications*, 19 FCC Rcd 23898 (2004). The issue on remand is whether a volume discount plan offered by BellSouth violates 47 U.S.C. § 272(e).

*AT&T Inc. v. FCC*, 452 F.3d 830 (D.C. Cir. 2006) (mandate issued Aug. 21, 2006), remanding *In the Matter of Petition of SBC Communications, Inc. for Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services*, 20 FCC Rcd 9361 (2005). The issue on remand is whether the Commission should grant a petition filed by SBC Communications under 47 U.S.C. § 160(c) seeking forbearance from application of Title II regulation to IP platform services.

*Qwest Communications v. FCC*, 398 F.3d 1222 (10th Cir. 2005), remanding *In the Matter of Federal-State Joint Board on Universal Service*, 18 FCC Rcd 22559 (2003). The issue on remand is the meaning of the term “reasonably comparable” in 47 U.S.C. § 254(b)(3) as it relates to non-rural high cost universal service support.

*U.S. Telecom Ass'n v. FCC*, 400 F.3d 29 (D.C. Cir. 2005), remanding *In the Matter of Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, 18 FCC Rcd 23697 (2003). The remand order directed the Commission to prepare a final regulatory flexibility analysis in accordance with 5 U.S.C. § 604. In response to the remand, the Commission sought comment on a draft regulatory flexibility analysis, 20 FCC Rcd 8616 (2005). Comments were received, and the matter is pending.

*Prometheus Radio Project v. FCC*, 373 F.3d 372 (3rd Cir. 2004), remanding *In the Matter of 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules*, 18 FCC Rcd 13620 (2003). The remand order directed the Commission to modify its methodology for setting numerical limits on local cross-media ownership and on local television and radio station ownership. In response to the remand, the Commission issued a further notice of proposed rulemaking, 21 FCC Rcd 8834 (2006).

*WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), cert. denied, 123 S.Ct. 1927 (2003), remanding *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001). The issue on remand is whether calls made to an Internet service provider in the caller's local calling area are exempt from the reciprocal compensation requirement in 47 U.S.C. § 251(b)(5).

*GTE Service Corp. v. FCC*, 224 F.3d 768 (D.C. Cir. 2000), remanding *In the Matter of Policy and Rules Concerning Interstate Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934*, 14 FCC Rcd 391 (1998). The issue on remand is whether the rate integration requirement in 47 U.S.C. § 254(g) applies to providers of commercial mobile radio service.

**Question 17.** Please list the proceedings subject to a pending petition for reconsideration of a Commission order, for which the Commission has not addressed the matters raised in the petition for reconsideration. Please provide the year in which the petition for reconsideration was filed.

Answer. A response will be provided shortly under separate cover.

**Question 18.** Please list the proceedings subject to a pending application for review of a Bureau or Office order, for which the Commission has not addressed the matters raised in the application. Please provide the year in which the application for review was filed.

Answer. A response will be provided shortly under separate cover.

**Question 19.** Please list the number of pending petitions for designation as an eligible telecommunications carrier in which the following period has elapsed since the Commission, Bureau or Office received the last formal round of public comments (i.e., comments for which public notice was given in the Federal Register or by Public Notice), without an intervening Commission, Bureau or Office order addressing the merits of the proceeding? Please itemize these petitions in an attachment to your response.

- a. 6 months or more, but less than 1 year——
- b. One year or more, but less than 2 years——
- c. More than 2 years——

Answer. (Itemized in Attachment to Question 19.)

There are 31 CETC applications that have been pending with the Commission for 6 months or longer. I note that CETC payments have been growing at an astonishing rate, over 101 percent per year since 2002. In 2000, CETCs received \$1 million in support. Based on recent USAC estimates, CETCs received almost \$1 billion last year. And, CETC support in 2007 is projected to be at least \$1.28 billion. If the Commission were to approve all pending CETC applications, CETC support could be as high as \$1.56 billion this year. The Federal-State Universal Service Joint Board is currently considering what changes to make to address this issue and expects to make a recommendation within the next 30 days.

Eligible Telecommunications Carrier Designation Requests	Number of Petitions
Pending 6 months or more, but less than 1 year	1
Pending 1 year or more, but less than 2 years	13
Pending more than 2 years	17
TOTAL	31

**Question 20.** Please list the number of pending petitions for a declaration of effective competition in which the following period has elapsed since the Commission, Bureau or Office received the last formal round of public comments (i.e., comments

for which public notice was given in the Federal Register or by Public Notice), without an intervening Commission, Bureau or Office order addressing the merits of the proceeding? Please itemize these petitions in an attachment to your response.

- a. 6 months or more, but less than 1 year
- b. One year or more, but less than 2 years
- c. More than 2 years.

Answer. (Itemized in *Attachment to Question 20.*)

Effective Competition Petitions	Number of Petitions
Pending 6 months or more, but less than 1 year	5
Pending 1 year or more, but less than 2 years	45
Pending more than 2 years	7
TOTAL	52

*Question 21.* Please list the number of pending petitions for license renewal in radio broadcasting, television broadcasting and wireless radio services (as defined in 47 C.F.R. 1.907) in which the following period has elapsed since the filing of any petition for renewal? Please itemize these petitions in an attachment to your response.

- a. 6 months or more, but less than 1 year
- b. One year or more, but less than 2 years
- c. More than 2 years.

Answer. (Itemized in *Attachment to Question 21.*)

For the past few years, the Media Bureau has received approximately 6000 license renewal applications per year. Of the 368 renewal applications that are over 2 years old, 152 are the subject of complaints alleging violations of the sponsorship identification and/or indecency law and regulations. The Commission frequently enters tolling agreements that allow the processing of renewal applications but ensure that the Commission retains its ability to enforce its rules should it find a violation occurred. The Commission has taken steps to ensure that these applicants are aware of this option.

Radio and Television Broadcasting	Number of Petitions
Pending 6 months or more, but less than 1 year	578
Pending 1 year or more, but less than 2 years	1,068
Pending more than 2 years	368*
TOTAL	2,014

\*For the past few years, the Media Bureau has received approximately 6000 license renewal applications per year.

Wireless Radio Services	Number of Petitions
Pending 6 months or more, but less than 1 year	53
Pending 1 year or more, but less than 2 years	5
Pending more than 2 years	22
TOTAL	80

*Question 22.* As you know, FCC rules (47 C.F.R. 54.724) require the Wireline Competition Bureau to act on appeals from the USF Administrator within 90 days, subject to a potential 90 day extension. The Commission may also further extend the time period for action. Please list the number of appeals from decisions of the USF Administrator in which the following period has elapsed since filing of the appeal, without an order extending the time period for action? Please separately list the number of appeals for which an extension order was issued, but for which the following period has elapsed since filing of the appeal. Please separately enumerate appeals with respect to USF contribution, high cost support, school and libraries support, rural health care support and low-income support.

- a. More than 90 days, but less than 6 months
- b. 6 months or more, but less than 1 year
- c. One year or more, but less than 2 years
- d. More than 2 years.



Answer. There were 712 schools and libraries appeals pending when I assumed the Chairmanship. Since this time, however, the Commission acted upon nearly 600 appeals and has several additional items in front it for consideration.

Schools and Libraries Support	Extension Order Released	No Extension Order Released	TOTAL
More than 90 days, but less than 6 months	0	96	96
6 months or more, but less than 1 year	0	126	126
One year or more, but less than 2 years	0	158	158
More than 2 years	111	47	158
TOTAL	111	427	538*

\*Since I became Chairman, we have acted upon nearly 600 applications.

Rural Health Care Support	Extension Order Released	No Extension Order Released	TOTAL
More than 90 days, but less than 6 months	0	0	0
6 months or more, but less than 1 year	0	2	2
One year or more, but less than 2 years	0	2	2
More than 2 years	0	0	0
TOTAL	0	4	4

USF Contribution	Extension Order Released	No Extension Order Released	TOTAL
More than 90 days, but less than 6 months	0	2	2
6 months or more, but less than 1 year	0	13	13
One year or more, but less than 2 years	0	7	7
More than 2 years	0	4	4
TOTAL	0	26	26

High Cost Support	Extension Order Released	No Extension Order Released	TOTAL
More than 90 days, but less than 6 months	0	0	0
6 months or more, but less than 1 year	0	0	0
One year or more, but less than 2 years	0	0	0
More than 2 years	0	1	1
TOTAL	0	1	1

There are no pending appeals for Low Income Support

*Question 23.* Please list all the proceedings during your service as Chairman in which an order was released by the Commission more than 30 days following the adoption of the order by the Commission.

Answer.

FCC Number	Title of Item
06-180	Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection Act of 1992 (R&O)
06-121	Application of Paxson Communications License Co., LLC and Univision Communications, Inc., for consent to the assignment of the license for Station KTFF(TV), Porterville, CA. (MO&O)
06-117	Implementation of Section 629 of the Consolidated Appropriations Act, 2004 (National Broadcast Television Ownership) (Order)
06-177	Premio, Inc., Notice of Debarment (Order)
06-126	NextiraOne LLC, Notice of Debarment and Order denying waiver petition (Order)
06-66	Request for Limited Waiver—United States Cellular Corporation (Order)
06-65	Request of Centennial Communications Corp. for Limited Waiver/Extension of Location-Capable Handset Penetration Deadline (Order)
06-64	Alltel Corporation Petition For Limited Waiver of Location-Capable Handset Penetration Rule (Order)
06-61	Petition for Limited Waiver and Brief Extension of Leap Wireless International, Inc. and Qwest Wireless, LLC Request for Limited Waiver of Automatic-Location-Information-Capable Handset Penetration Requirements (Order)
06-60	Request for Waiver of Location-Capable Handset Penetration Rule By Verizon Wireless (Order)
06-59	Joint Petition of CTIA and the Rural Cellular Association for Suspension or Waiver of the Location-Capable Handset Penetration Deadline (Order)
06-132	Mid-Rivers Telephone Cooperative, Inc. (R&O)
06-122	Application for Transfer of Control of Fox Television Stations, Inc. (MO&O)
06-35	Establishment of the Public Safety and Homeland Security Bureau and Other Organizational Changes (Order)
06-86	In the Matter of Biennial Regulatory Review of Regulation Administered by the Wireline Competition Bureau (Order)
06-93	2006 Quadrennial & 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules (FNPRM)
05-170	Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. 160(c) in the Omaha Metropolitan Statistical Area (MO&O)
05-150	Appropriate Framework for Broadband Access to the Internet over Wireline Facilities (WC Docket No. 05-271) (R&O)
05-153	Communications Assistance for Law Enforcement Act and Broadband Access and Services (R&O)

*Question 24.* Please list the number of orders released by the Commission, its Bureaus or Offices during the month prior to our February 1 hearing (January 2007). Please also list the number of orders released by the Commission, its Bureaus or Offices for each month during the last 6 months of 2006.

Answer.

Bureau/Office	Jan 07	Dec 06	Nov 06	Oct 06	Sept 06	Aug 06	July 06	TOTAL
CGB	44	19	43	76	301	38	3	524
EB	174	75	96	137	153	135	148	918
IB	6	7	2	0	1	0	1	17
MB	149	91	85	99	100	80	120	724
OET	2	0	1	1	1	3	1	9
OGC	0	0	0	1	0	0	0	1
OMD	0	0	0	0	0	0	1	1
PSHSB*	25	4	4	0	1			34
WCB	11	11	7	10	10	19	3	71
WTB	161	82	73	123	72	75	65	651
TOTAL	572	289	311	447	639	350	342	2,950

\*PSHSB established in September 2006

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN F. KERRY TO  
HON. KEVIN J. MARTIN

*Question 1.* The President has promised ubiquitous broadband by year-end 2007. Are we on pace to achieve that goal? What is our current ranking in the world for broadband deployment? Why do we continue to fall behind other industrialized countries? What is the Administration's broadband strategy? Will those measures alone get us to total ubiquitous broadband by year-end 2007? What additional measures should Congress take to ensure ubiquitous broadband?

Answer. Encouraging the deployment of broadband infrastructure is a top priority. Since I arrived at the Commission in July 2001, high-speed lines in the U.S. have gone from more than 9 million to nearly 65 million. According to the Commission's most recent data, high-speed connections increased by 26 percent in the first half of 2006 and by 52 percent for the full year ending June 30, 2006.

An independent study by Pew confirmed this trend, finding that from March 2005 to March 2006, overall broadband adoption increased by 40 percent—from 60 to 84 million—twice the growth rate of the year before. The study found that, although overall penetration rates in rural areas still lags behind urban areas, broadband adoption in rural America also grew at approximately the same rate (39 percent).

Perhaps most importantly, the Pew study found that the significant increase in broadband adoption was widespread and cut across all demographics. According to their independent research:

- broadband adoption grew by almost 70 percent among middle-income households (those with incomes between \$40,000 and \$50,000 per year);
- broadband adoption grew by more than 120 percent among African Americans;
- broadband adoption grew by 70 percent among those with less than a high school education; and
- broadband adoption grew by 60 percent among senior citizens.

According to the Pew study, the price of broadband service has also dropped in the past 2 years. Specifically, the Pew Report found that between February 2004 and December 2005, the average price for high-speed service declined from \$39 per month to \$36 per month. Currently, Verizon and Comcast each offer promotional broadband packages for \$19.99 per month, for example, and AT&T and BellSouth have committed to providing new retail broadband customers a \$10 a month broadband Internet access service throughout the combined region.

The United States is the largest broadband market in the world with over 56 million broadband subscribers according to the Organization for Economic Co-operation and Development (OECD). The OECD currently ranks the U.S. as 12th in the world

in terms of broadband penetration. It is important to note, however, that the OECD does not adjust for factors including population density, which puts a country as large as ours with sizable rural areas at a significant disadvantage. For instance, New Jersey has a similar population density as Korea, ranked 4th, yet has a higher penetration rate (30 subscribers per 100 residents, versus 26 for Korea). Nevertheless, our current standing of 12th is not good enough. We must continue to build on our efforts to encourage competition, speed broadband deployment, and lower prices for consumers.

The Commission has worked hard to create a regulatory environment that promotes investment and competition. We have taken actions to ensure that there is a level playing field that fosters competition and investment in broadband infrastructure. The Commission has also removed legacy regulations like tariffs and price controls that discouraged providers from investing in broadband networks. More recently, the Commission took action under section 621 of the Act, to ensure that local franchising authorities do not unreasonably refuse to award new video service providers the franchises they need to compete against incumbent cable operators.

In the wireless area, the Commission has made a significant amount of spectrum available on both a licensed and unlicensed basis that can be used to provide broadband service in municipalities, rural areas and across the Nation. For example, on the licensed side, we completed an auction of 90 megahertz of spectrum for advanced wireless services that generated the largest-ever receipts totaling nearly 14 billion dollars. We have also taken steps to completely reconfigure nearly 200 megahertz of spectrum in the 2.5 GHz region to create new broadband opportunities.

On the unlicensed side, the Commission completed actions necessary to make available 255 MHz of unlicensed spectrum in the 5 GHz region—nearly an 80 percent increase—that will fuel the deployment of Wi-Fi well into the future. And, last fall, the Commission initiated a proceeding to resolve technical issues associated with “white spaces” so that low power devices designed to operate on the unused television frequencies may reach the market with the completion of the DTV transition.

We will continue to encourage deployment of broadband from all providers using a variety of technologies. As wireless technologies become an increasingly important platform for broadband access, it is critical to ensure that there is adequate spectrum available for providing broadband service. Spectrum auctions will continue to be an important part of our strategy for facilitating the build-out of mobile broadband networks. For example, the upcoming auction of spectrum in the 700 MHz region is well suited for the deployment of broadband services.

The Commission is also considering an order that would classify wireless broadband Internet access service as an information service. This action would eliminate unnecessary regulatory barriers for service providers. This classification also would clarify any regulatory uncertainty and establish a consistent regulatory framework across broadband platforms, as we have already declared high-speed Internet access service provided via cable modem service, DSL, and BPL to be an information service. This action is particularly timely in light of the recently auctioned AWS-1 spectrum for wireless broadband and our upcoming 700 MHz auction.

The Commission will continue to look for new and innovative ways to facilitate broadband deployment. We are committed to furthering the universal availability and adoption of affordable broadband services. To the extent that Congress passes legislation that enables the Commission to take action to further encourage the deployment of broadband in all areas of the country, the Commission will do everything in its power to faithfully and effectively implement it.

*Question 1a.* Recent telecommunications mergers have required that providers offer naked DSL so that consumers are able to purchase a broadband pipe separate from their other services. Should such a requirement be extended to other companies that provide broadband services?

*Answer.* Although this condition provides consumers additional flexibility when purchasing broadband services, it was a voluntarily commitment made to by AT&T and Verizon. Accordingly, this condition is not a general statement of Commission policy and does not alter Commission precedent or bind future Commission policy or rules.

*Question 2.* Fifteen months ago, when you reported to the Congress on the state of retransmission consent in connection with the mandates of SHVERA, you indicated that cash has not emerged as a factor in negotiations and that generally, the process was working well. Do you still agree with that assessment? Is it true that broadcasters are increasingly receiving cash compensation for retransmission con-

sent? If so, what are the potential end results of this trend? What is the FCC's authority in this area?

The FCC has recently imposed baseball-style arbitration as an efficient way to resolve programming disputes. In that context, the FCC has prohibited parties from dropping programming while the dispute is pending. Is this an effective means for resolving disputes? If so, should baseball-style arbitration be expanded in the retransmission consent context?

Answer. The retransmission consent rules are part of a carefully balanced combination of laws and regulations governing carriage of television broadcast signals, with the must-carry and retransmission consent regimes complementing one another. Broadcast mandatory carriage rights, which promote localism and ensure the viability of free, over-the-air television, complement the retransmission consent regime. Together, must-carry and retransmission consent provide that all local stations are assured of carriage even if their audience is small, while also allowing more popular stations to seek compensation (cash or in-kind) for the audience their programming will attract for the cable or satellite operator. Must-carry alone might fail to provide stations with the opportunity to be compensated for their popular programming. Retransmission consent alone might not preserve local stations that have a smaller audience yet still offer free over-the-air programming and serve the public in their local areas.

Because retransmission consent involves private contractual negotiations, the Commission does not gather statistics regarding the amount or type of compensation resulting from retransmission consent agreements. Anecdotal evidence suggests that cash payments, although rare in the past, are becoming much more common. Hearst Argyle Television Inc., for example, reported a \$2.1 million increase in retransmission revenues for the three-month period ending Sept. 30, 2006. Sinclair Broadcast Group reported a \$2.8 million increase in revenue from retransmission and other fees for the nine-month period ending Sept. 30, 2006.

The Commission currently has limited authority to dictate or place limits on the terms of retransmission consent. The FCC concluded in 2000 that the Communications Act does not permit it to require agreement between parties to a retransmission consent negotiation, or to force them to do anything other than meet to negotiate "in an atmosphere of honesty, purpose and clarity of process." In that same order, the Commission addressed the suggestion made by certain parties that the insistence on cash payments in exchange for retransmission consent should be a *per se* violation of the good faith negotiation requirement. The Commission disagreed, stating that "... to arbitrarily limit the range or type of proposals that the parties may raise in the context of retransmission consent will make it more difficult for broadcasters and [programming distributors] to reach agreement. By allowing the greatest number of avenues to agreement, we give the parties latitude to craft solutions to the problem of reaching retransmission consent."

As you note, the Commission has imposed a binding arbitration condition in approving two merger transactions. Baseball-style arbitration was chosen over other forms of arbitration because it was considered the most likely to lead to reasonable offers from both parties as well as enhancing the possibility of a mutually agreed-upon settlement prior to arbitration.

While I generally have concerns about intervening in private negotiations, I recognize that the failure of a broadcaster and a cable operator to reach a retransmission consent agreement harms not just the broadcaster and the cable operator but all of the viewers affected by the removal of a station's signal from their cable system. If Congress believes the retransmission consent process needs reformation, it could give the Commission the authority to order arbitration of retransmission consent disputes by the Media Bureau, and require carriage during the arbitration process. To ensure that such arbitration process reaches a fair result in the context of the broader industry, the Commission would also need to be sure that it had the tools necessary to obtain similar pricing information from other broadcasters, cable operators and programmers. Without access to such information, it would be difficult for the Commission to determine whether offers from either party are appropriate.

*Question 3.* The program access rules are designed to prevent vertically integrated companies that own content from favoring their own distribution pipes. Are the program access rules effectively carrying out their mission? Is the programming market competitive enough to allow the program access rules to sunset in October, as currently scheduled?

We understand that, on average, the FCC appears to take many months to resolve a program access complaint. Is this true? If yes, why does it take so long? Should complaints be resolved within an established time frame?

Answer. The program access rules prevent a programmer owned by affiliated with a cable operator from favoring that cable operator. In this way, the rules promote video competition.

Access to the programming that consumers want is critical to new entrants. Today, the Commission's program access rules generally prohibit exclusive contracts between cable operators and programmers in which the cable operators have an attributable interest. Unless the Commission takes action, this prohibition will sunset next year. The Commission recently issued a Notice of Proposed Rulemaking to determine whether to allow the program access exclusivity prohibition to sunset later this year. I generally agree that this rule has been important, but because there is no record yet amassed in this proceeding, it would be premature to comment on whether or not the exclusivity prohibition should be allowed to sunset.

In the NPRM noted above, the Commission also requests information on the current program access rules and regulations, including those governing the program access complaint process. Today, the resolution of program access complaints can take several months. I agree that complaints should be resolved within established time frames. The Commission already has in place processing time lines for program access complaints that provide for resolution of certain complaints within 5 months of submission of complaints and other complaints within 9 months. However, given the length of time these guidelines allow for resolution of complaints, the NPRM expressly seeks comment on whether revised time limits would improve the existing program access complaint procedures.

*Question 4.* It has been eleven years since enactment of the 1996 Telecommunications Act that opened the floodgates of media consolidation in the radio industry. In terms of viewpoint diversity and localism, is American radio better or worse than it was in 1996? What has the impact of consolidation been on recording artists? How has consolidation impacted the public's ability to hear local music and news on the airwaves? How has the radio marketplace changed on account of the arrival of innovative music delivery options?

Answer. Consumers rely upon the media for news, information, and entertainment. Our policies need to continue to preserve and promote localism and diversity in the media. At the same time, we must balance the concerns about too much consolidation and too little choice with appropriate consideration of the changes and innovation that are taking place in the media marketplace.

The extent to which our current radio ownership rules promote diversity, localism and competition is one of the key issues raised in the periodic review of our media ownership rules and broadcast localism proceedings. We have received comments on all sides of this issue.

Some commenters assert a failure on the part of radio stations to meet their obligations to air sufficient programming that is responsive to local needs and interests. These commenters assert that financial considerations, in combination with the relaxation of the broadcast ownership rules, have resulted in a critical decrease in the quality and quantity of responsiveness of licensees to the needs and interests of the communities they serve. Others disagree, noting that many broadcasters devote significant amounts of time and resources to airing programming responsive to the needs and interests of the communities.

We also have received many comments on the changes to the radio marketplace since the passage of the Telecommunications Act of 1996. Some argue that new services and devices compete directly with broadcast radio while others argue that they do not.

As part of our quadrennial review, we have commissioned a number of economic studies. One study, "Station Ownership and Programming in Radio", will use station-level data to examine how ownership structures affect the programming and audiences of radio stations. The results of this study and another study concerning radio, "Radio Industry Review: Trends in Ownership, Format, and Finance", should provide the Commission with more information on whether and, if so, how ownership and changes in the radio market affect the programming and news available on radio.

Finally, in connection with the Commission's media ownership and localism proceedings, we are conducting hearings around the country to solicit public comment and to engage the American people in the process of reviewing the status of the media marketplace. One recent hearing, held in Nashville, focused on the general state of the music and radio industries. The Commission's efforts to collect a thorough public record will continue in the months ahead, with three more ownership hearings, and two additional hearings specifically focused on localism.

Once our hearings and studies are complete, we will be in a better position to speak to both the impact of consolidation and how the radio marketplace has changed.

*Question 4a.* The station license renewal process is often a pro forma process that entails little more than the periodic updating and filing of existing forms. Can this process be strengthened to ensure more robust station compliance with localism requirements?

Answer. In 1996, Congress changed the standards for renewal of broadcast station licenses to provide that “the Commission shall grant” a station’s renewal application if it finds that, during the preceding license term, (1) “the station served the public interest, convenience, and necessity,” (2) “there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission,” and (3) “there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.”

In preparing and submitting license renewal applications, broadcast licensees must certify their compliance during the previous license term with a number of substantive requirements of the Communications Act and the Commission’s Rules. If a licensee cannot so certify, the license renewal form requires it to disclose all such violations. Applicants also must certify that the station’s local public inspection file is complete and has been properly maintained during the previous license term.

Our rules include the requirement that a station locate its main studio in or near to the community of license and make its public inspection file available for inspection to any requesting member of the public. Main studios must be open to the public during regular business hours, and stations are required to maintain a local phone line for use by the public. Every station also is required to prepare quarterly issues/programs lists that outline the significant issues facing the community and what programs the licensee aired covering those issues, and to place copies of these lists in its public file within 10 days of the end of each quarter. In addition, commercial television stations must place in their public file quarterly reports identifying the programs broadcast to serve the informational and educational needs of children ages 16 years and under. Stations also must retain all listener or viewer letters in their public files. As part of the renewal process, any interested party may review a station public file, including these materials.

The Commission’s rules also require each station to provide a series of local public notices regarding the station’s license renewal process advising members of the public that they have the opportunity to file with the Commission petitions to deny the renewal application and advising them of the location of the station’s public file. These notices begin 6 months prior to the expiration of the station’s license term. Our rules apply the same renewal period and license expiration date for all radio and television stations licensed to communities in the same state.

The Commission is always looking for ways to improve its processes. For example, the Commission has before it a Report and Order that would adopt a standardized form for the quarterly reporting of programming aired in response to issues facing a station’s community. These requirements would ensure that the public had more and better information with which to evaluate whether a broadcaster has met its public interest obligations.

*Question 4b.* According to recent press accounts, the FCC has conducted an investigation on payola and is on the cusp of reaching a consent decree on the issue. Based on your findings, to what degree has payola impacted radio play lists in the past few years, and what steps can the Commission take to effectively address this problem in a meaningful and enforceable manner?

Answer. The Commission has a number of investigations pending regarding the alleged exchange of money, goods, or services for radio airplay of music or other material without the station’s airing of a sponsorship identification announcement, i.e., payola. Four consent decrees with major broadcast groups are currently circulating among the Commissioners. Each would impose a significant fine and require adherence to a compliance plan designed to ensure that violations do not occur in the future. Through strong enforcement action, in the form of forfeiture proceedings, consent decrees or by other means, the Commission can provide clear guidance to licensees and send a strong message that payola will not be tolerated.

*Question 5.* In your view, is there a lack of adequate independent programming on television and radio? If yes, are you concerned about the trend? Do you think independent programming is important for diversity, competition, consumer pricing and choice?

Has vertical integration in the current television environment impacted the availability of independent programming? What can the FCC do to help ensure that diversity of information, which Congress has said is of the “highest order of importance,” is preserved and that independent television programmers are not wiped out?

Since the early 1990s, the television production and distribution marketplace has undergone unparalleled vertical consolidation of content and distribution by the broadcast networks. How this consolidation resulted in a decline in the diversity of sources producing content on the Nation's broadcast networks? Is it true that more than 75 percent of the 2007 prime-time lineup is dominated by programming produced by the broadcast networks themselves—as compared to about 30 percent in 1993?

In a vertically-integrated media world, what steps can the Commission take to preserve diversity in prime-time broadcast television? Does the Commission have the authority to impose a minimum independent production requirement?

Answer. Independent programming is important for diversity, competition, consumer pricing, and choice. The issue of whether there is an adequate amount of independent programming on television and radio was a key topic at our first public hearing on Media Ownership in Los Angeles. There, members of the creative community and others presented their views on the impact of consolidation in television and radio on the production and availability of independent programming. Many of the participants in this hearing and a number of commenters have expressed concerns that there is a lack of independent programming on television and radio. On the other side, members of the broadcast industry have asserted that they have financial incentives to air the programming that their audiences want to hear and watch, be it independent programming or affiliated programming.

As part of our quadrennial review, the Commission is committed to ensuring that our media ownership rules further the three interests of competition, localism and diversity. We have contracted for an independent economist to specifically look at the issue of vertical integration in the media industry. The results of this study hopefully will provide the Commission with more information on whether and, if so, how ownership affects independent programmers' access. Among other things, the study will enable us to quantify the amount of independent programming in broadcast networks' prime-time lineups. Two other independent studies will specifically look at the issue of minority ownership in the media.

In terms of steps the Commission can take to preserve diversity in broadcast television lineups, one idea is to allow small and independently-owned businesses to enter the broadcast industry by leasing some of an existing broadcaster's spectrum to distribute their own programming. Conversion to digital operations enables broadcasters to fit a single channel of analog programming into a smaller amount of spectrum. Often, there is additional spectrum left over that can be used to air other channels of programming. Small and independently owned businesses could take advantage of this capacity and use a portion of the existing broadcasters' digital spectrum to operate their own broadcast channel. This new programming station would then obtain all the accompanying rights and obligations of other broadcast stations, such as public interest obligations and carriage rights.

Finally, I believe that the offering of programming services by MVPDs on a more a la carte basis would enable consumers to better express their programming preferences. In addition, it would provide consumers with greater choice and the ability to manage the size of their cable bills.

*Question 6.* Last fall, the Commission moved forward with a rulemaking designed to make productive use of the white spaces. This followed a 2004 rulemaking proceeding in which the FCC focused on unlicensed options. One of the most attractive features of unlicensed access is its affordability and low barriers to entry. I was pleased to hear you suggest at the February 1, 2007 hearing that licensing the white space is not a viable option because of technical barriers and other problems. Can you confirm that Commission is not reopening the question of whether to license these airwaves?

Answer. In the First Report and Order and Further Notice of Proposed Rule Making adopted in October 2006, the Commission stated that it would continue to focus on low power devices operating in the TV bands on an unlicensed basis. However, the Commission noted that a number of parties suggested that, if new wireless operations are permitted in the TV bands, they should be on a licensed, rather than an unlicensed, basis. It therefore sought comment on whether new low power operations in the TV bands should be permitted on a licensed, unlicensed, or hybrid basis.

The Commission identified a number of issues that would have to be addressed if low power operations in the TV bands were permitted on a licensed basis, including the rights and obligations of licensees, the allocation status of low power licensed operations, the appropriate interference avoidance mechanisms, whether licensing should be exclusive or non-exclusive, and the size of licensees' service areas. It also sought comment on the technical, operation, legal, or economic costs associate with the licensed, unlicensed and hybrid options, as well as the advantages and dis-



advantages of each. Parties filed comments supporting both licensed and unlicensed operations.

Generally, the licensed model tends to work best when spectrum rights are (1) clearly defined, (2) exclusive, (3) flexible, and (4) transferable. When spectrum rights lack these attributes, potential licensees face uncertainty and may lack incentive to invest in a license or offer service.

In those circumstances, the unlicensed model may better optimize spectrum access and utilization. As I indicated in my testimony, I believe there would be significant difficulties in making this spectrum available on a licensed basis, such as the need to precisely define the locations of the White Spaces as well as define the rights of new licensees vis-a-vis existing licensed services, including wireless microphones. We are planning to make a decision in the TV White Spaces proceeding later this year, including the issue of licensed versus unlicensed use.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO  
HON. KEVIN J. MARTIN

*Question 1.* Chairman Martin, you committed to hold six public hearings in the media ownership proceeding and so far two have been held. When and where can we expect the next four hearings to be announced?

Answer. The media ownership public hearings are being held in geographically diverse locations around the country. Thus far, the Commission has conducted three hearings: Los Angeles/El Segundo, California on October 3, 2006; Nashville, Tennessee on December 11, 2006; and Harrisburg, Pennsylvania on February 23, 2007.

The Commission currently is in the process of planning the other three hearings. At this time, no final decisions have been made concerning the dates and locations of the remaining hearings.

*Question 2.* Chairman Martin, I understand that you have announced 10 studies to be completed in a variety of issues. Will these studies be subject to peer review and independent analysis?

Answer. Each study will be subject to peer review and analysis in accordance with OMB guidelines and requirements. In addition, each study will be put out for public comment and review.

*Question 3.* Eleven years after Congress passed the 1996 Telecommunications Act that opened the floodgates of media consolidation in the radio industry is American radio better or worse than it was in 1996 in terms of viewpoint diversity and localism?

Answer. The extent to which our current radio ownership rules promote diversity, localism and competition is one of the key issues raised in the periodic review of our media ownership rules and broadcast localism proceedings. We have received comments on all sides of this issue. Some commenters assert a failure on the part of radio stations to meet their obligations to air sufficient programming that is responsive to local needs and interests. These commenters assert that financial considerations, in combination with the relaxation of the broadcast ownership rules, have resulted in a critical decrease in the quality and quantity of responsiveness of licensees to the needs and interests of the communities they serve. Others disagree, noting that many broadcasters devote significant amounts of time and resources to airing programming responsive to the needs and interests of the communities.

We also have received many comments on the changes to the radio marketplace since the passage of the Telecommunications Act of 1996. Some argue that new services and devices compete directly with broadcast radio while others argue that they do not.

As part of our quadrennial review, we have commissioned a number of economic studies. One study, "Station Ownership and Programming in Radio", will use station-level data to examine how ownership structures affect the programming and audiences of radio stations. The results of this study and another study concerning radio, "Radio Industry Review: Trends in Ownership, Format, and Finance", should provide the Commission with more information on whether and, if so, how ownership and changes in the radio market affect the programming and news available on radio.

Finally, in connection with the Commission's media ownership and localism proceedings, we are conducting hearings around the country to solicit public comment and to engage the American people in the process of reviewing the status of the media marketplace. One recent hearing, held in Nashville, focused on the general state of the music and radio industries. The Commission's efforts to collect a thor-

ough public record will continue in the months ahead, with three more ownership hearings, and two additional hearings specifically focused on localism.

Once our hearings and studies are complete, we will be in a better position to speak to both the impact of consolidation and how the radio marketplace has changed.

*Question 4.* How has consolidation impacted the public's ability to hear local music and local news on the airwaves?

Answer. We have received many complaints about the impact of media ownership on the public's ability to hear local music and local news on the airwaves. The impact of the current radio ownership rules on diversity, localism and competition is one of the key issues raised in the periodic review of our media ownership rules and broadcast localism proceedings. The extent to which broadcasters air local content is an issue frequently raised by commenters and is being addressed in two of the economic studies we have commissioned. The Commission's efforts to collect a thorough public record will continue in the months ahead, with three more ownership hearings, and two additional hearings specifically focused on localism. Once our hearings and studies are complete, we will be in a better position to speak to both the impact of consolidation and how the radio marketplace has changed.

*Question 5.* Even with the existence of net neutrality conditions on AT&T, are there rules in place to ensure that other broadband providers do not discriminate against Internet content, services or applications? Given the rulings on information services, is it even clear that the FCC has authority to act if such discrimination occurs?

Answer. Although the Commission has not adopted any rules, in August 2005, the Commission adopted an Internet Policy Statement "to ensure that broadband networks are widely deployed, open, affordable, and accessible to all consumers." Specifically, the Commission adopted the four following principles:

- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to access the lawful Internet content of their choice.
- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to run applications and use services of their choice, subject to the needs of law enforcement.
- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to connect their choice of legal devices that do not harm the network.
- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to competition among network providers, application and service providers, and content providers.

The Commission, under Title I of the Communications Act, has the ability to adopt and enforce the net neutrality principles it announced in the Internet Policy Statement. The Supreme Court reaffirmed last year that the Commission "has jurisdiction to impose additional regulatory obligations under its Title I ancillary jurisdiction to regulate interstate and foreign communications." *National Cable & Telecomm. Ass'n v. Brand X Internet Services*, 125 S. Ct. 2688, 2696 (2005) (Brand X). Indeed, the Supreme Court specifically recognized the Commission's ancillary jurisdiction to impose regulatory obligations on broadband Internet access providers. Brand X, 125 S. Ct. at 2708 ("[T]he Commission remains free to impose special regulatory duties on facilities-based ISPs under its Title I ancillary jurisdiction. In fact, it has invited comment on whether it can and should do so.").

Although the Commission did not adopt net neutrality rules, the Commission has the ability to take appropriate steps where needed. For example, when we learned that a particular phone company was blocking access to a competing VoIP provider, we opened an investigation and negotiated a consent decree that made the company cease discriminating and pay a fine. The Commission will not hesitate to take similar action, to the extent necessary, in the future.

*Question 6.* In an environment of industry consolidation and technological integration, what role do you see the FCC playing to ensure nondiscriminatory access to infrastructure, content, roaming, spectrum and rights-of-way?

Answer. The FCC continues to play a critical role in ensuring nondiscriminatory access in a variety of ways, and has continued to reexamine its role throughout the competitive and technological developments in the industry. Within the broader goals of its governing statutes, such as promoting competition, deregulating, and en-

couraging broadband deployment, as well as the specific parameters of individual provisions, the Commission has undertaken and continues to undertake a variety of rulemaking, enforcement, and other administrative measures.

For example, section 251(c)(3) of the Act requires incumbent LECs to provide requesting telecommunications carriers nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. The Commission has issued numerous orders addressing this statutory obligation.

And specifically, a number of Commission rules and policies are designed to provide nondiscriminatory access to essential assets that are necessary to the development of a competitive marketplace that promotes both consumer choice and technological innovation. In the content area, for example, our program access rules help to ensure that competitive multichannel video programming distributors ("MVPDs") have access to popular programming services that are owned by cable operators on nondiscriminatory terms and conditions. In addition, the Commission has established program carriage regulations which are intended to ensure that independent program vendors are treated fairly by all video programming distributors. The Commission's rules also require cable television system operators to set aside channel capacity for leasing to unaffiliated programmers on terms and conditions subject to Commission oversight.

The Commission also recently adopted regulations which prohibit local franchising authorities from unreasonably refusing to award competitive franchises for the provision of cable services. These rules will work to ensure that entities seeking to provide competitive video programming services to consumers will have nondiscriminatory access to local rights-of-way. Further, the Commission will soon examine whether and, if so, how competitive video providers are blocked from offering service to consumers who reside in apartment houses and other multi-dwelling unit buildings.

Regarding roaming, since 1996, the Commission has required that cellular, PCS, and certain SMR providers make manual roaming service available upon request to customers of other carriers, provided that the roamers' handsets are technically capable of accessing the roaming network. The Commission is currently examining whether its roaming requirements should be modified given the current state of the commercial mobile services market, including whether we should require carriers to provide automatic roaming.

The Commission uses a variety of means to promote access to spectrum. In advance of the AWS-1 auction, the Commission took a number of measures to further participation of small businesses and rural telephone companies (*e.g.*, designated entities) in the provision of wireless services. Shortly after I became Chairman in 2005, the Commission adopted a proposal to reconsider the AWS-1 band plan to address the needs of smaller entities for more manageable spectrum blocks and geographic license areas. The order designated more spectrum for licensing over smaller and rural geographic areas to promote access to AWS-1 spectrum by smaller carriers, new entrants, and rural telephone companies. It also broke portions of the spectrum into smaller bandwidth sizes, or "blocks," to facilitate access.

In addition to modifying the AWS-1 band plan, the Commission initiated a proceeding in early 2006 to consider whether we should modify our general competitive bidding rules governing benefits reserved for designated entities. During our reconsideration of the AWS-1 service rules, some had expressed concern that bidding credits intended for designated entities were instead benefiting companies with billions of dollars in revenues, who were partnering with small businesses to gain access to the bidding credits. We initiated a review of our rules to consider ways to curb these practices and subsequently adopted an order and applied it to the AWS-1 auction that strengthened our unjust enrichment rules, leasing requirements, reporting obligations, and auditing to better deter entities from attempting to circumvent our designated entity eligibility requirements.

Going forward, I believe the Commission should use its experience in the AWS-1 auction as a guide in completing our reexamination of the rules applicable to our upcoming auction of 700 MHz spectrum. I believe we should reconfigure this spectrum to provide for smaller geographic licensing areas similar to the AWS-1 band plan. Providing for smaller license areas would likely make it easier for designated entities and other smaller companies to participate in the upcoming auction.

The Commission also continues to license new radio stations in the AM, FM, and low power FM ("LPFM") services, and to facilitate the transition from analog to digital technology in the television industry. To promote entry into broadcast markets in circumstances where the spectrum is required to be auctioned, the Commission provides bidding credits to new entrants, including businesses owned by minorities and women, that do not have an attributable ownership interest in more than three

mass media facilities. Under this policy, a new entrant with no attributable interests is eligible for a 35 percent bidding credit, while a new entrant with an attributable interest in three or fewer mass media facilities would be eligible for a 25 percent bidding credit. In cases where an auction cannot be used, such as NCE radio and television service, the Commission employs objective selection criteria to determine the competing applicant that will be authorized to use the spectrum.

Finally, another idea the Commission is considering is to allow small and independently owned businesses to enter the broadcast industry by leasing some of an existing broadcaster's spectrum to distribute their own programming. Conversion to digital operations enables broadcasters to fit a single channel of analog programming into a smaller amount of spectrum. Often, there is additional spectrum left over that can be used to air other channels of programming. Small and independently owned businesses could take advantage of this capacity and use a portion of the existing broadcasters' digital spectrum to operate their own broadcast channel. This new programming station would then obtain all the accompanying rights and obligations of other broadcast stations, such as public interest obligations and carriage rights.

*Question 7.* Do you think that the current broadband market is sufficiently competitive and robust in terms of broadband deployment? Does the FCC currently have sufficient tools to even accurately determine whether Americans have access to broadband?

Answer. Encouraging the deployment of broadband infrastructure is a top priority. Since I arrived at the Commission in July 2001, high-speed lines in the U.S. have gone from more than 9 million to nearly 65 million. According to the Commission's most recent data, high-speed connections increased by 26 percent in the first half of 2006 and by 52 percent for the full year ending June 30, 2006.

An independent study by Pew confirmed this trend, finding that from March 2005 to March 2006, overall broadband adoption increased by 40 percent—from 60 to 84 million—twice the growth rate of the year before. The study found that, although overall penetration rates in rural areas still lags behind urban areas, broadband adoption in rural America also grew at approximately the same rate (39 percent).

Perhaps most importantly, the Pew study found that the significant increase in broadband adoption was widespread and cut across all demographics. According to their independent research:

- broadband adoption grew by almost 70 percent among middle-income households (those with incomes between \$40,000 and \$50,000 per year);
- broadband adoption grew by more than 120 percent among African Americans;
- broadband adoption grew by 70 percent among those with less than a high school education; and
- broadband adoption grew by 60 percent among senior citizens.

According to the Pew study, the price of broadband service has also dropped in the past 2 years. Specifically, the Pew Report found that between February 2004 and December 2005, the average price for high-speed service declined from \$39 per month to \$36 per month. Currently, Verizon and Comcast each offer promotional broadband packages for \$19.99 per month, for example, and AT&T and BellSouth have committed to providing new retail broadband customers a \$10 a month broadband Internet access service throughout the combined region.

The Commission has worked hard to create a regulatory environment that promotes investment and competition. We have taken actions to ensure that there is a level-playing that fosters competition and investment in broadband infrastructure. The Commission has also removed legacy regulations like tariffs and price controls that discouraged providers from investing in broadband networks. More recently, the Commission took action under section 621 of the Act, to ensure that local franchising authorities do not unreasonably refuse to award new video service providers the franchises they need to compete against incumbent cable operators.

In the wireless area, the Commission has made a significant amount of spectrum available on both a licensed and unlicensed basis that can be used to provide broadband service in municipalities, rural areas and across the Nation. For example, on the licensed side, we completed an auction of 90 megahertz of spectrum for advanced wireless services that generated the largest-ever receipts totaling nearly \$14 billion. We have also taken steps to completely reconfigure nearly 200 megahertz of spectrum in the 2.5 GHz region to create new broadband opportunities.

On the unlicensed side, the Commission completed actions necessary to make available 255 MHz of unlicensed spectrum in the 5 GHz region, nearly an 80 percent increase, that will fuel the deployment of Wi-Fi well into the future. And, last fall, the Commission initiated a proceeding to resolve technical issues associated

with “white spaces” so that low power devices designed to operate on unused television frequencies may reach the market with the completion of the DTV transition.

We will continue to encourage deployment of broadband from all providers using a variety of technologies. As wireless technologies become an increasingly important platform for broadband access, it is critical to ensure that there is adequate spectrum available for providing broadband service. Spectrum auctions will continue to be an important part of our strategy for facilitating the build-out of mobile broadband networks. For example, the upcoming auction of spectrum in the 700 MHz region is well suited for the deployment of broadband services.

The Commission is also considering an order that would classify wireless broadband Internet access service as an information service. This action would eliminate unnecessary regulatory barriers for service providers. This classification also would clarify any regulatory uncertainty and establish a consistent regulatory framework across broadband platforms, as we have already declared high-speed Internet access service provided via cable modem service, DSL and BPL to be information services. This action is particularly timely in light of the recently auctioned AWS-1 spectrum for wireless broadband and our upcoming 700 MHz auction.

The Commission will continue to look for new and innovative ways to facilitate the deployment of broadband technologies. We are committed to furthering the universal availability and adoption of affordable broadband services.

Obtaining information that is useful to gauge deployment and consumer subscription to broadband is an ongoing effort at the Commission. In order to gain an even better picture of the extent of broadband deployment and consumer acceptance of broadband, I have circulated a Notice of Proposed Rulemaking (NPRM) to the Commission that asks questions about how we can obtain more specific information. In particular, the NPRM asks questions about how we can obtain more specific information about broadband deployment and consumer acceptance in specific geographic areas and how we can combine our data with those collected at the state level or by other public sources. By improving our data collection, we will be able to identify more precisely those areas of the country where broadband services are not available.

I have also circulated our fifth inquiry under section 706 of the Telecommunications Act of 1996 into “whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.” 47 U.S.C. § 157 nt. In this Notice, we seek comment on all aspects of broadband availability, including price and bandwidth speeds. In particular, we seek comment on whether, given the evolution of technology and the marketplace, we should redefine the term “advanced services” to require a higher minimum speed in one or both directions. Between these two proceedings, it is my hope that the Commission will solicit the information necessary to better assess the competitive progress in the broadband market.

*Question 8.* How do you envision universal service reform moving ahead to keep the fund sustainable? I am concerned about proposals that would not require broadband connections to pay into universal service, or reverse auction proposals that advocate providing USF support in an auction type model to the least cost provider. Such proposals bring uncertainty to investment plans, and shift the universal service standard from comparable to urban areas, to one that would just go to the lower bidder, quality irrelevant. I understand that rural providers have expressed concern about both proposals. Can you discuss the least cost provider issue, as well as what possible distinctions exist to justify excluding broadband from paying into USF—why shouldn’t a technology that uses and benefits from the network pay into universal service?

*Answer.* I believe that a modern and high quality telecommunications infrastructure is essential to ensure that all Americans, including those living in rural communities, have access to the economic, educational, and healthcare opportunities available on a broadband network. Our universal service program must continue to promote investment in rural America’s infrastructure and ensure access to telecommunications services that are comparable to those available in urban areas today, as well as provide a platform for delivery of advanced services. Indeed, in the Federal-State Universal Service Joint Board’s (Joint Board) 2002 Recommended Decision, I urged the Commission to explore how, and to what extent, the Federal universal service support mechanism could assist the deployment of advanced services, or at least the removal of barriers to such deployment, particularly in rural, remote and high cost areas throughout the country.

Unfortunately, the discussion about using universal service to fund broadband is being overshadowed by the uncontrolled growth in the fund as a result of subsidizing multiple competitors to provide voice services in rural areas. Before the Joint Board can make real progress on the true mission of universal service, ensuring access to high quality communications services in rural areas of the country, it

must act to address the growth in the fund caused by competitive eligible telecommunications carriers. Specifically, CETC payments have been growing at a trend rate of 101 percent per year since 2002. In 2000, CETCs received \$1 million in support. Based on recent USAC estimates, CETCs received almost \$1 billion in 2007. And, CETC support in 2007 is estimated to be at least \$1.28 billion.

Of course, any viable reverse auction proposal will need to address concerns that the auctions might be won by service providers that have low costs, but offer poor service quality. I am hopeful that these concerns can be addressed through an auction design that clearly defines the substantial obligations, including service requirements of the auctions winner.

Although the use of reverse auctions is one way of limiting the growth of the fund, I remain open to other ideas that could restrain growth and prioritize broadband investment in underserved areas of the country. The Joint Board will be issuing recommendations on these issues in the near future.

Another aspect of universal service reform is examining the current contribution methodology. Preserving the stability of the universal service contribution system is one of the Commission's most important responsibilities. Changes in technology and increases in the number of carriers who are receiving universal service support have placed significant pressure on the stability of the fund. Today, universal service contributions are assessed on the interstate portion of end-user telecommunications revenues of providers of telecommunications services and certain other providers of telecommunications, such as interconnected Voice over Internet Protocol (VoIP). support reforming the current contribution system and moving to a more competitively and technology neutral system based on telephone numbers. Specifically, such an approach would help maintain the stability of the fund by assessing all technologies used to make a phone call on a similar basis. Nevertheless, as the Commission reviews the various proposals to reform the current assessment system, it will carefully weigh the record and examine the potential impact of any course of action on all consumers.

*Question 9.* What is your view of making the deployment of advanced infrastructure that is fully capable of offering the wide array of broadband oriented services the hallmark of our national universal service policy? Should universal service subsidize broadband?

Answer. I believe that a modern and high quality telecommunications infrastructure is essential to ensure that all Americans, including those living in rural communities, have access to the economic, educational, and healthcare opportunities available on a broadband network. Our universal service program must continue to promote investment in rural America's infrastructure and ensure access to telecommunications services that are comparable to those available in urban areas today, as well as provide a platform for delivery of advanced services. Indeed, in the Federal-State Universal Service Joint Board's 2002 Recommended Decision, I urged the Commission to explore how, and to what extent, the Federal universal service support mechanism could assist the deployment of advanced services, or at least the removal of barriers to such deployment, particularly in rural, remote and high cost areas throughout the country.

Unfortunately, the discussion about using universal service to fund broadband is being overshadowed by the uncontrolled growth in the fund as a result of subsidizing multiple competitors to provide voice services in rural areas. Before the Joint Board can make real progress on the true mission of universal service, ensuring access to high quality communications services in rural areas of the country, it must act to address the growth in the fund caused by competitive eligible telecommunications carriers. Specifically, CETC payments have been growing at a trend rate of 101 percent per year since 2002. In 2000 CETCs received \$1 million in support. Based on recent USAC estimates, CETCs received almost \$1 billion in 2007. And, CETC support in 2007 is estimated to be at least \$1.28 billion.

Nevertheless, I would welcome the passage of an effective broadband deployment program that would make efficient use of scarce universal service moneys. Indeed, at an *en banc* meeting of the Federal-State Joint Board on Universal Service held on February 20, 2007, I and many of my Joint Board colleagues expressed support for exploring whether to support explicitly broadband as part of the high-cost universal service mechanism. To the extent legislation is passed, the Commission will faithfully and effectively implement it.

*Question 10.* The FCC recently has been granting incumbent providers (ILECs) forbearance from regulations on the premise that sufficient competition exists in a specific market to make enforcement of the regulations unnecessary. However, a Fall 2006 GAO report indicates that the assumptions the FCC uses to determine the existence of competition may be flawed and further that prices in Phase II

areas—that is, areas where competition is theoretically most intense—are going up. Is that the case, and if so, are price increases consistent with a competitive market?

Answer. As you note, on November 30, 2006, the U.S. Government Accountability Office (GAO) released a report entitled *Telecommunications FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services* (GAO-07-80). On January 29, 2007, I provided my written response to the GAO conclusions and recommendations contained in this report to the Chairman and Ranking member of the U.S. Senate Committee on Homeland Security and Governmental Affairs and the Chairman and Ranking Member of the U.S. House of Representatives Committee on Oversight and Government Reform. In that letter I outline in detail my concerns with the GAO's findings and the steps the Commission will take to respond to the recommendations contained in the report. I have attached a copy of that letter for your review.

Significantly, the GAO did not conclude that prices for special access are going up in Metropolitan Statistical Areas (MSAs) that received Phase II pricing flexibility. Rather, the GAO Report concluded that such prices were higher than in areas with less regulatory relief (Phase I pricing flexibility). These factual findings appear to be based primarily on two studies. Without access to the data used to perform these studies, the Commission cannot evaluate the reliability of the GAO studies or assess the validity of the conclusions drawn therefrom. For example, we do not know what rate elements the incumbent LECs included in generating their average revenue data and how that might have affected the estimates. It is also not clear how differences in demand from one MSA to another may have affected the average revenue estimates.

Although the GAO Report states that it attempted to address this problem by weighting the data, it is not clear how this was accomplished. Moreover, the GAO Report acknowledges that there was an "imperfect weight." Thus, we are unable to assess the reliability or relevance of these studies. Assuming these studies are true, the previous Commission in the Pricing Flexibility Order explicitly recognized that Phase II pricing relief could lead to price increases for some customers in some areas, but explained that such a result was still superior to continued price regulation for two reasons. First, the previous Commission explicitly recognized that our special access pricing rules "may have required incumbent LECs to price access services below cost in certain areas." Accordingly, in such circumstances price increases may be consistent with a competitive market. Second, the Commission found that "[i]f an incumbent LEC charges an unreasonably high rate for access to an area that lacks a competitive alternative, that rate will induce competitive entry, and that entry will in turn drive rates down." Nevertheless, we have asked the GAO for all the data underlying its report so that we may review it more completely.

*Question 11.* Is forbearance for the ILECs in the public interest?

Answer. Each petitioner bears the burden of establishing that the forbearance criteria outlined in section 10 of the Act are satisfied. Significantly, in evaluating an application, the Commission must determine, among other matters, whether grant of the petition would serve the public interest. Each application is judged on its own merits based on the specific factual circumstances at issue. Section 10 permits all telecommunications carriers—incumbents and competitors alike—to avail themselves of this relief.

*Question 12.* A proceeding to investigate the rates, terms and conditions for interstate special access services has been pending for a number of years. What is the status of the FCC's special access proceeding? What steps are being taken to speed resolution of this matter?

Answer. The Commission is currently evaluating whether current market conditions warrant any revisions to our rules in this area. On January 30, 2007, the Commission sent a letter to the GAO requesting access to the data underlying the conclusions and recommendations contained in the GAO Report, *Telecommunications FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services* (GAO-07-80). The Commission has not yet received access to that data. Receipt of this data will better enable the Commission to determine what actions, if any, we should take with respect to these issues.

*Question 13.* Some say that the dispute between Mediacom and Sinclair signals a new period of confrontation between broadcasters and distributors. How many complaints involving retransmission consent disputes has the Commission received in the last couple of years? Is there any trend within that data that may be useful to consider? How long does the Commission typically take to resolve those complaints?

Answer. Since the adoption of the good faith retransmission consent negotiation rules in March 2000, the Commission has received 17 complaints. All but four of

the complaints were withdrawn after the parties settled the dispute through negotiation. The first complaint addressed by the Commission under the good faith rule, was resolved by the Commission in approximately four and a half months. *EchoStar Satellite Corporation v. Young Broadcasting, Inc.*, 16 FCC Rcd 15070 (CSB 2001). Recently, the Commission resolved a good faith dispute arising from the retransmission consent negotiations between Sinclair Broadcast Group, Inc. and Mediacom Communications Corporation. Mediacom filed its complaint with the Commission on October 31, 2006. On January 4, 2007, a little over 2 months after receiving the complaint, the Commission issued an order on the merits finding that Sinclair did not breach its duty to negotiate retransmission consent in good faith. Thereafter, Mediacom filed an Application for Review of the initial order. As you are aware, Mediacom and Sinclair settled their dispute by entering into a long-term retransmission consent agreement before the Commission could act on the Application for Review. Another complaint involved a broadcaster and cable television system operator in Puerto Rico in which the allegation of bad faith negotiation was tangential to the larger issue of whether the cable operator was carrying a broadcaster's signal without valid retransmission consent. That complaint was filed with the Commission on October 12, 2006 and was resolved in about four and a half months. The remaining pending complaint was filed on January 25, 2007, and involves VDC Corporation (a provider of Internet video streaming services) and CBS Broadcasting, Inc. The pleading cycle in this matter is not yet closed.

*Question 14.* One issue specifically important for public radio stations is the opportunity to file for and receive additional reserved FM spectrum. It has been almost 7 years since the FCC provided the public with an opportunity to build new noncommercial educational stations on reserved FM spectrum. When will the FCC open a filing window for new reserved-FM noncommercial stations? Will the FCC provide public notice of a filing window sufficiently in advance to permit non-profit, governmental, and other potential applicants adequate time to participate?

