



Office of Commissioner Robert M. McDowell  
Federal Communications Commission  
Washington, D.C. 20554

February 7, 2007

The Honorable John D. Dingell, Chairman  
Committee on Energy and Commerce  
The Honorable Edward J. Markey, Chairman  
Subcommittee on Telecommunications and the Internet  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairman Dingell and Chairman Markey:

Thank you for the opportunity to assist you with preparing for the Subcommittee on Telecommunications and the Internet oversight hearing on the Federal Communications Commission scheduled for Thursday, February 15, 2007.

I have attached my responses to your questions pertaining to the functioning and procedures of the Commission and my views on matters of policy and process.

Should you have any additional questions, please contact me at 202-418-2200.

Sincerely,

A handwritten signature in blue ink that reads "Robert M. McDowell".

Robert M. McDowell

Attachment

cc: The Honorable Joe Barton, Ranking Member  
Committee on Energy and Commerce

The Honorable Fred Upton, Ranking Member  
Subcommittee on Telecommunications and the Internet  
Committee on Energy and Commerce

**1.A. What is your assessment of broadband deployment, access, and affordability in the United States? What steps would you support the Commission taking to make broadband services (a) more accessible; (b) more affordable and (c) more robust? Are there other actions you would recommend be taken to promote further broadband deployment?**

On January 31, 2007, the FCC released its most recent status report on high-speed services for Internet access.<sup>1</sup> 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). The *January 2007 High-Speed Services Report* also notes that wireless growth was significant during the first six months of 2006. In fact, mobile wireless broadband connections showed the largest percentage increase: from 83,503 at the end of 2005, to 1.91 million by mid-2006 – a 2,187 percent increase in six months. Compare this to a seven percent growth rate of overall broadband deployment in Europe for a similar period, according to a recent European Competitive Telecommunications Association report.

The *January 2007 High-Speed Services Report* includes services that run at speeds as low as 200 kbps. Having this speed qualify as broadband may be insufficient, as consumers expect faster transport of ever-larger bandwidth-intensive files, especially given the skyrocketing amount of user-generated content flowing “upstream” from consumers’ homes and businesses. This incredibly powerful wave of consumer demand, however, appears to be pushing the network operators to offer fatter and faster pipes at competitive prices. I hope that future FCC studies better capture more detail regarding consumer take-rates of services at faster speeds. For instance, more than 50 million of the 64.6 million broadband lines in service across America exceed 200 kbps in both directions. Over 63 percent of those lines have transfer rates in the faster direction of 2.5 Mbps or greater. It appears that the data we collected may not offer sufficient detail regarding the rates of the slower speeds, or what upstream/downstream strata exist in the market.

Nonetheless, I believe that the results of the *January 2007 High-Speed Services Report* are encouraging. They illustrate that we have come a long way in broadband deployment in a short time. While we still have far to go, we should not lose sight of the fact that broadband has had the fastest penetration rate of any technology in modern history. That said, we should never stop striving for ubiquitous pipes that are fatter and faster.

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<sup>1</sup> *High-Speed Services for Internet Access: Status as of June 30, 2006*, Industry Analysis and Technology Division, Wireline Competition Bureau, FCC (January 2007) (*January 2007 High-Speed Services Report*).

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 (as more fully set forth in response to Question 2.B.), suggest that wireless broadband offers great opportunities for broadband deployment in all areas of the country, including rural communities. While it is encouraging that America's rate of broadband deployment has more than doubled over the past two years,<sup>2</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.

**1.B. What is your assessment of the definitions and methodology the Commission uses to gauge broadband deployment, access, and affordability in the United States? Are there other actions you would recommend be taken to improve such definitions or methodologies?**

The Commission is charged with encouraging the provision of new technologies and services to the public, pursuant to Section 7 of the Communications Act, and with determining the availability of advanced telecommunications capability to all Americans and taking steps to assure that availability, pursuant to Section 706 of the Telecommunications Act of 1996. I believe that the current reporting requirements embodied in FCC Form 477 that provide the data for the semi-annual *High-Speed Services for Internet Access* reports provide a comprehensive picture of broadband deployment in the nation. As technology advances, we must adapt our reporting and monitoring mechanisms to track the availability of those new technologies and services in the market place. I believe that we should regularly evaluate the Commission's reporting requirements, including the entities that submit information and the detail of the information provided. Specifically with regard to the current reporting requirements of FCC Form 477, we could consider evaluating the base speeds and the availability of broadband services in rural areas, to low-income consumers, to minority Americans and Americans with disabilities. This could be accomplished in a Commission-initiated rulemaking proceeding.