Answer. The Commission currently is considering an order that will resolve 76 comparative licensing proceedings by applying, where appropriate, the Commission's "point system" used to select among competing applicants for a particular authorization. Upon release of this omnibus NCE order, the Commission intends to move forward immediately with the first-ever NCE FM application filing window. Because we recognize that some potential NCE applicants are not particularly knowledgeable about radio station licensing procedures, the Commission recognizes it needs to provide sufficient lead time for applicants to organize, determine whether spectrum is available, secure financing, and obtain reasonable assurance of transmitter site availability. To that end, the Commission will issue a detailed Public Notice announcing filing procedures and explaining comparative licensing rules at least ninety days prior to the opening of the filing window. The Commission also is considering outreach efforts to promote wide participation by community organizations, Indian tribes, and other non-profit entities.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
HON. KEVIN J. MARTIN

*Question 1.* In the Commission's September 2006 Public Notice on digital white spaces, you established a timetable for completing the final rules and issuing a final order by October 2007. Will the order cover all pending issues in the rulemaking? Does this include all requisite field testing?

Answer. The Commission laid out a projected timetable for the white spaces proceeding in the First Report and Order and Further Notice of Proposed Rule Making adopted in October 2006. Specifically, the Commission stated that it intends to issue a report on measurements of DTV interference rejection capabilities by March 2007. It also intends to conduct a testing program, including field testing, to assess the potential for interference from low power devices in the TV bands and issue a report of the results by July 2007. The Commission also stated that it expects to adopt a Second Report and Order specifying final requirements for devices in the TV bands in the fall of 2007, and expects to begin accepting applications for certification of TV band devices by late 2007.

We are currently on schedule and it is our intention to address all of the outstanding issues in the Second Report and Order that is planned for later this year. We are also considering whether we can accelerate the schedule; however, we must allow sufficient time for completion of the Laboratory and field tests, as well as thorough technical analysis of the public record, before adopting final rules. Although an industry coalition has indicated plans to deliver one or more prototype



devices to our Laboratory for testing later this month, we have not yet received any such devices.

*Question 2.* The Public Notice also stated that the Office of Engineering Technology would begin accepting devices for certification of unlicensed operations in the TV bands. How quickly does the Commission plan to decide on applications submitted to its Laboratory? Does the FCC have the human and financial resources to do meaningful field-testing in the white spaces?

Answer. We plan to accept applications for certification of devices operating in the TV white spaces once the rules are finalized. Our processing time for certification of unlicensed devices by the FCC Laboratory is about 50 days. We believe we have sufficient staff and resources to perform meaningful Laboratory and field tests of devices operating in the TV white spaces. We will continue to monitor the situation.

*Question 3.* The Commission's October 2006 Order and Further Notice stated that it would allow products to use the white spaces upon completion of the DTV transition after February 17, 2009. If devices can operate without causing harmful interference to licensees, why would the Commission delay the sale and use of devices until after the DTV transition ends on February 17, 2009?

Answer. During the DTV transition, the TV spectrum has been a particularly crowded and dynamic environment. Most TV stations are currently broadcasting on both analog and digital channels, and it has been a challenge to accommodate all of these operations without causing harmful radio-frequency interference. Many TV stations have not completed building their transition facilities and their power and coverage patterns are changing. Other operations, such as low power TV, TV translators and wireless microphones are also adjusting their operations in response to this process. These ongoing changes have made it difficult to assess the amount of white space that might ultimately be available.

Although several parties have suggested that TV white space spectrum will be available even during the DTV transition, they also assert that we should rely on spectrum sensing techniques to detect these white spaces and avoid causing harmful interference to existing services. Spectrum sensing techniques are promising. However, such proposed devices have yet to be proven effective in this particular spectrum environment, and no such devices have yet been provided to our Laboratory for testing. To the extent such devices are proven effective, we could consider allowing their operation sooner.

Finally, the Commission's time line for allowing the marketing of such products was developed with industry input. Industry has indicated that it would take manufacturers 18–24 months from the time final rules are adopted before products could be designed, manufactured, and delivered to the market. According to their own projections, it is unlikely that any white spaces devices would be available prior to the end of the DTV transition. Nevertheless, we are prepared to accept equipment authorization applications once the rules are finalized so that manufacturers will be in position to introduce products as soon as possible.

*Question 4.* On February 13 and 14, 2007, the Federal Trade Commission will host a public workshop on "Broadband Connectivity Competition Policy", bringing together experts from business, government, and the technology sector, consumer advocates, and academics to explore competition and consumer protection issues relating to broadband Internet access, including so-called "net neutrality." What do you see as the appropriate roles between the FTC and the FCC with respect to "net neutrality"?

Answer. The FCC and FTC traditionally have coordinated to protect consumers where the agencies' interests and jurisdictions intersect. For example, we have worked closely with the FTC in implementing and enforcing the Telephone Consumers Protection Act and in various investigations such as pretexting. I believe we have worked together effectively in the past and will continue to do so as appropriate on issues such as "net neutrality."

*Question 5.* Washington State is home to the wireless industry. Craig McCaw and other entrepreneurs in my state founded the companies that became AT&T Wireless, T-Mobile, Nextel and other smaller wireless carriers. The innovation of the wireless industry has proven the power of competition, new applications and services, lower costs and improved service for consumers. I am very supportive of the industry developing new and innovative applications while at the same time being concerned about ensuring sensitive customer information is protected. How does the Commission make certain that its CPNI rules finds the right balance between protecting customer privacy while not having an unintended consequence of severely hampering innovation in this dynamic industry? For example, how does the Commission approach a wireless application where carriers use aggregated, anonymous

signaling data from inside the carrier firewall to deliver real-time traffic data to local, state and Federal Departments of Transportation nationwide?

Answer. The Act's CPNI rules balance carriers' interests with consumers' privacy interests. The level of privacy protection varies based on the sensitivity of the customer information at issue. The Act affords greater protection for personally identifiable CPNI than it does for aggregate customer information that does not disclose personally identifying information. Assuming the circumstances that you describe concern the transmittal of CPNI, section 222(c)(3) allows a carrier to disclose such aggregate customer information so long as the individual customer identities have been removed.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO  
HON. KEVIN J. MARTIN

*Question 1.* It is my understanding that there are at least four investigations pending at the FCC into possible violations of sponsorship identification rules. Some of these investigations have been pending for two or 3 years. Should there be a deadline for the FCC to act on these complaints? Does the FCC have adequate staff and resources to conduct these investigations?

Answer. We have a number of investigations regarding possible violations of the Commission's sponsorship identification rules that have been pending for varying amounts of time. Currently circulating among the Commissioners are four consent decrees involving large broadcast groups accused of violating these rules. If Congress chooses to set deadlines for Commission action on sponsorship identification complaints, we would comply. The Commission has adequate resources to conduct these investigations.

*Question 2.* In approximately 2 years, broadcasters will shift to digital television. There are over 200,000 homes in New Jersey that rely exclusively on over-the-air television. Do you think most Americans are educated about this transition today? What role will the FCC play in preparing the public for this transition?

Answer. As your question suggests, there are a significant number of Americans who rely exclusively on over-the-air television for news, public safety information, and other content. As we approach the February 17, 2009, deadline for the end of analog broadcasting, the Commission recognizes the importance of ensuring that consumers have access to the information they need to make informed decisions regarding the DTV transition. To that end, the Commission has undertaken consumer education efforts and worked with broadcasters, manufacturers, retailers, consumer organizations, and state and local governments to encourage their voluntary efforts to inform consumers about the DTV transition.

The Commission has a website dedicated exclusively to the digital transition (<http://www.dtv.gov>) which provides information about the transition, equipment needed, and programming available, and also serves as a clearinghouse with links to broadcast, cable, satellite, consumer electronics manufacturing and retail. Our consumer education activities also include publications, participation in public exhibits, and community and consumer-oriented events. The Commission's Consumer and Government Affairs Bureau developed an "Outreach Toolkit," available on our website, for consumer and community organizations to use in conducting their own local DTV consumer education programs. Our publications provide a range of information, from a booklet with general background information, DTV: What Every Consumer Should Know, to a brief Shopper's Guide and Tip Sheet. Most of our DTV information also is available in Spanish, and we are working on translations to other languages. The outreach staff also has participated in exhibits and presentations to a number of groups including AARP, the National Council of La Raza, the NAACP, educational institutions, and others.

*Question 3.* New Jersey is the second largest net contributor among states to the existing Universal Service Fund in the amount of almost \$200 million per year. Can you identify what your plans are for modifications to the current system and how they would affect New Jersey?

Answer. Preserving the stability of the universal service contribution system is one of the Commission's most important responsibilities. Changes in technology and increases in the number of carriers who are receiving universal service support have placed significant pressure on the stability of the fund. Today, universal service contributions are assessed on the interstate portion of end user telecommunications revenues of providers of telecommunications services and certain other providers of telecommunications, such as interconnected Voice over Internet Protocol (VoIP). I support reforming the current contribution system and moving to a more competitively and technology neutral system based on telephone numbers. Specifically, such

an approach would help maintain the stability of the fund by assessing all technologies used to make a phone call on a similar basis. Nevertheless, as the Commission reviews the various proposals to reform the current assessment system, it will carefully weigh the record and examine the potential impact of any course of action on all consumers. Because the Commission has yet to adopt a numbers-based methodology, it is not possible to know with any precision how such a change would affect specific states. I do believe, however, that such a system would be more sustainable and equitable than the current system.

In addition, the Federal-State Joint Board on Universal Service (Joint Board) is exploring whether a "reverse auction" mechanism could be used as the basis for distributing universal service high-cost support. I believe that reverse auctions could provide a technologically and competitively neutral means of controlling fund growth and ensuring a move to most efficient technology over time. Indeed, just last month, the Joint Board held a hearing in which it heard testimony on the use of reverse auctions to determine universal service support as well as other ways to control the growth of the universal service fund. Although the use of reverse auctions is one way of limiting the growth of the fund, I remain open to other ideas that could restrain growth and prioritize broadband investment in underserved areas of the country. The Joint Board will be issuing recommendations on these issues in the near future.

*Question 4.* In a filing with the FCC on the Missoula Plan, the New Jersey Board of Public Utilities notes that: "The result is the Plan shifts the burden from carriers to consumers, in particular low and middle-income, low-usage urban consumers and the Plan will further burden New Jersey ratepayers by more than \$300 million with little or no attendant benefits. This Plan is bad for consumers, and particularly low and middle-income consumers, who are the least able to afford the increased charges which are nothing more than additional subsidies." What is the status and time line for review of the Inter-Carrier Compensation (ICC) reform proceeding at the FCC, and in particular the Missoula Plan? Has the FCC done an assessment of how the Plan would affect residents in each state?

Answer. The Commission is currently examining several proposals in the intercarrier compensation reform proceeding docket. The Missoula Plan is one such proposal. We recently sought comment on the Missoula Proposal and we received an extensive amount of information on the record in response. The Commission is currently reviewing this extensive record to determine how to address this complicated issue in a manner that best serves the public interest. The supporters of the Missoula Plan recently filed additional information regarding methods to lessen the burden on states that have already taken steps to reform intercarrier compensation by reducing intrastate access charges and/or creating state universal service funds. This filing includes an assessment of how adoption of the proposal would affect each state. We have sought additional comment on this filing, and the record in response does not close until April 3, 2007.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK L. PRYOR TO  
HON. KEVIN J. MARTIN

*Question 1.* Over the past 4 years, consumers have enjoyed the successful emergence of a number of new players in the audio marketplace. Satellite radio and Internet radio now reach tens of millions of listeners every week, and portable MP3 players and iPods have become common household items. Digital Cable and DBS offer dozens of channels of uninterrupted music, and Wi-Max technology is evolving that will soon allow Internet-based listening options in automobiles. Would the Commissioners agree that the competitive landscape has changed dramatically in the audio market over the past few years? And would the Commissioners agree that this trend is only likely to continue for the foreseeable future?"

Answer. This question is before the Commission in its pending review of the media ownership rules. As part of this review, we have commissioned a number of economic studies, including studies regarding the competitive landscape in the radio marketplace. Finally, in connection with the Commission's media ownership and localism proceedings, we are conducting hearings around the country to solicit public comment and to engage the American people in the process of reviewing the status of the media marketplace. One recent hearing, held in Nashville, focused on the general state of the music and radio industries. The Commission's efforts to collect a thorough public record will continue in the months ahead, with three more ownership hearings, and two additional hearings specifically focused on localism.

*Question 2.* Consumers in many rural areas currently are not able to enjoy the same benefits wireless services offer as their urban counterparts enjoy. Due to low

user concentration, the cost of providing high quality wireless service in rural areas is frequently more expensive than is possible in higher-density urban areas. Designation of wireless carriers as ETCs, which permits these carriers to receive support from the Universal Service Fund ("USF"), can help to ensure that all Americans enjoy the benefits of competition and high-quality wireless services. What steps has the FCC taken to ensure that wireless coverage is extended to all Americans, regardless of where they live, and to ensure that Americans living in rural areas have the opportunity to subscribe to high-quality wireless services?

Answer. It is critical that all Americans, including those living in rural areas, stay connected to state-of-the-art communications services. The Universal Service Fund is the lifeblood of this goal. Unfortunately, our current high-cost mechanism is in need of repair. As I noted during a recent meeting of the Federal-State Joint Board on Universal Service, CETC universal service payments, most of which are made to wireless carriers, have increased year after year. CETC payments have been growing at a trend rate of 101 percent per year since 2002. In 2000 CETCs received \$1 million in support. Based on recent USAC estimates, CETCs received almost \$1 billion in 2007. And, CETC support in 2007 is estimated to be at least \$1.28 billion. If the Commission were to approve all the pending CETC applications, support could be as high as \$1.56 billion in 2007. Thus, while I support the ability of Americans living in rural areas to subscribe to wireless services, I believe that the Commission must carefully evaluate the pending CETC applications. I expect that in the near future, the Joint Board will be issuing recommendations on how the Commission can reform the high-cost system to address this issue.

I also note that the Commission is using spectrum management to promote the delivery of wireless services in rural areas. For example, in the coming year, we will auction 60 MHz of spectrum in the 700 MHz band that is particularly well-suited for the provision of wireless broadband services in rural and underserved areas. In particular, we are considering whether to reconfigure this band to provide for smaller geographic licensing areas and adopt more stringent build-out requirements for the band, which may further enhance rural and underserved deployment.

*Question 3.* Following the natural disasters that recently hit the Gulf Coast region wireless services provided emergency personnel, utility repairmen and residents with the only immediate means for communicating. In light of the experience of the Commission from Hurricane Katrina and other disasters, please describe the role wireless services fill with respect to emergency response and disaster recovery during times of crisis?

Answer. Wireless communications services are an essential component of emergency response and disaster recovery during times of crisis. Most first responder and other public safety communications rely on wireless-based services as the primary method of communications. As a result, it is critical that these services be restored as quickly as possible. In the aftermath of Hurricanes Katrina, Wilma and Rita, the Commission issued a number of Special Temporary Authorizations (STAs) and waivers to allow public safety agencies to restore communications services. Many public safety agencies from outside of the impacted regions obtained STAs and waivers in order to provide portable and mobile radios and other devices in support of first responders and relief agencies within the disaster areas. And, in response to Hurricane Katrina, the Commission released an Order to enable \$211 million in universal service funds to be used to respond to the disaster.

Wireless communications services can also serve as an alternative means of communications for public safety agencies, relief organizations, and consumers who are displaced or have lost landline communications services. In the aftermath of the 2005 hurricanes, commercial wireless carriers took a number of steps to provide wireless communications services to public safety agencies, relief organizations, and consumers who had lost landline services. For example, carriers distributed wireless phones, emergency trailers, generators and other equipment to first responders and other public safety officials. The Commission facilitated this effort by directing universal service funds through the Lifeline/Link-Up program to provide wireless handsets and up to 300 free calling minutes for those eligible for individual housing relief under FEMA rules. In addition, wireless carriers provided priority access, through the Wireless Priority Service (WPS) Program to public safety personnel.

In addition to public safety and commercial wireless services, there are a number of other wireless technologies that can play a key role in disaster response and recovery. For example, in the aftermath of the Gulf Coast hurricanes, service providers and others used unlicensed Part 15 frequencies to provide temporary Internet communications to various relief groups, Federal, state and local governments and agencies in the areas impacted by the hurricanes. These services were particularly useful to those who were displaced by the hurricanes.

Satellite technologies also play a unique role in emergency response and disaster recovery efforts. Federal, state, and local emergency response providers use commercial satellite services either as stand-alone platforms or as part of an integrated satellite terrestrial network to enable a range of voice, data, video, and other services often in situations where existing terrestrial infrastructure is degraded or non-existent. In the immediate aftermath of Hurricanes Katrina, Rita, and Wilma, satellite operators were able to rapidly deploy mobile telephony, data, radio and television services to the region. Earth stations were deployed to support data transmissions, Internet access, and information sharing. Satellite services were also vital in restoring critical communications for construction companies, utilities, and oil refineries. In addition, terrestrial wireless and wireline providers can use satellite networks for backhaul when terrestrial backhaul networks are disabled.

Finally, amateur radio operators provided wireless communications services in many locations where there was no other means of communicating and also provided technical aid to the communities affected by the hurricanes.

*Question 3a.* If a petitioner for ETC designation meets the statutory criteria and has consistently been the only service provider to remain operative in certain areas during natural disasters despite the presence of other carriers (including other ETCs) in those areas, would you view the designation of the petitioner as an ETC to be in the public interest?

Answer. The Commission reviews ETC designation petitions subject to its jurisdiction for compliance with section 214(e)(6) of the Act. Section 214(e)(6) provides that “the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.” 47 U.S.C. § 214(e)(6). Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the Federal universal service mechanisms throughout the designated service area.

In addition to the statutory requirements of section 214(e)(6), the Commission also ensures that any ETC designation is consistent with the universal service principles set out in section 254 of the Act, but certainly providing service during emergencies is an important public interest consideration.

*Question 3b.* Some of the areas hardest hit by recent natural disasters were underserved communities. To the extent a petitioner for ETC designation that meets the statutory criteria for ETC designation has demonstrated a strong commitment to serving rural and underserved communities since well before designation as an ETC, would the designation of the petitioner as an ETC be in the public interest? If not, please explain why.

Answer. The Commission reviews ETC designation petitions subject to its jurisdiction for compliance with section 214(e)(6) of the Act. Section 214(e)(6) provides that “the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.” 47 U.S.C. § 214(e)(6). Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the Federal universal service mechanisms throughout the designated service area.

In addition to the statutory requirements of section 214(e)(6), the Commission also ensures that any ETC designation is consistent with the universal service principles set out in section 254 of the Act, but certainly demonstrating a strong commitment to serving rural and underserved communities is an important public interest consideration.

*Question 4.* The FCC has committed to resolve, within 6 months of the date filed, all ETC designation requests for non-tribal lands that are properly before the FCC. How many petitions for ETC designation are currently pending at the FCC?

Answer. 34

*Question 4a.* What is the average length of time that the ETC Petitions currently before the FCC have been pending?

Answer. Less than 2 years

*Question 4b.* Of these petitions, what is the earliest filing date?

Answer. 12/31/2003

*Question 4c.* How many of these petitions were filed in 2004 or earlier?

Answer. 17

*Question 4d.* How many petitions for ETC designation did the FCC act on in 2006?

Answer. 2

*Question 4e.* How many petitions for ETC designation did the FCC act on in 2005?

Answer. 12

*Question 4f.* How many petitions for ETC designation did the FCC act on in 2004?

Answer. 8

*Question 4g.* What does the FCC intend to do about the backlog of pending ETC petitions? How soon does the FCC intend to act upon ETC petitions that have been pending for more than 6 months? Do you believe that Americans living in rural areas and the carriers who have filed ETC Petitions deserve to have those petitions acted upon promptly rather than simply kept pending without a yes or no answer? If you do not, please explain why.

Answer. It is critical that all Americans, including those in rural areas, stay connected to state-of-the art communications services. The Universal Service Fund is the lifeblood of this goal. Unfortunately, our current high-cost mechanism is in need of repair. As I noted during a recent meeting of the Federal-State Joint Board on Universal Service, CETC universal service payments have increased year after year. CETC payments have been growing at a trend rate of 101 percent per year since 2002. In 2000 CETCs received \$1 million in support. Based on recent USAC estimates, CETCs received almost \$1 billion in 2007. And, CETC support in 2007 is estimated to be at least \$1.28 billion. If the Commission were to approve all the pending CETC applications, support could be as high as \$1.56 billion in 2007. Consequently, I believe that the Commission should carefully examine the merits of the pending 34 CETC applications. I expect that in the near future, the Joint Board will be issuing recommendations on how the Commission can ream the high-cost system to address this issue.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO  
HON. KEVIN J. MARTIN

*Question 1.* In a September 8, 2005 report, the FCC stated, "Our review of the record does not lead us to recommend any changes to the retransmission consent regime at this time." What if any steps have you taken since that time to review and assess the retransmission consent regime; what if any additional conclusions have you reached; what if any plans do you have for additional formal or informal review; and what do you perceive to be the strengths and weaknesses of the retransmission consent process?

Answer. As part of our annual Video Competition Report, the Commission monitors the current state of retransmission consent market. In its most recent report to Congress, the Commission noted that distributors of video programming generally assert that retransmission consent, regardless of the form of compensation (e.g., cash, purchases of advertising, carriage of other affiliated programming, etc. was too expensive and has caused rates to increase. The Commission noted that broadcasters, on the other hand, support the existing system as a process that fairly compensates them for the carriage of their programming.

In the most recent Notice of Inquiry seeking comments for the upcoming Video Competition Report, the Commission requested specific information on a range of issues related to retransmission consent. For example, with respect to television stations carried pursuant to retransmission consent, the Commission requested information on the extent to which cable operators pay cash for broadcast station carriage rights, carry non-broadcast programming networks, provide advertising time, or otherwise compensate broadcasters. We also sought comment on the effect of retransmission consent compensation on cable television rates, the ability of small

cable system operators to secure retransmission consent on fair and reasonable terms, and the impact of agreements that require the carriage of non-broadcast networks in exchange for the right to carry local broadcast stations on MVPDs and consumers. The Commission will report on its findings in its next Video Competition Report.

The retransmission consent rules are part of a carefully balanced combination of laws and regulations governing carriage of television broadcast signals, with the must-carry and retransmission consent regimes complementing one another. Broadcast mandatory carriage rights, which promote localism and ensure the viability of free, over-the-air television, complement the retransmission consent regime. Together, must-carry and retransmission consent provide that all local stations are assured of carriage even if their audience is small, while also allowing more popular stations to seek compensation (cash or in-kind) for the audience their programming will attract for the cable or satellite operator. Must-carry alone might fail to provide stations with the opportunity to be compensated for their popular programming. Retransmission consent alone might not preserve local stations that have a smaller audience yet still offer free over-the-air programming and serve the public in their local areas.

While I generally have concerns about intervening in private negotiations, I recognize that the failure of a broadcaster and a cable operator to reach a retransmission consent agreement harms not just the broadcaster and the cable operator but all of the viewers affected by the removal of a station's signal from their cable system. If Congress believes the retransmission consent process needs reformation, it could give the Commission the authority to order arbitration of retransmission consent disputes by the Media Bureau, and require carriage during the arbitration process. To ensure that such arbitration process reaches a fair result in the context of the broader industry, the Commission would also need to be sure that it had the tools necessary to obtain similar pricing information from other broadcasters, cable operators and programmers. Without access to such information, it would be difficult for the Commission to determine whether offers from either party are appropriate.

*Question 2.* Section 10(a) of the Communications Act allows the Commission to forbear from applying any regulation or any statutory provision to a particular or multiple telecommunications carriers or services, in any or some geographic markets, if certain criteria are met—most notably that competition exists in the market and that such relief is in the public interest. The FCC recently has been granting incumbent providers (ILECs) forbearance from regulations on the premise that sufficient competition exists in a specific market to make enforcement of the regulations unnecessary. What are each of your respective positions on the conditions and circumstances under which forbearance for ILECs is appropriate?

*Answer.* Each petitioner bears the burden of establishing that the forbearance criteria outlined in section 10 of the Act are satisfied. Significantly, in evaluating an application, the Commission must determine, among other matters, whether grant of the petition would serve the public interest. Each application is judged on its own merits based on the specific factual circumstances at issue. Section 10 permits *all* telecommunications carriers—incumbents and competitors alike—to avail themselves of this relief.

*Question 3.* From the City of Saint Paul (similar questions were raised by Burnsville/Eagan Community Television and the Northern Suburban Communications Commission):

The Order issued by the FCC on December 20, 2006 allows new franchise entrants to “cherry pick” the neighborhoods in our communities, rather than bring true competition to all of our businesses and residents. This would allow new entrants to serve or upgrade only the profitable areas of Saint Paul [and other cities and towns], leaving many of our residents on the wrong side of the “digital divide.”

The Order authorizes a new entrant to withhold payment of fees that it deems to be in excess of a 5-percent franchise fee cap. This could completely undermine support for both Saint Paul’s [and other cities’ and towns’] very successful public, educational and government (PEG) operations.

The Order imposes a 90-day shot clock for new entrants with existing rights of way, opening the potential to reduce Saint Paul’s [and other cities’ and towns’] ability to manage its rights-of-way.

The Order authorizes a new entrant to refrain from obtaining a franchise when it is upgrading mixed use facilities that will be used in the delivery of video content.

Saint Paul believes that the policy goals of the Order are laudable but strongly disagrees with the method and substance of the decision taken by the FCC. How do you respond to each of these concerns, and how do you respond to the claim that the FCC exceeded its authority in adopting this order?

Answer. The Report and Order adopts rules and provides guidance to implement Section 621(a)(1) of the Communications Act, which prohibits franchising authorities from unreasonably refusing to award competitive franchises for the provision of cable services. Through the Report and Order, the Commission furthers the achievement of the interrelated Federal goals of enhanced cable competition and accelerated broadband deployment.

In relation to the City of Saint Paul's concerns about "cherry picking," the Report and Order does not limit an LFA's authority to appropriately enforce provisions of the Communications Act which ensure that consumers are protected against discrimination. This includes an LFA's authority to deny a franchise that would run afoul of the "redlining" provisions of the Act.

The Report and Order does indicate that a local franchising authority's refusal to award a competitive franchise because the applicant will not agree to unreasonable build-out requirements can be unreasonable. However, it seeks to strike a balance between encouraging as widespread deployment of broadband as possible while not deterring entry altogether. For instance, the Report and Order notes that, absent other factors, it would seem unreasonable to require a new competitive entrant to serve everyone in a franchise area before it has begun providing service to anyone. At the same time, the Report and Order specifically notes that it would seem reasonable for an LFA in establishing build-out requirements to consider the new entrant's market penetration. It would also seem reasonable for an LFA to consider benchmarks requiring the new entrant to increase its build-out after a reasonable period of time had passed after initiating service and taking into account its market success.

Regarding the City of Saint Paul's concerns about the Report and Order's findings regarding the franchise fee cap and their impact on support for PEG and I-Nets, the Commission clarified that "capital costs" for PEG facilities do not count toward the 5 percent limit on franchise fees. The Commission then explained that, pursuant to Section 622(g)(2)(B) of the Communications Act, PEG support payments are considered franchise fees and are subject to the 5 percent limit.

Beyond these limits on PEG support set forth in the Act, the Commission found simply that it would be unreasonable for an LFA to require a new entrant to provide PEG support that is in excess of the incumbent cable operator's obligations. The Commission also found that completely duplicative PEG requirements imposed by LFAs would be unreasonable. The Commission's actions set reasonable, and minimal, limits on LFA authority to require support for PEG channels.

The order finds that it would constitute an unreasonable refusal to grant a competitive franchise for an LFA to fail to act upon a franchise application filed by an entity that has access to the public rights-of-way within 90 days or to fail to act upon a franchise application filed by an entity with such access within 6 months. The record in this proceeding indicated that parties could complete the process under these timeframes. If not, the Report and Order indicates that the parties may agree to an extension of the relevant deadline.

In terms of the 90-day timeframe, as noted, this applies only where the applicant already has access to the public rights-of-way. The order notes that this timeframe should not impose an unreasonable burden on LFAs as it should take less time for an LFA to work through rights-of-way management issues and confirm an applicant's qualifications to provide service if the applicant already occupies the public rights-of way, and the applicant, in obtaining a certificate for public convenience and necessity from a state, already has had its legal, technical, and financial qualifications reviewed.

The City of Saint Paul is correct that, with regard to mixed use facilities, the Report and Order states that so long as there is a non-cable purpose associated with the network upgrade, the provider is not required to obtain a franchise until and unless it proposes to provide cable services. The Report and Order does not affect a municipality's ability to require a cable franchise once a provider seeks to provide cable service.

Finally, in terms of the Commission's authority, the Commission found it has legal authority to implement Section 621(a)(1) of the Act. The Commission has broad authority to adopt rules to implement Title VI and, specifically, Section 621(a)(1). As the Supreme Court has explained, the Commission serves "as the 'single Government agency' with 'unified jurisdiction' and 'regulatory power over all forms of electrical communication, whether by telephone, telegraph, cable, or radio.'" <sup>1</sup> To that end, "[t]he Act grants the Commission broad responsibility to forge a rapid and efficient communications system, and broad authority to implement that

<sup>1</sup> *United States v. Southwestern Cable Co.*, 392 U.S. 157, 167–68 (1968) (citations omitted).



responsibility.”<sup>2</sup> Section 201(b) authorizes the Commission to “prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.”<sup>3</sup> According to the Supreme Court, “the grant in §201(b) means what it says: The FCC has rulemaking authority to carry out the ‘provisions of this Act.’”<sup>4</sup> That grant of authority therefore necessarily includes Title VI of the Communications Act in general, and Section 621(a)(1) in particular.

Other provisions in the Act reinforce the Commission’s general rulemaking authority. Section 303(r), for example, states that “the Commission from time to time, as public convenience, interest, or necessity requires shall . . . make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act. . . .”<sup>5</sup> Our authority is reinforced by Section 4(i) of the Act which gives us broad power to perform acts necessary to execute our functions as well as the mandate in section 706 of the Act that we encourage the deployment of broadband services to all Americans.<sup>6</sup>

More specifically, Section 2 of the Communications Act grants the Commission explicit jurisdiction over “cable services.”<sup>7</sup> Furthermore, Congress specifically charged the Commission with the administration of the Cable Act, including Section 621, and Federal courts have consistently upheld the Commission’s authority in this area.<sup>8</sup> Thus, just as the Commission has the authority to interpret other provisions of Title VI, it also has the authority to interpret section 621(a)(1)’s requirement that LFAs not “unreasonably refuse to award an additional competitive franchise.” Indeed, in another context, the D.C. Circuit noted that the term “unreasonable” is among the “ambiguous statutory terms” in the Communications Act, and that the “court owes substantial deference to the interpretation the Commission accords them.”<sup>9</sup>

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TED STEVENS TO  
HON. KEVIN J. MARTIN

*Question 1.* What is the current status of any proposals to use auctions to determine universal service support?

Answer. The Federal-State Joint Board on Universal Service (Joint Board) is exploring whether a “reverse auction” mechanism could be used as the basis for distributing universal service high-cost support. I believe that reverse auctions could provide a technologically and competitively neutral means of controlling fund growth and ensuring a move to most efficient technology over time. Indeed, just last month, the Joint Board held a hearing in which it heard testimony on the use of reverse auctions to determine universal service support as well as other ways to control the growth of the universal service fund. Although the use of reverse auctions is one way of limiting the growth of the fund, I remain open to other ideas that could restrain growth and prioritize broadband investment in underserved areas of the country. The Joint Board will be issuing recommendations on these issues in the near future.

*Question 2.* Do you believe any of the proposals submitted to the Joint Board are viable alternative approaches to universal service support and can adequately support rural carriers like those in Alaska?

---

<sup>2</sup>*United Telegraph Workers, AFL-CIO v. FCC*, 436 F.2d 920, 923 (D.C. Cir. 1970) (citations and quotations omitted).

<sup>3</sup>47 U.S.C. § 201(b).

<sup>4</sup>*AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366,378 (1999).

<sup>5</sup>See also 47 U.S.C. § 151 (the Commission “shall execute and enforce the provisions of this Act”).

<sup>6</sup>See 47 U.S.C. § 154(i) (stating that the Commission “may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with the Act, as may be necessary in the execution of its functions.”); 47 U.S.C. § 157 nt.

<sup>7</sup>47 U.S.C. § 152 (“The provisions of this Act shall apply with respect to cable service, to all persons engaged within the United States in providing such service, and to the facilities of cable operators which relate to such service, as provided in title VI.”).

<sup>8</sup>See *City of Chicago v. FCC*, 199 F.3d 424 (7th Cir. 1999) (finding the FCC is charged by Congress with the administration of the Cable Act, including Section 621); see also *City of New York v. FCC*, 486 U.S. 57, 70 n.6 (1988) (explaining that section 303 gives the FCC rulemaking power with respect to the Cable Act); *National Cable Television Ass’n. v. FCC*, 33 F.3d 66, 70 (D.C. Cir. 1994) (upholding Commission finding that certain services are not subject to the franchise requirement in Section 621(b)(1)); *United Video v. FCC*, 890 F.2d 1173, 1183 (D.C. Cir. 1989) (denying petitions to review the Commission’s syndicated exclusivity rules); *ACLU v. FCC*, 823 F.2d 1554 (D.C. Cir. 1987) (upholding the Commission’s interpretive rules regarding Section 621(a)(3)).

<sup>9</sup>*Capital Network System, Inc. v. FCC*, 28 F.3d 201, 204 (D.C. Cir. 1994).

Answer. I believe that a modern and high quality telecommunications infrastructure is essential to ensure that all Americans, including those living in rural communities, have access to the economic, educational, and healthcare opportunities available on a broadband network. Our universal service program must continue to promote investment in rural America's infrastructure and ensure access to telecommunications services that are comparable to those available in urban areas today, as well as provide a platform for delivery of advanced services. Indeed, in the Joint Board's 2002 Recommended Decision, I urged the Commission to explore how, and to what extent, the Federal universal service support mechanism could assist the deployment of advanced services, or at least the removal of barriers to such deployment, particularly in rural, remote and high cost areas throughout the country.

Unfortunately, the discussion about using universal service to fund broadband is being overshadowed by the uncontrolled growth in the fund as a result of subsidizing multiple competitors to provide voice services in rural areas. Before the Joint Board can make real progress on the true mission of universal service, ensuring access to high quality communications services in rural areas of the country, it must act to address the growth in the fund caused by competitive eligible telecommunications carriers (CETCs). Specifically, CETC payments have been growing at a trend rate of 101 percent per year since 2002. In 2000 CETCs received \$1 million in support. Based on recent USAC estimates, CETCs received almost \$1 billion in 2007. And, CETC support in 2007 is estimated to be at least \$1.28 billion.

*Question 3.* When Chairman Powell visited a remote Eskimo village in Alaska, his plane got stuck in the mud on the unpaved runway during take-off. He and his staff whipped out their cell phones to try to call for help, but they didn't work. No roaming agreements. The villages call came and pulled his plane out of the mud, but he was not able to call his wife to tell her he was running late. I am pleased to report that the runway is now being paved, but the roaming problem has yet to be resolved. Many small cell phone companies in Alaska have been unsuccessful in getting the large national carriers to respond to their desires to arrange roaming agreements. As data, video, and other services are transmitted to mobile devices this problem will only grow more acute. What can you do to address this problem, and what is the time frame for moving forward?

Answer. I agree that ensuring roaming in rural areas is an important issue for the Commission to address. Since 1996, the Commission has required that cellular, PCS, and certain SMR providers make manual roaming service available upon request to customers of other carriers, provided that the roamers' handsets are technically capable of accessing the roaming network. The Commission is currently examining whether its roaming requirements should be modified given the current state of the commercial mobile services market, including whether we should require carriers to provide automatic roaming.

Parties in our proceeding significantly differ on their characterization of the state of roaming and whether Commission action is required in the current market. Rural carriers argue that, in many cases, they are unable to obtain reasonable roaming agreements with larger carriers. Larger carriers, however, argue that wireless markets are competitive and that no regulatory intervention is required at this time.

The Bureau is currently drafting an order to address the complex technical, economic, and competitive issues being raised in the proceeding. I expect to be able to circulate a draft order this spring.

*Question 4.* I continue to have concerns that too often domestic satellite services do not offer service to Alaska and Hawaii. In last year's Senate Communications Bill, a measure was included to require satellite operators to make good faith efforts in their satellite planning and development to ensure service to the entire United States. Are there measures that the FCC could take independent of Congressional legislation to ensure better service to Alaska and Hawaii?

Answer. Ensuring that there is adequate satellite coverage for Alaska and Hawaii is extremely important. The Commission is committed to taking action to ensure that satellite providers do not neglect these areas when deploying their systems. The Commission currently requires DBS satellite licensees to provide service to Alaska and Hawaii from any location at which such service is technically feasible, unless the licensee can demonstrate that such services would require so many compromises in satellite design as to make the service economically unreasonable.

In addition, the Commission has recently initiated two rulemaking proceedings to consider rules that would strengthen the requirement to provide satellite service in Alaska and Hawaii. For example, in the *17/24 GHz BSS NPRM*, the Commission invited comment on requiring satellite operators in the 17/24 GHz BSS to design any satellite that will be operated at an orbit location where it is technically feasible to provide service to Alaska and Hawaii to be capable of doing so. Similarly, in the

*DBS Spacing NPRM*, the Commission is considering rule revisions that would increase the number of satellites in orbit, which would improve DBS service throughout the United States, including Alaska and Hawaii.

*Question 5.* The FCC frequently faces the problem of making tough policy decisions that are wrapped in technological debates. There are several waivers pending at the FCC that deal with CableCARDs. What is the impact on the consumer and the impact on the development and deployment of downloadable security? How will these petitions be considered and will the full Commission address these issues?

*Answer.* Set-top box issues have been facing cable operators, the consumer electronics industry and the Commission for over a decade. It was in 1996 that Congress first ordered the Commission to establish a competitive market for the set-top boxes that are used for watching digital cable television. Congress explained: "Competition in the manufacturing and distribution of consumer devices has always led to innovation, lower prices and higher quality." A competitive market for set-top boxes has the great potential to result in significant innovation, lower prices, and extensive consumer choice for the television and set-top box markets.

In order to realize Congress' goals, the Commission required cable operators to separate their security functions, putting them into a CableCARD, which can be used in televisions and set-top boxes made by other manufacturers. The Commission originally gave cable operators 7 years, followed by two further extensions, to achieve this competitive market through separable security and common reliance. During this period, the cable operators twice challenged the Commission's rules in court. And, twice the court upheld them. And yet, almost 10 years later, cable operators have never fully implemented the Commission's set-top box requirement.

On January 10, 2007, the Media Bureau took steps to implement the statutory requirements to facilitate a competitive market for set-top boxes in a reasonable manner. The Bureau resolved several set-top waiver requests, furthering both pro-competition and pro-consumer policies. The Bureau granted the request filed by Cablevision by grandfathering Cablevision's implementation of its own separated security solution for 2 years. The Bureau also granted the request filed by Bend Cable Communications, LLC, d/b/a, BendBroadband, conditioned on its proposal to go all digital by 2008—a significant benefit to consumers. Finally, the Bureau denied the broad waiver request filed by Comcast but provided for several ways it could amend its request. Finally, the Bureau reiterated that a downloadable security solution would comply with the Commission's rules and noted that at least one company has already developed such a solution.

Finally, I would have preferred to establish a timeframe for cable operators to develop and deploy downloadable security with adequate assurance that this timeframe would actually be met. I would also have preferred that the cable industry and the consumer electronics industry agree on a two-way standard that would ensure that subscribers who do not wish to rely on set-top boxes provided by their cable operators can access two-way, as well as one-way, cable services. I have encouraged the cable industry and the consumer electronics industry to work together to make progress on these issues. However, in the absence of real progress on either of these issues, I think the Commission needs to move forward with its current rules.

*Question 6.* Obviously we are all concerned about the new frontiers that can be created on the Internet for pedophiles and child pornographers. To advance the safety of our children, everyone must do their part. Is there more that the Internet service providers can be doing to help law enforcement and does the FCC need any additional authority from Congress to ensure that entities under the Commission's authority are doing their part?

*Answer.* We must do everything in our power to ensure that technological advances do not empower pedophiles and child pornographers. Internet Service Providers (ISPs) currently have obligations under 42 U.S.C. § 13032 to report apparent violations of certain Federal statutes involving child pornography to the CyberTipLine operated by the National Center for Missing and Exploited Children (NCMEC). NCMEC then is required to forward that report to a law enforcement agency or agencies designated by the Attorney General. In addition to these obligations, I believe that Internet Service Providers can and should adopt internal mechanisms to enable them to better detect the distribution of such material over their network. The Commission stands ready to enforce any requirements adopted by Congress in this area. Protecting children from predators is of the utmost importance and the Commission will do everything in its power to ensure that the entities we regulate are vigilant in the monitoring of their networks.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO  
HON. KEVIN J. MARTIN

*Question 1.* Is it true that eleven years ago Congress required the FCC to adopt a new universal service mechanism that ensures that local telephone rates in rural areas are reasonably comparable to rates in urban areas?

Answer. The United States and the Commission have a long history and tradition of making sure that rural areas of the country are connected and have the same opportunities for communications as other areas. In the 1996 Act, Congress explicitly required that the Commission ensure that consumers in all regions of the Nation have access to services, including advanced services, that “are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonable comparable to rates charged for similar services in urban areas.” 47 U.S.C. § 254(b)(3). Specifically Congress required the Commission to establish Universal Service Fund mechanisms that are “specific, predictable and sufficient . . . to preserve and advance universal service.”

*Question 2.* Is it true that the 10th Circuit Court of Appeals has twice remanded the FCC’s method of providing universal service support for rural customers served by larger carriers?

Answer. Congress required the Commission to ensure that consumers living in rural and high cost areas have access to similar telecommunications services at rates that are reasonably comparable to rates paid by urban customers. Unfortunately, as you point out, this issue has been twice been remanded to the Commission.

As a Commissioner, I dissented from the method of providing universal service support that was adopted by my colleagues. As I said at the time, I thought that the Commission’s decision fell short of our statutory obligations to ensure that consumers living in rural and high cost areas have access to similar telecommunications services at rates that are reasonably comparable to rates paid by urban consumers. The 10th Circuit, in its most recent remand, apparently agreed with this assessment. Specifically, the court held that the Commission failed to reasonably define the terms “sufficient” and “reasonably comparable.” Because the non-rural, high-cost support mechanism rests on the application of the definition of “reasonably comparable” rates invalidated by the court, the court also deemed the support mechanism invalid.

*Question 3.* Is it true that the second decision was issued in February of 2005 with the court expressing an expectation that the FCC would respond expeditiously?

Answer. The court said that it expects the Commission to comply with its decision “in an expeditious manner.” It also expressly recognized the complexity of the task before the Commission on remand. Moreover, it declined the Petitioners’ request that the court retain jurisdiction and impose a deadline for Commission action.

*Question 4.* What steps will the FCC take now to ensure that it meets its obligations to the rural residents of large incumbent carriers? Will you commit that the FCC will take action on this remand during the next 6 months?

Answer. Congress required the Commission to ensure that consumers living in rural and high cost areas have access to similar telecommunications services at rates that are reasonably comparable to rates paid by urban customers. As a Commissioner, I dissented from the method of providing universal service support that was adopted by my colleagues. As I said at the time, I thought that the Commission’s decision fell short of our statutory obligations to ensure that consumers living in rural and high cost areas have access to similar telecommunications services at rates that are reasonably comparable to rates paid by urban consumers. The 10th Circuit directed the Commission to “utilize its unique expertise to craft a support mechanism taking into account all the factors that Congress identified in drafting that Act and its statutory obligation to preserve and advance universal service.” In response to this second remand, the Commission is currently considering additional modifications to the methodology for calculating universal service support for high-cost areas served by larger carriers (*i.e.*, the non-rural high-cost support mechanism). I intend to circulate an order resolving this issue before the end of the year.

*Question 5.* Now that the Antideficiency Act (ADA) exemption has expired, what kind of guarantees can you give that there will be no further E-Rate program shut downs or delays?

Answer. In the February 15, 2007 Continuing Resolution for Fiscal Year 2007’s appropriations, Congress extended the Antideficiency Act exemption for the Universal Service Fund through December 31, 2007.

*Question 6.* Can you tell us how much USAC has in its E-Rate accounts currently and whether those reserves will be sufficient to cover funding?

Answer. As of February 26, 2007, USAC has a cash balance of approximately \$4.103 billion allocated to the E-rate program (approximately \$3.057 billion of which has been obligated). At this time, the Commission staff estimates that the universal service program can continue to operate as it does today without triggering an Antideficiency Act violation. However, there is a possibility that (without an Antideficiency Act exemption) a temporary increase to the USF Contribution Factor—approximately 0.1 percent—may be necessary to address a potential deficiency in late 2008 and again in late 2009.

*Question 7.* Are you still working with the Office of Management and Budget (OMB) on a reinterpretation of the ADA that would exempt Universal Service?

Answer. We continue to work with the Office of Management and Budget on the application of the Antideficiency Act to the Universal Service Fund. OMB has informed the Commission staff that, for the High Cost and Low Income program, the Commission should accelerate slightly the timing for recognizing obligations to pay beneficiaries in these programs. Accelerating this process would require temporarily increasing USF collections to raise approximately \$500 million to ensure the High Cost and Low Income programs can continue to operate as they do today.

*Question 8.* Given that AT&T and BellSouth agreed to abide by a definition of “network neutrality” as part of their merger conditions, do you believe that the argument that it is impossible to craft such a definition is false?

Answer. To better assess how the marketplace is functioning and to address any potential harm to consumers, I have proposed that the Commission examine this issue more fully in a formal Notice of Inquiry, which is presently pending before my colleagues. This Notice of Inquiry will certainly inform the Commission as to whether and how to craft a definition of “network neutrality.”

*Question 9.* Will you enforce the “network neutrality” provision agreed to as part of AT&T’s and BellSouth’s gaining approval for the merger?

Answer. Yes; the Commission adopted voluntary commitments that are enforceable by the Commission. I expect that the merged entity will comply with all their commitments. To the extent that AT&T does not, we will take appropriate enforcement action.

*Question 10.* Do you consider the U.S. broadband marketplace to be competitive?

Answer. Encouraging the deployment of broadband infrastructure is a top priority. Since I arrived at the Commission in July 2001, high-speed lines in the U.S. have gone from more than 9 million to nearly 65 million. According to the Commission’s most recent data, high-speed connections increased by 26 percent in the first half of 2006 and by 52 percent for the full year ending June 30, 2006.

An independent study by Pew confirmed this trend, finding that from March 2005 to March 2006, overall broadband adoption increased by 40 percent—from 60 to 84 million—twice the growth rate of the year before. The study found that, although overall penetration rates in rural areas still lags behind urban areas, broadband adoption in rural America also grew at approximately the same rate (39 percent).

Perhaps most importantly, the Pew study found that the significant increase in broadband adoption was widespread and cut across all demographics. According to their independent research:

- √ broadband adoption grew by almost 70 percent among middle-income households (those with incomes between \$40,000 and \$50,000 per year);
- ® broadband adoption grew by more than 120 percent among African Americans;
- broadband adoption grew by 70 percent among those with less than a high school education; and
- broadband adoption grew by 60 percent among senior citizens.

According to the Pew study, the price of broadband service has also dropped in the past 2 years. Specifically, the Pew Report found that between February 2004 and December 2005, the average price for high-speed service declined from \$39 per month to \$36 per month. Currently, Verizon and Comcast each offer promotional broadband packages for \$19.99 per month, for example, and AT&T and BellSouth have committed to providing new retail broadband customers a \$10 a month broadband Internet access service throughout the combined region.

The Commission has worked hard to create a regulatory environment that promotes investment and competition. We have taken actions to ensure that there is a level-playing that fosters competition and investment in broadband infrastructure. The Commission has also removed legacy regulations like tariffs and price controls that discouraged providers from investing in broadband networks. More recently, the Commission took action under section 621 of the Act, to ensure that local fran-

chising authorities do not unreasonably refuse to award new video service providers the franchises they need to compete against incumbent cable operators.

In the wireless area, the Commission has made a significant amount of spectrum available on both a licensed and unlicensed basis that can be used to provide broadband service in municipalities, rural areas and across the Nation. For example, on the licensed side, we completed an auction of 90 megahertz of spectrum for advanced wireless services, the largest-ever receipts totaling nearly 14 billion dollars. We have also taken steps to completely reconfigure nearly 200 megahertz of spectrum in the 2.5 GHz region to create new broadband opportunities.

On the unlicensed side, the Commission completed actions necessary to make available 255 MHz of unlicensed spectrum in the 5 GHz region—nearly an 80 percent increase—that will fuel the deployment of Wi-Fi well into the future. And, last fall, the Commission initiated a proceeding to resolve technical issues associated with “white spaces” so that low power devices designed to operate on the unused television frequencies may reach the market with the completion of the DTV transition.

We will continue to encourage deployment of broadband from all providers using a variety of technologies. As wireless technologies become an increasingly important platform for broadband access, it is critical to ensure that there is adequate spectrum available for providing broadband service. Spectrum auctions will continue to be an important part of our strategy for facilitating the build-out of mobile broadband networks. For example, the upcoming auction of spectrum in the 700 MHz region is well suited for the deployment of broadband services.

The Commission is also considering an order that would classify wireless broadband Internet access service as an information service. This action would eliminate unnecessary regulatory barriers for service providers. This classification also would clarify any regulatory uncertainty and establish a consistent regulatory framework across broadband platforms, as we have already declared high-speed Internet access service provided via cable modem service, DSL and BPL to be information services. This action is particularly timely in light of the recently auctioned AWS-1 spectrum for wireless broadband and our upcoming 700 MHz auction.

The Commission will continue to look for new and innovative ways to facilitate the deployment of broadband technologies. We are committed to furthering the universal availability and adoption of affordable broadband services.

*Question 11.* Do you believe a wireless connection, which is two to four times more expensive and two to four times slower than DSL or cable, can be a substitute for a wireline connection to the Internet?

*Answer.* Wireless service is becoming increasingly important as another platform to compete with cable and DSL as a platform for broadband access.

Several wireless carriers are deploying broadband data services that offer speeds comparable to some DSL offerings. For example, Verizon and Sprint have deployed EV-DO Rev. A technology that has average download rates of 450–850 kb/s (3.1 Mb/s peak) and average upload rates of 300–400 kb/s (1.8 Mb/s peak). Moreover, although we are uncertain as to the exact nature of services that will be provided in the WCS and BRS bands, we expect that these spectrum bands may be used to provide fixed or portable wireless broadband services that will provide alternative service platforms for last-mile connections to residences and businesses. Operators providing such services will likely compete with DSL and cable modem service providers.

Furthermore, the Commission has made a significant amount of spectrum available on both a licensed and unlicensed basis that can be used to provide broadband service in municipalities, rural areas, and across the Nation. For example, on the licensed side, we completed an auction of 90 megahertz of spectrum for advanced wireless services that generated the largest-ever receipts, totaling nearly 14 billion dollars. We have also taken steps to completely reconfigure nearly 200 megahertz of spectrum in the 2.5 GHz region to create new broadband opportunities.

On the unlicensed side, the Commission completed actions necessary to make available 255 MHz of unlicensed spectrum in the 5 GHz region—nearly an 80 percent increase—that will fuel the deployment of Wi-Fi well into the future. And, last fall, the Commission initiated a proceeding to resolve technical issues associated with “white spaces” so that low power devices designed to operate on unused television frequencies may reach the market with the completion of the DTV transition.

We will continue to encourage deployment of broadband from all providers using a variety of technologies. As wireless technologies become an increasingly important platform for broadband access, it is critical to ensure that there is adequate spectrum available for providing broadband service. Spectrum auctions will continue to be an important part of our strategy for facilitating the build-out of mobile

broadband networks. For example, the upcoming auction of spectrum in the 700 MHz region is well-suited for the deployment of broadband services.

*Question 12.* How can we ensure that a variety of news and entertainment outlets will be there if the telephone and cable companies are allowed to limit what people can see and do online?

Answer. Market forces will help ensure that network providers do not block or otherwise limit the content that is available to consumers. To the extent that market forces do not protect consumers, the Commission has the ability to take appropriate steps where needed. For example, when we learned that a particular phone company was blocking access to a competing VoIP provider, we opened an investigation and negotiated a consent decree that made the company cease discriminating and pay a fine.

In addition, although the Commission has not adopted any rules, in August 2005, the Commission adopted an Internet Policy Statement “to ensure that broadband networks are widely deployed, open, affordable, and accessible to all consumers.” Specifically, the Commission adopted the four following principles:

- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to access the lawful Internet content of their choice.
- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to run applications and use services of their choice, subject to the needs of law enforcement.
- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to connect their choice of legal devices that do not harm the network.
- To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, consumers are entitled to competition among network providers, application and service providers, and content providers.

The Commission, under Title I of the Communications Act, has the ability to adopt and enforce the net neutrality principles it announced in the Internet Policy Statement. The Supreme Court reaffirmed that the Commission “has jurisdiction to impose additional regulatory obligations under its Title I ancillary jurisdiction to regulate interstate and foreign communications.” *National Cable & Telecomm. Ass’n v. Brand X Internet Services*, 125 S.Ct. 2688, 2696 (2005) (*Brand X*). Indeed, the Supreme Court specifically recognized the Commission’s ancillary jurisdiction to impose regulatory obligations on broadband Internet access providers. *Brand X*, 125 S. Ct. at 2708 (“[T]he Commission remains free to impose special regulatory duties on facilities-based ISPs under its Title I ancillary jurisdiction. In fact, it has invited comment on whether it can and should do so.”)

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GORDON H. SMITH TO  
HON. KEVIN J. MARTIN

*Question 1.* Under a couple of the conditions, AT&T and BellSouth committed that for 42 months, they would continue to offer, and would not increase the price of, unbundled network elements. They also committed not to seek forbearance with respect to unbundled loops and transport. Will these conditions preserve the option for consumers to purchase high-speed broadband service from companies that combine an AT&T/BellSouth UNE loop with their own electronics and other network facilities to offer their own high-speed Internet broadband services?

Answer. The Commission current rules require incumbent LECs to make UNE loops available to competing telecommunications carriers. The voluntary commitments made by AT&T in connection with the AT&T/BellSouth merger do not alter this obligation. With the voluntary commitments, competitors have the certainty that, for 42 months, AT&T will not seek forbearance from its current obligation to provide UNE loops.

*Question 2.* Has the Commission concluded that it is in the public interest to preserve additional broadband options for consumers through these UNE as part of the AT&T/BellSouth merger conditions?

Answer. The AT&T merger conditions are voluntary, enforceable commitments by AT&T, but are not general statements of Commission policy, and do not alter Commission precedent or bind future Commission policy or rules.

*Question 3.* I am pleased that the Media Bureau recognized the burdens that the ban on “integrated” set-top boxes places on small cable operators and granted a waiver of that requirement to Oregon’s BendBroadband. Given that the economic implications of enforcing this mandate to viewers could be huge (as much as \$600 million nationwide according to the cable industry) why were some of these waiver requests not dealt with at the full Commission?

Answer. Set-top box issues have been facing cable operators, the consumer electronics industry and the Commission for over a decade. It was in 1996 that Congress first ordered the Commission to establish a competitive market for the set-top boxes that are used for watching digital cable television. Congress explained: “Competition in the manufacturing and distribution of consumer devices has always led to innovation, lower prices and higher quality.” A competitive market for set-top boxes has the great potential to result in significant innovation, lower prices, and extensive consumer choice for the television and set-top box markets.

In order to realize Congress’ goals, the Commission required cable operators to separate their security functions, putting them into a CableCARD, which can be used in televisions and set-top boxes made by other manufacturers. The Commission originally gave cable operators 7 years, followed by two further extensions, to achieve this competitive market through separable security and common reliance. During this period, the cable operators twice challenged the Commission’s rules in court. And, twice the court upheld them. And yet, almost 10 years later, cable operators have never fully implemented the Commission’s set-top box requirement.

On January 10, 2007, the Media Bureau took steps to implement the statutory requirements to facilitate a competitive market for set-top boxes in a reasonable manner. The Bureau resolved several set-top waiver requests, furthering both pro-competition and pro-consumer policies. The Bureau granted the request filed by Cablevision by grandfathering Cablevision’s implementation of its own separated security solution for 2 years. The Bureau also granted the request filed by Bend Cable Communications, LLC, d/b/a, BendBroadband, conditioned on its proposal to go all digital by 2008—a significant benefit to consumers. Finally, the Bureau denied the broad waiver request filed by Comcast but provided for several ways it could amend its request. Finally, the Bureau reiterated that a downloadable security solution would comply with the Commission’s rules and noted that at least one company has already developed such a solution.

I would have preferred to establish a timeframe for cable operators to develop and deploy downloadable security with adequate assurance that this timeframe would actually be met. I would also have preferred that the cable industry and the consumer electronics industry agree on a two-way standard that would ensure that subscribers who do not wish to rely on set-top boxes provided by their cable operators can access two-way, as well as one-way, cable services. I have encouraged the cable industry and the consumer electronics industry to work together to make progress on these issues. However, in the absence of real progress on either of these issues, I think the Commission needs to move forward with its current rules.

Finally, I would note that generally requests for waivers of the Commission’s cable equipment rules routinely are handled at the Bureau level. Indeed, the Bureau has addressed requests for waiver of the ban on integrated set-top boxes in the past. *See, e.g., BellSouth Interactive Media Services, LLC*, 19 FCC Rcd 15607, 15609, para. 4 (Media Bur. 2004). Moreover, Comcast’s waiver requests was actually addressed and made to the Chief of the Media Bureau not to the full Commission. I have attached a copy of that page of their filing for your review.

*Question 4.* Don’t you think a ruling of that magnitude should be voted upon by you and your colleagues?

Answer. Generally requests for waivers of the Commission’s cable equipment rules routinely are handled at the Bureau level. Indeed, the Bureau has addressed requests for waiver of the ban on integrated set-top boxes in the past. *See, e.g., BellSouth Interactive Media Services, LLC*, 19 FCC Rcd 15607, 15609, para. 4 (Media Bur. 2004). Moreover, Comcast’s waiver requests was actually addressed and made to the Chief of the Media Bureau not to the full Commission. I have attached a copy of that page of their filing for your review.

[The information referred to follows:]



BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matter of )  
 )  
Comcast Corporation's ) CSR- \_\_\_\_\_  
Request for Waiver of )  
47 C.F.R. § 76.1204(a)(1) )

To: Chief, Media Bureau

**REQUEST FOR WAIVER**

Pursuant to Sections 1.3, 76.7, and 76.1207 of the Commission's rules and Section 629(c) of the Communications Act,<sup>1</sup> Comcast Corporation ("Comcast") respectfully requests a waiver of the Commission's integration ban as applied to the specific low-cost, limited-capability set-top boxes described herein and similar boxes meeting specified criteria.<sup>2</sup> Approval of the requested waiver is plainly in the public interest.

**I. THE COMMISSION MAY APPROPRIATELY CONSIDER WAIVERS OF THE INTEGRATION BAN.**

Under 47 C.F.R. §§ 1.3 and 76.7 and well-established precedent the Commission may waive (or grant other "special relief" from) any provision of its rules relating to cable television

<sup>1</sup> See 47 C.F.R. §§ 1.3, 76.7(i), & 76.1207. See also 47 U.S.C. § 549(c).

<sup>2</sup> The integration ban is set forth in Section 76.1204(a)(1) of the Commission's rules. See 47 C.F.R. § 76.1204(a)(1) ("Commencing on July 1, 2007, no multichannel video programming distributor subject to this section shall place in service new navigation devices for sale, lease, or use that perform both conditional access and other functions in a single integrated device.").

*Question 5.* I believe the National Cable & Telecommunications Association and others still have waiver requests pending and Comcast has appealed the bureau's denial of its waiver. Can you let us know when we should expect the full Commission to address these requests?

*Answer.* Comcast's Application for Review is currently before the full Commission, and the pleading cycle for that proceeding ended February 26. Other requests for waiver, including the National Cable & Telecommunications Association's request, remain pending. I expect the pending waiver requests to be handled soon.

*Question 6.* The U.S. has more broadband subscribers than any other nation. However, according to the Organization for Economic Cooperation and Development, as of June 2006, the U.S. ranked a paltry 12th among the OECD nations in broadband subscribers per 100 inhabitants. In other words, the penetration rate for broadband in the U.S. is slightly above the middle of the pack for the OECD countries. What are some of the specific ways the FCC can help: (1) increase our broadband penetration; (2) increase broadband speeds; (3) lower consumer pricing for broadband; and (4) promote deployment to rural and underserved areas?

*Answer.* Encouraging the deployment of broadband infrastructure is a top priority. Since I arrived at the Commission in July 2001, high-speed lines in the U.S. have gone from more than 9 million to nearly 65 million. According to the Commission's most recent data, high-speed connections increased by 26 percent in the first half of 2006 and by 52 percent for the full year ending June 30, 2006.

An independent study by Pew confirmed this trend, finding that from March 2005 to March 2006, overall broadband adoption increased by 40 percent—from 60 to 84 million—twice the growth rate of the year before. The study found that, although overall penetration rates in rural areas still lags behind urban areas, broadband adoption in rural America also grew at approximately the same rate (39 percent).

Perhaps most importantly, the Pew study found that the significant increase in broadband adoption was widespread and cut across all demographics. According to their independent research:

- broadband adoption grew by almost 70 percent among middle-income households (those with incomes between \$40,000 and \$50,000 per year);
- broadband adoption grew by more than 120 percent among African Americans;
- broadband adoption grew by 70 percent among those with less than a high school education; and
- broadband adoption grew by 60 percent among senior citizens.

According to the Pew study, the price of broadband service has also dropped in the past 2 years. Specifically, the Pew Report found that between February 2004 and December 2005, the average price for high-speed service declined from \$39 per month to \$36 per month. Currently, Verizon and Comcast each offer promotional broadband packages for \$19.99 per month, for example, and AT&T and BellSouth have committed to providing new retail broadband customers a \$10 a month broadband Internet access service throughout the combined region.

The Commission has worked hard to create a regulatory environment that promotes investment and competition. We have taken actions to ensure that there is a level-playing field that fosters competition and investment in broadband infrastructure. The Commission has also removed legacy regulations like tariffs and price controls that discouraged providers from investing in broadband networks. More recently, the Commission took action under section 621 of the Act, to ensure that local franchising authorities do not unreasonably refuse to award new video service providers the franchises they need to compete against incumbent cable operators.

In the wireless area, the Commission has made a significant amount of spectrum available on both a licensed and unlicensed basis that can be used to provide broadband service in municipalities, rural areas and across the Nation. For example, on the licensed side, we completed an auction of 90 megahertz of spectrum for advanced wireless services. We have also taken steps to completely reconfigure nearly 200 megahertz of spectrum in the 2.5 GHz region to create new broadband opportunities.

On the unlicensed side, the Commission completed actions necessary to make available 255 MHz of unlicensed spectrum in the 5 GHz region, nearly an 80 percent increase, that will fuel the deployment of Wi-Fi well into the future. And, last fall, the Commission initiated a proceeding to resolve technical issues associated with “white spaces” so that low power devices designed to operate on unused television frequencies may reach the market with the completion of the DTV transition.

We will continue to encourage deployment of broadband from all providers using a variety of technologies. As wireless technologies become an increasingly important platform for broadband access, it is critical to ensure that there is adequate spectrum available for providing broadband service. Spectrum auctions will continue to be an important part of our strategy for facilitating the build-out of mobile broadband networks. For example, the upcoming auction of spectrum in the 700 MHz region is well suited for the deployment of broadband services.

The Commission is also considering an order that would classify wireless broadband Internet access service as an information service. This action would eliminate unnecessary regulatory barriers for service providers. This classification also would clarify any regulatory uncertainty and establish a consistent regulatory framework across broadband platforms, as we have already declared high-speed Internet access service provided via cable modem service, DSL and BPL to be information services. This action is particularly timely in light of the recently auctioned AWS-1 spectrum for wireless broadband and our upcoming 700 MHz auction.

The Commission will continue to look for new and innovative ways to facilitate the deployment of broadband technologies. We are committed to furthering the universal availability and adoption of affordable broadband services.

*Question 7.* Is there anything we here in Congress can specifically do to help you to accomplish these goals?

Answer. While the Commission recently took limited action to ensure that the local franchising authorities did not unreasonably refuse to award competitive franchises, Congress could further ensure that the local franchising process does not

deter investment and competition in broadband networks. The Commission will faithfully and effectively implement whatever legislation that is passed by Congress.

*Question 8.* As you are aware, in 2005 I introduced the first legislation in Congress that called for easing restrictions into the video marketplace. I continue to believe that a robust, competitive video marketplace will promote a diversity of programming choices and lower prices for consumers. I applaud the Commission's recent efforts to expedite competition to the video marketplace by passing its video franchising reform order. However, ensuring that all video providers compete on a level playing field is fundamental to promoting full and fair competition. The video franchising order appears to adopt deregulatory interpretations of various provisions of the Cable Act but limits the applicability of those interpretations to new entrants. I know you are revisiting this issue in your further notice of proposed rulemaking. Can you tell us when we should anticipate that the Commission will address the issue of a level playing field in the video services marketplace?

*Answer.* As you note, in December of last year, the Commission adopted a Report and Order (FCC 06-180) regarding Section 621 of the Communications Act, which applies to competitive entrants. Because the notice in this proceeding was limited to competitive entrants, it did not address franchising as it relates to incumbent providers. We are looking at the franchising process as it relates to incumbents as part of the Further Notice of Proposed Rulemaking ("FNPRM"). In the FNPRM, we tentatively conclude that the findings in the December Order should apply to cable operators that have existing franchise agreements as they negotiate renewal of those agreements with LFAs. The Commission has committed to issue an Order in response to the FNPRM within 6 months.

*Question 9.* My state of Oregon receives no Federal Universal Service high cost funding in the rural areas served by larger carriers such as Qwest or Verizon. In 2006, there were forty states, including Arkansas, Arizona, Missouri, Texas, Florida, Washington, Nevada and California, that received no high cost funding for the rural areas served by their large incumbents. Would you support changing the administration of the Universal Service non-rural high cost fund to allow for a fair redistribution of those funds to include states with high cost rural areas that currently receive no support?

*Answer.* The Commission does need to change the administration of the universal service non-rural high cost fund, in part to comply with a remand from the United States Court of Appeals for the 10th Circuit (10th Circuit).

Qwest, Verizon, and other non-rural carriers serving Oregon do not currently receive high-cost universal service support pursuant to the non-rural mechanism. In 2005, however, Oregon received \$68.5 million in high-cost universal service support. This includes over \$20 million in Interstate Access Support received by Qwest, Verizon, and other, mainly large, carriers subject to price cap regulation in the interstate jurisdiction. For the Federal universal service fund as a whole, Oregon was a net recipient, rather than a net contributor, of approximately \$5 million of universal service support in 2005.

Congress required the Commission to ensure that consumers living in rural and high cost areas have access to similar telecommunications services at rates that are reasonably comparable to rates paid by urban customers. As a Commissioner, I dissented from the method of providing universal service support that was adopted by my colleagues. As I said at the time, I thought that the Commission's decision fell short of our statutory mandate and our statutory obligations to ensure that consumers living in rural and high cost areas have access to similar telecommunications services at rates that are reasonably comparable to rates paid by urban consumers. The 10th Circuit, in its most recent remand, apparently agreed with this assessment. Specifically, the court held that the Commission failed to reasonably define the terms "sufficient" and "reasonably comparable." Because the non-rural, high-cost support mechanism rests on the application of the definition of "reasonably comparable" rates invalidated by the court, the court also deemed the support mechanism invalid.

The court directed the Commission to "utilize its unique expertise to craft a support mechanism taking into account all the factors that Congress identified in drafting that Act and its statutory obligation to preserve and advance universal service." In response to this second remand, the Commission is currently considering additional modifications to the methodology for calculating universal service support for high-cost areas served by larger carriers (i.e., the non-rural high-cost support mechanism). I intend to circulate an order resolving this issue before the end of the year.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO  
HON. KEVIN J. MARTIN

*Question 1.* Even as we are strategizing on how to complete the deployment of DSL and cable modem broadband networks to the hard to reach places of our country, other countries are well on their way to deploying next-generation fiber networks. High-speed fiber will change how we use the Internet similar to the change we saw between dial-up and broadband. Is there anything Congress can be doing to help speed the deployment of our high-speed fiber network here at home, and in rural areas particularly?

Answer. I believe that it is critical that consumers in all areas of the country enjoy the benefits of broadband deployment. To this end, the Commission has taken actions to level the playing-field between broadband providers by eliminating legacy regulations, like tariffs and price controls that discourage providers from investing in broadband networks. Since then broadband penetration has increased while prices has decreased.

Obtaining information that is useful to gauge deployment and consumer subscription to broadband is an ongoing effort at the Commission. In order to gain an even better picture of the extent of broadband deployment and consumer acceptance of broadband, I have circulated a Notice of Proposed Rulemaking (NPRM) to the Commission that asks questions about how we can obtain more specific information. In particular, the NPRM asks questions about how we can obtain more specific information about broadband deployment and consumer acceptance in specific geographic areas and how we can combine our data with those collected at the state level or by other public sources. By improving our data collection, we will be able to identify more precisely those areas of the country where broadband services are not available.

I have also circulated our fifth inquiry under section 706 of the Telecommunications Act of 1996 into "whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion." 47 U.S.C. § 157 nt. In this Notice, we seek comment on all aspects of broadband availability, including price and bandwidth speeds. In particular, we seek comment on whether, given the evolution of technology and the marketplace, we should redefine the term "advanced services" to require a higher minimum speed in one or both directions. Between these two proceedings, it is my hope that the Commission will solicit the information necessary to better assess the competitive progress in the broadband market.

Of course, the universal service fund plays an important role in broadband deployment. It is this fund which is essential to enabling rural carriers to upgrade and maintain their networks. We must ensure that the universal service remains stable to support these efforts.

To the extent that Congress passes legislation that enables the Commission to take action to further encourage the deployment of broadband to rural areas, the Commission will do everything in its power to faithfully and effectively implement it.

*Question 2.* When I speak with some of South Dakota's rural telephone cooperatives and other telecommunications providers, I hear about the large amount of resources they must put toward legal fees to keep pace with the legal and regulatory maneuvers being made by some of the larger telecommunications providers with seemingly bottomless pockets for such actions. Some of these small providers honestly think part of the larger competitors' plan is to beat them through legal fees instead of the marketplace. The Commission obviously cannot do anything about the fees lawyers are charging, but they can do something about the speed at which regulatory decisions are made and the hoops that must be jumped through. How can the FCC improve its decisionmaking processes so that small telecommunications providers don't bear such an imbalanced burden?

Answer. The Commission is continually working to improve its decision-making processes and to resolve issues more expeditiously. In addition, the Commission is always looking for ways to ease the regulatory burdens on small carriers. For example, the Commission has, over the years, attempted to lessen substantially the level of regulation imposed on small incumbent LECs, such as the rural telephone cooperatives you describe. Specifically, the Commission has taken action to exempt small telephone companies from certain reporting and recordkeeping requirements. In addition, telephone companies whose operating revenues are below \$129 million (which is indexed annually) do not file Automated Reporting Management Information System (ARMIS) reports, do not submit cost allocation manuals for review, and may account for their operations in accordance with a streamlined version of the Commission's Part 32 accounting rules. In addition, small local telephone companies also benefit from the Commission's streamlined tariff process, and members of the

National Exchange Carrier Association (NECA) may avoid filing individual tariffs altogether by participating in the NECA tariff.

For small carriers that seek approval to transfer control of their domestic assets or operating authority, the Commission's streamlined section 214 rules ease the burden associated with obtaining Commission authorization for these transfers. The rules allow the carriers to close a proposed transaction on the 31st day after the date of the public notice listing their section 214 application as accepted for filing as a streamlined application. In particular, this streamlined process applies to rural incumbent LECs that have, in combination, fewer than 2 percent of the Nation's subscriber lines nationwide and no overlapping or adjacent service territories. And, of course, section 251(f) of the Act exempts rural telephone companies from the interconnection and unbundling requirements of section 251(c) unless certain prerequisites are met.

In light of the dramatic growth and technological developments in the communications industry, we believe that our small entity policies must continue to evolve with the industry. Accordingly, we will continue our efforts to resolve proceedings as expeditiously as possible and thereby create greater regulatory certainty and stability.

*Question 3.* As you know, some media companies and others are pushing for the repeal of the newspaper cross-ownership ban. They argue that a media outlet owning both the local newspaper and a local broadcast station could make better use of scarce resources to gather and report the local news. They also argue that the handful of "grandfathered" newspaper-broadcast combinations, which were in place before the ban was implemented in 1975, have not shown any gross abuse. Some consumer groups and others who support keeping the newspaper cross-ownership ban in place alternatively argue that combining newspaper and broadcast outlets could reduce competition among media outlets. There could be less incentive to get "the scoop" or report a contradicting viewpoint. What do you believe would happen to local news coverage if the newspaper cross-ownership ban was lifted? Do the 1975 grandfathered combinations really provide us with a good example since some of them are currently owned by those media companies who want to lift the ban? For example Gannett knows its management of Arizona's largest newspaper, the *Arizona Republic*, and television outlet KPNX-TV is under the microscope, so perhaps their behavior would not be representative of how news gathering would be conducted if the ban was permanently lifted.

*Answer.* The Commission has received many comments on this issue in our media ownership proceedings, including the 2006 quadrennial ownership review proceeding. Proponents of cross-ownership indicate that the editorial management of jointly owned newspaper and broadcast station operations generally do not overlap and that cross-owned stations compete for readers and viewers. They have explained that joint newsgathering resources allow economic efficiencies that can help newspapers and local television stations compete in an expanded marketplace. There is evidence that combining news-gathering resources can lead to more local news programming, particularly in smaller or rural markets. On the other hand, opponents of cross-ownership have stated that the newspaper/television cross-ownership prohibition is necessary to preserve and promote viewpoint diversity and competition.

While there has been an explosion of new sources of news and information over the last thirty years, when the cross-ownership ban was adopted, the number of newspapers has actually declined. At least 300 daily papers have stopped publishing since the cross-ownership rule was adopted. Newspaper circulation has declined steadily for more than 10 years. Losses have accelerated in recent years. These results have led to cuts in papers' newsgathering operations. For instance, the number of people working in the newsrooms of U.S. daily newspapers dropped 4.1 percent between 2001 and 2005.

During the Commission's last review of its media ownership rules, the Commission conducted a number of studies, including one entitled "The Measurement of Local Television News and Public Affairs Programs." That study found that newspaper-owned affiliated stations provide almost 50 percent more news and public affairs programming than other network-affiliated stations. In addition, the study found that the average number of hours of local news and public affairs programming provided by the same-market cross-owned television-newspaper combinations was 25.6 hours per week, compared to 16.3 hours per week for the sample of television stations owned by a newspaper that is not in the same market as the station. The study also found that the ratings for newspaper-owned stations' 5:30 and 6 p.m. newscasts during the November 2000 sweeps period averaged 8 compared to an average rating of 6.2 for non-newspaper-affiliated stations. Further, newspaper-owned stations received 319 percent of the national average per station Radio and Television News Directors Association ("RTNDA") awards, and 200 percent of the national average E.I. DuPont Awards in 2000-2001. During that same period, non-

newspaper-owned stations received RTNDA Awards at a rate of only 22 percent of the national average. They received DuPont Awards at a rate of 39 percent of the national average per station.

A second study, performed by the Project for Excellence in Journalism ("PEJ"), supported the findings of the study discussed above. In its study, PEJ analyzed 5 years of data on ownership and news quality. PEJ concluded that cross-owned stations in the same Nielsen Designated Market Area were more than twice as likely to receive an "A" grade as were other stations.

In its 2003 Order, the Commission noted these findings above and concluded that, "[n]ot only do newspaper-owned stations provide more news and public affairs programming, they also appear to provide higher-quality programming, on average, at least as measured by ratings and industry awards." As a result, the Commission found it in the public interest to remove the cross-ownership ban. Although the Third Circuit remanded the revised rule that the Commission adopted, the court upheld the Commission's decision to remove the ban, finding that "[t]he Commission's decision not to retain a ban on newspaper/broadcast cross-ownership [was] justified under § 202(h) and [was] supported by record evidence."

As part of its 2006 media ownership proceeding, the Commission is committed to a thorough examination of the newspaper/broadcast cross-ownership rule and its impact on local news and information as we move forward with the review of our media ownership rules launched last summer. The Commission is conducting a study to examine the effect of newspaper cross-ownership on television news coverage using matched pairs of cross-owned and non-cross-owned television stations. This study, as well as all of the other economic studies, will be released to the public for review and comment.

The Commission also has already held three hearings on media ownership and plans to hold three more ownership hearings. In addition, the Commission intends to conduct two more hearings on broadcast localism this year.

I intend to take account of all we learn in these hearings and in our proceedings. I expect that this extended process will result in a complete record, including a thorough airing of all sides of this important issue, as well as empirical evidence from our studies and from the rulemaking, upon which we can base our decisions.

*Question 4.* The closest daily newspaper can be 100 miles away in some parts of my state. Do you see any particular challenges in providing a diversity of news viewpoints in rural parts of our country if further media consolidation is allowed to occur? Some argue local cable news channels and local Internet news sites can enhance competition and bring out a diversity of viewpoints, but are these answers going to work in rural communities?

*Answer.* I recognize the unique challenges small and rural communities face in their efforts to access media and information technologies. In this regard, broadband infrastructure is particularly important to those living in rural and other insular areas. These consumers need to have access to the same types of news and information resources as those who live in urban areas.

Some media companies, on the other hand, have commented in our media ownership proceeding that allowing newspaper-broadcast cross-ownership or allowing broadcasters to form additional duopolies is particularly important in smaller and rural markets to allow economies of scale that will both allow newspapers to survive in a time of declining circulation and permit broadcasters to compete effectively by offering more and improved local news coverage and local programming in their communities. As we engage in our ongoing examination of broadcast localism and media ownership, I intend to devote specific attention to the status of competition, diversity, and localism in smaller and rural markets.

*Question 5.* You have stated that a primary goal of your term as Chairman is to increase access to broadband throughout our country. I commend you for making this a top priority at the FCC. I agree with this goal and hope I help you in achieving it. While a vast majority of Americans have access to broadband, there are still key rural and other hard to reach areas that have not yet been connected. Every study shows that access to broadband increases economic opportunities as well as increases access to education and quality health care services. Do you believe the current Federal programs to advance broadband deployment are doing the job? Senator Stevens recently introduced USF reform legislation which leaves many details up to the FCC. If Congress were to implement these reforms, could the Commission fashion an effective USF broadband deployment program that would make efficient use of scarce USF dollars?

*Answer.* I believe that a modern and high quality telecommunications infrastructure is essential to ensure that all Americans, including those living in rural communities, have access to the economic, educational, and healthcare opportunities

available on a broadband network. Our universal service program must continue to promote investment in rural America's infrastructure and ensure access to telecommunications services that are comparable to those available in urban areas today, as well as provide a platform for delivery of advanced services. Indeed, in the Federal-State Universal Service Joint Board's 2002 Recommended Decision, I urged the Commission to explore how, and to what extent, the Federal universal service support mechanism could assist the deployment of advanced services, or at least the removal of barriers to such deployment, particularly in rural, remote and high cost areas throughout the country.

Unfortunately, the discussion about using universal service to fund broadband is being overshadowed by the uncontrolled growth in the fund as a result of subsidizing multiple competitors to provide voice services in rural areas. Before the Joint Board can make real progress on the true mission of universal service, ensuring access to high quality communications services in rural areas of the country, it must act to address the growth in the fund caused by competitive eligible telecommunications carriers (CETCs). Specifically, CETC payments have been growing at a trend rate of 101 percent per year since 2002. In 2000 CETCs received \$1 million in support. Based on recent USAC estimates, CETCs received almost \$1 billion in 2007. And, CETC support in 2007 is estimated to be at least \$1.28 billion.

Nevertheless, I would welcome the passage of an effective broadband deployment program that would make efficient use of scarce universal service moneys. Indeed, at an en banc meeting of the Federal-State Joint Board on Universal Service held on February 20, 2007, I and many of my Joint Board colleagues expressed support for exploring whether to support explicitly broadband as part of the high-cost universal service mechanism. To the extent legislation is passed, the Commission will faithfully and effectively implement it.

*Question 6.* South Dakota's nine Indian reservations have distinct challenges in their effort to increase access to broadband and wireless telecommunication services. There are unique characteristics in regards to existing infrastructure, local government, and population density. In your assessment are Native American communities taking full advantage of the USF program and other programs available to them? Has the FCC's "Indian Telecommunications Initiative" been effective in building partnerships and identifying solutions to bringing affordable telecommunications services to Indian country? Should we be doing more?

*Answer.* The unique characteristics and needs of consumers on tribal lands are addressed in part by the Commission's Lifeline and Link-Up low income programs. For example, residents of tribal lands can receive Federal Lifeline discounts above the typical Lifeline discounts of up to an additional \$25 off the monthly cost of telephone service. Similarly, Link-Up discounts for consumers in tribal areas are available to fully cover charges between \$60 and \$130, representing up to a maximum of \$100 in discounts for initial connection charges for telephone service.

As reported in the December 2006 Federal-State Joint Board Monitoring Report, support to tribal areas in 2005 totaled more than \$45.5 million for Lifeline services and more than \$2.5 million in Link-Up benefits.

However, getting the word out to all consumers eligible for these programs, including those on tribal lands, remains a challenge. A Federal/state working group was formed in 2005 to address precisely this issue, staffed by the FCC, the National Association of Regulatory Utility Commissioners and the National Association of State Utility Consumer Advocates. In a report released in February 2007, the working group identified tribal lands as an area with particular challenges due to the characteristics such as population density, and has suggested a focus on coordinating with tribal governments to facilitate dissemination of program information. On February 28, 2007, the National Congress of American Indians (NCAI), which includes 250 member tribes from throughout the United States met here at the FCC to further discuss these issues.

The Commission's Indian Telecommunications Initiatives (ITI) recognizes that different tribes are at different stages of economic development and their experiences with telecommunications vary. The ITI holds interactive regional workshops designed to provide "how to" information about telecommunications services and telecommunications infrastructure development, with an emphasis on the unique characteristics and needs of consumers on tribal lands in the region. Workshop participants typically include tribal, Federal agency, and communications industry representatives and agendas are set with the primary goal of providing clear, practical information tribes can use to gain access to critical telecommunications services. Informing tribes about the financial support available through Federal Government programs, such as Lifeline and Link-Up, is a consistent component of our regional workshops. Our most recent ITI regional workshops were held in Polson, Montana, in October 2006 and San Diego, California in July 2006.

In addition to the ITI workshops, senior Commission officials and staff regularly attend and participate in conferences, meetings, and other events sponsored by American Indian tribes, tribal organizations, and others interested in Indian country issues. These outreach activities provide excellent opportunities to establish beneficial relationships with tribal governments and their members, and to listen and learn about their telecommunications needs and requirements. They also provide opportunities to distribute detailed information about Commission rules and policies affecting telecommunications services in Indian country. Commission staff consults regularly with tribal government representatives to analyze and explore other initiatives and activities that will assist in ensuring that consumers on tribal lands have access to affordable, quality telecommunications services.

Finally, the Commission also makes available a tribal land bidding credit to any winning auction bidder that commits to deploying facilities and providing wireless services to qualifying tribal lands. A licensee receiving a tribal land bidding credit for providing services to tribal lands has 3 years from the grant date for constructing and operating its system to cover at least 75 percent of the tribal population within its market, or repay the credit plus interest. For example, the Commission recently conditioned a waiver granting relief from power limits to Crown Castle International Corporation upon fulfillment of its tribal lands construction obligation associated with the White Mountain Apache Reservation.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JIM DEMINT TO  
HON. KEVIN J. MARTIN

*Question 1.* Are any proceedings pending that would significantly reform universal service in a way that would reduce the amount of subsidies disbursed?

Answer. The Commission needs to move to a universal service distribution system that is more efficient. There are several proceedings in which the Commission is examining how best to disburse Federal universal service support. The Federal-State Joint Board on Universal Service (Joint Board) is currently exploring how best to reform the rural high-cost support mechanism. One of the ideas that they are considering is whether a “reverse auction” mechanism could be used as the basis for distributing universal service high-cost support. I believe that reverse auctions could provide a technologically and competitively neutral means of controlling fund growth and ensuring a move to most efficient technology over time. The Joint Board will be issuing recommendations on these issues in the near future.

*Question 2.* Congress has mandated that analog broadcasting cease by February 2009, and that the auction of the analog spectrum occurs no later than January 2008. What proceedings need to be completed this year so that the auction can go forward as directed by Congress?

Answer. There are two proceedings that must be completed so that the auction can go forward as directed by Congress:

- *Service Rules for the 698–746, 747–762 and 777–792 MHz Bands, Notice of Proposed Rulemaking*, WT Docket No. 06–150, 21 FCC Rcd 9345 (2006)—seeking comment, among other things, on possible modifications to the service, technical, and auctions-related rules to be applied in the Congressionally mandated auction of analog spectrum and the use of that spectrum.
- *700 MHz Auctions Procedures Proceeding*—before the auction, specific procedures need to be adopted for the conduct of the 700 MHz auction. Such procedures encompass auction structure as well as the specific bidding procedures to be applied—including minimum opening bids, minimum acceptable bid amounts during the course of the auction, and auction activity requirements.

*Question 3.* What is the current status of each of those proceedings?

Answer. The status of each proceeding listed above is as follows:

- *Service Rules for the 698–746, 747–762 and 777–792 MHz Bands*—the Commission released a Notice of Proposed Rulemaking on August 10, 2006. Comments were filed on September 29, 2006. Reply Comments were filed on October 20, 2006. I anticipate the Commission issuing an order on the service rules in the spring of this year.
- *700 MHz Auctions Procedures Proceeding*—once the Commission completes the service rules proceeding, comment will be sought on auction procedures. The Commission will need to complete this proceeding by late summer.



*Question 4.* What percent of retransmission consent agreements between broadcasters and cable providers result in the broadcast channel being taken off the cable system?

Answer. Because retransmission consent involves *private* contractual negotiations, the Commission *does* not currently have information on retransmission consent *arrangements*.

*Question 5.* How many retransmission consent agreements are negotiated successfully each year?

Answer. As noted above, the Commission does not currently have information on retransmission consent arrangements.

*Question 6.* The requirement to provide analog cellular service expires in February 2008. Do you see any possibility that the February 2008 deadline would be extended?

Answer. We have under consideration a request that the deadline be extended that was filed by the Alarm Industry Communications Committee and ADT Security Services, Inc. Comments were filed on January 19, 2007. Reply Comments were filed on February 6, 2007.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DAVID VITTER TO  
HON. KEVIN J. MARTIN

*Question 1.* I wanted to ask about the Image Access, Inc. (NewPhone) Petition for Declaratory Ruling pending before the Commission, WC Docket No. 06-129. This petition deals with the rates for local services charged by wholesale incumbent telephone companies to telephone service resellers. A few companies in Louisiana are interested in how the Commission will deal with this petition and if it will be considered soon. These companies state that a disposition of this petition would help bring certainty to their market and by clearing up rules related to the FCC's regulations on the pricing for service resellers. Please let me know the status of the Commission's efforts to address this petition.

Answer. The 1996 Act requires all incumbent LECs to offer for resale any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. The Commission has found that resale restrictions are presumptively unreasonable. Accordingly, it adopted rules outlining circumstances under which incumbent LECs' promotional and discounted offerings are subject to the wholesale rate requirements in the Act. I also believe that incumbent LECs should allocate their costs consistently throughout all aspects of their operations. Thus, to the extent an incumbent offers a mixed bundle of telecommunications and non-telecommunications services, I expect that they will allocate the telecommunications portion of their service for resale purposes in the same manner that it allocates this portion of the service for all other purposes. The Commission sought comment on NewPhone's petition and the record closed last summer. We are currently considering the policy and legal clarifications sought by NewPhone.

*Question 2.* I have been alerted to a problem regarding compensation to payphone providers for coinless calls made from their phones. According to recent FCC statistics, about 6 percent of Louisiana households do not have any type of phone in their home. During the immediate aftermath of Hurricanes Katrina and Rita, payphones were the only way many people—both those without any other phones and also those whose mobile phones were not working due to the networks being overloaded—could reach emergency personnel or family and loved ones. Without being fairly compensated according to the rules set forth by the Commission, payphone providers will not be able to maintain these phones. I have been told that in the last 2 years since the Commission most recently revised the payphone compensation rules, a large number of carriers have failed to comply with their obligations under these rules. I also understand that in December 2006, the FCC issued its first sanctions against one of these carriers that violated these rules. I would appreciate hearing your comments on whether you think the agency has sufficient power and resources under your existing authority to continue to enforce these rules and help ensure that companies are not able to disregard the Commission's payphone compensation rules.

Answer. Enforcement of the Commission's rules, including our payphone compensation rules, is a priority. The Commission has taken several enforcement actions against carriers who have not complied with our payphone rules and is currently investigating other carriers. As you mention, last December, the Commission found that Compass, Inc., d/b/a Compass Global, Inc., apparently failed to meet its statutory and regulatory obligations related to payphone compensation, and the

Commission imposed a total forfeiture of \$466,000. More recently, on February 23, 2007, the Commission released an order awarding approximately \$2.7 million in damages, plus prejudgment interest, to billing and collection agents for various payphone service providers ("PSPs"), which represented per-call compensation owed to the PSPs pursuant to section 276 of the Communications Act.

In addition to enforcement actions, the Commission has taken steps to help payphone providers receive compensation by reminding carriers of their obligations to payphone providers. On September 13, 2006, the Commission's Wireline Competition Bureau released a Public Notice reminding carriers of their obligations under the payphone rules, and also reiterating that it will not hesitate to take enforcement action, including imposing forfeitures, should carriers fail to comply with their compensation and reporting obligations.

The combination of enforcement actions and the Public Notice informing carriers of their obligations are steps that the Commission has taken to ensure that carriers do not disregard our payphone rules. We also recognize the importance of payphones, especially in emergency situations. As such, we will continue our efforts of investigating and taking enforcement actions against carriers who fail to compensate payphone providers for completed calls.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO  
HON. MICHAEL J. COPPS

*Question 1.* In March, 2006, the FCC allowed a Verizon forbearance petition to become effective by operation of law. Because there was a vacancy on the Commission at that time and a 2-2 split among Commissioners, Verizon was able to gain regulatory relief through Commission inaction. Does the current process regarding the disposition of forbearance petitions in the absence of a Commission majority essentially allow petitioners to write the terms of their relief?

Answer. Yes. As I said at the time of the Commission's inaction on the Verizon petition, permitting a forbearance petition to go into effect like this is akin to providing industry the pen and giving it the go-ahead to rewrite the law. I believe Congress trusted the FCC to implement the law, but it did not tell us to delegate far-reaching policy changes to the companies that fall under our jurisdiction. I note a recent submission to the D.C. Circuit Court of Appeals concerning the appeal of the Verizon forbearance petition, which argues that "[w]hen the FCC voted 2-2 on Verizon's Petition, the legal effect of its deadlock was to deny Verizon's Petition." *Sprint Nextel Corp. et al. v. FCC*, Case No. 06-1111, filed Feb. 26, 2007.

*Question 1a.* Is it fair in such situations to allow petitioners to amend the scope of their requested relief after the period for comment on the original petition has concluded?

Answer. I fear that allowing petitioners to amend the scope of the relief requested after the comment period has concluded denies the public the opportunity to offer input. This is of special concern when petitions address vast areas of communications policy and inaction is tantamount to the Commission erasing decades of communications policy in a single stroke.

*Question 1b.* Should forbearance petitions be denied in the absence of an order approved by a majority of Commissioners?

Answer. Ideally, yes. I believe the Commission would benefit from additional Congressional guidance on this point.

*Question 2.* One of the biggest challenges we face over the next 2 years is moving our Nation from analog to digital television with minimal consumer disruption. I understand that the FCC is currently receiving comment on its Proposed Final Table of DTV allotments, proposing final digital channels for TV broadcast stations. However, even after that is final, additional actions will be needed to complete the transition. Given the enormity of the task before us, what action is the Commission taking and what action should it take to ensure that our country is ready in February 2009?

Answer. I believe the Commission needs to confront head-on the significant consumer confusion that exists in this area. We should be working to ensure that every customer understands what the February 2009 date will mean for his or her viewing options. We should strive to let every consumer understand how his or her buying decisions between now and then will affect those options. I appreciate the actions taken by the agency to date, including our Consumer and Governmental Affairs Bureau reaching out to state, local, and tribal governments and public service organizations, as well as its efforts in creating a DTV website ([www.dtv.gov](http://www.dtv.gov)), shopper's guide and DTV tip sheet. But if we are going to succeed here, we have to do more.

We need to be working closely with NTIA and the consumer electronics industry to ensure that we get the word out to every American as early as possible. Consumer education and outreach have not always been at the core of this agency's mission—but with the transition less than 2 years away, the time to make it a priority is now.

*Question 3.* A recent study conducted by Free Press entitled, *Out of the Picture: Minority & Female TV Station Ownership in the United States*, contained some sobering statistics.

Women comprise 51 percent of the entire U.S. population, but own a total of only 67 stations, or 4.97 percent of all stations.

Minorities comprise 33 percent of the entire U.S. population, but own a total of only 44 stations, or 3.26 percent of all stations.

Latinos comprise 14 percent of the entire U.S. population, but own a total of only 15 stations, or 1.11 percent of all stations.

African Americans comprise 13 percent of the entire U.S. population but only own 18 stations, or 1.3 percent of all stations.

Asians comprise 4 percent of the entire U.S. population but only own a total of 6 stations or 0.44 percent of all stations.

Do these facts trouble you as they do me, and what action should the Commission take to promote greater diversity of ownership?

Answer. These facts are beyond troubling and they deserve far more attention than they are getting. Today, the media and communications industries account for one-sixth of the U.S. economy. It may be the most influential industry in our country. We need to harness the promise and power of this sector for the benefit of all Americans, because every person in this country is entitled to a media that reflects America and serves the public interest. But as these numbers show, we are nowhere near taking advantage of our great diversity when it comes to the state of media in this country.

When it comes to media, ownership rules. If we truly want to increase the number of voices on the public airwaves, we need to diversify ownership. To get this process rolling, the FCC must seek comment on the minority ownership proposals remanded by the Third Circuit in 2003. To date, the Commission's failure to seek comment specifically on these proposals undermines the credibility of FCC efforts to respond to the court's remand. That leads me to question whether the agency is willing to be really proactive in promoting greater ownership diversity.

Finally, let me note that recent proposals that would have broadcasters leasing spectrum on non-primary digital channels to independent minority businesses so they can access the airwaves more easily after the digital transition do not get to the root of the problem. They may be fine as far as they go, but they go nowhere near far enough. They fail to address the troubling state of minority media ownership. Offering a few hours on the fourth or fifth channel ensures little more than second class citizenship on the digital airwaves.

*Question 4.* On November 22, 2006, the day before Thanksgiving, the FCC released a list of economic studies to be performed in the media ownership proceedings. How did the Commission choose the economic studies to be performed in the media ownership proceedings?

Answer. The Chairman's Office selected the studies to be performed.

*Question 4a.* Who at the Commission or elsewhere was consulted for input on the topics chosen?

Answer. Early in the process, the Chairman's Office asked for input from our office. I remain concerned, however, that the topics are so generalized that they may not be of much assistance as we address specific questions raised by the court remand.

*Question 4b.* How were parties selected for the studies done outside the Commission, and what is the cost of these contracts?

Answer. I believe the public has a right to know how the contractors were selected and how much money is being spent on each project. To date, this information has not been made publicly available. When the majority of the previous FCC voted to loosen the ownership rules in 2003, the court took them to task for inadequate justification of their handiwork. My hope has been that the Commission would not head off on the same course again—especially at a time when so many people already doubt the credibility of the research we do.

*Question 4c.* Would the Commission consider seeking public comment on what other studies might assist the Commission in its review of ownership rules?

Answer. I wholeheartedly support seeking public comment on what other studies could assist the Commission in its review of ownership rules. More than that, I believe it is imperative for whatever studies that are produced to be subject to peer review and public comment. The previous FCC was taken to task by the Congress, court and American people for its failure to seek public input during our last effort at revising our media ownership rules. It is vitally important that the Commission not trip itself up by failing to get public input during this current effort.

*Question 5.* In November 2006, the Government Accountability Office (GAO) issued a report concluding that the cost of special access has gone up—not down—in many areas where the FCC predicted that competition would emerge. To address this error, the report recommended that the FCC develop a better definition of “effective competition” and monitor more closely the effect of competition in the marketplace. Do you agree with these findings?

Answer. Yes. I have long pushed the FCC to review its policies governing special access. Special access is the backbone of business communications in this country. If our rules are inadequate to ensure competitive pricing, we must revisit them.

*Question 5a.* What action should the Commission take in response?

Answer. I have long pushed the FCC to review its policies governing special access. In 2005, the Commission began a Notice of Proposed Rulemaking to consider changes to our rules governing special access. We are overdue to complete this effort. It would have the added benefit of responding to some of the very same criticisms that are in the GAO report.

*Question 6.* Last year, Congress passed legislation imposing a ten-fold increase in the size of maximum fines for indecency violations, to a maximum of \$325,000 per violation. At the time President Bush signed the law, he said “[t]he problem we have is that the maximum penalty that the FCC can impose under current law is just \$32,500 per violation, and for some broadcasters, this amount is meaningless. It’s relatively painless for them when they violate decency standards.” Should Congress similarly raise the statutory maximum fine for other violations?

Answer. I worry that too many Commission fines are treated by our largest regulatees as simply the cost of doing business. Because larger fines are greater deterrents, I think it would be valuable to see in what areas under our jurisdiction compliance with FCC rules is the most problematic. In those areas, I believe Congress may want to consider increasing maximum fines.

*Question 6a.* What other actions should be taken to promote swifter and more effective enforcement?

Answer. Without swifter responses from the FCC, businesses will be disinclined to seek redress through Commission enforcement processes. Imposing deadlines on FCC action would increase the effectiveness of FCC enforcement action.

*Question 7.* Recently, the FCC adopted an order to prohibit certain practices by franchising authorities that the Commission finds are unreasonable barriers to entry. One issue mentioned in that order, which is very important to the State of Hawaii, is the ability of the franchise authority to seek appropriate contributions for public, educational, and governmental (PEG) and institutional networks (I-nets). I understand that some parties have disputed the veracity of some claims made in this proceeding. What, if any, efforts did the Commission take to independently investigate and verify the claims of unfair demands made by many of the carriers in this proceeding?

Answer. Too few, if any. In this context and in others the Commission relied heavily on the submissions of interested parties. These submissions are vitally important, but need to be accompanied by the FCC’s own independent research, verification and investigation. For this reason, among others, I dissented to this decision.

*Question 8.* In 2004, the FCC adopted a plan to move certain licenses within the 800 megahertz band in order to eliminate interference problems that were being experienced by public safety communications systems. What is your assessment of the pace of progress in rebanding the 800 MHz band and what steps does the Commission intend to take in order to get this process back on track?

Answer. We are now half-way through the 36-month re-banding process. It is my understanding that the new Public Safety and Homeland Security Bureau has been working closely with the Transition Administrator, public safety agencies and organizations and the other relevant stakeholders. I understand that some, but not all, parties think an extension of time will be necessary, and that various stakeholders have requested that the Commission work with the Transition Administrator to develop specific intermediate benchmarks. I would be very reluctant to grant an extension of the June 2008 deadline and would consider doing so only if it became abso-

lutely necessary to make the process work and in order to avoid any disruptions to public safety operations. Obviously, any potential relief would depend on the specific facts and those facts would need to be compelling. I continue to monitor the timetable closely in order to make sure that public safety receives the benefits promised by re-banding.

*Question 9.* A number of wireless carriers have employed the use of high “early termination fees” to prevent wireless customers from switching to other carriers. In some cases these fees may be \$200 or more, and may apply regardless of whether the subscriber wishes to cancel on the first or last date of their wireless contract. Do you believe these practices promote or impede competition?

Answer. Too often, I believe these practices impede competition. I have heard from consumers who feel that they are left with little or no option in terms of changing providers because of the early termination fees that they would be forced to pay, even if they are dissatisfied with their provider.

*Question 10.* Given requirements imposed by General Services Administration to promote greater redundancy of communications, how would the retirement of copper facilities impact Congress’ directive to promote the availability of alternate network facilities in federally owned and leased buildings?

Answer. Having redundant networks is an important part of ensuring the security of our communications system. Under the statute and under Commission rules, incumbent local exchange carriers seeking to retire copper loops must comply with FCC network modification disclosure requirements. While carriers should be permitted to update their network architecture, there is reason to be concerned that this process may reduce the availability of alternate network facilities in, among other places, federally owned and leased buildings. The Commission should consider reviewing its rules in order to ensure that under the guise of upgrading facilities, carriers do not sacrifice the safety and security that comes with having redundant networks.

*Question 11.* Given the Commission’s policy of promoting broadband deployment and eliminating regulations that treat competitors in the provision of broadband differently, how is this policy being implemented with regard to pole attachment regulations?

Answer. While implementing pole attachment policy is one of the drier and more technical issues the Commission faces, it is also essential to ensuring that we have a competitive broadband market. Unfortunately, I do not believe the Commission has done all it should in order to ensure that businesses have certainty about what our rules require and to welcome new entrants into the market for broadband services. I believe we owe the broadband over power line industry some certainty about how pole attachment rules will apply to them. I also believe we need to act in an expeditious fashion to resolve petitions before the agency that would clarify the rules that apply to competitive entrants into the wireline broadband market who seek to use poles and conduits owned by incumbent wireline providers.

*Question 12.* Recently, a Virginia Federal court referred a matter to the FCC for review and clarification as to whether Internet Protocol Television or “IPTV” service meets the definition of a “cable service” under the Communications Act—a question that this Committee answered affirmatively during consideration of last year’s telecommunications bill. How does the Commission intend to address this matter?

Answer. In 2002, the Commission took its first steps down the reclassification road by pronouncing cable modem service to be an information service under the Communications Act. Three years later, the Commission reclassified wireline broadband Internet access as an information service. As I have noted from the start, this reclassification frenzy has consequences. Moving a service from one title to another means the FCC has an obligation to spell out what it means for everything from homeland security to universal service to consumer privacy to disabilities access. Furthermore, it means the FCC should consider what the consequences are for new services, like IPTV. Unfortunately, the FCC has ducked and dodged too many of these questions, and new ones have arisen in the wake of these decisions. I believe the Commission is overdue to answer questions like these and provide consumers and industry alike with clear answers.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO  
HON. MICHAEL J. COPPS

*Question 1.* Eleven years after Congress passed the 1996 Telecommunications Act that opened the floodgates of media consolidation in the radio industry is American

radio better or worse than it was in 1996 in terms of viewpoint diversity and localism?

Answer. I fear it is substantially worse. The Telecommunications Act of 1996 eliminated the national radio cap, ushering in a tremendous and totally unanticipated wave of consolidation in terrestrial radio. The top ten radio conglomerates now control  $\frac{2}{3}$  of the total American radio audience. The result is that fewer companies own more radio stations in each market. This has had a scary impact on viewpoint diversity and localism. Fewer owners mean fewer voices in each market, and too often it means deep cuts in local newsgathering. As a result viewpoint diversity suffers, as does reporting on the truly local news.

Well-informed citizens are the lifeblood of our democracy. Having less local news and fewer viewpoints leaves us poorer as citizens, voters and as participants in community life. I am deeply concerned that further consolidation will further erode the viewpoint diversity and local character of radio.

*Question 2.* How has consolidation impacted the public's ability to hear local music and local news on the airwaves?

Answer. Over the past 5 years, I have been in scores of media markets across the nation, trying to understand how various localities are faring under the tremendous consolidation that has overtaken America's media during the past decade. The vast majority of local television and radio markets are tight oligopolies, with even higher levels of concentration for local news. In this environment, add a merger between the monopoly newspaper and dominant television station and you get fewer reporters covering fewer beats, less diversity of opinion and a reduction in editorial voices. This wave of consolidation may serve shareholder interest by reducing competition and cutting newsgathering costs. But far too often this comes at the expense of the public interest, because it strips to bare bones the amount of independently produced news available in a local community.

The same consolidation tune has played out on radio. A study of the top 50 radio markets shows that local market concentration means more homogenous formats, fewer overall songs played and less attention to songs that are no longer on the charts. In this environment, local music rarely has a chance to get on the airwaves.

*Question 3.* Even with the existence of net neutrality conditions on AT&T, are there rules in place to ensure that other broadband providers do not discriminate against Internet content, services or applications? Given the rulings on information services, is it even clear that the FCC has authority to act if such discrimination occurs?

Answer. The Communications Act has long prohibited common carriers from unjust or unreasonable discrimination. With the Commission's effort to reclassify wireline broadband Internet access service as an information service, this prohibition may no longer directly apply. So in response to the effort to reclassify, I pushed for the FCC to adopt its Internet Policy Statement. I see this effort as a starting point, because if we want Internet Freedom, we need to ensure that FCC policy adjusts so it continuously promotes the openness that has made the Internet so great. I believe that under Title I of the Communications Act the FCC has authority to act if discrimination occurs. Nonetheless, I acknowledge that this authority is less than optimally clear. In this environment, the FCC surely would benefit from Congressional guidance.

*Question 4.* In an environment of industry consolidation and technological integration, what role do you see the FCC playing to ensure nondiscriminatory access to infrastructure, content, roaming, spectrum and rights of way?

Answer. I believe that in the coming years, the Commission should make enforcement of the basic principle of nondiscrimination one of its central goals in a variety of technical areas—just as it has traditionally done in its regulation of the Public Switched Telephone Network. That is why I support the idea of Internet Freedom, which ensures that consumers of one Internet service provider will have equal access to the customers and content served by every other Internet service provider. I also believe that the principle of openness and non-discrimination should apply in a variety of other, comparable contexts. For example, I believe customers of smaller wireless carriers should have access—through commercially-reasonable, non-discriminatory roaming agreements—to the networks of larger carriers. Similarly, new entrants should have fair access to rights-of-way in order to promote competition. I believe that a strong commitment to the principles of competition, non-discrimination and open and interconnected networks will ensure that America's consumers are able to take full advantage of the rapid pace of technological innovation and evolution.

*Question 5.* Do you think that the current broadband market is sufficiently competitive and robust in terms of broadband deployment? Does the FCC currently have

sufficient tools to even accurately determine whether Americans have access to broadband?

Answer. I am not satisfied that the current broadband market is sufficiently competitive. In the United States, 96 percent of consumer broadband is provided by either cable modem or DSL technology. If they are lucky, then, consumers have a choice between the cable and DSL duopoly. But too many lack even this choice and we are paying a price for this low level of competition. Americans spend twice as much for broadband connections that are one-twentieth the speed of some countries in Asia and Europe. This state of affairs has to change. Without greater competition and a viable third broadband pipe, we consign too many of our businesses to tough stakes in the global digital economy and too many of our students to learning at dial-up speeds.

I also am not satisfied that the FCC has the data necessary to adequately determine where there is broadband access in this country. I have long been on record as a critic of the FCC's broadband data gathering techniques. No business in its right mind would make decisions based on the weak set of statistics we gather. The FCC assumes that if there is a single subscriber to 200 kilobit broadband in a zip code, then broadband is available throughout the area. This is like—as someone recently told me—finding a driver of a Mercedes in each zip code and concluding, ergo, everyone there drives a Benz. What I'd really like to see is the FCC collect more granular information on consumers' competitive choices; gather data on broadband price and measure the cost per bit in this country; compare these statistics to our international counterparts; and develop a deeper understanding of why our Nation's consumers—in urban, suburban, rural and tribal regions—are or are not able to subscribe to broadband services. That would really tell us something about just what the state of broadband deployment and penetration looks like in this country.

*Question 6.* How do you envision universal service reform moving ahead to keep the fund sustainable? I am concerned about proposals that would not require broadband connections to pay into universal service, or reverse auction proposals that advocate providing USF support in an auction type model to the least cost provider.

Such proposals bring uncertainty to investment plans, and shift the universal service standard from comparable to urban areas, to one that would just go to the lower bidder, quality irrelevant. I understand that rural providers have expressed concern about both proposals. Can you discuss the least cost provider issue, as well as what possible distinctions exist to justify excluding broadband from paying into USF—why shouldn't a technology that uses and benefits from the network pay into universal service?

Answer. The Commission is charged with preserving and advancing universal service. That means ensuring everyone, from the inner city to the most rural reaches of the country, has access to the wonders of communications. The challenge we face in meeting this great objective is ensuring that our universal service mechanisms are sustainable. As more of our networks and communications migrate to broadband technology, I believe the key to sustainability lies in modernizing the universal service system. That means having broadband both contribute to and receive support from the universal service fund.

While I am open to considering a wide array of reform proposals designed to ensure the sustainability of universal service, I have serious questions about the impact of an auction-based universal service system on rural areas in this country. Congress directed the Commission to ensure that consumers in all regions have access to comparable services at comparable rates. It is not yet clear to me that an auction-based system that rewards the least-cost provider will guarantee comparable services at comparable rates. Furthermore in 1997, when the Commission last considered the use of auctions, it noted "it is unlikely that there will be competition in a significant number of rural, insular, or high cost areas in the near future. Consequently, it is unlikely that competitive bidding mechanisms would be useful in many areas in the near future." Before moving ahead here, it is imperative that we understand what, if anything, has changed since the Commission reached this conclusion.

*Question 7.* What is your view of making the deployment of advanced infrastructure that is fully capable of offering the wide array of broadband oriented services the hallmark of our national universal service policy? Should universal service subsidize broadband?

Answer. Yes. Broadband is the infrastructure challenge of our time. Our future will be decided by how we master, or fail to master, advanced communications networks and how quickly and how well we build out broadband connectivity. The challenge comes in making sure that rural Americans get there right in time with the

rest of the country. Universal service can play a vital role in making this happen. First, as more and more of our communication migrates to broadband technology, broadband should be part of the contribution base. Second, as part of the contribution base, broadband should also be the subject of universal service support. This way we can modernize our current system to make the deployment of advanced infrastructure the hallmark of our national universal service policy.

Finally, it is important to note that universal service is only one of several policies that can speed the way for broadband in rural America. Ultimately, our efforts at the FCC must be part of a larger national broadband strategy that entails additional components that may be outside of Commission jurisdiction, like matching grants and tax incentives. On this point, however, time is not our friend. I believe every industrialized country around the globe already has a national broadband policy, save for the United States. We are long overdue to adopt and implement a policy to address this pressing national infrastructure challenge.

*Question 8.* The FCC recently has been granting incumbent providers (ILECs) forbearance from regulations on the premise that sufficient competition exists in a specific market to make enforcement of the regulations unnecessary. However, a Fall 2006 GAO report indicates that the assumptions the FCC uses to determine the existence of competition may be flawed and further that prices in Phase II areas—that is, areas where competition is theoretically most intense—are going up. Is that the case, and if so, are price increases consistent with a competitive market?

Answer. We all know that in a truly competitive market, consumers will enjoy lower prices due to competition among providers. But as the GAO report notes, some aspects of the special access market in this country are characterized by rising rates. In particular, the GAO found that in areas where the FCC has granted full pricing flexibility due to the presumed presence of competitive alternatives, prices are higher than in areas that remain subject to FCC regulation. This suggests something is askew with FCC policies. After all, price increases are not naturally the product of a competitive marketplace. It may very well be that the key competitive market assumptions on which the Commission built its pricing flexibility relief were flawed. I believe the FCC is past due to review its policies governing special access. For this reason, I have pushed for the Commission to resolve its outstanding 2005 Notice of Proposed Rulemaking concerning special access. The GAO report makes it even clearer that this is the right thing to do.

*Question 9.* Is forbearance for the ILECs in the public interest?

Answer. I have concerns about the existing forbearance process regardless of whether the petition at issue is filed by an incumbent LEC or any other party. If the Commission fails to act on a forbearance petition within the statutory timeframe, it effectively hands the petitioning party the pen and permits it to rewrite the law. I believe Congress trusted the FCC to implement the law, but it did not tell us to delegate far-reaching policy changes to the companies that fall under our jurisdiction. For this reason, the Commission would benefit from additional Congressional guidance in this area.

*Question 10.* A proceeding to investigate the rates, terms and conditions for interstate special access services has been pending for a number of years. What is the status of the FCC's special access proceeding? What steps are being taken to speed resolution of this matter?

Answer. I have long pushed the FCC to review its policies governing special access. Special access is the backbone of business communications in this country. If our rules are inadequate to ensure competitive pricing, we must revisit them. In 2005, the Commission began a Notice of Proposed Rulemaking to consider changes to our rules governing special access. We are overdue to complete this effort. This would have the added benefit of responding to some of the very same criticisms that are in the GAO report on special access.

*Question 11.* Some say that the dispute between Mediacom and Sinclair signals a new period of confrontation between broadcasters and distributors. How many complaints involving retransmission consent disputes has the Commission received in the last couple of years? Is there any trend within that data that may be useful to consider? How long does the Commission typically take to resolve those complaints?

Answer. In 2000, the Commission adopted rules governing good faith retransmission consent negotiation, pursuant to the Satellite Home Viewer Improvement Act of 1999. Since that time, the Commission has received 17 complaints. Thirteen of these complaints were withdrawn after the parties settled the dispute through private negotiation. Of the four remaining complaints, two led to decisions and two are pending. For the two decisions issued, the FCC took between 2 months and four and a half months to resolve the complaints.



Due in part to the dispute between Mediacom and Sinclair, this issue has received increased attention in recent months. On the one hand, multichannel video programming distributors claim the large integrated programmers tie their non-network programming to carriage of the network. They suggest that this leads to higher prices for the basic tier and occupies capacity that could be used to carry independent networks. On the other hand, broadcasters claim that they will need retransmission consent to negotiate the carriage of all of their digital signals. One thing is certain. Small broadcasters claim that they are at a disadvantage when negotiating against big cable companies and small cable operators claim the rules put them at a disadvantage when negotiating with large programming networks. All in all, the problem seems to stem from media concentration.

*Question 12.* One issue specifically important for public radio stations is the opportunity to file for and receive additional reserved FM spectrum. It has been almost 7 years since the FCC provided the public with an opportunity to build new noncommercial educational stations on reserved FM spectrum. When will the FCC open a filing window for new reserved-FM noncommercial stations? Will the FCC provide public notice of a filing window sufficiently in advance to permit non-profit, governmental, and other potential applicants adequate time to participate?

Answer. The Chairman's Office will determine when the FCC will next open a filing window for new reserved-FM noncommercial stations. I will do everything in my power to ensure that the FCC provides public notice of a filing window sufficiently in advance to permit non-profit, governmental and other potential applicants adequate time to apply for licenses. Low power radio is one of the last vestiges of localism and diversity and we need to provide an environment in which it can flourish.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
HON. MICHAEL J. COPPS

*Question 1.* When the Commission re-examines the existing ban on newspaper-television cross ownership, should the analysis be focused on how people obtain their local news and information or how they obtain all of their news and information? Does this distinction make a difference?

Answer. This distinction is vitally important. It goes to the heart of the FCC's consideration of the newspaper-broadcast cross-ownership ban. While there are new and exciting ways to gather news and information—most notably, the Internet—local broadcasting and newspapers are still forces to be reckoned with when it comes to local news. More than eighty percent of Americans say that local television, local radio or local print outlets are their most important source of news and information. Furthermore, what makes broadcasting unique is the obligation of station owners to address the needs and interest of the local community of license. I know of no other news medium that has this obligation under the law. So the Commission must keep its eye on the ball when it examines the existing ban and make certain that it focuses on how citizens get their *local* news.

*Question 2.* Do you consider blogs to be a reliable source of news?

Answer. Many blogs offer interesting commentary and exceptional news analysis. Blogs democratize punditry and make it easy to publish and share ideas across the country and across the globe. At the same time, few blogs are able to support the kind of investigative staffs and hard-hitting newsgathering and journalism that have traditionally characterized their larger counterparts at TV stations, radio stations and newspapers. Moreover, not all blogs subject themselves to the same journalistic standards that you'll find at these institutions. In the end, I believe the blogosphere is a fantastic addition to our media landscape. But in light of the different elements that make up this medium, I believe we must be extremely careful not to generalize about its substitutability for other forms of journalistic media.

*Question 3.* Do you believe the Commission's streamlining of the license renewal process over the years has led to a reduction in the local news and other public interest programming on television and radio?

Answer. Yes. Over time the Commission has pared back its license renewal process from one in which it examined every 3 years whether the broadcaster was actually serving the public interest to one where companies need only send us a postcard every 8 years and nothing more. Unless there is a major complaint pending against a station, license renewal is all but automatic. At the same time, the Commission has allowed too many of the fundamental protections of the public interest to wither and die—requirements like understanding the needs of the local audience, teeing up controversial issues and providing demonstrated diversity in programming, to name a few of the safeguards we had once but have since abandoned. As the Commission

has dismantled these provisions, it has relied instead on marketplace forces as a proxy for serving the public interest. Along the way, make no mistake about it, localism, diversity and competition suffered grievous wounds. We not only see less local news and public interest programming, we have come perilously close to taking the “public” out of the public airwaves.

*Question 4.* Are there actions the Commission can take within its existing authority to ensure that broadcasters are more responsive to the needs and interests of the communities they serve without being overly burdensome?

Answer. Yes. Under the law, broadcasters have a duty to benefit the public in return for using the public’s airwaves. As our Nation moves from analog to digital broadcasting, we have an opportunity to ensure that these technologies support our oldest values—like diversity, localism and competition. To this end, the Commission could use the dawn of digital television to ensure digital broadcasters offer a streamlined minimum of local civic programming, local electoral affairs coverage, public service announcements and creative independent programming. This could enrich our communications landscape immeasurably, with more coverage of the democratic process, more opportunities for new voices and more local news. Finally, I would note that the Commission has already made some progress in this area by virtue of adopting its children’s programming rules. This effort could be used as a model for further efforts to enumerate public interest obligations in a digital age.

*Question 5.* In your opinion does Congress need to give the Commission new authority with respect to specifying factors it needs to consider when renewing a broadcasting license or for the length of a license?

Answer. I believe the Commission has the authority it needs to specify factors to consider when renewing a broadcasting license. It used to be that broadcasters had a duty to demonstrate compliance with a clear set of public interest obligations in order to ensure the renewal of their license. But while the Commission may have the authority to again specify such factors—and in a digital age it seems doubly important to do so—it does not appear to have the will. So I believe this is an area where the Commission—and the American public—would truly benefit from additional Congressional guidance.

*Question 6.* Do you believe that Congress needs to review the rationale and process for addressing petitions for forbearance in Section 10 of the Communications Act? If so, why?

Answer. Yes. The Communications Act permits the Commission, either on its own motion or in response to a petition, to forbear from applying regulations or provisions of the Act to telecommunications carriers or telecommunications services. Furthermore, the Act provides that forbearance is warranted if the regulation or provision at issue is not necessary to prevent discrimination, not necessary to protect consumers and otherwise in the public interest. While these guideposts are useful in shaping our assessment of the need for relief, I believe the Commission would benefit from having more precise parameters. In addition, I have concerns that if the Commission fails to act on a forbearance petition, it effectively hands the petitioning party the pen and permits it to rewrite the law. I believe Congress trusted the FCC to implement the law, but it did not tell us to delegate far-reaching policy changes to the companies that fall under our jurisdiction. For this reason, the Commission would benefit from additional Congressional guidance in this area.

---

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. FRANK R. LAUTENBERG TO  
HON. MICHAEL J. COPPS

*Question.* In approximately 2 years, broadcasters will shift to digital television. There are over 200,000 homes in New Jersey that rely exclusively on over-the-air television. Do you think most Americans are educated about this transition today? What role will the FCC play in preparing the public for this transition?

Answer. I believe the Commission needs to confront head-on the significant consumer confusion that exists in this area. We should be working to ensure that every customer understands what the February 2009 date will mean for his or her viewing options. We should strive to let every consumer understand how his or her buying decisions between now and then will affect those options. I appreciate the actions taken by the agency to date, including our Consumer and Governmental Affairs Bureau reaching out to state, local, and tribal governments and public service organizations, as well as its efforts in creating a DTV website ([www.dtv.gov](http://www.dtv.gov)), shopper’s guide and DTV tip sheet. But if we are going to succeed here, we have to do more. We need to be working closely with NTIA and the consumer electronics industry to ensure that we get the word out to every American as early as possible. Consumer

education and outreach have not always been at the core of this agency's mission—but with the transition less than 2 years away, the time to make it a priority is now.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK L. PRYOR TO  
HON. MICHAEL J. COPPS

*Question 1.* Over the past 4 years, consumers have enjoyed the successful emergence of a number of new players in the audio marketplace. Satellite radio and Internet radio now reach tens of millions of listeners every week, and portable MP3 players and Ipods have become common household items.

Digital Cable and DBS offer dozens of channels of uninterrupted music, and Wi-Max technology is evolving that will soon allow Internet-based listening options in automobiles.

Would the Commissioners agree that the competitive landscape has changed dramatically in the audio market over the past few years?

And would the Commissioners agree that this trend is only likely to continue for the foreseeable future?

Answer. In some ways, the media music landscape has changed dramatically over the past few years. There are new options and new technologies. But in too many ways, the song remains the same. A study of the top 50 radio markets shows that local market concentration means more homogenous formats, fewer overall songs played and less attention to songs no longer on the charts. Other studies have shown that for most radio formats (i.e., rock, country, news) four firms control 60 percent of the national audience. Some radio markets now lack any stations devoted to even popular formats, like country music. Sure, there are alternatives out there. But terrestrial radio is special. Licensees use the public spectrum in return for providing programming in the public interest. They have unique duties and obligations to serve their communities of license. We should be sure this obligation supports local music, more diverse programming and more competitive choices. While changes in the competitive landscape are likely to continue, that does not prevent us from working to ensure that our local radio marketplace is as vibrant—and as local—as it can be.

*Question 2.* Consumers in many rural areas currently are not able to enjoy the same benefits wireless services offer as their urban counterparts enjoy. Due to low user concentration, the cost of providing high quality wireless service in rural areas is frequently more expensive than is possible in higher-density urban areas. Designation of wireless carriers as ETCs, which permits these carriers to receive support from the Universal Service Fund (“USF”), can help to ensure that all Americans enjoy the benefits of competition and high-quality wireless services. What steps have the FCC taken to ensure that wireless coverage is extended to all Americans, regardless of where they live, and to ensure that Americans living in rural areas have the opportunity to subscribe to high-quality wireless services?

Answer. From the start, wireless services have been a part of the universal service picture. In 1997, the Commission adopted an approach it characterized as “competitive neutrality,” ensuring that wireless services would be among the beneficiaries of universal service support. Since that time, many wireless providers have received universal service funds. As a result, we have seen the expansion of wireless service to rural areas.

Separate and apart from universal service, the Commission operates under a statutory obligation to bring the benefits of spectrum-based services to all Americans, including those living in rural areas. On the licensed spectrum front, we have an ideal opportunity to do that if we can create the right band plan, license area sizes and substantial service requirements for the upcoming 700 MHz auction. I also believe we should be trying to free up more spectrum for unlicensed uses. Unlicensed spectrum has been a hotbed for innovation and has special potential in rural areas. That is why I am supportive of our decision to authorize operation in the TV white spaces, provided of course that we can adequately protect existing users of the band.

*Question 3.* Following the natural disasters that recently hit the Gulf Coast region wireless services provided emergency personnel, utility repairmen and residents with the only immediate means for communicating.

In light of the experience of the Commission from Hurricane Katrina and other disasters, please describe the role wireless services fill with respect to emergency response and disaster recovery during times of crisis?

Answer. Wireless services play a critical role providing emergency response and in assisting in disaster recovery during times of crisis. With that important role in

mind, there are actions the Commission can and should take with respect to wireless services and public safety and homeland security needs.

First, the FCC must address the concerns of the public safety community about interference, interoperability, and other issues. This means completing the 800 MHz rebanding process in a timely and just fashion and fulfilling our statutory responsibilities to implement Emergency Alert System regulations as required by the SAFE Port Act of 2006.

In addition, the FCC must focus on the suite of pending issues raised in the 700 MHz band. In December 2006, the Commission adopted a Notice of Proposed Rule-making proposing an inventive public safety model—the creation of a nationwide, interoperable broadband public safety communications network in the 700 MHz band. While I think we must be especially careful that public safety users will not be adversely affected before authorizing government-commercial sharing of public safety spectrum, given the long-standing need for reform in this area we simply cannot afford to ignore innovative ideas that could potentially revolutionize existing public safety spectrum management.

*Question 3a.* If a petitioner for ETC designation meets the statutory criteria and has consistently been the only service provider to remain operative in certain areas during natural disasters despite the presence of other carriers (including other ETCs) in those areas, would you view the designation of the petitioner as an ETC to be in the public interest?

Answer. I would agree that this should be a key factor in any public interest analysis.

*Question 3b.* Some of the areas hardest hit by recent natural disasters were underserved communities. To the extent a petitioner for ETC designation that meets the statutory criteria for ETC designation has demonstrated a strong commitment to serving rural and underserved communities since well before designation as an ETC, would the designation of the petitioner as an ETC be in the public interest? If not, please explain why.

Answer. I would agree that this should be a key factor in any public interest analysis.

*Question 4.* The FCC has committed to resolve, within 6 months of the date filed, all ETC designation requests for non-tribal lands that are properly before the FCC. How many petitions for ETC designation are currently pending at the FCC?

There are 34 such petitions currently pending.

*Question 4a.* What is the average length of time that the ETC Petitions currently before the FCC have been pending? Of these petitions, what is the earliest filing date? How many of these petitions were filed in 2004 or earlier?

Answer. There are 18 petitions that have been pending more than 2 years. There are 13 petitions that have been pending more than a year, but less than 2 years. There are 3 petitions that have been pending less than a year. Of these petitions, the earliest was filed on December 31, 2003. Eighteen petitions were filed in 2004 or earlier.

*Question 4b.* How many petitions for ETC designation did the FCC act on in 2006?

Answer. The FCC's Wireline Competition Bureau granted 2.

*Question 4c.* How many petitions for ETC designation did the FCC act on in 2005?

Answer. The FCC's Wireline Competition Bureau granted 4.

*Question 4d.* How many petitions for ETC designation did the FCC act on in 2004?

Answer. The FCC and/or its Wireline Competition Bureau granted 23.

*Question 4e.* What does the FCC intend to do about the backlog of pending ETC petitions?

Answer. I believe we should resolve them as expeditiously as possible.

*Question 4f.* How soon does the FCC intend to act upon ETC petitions that have been pending for more than 6 months?

Answer. I believe the FCC should resolve any backlog in this area as expeditiously as possible.

*Question 4g.* Do you believe that Americans living in rural areas and the carriers who have filed ETC Petitions deserve to have those petitions acted upon promptly rather than simply kept pending without a yes or no answer? If you do not, please explain why.

Answer. Yes. While there are pending Universal Service Joint Board referrals on this subject and policy changes may be on the horizon as a result, all petitions in front of the FCC deserve a prompt answer.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO  
HON. MICHAEL J. COPPS

*Question 1.* In a September 8, 2005 report, the FCC stated, “Our review of the record does not lead us to recommend any changes to the retransmission consent regime at this time.” What if any steps have you taken since that time to review and assess the retransmission consent regime; what if any additional conclusions have you reached; what if any plans do you have for additional formal or informal review; and what do you perceive to be the strengths and weaknesses of the retransmission consent process?

Answer. Due in part to the dispute between Mediacom and Sinclair, this issue has received increased attention in recent months. On the one hand, multichannel video programming distributors claim the large integrated programmers tie their non-network programming to carriage of the network. They suggest that this leads to higher prices for the basic tier and occupies capacity that could be used to carry independent networks. On the other hand, broadcasters claim that they will need retransmission consent to negotiate the carriage of all of their digital signals. One thing is certain. Small broadcasters claim that they are at a disadvantage when negotiating against big cable companies and small cable operators claim the rules put them at a disadvantage when negotiating with large programming networks. All in all, the problem seems to stem from media concentration.

I did not participate in developing the Media Bureau’s 2005 report, nor was I a part of developing its conclusions. But I believe that we must judge the retransmission consent process not from the vantage point of companies, but from the vantage point of consumers. If screens go dark in homes because large media companies are waging war over retransmission consent rights, consumers are the real losers. So if this starts to occur with greater frequency, changes—legislative or regulatory—may be required.

*Question 2.* Section 10(a) of the Communications Act allows the Commission to forbear from applying any regulation or any statutory provision to a particular or multiple telecommunications carriers or services, in any or some geographic markets, if certain criteria are met—most notably that competition exists in the market and that such relief is in the public interest. The FCC recently has been granting incumbent providers (ILECs) forbearance from regulations on the premise that sufficient competition exists in a specific market to make enforcement of the regulations unnecessary. What are each of your respective positions on the conditions and circumstances under which forbearance for ILECs is appropriate?

Answer. The Communications Act permits the Commission, either on its own motion or in response to a petition, to forbear from applying regulations or provisions of the Act to telecommunications carriers or telecommunications services. Furthermore, the Act provides that forbearance is warranted if the regulation or provision at issue is not necessary to prevent discrimination, not necessary to protect consumers and otherwise in the public interest. While these guideposts are useful in shaping our assessment of the need for relief, I believe the Commission would benefit from having more precise parameters. In addition, I have concerns that if the Commission fails to act on a forbearance petition, it effectively hands the petitioning party the pen and permits it to rewrite the law. I believe Congress trusted the FCC to implement the law, but it did not tell us to delegate far-reaching policy changes to the companies that fall under our jurisdiction. For this reason, the Commission would benefit from additional Congressional guidance in this area.

*Question 3.* From the City of Saint Paul (similar questions were raised by Burnsville/Eagan Community Television and the Northern Suburban Communications Commission):

The Order issued by the FCC on December 20, 2006 allows new franchise entrants to “cherry pick” the neighborhoods in our communities, rather than bring true competition to all of our businesses and residents. This would allow new entrants to serve or upgrade only the profitable areas of Saint Paul [and other cities and towns], leaving many of our residents on the wrong side of the “digital divide.”

The Order authorizes a new entrant to withhold payment of fees that it deems to be in excess of a 5-percent franchise fee cap. This could completely undermine support for both Saint Paul’s [and other cities’ and towns’] very successful public, educational and government (PEG) operations.

The Order imposes a 90-day shot clock for new entrants with existing rights of way, opening the potential to reduce Saint Paul’s [and other cities’ and towns’] ability to manage its rights-of-way.

The Order authorizes a new entrant to refrain from obtaining a franchise when it is upgrading mixed use facilities that will be used in the delivery of video content.

Saint Paul believes that the policy goals of the Order are laudable but strongly disagrees with the method and substance of the decision taken by the FCC. How do you respond to each of these concerns, and how do you respond to the claim that the FCC exceeded its authority in adopting this order?

Answer. I share many of the same concerns with Saint Paul. We all want more video competition. With cable rates rising faster than the rate of inflation, wireline cable competition can be helpful in bringing those rates down. Consumers deserve rules that will bring competition to their doorsteps because they are not being well-served by the lack of competition today. But I dissented to the Commission's franchising decision because I believe the FCC fell short of coming up with rules that encourage fair competition within the framework of the statutes that Congress provided. Among other things, I fear that the FCC's effort does not adequately address concerns about cherry-picking and its consequences for communities that find themselves on the wrong side of the digital divide. I similarly fear that the decision falls short of fully protecting each community's ability to negotiate for PEG and I-NET facilities. Finally, I have concerns about the operation of the shot clock and language in the decision that suggests new entrants can refrain from obtaining a franchise when they upgrade mixed use facilities.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TED STEVENS TO  
HON. MICHAEL J. COPPS

*Question 1.* What is the current status of any proposals to use auctions to determine universal service support?

Answer. Last year, the Joint Board sought comment on the merits of using auctions to determine high-cost universal service support. Last month, the Joint Board held an *en banc* hearing to discuss the use of reverse auctions, or competitive bidding, to set levels of universal service support. Next, the Joint Board may follow up with a recommendation for the Commission. By statute, the Commission is required to act on any such recommendation within 1 year of receipt. I recognize the FCC is charged with preserving and advancing universal service. For this reason, I believe both the Joint Board and Commission must be cautious that any further action in this area fully complies with this Congressional directive.

*Question 2.* Do you believe any of the proposals submitted to the Joint Board are viable alternative approaches to universal service support and can adequately support rural carriers like those in Alaska?

Answer. I am concerned about the impact of an auction-based universal service system on rural areas in this country. Congress charged the Commission with ensuring that consumers in all regions of the Nation—including rural and high-cost areas in Alaska—have access to comparable services at comparable rates. It is not yet clear to me that an auction-based system would ensure adequate levels of support and meet this Congressional objective. In fact, in 1997, when the Commission last considered the use of auctions, it noted “it is unlikely that there will be competition in a significant number of rural, insular, or high cost areas in the near future. Consequently, it is unlikely that competitive bidding mechanisms would be useful in many areas in the near future.” Before moving ahead here, it is imperative that we understand what, if anything, has changed since the Commission reached this conclusion.

*Question 3.* When Chairman Powell visited a remote Eskimo village in Alaska, his plane got stuck in the mud on the unpaved runway during take-off. He and his staff whipped out their cell phones to try to call for help, but they didn't work. No roaming agreements. The villages call came and pulled his plane out of the mud, but he was not able to call his wife to tell her he was running late. I am pleased to report that the runway is now being paved, but the roaming problem has yet to be resolved. Many small cell phone companies in Alaska have been unsuccessful in getting the large national carriers to respond to their desires to arrange roaming agreements. As data, video, and other services are transmitted to mobile devices this problem will only grow more acute. What can you do to address this problem, and what is the timeframe for moving forward?

Answer. In 2005, the Commission opened a proceeding to consider modifying the FCC's roaming requirements. I have heard numerous concerns from consumers about roaming. I also have heard allegations from small and rural carriers concerning anticompetitive behavior in negotiating roaming agreements. Because the

record in this proceeding closed over a year ago, I believe the Commission should examine this situation closely and act soon.

*Question 4.* I continue to have concerns that too often domestic satellite services do not offer service to Alaska and Hawaii. In last year's Senate Communications Bill, a measure was included to require satellite operators to make good faith efforts in their satellite planning and development to ensure service to the entire United States. Are there measures that the FCC could take independent of Congressional legislation to ensure better service to Alaska and Hawaii?

Answer. Independent of legislative action, the FCC should be doing all it can to ensure that satellite services in Alaska and Hawaii are on par with those available on the mainland. In fact, the FCC's rules require that DBS licensees provide service where technically feasible to Alaska and Hawaii, and DBS licensees must offer packages of services in Alaska and Hawaii that are reasonably comparable to what they offer in the contiguous states. Despite this, in 2003 the FCC allowed a major satellite deal to go through without giving proper weight to coverage in Alaska and Hawaii. I dissented from this decision, for among other reasons, an inadequate public interest analysis of the impact of consolidation on the availability of reasonably comparable service packages in Alaska and Hawaii. In any future decisions regarding direct broadcast satellite service, it is imperative that the Commission do a better job of taking consumers from Alaska and Hawaii into account. Furthermore, when the FCC updates its policies and rules governing direct broadcast satellite service, it should consider whether our existing rule is sufficient to ensure satellite operators make good faith efforts in their satellite planning and development to ensure service to the entire United States.

*Question 5.* The FCC frequently faces the problem of making tough policy decisions that are wrapped in technological debates. There are several waivers pending at the FCC that deal with CableCARDs. What is the impact on the consumer and the impact on the development and deployment of downloadable security? How will these petitions be considered and will the full Commission address these issues?

Answer. In technological debates, I start from the premise that consumers are better served by having more choices and options. This is why I believe competition in the manufacturing and distribution of consumer navigation devices can lead to greater innovation, lower prices and higher quality services. But more importantly, Congress charged the FCC with ensuring that consumers have the opportunity to purchase navigation devices from sources other than their multichannel video programming distributor. To this end, nearly a decade ago the FCC concluded that cable operators should be prohibited as of a date-certain from integrating navigation and security functionalities in set-top-boxes. The FCC has extended the date of this integration ban on multiple occasions. But with the deadline for the integration ban now looming once again, more than a handful of multichannel video programming distributors have filed petitions seeking waiver of the ban.

In reviewing these petitions, the Commission needs to consider the impact upon consumers and is required by statute to conclude that a waiver is necessary to assist in the development or introduction of new or improved services, technology or products. I believe there remains a strong case for the continued existence of the ban. I should also note that I am optimistic that a downloadable security solution is on the not-too-distant horizon. This would allow set-top boxes and other consumer electronics devices to download security automatically over a cable system. I believe that over time, downloadable security solutions will bring even greater benefits to consumers by providing them with more choices and options.

The Commission's Media Bureau recently resolved three of these waiver requests. To date, only one of these decisions has been appealed to the full Commission. I expect the Commission will act on this appeal shortly.

*Question 6.* Obviously we are all concerned about the new frontiers that can be created on the Internet for pedophiles and child pornographers. To advance the safety of our children, everyone must do their part. Is there more that the Internet service providers can be doing to help law enforcement and does the FCC need any additional authority from Congress to ensure that entities under the Commission's authority are doing their part?

Answer. To ensure the safety of our children, we can all do more. Parents can monitor and control what their children read and see over the Internet. Internet service providers can ensure that parents have the tools they need to do this, and that these tools are simple and easy to use. But when these efforts fall short and put our children at risk, government has a duty to protect the safety of our children. One area I believe the FCC should address involves the consequences of interactive television for children and advertising. As a regulatory matter, clicking out beyond the regulated confines of broadcasting has important consequences. Although the

kids with their remotes in hand won't know it, a single click of the bottom can transport them beyond the regulated world of television to an Internet bazaar bereft of any rules. While I believe that the FCC has adequate authority to move ahead on this issue, and in fact began a Notice of Proposed Rulemaking on it several years ago, the Commission certainly would benefit from additional Congressional guidance.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO  
HON. MICHAEL J. COPPS

*Question 1.* Is it true that eleven years ago Congress required the FCC to adopt a new universal service mechanism that ensures that local telephone rates in rural areas are reasonably comparable to rates in urban areas?

Answer. Yes. In Section 254 of the Communications Act, Congress charged the Commission with ensuring that consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to services that are reasonably comparable to those provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

*Question 2.* Is it true that the 10th Circuit Court of Appeals has twice remanded the FCC's method of providing universal service support for rural customers served by larger carriers?

Answer. Yes. In 2001, the 10th Circuit Court of Appeals first remanded the FCC's first effort to develop a mechanism for providing high-cost universal service support for rural customers served by larger carriers. In 2005, the same court remanded the FCC's second effort to develop such a mechanism.

*Question 3.* Is it true that the second decision was issued in February of 2005 with the court expressing an expectation that the FCC would respond expeditiously?

Answer. Yes. While in its 2005 decision the 10th Circuit Court of Appeals chose not to impose a specific deadline for FCC compliance, the court stated that it fully expected the FCC to comply with its decision "in an expeditious manner, bearing in mind the consequences inherent in further delay."

*Question 4.* What steps will the FCC take now to ensure that it meets its obligations to the rural residents of large incumbent carriers? Will you commit that the FCC will take action on this remand during the next 6 months?

Answer. The FCC has a duty to resolve the outstanding remand and develop a universal service support mechanism that meets the needs of rural residents served by large incumbent carriers. To respond to the court, the FCC must develop a plan that defines the statutory terms "sufficient" and "reasonably comparable" in a manner that comports with its duty to preserve and advance universal service. It has been over 2 years since the court directed the FCC to do so. For this reason, the Commission is overdue to resolve the outstanding issues. When a decision regarding this matter is provided to my office, I will complete my review of it as expeditiously as possible.

*Question 5.* Now that the Antideficiency Act (ADA) exemption has expired, what kind of guarantees can you give that there will be no further E-Rate program shut downs or delays?

Answer. I was pleased that as part of last month's Continuing Resolution, Congress extended the Antideficiency Act exemption until December 31, 2007. I also fully support efforts to exempt permanently universal service from the ADA. I believe an exemption would ensure that USAC can administer universal service programs without disrupting service to beneficiaries or increasing the universal service fees paid by residential and business customers. In the absence of Congressional action, I believe the FCC must do everything it can to provide assurance that there will be no further ADA-related regulatory snafus that jeopardize the students and library patrons who are the real beneficiaries of the E-Rate program.

*Question 6.* Can you tell us how much USAC has in its E-Rate accounts currently and whether those reserves will be sufficient to cover funding?

Answer. I understand that Chairman Martin will make these figures available to the Committee in his response to this question.

*Question 7.* Are you still working with the Office of Management and Budget (OMB) on a reinterpretation of the ADA that would exempt Universal Service?

Answer. I believe that the Chairman's Office has had discussions with OMB regarding a reinterpretation of the ADA that would exempt universal service. I have not been invited to participate in these discussions, but would welcome the opportunity to offer my input. Above all else, I believe the FCC must do everything it



can to ensure that USAC can administer universal service programs without disrupting service to beneficiaries or increasing the universal service fees paid by residential and business customers.

*Question 8.* Given that AT&T and BellSouth agreed to abide by a definition of “network neutrality” as part of their merger conditions, do you believe that the argument that it is impossible to craft such a definition is false?

Answer. Yes. The condition concerning network neutrality, or Internet freedom, in the AT&T/BellSouth merger is proof positive that it is possible to craft a workable definition of “network neutrality.”

*Question 9.* Will you enforce the “network neutrality” provision agreed to as part of AT&T’s and BellSouth’s gaining approval for the merger?

Answer. I will do everything in my power to ensure that it is enforced.

*Question 10.* Do you consider the U.S. broadband marketplace to be competitive?

Answer. FCC statistics demonstrate that at present the United States broadband market is insufficiently competitive. In the United States, 96 percent of consumer broadband is provided by either cable modem or DSL technology. If they are lucky, consumers have a choice between the cable and DSL duopoly. But too many lack even this choice and we are paying a price for this low level of competition. Americans spend twice as much for broadband connections that are one-twentieth the speed of some countries in Asia and Europe. This state of affairs has to change. Without greater competition and a viable third broadband pipe, we consign too many of our businesses to tough stakes in the global digital economy and too many of our students to learning at dial-up speeds.

*Question 11.* Do you believe a wireless connection, which is two to four times more expensive and two to four times slower than DSL or cable, can be a substitute for a wireline connection to the Internet?

Answer. Over the past few years, we have seen that a wireline Internet connection using the cutting-edge technology at a particular point in time will typically be faster and less expensive than a wireless connection using cutting-edge technology at that same point in time. And while technological evolution is never entirely predictable, I expect that this relationship will remain true for the near term.

At the same time, I believe that wireless technologies may be appropriate as a primary means for accessing the Internet for consumers who lack affordable wireline Internet access options, who live in remote areas where wireline technologies may be especially expensive, or who may be willing to tradeoff speed and/or cost in return for mobility and the convenience of “cutting the cord.”

*Question 12.* How can we ensure that a variety of news and entertainment outlets will be there if the telephone and cable companies are allowed to limit what people can see and do online?

Answer. The more concentrated our facilities providers grow, the greater their ability to limit what people can see and do online. For this reason, we need a watchful eye to ensure that network providers, like telephone and cable companies, do not become Internet gatekeepers, with the ability to dictate who can use the Internet and for what purposes. If we allow such harms to occur, we will put innovation, content diversity and our nation’s competitive posture at risk. I believe we must be vigilant and adopt net neutrality—or Internet freedom—policies to prevent this from happening.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GORDON H. SMITH TO  
HON. MICHAEL J. COPPS

*Question 1.* Under a couple of the conditions, AT&T and BellSouth committed that for 42 months, they would continue to offer, and would not increase the price of, unbundled network elements. They also committed not to seek forbearance with respect to unbundled loops and transport. Will these conditions preserve the option for consumers to purchase high-speed broadband service from companies that combine an AT&T/BellSouth UNE loop with their own electronics and other network facilities to offer their own high-speed Internet broadband services?

Answer. AT&T’s commitment to maintain its existing UNE rates promotes competition by preserving competitive carriers’ access to UNEs. Competitive carriers use UNEs to deliver a wide array of services to both residential and business customers across the country. These include voice, data and Internet access services. Data collected by the FCC makes clear that competitive carriers continue to rely on the availability of UNEs to provide these services to consumers. For instance, the FCC’s most recent report on the state of local competition finds that as of June 2006 competitive carriers were using over 4.4 million UNE loops to deliver these services to

customers across the country. The report also found that competitive carriers had deployed their own facilities to provide approximately 10.7 million lines. The condition was not broadband-specific, but allows competitive carriers to incorporate the benefits of this commitment in their efforts to offer the panoply of competitive services they make available to their consumers.

*Question 2.* Has the Commission concluded that it is in the public interest to preserve additional broadband options for consumers through these UNE AT&T/BellSouth merger conditions?

Answer. As a general matter, the Commission has strived to promote a variety of broadband options, regardless of the technology (*e.g.*, wireless, copper, fiber and broadband over powerline). However, in the context of the merger I was asked to decide whether the merger as a whole served the public interest. AT&T made commitments concerning a wide range of issues including the openness of the Internet, consumers' access to broadband, video and advanced wireless services; business prices for high-volume voice and data services; competitor access to UNEs and interconnection; public safety and disaster relief; and the repatriation of jobs to the United States. In the final analysis, I believed that this package of commitments sufficiently benefited consumers in AT&T's territory that I concurred in the merger.

*Question 3.* This Committee has operated under Republican and Democratic chairmen on largely a bipartisan, consensus basis on the vast majority of communications issues. In the last several years, however, a larger number of these issues, particularly media ownership, have become extremely divisive, largely upon political lines. I think Americans have sent us a signal that they don't want this kind of divisiveness and partisanship. They want us to work together to find reasonable, workable solutions. Does media ownership really have to be such a partisan issue? Aren't there areas of consensus where common sense reforms can be made?

Answer. During the past 5 years, I have visited scores of communities in this country to discuss the state of local media. What I have learned is that the effort to hold media consolidation at bay is not a partisan issue. People from every political stripe are alive to the consequences of concentrated media ownership.

Nothing made this clearer than when in 2003 former Chairman Powell—over my objection—authorized a sea change in the number of media outlets a single corporation could own in a single community. What we saw in response was nothing short of amazing. The American people, the Congress and a Federal court rose up with one voice to oppose these new rules and the way they were crafted out of view from the public. Dozens of organizations—from all over the political map—weighed in. Among others, we heard from the Writers Guild of America, the Parents Television Council, the Communications Workers of America, the National Association of Black Journalists, the Conference of Catholic Bishops, the American Civil Liberties Union, the National Rifle Association, the National Organization of Women, United Church of Christ and the Leadership Conference on Civil Rights.

As Brent Bozell of the Parents Television Council so aptly put it, "When all of us are united on an issue, then one of two things has happened. Either the Earth has spun off its axis and we have all lost our minds or there is universal support for a concept." I think it is the concept—a transcending, nationwide concept. This issue is not Republican or Democratic. It is not liberal or conservative. Not North or South. Not young or old or red state versus blue. It is an all-American issue. That is why I am convinced if we all work together—to identify common sense reform—we will lay the groundwork for not only a better media, but a better America.

*Question 4.* I understand that AT&T agreed to lower the rates it charges big business customers for special access services, as a condition to the FCC's approval of the merger with BellSouth, but that these rate reductions would not apply to a subset of companies, including Qwest, Verizon and others, unless those companies lower their special access rates as well. This effectively placed burdens on companies who weren't parties to the merger. As Chairman Martin and Commissioner Tate stated in their Joint Statement "the Democratic Commissioners want to price regulate not only AT&T but also Verizon and Qwest." ". . . [N]ot only are the conditions unnecessary as there is no finding of a public harm, but the conditions attempt to impose requirements on companies that are not even parties to the merger." How can you explain using the merger process to impose burdens on other parties, and isn't this just a way to circumvent the rulemaking process?

Answer. I believe that AT&T's commitments regarding special access, including the price reductions for these services, are reasonable, address clear merger-specific harms raised by the consolidation of AT&T and do not impose a burden on other companies. I believe that this commitment is reasonable within the meaning of Section 202 of the Communications Act because it takes into account the difference in regulatory and marketplace position between price cap incumbent local exchange

carriers and their competitors. It is merger-specific because it addresses the fact that the merged entity is the only choice most companies within AT&T's 22-state region will have for business access services, which means a substantial increase in market power. In November 2006, the Government Accountability Office issued a report raising particular concerns regarding competition in special access services. I also do not believe that the commitment in question imposes a burden on other companies. It provides only that, in order to receive discounts in AT&T territory, other incumbent local exchange carriers must provide reciprocal discounts in their own territories. If the other incumbent local exchange carriers elect not to offer these reciprocal discounts then they are in no worse position than before the merger and if they elect to offer these discounts I would expect that they would benefit from them. While I would hope that the FCC quickly completes the special access rule-making that has been open for over 2 years, the merger condition does not circumvent this process at all. In the end, I believe that these conditions are good for competition and good for consumers in AT&T's territory.

*Question 5.* As Congress contemplates whether to enact legislation addressing net neutrality, it would be helpful to understand whether there is some particular behavior in the U.S. broadband marketplace related to net neutrality that is harming consumers today. Aside from the one reported incident involving Madison River Communications blocking Voice over Internet Protocol (VoIP) calls, which the FCC rectified in March 2005, can you identify any specific, concrete examples of actual conduct by a broadband provider that runs afoul of net neutrality?

*Answer.* The broadband market in this country is highly concentrated. Ninety-six percent of consumer broadband in this country is provided by either DSL or cable modem. The more powerful and concentrated our facilities providers grow, the more they have the ability—and perhaps even the incentive—to close off Internet lanes and block IP byways. It may be that this is not part of their business plans today. But we create the power to inflict such harms only at great risk to consumers, innovation and our Nation's competitive posture. Because in practice, such stratagems can mean filtering technologies that restrict the use of Internet-calling services or that make it difficult to watch videos or listen to music over the web. In fact, the *Wall Street Journal* has pointed out that large carriers already “are starting to make it harder for consumers to use the Internet for phone calls or swapping video files.” While the Madison River episode is the most public example of this behavior, I believe there are others that demonstrate the potential for abuse. We have seen already that the technology is capable of this kind of discrimination. In Canada, for instance, during a labor dispute, a telephone company blocked its customers from reaching a union website. And we have seen the top management of key broadband providers publicly state that they want to pursue business models built on discriminatory network policies.

When you add this up, what you have is the specter of broadband providers restricting where you go and what you do on the Internet. History shows when firms have both the technology and the incentive to do something to enhance their sway, chances are some will give it a try. But while they experiment, the public who uses the Internet loses out. That is why net neutrality—or Internet freedom—policies are so vital.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO  
HON. MICHAEL J. COPPS

*Question 1.* Even as we are strategizing on how to complete the deployment of DSL and cable modem broadband networks to the hard to reach places of our country, other countries are well on their way to deploying next-generation fiber networks. High-speed fiber will change how we use the Internet similar to the change we saw between dial-up and broadband. Is there anything Congress can be doing to help speed the deployment of our high-speed fiber network here at home, and in rural areas particularly?

*Answer.* The deployment of broadband is the central infrastructure challenge facing this country in the first part of the twenty-first century. We are going to work differently, learn differently and play differently because of the transformative power of advanced communications. Communities around the country have come to realize the critical importance of broadband facilities. Without access to advanced services like broadband, whole communities—and particularly rural areas—may be left behind, stranded without the economic tools and educational opportunities that high-speed services, such as those using fiber, can provide.

In the first instance, we look to the private sector to deploy advanced communications. That is as it should be. But if the market is passing communities by, they

should have a right to develop municipal fiber alternatives. The FCC should review its policies to ensure they do not hamstring these kinds of efforts. In addition, Congress and the FCC should consider how to recast the universal service system to provide appropriate incentives to ensure the deployment of broadband all across this country—from the inner city to the outer farm. Finally, the FCC must get serious about our data collection efforts. By surveying the deployment of broadband based on zip codes, we do a real disservice to rural America. In areas where land is vast and populations are sparse, it defies common sense to assume that if one subscriber to broadband exists in a zip code, high-speed services are available throughout. We need to do a better job surveying the deployment of high-speed fiber to really learn what the challenges are on the ground. Moreover, better data will lay the groundwork for better policy and help us target our efforts to ensure that all Americans—rural Americans included—have access to affordable, high-speed broadband service.

*Question 2.* When I speak with some of South Dakota's rural telephone cooperatives and other telecommunications providers, I hear about the large amount of resources they must put toward legal fees to keep pace with the legal and regulatory maneuvers being made by some of the larger telecommunications providers with seemingly bottomless pockets for such actions. Some of these small providers honestly think part of the larger competitors' plan is to beat them through legal fees instead of the marketplace. The Commission obviously cannot do anything about the fees lawyers are charging, but they can do something about the speed at which regulatory decisions are made and the hoops that must be jumped through. How can the FCC improve its decisionmaking processes so that small telecommunications providers don't bear such an imbalanced burden?

*Answer.* The FCC should strive to provide greater certainty. Businesses are not able to operate with question marks. And consumers have fewer products and services to choose from if the regulatory rules of the road are less than clear. While issues like legal fees are well outside of the Commission's jurisdiction, the FCC can make a greater effort to ensure that its decisions are built on sturdy legal ground. Decisions with a well-laid foundation can reduce the likelihood of challenges in court and the expense associated with the resulting legal battles. In addition, the FCC should strive to make faster decisions to provide greater clarity for small and large businesses alike.

*Question 3.* As you know, some media companies and others are pushing for the repeal of the newspaper cross-ownership ban. They argue that a media outlet owning both the local newspaper and a local broadcast station could make better use of scarce resources to gather and report the local news. They also argue that the handful of "grandfathered" newspaper-broadcast combinations, which were in place before the ban was implemented in 1975, have not shown any gross abuse. Some consumer groups and others who support keeping the newspaper cross-ownership ban in place alternatively argue that combining newspaper and broadcast outlets could reduce competition among media outlets. There could be less incentive to get "the scoop" or report a contradicting viewpoint. What do you believe would happen to local news coverage if the newspaper cross-ownership ban was lifted? Do the 1975 grandfathered combinations really provide us with a good example since some of them are currently owned by those media companies who want to lift the ban? For example Gannett knows its management of Arizona's largest newspaper, the Arizona Republic, and television outlet KPNX-TV is under the microscope, so perhaps their behavior would not be representative of how news gathering would be conducted if the ban was permanently lifted.

*Answer.* The future of our media—how few are going to be allowed to own how much, and what public interest standards media should be expected to operate under—is so important to each of us. Over the past 5 years, I have been in scores of media markets across this nation, trying to understand how various localities are faring under the tremendous consolidation that has overtaken America's media during the past decade. Most communities have become one newspaper towns. The vast majority of local television and radio markets are tight oligopolies, with even higher levels of concentration for local news. In this environment, add a merger between the monopoly newspaper and dominant television station and you get fewer reporters covering fewer beats, less diversity of opinion and a reduction in editorial voices. Merging newspapers and broadcast outlets may serve shareholder interest by reducing competition and cutting newsgathering costs. But far too often this comes at the expense of the public interest, because it strips to bare bones the amount of independently produced news available in a local community.

Well-informed citizens are the lifeblood of our democracy. Having less news, less newsgathering—and less local news, in particular—leaves us poorer as citizens, voters and as participants in community life. So that's the risk we face with relaxing

the newspaper broadcast cross-ownership ban. While some grandfathering of these properties has been permitted in some areas in the country, the results are mixed at best. So I am fearful that relaxing the ban across the board will be tough stakes for too many American communities.

*Question 4.* The closest daily newspaper can be 100 miles away in some parts of my state. Do you see any particular challenges in providing a diversity of news viewpoints in rural parts of our country if further media consolidation is allowed to occur? Some argue local cable news channels and local Internet news sites can enhance competition and bring out a diversity of viewpoints, but are these answers going to work in rural communities?

Answer. People across this country are concerned that greater media consolidation will have a devastating effect on the diversity of news and viewpoints. Perhaps nowhere is this concern greater than in rural America, where less media competition, less diversity and less localism can hit especially hard. By way of example, farm bureaus from across the country have written to the FCC, concerned that media concentration has resulted in too many farmers and ranchers being denied the local news and up-to-the minute market reports and weather they need to make vital decisions. They suggest that big city, out-of-state media companies are not devoting resources to the kind of news and information—ranging from hog reports to weather analysis—that will help the local economy and local community thrive. Add to this situation newspapers that are as much as 100 miles away, and you are facing a situation with a serious shortage of meaningful local news.

While some contend that cable channels and Internet sites will be able to fill the gap, rural Americans have their doubts. Again, the farm bureaus point out that while there are other sources for commodity market and weather news, including subscription-based, satellite-delivered and Internet offerings, radio remains the medium farmers rely on most. Moreover, when you look at the top Internet news sites, they are virtually all owned by big companies with few resources devoted to covering news and events in rural locales. For these reasons, I am fearful that if we allow greater media consolidation in this country, we will leave too many in rural America without the news and information they need for their communities to prosper.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JIM DEMINT TO  
HON. MICHAEL J. COPPS

*Question 1.* In the 4 years since the term “network neutrality” has existed, can you give me any examples, aside from the often-cited 2004 Madison River case, that justify the need for new regulations?

Answer. As the *Wall Street Journal* has noted, large carriers already “are starting to make it harder for consumers to use the Internet for phone calls or swapping video files.” As you point out, the Madison River case is the most frequently cited example of this behavior. But other signs are out there. We have seen already that the technology is capable of this kind of discrimination. In Canada, for instance, during a labor dispute, a telephone company blocked its customers from reaching a union website. And we have seen the top management of key broadband providers publicly state that they want to pursue business models built on discriminatory network policies. When the technology is available to discriminate and there are business means to make it happen, we have reason to be concerned.

*Question 2.* What problem exists today that necessitates government intrusion in the market?

Answer. In a competitive marketplace, by all means the government should step out of the picture and let a thousand flowers bloom. If a market is truly competitive, we can rely on its genius. But where it falls short of full competition, where monopolies and oligopolies emerge, where prices are unnaturally high and the rate of innovation is low, government oversight and consumer protection are essential.

*Question 3.* Why are anti-trust laws and basic laws of economics insufficient to protect consumers?

Answer. We are dramatically changing the ways we communicate in this country—and around the globe. Antitrust law prohibiting anticompetitive behavior and unfair business practices is an important part of protecting consumers. But regulatory policy has long had a recognized role in modern international economies. If we ask the right questions, dig deep in the data and then compose our policies based on the facts, I believe we will have a regulatory climate that protects consumers, encourages investment and speeds the way for new and innovative services. Such a climate can provide more certainty to both businesses and consumers than one

which tries to operate without commonly-developed and commonly-accepted rules and procedures.

*Question 4.* Today's media landscape includes ubiquitous options that did not exist in 1996: broadband offered by both cable and telephone companies, satellite radio, the Internet, and a far more mature DBS service. Given the growth of these new media outlets over the past decade, do you believe there are any areas where some relaxation of ownership limits could be in the public interest?

Answer. I certainly believe that the Commission must continually reassess its ownership regulations in light of evolving technologies and changes to the communications marketplace. Indeed, in the case of our broadcast ownership rules, we are required to do so periodically by statute. We must also address requests for waivers from our ownership rules filed by parties who assert that a particular station is "failing"—and I have supported such waivers, including most recently the Media Bureau's decision regarding WCWN(TV) in Schenectady on November 22, 2006.

At the same time, I also believe we need to consider the fact that the increase in distribution channels (such as DBS, the Internet and satellite radio) has not been accompanied by a comparable increase in the number of entities that engage in substantial newsgathering, especially at the local level. Many of the products offered over DBS, the Internet and satellite radio simply report information that was originally uncovered by more traditional sources, such as newspapers and TV broadcasters. Given the increased influence that these newsgathering organizations appear to have, I believe we need to be very careful about allowing changes to our ownership rules that could lead to greater consolidation among the entities that engage in substantial local newsgathering.

---

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DAVID VITTER TO  
HON. MICHAEL J. COPPS

*Question.* I have been alerted to a problem regarding compensation to payphone providers for coinless calls made from their phones. According to recent FCC statistics, about 6 percent of Louisiana households do not have any type of phone in their home. During the immediate aftermath of Hurricanes Katrina and Rita, payphones were the only way many people—both those without any other phones and also those whose mobile phones were not working due to the networks being overloaded—could reach emergency personnel or family and loved ones. Without being fairly compensated according to the rules set forth by the Commission, payphone providers will not be able to maintain these phones. I have been told that in the last 2 years since the Commission most recently revised the payphone compensation rules, a large number of carriers have failed to comply with their obligations under these rules. I also understand that in December 2006, the FCC issued its first sanctions against one of these carriers that violated these rules. I would appreciate hearing your comments on whether you think the agency has sufficient power and resources under your existing authority to continue to enforce these rules and help ensure that companies are not able to disregard the Commission's payphone compensation rules.

Answer. Even in a day and age when personal wireless phones can seem ubiquitous, payphones remain an important component of our Nation's communications systems. They are a vital link to public safety and to loved ones when other means of communication are not available or affordable. Congress charged the Commission with ensuring that all payphone providers are fairly compensated for completed calls. In 2004, the Commission adjusted its payphone compensation rules to require the last facilities-based long distance carrier in a call path to be responsible for compensating payphone service providers for coinless calls that are completed on that long distance carrier's platform. For local calls, the local exchange carrier is responsible for compensation. These rules are admittedly complex. But if carriers fail to comply with their obligations, the Commission must address the situation. This means vigorously enforcing our existing rules and taking swift action if they are violated. It also means we should consider if there are ways we can streamline this process in order to ensure that parties are appropriately compensated.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO  
HON. JONATHAN S. ADELSTEIN

*Question 1.* In March, 2005, the FCC allowed a Verizon forbearance petition to become effective by operation of law. Because there was a vacancy on the Commission at that time and a 2-2 split among Commissioners, Verizon was able to gain

regulatory relief through Commission inaction. Does the current process regarding the disposition of forbearance petitions in the absence of a Commission majority essentially allow petitioners to write the terms of their relief?

Answer. In cases in which the Commission has not been able to reach a majority on the resolution of Section 10 forbearance petitions, the Commission's approach has effectively permitted petitioners to write the terms of their relief, to amend their request multiple times during the course of the Commission's consideration, and to obtain that relief without the Commission issuing an order.<sup>1</sup> In effect, it permits interested parties to rewrite the law as well as the Commission's regulations. Such an approach raises serious legal and constitutional questions and does not best serve the public interest.

*Question 1a.* Is it fair in such situations to allow petitioners to amend the scope of their requested relief after the period for comment on the original petition has concluded?

Answer. It is important that the Commission be able to compile detailed records, obtain data, and engage parties in an open analytical process. However, granting petitioners an unlimited ability to continually modify the scope of their forbearance requests raises serious questions of fairness.

The "moving target" quality to this process was particularly troubling in one recent case, in which the filed petition sought forbearance with respect to all broadband services that the petitioner "does or may offer." More than a year after the initial filing, the petitioner sought multiple times to narrow its request, though the parameters of these amended filings were disputed. This approach is particularly troubling in circumstances where the Commission does not issue an order addressing the merits of the petition, leaving the scope of the relief unclear.

I have urged the Commission to adopt rigorous procedural rules requiring parties to include in their original petitions detailed information about the services subject to the forbearance petition and analysis of how such proposals satisfy the statutory test.

*Question 1b.* Should forbearance petitions be denied in the absence of an order approved by a majority of Commissioners?

Answer. I have serious concerns about a process that allows private parties to change the law or the Commission's rules without a determination by the Commission that Congress's statutory test for forbearance has been met.

Section 10 of the Act grants the Commission authority to forbear from enforcing all or a portion of the Title II of the Act and sets forth significant substantive standards upon which the Commission is to base forbearance decisions. Section 10(c) of the Act provides that a forbearance petition "shall be deemed granted if the Commission does not deny the petition" within 1 year, which can be extended by an additional 90 days.

In many forbearance proceedings, I have worked with my colleagues to support regulatory relief where the record reflects the development of competition. I am concerned, however, about the Commission's recent willingness to allow complex and controversial forbearance petitions to grant without issuing an order. Congress has given the Commission a powerful tool in our Section 10 forbearance authority, but the Commission must wield this tool responsibly. Allowing petitions to grant by operation of law, and without disclosing a shred of analysis, does not best serve the public interest. Moreover, this approach inappropriately ignores Congress's directive to consider the specific substantive standards set out in Section 10 and raises serious legal questions about the scope, effect, and validity of its actions.<sup>2</sup>

*Question 2.* One of the biggest challenges we face over the next 2 years is moving our Nation from analog to digital television with minimal consumer disruption. I understand that the FCC is currently receiving comment on its Proposed Final Table of DTV allotments, proposing final digital channels for TV broadcast stations. However, even after that is final, additional actions will be needed to complete the transition. Given the enormity of the task before us, what action is the Commission taking and what action should it take to ensure that our country is ready in February 2009?

Answer. Last March, in my keynote address at the consumer electronics industry's spring policy summit, I issued a "Call to Action" to both public and private in-

<sup>1</sup> See *Statement of Commissioner Jonathan S. Adelstein, Petition of Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to their Broadband Service*, WC Docket No. 04-440 (March, 20, 2006).

<sup>2</sup> I note that petitioners challenging the FCC's disposition of the Verizon forbearance petition in WC Docket No. 04-440 have argued to the D.C. Circuit Court of Appeals that the legal effect of "a deadlocked vote constitutes a denial [and] a retention of the rules currently in place. . . ." See Brief of Carrier Petitioners, *Sprint Nextel Corporation, et al. v. FCC* at 17 (Feb. 26, 2007).

dustry leaders. Specifically, I encouraged the Commission to take a greater leadership role in preparing the Nation for this historic transition to digital television (DTV). For a complete text of my keynote, please find it at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC\\_264354A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC_264354A1.pdf).

- *With the end of analog broadcasting in 2 years, there is a critical need for greater national attention on the impending DTV transition and for more focused leadership from the FCC.*

With less than 2 years to the end of analog broadcasting, I believe there is a critical need for greater national attention on the impending DTV transition. More focused leadership from the FCC—the nation’s expert agency—and the National Telecommunications and Information Administration (NTIA) is needed. Currently, the DTV preparedness effort lacks a clear national message and a coordinated set of industry activities.

The DTV transition is a significant public policy issue that is worthy of mention in the State of Union Address and other nationally televised speeches to the American people. Studies continue to show that the most Americans are unaware of the transition, few understand the benefits of digital television, and even fewer Americans who rely exclusively on over-the-air TV are aware of the deadline. To date, the Commission’s outreach initiative and the effort of the broadcast, cable, satellite, and consumer electronics industries have had limited success, primarily reaching only high-end consumers. The latest study shows that 61 percent of Americans are totally unaware of the DTV transition.

- *To improve awareness, the FCC needs to develop a unified message among all levels of government, particularly with the NTIA; coordinate the efforts of the various industry stakeholders; and improve education, especially in insular communities.*

To begin to address this general lack of public awareness, the Commission needs to take the following steps: (1) develop a unified, coherent message among Federal, state, local and tribal governmental entities; (2) coordinate the efforts of the broadcast, cable, satellite, and consumer electronics industries; and (3) educate insular communities about the consequences and benefits of the impending transition.

Failure to administer a comprehensive national DTV transition plan will almost certainly result in a tsunami of consumer complaints to congressional and other government offices from viewers across the country. To better manage this potential national disruption, I would recommend establishing a clear chain of command.

While the NTIA is principally charged with administering the converter box program, the FCC’s technical and consumer outreach expertise makes us especially well-suited to spearhead a national consumer education initiative. The two agencies should work collaboratively to develop a unified Federal message about the DTV transition, and to inform consumers about options they have to continue receiving broadcast programming after February 17, 2009.

An inter-agency, public/private Federal Task Force could also be established to reach out to state, local and tribal governments, as well as private sector stakeholders, to further refine our message and approach. For example, while the DTV website ([www.dtv.gov](http://www.dtv.gov)) has been successful, that may not be the best way to reach certain insular communities—communities with relatively low Internet subscribership, i.e., low income, elderly, minority, non-English speaking and tribal communities. Local officials and organizations may be able to offer the best approach for their television market. While we need a clear, unified and consistent message emanating from both the public and private sectors, we need to target a number of unique communities to ensure we reach specialized audiences.

Since my keynote address last March, the Commission and the principal stakeholders have taken steps in right direction, but we are far from a national plan. Accordingly, in addition to the abovementioned steps, the Commission specifically could enhance consumer DTV education by: (1) developing quantitative public interest obligations for DTV broadcasters; (2) encouraging more PSAs on analog television as well as pay-TV services; (3) conducting more targeted outreach to insular communities; (4) standardizing the information that consumers receive at points of sale; and (5) establishing achievable benchmarks for industry stakeholders.

- *The FCC must develop DTV public interest obligations and encourage more PSAs.*

First, in order to maximize the benefits to the American people, the Commission needs to determine DTV broadcasters’ public interest obligations. This proceeding has been pending since 1999, and the Commission has failed to produce final rules. Quantitative public interest obligations would encourage broadcasters to develop



news and entertainment programming that is compelling and relevant to the viewing audience.

Second, the best way to inform the American people, especially analog-only viewers, about the DTV transition is through public service announcements (PSAs) on broadcast channels. Additionally, the Commission should encourage PSAs on cable and satellite systems.

- *The FCC must conduct more outreach to insular communities, standardize the information that consumers receive at points of sale, and establish achievable benchmarks for industry stakeholders.*

Third, the Commission needs a more targeted outreach to insular communities across the United States. While the physical reach of FCC staff is limited, the Commission should hold regional seminars to train members of public interest organizations in local communities. Additionally, the Commission should take advantage of the numerous official and unofficial media ownership/localism hearings to educate the American public about the DTV transition. The FCC needs to move beyond attending industry trade shows and visit people in their local communities.

Fourth, the Commission should make an affirmative effort to contact consumer electronic retailers and strongly encourage them to improve floor signs and displays, educate their sales-forces and ensure all analog sets have informational labels.

And finally, considering the potential disruption this transition could cause, the Commission could serve as the central clearinghouse for all DTV initiatives. For the principal industry stakeholders—broadcasting, cable, satellite, and the consumer electronics retail and manufacturing sectors—the Commission could coordinate their dispersed efforts and establish achievable benchmarks to ensure a smooth transition. The Task Force could help accomplish these goals.

*Question 3.* A recent study conducted by Free Press entitled, *Out of the Picture: Minority & Female TV Station Ownership in the United States*, contained some sobering statistics.

Women comprise 51 percent of the entire U.S. population, but own a total of only 67 stations, or 4.97 percent of all stations.

Minorities comprise 33 percent of the entire U.S. population, but own a total of only 44 stations, or 3.26 percent of all stations.

Latinos comprise 14 percent of the entire U.S. population, but own a total of only 15 stations, or 1.11 percent of all stations.

African Americans comprise 13 percent of the entire U.S. population but only own 18 stations, or 1.3 percent of all stations.

Asians comprise 4 percent of the entire U.S. population but only own a total of 6 stations or 0.44 percent of all stations.

Do these facts trouble you as they do me, and what action should the Commission take to promote greater diversity of ownership?

Answer. These facts trouble me deeply because they reflect the Commission's failure over the years to acknowledge and study the reasons there are so few women and minority FCC broadcast licensees. This lack of concern and no comprehensive Commission review of female and minority ownership are barriers preventing the development and implementation of regulatory policies that are specifically targeted to improve ownership diversity—a compelling national interest.

The FCC media ownership decision in 2003 would have been an enormous setback for diversity in broadcasting. Opportunities to promote minority, small and start-up broadcasters were cast aside to enable the big media companies to get even bigger. Criticizing the Commission's 2003 decision, the Third Circuit Court of Appeals said the FCC utterly failed in rational decision-making by repealing the only policy specifically aimed at fostering minority station ownership without any analysis whatsoever of the effect on minorities. The Commission's decision did not even acknowledge the decline in minority station ownership.

For starters, the Commission needs to first acknowledge that the state of female and minority ownership in the United States is a direct result of Commission policy. The Commission then needs to develop a "white paper" to determine whether diversity of ownership in the broadcasting industry is a compelling state interest, in light of the enormous influence broadcasting has in our public and political discourse. These first two steps are critical because they will set the constitutional bounds of the Commission's ability to study and implement reform measures that have been proposed by the Commission's own Diversity Committee and the Minority Media and Telecommunications Committee.

The Commission's acknowledgment and the white paper would complement the two outstanding minority ownership studies which should examine levels of minority ownership of media companies and the barriers to entry.

As the Commission goes through this process, it is important to bear in mind that we should develop policies with the specific goal to improve minority ownership. The policies we develop should put minority groups on the path of ownership—not mere subleasing opportunities.

*Question 4.* On November 22, 2006, the day before Thanksgiving, the FCC released a list of economic studies to be performed in the media ownership proceedings.

- How did the Commission choose the economic studies to be preformed in the media ownership proceedings?
- Who at the Commission or elsewhere was consulted for input on the topics chosen?
- How were parties selected for the studies done outside the Commission, and what is the cost of these contracts?
- Would the Commission consider seeking public comment on what other studies might assist the Commission in its review of ownership rules?

Answer. Those are all very important questions, and I wish I could answer them. The studies were developed, topics were chosen, and the analysts were selected, all without the full Commission's knowledge or input. As I said in my press release shortly after hearing about announcement of the studies,

[The] unilateral release of this Public Notice on the eve of the Thanksgiving holiday ultimately undermines the public's confidence by raising more questions than it answers. The legitimacy of the studies is directly correlated to the transparency of the process undertaken to develop the studies and select the authors. The descriptions of the studies are scant, lacking any sense of the Commission's expectations for scope, proposed methodology and data sources. In certain instances, the truncated period of time to complete the studies is an ingredient for a study that doesn't engender public faith and confidence. The release of this deficient Public Notice is unfortunate given the importance of these studies in evaluating the impact of media ownership on the American public.

I still feel the same way about the studies today. I hope, in the future, all Commissioners are able to provide input.

*Question 5.* In November 2006, the Government Accountability Office (GAO) issued a report concluding that the cost of special access has gone up—not down—in many areas where the FCC predicted that competition would emerge. To address this error, the report recommended that the FCC develop a better definition of “effective competition” and monitor more closely the effect of competition in the marketplace. Do you agree with these findings? What action should the Commission take in response?

Answer. GAO's report appears to be based on a comprehensive study that takes into account relevant evidence in making its findings. The Commission must closely examine GAO's recommendations and move forward with its own pending proceeding on special access services because many business customers and wholesale carriers rely heavily on incumbent providers' special access services for their voice and high-speed connections. Independent wireless companies, satellite providers, rural companies, and long distance providers also depend on access to incumbents' nearly ubiquitous network and services to connect their networks to other carriers. So, it is important that the Commission tackle these issues as comprehensively and expeditiously as possible.

In particular, I agree with GAO's recommendations that the FCC must more closely monitor the effect of its rules and competition in the marketplace. GAO recommended that the FCC consider collecting additional data and developing additional measures to monitor competition on an ongoing basis that more accurately represents market developments and individual customer choice.<sup>3</sup> The GAO report should give further impetus to move forward with the Commission's long-pending proceeding on special access services.

*Question 6.* Last year, Congress passed legislation imposing a ten-fold increase in the size of maximum fines for indecency violations, to a maximum of \$325,000 per

<sup>3</sup>I note that the National Association of Regulatory Utility Commissioners (NARUC) recently convened a Task Force to examine competitive issues involving special access services. I commend NARUC for that effort and look forward to reviewing its analysis, findings, and recommendations.

violation. At the time President Bush signed the law, he said “[t]he problem we have is that the maximum penalty that the FCC can impose under current law is just \$32,500 per violation, and for some broadcasters, this amount is meaningless. It’s relatively painless for them when they violate decency standards.” Should Congress similarly raise the statutory maximum fine for other violations? What other actions should be taken to promote swifter and more effective enforcement?

Answer. It would be fairer and more equitable to raise the statutory maximum fine for other violations in addition to indecency. This would provide the proper deterrent against violating Commission rules. The Commission certainly could use its discretion not to impose the maximum fine indiscriminately, but to calibrate the level of the fine based on the nature of the offense. In other words, increasing the maximum fine should not mean it is employed in every circumstance. Given increasing size and scope of the entities we oversee, including the revenue growth of the media and telecommunications industries in recent years, an increase in the maximum fine amounts is fully justified.

In terms of improving our enforcement efforts, I have long believed that the best way to improve compliance is through strict enforcement of existing rules. Strong enforcement measures send the most effective message that violations of our rules will not be tolerated, and by thus improving compliance, it reduces the need for further enforcement actions.

In order to accomplish the goal of strict enforcement, additional resources would benefit the Enforcement Bureau. Given the scope of new laws that Congress has required us to enforce, and the ballooning number of complaints about alleged violations of existing laws, the demands on our staff have exceeded our ability to respond adequately. If Congress provides additional resources to our enforcement efforts, it would also send a strong message and help us to deal with backlogs.

Clarity in our rules is also essential. The more clearly we draw the lines, the less likely we are to encounter excuses that parties failed to comply because they did not understand what is permitted under the rules.

*Question 7.* Recently, the FCC adopted an order to prohibit certain practices by franchising authorities that the Commission finds are unreasonable barriers to entry. One issue mentioned in that order, which is very important to the State of Hawaii, is the ability of the franchise authority to seek appropriate contributions for public, educational, and governmental (PEG) and institutional networks (I-nets). I understand that some parties have disputed the veracity of some claims made in this proceeding. What, if any, efforts did the Commission take to independently investigate and verify the claims of unfair demands made by many of the carriers in this proceeding?

Answer. I am not aware of the Commission taking any steps to independently investigate and verify the claims of the major phone companies. Nor am I aware of the Media Bureau contacting a representative sample of franchising authorities. There are no specific instances of the Bureau doing its own research concerning claims of unfair demands. In my dissenting opinion on this proceeding I wrote:

Instead of acknowledging the vast dispute in the record as to whether there are actually any unreasonable refusals being made today, the majority simply accepts in every case that the phone companies are right and the local governments are wrong, all without bothering to examine the facts behind these competing claims, or conduct any independent fact-finding. This is breathtaking in its disrespect of our local and state government partners and in its utter disregard for agency action based on a sound record.

The Bureau simply took all the carriers claims of unfair practices as true, without even questioning the fact that the ones providing the examples had the most to gain in the proceeding. All other viewpoints, primarily from state and local governments, were summarily dismissed.

*Question 8.* In 2004, the FCC adopted a plan to move certain licenses within the 800 megahertz band in order to eliminate interference problems that were being experienced by public safety communications systems. What is your assessment of the pace of progress in rebanding the 800 MHz band and what steps does the Commission intend to take in order to get this process back on track?

Answer. I am concerned about the pace of progress in rebanding the 800 MHz band. It appears that the Commission’s initial oversight of the process and of the role of the Transition Administrator (TA) may have not been sufficiently vigorous. Indeed, last month, the major organizations affected by the transition and Sprint Nextel filed a letter with the Commission asking us to direct the TA to develop specific benchmarks to complete reconfiguration of the NPSPAC channels (channels 601–720). The letter also counsels the TA to work closely with public safety organi-

zations, Sprint Nextel, and equipment and service providers to develop plans and schedules to ensure a smooth transition to the reconfigured channel plan. The letter's signatories also indicated that the TA, by July 15, 2007, should identify NPSPAC systems that can complete their reconfiguration in 2007 and schedule them accordingly. I support the specific action items laid out in that letter and will do what I can to ensure the Commission is taking the appropriate steps to implement these recommendations.

*Question 9.* A number of wireless carriers have employed the use of high "early termination fees" to prevent wireless customers from switching to other carriers. In some cases these fees may be \$200 or more, and may apply regardless of whether the subscriber wishes to cancel on the first or last date of their wireless contract. Do you believe these practices promote or impede competition?

Answer. As I travel the country, I often hear consumers complain about the practice of early termination fees or ETFs. Indeed, it is one of the complaints the Commission receives most frequently with respect to wireless services. Clearly, consumers have a concern with ETFs and its impact on their ability to switch service providers. We have seen the success of local number portability in promoting competition among mobile wireless providers. Some argue that ETFs have the effect of limiting some of the pro-consumer and pro-competitive impact of that significant policy decision.

*Question 10.* Given requirements imposed by General Services Administration to promote greater redundancy of communications, how would the retirement of copper facilities impact Congress' directive to promote the availability of alternate network facilities in federally owned and leased buildings?

Answer. The Commission has recognized the importance of redundant communications in several contexts.<sup>4</sup> Indeed, the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks found that failure of redundant pathways for communications traffic was one of three main problems that caused the majority of communications network interruptions.<sup>5</sup>

Two currently pending petitions ask the Commission to investigate whether the retirement of copper facilities would lessen the redundant capabilities available for consumers, including federally owned and leased buildings.<sup>6</sup> These petitions argue that copper loop and subloop retirement eliminate network alternatives that might otherwise prove essential for network redundancy in the event of a homeland security crisis, natural disaster, or the recovery period after such events. The Commission has sought comment on these petitions, and I look forward to reviewing the record developed in response to these petitions.<sup>7</sup>

*Question 11.* Given the Commission's policy of promoting broadband deployment and eliminating regulations that treat competitors in the provision of broadband differently, how is this policy being implemented this policy with regard to pole attachment regulations?

Answer. The Commission has, in recent years, taken a number of actions designed to level the competitive playing field for facilities-based providers of broadband services.<sup>8</sup> A number of parties have suggested that the Commission should also explore changes to its pole attachment rules in order to reduce competitive distortions among broadband providers.<sup>9</sup> These parties have asked the Commission to consider,

<sup>4</sup>See, e.g., *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, WC Docket No.06-10, FCC 06-165, Memorandum Opinion and Order (rel. Nov. 7, 2006).

<sup>5</sup>See *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Notice of Proposed Rulemaking*, EB Docket No. 06-119, App. B (rel. June 19, 2006).

<sup>6</sup>See *Petition for a Rulemaking to Amend Certain Part 51 Rules Applicable to Incumbent LEC Retirement for Copper Loops and Copper Subloops*, filed by XO Communications, LLC et al. (filed Jan. 18, 2007); *Petition for Rulemaking and Clarification filed by BridgeCom International, Inc. et al., Policies and Rules Governing Retirement of Copper Loops By Incumbent Local Exchange Carriers* (filed Jan. 18, 2007).

<sup>7</sup>See *Pleading Cycle Established For Comments On Petitions For Rulemaking And Clarification Regarding The Commission's Rules Applicable To Retirement Of Copper Loops And Copper Subloops*, Public Notice, DA 07-209, Docket No. RM-11358 (2007).

<sup>8</sup>See, e.g., *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No.02-33, FCC 05-150, Report and Order (Aug. 5, 2005); *United Powerline Council's Petition for Declaratory Ruling Regarding the Classification of Broadband Over Power Line Internet Access Service as an Information Service*, WC Docket No. 06-10, Memorandum Opinion and Order, 20 FCCR 13281 (2006).

<sup>9</sup>See *Petition of United States Telecom Association for a Rulemaking to Amend Pole Attachment Rate Regulation and Complaint Procedures*, RM-11293 (filed Oct. 2005); *Petition for Rulemaking of Fibertech Networks, LLC*, RM 11303 (filed Dec. 2005).

among other things, changes to its rules for pole attachment rates, complaint processes, and procedures for providing access to poles, ducts, and conduits. The Commission has sought comment on two such petitions and comments have now been filed.<sup>10</sup> Given that access to poles, ducts, and conduits is critical for facilities-based providers of broadband services, it is important that the Commission move forward with its consideration of these petitions as expeditiously as possible.

*Question 12.* Recently, a Virginia Federal court referred a matter to the FCC for review and clarification as to whether Internet Protocol Television or “IPTV” service meets the definition of a “cable service” under the Communications Act—a question that this Committee answered affirmatively during consideration of last year’s telecommunications bill. How does the Commission intend to address this matter?

Answer. I would expect the Commission to follow the plain meaning of the law and the intent of Congress, and promote the public interest. At this time, I am not aware of how the Commission intends to address this matter.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO  
HON. JONATHAN S. ADELSTEIN

*Question 1.* Eleven years after Congress passed the 1996 Telecommunications Act that opened the floodgates of media consolidation in the radio industry is American radio better or worse than it was in 1996 in terms of viewpoint diversity and localism?

Answer. Since joining the Commission in 2002, I have visited dozens of local communities throughout the country and the overwhelming public belief is that viewpoint diversity and localism have not improved since 1996. In fact, many say that diversity and localism in radio have gotten much worse. Studies from independent organizations have confirmed public sentiment. A recent study from Future of Music Coalition has found that local ownership has declined by nearly 30 percent since 1996. Just fifteen formats make up 76 percent of commercial programming, and radio formats with different names can overlap up to 80 percent in terms of songs played on them.

*Question 2.* How has consolidation impacted the public’s ability to hear local music and local news on the airwaves?

Answer. A recent study from the Future Music Coalition has revealed that the playlists of many radio stations are very similar. And for commonly owned stations in the same format, their playlists overlap over 97 percent. In addition concentration of ownership, programming ownership is also concentrated. For instance, the Top 3 radio companies in terms of station ownership are also the Top 3 in terms of programming-network ownership.

*Question 3.* Even with the existence of net neutrality conditions on AT&T, are there rules in place to ensure that other broadband providers do not discriminate against Internet content, services or applications? Given the rulings on information services, is it even clear that the FCC has authority to act if such discrimination occurs?

Answer. I do not believe that the FCC has adequate rules in place to ensure that broadband providers do not discriminate in their provision of Internet content, services, or applications. In August 2005, the FCC ruled that the Act’s long-standing non-discrimination safeguards in Sections 201 and 202 no longer apply to wireline broadband Internet access services.<sup>11</sup> At the same time, the Commission also adopted its *Internet Policy Statement* that outlines four principles to encourage broadband deployment and preserve and promote the open and interconnected nature of public Internet: (1) consumers are entitled to access the lawful Internet content of their choice; (2) consumers are entitled to run applications and services of their choice, subject to the needs of law enforcement; (3) consumers are entitled to connect their choice of legal devices that do not harm the network; and (4) consumers are entitled to competition among network providers, application and service providers, and content providers.<sup>12</sup> The Commission stated that it would incorporate these principles into its ongoing policymaking activities but it did not adopt rules in this regard.

The Commission’s authority to act if discrimination occurs can fairly be characterized as unclear. The Supreme Court, in the *Brand X* decision, suggested that the Commission has broad authority to “impose additional regulatory obligations under

---

<sup>10</sup> *Id.*

<sup>11</sup> See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No.02–33, FCC 05–150, Report and Order (Aug. 5, 2005).

<sup>12</sup> See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No.02–33, FCC 05–151, Policy Statement (Aug. 5, 2005).

its Title I ancillary jurisdiction to regulate interstate and foreign communications.”<sup>13</sup> It is noteworthy, however, that other courts have taken a narrow view of the Commission’s ancillary authority. For example, in reviewing the Commission’s authority to set rules related to the unauthorized copying and redistribution of digital programming, the D.C. Circuit has stated that “[the Commission’s] position in this case amounts to the bare suggestion that it possesses plenary authority to act within a given area simply because Congress has endowed it with some authority to act in that area. We categorically reject that suggestion.”<sup>14</sup> Given the importance of preserving the open character of the Internet, Congress may wish to provide a stronger legal foundation for Commission oversight.

*Question 4.* In an environment of industry consolidation and technological integration, what role do you see the FCC playing to ensure nondiscriminatory access to infrastructure, content, roaming, spectrum and rights of way?

Answer. The goal of the Telecommunications Act of 1996 is to establish a competitive and de-regulatory telecommunications environment. Over the past few years, the Commission has done much to reduce regulation by eliminating obligations on incumbent local exchange carriers, but the Commission can do much more to promote truly dynamic competitive markets. Going forward, it is critical that the Commission improve its efforts to monitor market developments and to make decisions based on sound data and analysis.

This is a time of great change in telecommunications markets with the emergence of new services, increased convergence, and seismic structural changes among the market participants. For many residential customers, there is an emerging rivalry between traditional telephone providers and new cable entrants, along with an increasing opportunity for use of wireless and VoIP services. Nonetheless, the Commission must continue to promote competition between providers and to be vigilant about the potential impacts of increased consolidation in these markets. I have been concerned about the adequacy and vigor of the Commission’s analysis in its consideration of recent mergers and forbearance petitions. I believe that the Act contemplates more than just competition between a wireline and cable provider, and that both residential and business consumers deserve more.

It is also noteworthy that GAO recently raised concerns about the development of competition for business customers. In its report on special access services, GAO found that competitive providers are serving, on average, less than 6 percent of the buildings with demand for dedicated access, leaving 94 percent of the market served only by incumbent providers. The Commission has a long-pending proceeding on special access services and, with fresh motivation from GAO’s report, it will be even more critical that the Commission tackle these issues as comprehensively and expeditiously as possible.

In considering recent wireline mergers that represented major consolidation of the marketplace, I have also looked for ways to counter-balance the effects of the transactions through meaningful conditions that protect the open and neutral character of the Internet, benefit consumers by promoting affordable broadband services, and preserve competitive choices for residential and business consumers. For example, in the recent AT&T/BellSouth merger, I supported conditions designed to promote and preserve competition by requiring the divestiture of wireless broadband spectrum that will be critical to the development of an independent broadband option; by ensuring that competitive carriers continue to have access to critical wholesale inputs; and by providing that these conditions last for a meaningful period of time.

On the spectrum side, I have long advocated that we should continually evaluate our spectrum policies to ensure that we are doing what we can to get spectrum into the hands of operators who are ready and willing to serve consumers at the most local levels. I want auctions to be a real opportunity for new and incumbent carriers to expand existing networks and develop new and exciting wireless broadband services. I have worked hard to put in place policies and rules that would promote opportunities for all carriers in auctions, such as a more diverse group of license blocks.

During our review of the bandplan in advance of the auction last year of 90 MHz of new spectrum for the Advanced Wireless Service (AWS), I pressed for the inclusion of an additional smaller block of licenses. I believe that smaller licenses will improve access to spectrum by those providers who want to offer service to smaller, more rural, areas, while also providing a better opportunity for larger carriers to more strategically expand their spectrum footprint. As we prepare for the 700 MHz

<sup>13</sup> *National Cable & Telecommunications Association, et al. v. Brand X Internet Services, et al.*, No. 04-277, 125 S.Ct. 2688 (June 27, 2005).

<sup>14</sup> *American Library Association v. Federal Communications Commission*, No. 04-1037 (Mar. 15, 2005).

and future auctions, it is critical we build on the success of the AWS auction by providing a diverse group of licenses so that all bidders have an opportunity to obtain licenses that best match their business plan. While I have supported rules to facilitate the secondary market for spectrum rights and licenses, I think we are best served by providing a wide variety of license sizes at the initial auction when appropriate.

Finally, I am increasingly concerned with the competitiveness of the commercial mobile radio service (CMRS) wholesale market. Whether in the context of recent mergers or other rulemakings, the Commission hears regularly from small and mid-size carriers who are increasingly frustrated with their inability to negotiate automatic roaming agreements with larger regional and nationwide carriers for the full range of CMRS services. I was pleased that we initiated a proceeding in August 2005 to explore all aspects of roaming and more specifically the effects that consolidation has on the ability of smaller carriers to negotiate access to larger networks. Currently, we are hearing from parties on both sides of the issue. Yet, I think we should get access to more information. I have supported an FCC review of actual roaming agreements so that the Commission truly is informed on the nature of these contracts. I also believe we should move forward with this proceeding as quickly as possible.

*Question 5.* Do you think that the current broadband market is sufficiently competitive and robust in terms of broadband deployment? Does the FCC currently have sufficient tools to even accurately determine whether Americans have access to broadband?

Answer. It is difficult to assess the relative competitiveness of the current broadband services market because of the lack of sufficient data collected at the FCC and because the industry is changing so dramatically.

Even though we have made strides with broadband deployment, we must work to promote meaningful competition, as competition is the most effective driver of lower prices and innovation. Given that cable and DSL providers control 98 percent of the broadband market, we must be vigilant to ensure that the U.S. broadband market does not stagnate into a comfortable duopoly.

Unfortunately, the Commission's current efforts to gauge broadband deployment, competition, and affordability fall short. In a May 2006 report, the Government Accountability Office (GAO) took the FCC to task for the quality of its broadband data. GAO criticized the Commission's ability to analyze who is getting broadband and where it is deployed, observing that the FCC's data "may not provide a highly accurate depiction of deployment of broadband infrastructures for residential service, especially in rural areas." Similarly, GAO observed that the number of providers reported in a Zip Code overstates the level of competition to individual households. One clear conclusion from the GAO's report is that the Commission must explore ways to develop greater granularity in its assessment and analysis of broadband availability, whether through statistical sampling, Census Bureau surveys, or other means.

*Question 6.* How do you envision universal service reform moving ahead to keep the fund sustainable? I am concerned about proposals that would not require broadband connections to pay into universal service, or reverse auction proposals that advocate providing USF support in an auction type model to the least cost provider.

Such proposals bring uncertainty to investment plans, and shift the universal service standard from comparable to urban areas, to one that would just go to the lower bidder, quality irrelevant. I understand that rural providers have expressed concern about both proposals. Can you discuss the least cost provider issue, as well as what possible distinctions exist to justify excluding broadband from paying into USF—why shouldn't a technology that uses and benefits from the network pay into universal service?

Answer. Congress and the Commission recognized early on that the economic, social, and public health benefits of the telecommunications network are increased for all subscribers by the addition of each new subscriber. Federal universal service continues to play a vital role in meeting our commitment to connectivity, helping to maintain high levels of telephone penetration, and increasing access for our Nation's schools and libraries.

I have worked hard to preserve and advance the universal service programs as Congress intended. It is vital to keep them on solid footing. The Commission has taken a number of positive steps over the past year to maintain the base of support for universal service, but the Commission must continue to be vigilant and look for long-term solutions that ensure universal service remains effective. As we consider further changes to our contribution rules, it is apparent that ensuring a stable base

of support means expanding it. Any changes to these rules must also meet the statutory requirements, be administratively workable, and not unduly impact consumers. One specific area for Commission attention is the question of whether broadband providers must contribute. As a result of the FCC's reclassification decisions, the de facto result is that broadband revenues have dropped out of the contribution base. Given that broadband services represent the future of our telecommunications networks, it is critical that the Commission not undermine the long-term foundation of universal service.

The Commission also has open proceedings looking at how it distributes federal Universal Service Funds to both large and small companies. On August 11, 2006, the Federal-State Joint Board on Universal Service sought comment on the use of reverse auctions to determine high cost universal service funding to eligible telecommunications carriers pursuant to Section 254 of the Act. While I do not currently serve on the Joint Board, this is an important proceeding for consumers in rural America, and I have heard concern from many rural providers about whether reverse auctions will create appropriate incentives for carriers to invest in their networks. It is critical that we have a framework that creates incentives for providers to invest in rural America, so I will consider the Joint Board's recommendations very carefully. Particularly given the impact of this proceeding on the services available in Rural America, I will look closely to make sure that any changes are consistent with the Act's requirement that universal service be specific, sufficient, and predictable.

On a larger scale, it is important that the Commission conducts its stewardship of universal service with the highest of standards. Ensuring the vitality of universal service will be particularly important as technology continues to evolve. As voice becomes just one application over broadband networks, we must ensure that universal service evolves to promote advanced services, which is a priority that Congress has made clear.

*Question 7.* What is your view of making the deployment of advanced infrastructure that is fully capable of offering the wide array of broadband oriented services the hallmark of our national universal service policy? Should universal service subsidize broadband?

Answer. Americans should have the opportunity to maximize their potential through communications, no matter where they live or what challenges they face. We have got to make broadband truly affordable and accessible to everyone. Some have argued that the reason we have fallen so far in the international broadband rankings is that we are a more rural country than many of those ahead of us. If that is the case, we should strengthen our efforts to address any rural challenges head-on.

As voice, video, and data increasingly flow to homes and businesses over broadband platforms, voice is poised to become just one application over broadband networks. So, in this rapidly-evolving landscape, we also must ensure that universal service evolves to promote advanced services, which is a priority that Congress made clear.

*Question 8.* The FCC recently has been granting incumbent providers (ILECs) forbearance from regulations on the premise that sufficient competition exists in a specific market to make enforcement of the regulations unnecessary. However, a Fall 2006 GAO report indicates that the assumptions the FCC uses to determine the existence of competition may be flawed and further that prices in Phase II areas—that is, areas where competition is theoretically most intense—are going up. Is that the case, and if so, are price increases consistent with a competitive market?

Answer. GAO's report found that list prices and average revenue for dedicated business services appear to be higher in areas where the FCC had granted full pricing flexibility due to the presumed presence of competitive alternatives than they are in areas still under some FCC price regulation. As to whether this is consistent with a competitive market, GAO found that its analysis of facilities-based competition suggests that the FCC's predictive judgment—that areas with pricing flexibility have sufficient competition—may not have been borne out.

GAO's report appears to be based on a comprehensive study that takes into account relevant evidence in making its findings. It is important that the Commission address GAO's recommendations and that it move forward with its own consideration of these issues through its pending special access rulemaking.

*Question 9.* Is forbearance for the ILECs in the public interest?

Answer. Section 10 of the Act sets out the standards for forbearance. Under Section 10, the Commission is required to forbear from any statutory provision or regulation if it determines that: (1) enforcement of the regulation is not necessary to ensure that charges, practices, classifications, or regulations are just and reasonable,



and are not unjustly or unreasonably discriminatory; (2) enforcement is not necessary to protect consumers; and (3) forbearance is consistent with the public interest. In making this determination, the Commission must also consider pursuant to Section 10(b) "whether forbearance from enforcing the provision or regulation will promote competitive market conditions."

I have supported a number of forbearance petitions where the statutory criteria were met. In two recent proceedings, I have supported Orders granting unbundling relief to incumbent LECs where there is especially strong evidence of competition between the incumbent cable and wireline provider. While I have been concerned with the analysis in these decisions and I believe that the Act contemplates more than just competition between a wireline and cable provider, I believe that these Orders were clearly superior to an automatic grant of the underlying petitions.

I am concerned, however, about the Commission's recent willingness to allow complex and controversial forbearance petitions to grant without issuing an order. Congress has given the Commission a powerful tool in our Section 10 forbearance authority, but the Commission must wield this tool responsibly. Allowing petitions to grant by operation of law, and without disclosing a shred of analysis, does not best serve the public interest. Moreover, this approach inappropriately ignores Congress's directive to consider the specific substantive standards set out in Section 10 and raises serious legal questions about the scope, effect, and validity of its actions.

*Question 10.* A proceeding to investigate the rates, terms and conditions for interstate special access services has been pending for a number of years. What is the status of the FCC's special access proceeding? What steps are being taken to speed resolution of this matter?

Answer. In January 2005, in response to a petition filed by AT&T in 2002, the FCC initiated a Notice of Proposed Rulemaking, seeking comment on whether regulation of dedicated access services and on whether the Commission's pricing flexibility rules should be revised.<sup>15</sup> Comments and reply comments have been filed in this proceeding and it is pending before the Commission.

While Orders are typically drafted at the direction of the Chairman rather than individual Commissioners, I will expeditiously review any Bureau recommendations regarding these rules. Indeed, the GAO report should give further impetus to move forward with that proceeding.

*Question 11.* Some say that the dispute between Mediacom and Sinclair signals a new period of confrontation between broadcasters and distributors. How many complaints involving retransmission consent disputes has the Commission received in the last couple of years? Is there any trend within that data that may be useful to consider? How long does the Commission typically take to resolve those complaints?

Answer. I have requested the necessary information and analysis concerning retransmission consent disputes from the FCC's Media Bureau.

*Question 12.* One issue specifically important for public radio stations is the opportunity to file for and receive additional reserved FM spectrum. It has been almost 7 years since the FCC provided the public with an opportunity to build new noncommercial educational stations on reserved FM spectrum. When will the FCC open a filing window for new reserved-FM noncommercial stations? Will the FCC provide public notice of a filing window sufficiently in advance to permit non-profit, governmental, and other potential applicants adequate time to participate?

Answer. I have requested the necessary information and analysis concerning the filing window for new reserved-FM NCE stations from the Media Bureau. In any event, I believe the Commission should provide public notice of the filing window several months in advance to permit full and active public participation.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
HON. JONATHAN S. ADELSTEIN

*Question 1.* Do you believe those individual and their employers who violated the commission's payola rules should be held accountable and those who have been injured receive fair compensation?

Answer. Yes, they should be held accountable. I believe these objectives were achieved in the recently reported payola consent decrees with Clear Channel, CBS Radio, Entercom, and Citadel: \$12.5 million contribution to the Federal Treasury,

<sup>15</sup> *Special Access Rates for Price Cap Local Exchange Carriers, Order and Notice of Proposed Rulemaking*, WC Docket 05-25, 20 FCCR 1994 (2005).

and a separate voluntary commitment to program and broadcast over 4200 hours of local and independent music, which should help counteract the harm caused by payola.

*Question 2.* Should significant fines be part of the penalty?

Answer. Fines and all forms of financial or service contributions should be commensurate to the seriousness of the alleged offense. The \$12.5 million fine in the announced payola settlement would be the largest fine collectively imposed on broadcasters in the history of the FCC.

*Question 3.* How do you structure a consent decree so that it changes behavior and deters individuals from future violations beyond when the consent decree ends?

Answer. First, the Commission could deter individuals and their employers from future violations by imposing a stiff fine. Second, the Commission could endeavor to change individual and employer behavior by requiring real business reform measures that better tracks record label transactions in radio stations. And finally, the Commission should structure a consent decree to prevent future violations by committing the Commission to perform certain meaningful oversight elements which the Commission is committed to perform. While the details of the consent decree and independent airtime agreement are not yet final, I believe that the Commission has achieved the primary three objectives of the investigation against Clear Channel, CBS Radio, Entercom, and Citadel.

*Question 4.* What kind of enforcement mechanism do you envision to ensure the consent decree is effective?

Answer. I envision the Commission requiring the four radio groups to designate one corporate-level Compliance Officer as well as market-level Compliance Contacts to monitor all potential pay-for-play concerns. The groups will also maintain a database that tracks all record label transactions and the Commission will have unfettered access to the data base. Additionally, the groups will also be required to provide the Commission with annual reports.

*Question 5.* Given how important music and radio is to many Americans, do you believe there should be public comment on any consent decree before the Commission adopts it?

Answer. I would not oppose the opportunity for the public to comment on any consent decree before the Commission adopts it. After all, our job is to promote the public interest and the Commission's decision-making should be fair and transparent to the public. Comments would inform the Commission about the harms that many listeners experience and would ensure that our fines and requirements are supported by those we are trying to protect.

Public comment on consent decrees, however, has not been the Commission's practice.

*Question 6.* In your dissent of the Report and Order and Further Notice of Proposed Rulemaking that establishes rules and provides guidance to implement Section 621(a)(1) of the Communications Act of 1934 issued in December 2006, you argued that you believed the Commission was on shaky legal ground and was using the item to legislate rather than to regulate. Do you believe that the record supports the Commission's decision? Why do you believe the Commission is on shaky legal ground?

Answer. The policy goals of the Commission's decision, to promote competitive video offerings and broadband deployment, are laudable. But while I support these goals, the decision goes out on a limb in asserting Federal authority to preempt local governments, and then saws off the limb with a highly dubious legal scheme. It substitutes the Commission's judgment as to what is reasonable—or unreasonable—for that of local officials—all in violation of the franchising framework established in the Communications Act.

I could not support the video franchise decision because the FCC is a regulatory agency, not a legislative body. In my years working on Capitol Hill, I learned enough to know that Commission's decision is legislation disguised as regulation. The courts will likely reverse such action because the Commission cannot act when it "does not really define specific statutory terms, but rather takes off from those terms and devises a comprehensive regulatory regimen. . . . This extensive quasi-legislative effort to implement the statute does not strike [me] as merely a construction of statutory phrases." *Kelley v. E.P.A.*, 15 F.3d 1100, 1108 (DC. Cir. 1994)

The decision also displays a fundamental misunderstanding about the commitment of franchising authorities to bring competition to their citizens. By law, a franchise under Title VI confers a right of access to people's property. Unlike members of the Commission, many state and local officials are elected and directly accountable to their citizens. Instead of acknowledging the vast dispute in the record as to whether there are actually any unreasonable refusals being made today, the major-

ity simply accepts in every case that the phone companies are right and the local governments are wrong, all without bothering to examine the facts behind these competing claims, or conduct any independent fact-finding. Our embrace of everything interested companies say while discounting local elected officials on a matter grounded in local property rights certainly does not inspire a great deal of confidence in the Commission's ability on the Federal level to arbitrate every local dispute in the country and fairly decide who is unreasonable and who is not.

Even if the Commission had such power, there is no mechanism outlined in the decision to establish how that process would work. Consequently, the end result will likely be litigation, confusion, abuse of the process, and a certain amount of chaos.

Notwithstanding the scant record evidence to justify agency preemption and the creation of a national, unified franchising process in contravention of Federal law, the Commission conjures its authority to reinterpret and, in certain respects, rewrite Section 621 and Title VI of the Communications Act, on just two words in Section 621(a)(1)—“unreasonably refuse.” The Commission ignores the verb that follows: “to award.” A plain reading of Section 621(a)(1) does not provide a wholesale “unreasonable” test for all LFA action. Rather, the statutory language focuses on the act of awarding a franchise. While I agree that the Commission has authority to interpret and implement the Communications Act, including Title VI, the Commission does not have authority to ignore the plain meaning, structure and legislative history of Section 621, and judicial precedent.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO  
HON. JONATHAN S. ADELSTEIN

*Question 1.* It is my understanding that there are at least four investigations pending at the FCC into possible violations of sponsorship identification rules. Some of these investigations have been pending for two or 3 years. Should there be a deadline for the FCC to act on these complaints? Does the FCC have adequate staff and resources to conduct these investigations?

Answer. Deadlines would be helpful for the FCC to act on sponsorship ID and other enforcement investigation. Deadlines could serve as an incentive for the Commission to conclude all investigations. I am of the view that the FCC could use additional staff resources to deal with the large volume of complaints we receive.

*Question 2.* In approximately 2 years, broadcasters will shift to digital television. There are over 200,000 homes in New Jersey that rely exclusively on over-the-air television. Do you think most Americans are educated about this transition today? What role will the FCC play in preparing the public for this transition?

Answer. Last March, in my keynote address at the consumer electronics industry's spring policy summit, I issued a “Call to Action” to both public and private industry leaders. Specifically, I encouraged the Commission to take a greater leadership role in preparing the Nation for this historic transition to digital television (DTV). For a complete text of my keynote, please find it at: <http://hraunfoss.fcc.gov/edocs—public/attachmatch/DOC-264354A1.pdf>.

- *With the end of analog broadcasting in 2 years, there is a critical need for greater national attention on the impending DTV transition and for more focused leadership from the FCC.*

With less than 2 years to the end of analog broadcasting, I believe there is a critical need for greater national attention on the impending DTV transition. More focused leadership from the FCC—the nation's expert agency—and the National Telecommunications and Information Administration (NTIA) is needed. Currently, the DTV preparedness effort lacks a clear national message and a coordinated set of industry activities.

The DTV transition is a significant public policy issue that is worthy of mention in the State of Union Address and other nationally televised speeches to the American people. Studies continue to show that the most Americans are unaware of the transition, few understand the benefits of digital television, and even fewer Americans who rely exclusively on over-the-air TV are aware of the deadline. To date, the Commission's outreach initiative and the effort of the broadcast, cable, satellite, and consumer electronics industries have had limited success, primarily reaching only high-end consumers. The latest study shows that 61 percent of Americans are totally unaware of the DTV transition.

- *To improve awareness, the FCC needs to develop a unified message among all levels of government, particularly with the NTIA; coordinate the efforts of the*

*various industry stakeholders; and improve education, especially in insular communities.*

To begin to address this general lack of public awareness, the Commission needs to take the following steps: (1) develop a unified, coherent message among Federal, state, local and tribal governmental entities; (2) coordinate the efforts of the broadcast, cable, satellite, and consumer electronics industries; and (3) educate insular communities about the consequences and benefits of the impending transition.

Failure to administer a comprehensive national DTV transition plan will almost certainly result in a tsunami of consumer complaints to congressional and other government offices from viewers across the country. To better manage this potential national disruption, I would recommend establishing a clear chain of command.

While the NTIA is principally charged with administering the converter box program, the FCC's technical and consumer outreach expertise makes us especially well-suited to spearhead a national consumer education initiative. The two agencies should work collaboratively to develop a unified Federal message about the DTV transition, and to inform consumers about options they have to continue receiving broadcast programming after February 17, 2009.

An inter-agency, public/private Federal Task Force could also be established to reach out to state, local and tribal governments, as well as private sector stakeholders, to further refine our message and approach. For example, while the DTV website ([www.dtv.gov](http://www.dtv.gov)) has been successful, that may not be the best way to reach certain insular communities—communities with relatively low Internet subscriber-ship, *i.e.*, low income, elderly, minority, non-English speaking and tribal communities. Local officials and organizations may be able to offer the best approach for their television market. While we need a clear, unified and consistent message emanating from both the public and private sectors, we need to target a number of unique communities to ensure we reach specialized audiences.

Since my keynote address last March, the Commission and the principal stakeholders have taken steps in right direction, but we are far from a national plan. Accordingly, in addition to the abovementioned steps, the Commission specifically could enhance consumer DTV education by: (1) developing quantitative public interest obligations for DTV broadcasters; (2) encouraging more PSAs on analog television as well as pay-TV services; (3) conducting more targeted outreach to insular communities; (4) standardizing the information that consumers receive at points of sale; and (5) establishing achievable benchmarks for industry stakeholders.

- *The FCC must develop DTV public interest obligations and encourage more PSAs.*

First, in order to maximize the benefits to the American people, the Commission needs to determine DTV broadcasters' public interest obligations. This proceeding has been pending since 1999, and the Commission has failed to produce final rules. Quantitative public interest obligations would encourage broadcasters to develop news and entertainment programming that is compelling and relevant to the viewing audience.

Second, the best way to inform the American people, especially analog-only viewers, about the DTV transition is through public service announcements (PSAs) on broadcast channels. Additionally, the Commission should encourage PSAs on cable and satellite systems.

- *The FCC must conduct more outreach to insular communities, standardize the information that consumers receive at points of sale, and establish achievable benchmarks for industry stakeholders.*

Third, the Commission needs a more targeted outreach to insular communities across the United States. While the physical reach of FCC staff is limited, the Commission should hold regional seminars to train members of public interest organizations in local communities. Additionally, the Commission should take advantage of the numerous official and unofficial media ownership/localism hearings to educate the American public about the DTV transition. The FCC needs to move beyond attending industry trade shows and visit people in their local communities.

Fourth, the Commission should make an affirmative effort to contact consumer electronic retailers and strongly encourage them to improve floor signs and displays, educate their sales-forces and ensure all analog sets have informational labels.

And finally, considering the potential disruption this transition could cause, the Commission could serve as the central clearinghouse for all DTV initiatives. For the principal industry stakeholders—broadcasting, cable, satellite, and the consumer electronics retail and manufacturing sectors—the Commission could coordinate their

dispersed efforts and establish achievable benchmarks to ensure a smooth transition. The Task Force could help accomplish these goals.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK L. PRYOR TO  
HON. JONATHAN S. ADELSTEIN

*Question 1.* Over the past 4 years, consumers have enjoyed the successful emergence of a number of new players in the audio marketplace. Satellite radio and Internet radio now reach tens of millions of listeners every week, and portable MP3 players and iPods have become common household items.

Digital Cable and DBS offer dozens of channels of uninterrupted music, and WiMax technology is evolving that will soon allow Internet based listening options in automobiles.

Would the Commissioners agree that the competitive landscape has changed dramatically in the audio market over the past few years? And would the Commissioners agree that this trend is only likely to continue for the foreseeable future?

Answer. The competitive landscape is certainly changing. Nonetheless, I am optimistic about the future of the broadcasting industry because every device or platform you've mentioned presents a great opportunity for radio and television broadcasting. Change isn't always easy; but in the case of the broadcast industry, I believe the industry is holding the strongest card in the deck—quality content, which viewers and listeners love and is *not* substitutable overnight.

- *Cable and Satellite TV* have allowed the major broadcasters to reach more homes and to create additional channels to deliver more content to families. While broadcast television has lost viewers to cable, network shows still dominate the ratings.
- *Satellite Radio* presents an opportunity for broadcasters to differentiate their service and to compete with satellite radio by incorporating more quality local content—news and music—into their programming. HD Radio will enable radio broadcasters and equipment manufacturers to offer new services and products to consumers.
- *TiVo and other DVR*: Time-shifting (TiVo) and place-shifting (Sling Box) technology will simply allow more people to watch broadcast programming at a time and place that's convenient for them. Since 2002, Nielsen Media Research and TiVo have agreed to measure viewing habits through the collection of TiVo recording data. When viewers record shows to watch later, their viewing is counted in the total audience. That should help broadcast ad revenue.
- *iPods*: Major networks, like ABC and NBC, are starting to embrace MP3 players such as the iPod. Viewers can now download their favorite NBC or ABC show for \$1.99 an episode and take it on the road.
- *Internet*: Recent studies demonstrate that Americans are consuming more and more media everyday. TV and radio remain the dominant forms of media for news and information. Although there is a growing trend toward dual usage, with consumers using the Internet while watching television at home, Americans watch television twice as much as we use computers.

Another interesting development is digital radio. I very much support the Commission moving the In Band on Channel (IBOC) proceeding as soon as possible. Since 2002, the Commission has selected IBOC as the digital technology for terrestrial radio broadcast service and some 1000 stations are currently using IBOC technology on the air under special FCC experimental authorization.

The IBOC technology allows radio broadcasters to use the first adjacent channel of their current spectrum frequency to transmit near-CD quality audio signals to digital radio receivers along with new datacasting services such as station, song and artist identification, as well as local traffic and weather bulletins. This will help radio compete more effectively with satellite radio.

*Question 2.* Consumers in many rural areas currently are not able to enjoy the same benefits wireless services offer as their urban counterparts enjoy. Due to low user concentration, the cost of providing high quality wireless service in rural areas is frequently more expensive than is possible in higher-density urban areas. Designation of wireless carriers as ETCs, which permits these carriers to receive support from the Universal Service Fund ("USF"), can help to ensure that all Americans enjoy the benefits of competition and high-quality wireless services.

What steps has the FCC taken to ensure that wireless coverage is extended to all Americans, regardless of where they live, and to ensure that Americans living in rural areas have the opportunity to subscribe to high-quality wireless services?

Answer. While we have taken some steps to improve wireless coverage and opportunity in rural areas, there is always room for improvement. For example, I am increasingly concerned with the competitiveness of the CMRS wholesale market. Whether in the context of recent mergers or other rulemakings, the Commission hears regularly from small and mid-size carriers who are increasingly frustrated with their inability to negotiate automatic roaming agreements with larger regional and nationwide carriers for the full range of CMRS services. I was pleased that we initiated a proceeding in August 2005 to explore all aspects of roaming and more specifically the effects that consolidation has on the ability of smaller carriers to negotiate access to larger networks. Currently, we are hearing from parties on both sides of the issue. Yet, I think we should get access to more information. I have supported an FCC review of actual roaming agreements so that the Commission truly is informed on the nature of these contracts. I also believe we should move forward with this proceeding as quickly as possible.

I have long advocated that we should continually evaluate our spectrum policies to ensure that we are doing what we can to get spectrum into the hands of operators who are ready and willing to serve consumers at the most local levels. I want auctions to be a real opportunity for new and incumbent carriers to expand existing networks and develop new and exciting wireless broadband services. I have worked hard to put in place policies and rules that would promote opportunities for all carriers in auctions, such as a more diverse group of license blocks.

During our review of the bandplan in advance of the auction last year of 90 MHz of new spectrum for the Advanced Wireless Service (AWS), I pressed for the inclusion of an additional smaller block of licenses. I believe that smaller licenses will improve access to spectrum by those providers who want to offer service to smaller, more rural, areas, while also providing a better opportunity for larger carriers to more strategically expand their spectrum footprint. As we prepare for the 700 MHz and future auctions, it is critical we build on the success of the AWS auction by providing a diverse group of licenses so that all bidders have an opportunity to obtain licenses that best match their business plan. While I have supported rules to facilitate the secondary market for spectrum rights and licenses, I think we are best served by providing a wide variety of license sizes at the initial auction when appropriate.

While I supported the bandplan changes made prior to the AWS auction, the Commission made a number of decisions in advance of the auction that I did not support because of their impact on small and rural businesses. For example, I was concerned with the decision to impose blind bidding on the AWS auction in the event certain thresholds were not met. While blind bidding ultimately was not imposed in that auction, I am troubled by the impact of this decision on small companies in the event that future auctions are subject to blind bidding. I was originally told by our staff that small companies would benefit from our blind bidding proposal because it would protect them from becoming victims of larger carrier bidding strategies. In an interesting twist, it was the smallest carriers who spoke the loudest against the proposal. They raised legitimate concerns about access to real time auction information that significantly informs their auction bidding strategy. So I am worried about the chilling effect of this decision on participation by smaller and medium-sized carriers in the future.

As we prepare a schedule for the upcoming 700 MHz auction, we must remember that our rules have not yet been finalized. We have rightly teed up a number of important discussions to ensure that the 700 MHz band is quickly and efficiently put to use and that parts of the spectrum do not remain an untapped well for the spectrum-thirsty. I am very pleased that our items seek comment, for example, on whether we should revise performance requirements for licensees in the 700 MHz band and whether we should reconfigure or sub-divide the existing spectrum blocks in the 700 MHz band in order to make spectrum in the band more easily accessible.

As these are significant questions, we must be mindful that some companies may not currently be in a position to move forward with plans to participate in the auction until the Commission makes a final decision about the size of auction licenses and the types of construction requirements. They need sufficient time to establish business plans and line up financing. Consequently, we must make sure that our auction schedule allows for sufficient spacing between the adoption of final 700 MHz band rules and the filing of auction applications. This will ensure that the auction truly is available to a diverse group of interested parties, and that full participation will lead to a more successful and robust auction. I am confident that we can provide the necessary time for preparation and still comply with our statutory obligations related to the auction.

A different proceeding that could substantially help both our wireless broadband efforts and the opportunities afforded to smaller businesses is our rural wireless

proceeding that has languished since the summer of 2004. While I was disappointed in several aspects of the Report and Order in that proceeding, I pushed strongly for a Further Notice that continues to explore possible re-licensing approaches and construction obligations for current and future licensees who hold licenses beyond their first term. I think this is an important dialogue. I continue to believe that we should consider an approach that provides for re-licensing in the event that market-based mechanisms still result in unused spectrum. We cannot afford to let spectrum lay fallow. If, after so many years, licensees do not plan to use or lease the spectrum they acquired in rural and other unserved areas, they should let someone else have access to it. Often a small business is best situated to fill this gap.

*Question 3.* Following the natural disasters that recently hit the Gulf Coast region wireless services provided emergency personnel, utility repairmen and residents with the only immediate means for communicating. In light of the experience of the Commission from Hurricane Katrina and other disasters, please describe the role wireless services fill with respect to emergency response and disaster recovery during times of crisis?

Answer. Wireless services are invaluable during times of crisis to enable emergency personnel and first responders to communicate effectively. Indeed, most state and local jurisdictions operate their own public safety wireless networks, which their first responders rely on for their primary source of communications during times of crisis. Our nation's commercial mobile service providers often provide the primary link for our Nation's citizens during emergencies. As cell phones have become a way of life they are an important connection to our families, friends, and emergency personnel when natural and man-made disasters occur. The commercial networks also play an important role in providing supporting communications for first responders. Finally, we are increasingly seeing the use of satellite and unlicensed wireless services in times of emergency. These services have their own unique characteristics that can be particularly useful in enabling emergency response personnel to communicate and to have access to information during difficult times.

*Question 3a.* If a petitioner for ETC designation meets the statutory criteria and has consistently been the only service provider to remain operative in certain areas during natural disasters despite the presence of other carriers (including other ETCs) in those areas, would you view the designation of the petitioner as an ETC to be in the public interest?

Answer. The Commission has stated that functionality during emergency situations is an important consideration in designating eligible telecommunications carriers pursuant to Section 214(e)(6). In the *ETC Designation Order*, released March 17, 2005, the Commission found, consistent with the recommendation of the Federal-State Joint Board on Universal Service, that an ETC applicant must demonstrate: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to Section 214(e)(4) of the Act.

Prior to designating an eligible telecommunications carrier pursuant to Section 214(e)(6) of the Act, the Commission determines whether such designation is in the public interest. The Commission set forth, in the *ETC Designation Order*, its public interest analysis for ETC designations, which includes an examination of (1) the benefits of increased consumer choice, (2) the impact of the designation on the universal service fund, and (3) the unique advantages and disadvantages of the competitor's service offering. Thus, the ability to remain operative during natural disasters is one factor that the Commission must consider in designating eligible telecommunications carriers.

*Question 3b.* Some of the areas hardest hit by recent natural disasters were underserved communities. To the extent a petitioner for ETC designation that meets the statutory criteria for ETC designation has demonstrated a strong commitment to serving rural and underserved communities since well before designation as an ETC, would the designation of the petitioner as an ETC be in the public interest? If not, please explain why.

Answer. The Commission has stated that commitment to serve rural areas is an important consideration in designating eligible telecommunications carriers pursuant to Section 214(e)(6). As described above, the Commission found in the *ETC Designation Order* that an applicant seeking to be designated as an eligible telecommunications carrier must demonstrate, among other things, a commitment and

ability to provide services, including providing service to all customers within its proposed service area.

The Commission also found that, prior to designating an eligible telecommunications carrier, it must determine whether such designation is in the public interest. The Commission set forth, in the *ETC Designation Order*, its public interest analysis for ETC designations, which includes an examination of (1) the benefits of increased consumer choice, (2) the impact of the designation on the universal service fund, and (3) the unique advantages and disadvantages of the competitor's service offering. As part of the Order the Commission stated that it would also examine the potential for cream-skimming in instances where an ETC applicant seeks designation below the study area level of a rural incumbent LEC. Thus, commitment to serve rural areas is one factor that the Commission must consider.

*Question 4.* The FCC has committed to resolve, within 6 months of the date filed, all ETC designation requests for non-tribal lands that are properly before the FCC. How many petitions for ETC designation are currently pending at the FCC?

What is the average length of time that the ETC Petitions currently before the FCC have been pending? Of these petitions, what is the earliest filing date? How many of these petitions were filed in 2004 or earlier?

How many petitions for ETC designation did the FCC act on in 2006?

How many petitions for ETC designation did the FCC act on in 2005?

How many petitions for ETC designation did the FCC act on in 2004?

Answer. In response to the above questions, please see the response of Chairman Martin.

*Question 4a.* What does the FCC intend to do about the backlog of pending ETC petitions? How soon does the FCC intend to act upon ETC petitions that have been pending for more than 6 months?

Answer. Subsequent to the Commission's adoption of the *ETC Designation Order*, the Wireline Competition Bureau has reviewed petitions for designation of eligible telecommunications carriers. Please see the response of Chairman Martin.

*Question 4b.* Do you believe that Americans living in rural areas and the carriers who have filed ETC Petitions deserve to have those petitions acted upon promptly rather than simply kept pending without a yes or no answer? If you do not, please explain why.

Answer. Section 214(e) of the Act sets out the Congressional framework for designating eligible telecommunications carriers. Section 214(e)(2) provides state commissions with the primary responsibility for performing ETC designations.<sup>16</sup> Section 214(e)(6) provides that, "[i]n the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request" perform the relevant ETC designation. The Commission must strive for timely action on industry petitions, in order to provide certainty for both carriers and consumers.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO  
HON. JONATHAN S. ADELSTEIN

*Question 1.* In a September 8, 2005 report, the FCC stated, "Our review of the record does not lead us to recommend any changes to the retransmission consent regime at this time." What if any steps have you taken since that time to review and assess the retransmission consent regime; what if any additional conclusions have you reached; what if any plans do you have for additional formal or informal review; and what do you perceive to be the strengths and weaknesses of the retransmission consent process?

Answer. The Report to Congress Pursuant to the Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 was prepared and submitted to Congress without my participation or vote. I am not aware of any steps the Commission has taken since September 2005 to review and assess the retransmission regime, in addition to dealing with specific complaints. Thus far, all com-

---

<sup>16</sup>Under Section 214(e)(2), "[u]pon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier" for a designated service area, so long as the requesting carrier meets the requirements of Section 214(e)(1). Section 214(e)(2) further states: "[b]efore designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest."



plaints have been managed at the Bureau level with no input from the full Commission.

Based on recent experience, the Commission can improve its handling of disputes to provide clarity and prompt resolution, and to protect viewers. One of the strengths of the retransmission consent process is to provide broadcasters with the opportunity to negotiate just compensation for their quality programming. It is not clear, however, whether Congress achieved its intent to prioritize the interests of viewers ahead of the commercial interests of cable operators and broadcasters.

*Question 2.* Section 10(a) of the Communications Act allows the Commission to forbear from applying any regulation or any statutory provision to a particular or multiple telecommunications carriers or services, in any or some geographic markets, if certain criteria are met—most notably that competition exists in the market and that such relief is in the public interest. The FCC recently has been granting incumbent providers (ILECs) forbearance from regulations on the premise that sufficient competition exists in a specific market to make enforcement of the regulations unnecessary. What are each of your respective positions on the conditions and circumstances under which forbearance for ILECs is appropriate?

Answer. Section 10 of the Act sets out the standards for forbearance. Under Section 10, the Commission is required to forbear from any statutory provision or regulation if it determines that: (1) enforcement of the regulation is not necessary to ensure that charges, practices, classifications, or regulations are just and reasonable, and are not unjustly or unreasonably discriminatory; (2) enforcement is not necessary to protect consumers; and (3) forbearance is consistent with the public interest. In making this determination, the Commission must also consider pursuant to Section 10(b) “whether forbearance from enforcing the provision or regulation will promote competitive market conditions.”

I have supported a number of forbearance petitions where the statutory criteria where met. In two recent proceedings, I have supported Orders granting unbundling relief to incumbent LECs where there is especially strong evidence of competition between the incumbent cable and wireline provider. While I have been concerned with the analysis in these decisions and I believe that Act contemplates more than just competition between a wireline and cable provider, I believe that these Orders were clearly superior to an automatic grant of the underlying petitions.

I am concerned, however, about the Commission’s recent willingness to allow complex and controversial forbearance petitions to grant without issuing an order. Congress has given the Commission a powerful tool in our Section 10 forbearance authority, but the Commission must wield this tool responsibly. Allowing petitions to grant by operation of law, and without disclosing a shred of analysis, does not best serve the public interest. Moreover, this approach inappropriately ignores Congress’s directive to consider the specific substantive standards set out in Section 10 and raises serious legal questions about the scope, effect, and validity of its actions.

*Question 3.* From the City of Saint Paul (similar questions were raised by Burnsville/Eagan Community Television and the Northern Suburban Communications Commission):

The Order issued by the FCC on December 20, 2006 allows new franchise entrants to “cherry pick” the neighborhoods in our communities, rather than bring true competition to all of our businesses and residents. This would allow new entrants to serve or upgrade only the profitable areas of Saint Paul [and other cities and towns], leaving many of our residents on the wrong side of the “digital divide.”

The Order authorizes a new entrant to withhold payment of fees that it deems to be in excess of a 5 percent franchise fee cap. This could completely undermine support for both Saint Paul’s [and other cities’ and towns’] very successful public, educational and government (PEG) operations.

The Order imposes a 90-day shot clock for new entrants with existing rights of way, opening the potential to reduce Saint Paul’s [and other cities’ and towns’] ability to manage its rights-of-way.

The Order authorizes a new entrant to refrain from obtaining a franchise when it is upgrading mixed use facilities that will be used in the delivery of video content.

Saint Paul believes that the policy goals of the Order are laudable but strongly disagrees with the method and substance of the decision taken by the FCC. How do you respond to each of these concerns, and how do you respond to the claim that the FCC exceeded its authority in adopting this order?

Answer. The policy goals of the Commission's decision, to promote competitive video offerings and broadband deployment, are laudable. But while I support these goals, the decision goes out on a limb in asserting Federal authority to preempt local governments, and then saws off the limb with a highly dubious legal scheme. It substitutes the Commission's judgment as to what is reasonable—or unreasonable—for that of local officials—all in violation of the franchising framework established in the Communications Act.

I could not support the video franchise decision because the FCC is a regulatory agency, not a legislative body. In my years working on Capitol Hill, I learned enough to know that Commission's decision is legislation disguised as regulation. The courts will likely reverse such action because the Commission cannot act when it "does not really define specific statutory terms, but rather takes off from those terms and devises a comprehensive regulatory regimen. . . . This extensive quasi-legislative effort to implement the statute does not strike [me] as merely a construction of statutory phrases." *Kelley v. E.P.A.*, 15 F.3d 1100, 1108 (D.C. Cir. 1994)

The decision also displays a fundamental misunderstanding about the commitment of franchising authorities to bring competition to their citizens. By law, a franchise under Title VI confers a right of access to people's property. Unlike members of the Commission, many state and local officials are elected and directly accountable to their citizens. Instead of acknowledging the vast dispute in the record as to whether there are actually any unreasonable refusals being made today, the majority simply accepted in every case that the phone companies are right and the local governments are wrong, all without bothering to examine the facts behind these competing claims, or conduct any independent fact-finding. Our embrace of everything interested companies say while discounting local elected officials on a matter grounded in local property rights certainly does not inspire a great deal of confidence in the Commission's ability on the Federal level to arbitrate every local dispute in the country and fairly decide who is unreasonable and who is not.

Even if the Commission had such power, there is no mechanism outlined in the decision to establish how that process would work. Consequently, the end result will likely be litigation, confusion, abuse of the process, and a certain amount of chaos.

The *Order* finds that franchising negotiations that extend beyond the time frames created by the Commission amount to an unreasonable refusal to award a competitive franchise within the meaning of 621(a)(1). This finding ignores the plain reading of the first sentence of Section 621(a)(1), which provides that a franchising authority "may not *unreasonably refuse to award* an additional competitive franchise." On its face, Section 621(a)(1) does not impose a time limitation on an LFA's authority to consider, award, or deny a competitive franchise. The second and final sentence of Section 621(a)(1) provides judicial relief, with no Commission involvement contemplated, when the competitive franchise has been "denied by a *final decision* of the franchising authority." There is no ambiguity here: Congress simply did not impose a time limit on franchise negotiations, as it did on other parts of Title VI. Hence, whether you read the first sentence alone or in context of the entire statutory provision or title, its plain and unambiguous meaning is contrary to the Commission's interpretation. Section 621(a)(1) provides an expressed limitation on the *nature*, not the timing, of the refusal to award a competitive franchise.

To make matters worse, the Commission-created 90-day shot clock seems to function more like a waiting period, during which time the new entrant has little incentive to engage in meaningful negotiations. An objective review of the evidence shows that there is sufficient blame on both sides of the negotiation table. Sometimes, there are good reasons for delay; and at other times, one side might stall to gain leverage. While the majority is certainly aware of these tactics, they fail to even mention the need for LFAs and new entrants to abide by, or so much as to have, reciprocal good faith negotiation obligations. The majority also has ignored the apparent need to develop a complaint or grievance mechanism for the parties to ensure compliance. Perhaps Congress might consider imposing on the Commission a binding deadline to resolve complaints, which would inject an incentive for both sides to negotiate, meaningfully and in good faith.

In terms of build-out, the Commission seems to make a deliberate effort to overlook the plain meaning of the statute and to substitute its policy judgment for that of Congress. The Commission concludes that it is unlawful for LFAs to refuse to grant a competitive franchise on the basis of an applicants' refusal to agree to any build-out obligations. The Commission's analysis in this regard is anemic and facially inadequate.

Section 621(a)(4)(A) provides that "[i]n awarding a franchise the franchising authority shall allow the applicant's cable system a *reasonable period of time* to become capable of providing cable service to all households in the franchise area." Absent express statutory authority, the Commission cannot declare it unreasonable for

LFAs to require build-out to all households in the franchise area over a reasonable period of time. The Commission's argument in this regard is particularly spurious in light of the stated objective of the *Order* to promote broadband deployment and our common goal of promoting affordable broadband to all Americans. In the end, this is less about fiber to the home and more about fiber to the McMansion.

The Commission's decision should have made it clear that, while any requests made by an LFA unrelated to the provision of cable service *and* unrelated to PEG or I-NET are subject to the statutory 5 percent franchise fee cap, these are not the type of costs excluded from the term "franchise fee" by Section 622(g)(2)(C). That provision excludes from the term "franchise fee" any "capital costs that are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities." The legislative history of the 1984 Cable Act clearly indicates that "any franchise requirement for the provision of services, facilities or equipment is not included as a 'fee.'"

PEG facilities and access provide an important resource to thousands of communities across this country. Equally important, redundancy or even duplicative I-Net provides invaluable homeland security and public health, safety and welfare functions in towns, cities, and municipalities across America. It is my hope that the Commission's decision does not undermine these and other important community media resource needs.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TED STEVENS TO  
HON. JONATHAN S. ADELSTEIN

*Question 1.* What is the current status of any proposals to use auctions to determine universal service support?

Answer. On August 11, 2006, the Federal-State Joint Board on Universal Service sought comment on the use of reverse auctions to determine high cost universal service funding to eligible telecommunications carriers pursuant to Section 254 of the Act. Comments and reply comments have been filed in this proceeding. While I do not currently serve on the Joint Board, my understanding is that the Joint Board is continuing to consider reverse auction proposals, among others, in the context of that proceeding.

*Question 2.* Do you believe any of the proposals submitted to the Joint Board are viable alternative approaches to universal service support and can adequately support rural carriers like those in Alaska?

Answer. While I do not currently serve on the Joint Board, this is an important proceeding for consumers in Rural America and I will consider the Joint Board's recommendations very carefully. Congress recognized the importance of universal service in its passage of the Telecommunications Act of 1996 (1996 Act), and the outcome of Joint Board's current proceeding will be important for the ability of communities and consumers in rural America to thrive and grow with the rest of the country.

*Question 3.* When Chairman Powell visited a remote Eskimo village in Alaska, his plane got stuck in the mud on the unpaved runway during take-off. He and his staff whipped out their cell phones to try to call for help, but they didn't work. No roaming agreements. The villages call came and pulled his plane out of the mud, but he was not able to call his wife to tell her he was running late. I am pleased to report that the runway is now being paved, but the roaming problem has yet to be resolved. Many small cell phone companies in Alaska have been unsuccessful in getting the large national carriers to respond to their desires to arrange roaming agreements. As data, video, and other services are transmitted to mobile devices this problem will only grow more acute. What can you do to address this problem, and what is the timeframe for moving forward?

Answer. I am increasingly concerned with the competitiveness of the CMRS wholesale market. Whether in the context of recent mergers or other rulemakings, the Commission hears regularly from small and mid-size carriers who are increasingly frustrated with their inability to negotiate automatic roaming agreements with larger regional and nationwide carriers for the full range of CMRS services. I was pleased that we initiated a proceeding in August 2005 to explore all aspects of roaming and more specifically the effects that consolidation has on the ability of smaller carriers to negotiate access to larger networks. Currently, we are hearing from parties on both sides of the issue. Yet, I think we should get access to more information. I have supported an FCC review of actual roaming agreements so that the Commission truly is informed on the nature of these contracts. I also believe we should move forward with this proceeding as quickly as possible.

*Question 4.* I continue to have concerns that too often domestic satellite services do not offer service to Alaska and Hawaii. In last year's Senate Communications Bill, a measure was included to require satellite operators to make good faith efforts in their satellite planning and development to ensure service to the entire United States. Are there measures that the FCC could take independent of Congressional legislation to ensure better service to Alaska and Hawaii?

Answer. The Commission could better monitor the efforts of domestic satellite services to serve Alaska and Hawaii. For instance, without the need for legislation, the Commission could develop a report on the services satellite operators provide and are planning to provide Alaska, Hawaii, and other parts of the United States. Satellite operators should remember that residents of all 50 states deserve a full suite of services.

*Question 5.* The FCC frequently faces the problem of making tough policy decisions that are wrapped in technological debates. There are several waivers pending at the FCC that deal with CableCARDs. What is the impact on the consumer and the impact on the development and deployment of downloadable security? How will these petitions be considered and will the full Commission address these issues?

Answer. While the Media Bureau has acted on several requests for waiver of the Commission's integration ban, I welcome the opportunity to resolve all waiver requests as soon as practicable. Section 629 of the Act requires the Commission to consider such waiver requests within 90 days of filing. Excessive delay could adversely impact the ability of operators to migrate to an all-digital network and offer enhanced programming choices to consumers. Cable operators have asserted that the Commission's failure to grant waivers to the set top integration ban could cost consumers nearly \$600 million per year. Cable operators have also asserted that the grant of these waivers will enable more consumers to receive digital picture quality and to access newly developed family tiers, parental controls, digital broadcast programming, and VOD programming by expanding the number of Comcast households that will have access to digital set-top boxes. The cable industry has committed to fully deploy downloadable security by 2009. The consumer electronics community, however, has argued that the competitive availability of devices that are used to view cable programming is an important pro-consumer objective in the digital age. A separate security device or CableCARD is the key to ensuring that consumers can use devices of their choice. The Consumer Electronics Association has estimated that the initial manufacturing costs required to add CableCARD functionality to be in the range of \$10-\$15, which translates into an initial price of \$40 or less at retail (or a monthly cost of less than \$1.25), not \$72 or \$93 as the cable industry has estimated.

*Question 6.* Obviously we are all concerned about the new frontiers that can be created on the Internet for pedophiles and child pornographers. To advance the safety of our children, everyone must do their part. Is there more that the Internet service providers can be doing to help law enforcement and does the FCC need any additional authority from Congress to ensure that entities under the Commission's authority are doing their part?

Answer. As a parent and a Commissioner, I am deeply concerned about the safety of our children on the Internet. Everyone must do their part: Internet service providers should better monitor illegal content on their servers, and parents must monitor their children. Law enforcement agencies have a particular role to play in enforcing current laws against offenders, and encouraging ISPs and others in private industry to develop better ISP-level and PC-based filters and enhance their data retention policies. I would expect that, should any Commission regulatee or licensee become aware of such illegal activities being conducted over its network, the company would work quickly with law enforcement to shut down the illegal service. The Commission could also assist in educating parents about predatory online threats and available tools that help protect unsuspecting children. Given the nature of these offenses, we must always be vigilant in ensuring that we are doing what we can to improve enforcement and compliance, and I welcome the further direction of Congress in dealing with this issue.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO  
HON. JONATHAN S. ADELSTEIN

*Question 1.* Is it true that eleven years ago Congress required the FCC to adopt a new universal service mechanism that ensures that local telephone rates in rural areas are reasonably comparable to rates in urban areas?

Answer. Yes. In the Telecommunications Act of 1996, Congress passed Section 254(b)(3) which states that consumers in all regions of the Nation should have ac-

cess to telecommunications and information services at rates that are reasonably comparable to rates charged for similar services in urban areas. Furthermore, in Section 254(a)(2) Congress mandated that the Commission initiate a proceeding on the Joint Boards' recommendation on universal service.

*Question 2.* Is it true that the 10th Circuit Court of Appeals has twice remanded the FCC's method of providing universal service support for rural customers served by larger carriers?

Answer. Yes. On July 31, 2001, in *Qwest Corp. v. Federal Communications Commission* (258 F.3d 1191) (*Qwest I*), the 10th Circuit remanded the Commission's Ninth Report and Order (14 F.C.C.R. 20432), which established a Federal high-cost universal service support mechanism for larger carriers. Subsequently, on February 23, 2005 the 10th Circuit in *Qwest II* (398 F.3d 1222) remanded a portion of the Commission's Order on Remand (18 F.C.C.R. 22559). In *Qwest II*, the Court directed the Commission to "utilize its unique expertise to craft a support mechanism taking into account all the factors that Congress identified in drafting the Act and its statutory obligation to preserve and advance universal service." The court affirmed the portion of the Order on Remand that created a mechanism to induce state action to assist in implementing the goals of universal service.

*Question 3.* Is it true that the second decision was issued in February of 2005 with the court expressing an expectation that the FCC would respond expeditiously?

Answer. Yes. In *Qwest II*, the 10th Circuit expressed their expectation that the Commission comply with its decision "in an expeditious manner, bearing in mind the consequences inherent in further delay." The court stated that the task before the Commission on remand will require "the full development of an administrative record, empirical findings, and careful analysis" and that "[u]nder these circumstances, [the court would] not constrain the Commission's consideration of the issues before it."

*Question 4.* What steps will the FCC take now to ensure that it meets its obligations to the rural residents of large incumbent carriers? Will you commit that the FCC will take action on this remand during the next 6 months?

Answer. On December 9, 2005, the Commission responded to the 10th Circuit's remand by issuing a Notice of Proposed Rulemaking (FCC 05-205). The NPRM sought public comment on how to reasonably define the statutory terms "sufficient" and "reasonably comparable," in light of the court's holding in *Qwest II*, and on the support mechanisms for non-rural carriers. While Orders are typically drafted at the direction of the Chairman rather than individual Commissioners, I will expeditiously review any Bureau recommendations that I receive regarding these rules.

*Question 5.* Now that the Antideficiency Act (ADA) exemption has expired, what kind of guarantees can you give that there will be no further E-Rate program shut downs or delays?

Answer. I note that, on February 15, 2007, Congress passed a continuing resolution that extends the exemption of the Universal Service Fund from the Anti-Deficiency Act (ADA) until December 31, 2007. I do not believe the E-Rate program actually constitutes an appropriation by Congress and therefore did not believe that the ADA should have been applied in the first place. As a supporter of the E-Rate program, I believe it is essential that we take steps to maintain the program's vitality on a more permanent basis, whether that requires further Congressional or administrative action.

*Question 6.* Can you tell us how much USAC has in its E-Rate accounts currently and whether those reserves will be sufficient to cover funding?

Answer. Please see the response of Chairman Martin.

*Question 7.* Are you still working with the Office of Management and Budget (OMB) on a reinterpretation of the ADA that would exempt Universal Service?

Answer. My office has had no contact with the OMB regarding the applicability of the ADA to Federal universal service programs. I would, however, encourage and support such a reinterpretation.

*Question 8.* Given that AT&T and BellSouth agreed to abide by a definition of "network neutrality" as part of their merger conditions, do you believe that the argument that it is impossible to craft such a definition is false?

Answer. Yes. I believe that it is possible and necessary to craft a balanced policy that protects the openness of the Internet. The precise contours, scope, and exclusions of AT&T's commitment reflect compromise and a predictive judgment about how to preserve the most attractive features of the Internet. The AT&T commitment strikes a reasonable balance by preserving the openness of Internet access while also allowing AT&T flexibility in certain areas that it deemed critical. It is important that we continue to explore comprehensive approaches to this issue, and any

such provisions may need revision over time. Nonetheless, I hope that the AT&T commitment will inform the debate in the coming months and years.

*Question 9.* Will you enforce the “network neutrality” provision agreed to as part of AT&T’s and BellSouth’s gaining approval for the merger?

Answer. Yes. This provision is enforceable by the FCC and was critical for my support of this merger. The condition states that the combined company will not privilege, degrade, or prioritize the traffic of Internet content, applications or service providers, including their own affiliates. Given the increase in concentration presented by that transaction—particularly set against the backdrop of a market in which telephone and cable operators control nearly 98 percent of the market, with many consumers lacking any meaningful choice of providers—it was critical that the Commission add an enforceable condition to address incentives for anti-competitive discrimination.

*Question 10.* Do you consider the U.S. broadband marketplace to be competitive?

Answer. It is difficult to assess the relative competitiveness of the current broadband services market because of the lack of sufficient data collected at the FCC and because the industry is changing so dramatically.

Even though we have made strides with broadband deployment, we must work to promote meaningful competition, as competition is the most effective driver of lower prices and innovation. Given that cable and DSL providers control 98 percent of the broadband market, we must be vigilant to ensure that the U.S. broadband market does not stagnate into a comfortable duopoly.

Unfortunately, the Commission’s current efforts to gauge broadband deployment, competition, and affordability fall short. In a May 2006 report, the Government Accountability Office (GAO) took the FCC to task for the quality of its broadband data. GAO criticized the Commission’s ability to analyze who is getting broadband and where it is deployed, observing that the FCC’s data “may not provide a highly accurate depiction of deployment of broadband infrastructures for residential service, especially in rural areas.” Similarly, GAO observed that the number of providers reported in a Zip Code overstates the level of competition to individual households. One clear conclusion from the GAO’s report is that the Commission must explore ways to develop greater granularity in its assessment and analysis of broadband availability, whether through statistical sampling, Census Bureau surveys, or other means.

*Question 11.* Do you believe a wireless connection, which is two to four times more expensive and two to four times slower than DSL or cable, can be a substitute for a wireline connection to the Internet?

Answer. It is difficult to answer your question because the FCC has not collected the type of data in its broadband collection report that would allow us to assess the substitutability of wireline broadband services with wireless ones—such as data speed, and cost of service. Based on anecdotal evidence, however, it does appear that current mobile broadband services are typically offered at a higher price, and for a lower speed, than those available to DSL or cable customers. I do believe, though, that one of the best options for promoting broadband, particularly in rural areas, and providing new competition all across the country, is maximizing the potential of spectrum-based services, particularly those that are comparable to cable and DSL broadband services.

*Question 12.* How can we ensure that a variety of news and entertainment outlets will be there if the telephone and cable companies are allowed to limit what people can see and do online?

Answer. The hallmark of the Internet has been its open and neutral character, which has given it such great potential as a tool for economic opportunity, innovation, and so many forms of civic, democratic, and social participation. Access to the wide range of news and entertainment outlets available through the Internet is one of its great strengths.

Preserving the vibrant and open quality of the Internet is critical. Historically, there have not been gatekeepers on the Internet. It has enabled those with unique interests and needs, or with a unique cultural heritage, to meet and form virtual communities the likes of which have never been seen before. It also means that consumers are being empowered—as citizens and as entrepreneurs—and they are increasingly developing creative ways to use these new technologies. While the Commission has taken important steps by adopting an Internet Policy Statement and making enforceable commitments to maintain a neutral network in the context of license transfer proceedings, it is critical that we remain vigilant and continue to explore comprehensive approaches to maintaining freedom on the Internet.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GORDON H. SMITH TO  
HON. JONATHAN S. ADELSTEIN

*Question 1.* Under a couple of the conditions, AT&T and BellSouth committed that for 42 months, they would continue to offer, and would not increase the price of, unbundled network elements. They also committed not to seek forbearance with respect to unbundled loops and transport. Will these conditions preserve the option for consumers to purchase high-speed broadband service from companies that combine an AT&T/BellSouth UNE loop with their own electronics and other network facilities to offer their own high-speed Internet broadband services?

Answer. Competitive providers use unbundled network elements to offer a suite of telecommunications and information services, including broadband services. AT&T committed, in response to concerns about the loss of competitive alternatives, to continue to offer these wholesale inputs and to freeze rates for these inputs. These commitments should result in more choice, lower prices, and increased innovation for consumers.

*Question 2.* Has the Commission concluded that it is in the public interest to preserve additional broadband options for consumers through these UNE as part of the AT&T/BellSouth merger conditions?

Answer. To address concerns about loss of competitive alternatives and concentration in the broadband market, AT&T made a number of commitments related to broadband services. As a result of these commitments, consumers will have access to more affordable broadband services, whether purchased as a bundled package or as a stand-alone offering that can be paired with wireless or Internet phone service. For example, AT&T's commitment to offer basic broadband service for 10 per month should help lower the cost for many consumers who are just starting to take advantage of the broadband experience. In addition, the commitments will promote and preserve competition by requiring that the applicants divest wireless broadband spectrum critical to the development of an independent broadband option; by ensuring that competitive carriers continue to have access to critical wholesale inputs; and by providing that these conditions last for a meaningful period of time. I believe that these conditions will preserve additional broadband options for consumers in the AT&T and BellSouth regions and they were critical for my support of the transaction.

*Question 3.* This Committee has operated under Republican and Democratic chairmen on largely a bipartisan, consensus basis on the vast majority of communications issues. In the last several years, however, a larger number of these issues, particularly media ownership, have become extremely divisive, largely upon political lines. I think Americans have sent us a signal that they don't want this kind of divisiveness and partisanship. They want us to work together to find reasonable, workable solutions. Does media ownership really have to be such a partisan issue? Aren't there areas of consensus where common sense reforms can be made?

Answer. Media ownership is not a partisan issue even though it broke down on partisan lines in the Commission in 2003. We now have a different Chairman and two new Commissioners. I am hopeful we can avoid in the next decision the division that plagued the last and reach consensus on this issue, as we have on most other issues before us.

In 2003, over three million Americans from different states and party affiliations—from the National Rifle Association, Parents Television Council to the NAACP—contacted the FCC to register their opposition to the FCC revised ownership rules which would have increased media consolidation. Additionally, in a bipartisan vote, the Senate voted to disapprove the new FCC rules.

As I've traveled throughout the country and studied the historical development of media in the United States and Europe, I've seen first-hand that Americans on a bipartisan and nonpartisan basis really want to preserve and promote competition, localism and diversity in their media.

I believe that improving female and minority ownership of broadcast assets is an area where common sense reform can be made and is very much needed. Women make up over half of the U.S. population; they own less than 5 percent of all television stations. Racial and ethnic minorities make up over 30 percent of the population, yet they own less than 3.3 percent of all television stations. African Americans own 1.3 percent; Latino Americans own 1.1 percent, and Asians and American Indians only own 0.44 and 0.37 percent, respectively, of all television stations.

*Question 4.* As Congress contemplates whether to enact legislation addressing net neutrality, it would be helpful to understand whether there is some particular behavior in the U.S. broadband marketplace related to net neutrality that is harming consumers today. Aside from the one reported incident involving Madison River

Communications blocking Voice over Internet Protocol (VoIP) calls, which the FCC rectified in March 2005, can you identify any specific, concrete examples of actual conduct by a broadband provider that runs afoul of net neutrality?

Answer. In February–March 2005, the FCC’s Enforcement Bureau conducted an investigation into Madison River Communications after that company blocked its DSL customers from using rival Web-based phone service, which it resolved through a consent decree.<sup>1</sup>

Although the Madison River case is the only such enforcement action by the FCC to date, many commenters have suggested that this is because the FCC applied the traditional nondiscrimination obligations of Act to the provision of wireline broadband services until the fall of last year.<sup>2</sup> With the Commission’s decision to eliminate the safeguards now in effect, there is increasing attention to the plans of U.S. broadband providers. In this regard, senior management of the largest U.S. broadband providers have expressed an explicit interest in changing their business models in ways that might impose new fees on applications providers or discriminate against online content and services. In its 2006 Report to Congress on *Access to Broadband Networks*, the Congressional Research Service found that broadband network providers will have the ability and incentive to build, operate, and manage their broadband networks in a fashion that favors their own applications over competitors’ applications.

Given the importance of the Internet as a tool for economic opportunity, innovation, and so many forms of civic, democratic, and social participation, I believe we must take these proposals seriously and consider policy changes to preserve the open character of the Internet.

*Question 5.* I understand that AT&T agreed to lower the rates it charges big business customers for special access services, as a condition to the FCC’s approval of the merger with BellSouth, but that these rate reductions would not apply to a subset of companies, including Qwest, Verizon and others, unless those companies lower their special access rates as well. This effectively placed burdens on companies who weren’t parties to the merger. As Chairman Martin and Commissioner Tate stated in their Joint Statement “the Democratic Commissioners want to price regulate not only AT&T but also Verizon and Qwest.” “. . . [N]ot only are the conditions unnecessary as there is no finding of a public harm, but the conditions attempt to impose requirements on companies that are not even parties to the merger.” How can you explain using the merger process to impose burdens on other parties, and isn’t this just a way to circumvent the rulemaking process?

Answer. The special access conditions agreed to by AT&T address merger-specific concerns about the formation of the country’s largest wireline, wireless, and broadband company and the resulting loss of competition. As GAO recognized in its November 2006 report on these services, the combined company will be the only source of dedicated access services for retail enterprise customers, long distance competitors, and local service competitors at the vast majority of locations in the post-merger territory. The special access conditions address these concerns in a reasonable manner that takes into account regulatory and marketplace differences between price cap ILECs and other competitors. The condition places no burdens and compels no actions by any party other than the combined company. While certain actions are necessary to avail themselves of the discounts, no party is required to take advantage of these discounts. Thus, the adoption of these conditions does not circumvent the Commission’s consideration of the long-pending special access proceeding, but it does represent a modest benefit for consumers, including large and small businesses, schools, hospitals, government offices, and independent wireless providers.

<sup>1</sup>I note also for Congress’s consideration that, in 2005, Canada’s telephone company Telus blocked customers from visiting a website sympathetic to the Telecommunications Workers Union during a contentious labor dispute. See Telus Cuts Subscriber Access To Pro-Union Website, CBC News, <http://www.cbc.ca/canada/story/2005/07/24/telussites050724.html> (2005).

<sup>2</sup>See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No.02–33, FCC 05–150, Report and Order (Aug. 5, 2005) (adopting “a one-year transition period, which begins on the effective date of this Order, in order to give both ISPs and facilities-based wireline broadband Internet access transmission providers sufficient time to adjust to our new framework”).



RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO  
HON. JONATHAN S. ADELSTEIN

*Question 1.* Even as we are strategizing on how to complete the deployment of DSL and cable modem broadband networks to the hard to reach places of our country, other countries are well on their way to deploying next-generation fiber networks. High-speed fiber will change how we use the Internet similar to the change we saw between dial-up and broadband. Is there anything Congress can be doing to help speed the deployment of our high-speed fiber network here at home, and in rural areas particularly?

Answer. One of our central national priorities is promoting widespread broadband deployment, and deployment of high-speed fiber is an important part of that effort. Even though we have made strides, I am concerned we are not keeping pace with our global competitors. According to the ITU, the digital opportunity afforded to U.S. citizens is 21st in the world. Citizens of other countries are simply getting more megabits for less money. This is more than a public relations problem. It's a productivity problem, and our citizens deserve better. This effort warrants a comprehensive national strategy.

We must encourage broadband development and the deployment of high-speed fiber by increasing incentives for investment because we will rely on the private sector as the primary driver of growth. To this end, Congress may also wish to consider alternatives outside of the purview of the FCC, such as tax incentives for companies that invest in broadband to underserved areas; better depreciation rules for capital investments in targeted telecommunications services; providing adequate funding for Rural Utilities Service broadband loans and grants; investing in basic science research and development to spur further innovation in telecommunications technology; and improving math and science education to ensure that we have the human resources to fuel continued growth, innovation and usage of advanced telecommunications services.

Another way to promote the deployment of high-speed fiber in rural areas is through universal service. As voice becomes just one application over broadband networks, we must ensure that universal service evolves to promote advanced services. Some have argued that our low broadband ranking is due to our dispersed population. If that is the reason, we need to re-double our efforts to promote rural broadband. Congress could help by authorizing the FCC to tap a stable and comprehensive base of support for universal service.

*Question 2.* When I speak with some of South Dakota's rural telephone cooperatives and other telecommunications providers, I hear about the large amount of resources they must put toward legal fees to keep pace with the legal and regulatory maneuvers being made by some of the larger telecommunications providers with seemingly bottomless pockets for such actions. Some of these small providers honestly think part of the larger competitors' plan is to beat them through legal fees instead of the marketplace. The Commission obviously cannot do anything about the fees lawyers are charging, but they can do something about the speed at which regulatory decisions are made and the hoops that must be jumped through. How can the FCC improve its decisionmaking processes so that small telecommunications providers don't bear such an imbalanced burden?

Answer. Small telecommunications providers provide critical communications services in many parts of our country. I have consistently supported efforts to minimize the impact of our regulations on small telecommunications providers. Indeed, the Commission has an obligation under the Regulatory Flexibility Act to consider the impact of its activities on small entities. I will continue to work with my colleagues to ensure that small telecommunications providers are not unduly impacted by FCC decisions.

*Question 3.* As you know, some media companies and others are pushing for the repeal of the newspaper cross-ownership ban. They argue that a media outlet owning both the local newspaper and a local broadcast station could make better use of scarce resources to gather and report the local news. They also argue that the handful of "grandfathered" newspaper-broadcast combinations, which were in place before the ban was implemented in 1975, have not shown any gross abuse. Some consumer groups and others who support keeping the newspaper cross-ownership ban in place alternatively argue that combining newspaper and broadcast outlets could reduce competition among media outlets. There could be less incentive to get "the scoop" or report a contradicting viewpoint. What do you believe would happen to local news coverage if the newspaper cross-ownership ban was lifted? Do the 1975 grandfathered combinations really provide us with a good example since some of them are currently owned by those media companies who want to lift the ban? For example Gannett knows its management of Arizona's largest newspaper, the Ari-

*zona Republic*, and television outlet KPNX-TV is under the microscope, so perhaps their behavior would not be representative of how news gathering would be conducted if the ban was permanently lifted.

Answer. As part of its review of the media ownership rules, the Commission is conducting ten economic studies. Although I was not involved in developing these studies and selecting the researchers, it is my understanding that one study “will examine the effect of newspaper cross-ownership on television news coverage using matched pairs of cross-owned and non-cross-owned television stations.” One study conducted by Dr. Mark Cooper, Director of Research, Consumers Federation of America, documented that more media mergers in our already highly consolidated media markets will reduce already insufficient local news coverage and eliminate diverse voices and viewpoints, harming local communities across the country. A 2003 study by Professor Michael Zhaoxu Yan found that cross-owned television stations do not provide more local news and a local public affairs programming than do independently-owned stations.

The cross-ownership rule was designed to promote the Commission’s longstanding goals in broadcast regulation—localism, competition and diversity of information sources. Hopefully, the FCC-commissioned studies will provide us with the necessary information to determine, among other things, whether the 1975 grandfathered combinations really serve as good examples of local news coverage. Several studies have already concluded that the primary source of local news for the overwhelming majority of the public remains television and daily newspapers. Permitting one entity to monopolize both venues of local news and information could undercut diversity and thereby our democratic discourse.

*Question 4.* The closest daily newspaper can be 100 miles away in some parts of my state. Do you see any particular challenges in providing a diversity of news viewpoints in rural parts of our country if further media consolidation is allowed to occur? Some argue local cable news channels and local Internet news sites can enhance competition and bring out a diversity of viewpoints, but are these answers going to work in rural communities?

Answer. As a fellow South Dakotan, I do indeed see challenges in providing a diversity of news viewpoints in rural parts of America if further media consolidation is allowed to occur. Broadcast stations and newspapers tend to dominate the local marketplace of ideas, a function critical to a democratic society. Because rural markets have fewer newspapers and broadcast outlets, it is especially important that we ensure that rural residents are afforded diverse and divergent viewpoints on controversial issues. As the Supreme Court said in *Red Lion*, “it is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market.” These challenges in rural markets will be further exacerbated without clear and measurable public interest obligations.

While some argue local cable news channels and local Internet news sites can enhance competition and bring out a diversity of viewpoints, these are virtually absent from rural areas. The facts show that local broadcast remains the clear dominant source for local news and information. Local cable news channels do not appear to be viable competitive alternatives for news in rural markets, and local Internet news sites are owned by the same dominant local broadcaster. Hence, if further media consolidation is allowed to occur, the effects on rural America could be particularly harmful. People in rural communities and small-town America have distinctive interests, and local stations offer programming that responds to these interests.

*Question 5.* South Dakota’s nine Indian reservations have distinct challenges in their effort to increase access to broadband and wireless telecommunication services. There are unique characteristics in regards to existing infrastructure, local government, and population density. In your assessment are Native American communities taking full advantage of the USF program and other programs available to them? Has the FCC’s “Indian Telecommunications Initiative” been effective in building partnerships and identifying solutions to bringing affordable telecommunications services to Indian country? Should we be doing more?

Answer. The FCC’s Indian Telecommunications Initiative is an important part of the Commission’s outreach to Native American communities. The economic and social prosperity of Native American communities depends on access to state-of-the-art communications technologies, so I strongly support these efforts.

It is difficult to assess, based on current FCC data, the precise extent to which Native American communities are participating in Federal universal service and other programs. It is clear however, based on the data we do have, and a January 2006 report from GAO, that more needs to be done. GAO’s report on telecommuni-

cations in Indian country documented the substantial and unique barriers to improving telecommunications service on tribal lands. Although GAO encouraged the FCC to do more data collection about the availability of telecommunications and broadband services in Native American communities, GAO found that there is great variation among tribes in terms of the barriers faced and the level of success achieved thus far.

The FCC has taken some important steps by adopting enhanced Lifeline and Link-Up programs to serve tribal communities, but we must continue to improve these programs. When these programs were started 6 years ago, there were just under 20,000 tribal participants nationwide. Now there are approximately 176,000 tribal participants. While we have made progress, I continue to hear concern that some tribal members are not aware of these programs. So, we need to find ways to get even higher utilization.

Also, the Commission initiated a tribal land bidding credits program that makes credits available to telecommunication carriers to help offset some of the costs of providing telecommunication services in tribal areas. I would like to see that program more fully used, and have pushed for modifications to ensure that the credit is utilized to its fullest possible extent. For example, we have allowed the wireline telephone penetration benchmark to increase from 70 to 85 percent for qualifying tribal lands, which will triple the number of tribal lands deemed eligible for bidding credits. Similarly, we increased the bidding credit limit by two-thirds to further incentivize investment in these underserved areas.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JIM DEMINT TO  
HON. JONATHAN S. ADELSTEIN

*Question 1.* In the 4 years since the term “network neutrality” has existed, can you give me any examples, aside from the often-cited 2004 Madison River case, that justify the need for new regulations?

Answer. In February-March 2005, the FCC’s Enforcement Bureau conducted an investigation into Madison River Communications after that company blocked its DSL customers from using rival web-based phone service, which it resolved through a consent decree.<sup>3</sup>

Although the Madison River case is the only such enforcement action by the FCC to date, many commenters have suggested that this is because the FCC applied the traditional nondiscrimination obligations of the Act to the provision of wireline broadband services until the fall of last year.<sup>4</sup> With the Commission’s decision to eliminate the safeguards now in effect, there is increasing attention to the plans of U.S. broadband providers. In this regard, senior management of the largest U.S. broadband providers have expressed an explicit interest in changing their business models in ways that might impose new fees on applications providers or discriminate against online content and services. In its 2006 Report to Congress on *Access to Broadband Networks*, the Congressional Research Service found that broadband network providers will have the ability and incentive to build, operate, and manage their broadband networks in a fashion that favors their own applications over competitors’ applications.

Given the importance of the Internet as a tool for economic opportunity, innovation, and so many forms of civic, democratic, and social participation, I believe we must take these proposals seriously and consider policy changes to preserve the open character of the Internet.

*Question 2.* What problem exists today that necessitates government intrusion in the market?

Answer. I believe the Communications Act of 1934, as amended, clearly intends to promote the deployment of advanced services to all areas of the United States, including rural areas. Until we have ubiquitous broadband deployment to all Americans at the speeds and prices currently available in other countries, we must do whatever we can to promote broadband deployment over all of the networks subject

---

<sup>3</sup>I note also for Congress’s consideration that in 2005 Canada’s telephone company Telus blocked customers from visiting a website sympathetic to the Telecommunications Workers Union during a contentious labor dispute. See *Telus Cuts Subscriber Access To Pro-Union Website*, CBC News, <http://www.cbc.ca/canada/story/2005/07/24/telussites050724.html> (2005).

<sup>4</sup>See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No.02-33, FCC 05-150, Report and Order (Aug. 5, 2005) (adopting “a one-year transition period, which begins on the effective date of this Order, in order to give both ISPs and facilities-based wireline broadband Internet access transmission providers sufficient time to adjust to our new framework”).

to the Commission's oversight. The Act contains a number of tools specifically designed to enhance ubiquitous broadband deployment, such as promoting competition, advancing universal service, and managing the public spectrum. We should use each of these tools in advancing the goals of the Act.

*Question 3.* Why are anti-trust laws and basic laws of economics insufficient to protect consumers?

Answer. The law requires the Commission to ensure that all mergers and changes in policy and regulations are in the public interest. In considering the public interest in a merger analysis, for example, the Commission has taken a broader look at the impact of the loss of competition in comparison to the strict anti-trust approach used by the Department of Justice. Moreover, in the context of media policy, the public interest requires the Commission to consider the possible impact of a decision on competition, localism, and diversity in the media marketplace.

*Question 4.* Today's media landscape includes ubiquitous options that did not exist in 1996: broadband offered by both cable and telephone companies, satellite radio, the Internet, and a far more mature DBS service. Given the growth of these new media outlets over the past decade, do you believe there are any areas where some relaxation of ownership limits could be in the public interest?

Answer. While there is competition from cable, satellite, or online content providers, broadcast radio and television continue to have a powerful influence over our culture, political system, and the ideas that inform our public discourse. Study after study has shown that broadcasting is still the dominant source of not just local news and information, but also entertainment programming. The broadcast industry still produces, disseminates, and ultimately controls the news, information, and entertainment programs that most inform the discourse, debate, and the free exchange of ideas that is essential to our participatory democracy.

In the 2005–2006 seasons, broadcasters—not cable, satellite or Internet programmers—had the top 200 highest rated programs on television. And all but a handful of the top 500 programs were on broadcast television. On the radio, the two satellite radio companies have a total of about 12 million subscribers, while over 230 million people listen to terrestrial radio on a weekly basis.

Media ownership is about the power to control the public's airwaves that the Congress has told that the FCC to license to broadcasters to serve the "public interest, convenience and necessity." And the FCC is thus charged by law to regulate the broadcast industry in order to foster diversity and localism, and to prevent undue concentrations of power. Nevertheless, in recent years, there has been a wave of consolidation, which has led to unprecedented levels of concentration in radio and television ownership and program production.

I believe the Commission could promote the public interest by modifying ownership rules to promote diversity of ownership. While fewer and fewer companies gain more control over the means of distributing ideas, fewer small businesses, fewer members of the creative community, and fewer African Americans, Latinos, Asians, and Native Americans can use the public airwaves to contribute to our national experience. While women make up over half of the U.S. population, they own less than 5 percent of all television stations. Racial and ethnic minorities make up over 30 percent of the population, but yet they own less than 3.3 percent of all television stations. African Americans own 1.3 percent; Latino Americans own 1.1 percent, and Asians and American Indians only own 0.44 and 0.37 percent, respectively, of all television stations.

---

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DAVID VITTER TO  
HON. JONATHAN S. ADELSTEIN

*Question.* I have been alerted to a problem regarding compensation to payphone providers for coinless calls made from their phones. According to recent FCC statistics, about 6 percent of Louisiana households do not have any type of phone in their home. During the immediate aftermath of Hurricanes Katrina and Rita, payphones were the only way many people—both those without any other phones and also those whose mobile phones were not working due to the networks being overloaded—could reach emergency personnel or family and loved ones. Without being fairly compensated according to the rules set forth by the Commission, payphone providers will not be able to maintain these phones. I have been told that in the last 2 years since the Commission most recently revised the payphone compensation rules, a large number of carriers have failed to comply with their obligations under these rules. I also understand that in December 2006, the FCC issued its first sanctions against one of these carriers that violated these rules. I would appreciate hearing your comments on whether you think the agency has sufficient power and re-

sources under your existing authority to continue to enforce these rules and help ensure that companies are not able to disregard the Commission's payphone compensation rules.

Answer. Section 276 of the Act directs the Commission to establish rules that ensure that all payphone service providers are fairly compensated for each and every interstate and intrastate call made using their payphones. In 2003, the Commission adopted its current rules requiring telecommunications carriers to pay compensation for "coinless access code" calls and "subscriber toll-free" calls. The Commission has an obligation to enforce these rules, as it acknowledged at the time they were adopted. The Commission recently took its first enforcement action against a carrier for failure to comply with these payphone compensation rules. I supported that December 2006 Notice of Apparent Liability and Forfeiture Order and will continue to support efforts to encourage compliance by other similarly-situated carriers.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO  
HON. DEBORAH TAYLOR TATE

*Question 1.* In March, 2005, the FCC allowed a Verizon forbearance petition to become effective by operation of law. Because there was a vacancy on the Commission at that time and a 2-2 split among Commissioners, Verizon was able to gain regulatory relief through Commission inaction. Does the current process regarding the disposition of forbearance petitions in the absence of a Commission majority essentially allow petitioners to write the terms of their relief?

Answer. Congress included, and section 10 of the Communications Act requires, that "the Commission shall forbear from applying any regulation or provision of this Act . . . if the Commission determines that" enforcement of the provision is "not necessary" to ensure just and reasonable prices and practices or the protection of consumers, and that it serves the public interest. Congress set forth in section 10 of the Act that any carrier may petition the Commission for forbearance and "[a]ny petition shall be deemed granted if the Commission does not deny the petition . . . within 1 year after the Commission receives it, unless the one-year period is extended by the Commission." Accordingly, if the Commission does not deny the petition by the statutory deadline, the relief requested is granted by operation of law.

*Question 1a.* Is it fair in such situations to allow petitioners to amend the scope of their requested relief after the period for comment on the original petition has concluded?

Answer. While it is preferable that the Commission address the scope of the petitions as filed, some petitioners have narrowed the scope of the regulatory relief requested after the official comment cycle had closed. Depending on the nature of any proposed changes, and the remaining time before deadline that interested parties have to weigh in through the *ex parte* process, such changes may not always be objectionable and may provide the needed flexibility to address issues that arise as the petition is pending.

*Question 1b.* Should forbearance petitions be denied in the absence of an order approved by a majority of Commissioners?

Answer. As I stated above, section 10 of the Communications Act states, "[a]ny petition shall be deemed granted if the Commission does not deny the petition . . . within 1 year after the Commission receives it, unless the one-year period is extended by the Commission." As I interpret the Act, in the absence of a majority action by the Commission to either grant or deny, the presumption in the statute is that the petition is granted.

*Question 2.* One of the biggest challenges we face over the next 2 years is moving our Nation from analog to digital television with minimal consumer disruption. I understand that the FCC is currently receiving comment on its Proposed Final Table of DTV allotments, proposing final digital channels for TV broadcast stations. However, even after that is final, additional actions will be needed to complete the transition. Given the enormity of the task before us, what action is the Commission taking and what action should it take to ensure that our country is ready in February 2009?

Answer. Aside from the more technical aspects of the digital transition, which the Commission is addressing expeditiously, consumer education looms as the most pressing concern. The Commission has sought to increase awareness through a variety of outreach efforts, including the creation of a website, [www.dtv.gov](http://www.dtv.gov). In addition, it has requested an additional \$1.5 million as part of its FY 2008 budget in order to continue these efforts. I am also pleased that the major trade associations, Consumer Electronics Association, National Association of Broadcasters, and National

Cable Television Association, have committed to a coordinated public information campaign. Finally, the Commission will consult with NTIA as it administers the national coupon program for over-the-air digital-to-analog converter boxes.

*Question 3.* A recent study conducted by Free Press entitled, *Out of the Picture: Minority & Female TV Station Ownership in the United States*, contained some sobering statistics.

Women comprise 51 percent of the entire U.S. population, but own a total of only 67 stations, or 4.97 percent of all stations.

Minorities comprise 33 percent of the entire U.S. population, but own a total of only 44 stations, or 3.26 percent of all stations.

Latinos comprise 14 percent of the entire U.S. population, but own a total of only 15 stations, or 1.11 percent of all stations.

African Americans comprise 13 percent of the entire U.S. population but only own 18 stations, or 1.3 percent of all stations.

Asians comprise 4 percent of the entire U.S. population but only own a total of 6 stations or 0.44 percent of all stations.

Do these facts trouble you as they do me, and what action should the Commission take to promote greater diversity of ownership?

Answer. I am troubled by the low levels of broadcast station ownership among women and minorities, and I believe that the Commission should look for ways in which it can remove barriers to market entry, consistent with constitutional guidance from the Supreme Court. In this regard, I am very pleased that the Chairman has reinvigorated the Advisory Committee on Diversity for Communications in the Digital Age, renewing its charter through December 2008. The Committee has adopted a number of proposals that I believe we should consider. In addition, I am committed to using my time and efforts to champion the issue of ownership diversity, to call attention to it and raise the level of conversation. We need more diversity in broadcasting at all levels—behind the microphone and in the production room, as well as in the board room. I am doing all that I can to achieve this important goal, through formal FCC actions and in reaching out to industry partners to offer my help and support.

*Question 4.* On November 22, 2006, the day before Thanksgiving, the FCC released a list of economic studies to be performed in the media ownership proceedings. How did the Commission choose the economic studies to be performed in the media ownership proceedings?

Answer. Chairman Martin's Office solicited input from all of the commissioners' offices on media ownership studies to be performed.

*Question 4a.* Who at the Commission or elsewhere was consulted for input on the topics chosen?

Answer. Chairman Martin's Office solicited input from all of the commissioners' offices on media ownership studies to be performed. As a mother of three young adults, I was specifically interested in how our younger generation receives its news and information.

*Question 4b.* How were parties selected for the studies done outside the Commission, and what is the cost of these contracts?

Answer. In his recent letter to Congressman Maurice D. Hinchey (NY), Chairman Martin explained, "[t]he economists were chosen based on academic reputation and expertise either on a particular topic or literature or with particular econometric techniques."

As for the costs of the contracts, Chairman Martin explained:

The Commission has contracted for Study 1 (How People Get News and Information) to be performed for \$58,000, Study 3 (Ownership Effect of Ownership Structure and Robustness on the Quantity and Quality of TV Programming) to be performed for \$25,000, Study 5 (Station Ownership and Programming in Radio) to be performed for \$60,000, Study 6 (News Coverage of Cross-Owned Newspapers and Television Stations) to be performed for \$54,500, Study 7 (Minority Ownership) to be performed for \$10,000, Study 8 (Minority Ownership) to be performed for \$55,000, and Study 9 (Vertical Integration) proposed to be performed for \$60,000. Studies 2 (Ownership Structure and Robustness of Media), 4 (News Operations) and 10 (Radio Industry Review: Trends in Ownership, Format, and Finance) will be performed by Commission staff.

Chairman Martin concluded, "The Commission has made a total of \$361,096 of data purchases."

*Question 4c.* Would the Commission consider seeking public comment on what other studies might assist the Commission in its review of ownership rules?

Answer. I would certainly consider seeking public comment on what other studies might assist the Commission in its review of ownership rules. Any expert or member of the public may file in this docket, participate in our public hearings, or provide us with additional information.

*Question 5.* In November 2006, the Government Accountability Office (GAO) issued a report concluding that the cost of special access has gone up—not down—in many areas where the FCC predicted that competition would emerge. To address this error, the report recommended that the FCC develop a better definition of “effective competition” and monitor more closely the effect of competition in the marketplace. Do you agree with these findings?

Answer. I have reviewed the GAO report and take seriously its findings. I understand that the Commission has asked for the data upon which GAO based its analysis and expect that the Commission will undertake a thorough review of the GAO’s data and analysis. The Commission has an ongoing open proceeding investigating special access rates in which it will consider the GAO’s report. Certainly, the Commission’s analysis as it undertakes this review will be substantially improved by a factual assessment of the impact that competition has on special access prices.

*Question 5a.* What action should the Commission take in response?

Answer. As a part of its open proceeding investigating special access rates, the Commission should review the analysis and factual basis of the GAO’s report. Moreover, if the Commission determines that additional information or data is required to make an effective determination, the Commission should take steps to obtain that information or data.

*Question 6.* Last year, Congress passed legislation imposing a ten-fold increase in the size of maximum fines for indecency violations, to a maximum of \$325,000 per violation. At the time President Bush signed the law, he said “[t]he problem we have is that the maximum penalty that the FCC can impose under current law is just \$32,500 per violation, and for some broadcasters, this amount is meaningless. It’s relatively painless for them when they violate decency standards.” Should Congress similarly raise the statutory maximum fine for other violations?

Answer. Indecent programming on radio and television is the issue raised most often by the citizens I meet with across the country. No other issue elicits remotely the same level of public outrage. I am grateful that Congress passed the Broadcast Decency Enforcement Act, increasing the maximum fine for violations of decency standards by broadcasters. It is my hope that the possibility of higher fines will, in fact, deter future violations. While I cannot, based on my first year as a commissioner, identify other common violations that require similar increases, should Congress determine that such increases are necessary for their deterrent effect, I will, of course, faithfully seek to use them to enforce Commission rules.

*Question 6a.* What other actions should be taken to promote swifter and more effective enforcement?

Answer. I believe the Commission’s Enforcement Bureau performs its duties well, however, I do believe we could respond more quickly.

*Question 7.* Recently, the FCC adopted an order to prohibit certain practices by franchising authorities that the Commission finds are unreasonable barriers to entry. One issue mentioned in that order, which is very important to the State of Hawaii, is the ability of the franchise authority to seek appropriate contributions for public, educational, and governmental (PEG) and institutional networks (I-NETS). I understand that some parties have disputed the veracity of some claims made in this proceeding. What, if any, efforts did the Commission take to independently investigate and verify the claims of unfair demands made by many of the carriers in this proceeding?

Answer. As with all rulemakings, the comments filed in the section 621 rule-making proceeding were public documents. Any claims made in those comments were subject to dispute by interested parties, who had the opportunity to take advantage of a public comment and reply comment period.

*Question 8.* In 2004, the FCC adopted a plan to move certain licenses within the 800 megahertz band in order to eliminate interference problems that were being experienced by public safety communications systems. What is your assessment of the pace of progress in rebanding the 800 MHz band and what steps does the Commission intend to take in order to get this process back on track?

Answer. While the original 800 MHz rebanding item was addressed prior to my arrival at the Commission, I am deeply committed to working closely with the Association of Public-Safety Communications Officials, other public safety entities, the

Transition Administrator, Sprint, affected foreign governments, and Members of Congress to ensure that rebanding in the 800 MHz band is completed in a timely manner while ensuring full public safety operability during the transition. In addition, while I am a proponent of mediation, it has come to my attention that the 800 MHz rebanding may not be moving as swiftly as envisioned, and the FCC may need to step in and revisit the process.

*Question 9.* A number of wireless carriers have employed the use of high “early termination fees” to prevent wireless customers from switching to other carriers. In some cases these fees may be \$200 or more, and may apply regardless of whether the subscriber wishes to cancel on the first or last date of their wireless contract. Do you believe these practices promote or impede competition?

Answer. The Commission currently has before it an open proceeding concerning early termination fees (ETFs) imposed by CMRS providers on customers that terminate service prior to the expiration of the contract term. The wireless industry contends that ETFs provide consumers with numerous benefits, notably lower costs for handsets and other wireless services and products. Some consumer and public interest groups, on the other hand, contend that ETFs prevent consumers from shopping for better or less expensive wireless services. I will work with my FCC colleagues to undertake, among other things, whether ETFs promote or impede competition and other issues in a timely and considerate manner.

*Question 10.* Given requirements imposed by General Services Administration to promote greater redundancy of communications, how would the retirement of copper facilities impact Congress’ directive to promote the availability of alternate network facilities in federally owned and leased buildings?

Answer. As the tragic events of 9/11 and the gulf coast hurricanes have taught us, redundancy in communications networks is important to the continuity of essential government operations. When telephone companies upgrade loop facilities, often replacing copper facilities with fiber optic facilities, the Commission’s rules establish a process permitting the telephone companies to “retire” the copper by disconnecting it from the network, or by removing it altogether. *See* 47 CFR § 51.319(a)(3); 47 CFR §§ 51.325–51.335. Several competing carriers recently filed a pair of petitions asking the Commission to modify these rules. I plan to carefully evaluate these petitions, including any value that modifying these rules might have on network redundancy. However, I am also mindful of the policies that led to the creation of these rules, including concerns about network management and investment incentives.

*Question 11.* Given the Commission’s policy of promoting broadband deployment and eliminating regulations that treat competitors in the provision of broadband differently, how is this policy being implemented with regard to pole attachment regulations?

Answer. The Commission’s Enforcement Bureau recently issued an Order taking action to enforce the Commission’s existing pole attachment rules. This ruling requires that pole access be made available to a new entrant. (*See Fiber Technologies Networks, L.L.C. v. North Pittsburgh Telephone Company*, File No. EB–05–MD–014, Memorandum Opinion and Order, DA 07–486 (Enf. Bur. Feb. 23, 2007). Additionally, the Commission has before it a Petition for Rulemaking asking the Commission to adopt standard practices for pole and conduit access. As I evaluate that petition, I plan to review the relationship between pole attachment access and broadband deployment.

*Question 12.* Recently, a Virginia Federal court referred a matter to the FCC for review and clarification as to whether Internet Protocol Television or “IPTV” service meets the definition of a “cable service” under the Communications Act—a question that this Committee answered affirmatively during consideration of last year’s telecommunications bill. How does the Commission intend to address this matter?

Answer. This issue has been raised before the Commission in the *IP-Enabled Services* rulemaking proceeding. The Commission has heard from several parties regarding the merits of this question. The Commission expressly declined to address this issue in the section 621 franchising reform proceeding.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO  
HON. DEBORAH TAYLOR TATE

*Question 1.* Eleven years after Congress passed the 1996 Telecommunications Act that opened the floodgates of media consolidation in the radio industry is American radio better or worse than it was in 1996 in terms of viewpoint diversity and localism?



Answer. While a state official, I did not have the opportunity to review the effects of, and form an opinion on, consolidation in the radio industry. I therefore bring an open and inquiring mind to the issue, as the Commission continues to review its broadcast ownership rules. Attending the first three of our six planned public field hearings, where broadcasters, academics, recording artists, union representatives, and hundreds of citizens have spoken passionately about the issue, has been an educational experience. I look forward to the continuing dialogue with Members of Congress and considering the full record in the current proceeding so as to make an informed judgment.

*Question 2.* How has consolidation impacted the public's ability to hear local music and local news on the airwaves?

Answer. Please see answer to Question 1 above.

*Question 3.* Even with the existence of net neutrality conditions on AT&T, are there rules in place to ensure that other broadband providers do not discriminate against Internet content, services or applications? Given the rulings on information services, is it even clear that the FCC has authority to act if such discrimination occurs?

Answer. On August 5, 2005, the Commission adopted four principles in its *Internet Policy Statement* with the intent of ensuring that "broadband networks are widely deployed, *open*, affordable, and accessible to all consumers. . . ." I support the Commission's *Internet Policy Statement* and believe the Commission should establish competitively and technologically neutral policies that will foster investment in broadband networks and the development of new and innovative broadband applications and services. In the *Internet Policy Statement*, the Commission stated it "has jurisdiction to impose additional regulatory obligations under its Title I ancillary jurisdiction to regulate interstate and foreign communications" and "[a]s a result . . . to ensure that providers of telecommunications for Internet access or Internet Protocol-enabled (IP-enabled) services are operated in a neutral manner." Based on this authority, the Commission is currently considering a proceeding that will investigate the need for more formal rules. Also, in addition to the Commission's oversight, other antitrust and consumer-oriented arms of our government, such as the FTC, are monitoring the market behavior of broadband providers.

*Question 4.* In an environment of industry consolidation and technological integration, what role do you see the FCC playing to ensure nondiscriminatory access to infrastructure, content, roaming, spectrum and rights of way?

Answer. The marketplace the Commission oversees continues to undergo constant technological and structural change. I prefer to allow properly functioning markets to operate. In a period of rapid technological change, the Commission must evaluate how these changes impact consumers. If there is evidence of harmful discrimination, the Commission is well-positioned to correct those problems, either through enforcement of existing rules, or the creation or redrafting of rules. However, where no evidence of harmful discrimination exists, the Commission should allow the marketplace to evolve, while keeping a watchful eye as it develops.

*Question 5.* Do you think that the current broadband market is sufficiently competitive and robust in terms of broadband deployment? Does the FCC currently have sufficient tools to even accurately determine whether Americans have access to broadband?

Answer. Nearly 65 million Americans had access to high-speed lines by June 2006, over a 50 percent increase in 1 year, with rural Americans more than doubling their broadband connections from 2003 to 2005. This is good news. However, our work is far from complete. I am encouraged that we are taking steps to improve our broadband data collection to better assess consumer access to broadband to help us increase broadband deployment and competition. We must also continue to take steps that encourage investment, especially in rural areas. This includes our continuing spectrum and auction policies to deploy spectrum throughout the country. Moreover, encouraging public-private partnerships, like ConnectKentucky, also is an important tool in working to deploy broadband. Further, I am pleased that we launched a pilot program to explore ways to enhance broadband through our rural healthcare program.

*Question 6.* How do you envision universal service reform moving ahead to keep the fund sustainable? I am concerned about proposals that would not require broadband connections to pay into universal service, or reverse auction proposals that advocate providing USF support in an auction type model to the least cost provider.

Such proposals bring uncertainty to investment plans, and shift the universal service standard from comparable to urban areas, to one that would just go to the lower bidder, quality irrelevant. I understand that rural providers have expressed

concern about both proposals. Can you discuss the least cost provider issue, as well as what possible distinctions exist to justify excluding broadband from paying into USF—why shouldn't a technology that uses and benefits from the network pay into universal service?

Answer. The Federal-State Joint Board on Universal Service issued a Public Notice last August seeking comment on the use of reverse auctions to evaluate distributions of universal service support to high cost areas. In many areas defined as high cost by the Commission's rules, multiple service providers receive universal service support. Reverse auctions are one way among many to address how to more efficiently fund high cost areas. The Joint Board's Notice on this issue expressly asks questions about how to address service quality and other consumer issues and I think addressing this is essential, if the Joint Board chooses to pursue this path. Like any other contract for services put out for competitive bid, service quality guarantees and enforcement provisions can be employed to ensure that appropriate consumer and social policy requirements are met. Any major universal service reform measure would necessitate a transition in order for providers to adjust to the change in funding.

You raise a very important question when you ask about assessing broadband services with universal service contributions. On the one hand, if broadband services are eligible for support, it is reasonable to ask that those services contribute to the universal service system. On the other hand, it is important to consider the ramifications of adding additional cost to broadband Internet access services as we work to increase broadband deployment and adoption by more Americans.

*Question 7.* What is your view of making the deployment of advanced infrastructure that is fully capable of offering the wide array of broadband oriented services the hallmark of our national universal service policy? Should universal service subsidize broadband?

Answer. The Communications Act specifies that the universal service program should support "an evolving level of telecommunications services." Further, the Act provides a list of factors to consider, including whether the service is "subscribed to by a substantial majority of residential customers" or is "essential to education, public health, or public safety." However, as one of my Joint Board colleagues pointed out, the process for making this determination could prove to be lengthy, and Congress may wish to act more quickly. That said, the rural high cost universal service program already supports network improvements, such as loop upgrades, that also help to support the deployment of broadband services.

*Question 8.* The FCC recently has been granting incumbent providers (ILECs) forbearance from regulations on the premise that sufficient competition exists in a specific market to make enforcement of the regulations unnecessary. However, a Fall 2006 GAO report indicates that the assumptions the FCC uses to determine the existence of competition may be flawed and further that prices in Phase II areas—that is, areas where competition is theoretically most intense—are going up. Is that the case, and if so, are price increases consistent with a competitive market?

Answer. Section 10 of the Communications Act requires that "the Commission shall forbear from applying any regulation or provision of this Act . . . if the Commission determines that" enforcement of the provision is "not necessary" to ensure just and reasonable prices and practices or the protection of consumers, and that it serves the public interest. Obviously, each forbearance request must be reviewed on its own facts and merits. Regarding special access, the GAO report focused its attention on DS1 and DS3 special access prices. The Commission has not granted forbearance with respect to DS1 or DS3 facilities. I take seriously the GAO's findings. I understand that the Commission has asked for the data upon which GAO based its analysis and expect that the Commission will undertake a thorough review of the GAO's data and analysis as a part of the Commission's open proceeding investigating special access rates.

*Question 9.* Is forbearance for the ILECs in the public interest?

Answer. Section 10 of the Communications Act requires that "the Commission shall forbear from applying any regulation or provision of this Act . . . if the Commission determines that" enforcement of the provision is "not necessary" to ensure just and reasonable prices and practices or the protection of consumers, and that it serves the public interest. The Commission evaluates each forbearance petition on the specific facts and merits of the case. When sustainable competition arrives, we must exercise our regulatory humility and transition markets away from the constant touch of government regulation, such as price-setting. Recently, for example, the Commission took a carefully balanced approach, granting in part and denying in part, a forbearance petition regarding section 251 unbundling obligations in Anchorage, Alaska. The Commission granted regulatory relief in some, but not all,

of the wire centers in the Anchorage area and conditioned relief on a reasonable transition period and other requirements.

*Question 10.* A proceeding to investigate the rates, terms and conditions for interstate special access services has been pending for a number of years. What is the status of the FCC's special access proceeding? What steps are being taken to speed resolution of this matter?

Answer. In February 2005, the Commission adopted a Notice of Proposed Rulemaking taking a broad examination of price cap incumbent LEC special access services and rates. The Commission is reviewing the record and is evaluating, among other things, the GAO's recommendations on special access rules. Although the Commission has not taken formal action in this proceeding, the Commission has addressed special access services and pricing in several other contexts. See *SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290 (2005) (*SBC/AT&T Order*); *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433 (2005) (*Verizon/MCI Order*); *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, News Release, (December 29, 2006) (*BellSouth/AT&T Approval*); *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, WC Docket No. 05-333, Memorandum Opinion and Order, FCC 07-13 (rel. Mar. 9, 2007) (*Qwest 272 Forbearance Order*).

*Question 11.* Some say that the dispute between Mediacom and Sinclair signals a new period of confrontation between broadcasters and distributors. How many complaints involving retransmission consent disputes has the Commission received in the last couple of years? Is there any trend within that data that may be useful to consider? How long does the Commission typically take to resolve those complaints?

Answer. See Chairman Martin's response.

*Question 12.* One issue specifically important for public radio stations is the opportunity to file for and receive additional reserved FM spectrum. It has been almost 7 years since the FCC provided the public with an opportunity to build new noncommercial educational stations on reserved FM spectrum. When will the FCC open a filing window for new reserved-FM noncommercial stations? Will the FCC provide public notice of a filing window sufficiently in advance to permit non-profit, governmental, and other potential applicants adequate time to participate?

Answer. The lengthy time period between filing windows for applications for new stations or major changes to existing stations in the reserved band is the result of judicial invalidation of the Commission's comparative hearing procedures to resolve conflicts among mutually exclusive applicants. Judicial challenges have, for years, delayed implementation of new point system procedures. The Commission currently is considering an item that employs the point system to resolve conflicts among a number of applications that were filed when comparative hearing procedures were still in effect. According to the information that I have received from the Commission's staff, I anticipate that, if the item is adopted, a new filing window could be opened expeditiously, with a Public Notice issued sufficiently far in advance to allow all potential applicants time to participate.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
HON. DEBORAH TAYLOR TATE

*Question 1.* Do you believe those individual and their employers who violated the commission's payola rules should be held accountable and those who have been injured receive fair compensation?

Answer. Section 317 of the Act requires broadcasters to disclose to viewers or listeners that matter is being broadcast in exchange for money, services, or other valuable consideration. The Commission has adopted rules, section 73.1212 and section 76.1615, which set forth broadcasters' and cable operators' responsibilities for sponsorship identification. Violations of these rules are usually punished by imposition of a monetary forfeiture, and it is important that the Commission enforce its rules.

*Question 2.* Should significant fines be part of the penalty?

Answer. In Section 503 of the Communications Act, Congress has authorized the Commission to impose fines for violations of its Rules, so fines certainly are a potential penalty where "payola" has been determined to have occurred.

*Question 3.* How do you structure a consent decree so that it changes behavior and deters individuals from future violations beyond when the consent decree ends?

Answer. One way to change behavior and prevent future violations is to require a consent decree to include a detailed and specific compliance plan and other business reforms.

*Question 4.* What kind of enforcement mechanism do you envision to ensure the consent decree is effective?

Answer. Once a licensee has entered into a consent decree with the Commission in order to conclude an enforcement proceeding, any violation of the terms of that consent decree shall be treated the same as a violation of a Commission rule. In addition, the Commission rule(s), the alleged violation of which led to the enforcement proceeding, remain in place.

*Question 5.* Given how important music and radio is to many Americans, do you believe there should be public comment on any consent decree before the Commission adopts it?

Answer. No. Given that the process of negotiating a consent decree is a private, party-specific adjudicatory action, I do not believe that a public comment period is necessary.

*Question 6.* Commissioner Tate, given your experience as a state regulator in Tennessee and at the Commission, you have had some time to think about how regulatory responsibilities should be divided between the states and the Federal Government. Based on your experience, should the States or the Commission be responsible for consumer protection and service standards when it comes to information, telecommunications, and video services?

Answer. I believe that the effectiveness of our communications regulatory regime depends on the strength of the partnership between the FCC, state commissions, other governmental entities, and the industry. When allocating responsibilities between Federal and state regulatory authorities, policymakers should specifically recognize and leverage the core competencies of states: a functional direct line of communication with consumers, a wealth of experience in implementing consumer protection laws, and a knowledge of the markets within the states. There certainly are instances in which it is appropriate to have a uniform Federal policy.

States should remain valuable partners with the Federal Government to ensure that "shared federalism" remains successful. A strong Federal-state partnership can also help us achieve broad national goals through improved coordination, such as public safety or educational goals. Issues like Do-Not-Call and Do-Not-Fax, as well as slamming and cramming, are excellent examples of cooperation between state and Federal agencies to protect consumers. Often, states hear about or see consumer and other issues first. State agencies, including the utilities commissions and attorneys general, have broad consumer protections authority that can help enhance vigorous consumer protection. Finally, states often serve as "incubators" of policy concepts that, if effective, may translate into effective tools for broader application.

*Question 7.* Should federal rules be considered a floor or a ceiling? And if the Commission's enforcement doesn't measure up on consumer protection, should that responsibility be given to the states or local governments? How does your answer apply with respect to the consumer protection issues raised in the Report and Order and Further Notice of Proposed Rulemaking that establishes rules and provides guidance to implement Section 621(a)(1) of the Communications Act of 1934 issued in December 2006?

Answer. The Commission tentatively concluded in its Order implementing section 621(a) of the Communications Act that it did not have the authority to preempt state and local customer service laws that exceed Commission standards.

---

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. FRANK R. LAUTENBERG TO  
HON. DEBORAH TAYLOR TATE

*Question.* In approximately 2 years, broadcasters will shift to digital television. There are over 200,000 homes in New Jersey that rely exclusively on over-the-air television. Do you think most Americans are educated about this transition today? What role will the FCC play in preparing the public for this transition?

Answer. As I noted in response to a similar question from Chairman Inouye, aside from the more technical aspects of the digital transition, which the Commission is addressing expeditiously, consumer education looms as the most pressing concern. The Commission has sought to increase awareness through a variety of outreach efforts, including the creation of a website, [www.dtv.gov](http://www.dtv.gov). In addition, it has requested an additional \$1.5 million as part of its FY 2008 budget in order to continue these

efforts. I am also pleased that the major trade associations, CEA, NAB, and NCTA, have committed to a coordinated public information campaign and the Commission will participate or provide assistance as appropriate. Finally, the Commission will consult with NTIA as it administers the national coupon program for over-the-air digital-to-analog converter boxes and provide assistance, as appropriate.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK L. PRYOR TO  
HON. DEBORAH TAYLOR TATE

*Question 1.* Over the past 4 years, consumers have enjoyed the successful emergence of a number of new players in the audio marketplace. Satellite radio and Internet radio now reach tens of millions of listeners every week, and portable MP3 players and iPods have become common household items. Digital Cable and DBS offer dozens of channels of uninterrupted music, and Wi-Max technology is evolving that will soon allow Internet-based listening options in automobiles. Would the Commissioners agree that the competitive landscape has changed dramatically in the audio market over the past few years?

Answer. Yes. I certainly agree that the audio marketplace has witnessed rapid and dramatic changes in recent years. XM and Sirius have only offered service for a little over 5 years, but they have already signed up millions of subscribers. iPods and other digital music players are used by millions more, including 1 in 5 people under the age of 30. We must remain cognizant of these developments and others that are sure to come as we adopt future regulations.

*Question 1a.* And would the Commissioners agree that this trend is only likely to continue for the foreseeable future?"

Answer. Yes.

*Question 2.* Consumers in many rural areas currently are not able to enjoy the same benefits wireless services offer as their urban counterparts enjoy. Due to low user concentration, the cost of providing high quality wireless service in rural areas is frequently more expensive than is possible in higher-density urban areas. Designation of wireless carriers as ETCs, which permits these carriers to receive support from the Universal Service Fund ("USF"), can help to ensure that all Americans enjoy the benefits of competition and high-quality wireless services. What steps has the FCC taken to ensure that wireless coverage is extended to all Americans, regardless of where they live, and to ensure that Americans living in rural areas have the opportunity to subscribe to high-quality wireless services?

Answer. The Commission has taken a number of steps to encourage the deployment of wireless services in rural areas and foster the deployment of wireless broadband service offerings to all Americans. For example, in the AWS auction, spectrum was made available in smaller geographic service areas to provide greater opportunities for small providers to obtain access to this spectrum at auction for rural and underserved areas. And, recently, the Commission released a *Notice of Proposed Rulemaking* seeking comment on, among other things, the issue of build-out requirements in the 700 MHz Band so as to promote service to rural areas and the use of small license areas in those portions of the 700 MHz Band that have yet to be auctioned.

*Question 3.* Following the natural disasters that recently hit the Gulf Coast region wireless services provided emergency personnel, utility repairmen and residents with the only immediate means for communicating. In light of the experience of the Commission from Hurricane Katrina and other disasters, please describe the role wireless services fill with respect to emergency response and disaster recovery during times of crisis?

Answer. Since coming to the FCC, I have gained a real appreciation of how important wireless, satellite, and other technologies are when public safety or homeland security concerns become paramount. During Hurricane Katrina and other disasters, a variety of wireless, satellite, and other services enabled first responders to communicate and citizens to reach loved ones.

Last year, at the second meeting of the FCC Independent Panel Reviewing the impact of Hurricane Katrina on communications networks, I heard personal accounts of the devastation caused by Hurricane Katrina. The one clear message I heard was the need for redundancy in communications networks. I applaud the collaborative efforts and contributions of the entire communications industry, which has worked hard to address the difficult policy and technical issues. The Commission, in particular the newly established Public Safety and Homeland Security Bureau, must also do its part to facilitate effective communications during and after a disaster. I look forward to working with my fellow Commissioners, public safety

entities, state and local officials, and all interested stakeholders regarding what we can do to ensure the reliability and interoperability of communications in order to better protect all Americans.

*Question 3a.* If a petitioner for ETC designation meets the statutory criteria and has consistently been the only service provider to remain operative in certain areas during natural disasters despite the presence of other carriers (including other ETCs) in those areas, would you view the designation of the petitioner as an ETC to be in the public interest?

Answer. The Commission has adopted a number of requirements to enhance its evaluation and provide guidance to states during the competitive ETC designation process. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005). Indeed, the ability to remain functional in emergency situations is a factor in the Commission's analysis. Without knowing the specifics, there may be other factors that could impact the public interest analysis of the Commission.

*Question 3b.* Some of the areas hardest hit by recent natural disasters were underserved communities. To the extent a petitioner for ETC designation that meets the statutory criteria for ETC designation has demonstrated a strong commitment to serving rural and underserved communities since well before designation as an ETC, would the designation of the petitioner as an ETC be in the public interest? If not, please explain why.

Answer. The universal service program has provided a valuable benefit to consumers across the nation, connecting homes and businesses in high cost, rural, and insular areas that would not otherwise have service comparable to urban areas. It is essential that the Commission ensure its sustainability to provide consumers in all areas of the country have access to an evolving level of communications services.

*Question 4.* The FCC has committed to resolve, within 6 months of the date filed, all ETC designation requests for non-tribal lands that are properly before the FCC. How many petitions for ETC designation are currently pending at the FCC?

Answer. According to information supplied by Commission staff, there are 34 petitions pending.

*Question 4a.* What is the average length of time that the ETC Petitions currently before the FCC have been pending? Of these petitions, what is the earliest filing date? How many of these petitions were filed in 2004 or earlier?

Answer. See Chairman Martin's response.

*Question 4b.* How many petitions for ETC designation did the FCC act on in 2006?

Answer. According to information supplied by Commission staff, the agency acted on 2 petitions in 2006.

*Question 4c.* How many petitions for ETC designation did the FCC act on in 2005?

Answer. See Chairman Martin's response. Moreover, I was not a member of the Commission in 2005.

*Question 4d.* How many petitions for ETC designation did the FCC act on in 2004?

Answer. See Chairman Martin's response. Moreover, I was not a member of the Commission in 2004.

*Question 4e.* What does the FCC intend to do about the backlog of pending ETC petitions?

Answer. See Chairman Martin's response.

*Question 4f.* How soon does the FCC intend to act upon ETC petitions that have been pending for more than 6 months?

Answer. See Chairman Martin's response.

*Question 4g.* Do you believe that Americans living in rural areas and the carriers who have filed ETC Petitions deserve to have those petitions acted upon promptly rather than simply kept pending without a yes or no answer? If you do not, please explain why.

Answer. Yes.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO  
HON. DEBORAH TAYLOR TATE

*Question 1.* In a September 8, 2005 report, the FCC stated, "Our review of the record does not lead us to recommend any changes to the retransmission consent regime at this time." What, if any, steps have you taken since that time to review and assess the retransmission consent regime; what if any additional conclusions

have you reached; what if any plans do you have for additional formal or informal review; and what do you perceive to be the strengths and weaknesses of the retransmission consent process?

Answer. With respect to your first three questions, please see Chairman Martin's response. With respect to the strengths and weakness of the retransmission consent process, in general, I believe that it is working as Congress intended. Market forces encourage broadcasters and multichannel video programming distributors to reach agreement for carriage of the broadcasters' channels, and the vast majority of negotiations result in such agreement, without government involvement. In the relatively few cases where agreement remains elusive, either party to the negotiation may file a complaint with the Commission if it believes that the other is not negotiating in good faith.

*Question 2.* Section 10(a) of the Communications Act allows the Commission to forbear from applying any regulation or any statutory provision to a particular or multiple telecommunications carriers or services, in any or some geographic markets, if certain criteria are met—most notably that competition exists in the market and that such relief is in the public interest. The FCC recently has been granting incumbent providers (ILECs) forbearance from regulations on the premise that sufficient competition exists in a specific market to make enforcement of the regulations unnecessary. What are each of your respective positions on the conditions and circumstances under which forbearance for ILECs is appropriate?

Answer. Section 10 of the Communications Act requires that "the Commission shall forbear from applying any regulation or provision of this Act . . . if the Commission determines that" enforcement of the provision is "not necessary" to ensure just and reasonable prices and practices or the protection of consumers, and that it serves the public interest. The Commission evaluates each forbearance petition on the specific facts and merits of the case. When sustainable competition arrives, we must exercise our regulatory humility and transition markets away from the constant touch of government regulation, such as price-setting. Recently, for example, the Commission took a carefully balanced approach, granting in part and denying in part, a forbearance petition regarding section 251 unbundling obligations in Anchorage, Alaska. The Commission granted regulatory relief in some, but not all, of the wire centers in the Anchorage area and conditioned relief on a reasonable transition period and other requirements.

*Question 3.* From the City of Saint Paul (similar questions were raised by Burnsville/Eagan Community Television and the Northern Suburban Communications Commission):

The Order issued by the FCC on December 20, 2006 allows new franchise entrants to "cherry pick" the neighborhoods in our communities, rather than bring true competition to all of our businesses and residents. This would allow new entrants to serve or upgrade only the profitable areas of Saint Paul [and other cities and towns], leaving many of our residents on the wrong side of the "digital divide."

The Order authorizes a new entrant to withhold payment of fees that it deems to be in excess of a 5-percent franchise fee cap. This could completely undermine support for both Saint Paul's [and other cities' and towns'] very successful public, educational and government (PEG) operations.

The Order imposes a 90-day shot clock for new entrants with existing rights of way, opening the potential to reduce Saint Paul's [and other cities' and towns'] ability to manage its rights-of-way.

The Order authorizes a new entrant to refrain from obtaining a franchise when it is upgrading mixed use facilities that will be used in the delivery of video content.

Saint Paul believes that the policy goals of the Order are laudable but strongly disagrees with the method and substance of the decision taken by the FCC. How do you respond to each of these concerns, and how do you respond to the claim that the FCC exceeded its authority in adopting this order?

Answer. With respect, the City of Saint Paul raised its concerns without the benefit of the text of the *Order*, which was released on March 5, 2007. As a result, I believe that many of its concerns are based on a misunderstanding of what the *Order* does and does not permit. The *Order* does provide guidance on what may constitute "unreasonable" buildout requirements on new entrants, but it does not, in my opinion, permit new entrants to "cherry pick" neighborhoods. It does not allow new entrants to withhold payment of fees it believes are in excess of the 5 percent cap. It does establish a 90-day time period during which the franchising authority must act on applications by new entrants that already have existing rights-of-way

access. This time period is longer than that adopted by most states that have reformed the franchising process. In Indiana, for example, a new entrant may obtain a franchise 15 days after filing its application. In Texas, the time period is 16 business days, and in Kansas, California, New Jersey, and South Carolina, the time period ranges from 30 to 80 calendar days. The *Order* does not authorize a new entrant to refrain from obtaining a franchising when it is upgrading mixed use facilities. The good news is that this will enable consumers to have choice and hopefully encourage the deployment of broadband.

In the absence of congressional action, I believe that the Commission's broad and well-recognized authority as the Federal agency responsible for administering the Communications Act gives it the jurisdictional authority to interpret section 621(a)(1) by determining whether certain actions by local franchising authorities constitute an unreasonable refusal to award a competitive franchise. *See, e.g.*, sections 201(b), 303(r), and 4(i) of the Communications Act of 1934, as amended.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TED STEVENS TO  
HON. DEBORAH TAYLOR TATE

*Question 1.* What is the current status of any proposals to use auctions to determine universal service support?

Answer. On August 11, 2006, the Federal-State Joint Board on Universal Service ("Joint Board") issued a Public Notice seeking comment from interested parties on the use of auctions to determine universal service support. More than 50 parties filed comments and reply comments in fall 2006, responding to the Joint Board's request for comment. On February 20, 2007, the Joint Board held an *en banc* hearing in Washington, D.C., where it heard, among other issues, from experts in support of, and in opposition to, the use of auctions to determine universal service support. The Joint Board continues to discuss what reforms it should recommend to the Federal Communications Commission, and the use of reverse auctions remains just one of the many tools being considered. Once the Joint Board issues a Recommended Decision to the FCC, the Commission has 1 year to complete its proceedings responding to the Recommended Decision. 47 U.S.C. § 254(a)(2).

*Question 2.* Do you believe any of the proposals submitted to the Joint Board are viable alternative approaches to universal service support and can adequately support rural carriers like those in Alaska?

Answer. Yes. The Joint Board has received a number of proposals to ensure the long-term sufficiency, stability, and sustainability of the universal service fund. I look forward to working with my FCC and state colleagues, and Members of this Committee, to ensure that consumers in all regions of the country, including those in high-cost areas, have affordable, quality communications and advanced services.

*Question 3.* When Chairman Powell visited a remote Eskimo village in Alaska, his plane got stuck in the mud on the unpaved runway during take-off. He and his staff whipped out their cell phones to try to call for help, but they didn't work. No roaming agreements. The villages call came and pulled his plane out of the mud, but he was not able to call his wife to tell her he was running late. I am pleased to report that the runway is now being paved, but the roaming problem has yet to be resolved. Many small cell phone companies in Alaska have been unsuccessful in getting the large national carriers to respond to their desires to arrange roaming agreements. As data, video, and other services are transmitted to mobile devices this problem will only grow more acute. What can you do to address this problem, and what is the timeframe for moving forward?

Answer. In August 2005, the Commission initiated a proceeding regarding roaming requirements applicable to Commercial Mobile Radio Service ("CMRS") providers. The record is extensive, with several segments of the CMRS industry represented. I look forward to working with my FCC colleagues to undertake these issues in a timely and considerate manner.

*Question 4.* I continue to have concerns that too often domestic satellite services do not offer service to Alaska and Hawaii. In last year's Senate Communications Bill, a measure was included to require satellite operators to make good faith efforts in their satellite planning and development to ensure service to the entire United States. Are there measures that the FCC could take independent of Congressional legislation to ensure better service to Alaska and Hawaii?

Answer. Section 25.148(c) of the Commission's rules requires Direct Broadcast Satellite (DBS) operators to provide service to Alaska and Hawaii if "technically feasible" or to provide a technical analysis showing that such service is not technically feasible. *See* 47 CFR § 25.148(c). I intend to encourage satellite providers to make



good faith efforts to provide consumer products in Alaska and Hawaii that are comparable to those offered in the contiguous United States, to the extent technically feasible.

*Question 5.* The FCC frequently faces the problem of making tough policy decisions that are wrapped in technological debates. There are several waivers pending at the FCC that deal with CableCARDs. What is the impact on the consumer and the impact on the development and deployment of downloadable security? How will these petitions be considered and will the full Commission address these issues?

Answer. The Commission has received a number of requests for waiver of the so-called “integration ban,” which would preclude cable operators from deploying set-top boxes with integrated security and navigation functions after July 1, 2007. It is well settled that the Commission evaluates waiver requests on a case-by-case basis to determine whether an applicant’s showing satisfies the waiver standard.<sup>1</sup> Accordingly, the Media Bureau continues to review the requests on a case-by-case basis, and it has both granted and denied some already. In addition, Comcast has filed an Application for Review of the Media Bureau’s denial of its waiver request. I will fully consider all issues related to enforcement of the ban, balancing the congressional directive in Section 629 of the Communications Act to assure the commercial availability of multichannel video programming navigation devices against the possibility that consumers may face additional short-term costs.

*Question 6.* Obviously we are all concerned about the new frontiers that can be created on the Internet for pedophiles and child pornographers. To advance the safety of our children, everyone must do their part. Is there more that the Internet service providers can be doing to help law enforcement and does the FCC need any additional authority from Congress to ensure that entities under the Commission’s authority are doing their part?

Answer. As a mother of three children, I believe we all have more to do. From educating them about the potential dangers, to providing parent’s tools, to law enforcement, to speaking out—we each must take steps to safeguard our children from the potential dangers of the Internet.

Recently, I participated in the launch of the Family Online Safety Institute, which seeks to provide a forum for the exchange of ideas and information to make the Internet a safer place for our children. Moreover, the wireless industry has voluntarily adopted wireless carrier content classification and Internet access control guidelines. If voluntary industry efforts and self-regulation are insufficient, however, perhaps Congress will consider additional jurisdiction for the FCC.

Congress has addressed this issue, for example, in the context of E-Rate funding. Through the Children’s Internet Protection Act and the Neighborhood Children’s Protection Act, Congress requires schools and libraries to certify that they have Internet safety policies in place—and that they use them—before they are eligible to receive funding from the E-Rate program administered by the FCC. Thus, even as Congress acts to promote access to the Internet, it recognizes the importance of protecting the children who use it. It is critically important that, as the Internet becomes ever more essential—even indispensable—for our children’s educational and social development, we continue to ensure the safety of our Nation’s children.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO  
HON. DEBORAH TAYLOR TATE

*Question 1.* Is it true that eleven years ago Congress required the FCC to adopt a new universal service mechanism that ensures that local telephone rates in rural areas are reasonably comparable to rates in urban areas?

Answer. Yes. See 47 U.S.C. § 254.

*Question 2.* Is it true that the 10th Circuit Court of Appeals has twice remanded the FCC’s method of providing universal service support for rural customers served by larger carriers?

Answer. Yes. See *Qwest Corp. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) (*Qwest I*); *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2003) (*Qwest II*).

*Question 3.* Is it true that the second decision was issued in February of 2005 with the court expressing an expectation that the FCC would respond expeditiously?

Answer. Yes. However, I was not a member of the Commission when the court issued its decision. Moreover, while the court expected the FCC to comply with its decision in an “expeditious manner,” it recognized the complex tasks before the FCC

---

<sup>1</sup> See, e.g., In the matter of Intelsat LLC, *Order on Reconsideration*, 15 FCC Rcd. 25234 (2000) (“waiver request must be considered on its own merits”).

on remand. I am committed to working with my FCC colleagues to address these matters in a timely and considerate manner.

*Question 4.* What steps will the FCC take now to ensure that it meets its obligations to the rural residents of large incumbent carriers? Will you commit that the FCC will take action on this remand during the next 6 months?

Answer. The Commission issued a Notice of Proposed Rulemaking on December 9, 2005, to address the issues remanded by the Qwest II court. I will work with my colleagues to address this issue in a timely and considerate manner.

*Question 5.* Now that the Antideficiency Act (ADA) exemption has expired, what kind of guarantees can you give that there will be no further E-Rate program shut downs or delays?

Answer. Section 20946 of the Revised Continuing Appropriations Resolution, 2007 amends Section 302 of the Universal Service Antideficiency Temporary Suspension Act (Public Law 108-494; 118 Stat. 3998) by extending the temporary suspension through December 31, 2007. For further discussion of the Commission's work on securing E-Rate funding, please see Chairman Martin's response.

*Question 6.* Can you tell us how much USAC has in its E-Rate accounts currently and whether those reserves will be sufficient to cover funding?

Answer. Please see Chairman Martin's response.

*Question 7.* Are you still working with the Office of Management and Budget (OMB) on a reinterpretation of the ADA that would exempt Universal Service?

Answer. Please see Chairman Martin's response.

*Question 8.* Given that AT&T and BellSouth agreed to abide by a definition of "network neutrality" as part of their merger conditions, do you believe that the argument that it is impossible to craft such a definition is false?

Answer. Yes.

*Question 9.* Will you enforce the "network neutrality" provision agreed to as part of AT&T's and BellSouth's gaining approval for the merger?

Answer. Yes.

*Question 10.* Do you consider the U.S. broadband marketplace to be competitive?

Answer. Nearly 65 million Americans had access to high-speed lines by June 2006, over a 50 percent increase in 1 year, with rural Americans more than doubling their broadband connections from 2003 to 2005. This is good news. However, our work is far from complete. I am encouraged that we are taking steps to improve our broadband data collection to better assess consumer access to broadband to help us increase broadband deployment and competition. We must also continue to take steps that encourage investment, especially in rural areas. This includes our continuing spectrum and auction policies to deploy spectrum throughout the country. Moreover, encouraging public-private partnerships, like ConnectKentucky, also is an important tool in working to deploy broadband. Further, I am pleased that we launched a pilot program to explore ways to enhance broadband through our rural healthcare program.

*Question 11.* Do you believe a wireless connection, which is two to four times more expensive and two to four times slower than DSL or cable, can be a substitute for a wireline connection to the Internet?

Answer. While speed and price are critical factors in a consumer's broadband purchase decision, wireless broadband connections may offer mobility, or other features that consumers highly value. In fact, according to FCC data, from June 2005 to June 2006, wireless share of total broadband lines increased from 1 percent to 17 percent. Accordingly, for some consumers, wireless broadband may be a desirable substitute.

*Question 12.* How can we ensure that a variety of news and entertainment outlets will be there if the telephone and cable companies are allowed to limit what people can see and do online?

Answer. I support the four principles contained in the Commission's *Internet Policy Statement*, including the principle that "consumers are entitled to access the lawful Internet content of their choice." Especially as broadband offerings increase, the market will punish service providers that limit consumer access to content. Moreover, the Commission has the tools to effectively address these issues if evidence of a problem arises.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GORDON H. SMITH TO  
HON. DEBORAH TAYLOR TATE

*Question 1.* Under a couple of the conditions, AT&T and BellSouth committed that for 42 months, they would continue to offer, and would not increase the price of, unbundled network elements. They also committed not to seek forbearance with respect to unbundled loops and transport. Will these conditions preserve the option for consumers to purchase high-speed broadband service from companies that combine an AT&T/BellSouth UNE loop with their own electronics and other network facilities to offer their own high-speed Internet broadband services?

Answer. Competitive local exchange carriers (CLECs) that provide service using unbundled network elements (UNEs) obtained from AT&T and BellSouth asserted in the merger proceeding that a limitation against price increases on UNEs and a commitment by AT&T not to seek forbearance from UNE rules would provide them stability in offering their competing services. Although the Commission did not modify its rules, AT&T did make enforceable commitments in the context of the merger not to seek any increase in state-approved rates for UNEs or collocation and not to seek forbearance from UNE access rules for 42 months.

*Question 2.* Has the Commission concluded that it is in the public interest to preserve additional broadband options for consumers through these UNE as part of the AT&T/BellSouth merger conditions?

Answer. The Commission has rules permitting UNE access by CLECs. The Commission's access rules for loops and transport have been upheld by the D.C. Circuit. These rules remain the general policy of the Commission. However, the Commission has, on a very market-specific basis, granted relief to incumbent LECs from certain UNE access rules. See *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, WC Docket No. 05-281, Memorandum Opinion and Order, FCC 06-188 (rel. Jan. 30, 2007); *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005).

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO  
HON. DEBORAH TAYLOR TATE

*Question 1.* Even as we are strategizing on how to complete the deployment of DSL and cable modem broadband networks to the hard to reach places of our country, other countries are well on their way to deploying next-generation fiber networks. Highspeed fiber will change how we use the Internet similar to the change we saw between dial-up and broadband. Is there anything Congress can be doing to help speed the deployment of our high-speed fiber network here at home, and in rural areas particularly?

Answer. It is important for Federal and state governments to create a policy environment that encourages investment and competition. Competition is the best way for consumers to get better services and lower prices. Coming from a state with large urban markets and a significant rural constituency, I understand the need for policies that promote competition among all carriers. I am particularly excited by the efforts made by several states, like in Kentucky with ConnectKentucky, to accelerate the deployment of universal, affordable high-speed networks. States and Congress also have tools to evaluate tax and other investment incentives to encourage costly network deployment. I am committed to working with my FCC and state colleagues, and Members of this Committee, to encourage the further deployment of new and innovative services to all Americas.

*Question 2.* When I speak with some of South Dakota's rural telephone cooperatives and other telecommunications providers, I hear about the large amount of resources they must put toward legal fees to keep pace with the legal and regulatory maneuvers being made by some of the larger telecommunications providers with seemingly bottomless pockets for such actions. Some of these small providers honestly think part of the larger competitors' plan is to beat them through legal fees instead of the marketplace. The Commission obviously cannot do anything about the fees lawyers are charging, but they can do something about the speed at which regulatory decisions are made and the hoops that must be jumped through. How can the FCC improve its decisionmaking processes so that small telecommunications providers don't bear such an imbalanced burden?

Answer. At the state and now Federal level, I have always encouraged the industry to work together voluntarily to settle disputes and find solutions to policy con-

cerns. At the same time, I am a proponent of swift agency action and will do all I can to encourage this at the FCC.

*Question 3.* As you know, some media companies and others are pushing for the repeal of the newspaper cross-ownership ban. They argue that a media outlet owning both the local newspaper and a local broadcast station could make better use of scarce resources to gather and report the local news. They also argue that the handful of “grandfathered” newspaper-broadcast combinations, which were in place before the ban was implemented in 1975, have not shown any gross abuse. Some consumer groups and others who support keeping the newspaper cross-ownership ban in place alternatively argue that combining newspaper and broadcast outlets could reduce competition among media outlets. There could be less incentive to get “the scoop” or report a contradicting viewpoint. What do you believe would happen to local news coverage if the newspaper cross-ownership ban was lifted? Do the 1975 grandfathered combinations really provide us with a good example since some of them are currently owned by those media companies who want to lift the ban? For example Gannett knows its management of Arizona’s largest newspaper, the *Arizona Republic*, and television outlet KPNX-TV is under the microscope, so perhaps their behavior would not be representative of how news gathering would be conducted if the ban was permanently lifted.

Answer. The Third Circuit Court of Appeals affirmed the Commission’s conclusion in the last review of its broadcast ownership rules that, based on record evidence, the blanket ban on newspaper/broadcast cross-ownership was no longer necessary in the public interest. That conclusion was based on a Commission finding that newspaper-owned broadcast stations produce more and better quality local news and public affairs programming. The record with respect to local news coverage by such combinations is being refreshed as part of the Commission’s current ownership proceeding, and I will review thoroughly the information submitted by all parties.

*Question 4.* The closest daily newspaper can be 100 miles away in some parts of my state. Do you see any particular challenges in providing a diversity of news viewpoints in rural parts of our country if further media consolidation is allowed to occur? Some argue local cable news channels and local Internet news sites can enhance competition and bring out a diversity of viewpoints, but are these answers going to work in rural communities?

Answer. Coming from Tennessee, a state with a significant rural population, I understand that residents of rural communities may face certain unique challenges in accessing the full diversity of viewpoints that most of us take for granted. Even in the absence of a local daily newspaper, however, I am encouraged by evidence showing that weeklies, “shoppers,” and other publications provide useful local information. In addition, broadband, whether via wireless, DSL, cable, or satellite, also promises unprecedented business, educational, and healthcare opportunities for all Americans. I hope that by encouraging the deployment of broadband to rural areas, citizens can get news and information from any source, anywhere in the world.

---

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DAVID VITTER TO  
HON. DEBORAH TAYLOR TATE

*Question.* I have been alerted to a problem regarding compensation to payphone providers for coinless calls made from their phones. According to recent FCC statistics, about 6 percent of Louisiana households do not have any type of phone in their home. During the immediate aftermath of Hurricanes Katrina and Rita, payphones were the only way many people—both those without any other phones and also those whose mobile phones were not working due to the networks being overloaded—could reach emergency personnel or family and loved ones. Without being fairly compensated according to the rules set forth by the Commission, payphone providers will not be able to maintain these phones. I have been told that in the last 2 years since the Commission most recently revised the payphone compensation rules, a large number of carriers have failed to comply with their obligations under these rules. I also understand that in December 2006, the FCC issued its first sanctions against one of these carriers that violated these rules. I would appreciate hearing your comments on whether you think the agency has sufficient power and resources under your existing authority to continue to enforce these rules and help ensure that companies are not able to disregard the Commission’s payphone compensation rules.

Answer. I was not a member of the FCC when the Commission revised its payphone compensation rules. I understand these rules became effective in July 2004. See 47 CFR §64.1300 *et seq.* As you mention, we have just issued our first enforcement action under those new rules. Swift and just enforcement of the Com-

mission's rules will curtail violations. Moreover, the establishment of Commission precedent should enable rapid enforcement by the Enforcement Bureau for additional cases involving similar violations of the Commission's rules.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUE TO  
HON. ROBERT M. McDOWELL

*Question 1.* In March, 2005, the FCC allowed a Verizon forbearance petition to become effective by operation of law. Because there was a vacancy on the Commission at that time and a 2–2 split among Commissioners, Verizon was able to gain regulatory relief through Commission inaction.

Does the current process regarding the disposition of forbearance petitions in the absence of a Commission majority essentially allow petitioners to write the terms of their relief?

Is it fair in such situations to allow petitioners to amend the scope of their requested relief after the period for comment on the original petition has concluded?

Should forbearance petitions be denied in the absence of an order approved by a majority of Commissioners?

What effect will government recusal rules have on your ability to participate in other pending or future forbearance proceedings in which your former employer, Comptel, is a party or otherwise participates?

Answer. Section 10 of the Communications Act directs the FCC to forbear from applying any regulation or provision of the Act to a telecommunications carrier or service, or class of carriers or services, if the Commission determines that: “(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.” Section 10 also provides that a telecommunications carrier can file a petition for forbearance with the FCC and that such a petition is deemed granted unless the Commission does not deny the petition within 1 year after it is filed, unless the Commission extends that period for an additional 90 days.

Action on a forbearance petition requires a majority of Commissioners to act to deny the request. In the case of recusal of a Commissioner by virtue of the Federal conflict of interest statutes<sup>1</sup> and regulations,<sup>2</sup> three of the four remaining participating Commissioners would have to vote to deny the forbearance petition in order for it not be granted. The Commission is bound by the statutory provisions governing forbearance petitions. If, in the opinion of Congress, the operation of this statute is causing an undesired result, then it would have to be modified by Congress.

In my case, I have been recused from each of the forbearance petitions that the Commission has acted on since my coming to the Commission in June 2006, by virtue of my former employer's participation in those forbearance proceedings. Therefore, I have no experience as a Commissioner upon which to base a position on process for considering forbearance petitions.

The Federal conflict of interest statutes and regulations referred to above require my continued recusal from all forbearance petitions in which my former employer was a party for a period of 1 year from my taking the oath of office.

*Question 2.* One of the biggest challenges we face over the next 2 years is moving our Nation from analog to digital television with minimal consumer disruption. I understand that the FCC is currently receiving comment on its Proposed Final Table of DTV allotments, proposing final digital channels for TV broadcast stations. However, even after that is final, additional actions will be needed to complete the transition. Given the enormity of the task before us, what action is the Commission taking and what action should it take to ensure that our country is ready in February 2009?

---

<sup>1</sup>See 18 U.S.C. § 208 (setting forth acts affecting a personal financial interest); 47 U.S.C. § 154 (providing that no member of the Commission shall have a financial interest in any company or other entity engaged in the manufacture or sale of telecommunications equipment, the business of communication by wire or radio, or in the use of the electromagnetic spectrum).

<sup>2</sup>See 5 C.F.R. § 2635.501 *et seq.* (containing provisions intended to ensure that an employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of official duties).

Answer. Our Media Bureau and Office of Engineering and Technology are working diligently on digital transition issues to make the February 17, 2009 transition date a reality. As you know, we are in the process of completing a final DTV table of allotments for the assignment of digital channels to stations. We are overseeing broadcasters' construction of digital facilities and enforcing deadlines for that construction. We have established deadlines for all TV tuners to be capable of receiving DTV broadcast signals. We have launched a consumer education website about the transition, [www.dtv.gov](http://www.dtv.gov). Much more work remains to be done, but we are all striving to make the transition as smooth as possible for the industry and for consumers so that the benefits of digital television technology can be enjoyed by the public. Also, we will consult with NTIA as it implements the digital-to-analog converter box program, which will enable over-the-air broadcast television viewers to view DTV programming.

*Question 3.* A recent study conducted by Free Press entitled, *Out of the Picture: Minority & Female TV Station Ownership in the United States*, contained some sobering statistics.

Women comprise 51 percent of the entire U.S. population, but own a total of only 67 stations, or 4.97 percent of all stations.

Minorities comprise 33 percent of the entire U.S. population, but own a total of only 44 stations, or 3.26 percent of all stations.

Latinos comprise 14 percent of the entire U.S. population, but own a total of only 15 stations, or 1.11 percent of all stations.

African Americans comprise 13 percent of the entire U.S. population but only own 18 stations, or 1.3 percent of all stations.

Asians comprise 4 percent of the entire U.S. population but only own a total of 6 stations or 0.44 percent of all stations.

Do these facts trouble you as they do me, and what action should the Commission take to promote greater diversity of ownership?

Answer. I am particularly concerned about the lack of women and minority owners of broadcast properties. At this point in time, I am exploring the causes of this situation, especially as compared with other industries, and the proposed solutions submitted by participants in the media ownership proceeding.

*Question 4.* On November 22, 2006, the day before Thanksgiving, the FCC released a list of economic studies to be performed in the media ownership proceedings.

- How did the Commission choose the economic studies to be performed in the media ownership proceedings?
- Who at the Commission or elsewhere was consulted for input on the topics chosen?
- How were parties selected for the studies done outside the Commission, and what is the cost of these contracts?
- Would the Commission consider seeking public comment on what other studies might assist the Commission in its review of ownership rules?

Answer. Chairman Martin and his staff, after consulting with all of the Commissioners' offices, took the lead on developing the topics for the economic studies, selecting Commission personnel and third parties to conduct the studies, and contracting with those third parties. The details about those contracts, including the costs, are available through the Chairman's office. Regarding other studies that might assist us in our media ownership review, we have received several studies in the comments filed in the proceeding. I will review those carefully and consider how they supplement the Commission studies. Additionally, please see Chairman Martin's response to this question.

*Question 5.* In November 2006, the Government Accountability Office (GAO) issued a report concluding that the cost of special access has gone up—not down—in many areas where the FCC predicted that competition would emerge. To address this error, the report recommended that the FCC develop a better definition of “effective competition” and monitor more closely the effect of competition in the marketplace. Do you agree with these findings? What action should the Commission take in response?

Answer. The GAO special access report provided useful analysis of the impact of the Commission's pricing flexibility rules on competition that had not been undertaken before. The Commission has an outstanding rulemaking proceeding to determine what price cap rules should apply to special access services after 2005 and whether the pricing flexibility rules should be modified or repealed. While I do not

have a position on the merits of the GAO findings, I believe that the Commission should fully consider those findings. I will review the positions of the various carriers, user groups and the analysis of GAO as I continue to formulate an opinion on special access issues.

*Question 6.* Last year, Congress passed legislation imposing a ten-fold increase in the size of maximum fines for indecency violations, to a maximum of \$325,000 per violation. At the time President Bush signed the law, he said “[t]he problem we have is that the maximum penalty that the FCC can impose under current law is just \$32,500 per violation, and for some broadcasters, this amount is meaningless. It’s relatively painless for them when they violate decency standards.” Should Congress similarly raise the statutory maximum fine for other violations? What other actions should be taken to promote swifter and more effective enforcement?

*Answer.* We at the Commission are doing our best to enforce the law, while being mindful of First Amendment protections and the prohibitions on censorship and interference with broadcasters’ freedom of speech. Swift and effective enforcement is especially important as we endeavor to protect America’s children from indecent broadcast content. Obviously, ruling on indecency complaints requires a delicate balancing of legal rights and a review of the particular facts of a case. The context in which the allegedly indecent content appears is always critical. I hope that the Commission’s decisions will provide some measure of guidance for the industry regarding what is appropriate for broadcast during hours in which many children are watching television. I also look forward to guidance from the courts about whether our rulings are providing the guidance that they should.

*Question 7.* Recently, the FCC adopted an order to prohibit certain practices by franchising authorities that the Commission finds are unreasonable barriers to entry. One issue mentioned in that order, which is very important to the State of Hawaii, is the ability of the franchise authority to seek appropriate contributions for public, educational, and governmental (PEG) and institutional networks (I-NETS). I understand that some parties have disputed the veracity of some claims made in this proceeding. What, if any, efforts did the Commission take to independently investigate and verify the claims of unfair demands made by many of the carriers in this proceeding?

*Answer.* My understanding is that nearly all of the claims of unfair demands that the Commission cited in the video franchising order and that carriers submitted into the record were not contested by other parties. Based on the uncontested evidence before us, we were able to make a finding that sufficient barriers to competitive entry existed to justify our actions in the proceeding. Chairman Martin’s office may have additional details about the Commission’s efforts to investigate these claims.

*Question 8.* In 2004, the FCC adopted a plan to move certain licenses within the 800 megahertz band in order to eliminate interference problems that were being experienced by public safety communications systems. What is your assessment of the pace of progress in rebanding the 800 MHz band and what steps does the Commission intend to take in order to get this process back on track?

*Answer.* Improving public safety communications within the 800 MHz band is a critical undertaking and I can assure you that completing this task is a very important priority for the Commission. I share my colleagues’ deep commitment to provide public safety entities with freedom from interference and an improved, more efficient 800 MHz spectrum band plan.

As a preliminary matter, I applaud Chairman Martin’s formation of the new Public Safety and Homeland Security Bureau (PSHSB), which was launched in September 2006. Among other responsibilities, PSHSB is specifically tasked with the ongoing work toward improving public safety communications within the 800 MHz band. Further, the Chairman appointed an associate chief within PSHSB to manage this project on a full-time basis. This hands-on management has greatly improved the agency’s ability to move forward. Specifically, the bureau has issued several orders and public notices on delegated authority to resolve disputed issues and facilitate negotiations between the parties. In fact, as of this month, the bureau has issued six orders resolving disputed issues referred from specific mediation cases. Most recently, on March 6, 2007, the Bureau directed the project administrator to confirm the status of rebanding activities.

Certainly the added complexity pertaining to areas located near the Canadian and Mexican borders is an ongoing challenge for the Commission’s efforts to full resolve all lingering issues. Given this, I traveled to Mexico in late February and met with my counterparts in the Mexican government to discuss the importance of moving apace as quickly as possible. In those discussions, I stressed the critical importance of implementing changes in our bilateral agreements to facilitate and conclude band reconfiguration on the Mexican border in an expeditious manner.

Finally, a number of parties filed petitions for reconsideration or clarification of the 800 MHz Reconsideration Order. The pleading cycle closed on April 3, 2006, therefore, I am hopeful that we will act upon these requests as quickly as possible.

*Question 9.* A number of wireless carriers have employed the use of high “early termination fees” to prevent wireless customers from switching to other carriers. In some cases these fees may be \$200 or more, and may apply regardless of whether the subscriber wishes to cancel on the first or last date of their wireless contract. Do you believe these practices promote or impede competition?

Answer. I am delighted that the Chairman has indicated that the staff is working on a draft order addressing the practice by wireless carriers of imposing early termination fees. I am also pleased that the market has responded to this issue—in that one company announced a policy change in late November. I am hopeful, and I would expect (given the competitive nature of the wireless industry) that this action will lead to additional carriers following suit. In the meantime, I have heard from numerous stakeholders on this matter and I look forward to reviewing the draft upon circulation.

With respect to the substance, I believe that wireless is an inherently interstate service. I also believe that the wireless industry is a wonderful example of the many consumer benefits that arise when a highly competitive industry is regulated with a light touch. Wireless subscriber growth has grown exponentially and competition among numerous providers has flourished. At the same time, prices are decreasing. This is great news for America’s consumers. As a result, I am hopeful that the Commission would proceed cognizant of the importance of the wireless industry to America’s continued economic competitiveness across the globe.

*Question 10.* Given requirements imposed by General Services Administration to promote greater redundancy of communications, how would the retirement of copper facilities impact Congress’ directive to promote the availability of alternate network facilities in federally owned and leased buildings?

Answer. The issue of copper loop retirement by incumbent local exchange carriers has been raised in two petitions for rulemaking filed in January 2007, which are currently pending before the FCC. At such time as the comments and reply comments have been filed with the Commission, I will review the entire record and consider the merits of the relief requested with both the competitive consequences and the effect on the Congressional directive for redundancy in Federal facilities firmly in mind.

*Question 11.* Given the Commission’s policy of promoting broadband deployment and eliminating regulations that treat competitors in the provision of broadband differently, how is this policy being implemented this policy with regard to pole attachment regulations?

Answer. Section 224(b)(1) of the Communications Act requires the FCC to regulate the pole attachments of all providers of telecommunications services and to ensure that the rates, terms, and conditions of pole attachment agreements are just and reasonable. By virtue of the current Commission rules, the formula for calculating the rates for different categories of providers results in three different rates. An outstanding petition for rulemaking to revise those rules is pending before the Commission. I believe that the petition for rulemaking and the comments filed in that proceeding should be evaluated in the context of the directive in Section 224(b)(1) of the Act and the effect of the current rules on promoting broadband deployment. While I cannot determine when the Commission will consider the rule-making petition, I will fully evaluate the merits of this petition when it comes before the Commission for decision.

*Question 12.* Recently, a Virginia Federal court referred a matter to the FCC for review and clarification as to whether Internet Protocol Television or “IPTV” service meets the definition of a “cable service” under the Communications Act—a question that this Committee answered affirmatively during consideration of last year’s telecommunications bill. How does the Commission intend to address this matter?

Answer. The issue of whether a IPTV constitutes a “cable service” under the Communications Act has been raised in two Commission proceedings: (1) the video franchising proceeding, in which we explicitly deferred deciding the issue in our order adopted in December 2006; and (2) the IP-enabled devices proceeding, which was initiated in February 2004.

With respect to the video franchising order, I hope that the Commission will extend the same de-regulatory benefits we are providing to new entrants in our recently adopted video franchising order to *all* cable providers, specifically incumbents and overbuilders. Many of the statutory provisions we interpreted in the proceeding are generally applicable to all cable operators. I want to ensure that no governmental entities, including those of us at the FCC, have any thumb on the scale to



give a regulatory advantage to any competitor. Accordingly, in this context and others, it is important to resolve the question of whether IPTV is a cable service under the statute and our rules. Deciding this issue will give regulatory certainty to all market players.

Because the Chairman sets the Commission's agenda, I refer you to Chairman Martin's answer regarding when and how he intends to address this issue.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO  
HON. ROBERT M. McDOWELL

*Question 1.* Eleven years after Congress passed the 1996 Telecommunications Act that opened the floodgates of media consolidation in the radio industry is American radio better or worse than it was in 1996 in terms of viewpoint diversity and localism?

Answer. At this stage in our media ownership proceeding, I am not certain whether viewpoint diversity and localism in radio are better or worse off than in 1996. Thus far, the evidence on the record in our current proceeding is mixed with respect to the quality and quantity of local content provided by station groups to their communities of license. The evidence also provides varied views regarding whether more viewpoints are available, given the drastic increase in audio platforms since that time (satellite radio, iPods, low power radio, Internet radio stations). I am studying the record carefully and I look forward to attending more of the field hearings we are convening around the country to learn about specific local experiences from people with first-hand knowledge of the realities of the markets in their communities. I am pleased that we have a summary of the comments filed in our localism inquiry in the media ownership docket so that we will have a full record on localism issues. With respect to diversity, I am particularly concerned about the decline in female and minority owners of broadcast properties. I look forward to learning about the causes of this situation, especially as compared with other industries.

*Question 2.* How has consolidation impacted the public's ability to hear local music and local news on the airwaves?

Two critical issues in our media ownership inquiry are whether licensees of multiple stations supply more or less local music and news and whether the explosion of new audio choices for consumers (satellite radio, iPods, Internet radio stations, low power radio stations and so forth) has resulted in more local music and news on the airwaves. Again, the evidence on the record is mixed. I am studying these issues carefully and with an open mind.

The Commission's investigation of four leading radio station groups for violations of our sponsorship identification rules may soon be concluded in a manner favorable to independent music. As part of the voluntary settlement, the radio station groups will likely provide hundreds of hours of free air time to local musicians who are independent of major record labels. This would be a great resolution of the investigation and a creative private sector solution to issues underlying payola practices.

*Question 3.* Even with the existence of net neutrality conditions on AT&T, are there rules in place to ensure that other broadband providers do not discriminate against Internet content, services or applications? Given the rulings on information services, is it even clear that the FCC has authority to act if such discrimination occurs?

Answer. I believe that the net neutrality debate is healthy and I welcome further discussion of the net neutrality issue. The Internet already is the communications lifeblood of the world economy and is becoming the primary means of communication for American consumers. It is absolutely essential that broadband network and service providers have the proper incentives to deploy new technologies and retain the ability to manage them. However, it is equally as important that consumers have the option of pulling, or posting, the content of their choice anytime, anywhere and on any device. In the one instance where the Commission received allegations that a carrier was blocking ports used for VoIP applications, it swiftly launched an investigation and entered into a consent decree, thereby resolving the alleged practices that affected customers' ability to use VoIP through one or more VoIP service providers.<sup>3</sup> In that situation, we acted swiftly and resolutely, sending a clear signal that we will not tolerate anti-competitive behavior. The Commission has adopted a *Policy Statement* that set forth four broad principles designed "to encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet." It specifically stated that consumers are entitled to: (1)

---

<sup>3</sup>*In the Matter of Madison River Communications, LLC and affiliated companies*, File No. EB-05-IH-0110, Order, DA 05-543, rel. March 3, 2005.

access to Internet content; (2) run applications and use services of their choice; (3) connect legal devices that do not harm the network; and (4) competition among network providers, application and service providers and content providers. I believe that we have the ancillary authority under Title I of the Communications Act to enforce these principles.

The Commission will continue to monitor this situation and will remain vigilant in protecting the continued availability of all types of content over the Internet for consumers. Should we receive evidence of additional anticompetitive conduct, I will urge the Commission to act swiftly and in the best interest of consumers.

*Question 4.* In an environment of industry consolidation and technological integration, what role do you see the FCC playing to ensure nondiscriminatory access to infrastructure, content, roaming, spectrum and rights-of-way?

Answer. The FCC has jurisdiction under specific provisions of the Communications Act to promote competition and prevent anti-competitive conduct in each of the areas addressed in this question. The Commission is exercising its authority as set forth below.

With respect to nondiscriminatory access to infrastructure, Section 251 of the Communications Act requires all telecommunications carriers to interconnect with the facilities and equipment of other telecommunications carriers. That provision imposes additional interconnection obligations on local exchange carriers and incumbent local exchange carriers. As more competition develops among different types of services, such as wireline, wireless, cable and broadband, these obligations work to ensure that those competitors have nondiscriminatory access. On the other hand, we should not impose legacy regulations that are no longer needed to promote competition among different services. As an example of the Commission's ongoing enforcement of the nondiscriminatory access provisions of Section 251, on March 1, 2007, we granted a request for declaratory ruling filed by Time Warner Cable in which we affirmed that wholesale telecommunications carriers are entitled to interconnect and exchange traffic with incumbent local exchange carriers when providing services to other service providers, including VoIP.

Regarding content, the Commission ensures nondiscriminatory access to content through the program access rules, which under the authority Congress granted in the 1992 Cable Act, restrict the ability of vertically integrated video programmers to favor affiliated over nonaffiliated cable operators. We recently released a notice of proposed rulemaking to initiate our review of whether the rules prohibiting exclusive contracts between cable operators and vertically integrated programmers continues to be necessary to preserve competition and diversity in video programming distribution. The current limitation will expire on October 5 of this year unless the Commission acts to extend the prohibition. We are also considering a Notice of Proposed Rule Making regarding whether our procedures for resolving program access disputes should be modified to increase their effectiveness as an avenue for relief.

With respect to roaming, I have met with a number of parties regarding wireless roaming obligations. Certainly it is important that all American consumers, no matter where they live, work or travel, have the ability to benefit from competitive wireless services. As a result of my introduction to this issue, I have come to recognize and appreciate the complicated legal and economic factors involved. Although I cannot predict the timeframe for moving forward (given that the Chairman sets the agenda for the Commission), I will continue to work on analyzing this important issue.

With respect to spectrum management, I believe that, for consumers—all types of consumers (residential, government, business, wholesale, retail)—to truly reap the rewards of the digital age, regulators should not try to keep up with the pace of innovation and technology brought forth by the private sector, but should step out of the way of technology where possible. Good spectrum management allows entrepreneurs, rather than the government, to determine how best to maximize our limited spectrum resources. But where the markets may fail, the Commission should be poised to use a light regulatory touch to protect the public interest. I am pleased, therefore, that the Commission has progressively implemented more flexible, market-oriented spectrum management policies.

The new, technology-driven global economy requires the Commission to allocate and manage spectrum in an integrated, market-oriented manner that provides greater regulatory certainty, while minimizing regulatory intervention and fostering flexibility and robust competition. This type of dynamic disruption best serves consumers and, therefore, the public interest. Given the need to continue to spur the development and deployment of advanced wireless and satellite technologies, a priority of mine as a commissioner is to encourage the creation of new wireless delivery platforms—integrated, interconnected and interoperable platforms—that maximize use of our Nation's spectrum resources.

Finally, regarding rights-of-way, the order we recently released in the video franchising proceeding takes appropriate steps to ensure nondiscriminatory access for cable operators, regardless of delivery platform. I have long advocated the Commission doing all that it can to open new opportunities for entrepreneurs to have the freedom to construct new delivery platforms for innovative new services. More delivery platforms mean more competition, which translates into more innovative and less costly offerings for consumers. The Commission's video franchising order establishes a de-regulatory national framework to clear unnecessary underbrush that has hindered competitors to incumbent cable companies from gaining access to rights-of-way. At the same time, the order preserves local control by allowing localities to protect important local interests through meaningful negotiations with aspiring video service providers.

*Question 5.* Do you think that the current broadband market is sufficiently competitive and robust in terms of broadband deployment? Does the FCC currently have sufficient tools to even accurately determine whether Americans have access to broadband?

Answer. Broadband deployment is occurring rapidly, although we should never become complacent and always strive for faster speeds and more ubiquity. Significantly more Americans are adopting broadband services each day. The FCC recently released a status report on high-speed services for Internet access. As of June 30, 2006, high-speed lines connecting homes and businesses to the Internet increased by 26 percent during the first half of 2006; from 51.2 million to 64.6 million lines in service. In addition, for the full twelve month period ending June 30, 2006, high-speed lines increased by 52 percent (or 22.2 million lines).

However, it is critical that the regulatory climate in the U.S. promotes broadband growth and availability. Our economic future depends on it. Accordingly, the Commission is adopting policies to encourage increased broadband deployment for the public, pursuant to Section 7 of the Communications Act. Current deployment figures, coupled with recent and impending FCC actions, suggest that wireless broadband offers great opportunities for broadband deployment in all areas of the country, including rural communities. For instance, I am optimistic that the 700 MHz auction and availability of spectrum in the white spaces of the TV broadcast bands will help deployment of broadband in rural areas. In addition, the Commission's video franchising decision adopted in December, 2006 extends benefits to new entrants and should further stimulate deployment of fiber. While it is encouraging that America's rate of broadband deployment has more than doubled over the past 2 years,<sup>4</sup> we must ensure that the Commission takes advantage of all opportunities to spur technological innovation and increased access to broadband services. Accordingly, we are making it easier for entrepreneurs to construct new delivery platforms more quickly and for the owners of existing platforms to upgrade their facilities, as discussed below. These policies should result in more choices for consumers and lead to more competition among different broadband platforms and within them, which should, in turn, result in lower prices for consumers.

*Question 6.* How do you envision universal service reform moving ahead to keep the fund sustainable? I am concerned about proposals that would not require broadband connections to pay into universal service, or reverse auction proposals that advocate providing USF support in an auction type model to the least cost provider.

Such proposals bring uncertainty to investment plans, and shift the universal service standard from comparable to urban areas, to one that would just go to the lower bidder, quality irrelevant. I understand that rural providers have expressed concern about both proposals. Can you discuss the least cost provider issue, as well as what possible distinctions exist to justify excluding broadband from paying into USF—why shouldn't a technology that uses and benefits from the network pay into universal service?

Answer. The Universal Service system has been instrumental in keeping Americans connected and improving their quality of life, particularly in rural areas. However, this system is in dire need of comprehensive reform. Universal Service Fund disbursements have grown significantly from approximately \$4.4 billion in 2000 to approximately \$6.5 billion in 2005, almost a 50 percent increase, and are projected to continue to rise at similarly exponential rates. This is compared to an overall in-

<sup>4</sup>From March 2004 to March 2005, the broadband adoption rate grew at 20 percent. *Home Broadband Adoption 2006*, Pew Internet & American Life Project (May 28, 2006) at 1. From March 2005 to March 2006, it accelerated to about a 40 percent penetration rate. *Id.* The most current rate has accelerated even faster to 52 percent. *High-Speed Services for Internet Access: Status as of June 30, 2006*, Industry Analysis and Technology Division, Wireline Competition Bureau, FCC (January 2007) at 1.

flation rate of only 13 percent for the same 5 year period. We simply cannot afford to continue to let the Fund grow unchecked. The future of the Universal Service Fund hangs in the balance.

Last June, the Commission adopted interim changes to the Universal Service contribution methodology that were designed to address deficiencies in the Universal Service Fund temporarily. The changes raised the interim wireless safe harbor for interstate traffic from 28.5 percent to 37 percent, and required VoIP providers to contribute to the Fund for the first time. Their interstate safe harbor was pegged at 65 percent. The hope was that by expanding the contribution base, we could lower the contribution factor, at least temporarily. However, the contribution factor that was supposed to have declined as a result of the FCC's action, is back on the rise again. The factor initially declined from about 11 percent to 9 percent once we broadened the base. But for the First Quarter of 2007 it has risen again to 9.7 percent—and early indications are that the Second Quarter figure could spike to over 11 percent.

Fundamental reform of the Universal Service system is necessary so that it can continue to support rural areas. The Commission is working to achieve comprehensive reform to ensure long term sustainability of Universal Service. The Commission is considering alternatives to the current end-user revenues-based contribution factor. On the disbursements side, the Federal-State Joint Board on Universal Service is considering proposals on the use of reverse auctions. Some of those proposals initially address the growth of the Fund resulting from the expansion of funding to the competitive eligible telecommunications carriers, which I believe is an appropriate initial focus. This should not adversely affect the support to existing rural wireline carriers in rural areas. At such time as the Joint Board recommendations are forwarded to the Commission, I will fully consider the merits of those recommendations and the comments of the parties.

*Question 7.* What is your view of making the deployment of advanced infrastructure that is fully capable of offering the wide array of broadband oriented services the hallmark of our national universal service policy? Should universal service subsidize broadband?

Answer. As I have indicated, the Universal Service system has been instrumental in keeping Americans connected and improving their quality of life, particularly in rural areas. However, this system is in dire need of comprehensive reform. Universal Service Fund disbursements have grown significantly from approximately \$4.4 billion in 2000 to approximately \$6.5 billion in 2005, almost a 50 percent increase, and are projected to continue to rise at similarly exponential rates. This is compared to an overall inflation rate of only 13 percent for the same 5 year period. We simply cannot afford to continue to let the Fund grow unchecked. Otherwise, the future of the Universal Service Fund will be in jeopardy.

Fundamental reform of the Universal Service system is necessary so that it can continue to support rural areas. The Commission is working to achieve comprehensive reform to ensure long term sustainability of Universal Service. The Commission is considering alternatives to the current end-user revenues-based contribution factor. On the disbursements side, the Federal-State Joint Board on Universal Service is considering proposals on the use of reverse auctions. Some of those proposals initially address the growth of the Fund resulting from the expansion of funding to the competitive eligible telecommunications carriers, which I believe is an appropriate initial focus. This should not adversely affect the support to existing rural wireline carriers in rural areas. At such time as the Joint Board recommendations are forwarded to the Commission, I will fully consider the merits of those recommendations and the comments of the parties.

*Question 8.* The FCC recently has been granting incumbent providers (ILECs) forbearance from regulations on the premise that sufficient competition exists in a specific market to make enforcement of the regulations unnecessary. However, a Fall 2006 GAO report indicates that the assumptions the FCC uses to determine the existence of competition may be flawed and further that prices in Phase II areas—that is, areas where competition is theoretically most intense—are going up. Is that the case, and if so, are price increases consistent with a competitive market?

Answer. In November, 2006, GAO issued a study that assessed the effect of the special access rates on competition. The study found that the pricing flexibility plan reduced, rather than increased, competition in special access services. I look forward to reviewing the positions of the various carriers, user groups and the analysis of GAO in working out the best approach for assuring that special access rates foster competition in the context of the Commission's pending special access proceeding, as more fully discussed in response to Question 10., below.

*Question 9.* Is forbearance for the ILECs in the public interest?

Answer. Section 10 of the Communications Act provides that the Commission must make a determination that a forbearance petition filed by a telecommunications carrier is in the public interest before it grants the petition. Each petition must be judged based on the criteria set forth in Section 10. I have been recused from each of the forbearance petitions that the Commission has acted upon since my coming to the Commission in June 2006, by virtue of my former employer's participation in those forbearance proceedings. Therefore, I have had no experience as a Commissioner upon which to base a position on the forbearance decision-making process at the Commission. However, I will weigh the merits of each forbearance petition that I am permitted to participate in against the statutory criteria for granting forbearance petitions and act consistently with those criteria.

*Question 10.* A proceeding to investigate the rates, terms and conditions for interstate special access services has been pending for a number of years. What is the status of the FCC's special access proceeding? What steps are being taken to speed resolution of this matter?

Answer. The issue of what price cap rules should apply to special access services after 2005 and whether the pricing flexibility rules should be modified or repealed is the subject of a Commission Notice of Proposed Rulemaking. In the meantime, the CALLS plan was intended to run until June 30, 2005, but it continues to remain in effect for price cap carriers. The November, 2006, GAO special access study, referred to in response to Question 8., above, addresses the issues raised in that Commission proceeding and the substance of those findings will be considered when the Commission reaches a decision on special access reforms. As I indicated above, I will review the analysis of GAO, as well as the positions of the various carriers, and user groups in working out the best approach for assuring that special access rates foster competition. With regard to timing of action on the special access proceeding, I refer the Committee to the Chairman's office, in view of the fact that he sets the Commission's agenda.

*Question 11.* Some say that the dispute between Mediacom and Sinclair signals a new period of confrontation between broadcasters and distributors. How many complaints involving retransmission consent disputes has the Commission received in the last couple of years? Is there any trend within that data that may be useful to consider? How long does the Commission typically take to resolve those complaints?

Answer. While the dispute between Mediacom and Sinclair was particularly contentious, the vast majority of retransmission consent disputes are resolved privately between the negotiating parties without either party seeking recourse before the Commission. It is clear that more broadcasters are seeking compensation for their programming from cable operators. What remains to be seen is whether the marketplace players will adapt to this change through commercial means or whether they will seek regulatory solutions. We will watch these developments carefully. I respectfully refer you to Chairman Martin and the Media Bureau regarding the specific number of complaints and specific time frames for resolution.

*Question 12.* One issue specifically important for public radio stations is the opportunity to file for and receive additional reserved FM spectrum. It has been almost 7 years since the FCC provided the public with an opportunity to build new noncommercial educational stations on reserved FM spectrum. When will the FCC open a filing window for new reserved-FM noncommercial stations? Will the FCC provide public notice of a filing window sufficiently in advance to permit non-profit, governmental, and other potential applicants adequate time to participate?

Answer. The Commission currently has under consideration a memorandum opinion and order that will result in the opening of a new filing window for noncommercial educational (NCE) FM station applications. The comparative point system that the Commission developed to resolve mutually exclusive NCE applications has been the subject of several judicial challenges that have delayed our implementation of the system for several years. In light of recent court decisions, the Commission is now prepared to process approximately 200 mutually exclusive applications for new or modified NCE FM stations. After processing these long-pending applications and granting licenses to the winning applicants, we will open a new filing window. We are also giving careful consideration to the amount of time potential applicants will need to be sufficiently prepared to participate in the new filing window.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. FRANK R. LAUTENBERG TO  
HON. ROBERT M. McDOWELL

*Question.* In approximately 2 years, broadcasters will shift to digital television. There are over 200,000 homes in New Jersey that rely exclusively on over-the-air television. Do you think most Americans are educated about this transition today? What role will the FCC play in preparing the public for this transition?

*Answer.* While a foundation has been laid for progress on this front, work still needs to be done to educate consumers about the digital transition, the February 17, 2009 deadline and consumers' options for digital television equipment, whether they be over-the-air, cable or satellite customers. In addition to our technical and policy work to make the transition date a reality, the Commission has launched a consumer education website about the transition, [www.dtv.gov](http://www.dtv.gov), which provides a great deal of practical information about the transition. We also are consulting with NTIA as it implements the digital-to-analog converter box program, which will enable over-the-air broadcast television viewers to view DTV programming. I was pleased to hear that the National Association of Broadcasters, the National Cable Telecommunications Association and the Consumer Electronics Association are banding together for a consumer education initiative as well. With private and public sector efforts combined, we can ensure as smooth a transition for consumers as possible.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK L. PRYOR TO  
HON. ROBERT M. McDOWELL

*Question 1.* Over the past 4 years, consumers have enjoyed the successful emergence of a number of new players in the audio marketplace. Satellite radio and Internet radio now reach tens of millions of listeners every week, and portable MP3 players and iPods have become common household items. Digital Cable and DBS offer dozens of channels of uninterrupted music, and Wi-Max technology is evolving that will soon allow Internet-based listening options in automobiles.

Would the Commissioners agree that the competitive landscape has changed dramatically in the audio market over the past few years? And would the Commissioners agree that this trend is only likely to continue for the foreseeable future?"

*Answer.* I agree that the competitive landscape in the audio market has changed dramatically in recent years and that these changes have given consumers an unprecedented amount of choices and control for music, news, sports, talk and other entertainment. I am optimistic that the trend will continue as entrepreneurs both big and small continue to innovate. I hope that the Commission's engineering work will enable these new technologies to flourish and that our policies will regulate only when the market fails and otherwise will "get out of the way" of marketplace developments.

For example, the Commission soon will issue our service rules and other licensing and operational requirements in the digital audio broadcasting, or in-band on-channel (IBOC), proceeding. I hope these rules will provide both the regulatory certainty and the flexibility that the industry needs to expedite the transition to digital radio and to provide higher quality audio, diverse programming and innovative data services to the public. I applaud the "early adopters" IBOC technology for taking the initiative and embracing the capabilities of digital radio, particularly multicasting, to provide their listeners with better quality sound and expanded programming options, particularly for underserved and niche audiences. Many groups have brought the issue of public interest obligations to the fore in this proceeding. I think it is appropriate to defer consideration of new public interest obligations or other additional regulation of digital radio until stations using this nascent technology have had time to find their place in the free market. We will of course keep close watch over industry developments.

*Question 2.* Consumers in many rural areas currently are not able to enjoy the same benefits wireless services offer as their urban counterparts enjoy. Due to low user concentration, the cost of providing high quality wireless service in rural areas is frequently more expensive than is possible in higher-density urban areas. Designation of wireless carriers as ETCs, which permits these carriers to receive support from the Universal Service Fund ("USF"), can help to ensure that all Americans enjoy the benefits of competition and high-quality wireless services. What steps has the FCC taken to ensure that wireless coverage is extended to all Americans, regardless of where they live, and to ensure that Americans living in rural areas have the opportunity to subscribe to high-quality wireless services?

Answer. I am pleased that the Commission is adopting policies to encourage increased broadband deployment for the benefit of American consumers. Current deployment figures, coupled with recent and impending FCC actions, suggest that wireless broadband offers great opportunities for broadband deployment in all areas of the country, including rural communities. I am fully committed to ensuring that the Commission takes advantage of all opportunities to spur technological innovation and increased access to advanced broadband wireless services by all American consumers, businesses and public safety agencies, no matter where they live or work.

There is hope on the horizon for bringing more broadband to rural America in particular. Despite notions to the contrary, significantly more Americans are adopting broadband services each day. The FCC recently released a status report on high-speed services for Internet access. As set forth in the *January 2007 High-Speed Services Report*, as of June 30, 2006, high-speed lines connecting homes and businesses to the Internet increased by 26 percent during the first half of 2006; from 51.2 million to 64.6 million lines in service. And, for the full twelve month period ending June 30, 2006, high-speed lines increased by 52 percent (or 22.2 million lines). The *January 2007 High-Speed Services Report* notes that wireless growth was significant during the first 6 months of 2006. Mobile wireless broadband connections showed the largest percentage increase: from 83,503 at the end of 2005, to 1.91 million by mid-2006—an increase of 2,187 percent in just 6 months. While I acknowledge criticism that the report relies upon the relatively slow speed of 200 kbps as a baseline, I find this data encouraging nonetheless.

As indicated by the phenomenal overall growth of broadband penetration, especially in the wireless sector, these statistics are exciting. I acknowledge, however, that we must continue to build on our success and we must never rest. I believe that the Commission must continue to move forward to facilitate access in all areas of the country, whether urban, suburban, or rural. We must pave the way for entrepreneurs who are ready, willing and able to invest and take the risks necessary to accelerate the development and roll-out of advanced services for an array of customers.

This year in particular the Commission is in an excellent position to ensure that wireless licenses are disseminated among a wide variety of applicants, and we have been working hard to open new windows of opportunity for as unlicensed operators, as well. I am excited about our work to prepare for the 700 MHz auction, as well as future deployment in the white spaces, because I am hopeful that the competitive opportunities presented by these proceedings will broaden the opportunities available to entities seeking to enter the wireless marketplace.

I also want to note that the Commission recently favorably ruled on a request for waiver seeking authority to design, build and operate its network at higher powers. In granting this request, we enabled this entrant to ultimately roll-out an innovative and exciting mobile broadband video service to American consumers living in urban, rural, insular and tribal areas. This is precisely the type of action the Commission must continuously and expeditiously take to provide the certainty necessary for our country's entrepreneurs to forge ahead with advanced broadband offerings.

I am hopeful that, by eliminating the barriers that may hinder new entrants from constructing new delivery platforms and owners of existing platforms to upgrade their facilities, our work will result in more choices for consumers and more competition among different broadband platforms. This should, in turn, result in lower prices for consumers and a corresponding increase in delivery to consumers living and working in rural, insular and tribal areas.

*Question 3.* Following the natural disasters that recently hit the Gulf Coast region wireless services provided emergency personnel, utility repairmen and residents with the only immediate means for communicating. In light of the experience of the Commission from Hurricane Katrina and other disasters, please describe the role wireless services fill with respect to emergency response and disaster recovery during times of crisis?

Answer. The destruction wrought by Hurricane Katrina against communications companies' facilities in the region, and therefore to the services upon which citizens rely, was extraordinary. Local wireless networks sustained considerable damage as more than 1,000 cell sites were knocked out of service by the hurricane. In January 2006, Chairman Martin established the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks (Independent Panel). The Independent Panel finalized its findings and recommendations and submitted its report on June 12, 2006. On June 19, 2006, the Commission initiated a comprehensive rulemaking to address and implement the recommendations presented by the Independent Panel. This proceeding is currently pending.

With respect to cellular service and personal communications service (PCS), the Independent Panel determined that, in general, cellular/PCS base stations were not destroyed by Katrina. Rather, the majority of the adverse effects and outages encountered by wireless providers were due to a lack of commercial power or a lack of transport connectivity to the wireless switch (T1 line lost or fixed microwave backhaul offline). Within 1 week after Katrina, however, approximately 80 percent of wireless cell sites were operational. Cellular base stations on wheels ("COWs") were successfully used as needed to restore service throughout the affected region. Over 100 COWs were delivered to the Gulf Coast region. In addition to voice services, text messaging was used successfully during the crisis. Additionally, wireless push-to-talk services appeared to be more resilient than interconnected voice service inasmuch as this service does not necessarily rely upon connectivity to the public-switched telephone network.

In addition, the Independent Panel found that paging systems seemed more reliable in some instances than voice/cellular systems because paging systems utilize satellite networks, rather than terrestrial systems, for backbone infrastructure. The Independent Panel found that paging technology is also inherently redundant (messages may still be relayed if a single transmitter or group of transmitters in a network fails), and reliable (paging signals penetrate buildings very well). During the crisis, paging systems were effective at text messaging and were equipped to provide broadcast messaging.

Finally, the Independent Panel found that satellite networks appeared to be the communications service least disrupted by Hurricane Katrina. As a result, both fixed and mobile satellite systems provided a functional, alternative communications path for those with adequate training and equipment preparation located within the storm-ravaged areas. The Independent Panel noted that mobile satellite operators reported large increases in satellite traffic without any particular network/infrastructure issues, and that users observed that satellite data networks (replacing T1 service) were more robust and had fewer difficulties in obtaining and maintaining communications with the satellite network than voice services.

*Question 3a.* If a petitioner for ETC designation meets the statutory criteria and has consistently been the only service provider to remain operative in certain areas during natural disasters despite the presence of other carriers (including other ETCs) in those areas, would you view the designation of the petitioner as an ETC to be in the public interest?

Answer. Based on the hypothetical scenario outlined, and if there were no additional mitigating factors, I believe that the designation of such a petitioner as an ETC would be in the public interest.

*Question 3b.* Some of the areas hardest hit by recent natural disasters were underserved communities. To the extent a petitioner for ETC designation that meets the statutory criteria for ETC designation has demonstrated a strong commitment to serving rural and underserved communities since well before designation as an ETC, would the designation of the petitioner as an ETC be in the public interest? If not, please explain why.

Answer. Based on the hypothetical scenario outlined, and if there were no additional mitigating factors, I believe that the designation of such a petitioner as an ETC would be in the public interest.

*Question 4.* The FCC has committed to resolve, within 6 months of the date filed, all ETC designation requests for non-tribal lands that are properly before the FCC. How many petitions for ETC designation are currently pending at the FCC?

Answer. Because the requested information is under the purview of the Chairman's office, I refer the Committee to the answer provided by Chairman Martin to this question.

*Question 4a.* What is the average length of time that the ETC Petitions currently before the FCC have been pending? Of these petitions, what is the earliest filing date? How many of these petitions were filed in 2004 or earlier?

Answer. Because the requested information is under the purview of the Chairman's office, I refer the Committee to the answer provided by Chairman Martin to this question.

*Question 4b.* How many petitions for ETC designation did the FCC act on in 2006?

Answer. Because the requested information is under the purview of the Chairman's office, I refer the Committee to the answer provided by Chairman Martin to this question.

*Question 4c.* How many petitions for ETC designation did the FCC act on in 2005?



Answer. Because the requested information is under the purview of the Chairman's office, I refer the Committee to the answer provided by Chairman Martin to this question.

*Question 4d.* How many petitions for ETC designation did the FCC act on in 2004?

Answer. Because the requested information is under the purview of the Chairman's office, I refer the Committee to the answer provided by Chairman Martin to this question.

*Question 4e.* What does the FCC intend to do about the backlog of pending ETC petitions?

Answer. Because the Chairman sets the Commission agenda, I refer the Committee to his office regarding the status and timing of action on pending ETC petitions.

*Question 4f.* How soon does the FCC intend to act upon ETC petitions that have been pending for more than 6 months?

Answer. Because the Chairman sets the Commission agenda, I refer the Committee to his office regarding the status and timing of action on pending ETC petitions.

*Question 4g.* Do you believe that Americans living in rural areas and the carriers who have filed ETC Petitions deserve to have those petitions acted upon promptly rather than simply kept pending without a yes or no answer? If you do not, please explain why.

Answer. Yes. I have consistently held that regulatory expediency and certainty are important to the public interest.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO  
HON. ROBERT M. McDOWELL

*Question 1.* In a September 8, 2005 report, the FCC stated, "Our review of the record does not lead us to recommend any changes to the retransmission consent regime at this time." What if any steps have you taken since that time to review and assess the retransmission consent regime; what if any additional conclusions have you reached; what if any plans do you have for additional formal or informal review; and what do you perceive to be the strengths and weaknesses of the retransmission consent process?

Answer. The Commission has continued to assess the retransmission consent regime through review and investigation of complaints filed with us. As you know, the recent dispute between Mediacom and Sinclair Broadcasting was particularly contentious. I am pleased that these companies were able to reach a retransmission consent agreement on the eve of the Super Bowl. We followed their dispute closely and on November 26 of last year, had convened a meeting with the principals from both companies, in addition to Commissioner Adelstein, in the hopes that they would return to the negotiating table and reach an agreement for carriage of the Sinclair stations on terms satisfactory to both sides.

Pursuant to statute, the Commission has adopted rules regarding the obligations of both broadcasters and cable operators to negotiate retransmission consent agreements in good faith. Beyond those rules, under current law retransmission consent agreements are privately negotiated commercial transactions. I hesitate to have the Commission place its thumb on the scale in favor of either side.

Recently, we have had meetings with a few parties interested in changing the retransmission consent regime. Most of those changes would have to be made by the Congress. I am listening to these proposals with an open mind and look forward to any guidance the Congress may have.

*Question 2.* Section 10(a) of the Communications Act allows the Commission to forbear from applying any regulation or any statutory provision to a particular or multiple telecommunications carriers or services, in any or some geographic markets, if certain criteria are met—most notably that competition exists in the market and that such relief is in the public interest. The FCC recently has been granting incumbent providers (ILECs) forbearance from regulations on the premise that sufficient competition exists in a specific market to make enforcement of the regulations unnecessary. What are each of your respective positions on the conditions and circumstances under which forbearance for ILECs is appropriate?

Answer. Section 10 of the Communications Act directs the FCC to forbear from applying any regulation or provision of the Act to a telecommunications carrier or service, or class of carriers or services, if the Commission determines that: "(1) enforcement of such regulation or provision is not necessary to ensure that the

charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.”

Since I have been recused from each of the forbearance petitions voted on by the Commission since coming to the Commission in June 2006 by virtue of my former employer’s participation in those forbearance proceedings, I have had no participation in the forbearance decision-making process as a Commissioner. However, I will weigh the merits of each forbearance petition that I am permitted to participate in against the statutory criteria for granting forbearance petitions and act consistently with those criteria.

*Question 3.* From the City of Saint Paul (similar questions were raised by Burnsville/Eagan Community Television and the Northern Suburban Communications Commission):

The Order issued by the FCC on December 20, 2006 allows new franchise entrants to “cherry pick” the neighborhoods in our communities, rather than bring true competition to all of our businesses and residents. This would allow new entrants to serve or upgrade only the profitable areas of Saint Paul [and other cities and towns], leaving many of our residents on the wrong side of the “digital divide.”

The Order authorizes a new entrant to withhold payment of fees that it deems to be in excess of a 5-percent franchise fee cap. This could completely undermine support for both Saint Paul’s [and other cities’ and towns’] very successful public, educational and government (PEG) operations.

The Order imposes a 90-day shot clock for new entrants with existing rights of way, opening the potential to reduce Saint Paul’s [and other cities’ and towns’] ability to manage its rights-of-way.

The Order authorizes a new entrant to refrain from obtaining a franchise when it is upgrading mixed use facilities that will be used in the delivery of video content.

Saint Paul believes that the policy goals of the Order are laudable but strongly disagrees with the method and substance of the decision taken by the FCC. How do you respond to each of these concerns, and how do you respond to the claim that the FCC exceeded its authority in adopting this order?

Answer. The order we adopted strikes a careful balance between establishing a de-regulatory national framework to clear unnecessary regulatory underbrush, while also preserving local control over local issues. It guards against localities making *unreasonable* demands of new entrants, while still allowing those same localities to be able to protect important local interests through meaningful negotiations with aspiring video service providers.

On the important issue of build-out requirements, we preserve local flexibility to implement important public policy objectives, but we don’t allow localities to require new entrants to serve everybody before they serve anybody. By finding that certain specified costs, fees and other compensation required by local franchising authorities (LFAs) must be counted toward the 5 percent cap on franchise fees, we are interpreting the applicable statute, not changing the law. Regarding the “shot clock,” LFAs remain free to deny deficient applications on their own schedule, but are not permitted to unreasonably delay decisions on complete applications. Last, should communications companies decide to upgrade their existing *non*-cable services networks, localities may not require them to obtain a franchise, in accordance with current law.

Many commenting parties, Members of Congress, and two of my distinguished colleagues, have legitimately raised questions regarding the Commission’s authority to implement many of these initiatives. I have raised similar questions. After additional study, I feel that we are on safe legal ground. The Commission has ample general and specific authority to interpret and implement Section 621 and to issue these rules under several sections including, but not limited to, sections: 151, 4(i), 201, 303(r), 622, 706 and many others. Furthermore, a careful reading of applicable case law shows that the courts have consistently given the Commission broad discretion in this arena, including the authority to grant interim relief to requesting parties.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TED STEVENS TO  
HON. ROBERT M. MCDOWELL

*Question 1.* What is the current status of any proposals to use auctions to determine universal service support?

Answer. The Federal-State Joint Board on Universal Service met on February 20, 2007, to consider reverse auctions. Specific reverse auction proposals have been advanced by Verizon, the Cellular Telecommunications Industry Association, and Alltel, as well as a proposal by Embarq to target support to highest cost areas. The Joint Board indicated that it intends to make its recommendations to the FCC in the next several months. At that time, we will seek comments on the merits of the recommendations. The Commission will have up to a year to complete any proceedings to implement those recommendations, pursuant to Section 254(a)(2) of the Communications Act. Because the Chairman sets the Commission's agenda, I refer the Committee to his office regarding the status and timing of further action.

*Question 2.* Do you believe any of the proposals submitted to the Joint Board are viable alternative approaches to universal service support and can adequately support rural carriers like those in Alaska?

Answer. As I have indicated, the Universal Service system has been instrumental in keeping Americans connected and improving their quality of life, particularly in rural areas such as Alaska. However, this system is in dire need of comprehensive reform. Universal Service Fund disbursements have grown significantly from approximately \$4.4 billion in 2000 to approximately \$6.5 billion in 2005, almost a 50 percent increase, and are projected to continue to rise at similarly exponential rates. This is compared to an overall inflation rate of only 13 percent for the same 5 year period. We simply cannot afford to continue to let the Fund grow unchecked. Otherwise, the future of the Universal Service Fund will be in jeopardy.

Fundamental reform of the Universal Service system is necessary so that it can continue to support rural areas such as Alaska. The Commission is working to achieve comprehensive reform to ensure long term sustainability of Universal Service. The Commission is considering alternatives to the current end-user revenues-based contribution factor. On the disbursements side, the Federal-State Joint Board on Universal Service is considering proposals on the use of reverse auctions, as indicated in response to Question 1., above. Some of those proposals initially address the growth of the Fund resulting from the expansion of funding to the competitive eligible telecommunications carriers, which I believe is an appropriate initial focus. This should not adversely affect the support to existing rural wireline carriers in areas such as Alaska. At such time as the Joint Board recommendations are forwarded to the Commission, I will fully consider the merits of those recommendations and the comments of the parties.

*Question 3.* When Chairman Powell visited a remote Eskimo village in Alaska, his plane got stuck in the mud on the unpaved runway during take-off. He and his staff whipped out their cell phones to try to call for help, but they didn't work. No roaming agreements. The villages call came and pulled his plane out of the mud, but he was not able to call his wife to tell her he was running late. I am pleased to report that the runway is now being paved, but the roaming problem has yet to be resolved. Many small cell phone companies in Alaska have been unsuccessful in getting the large national carriers to respond to their desires to arrange roaming agreements. As data, video, and other services are transmitted to mobile devices this problem will only grow more acute. What can you do to address this problem, and what is the timeframe for moving forward?

Answer. Over the course of my brief tenure, I have traveled to remote areas of Alaska such as those described in this question. I have also met with a number of parties regarding wireless roaming obligations. Certainly it is important that all American consumers, no matter where they live, work or travel, have the ability to benefit from competitive wireless services. As a result of my introduction to this issue, I have come to recognize and appreciate the complicated legal and economic factors involved. Although I cannot predict the timeframe for moving forward (given that the Chairman sets the agenda for the Commission), I will continue to work on and analyze this important issue. In the meantime, I strongly urge the private sector to forge a resolution.

*Question 4.* I continue to have concerns that too often domestic satellite services do not offer service to Alaska and Hawaii. In last year's Senate Communications Bill, a measure was included to require satellite operators to make good faith efforts in their satellite planning and development to ensure service to the entire United States. Are there measures that the FCC could take independent of Congressional legislation to ensure better service to Alaska and Hawaii?

Answer. In broad terms, I believe that effective digital broadcast services (DBS) are those that are ubiquitous. Therefore, the Commission must continuously encourage new entrants and new technologies that drive down the cost of services so that all American consumers—no matter where they live—will benefit from the resulting economies of scale.

I understand that EchoStar and DIRECTV, the leading DBS providers that serve the continental U.S., also offer packages to consumers located in Hawaii and Alaska. I understand that DIRECTV offers local stations as well. In fact, the Commission's rules require providers to serve the *entire* United States, including Alaska and Hawaii, if technically feasible. Last summer, I voted to support the Commission's release of a notice of proposed rulemaking to analyze the possibility of licensing additional satellites at reduced orbital locations. Although that proceeding is pending, it is my hope that, in the long term, additional satellite capabilities would improve the ability of all American consumers, including those in Alaska and Hawaii, to receive additional broadcast content at reasonable prices. In the meantime, the Commission will continue to vigilantly enforce its rules in this area.

*Question 5.* The FCC frequently faces the problem of making tough policy decisions that are wrapped in technological debates. There are several waivers pending at the FCC that deal with CableCARDs. What is the impact on the consumer and the impact on the development and deployment of downloadable security? How will these petitions be considered and will the full Commission address these issues?

Answer. As you know, the CableCARD issue presents several extremely complicated technological and policy issues. I believe that technological innovation and competition will solve most challenges eventually and bring consumers more choices. I applaud the Beyond Broadband Technology (BBT) group for filing the summary of its downloadable security proposal on December 21, 2006, and I look forward to learning more about how it is engineered. I hope that innovation, in this case developing downloadable security options, and private sector negotiation will provide answers that are workable for the cable and consumer electronics industries and beneficial to consumers. I strongly encourage a speedy private sector resolution to this challenge.

With respect to the requests for waivers of the integration ban filed with the FCC, the three orders issued by the Media Bureau (addressing the waiver requests of Comcast, BendBroadband and Cablevision) appears to attempt to strike a balance between our Congressional mandate to foster competition and consumer choice in the market for navigation devices and the development of new digital technologies and services by cable companies. These cable operators and others contend that waivers of the integration ban for low-cost, limited capability set-top boxes are in the public interest because the integration ban could retard innovation and increase costs for consumers. On the other hand, several members of the consumer electronics industry argue that common reliance on CableCARDs must be enforced, without granting the waivers requested, to foster competition in the market for navigation devices.

Because the Chairman determines our agenda, I am unsure whether the full Commission will address the pending waiver requests. Comcast has filed a petition for review by the full Commission of the Media Bureau's denial of its waiver request. If called upon to consider these issues, I will examine closely the impact of our policy proposals on consumers and on the technologies being developed in the marketplace.

*Question 6.* Obviously we are all concerned about the new frontiers that can be created on the Internet for pedophiles and child pornographers. To advance the safety of our children, everyone must do their part. Is there more that the Internet service providers can be doing to help law enforcement and does the FCC need any additional authority from Congress to ensure that entities under the Commission's authority are doing their part?

Answer. Protecting our children from new dangers created by new technologies should be among the highest priorities for government. As a father of two young children, I am personally concerned about online predators. And, I am grateful for the important work undertaken by the National Center for Missing & Exploited Children (NCMEC) in Alexandria, Virginia. I visited the NCMEC headquarters last fall and I am impressed with their extraordinary capabilities and diligence.

While the Commission has some authority to regulate the Internet under Title I, we do not have direct authority to regulate Internet content. That rests with the Department of Justice. Accordingly, the Commission does not have experience with enforcement actions against pedophiles and child pornographers. Thus, from the FCC's perspective, it is difficult to evaluate the adequacy of the role that Internet Service Providers are playing in cooperating with law enforcement on this important

matter. I stand ready to support whatever the Commission can do within its limited jurisdiction to protect our children against the abuses by pedophiles and child pornographers. Furthermore, I look forward to working with Congress on this extremely important matter.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO  
HON. ROBERT M. MCDOWELL

*Question 1.* Is it true that eleven years ago Congress required the FCC to adopt a new universal service mechanism that ensures that local telephone rates in rural areas are reasonably comparable to rates in urban areas?

Answer. As amended by the Telecommunications Act of 1996, Section 254(a) of the Communications Act directed the FCC to institute within 1 month a Federal-State Joint Board to recommend changes to the Universal Service regulations, including the definition of supported services. Although I was not a member of the Commission then, the Joint Board was required to make its recommendations to the Commission 9 months after enactment of the Telecommunications Act of 1996, which it did in November 1996. The Commission then was required to complete its proceeding to implement the recommendations within fifteen months of enactment of the Telecommunications Act of 1996. The Commission considered the Joint Board recommendations when it adopted its *First Report and Order* in the Universal Service proceeding, CC Doc. No. 96-45, 12 FCC Rcd 8776 (1997).

*Question 2.* Is it true that the 10th Circuit Court of Appeals has twice remanded the FCC's method of providing universal service support for rural customers served by larger carriers?

Answer. Yes, the 10th Circuit Court of Appeals issued its decision in *Quest Corp. v. FCC*, 258 F.3d 1191 (2001) (*Quest I*), in which it found that the FCC had not adequately defined the term "reasonably comparable" and "sufficient," had not explained setting of the benchmark at 135 percent of the national average, had not provided inducements for state universal service mechanisms, or explained how the non-rural funding mechanism would interact with other universal service programs. On those findings, the Court remanded the decision to the Commission. The 10th Circuit issued its second decision in *Quest Corp. v. FCC*, 398 F.3d 1222 (2005) (*Quest II*), in which it found that again the Commission had not defined the terms "reasonably comparable" and "sufficient," that the support mechanism was invalid, and that the Commission had not demonstrated a valid relationship between costs and rates. The Court again remanded the decision to the FCC.

*Question 3.* Is it true that the second decision was issued in February of 2005 with the court expressing an expectation that the FCC would respond expeditiously?

Answer. *Quest II* was issued in February 2005. In that decision, the Court declined to impose an arbitrary deadline for the Commission to act on remand, as requested by the petitioners. However, the Court did state that it expected the FCC to comply with its decision "in an expeditious manner." 398 F.3d at 1239. In response to that 10th Circuit decision, the Commission issued a *Notice of Proposed Rulemaking* on December 9, 2005 (*Notice*) seeking comments on the Universal Service support mechanism for non-rural carriers.

*Question 4.* What steps will the FCC take now to ensure that it meets its obligations to the rural residents of large incumbent carriers? Will you commit that the FCC will take action on this remand during the next 6 months?

Answer. As set forth in the FCC's *Notice*, comments were due by March 27, 2006 and reply comments by May 26, 2006. Since the Chairman of the FCC determines the Commission's agenda, I refer the Committee to his office regarding the status and timing of further action on the issues raised in the *Notice*.

*Question 5.* Now that the Antideficiency Act (ADA) exemption has expired, what kind of guarantees can you give that there will be no further E-Rate program shut downs or delays?

Answer. The Continuing Resolution adopted by Congress for this Fiscal Year includes an Antideficiency Act exemption for the Universal Service Fund, including the E-Rate program. This exemption assures that the Universal Service Fund is protected during the current Fiscal Year from disruption that might have otherwise been caused by the Antideficiency Act. In addition, I note that Senator Stevens' Universal Service for Americans Act includes a permanent exemption of the Fund from the Antideficiency Act, which I support. I know of no attempts to shut down the E-Rate program, nor would I support any such efforts unless mandated by law.

*Question 6.* Can you tell us how much USAC has in its E-Rate accounts currently and whether those reserves will be sufficient to cover funding?

Answer. This information is held directly by USAC, which is an independent, not-for-profit corporation that the Commission has designated as the Universal Service Fund administrator. As such, USAC is responsible for billing contributors and collecting contributions to the USF support mechanisms. It is my understanding that the requested information is being provided by Chairman Martin in response to this question. I am committed to taking all steps necessary that are available to the Commission to make certain that USAC administers the funds in such a way that its annual funding commitments for the Schools and Libraries program are adequate.

*Question 7.* Are you still working with the Office of Management and Budget (OMB) on a reinterpretation of the ADA that would exempt Universal Service?

Answer. I believe that efforts on behalf of the Commission to work with OMB have been undertaken directly by Chairman Martin. Now that the Continuing Resolution exempts the Universal Service Fund from the Antideficiency Act for the current Fiscal Year, I am not certain of the need for continuing this effort with OMB.

*Question 8.* Given that AT&T and BellSouth agreed to abide by a definition of "network neutrality" as part of their merger conditions, do you believe that the argument that it is impossible to craft such a definition is false?

Answer. I did not participate in the Commission's consideration of the merger between AT&T and BellSouth; therefore, I am unable to offer an answer to this question.

*Question 9.* Will you enforce the "network neutrality" provision agreed to as part of AT&T's and BellSouth's gaining approval for the merger?

Answer. Given that I did not participate in the Commission's consideration of the merger between AT&T and BellSouth, I am unable to offer an answer to this question.

*Question 10.* Do you consider the U.S. broadband marketplace to be competitive?

Answer. In order to remain competitive, the U.S. must always strive for faster broadband speeds and ubiquitous deployment. We should never grow complacent or satisfied. Accordingly, the Commission is adopting policies to encourage increased broadband deployment for the public, pursuant to Section 7 of the Communications Act. Current deployment figures, coupled with recent and impending FCC actions, suggest that wireless broadband offers great opportunities for broadband deployment in all areas of the country, including rural communities. For instance, I am optimistic that the 700 MHz auction and availability of spectrum in the white spaces of the TV broadcast bands will help deployment of broadband in rural areas. In addition, the Commission's video franchising decision adopted in December, 2006 extends benefits to new entrants and should further stimulate deployment of fiber. While it is encouraging that America's rate of broadband deployment has more than doubled over the past 2 years,<sup>1</sup> we must ensure that the Commission takes advantage of all opportunities to spur technological innovation and increased access to broadband services. Accordingly, we are making it easier for entrepreneurs to construct new delivery platforms more quickly and for the owners of existing platforms to upgrade their facilities, as discussed below. These policies should result in more choices for consumers and lead to more competition among different broadband platforms and within them, which should, in turn, result in lower prices for consumers.

*Question 11.* Do you believe a wireless connection, which is two to four times more expensive and two to four times slower than DSL or cable, can be a substitute for a wireline connection to the Internet?

Answer. I am pleased that the Commission is adopting policies to encourage increased broadband deployment for the benefit of American consumers. Current deployment figures, coupled with recent and impending FCC actions, suggest that wireless broadband offers great opportunities for broadband deployment in all areas of the country, including rural communities.

This year in particular the Commission is in an excellent position to ensure that wireless licenses are disseminated among a wide variety of applicants, and we have been working hard to open new windows of opportunity for unlicensed operators, as well. I am excited about our work to prepare for the 700 MHz auction, as well as future deployment in the white spaces, because I am hopeful that the competitive

<sup>1</sup>From March 2004 to March 2005, the broadband adoption rate grew at 20 percent. *Home Broadband Adoption 2006*, Pew Internet & American Life Project (May 28, 2006) at 1. From March 2005 to March 2006, it accelerated to about a 40 percent penetration rate. *Id.* The most current rate has accelerated even faster to 52 percent. *High-Speed Services for Internet Access: Status as of June 30, 2006*, Industry Analysis and Technology Division, Wireline Competition Bureau, FCC (January 2007) at 1.

opportunities presented by these proceedings will broaden the opportunities available to entities seeking to enter the wireless marketplace.

I also want to note that the Commission recently favorably ruled on a request for waiver seeking authority to design, build and operate its network at higher powers. In granting this request, we enabled this entrant to ultimately roll-out an innovative and exciting mobile broadband video service to American consumers living in urban, rural, insular and tribal areas. This is precisely the type of action the Commission must continuously and expeditiously take to provide the certainty necessary for our country's entrepreneurs to forge ahead with advanced broadband offerings.

I am hopeful that, by eliminating the barriers that may hinder new entrants from constructing new delivery platforms and owners of existing platforms to upgrade their facilities, our work will result in more choices for consumers and more competition among different broadband platforms. This should, in turn, result in lower prices and faster speeds for consumers.

*Question 12.* How can we ensure that a variety of news and entertainment outlets will be there if the telephone and cable companies are allowed to limit what people can see and do online?

Answer. The arguments both for and against net neutrality are at the heart of this question. I believe this is a healthy debate and I welcome further discussion of net neutrality. The Internet already is the communications lifeblood of the world economy and is becoming the primary means of communication for American consumers. It is absolutely essential that broadband network and service providers have the proper incentives to deploy new technologies. However, it is equally as important that consumers have the option of pulling, or posting, the content of their choice anytime, anywhere and on any device. In the one instance where the Commission received allegations that a carrier was blocking ports used for VoIP applications, it swiftly launched an investigation and entered into a consent decree, thereby resolving the alleged practices that affected customers' ability to use VoIP through one or more VoIP service providers.<sup>2</sup> In that situation, we acted swiftly and resolutely, sending a clear signal that we will not tolerate anti-competitive behavior. The Commission has adopted a *Policy Statement* that set forth four broad principles designed "to encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet." It specifically stated that consumers are entitled to: (1) access to Internet content; (2) run applications and use services of their choice; (3) connect legal devices that do not harm the network; and (4) competition among network providers, application and service providers and content providers. I believe that we have the ancillary authority under Title I of the Communications Act to enforce these principles.

The Commission will continue to monitor this situation and will remain vigilant in protecting the continued availability of all types of content over the Internet for consumers. Should we receive evidence of additional anticompetitive conduct, I will urge the Commission to act swiftly and in the best interest of consumers.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GORDON H. SMITH TO HON.  
ROBERT M. McDOWELL

*Question 1.* Under a couple of the conditions, AT&T and BellSouth committed that for 42 months, they would continue to offer, and would not increase the price of, unbundled network elements. They also committed not to seek forbearance with respect to unbundled loops and transport. Will these conditions preserve the option for consumers to purchase high-speed broadband service from companies that combine an AT&T/BellSouth UNE loop with their own electronics and other network facilities to offer their own high-speed Internet broadband services?

Answer. Given that I did not participate in the Commission's consideration of the merger between AT&T and BellSouth, I am unable to offer an answer to this question.

*Question 2.* Has the Commission concluded that it is in the public interest to preserve additional broadband options for consumers through these UNE the AT&T/BellSouth merger conditions?

Answer. Given that I did not participate in the Commission's consideration of the merger between AT&T and BellSouth, I am unable to offer an answer to this question.

---

<sup>2</sup>*In the Matter of Madison River Communications, LLC and affiliated companies*, File No. EB-05-IH-0110, Order, DA 05-543, rel. March 3, 2005.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO  
HON. ROBERT M. MCDOWELL

*Question 1.* Even as we are strategizing on how to complete the deployment of DSL and cable modem broadband networks to the hard to reach places of our country, other countries are well on their way to deploying next-generation fiber networks. High-speed fiber will change how we use the Internet similar to the change we saw between dial-up and broadband. Is there anything Congress can be doing to help speed the deployment of our high-speed fiber network here at home, and in rural areas particularly?

Answer. I believe that broadband deployment, including to rural areas, is occurring more rapidly than some recent reports reflect, although we should never become complacent and always strive for faster speeds and more ubiquity. Significantly more Americans are adopting broadband services each day. The FCC recently released a status report on high-speed services for Internet access. As of June 30, 2006, high-speed lines connecting homes and businesses to the Internet increased by 26 percent during the first half of 2006; from 51.2 million to 64.6 million lines in service. And, for the full twelve month period ending June 30, 2006, high-speed lines increased by 52 percent (or 22.2 million lines).

The report reveals that about 14 million lines of the 64.6 million exceed 200 kbps in one direction. But of those 14 million, 4.2 million users receive ADSL service which can have download speeds of 1.5 Mbps up to 3 Mbps. An even greater number of lines exceed 200 kbps in both directions. Specifically, more than 50 million of the 64.6 million broadband lines in service across America exceed 200 kbps in both directions. As a result, I am hopeful that we will soon discard the mediocre benchmark of 200 kbps and focus future analyses on much higher speeds.

The report also notes that wireless growth was significant during the first 6 months of 2006. Mobile wireless broadband connections showed the largest percentage increase: from a mere 83,503 at the end of 2005, to 1.91 million by mid-2006—that is a 2,187 percent increase in just 6 months. But we still have far to go. We should never stop striving for ubiquitous pipes that are fatter and faster.

These numbers, coupled with recent FCC actions, with more on the way, suggest that wireless broadband is the wave of the future. Clearly the Internet is going wireless. Wireless technologies offer an additional means to bring advanced, innovative services—and the associated benefits—to rural America. For instance, in the 700 MHz band and in the white spaces, broadband signals can travel longer distances and penetrate buildings.

Furthermore, the Commission's action in our video franchising proceeding in December will help speed the deployment of fiber across America. By making it easier for entrepreneurs to gain the necessary regulatory approval from local franchising authorities, they will be able to invest in competitive fiber-based advanced networks—and deploy them—more quickly.

In sum, I believe that market forces are working to deploy broadband to all parts of America, including rural areas. Both Congress and the FCC should be vigilant and monitor broadband deployment to make sure that rural areas are receiving the benefits of broadband services.

*Question 2.* When I speak with some of South Dakota's rural telephone cooperatives and other telecommunications providers, I hear about the large amount of resources they must put toward legal fees to keep pace with the legal and regulatory maneuvers being made by some of the larger telecommunications providers with seemingly bottomless pockets for such actions. Some of these small providers honestly think part of the larger competitors' plan is to beat them through legal fees instead of the marketplace. The Commission obviously cannot do anything about the fees lawyers are charging, but they can do something about the speed at which regulatory decisions are made and the hoops that must be jumped through. How can the FCC improve its decisionmaking processes so that small telecommunications providers don't bear such an imbalanced burden?

Answer. Rural telephone companies have kept rural America connected to the world for over a century. Not only has providing affordable connectivity to the far corners of our Nation helped grow America's economy and maintain our competitiveness abroad, it has helped improve the lives of all Americans. Rural areas, just like the rest of the nation, should have available new technologies and telecommunications services. This can be best achieved by allowing marketplace forces, rather than unnecessary regulation, to satisfy consumers' demands. However, there are times when the government should address market failure so new entrepreneurial ideas have a chance to compete in the market place. In those instances where government regulation is necessary, the Commission is bound by the procedural and due process requirements of the Administrative Procedures Act, the Communica-



tions Act and the pro-small business mandates of the Regulatory Flexibility Act. That said, we are always looking for ways to expedite proceedings rather than to lengthen them unnecessarily.

*Question 3.* As you know, some media companies and others are pushing for the repeal of the newspaper cross-ownership ban. They argue that a media outlet owning both the local newspaper and a local broadcast station could make better use of scarce resources to gather and report the local news. They also argue that the handful of “grandfathered” newspaper-broadcast combinations, which were in place before the ban was implemented in 1975, have not shown any gross abuse. Some consumer groups and others who support keeping the newspaper cross-ownership ban in place alternatively argue that combining newspaper and broadcast outlets could reduce competition among media outlets. There could be less incentive to get “the scoop” or report a contradicting viewpoint. What do you believe would happen to local news coverage if the newspaper cross-ownership ban was lifted? Do the 1975 grandfathered combinations really provide us with a good example since some of them are currently owned by those media companies who want to lift the ban? For example Gannett knows its management of Arizona’s largest newspaper, the *Arizona Republic*, and television outlet KPNX-TV is under the microscope, so perhaps their behavior would not be representative of how news gathering would be conducted if the ban was permanently lifted.

Answer. This quadrennial review of our broadcast ownership rules is my first foray into this area. I am studying the issues with an open mind and trying to hear from as many viewpoints as I can. I hope we can develop a reasoned approach that resolves the regulatory uncertainty that followed the appeal of the order the Commission issued in June 2003. As you know, the rules must strike a difficult balance between taking into account the dramatic changes that have occurred in the media landscape in recent years and, at the same time, continuing to promote our longstanding values of competition, diversity and localism. We must also carefully address the issues presented to us by Third Circuit in the *Prometheus* decision.

However, the court’s decision in *Prometheus* did not find fault with the Commission’s lifting of the newspaper-broadcast cross ownership ban in 2003. In the current review, I will carefully consider the evidence in our record and rely on those facts to decide the issues before us. The evidence regarding the news coverage provided by the 1975 grandfathered combinations and the competition those combinations face in their markets will be extremely relevant to our analysis. The behavior of those companies in those markets provides concrete information about the effect of lifting the ban. Although I understand your concerns, because these combinations have been grandfathered for over 30 years, I think we can find the information provided by their experience to be useful.

*Question 4.* The closest daily newspaper can be 100 miles away in some parts of my state. Do you see any particular challenges in providing a diversity of news viewpoints in rural parts of our country if further media consolidation is allowed to occur? Some argue local cable news channels and local Internet news sites can enhance competition and bring out a diversity of viewpoints, but are these answers going to work in rural communities?

Answer. The size of a market, in terms of both geography and population, is of great importance in our consideration of the ownership rules. Because the nature of broadcasting has always been local, we must weigh the effect of our rules on communities of all sizes, whether they be urban, rural or in between. We must also study the effect of competition from cable and Internet news on local stations. I will do my best to consider what the evidence shows us with respect to newspaper-broadcast combinations in rural markets. I hope that we will hold at least one of our media ownership field hearings in a rural market so that we can hear directly from people in a rural community about the challenges they face.

---

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DAVID VITTER TO  
HON. ROBERT M. MCDOWELL

*Question.* I have been alerted to a problem regarding compensation to payphone providers for coinless calls made from their phones. According to recent FCC statistics, about 6 percent of Louisiana households do not have any type of phone in their home. During the immediate aftermath of Hurricanes Katrina and Rita, payphones were the only way many people—both those without any other phones and also those whose mobile phones were not working due to the networks being overloaded—could reach emergency personnel or family and loved ones. Without being fairly compensated according to the rules set forth by the Commission, payphone providers will not be able to maintain these phones. I have been told that in the last

2 years since the Commission most recently revised the payphone compensation rules, a large number of carriers have failed to comply with their obligations under these rules. I also understand that in December 2006, the FCC issued its first sanctions against one of these carriers that violated these rules. I would appreciate hearing your comments on whether you think the agency has sufficient power and resources under your existing authority to continue to enforce these rules and help ensure that companies are not able to disregard the Commission's payphone compensation rules.

Answer. Yes, I do believe that the Commission has sufficient authority to enforce payphone compensation rules. Those rules are very complicated and require adequate resources to administer. I am committed to acting on those enforcement actions that are brought before the Commission in an expeditious manner to ensure that all carriers are fairly compensated for use of their facilities while protecting the public interest.