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<sup>2</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. *January 2007 High-Speed Services Report* at 1.

**2.A. Do you believe the commercial mobile service market is more or less competitive than it was five years ago? Do you believe that consumers in the commercial mobile service market would benefit from additional competitors?**

In September, 2006, given the many positive developments in the wireless sector, I voted to approve the Commission's Eleventh Annual Wireless Competition Report.<sup>3</sup> Over the last 13 years, wireless subscriber growth has grown exponentially and competition among numerous providers has flourished. Ninety-eight percent of the total U.S. population continues to live in counties where three or more different operators compete to offer wireless service, while nearly 94 percent of the U.S. population continues to live in counties with four or more different operators competing to offer service.

The *Eleventh Wireless Competition Report* concludes that the overall wireless penetration rate in our country is now at 71 percent. Moreover, 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. Mobile phones are increasingly providing consumers with a personal computer-type broadband experience at lower prices. The *Eleventh Wireless Competition 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. (By the way, that 47 cents in 1994 would be 60 cents today when adjusted for inflation.)

While these positive trends benefit American consumers, I will continue to work to ensure that entities of varied types and sizes have meaningful opportunities to enter and thrive in the wireless marketplace. The Commission must ensure that our rules and policies pertaining to spectrum acquisition – whether at auction, through partitioning or disaggregation, or through spectrum leasing, for instance – are implemented and enforced in a manner that provides regulatory certainty and encourages market entry. As discussed immediately below, I am pleased by the number and diversity of entities that participated in last summer's Advanced Wireless Services (AWS) auction. I am also hopeful that the Commission's work in preparation for the forthcoming auction of licenses in the 700 MHz spectrum band, as well as our efforts to promote additional technology platforms, will entice additional competitors to enter the wireless marketplace.

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<sup>3</sup> Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Eleventh Report*, 21 FCC Rcd 10947 (2006) (*Eleventh Wireless Competition Report*).

**2.B. What actions, if any, do you believe the Commission should take, consistent with the Communications Act, to avoid “excessive concentration of licenses” and to disseminate licenses “among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women”?**

This year in particular the Commission is in an excellent position to ensure that wireless licenses are disseminating among a wide variety of applicants, including small and very small businesses, rural telephone companies, and businesses owned by members of minority groups and women. We have been working hard to open new windows of opportunity for all types of spectrum license applicants, as well as unlicensed operators.

With respect to spectrum license applicants, last summer, the Commission adopted a Notice of Proposed Rulemaking regarding possible changes to the rules that will govern licensees that win spectrum in the portion of the 700 MHz band allocated for commercial use. Much of the impetus with respect to the Commission’s work in this proceeding is driven by the DTV Act, which mandates that we deposit the proceeds from this auction no later than June 30, 2008. I am pleased that all types of issues intended to stimulate meaningful opportunities are on the table, including, for instance, geographic market sizes, construction requirements, power limits, and Designated Entity rules for small and very small businesses, and businesses owned by members of minority groups and women.

The Commission’s action to establish a broad array of market sizes for last summer’s auction of AWS licenses attracted participation by many types of participants. In fact, of the 104 winning bidders, 57 identified themselves as small or very small businesses, rural telephone companies, and businesses owned by members of minority groups or women. This represents 55 percent of all winning bidders. It appears, therefore, that last summer’s auction provides good guidance as we design the band plan and implement the rules for the 700 MHz auction, and seek to maximize opportunities further for meaningful participation by a broad range of entities. I hope to be able to enhance and improve upon the positive aspects of the AWS auction to provide an even better opportunity for participation in the 700 MHz auction.

With respect to unlicensed spectrum operators, also last summer, the Commission started a new proceeding regarding commercial deployment in the “white spaces” of the TV broadcast bands. As part of that Congressional directive, we have indicated that that our Office of Engineering & Technology would complete its testing and analysis of consumer equipment to operate in the white spaces bands in October of this year, and our engineers are very busy leading this process forward. Of course, the technology innovation spurred by the Commission’s leadership in the white spaces proceeding plays a critical role in the in the wireless marketplace, including fostering job growth and related business opportunities. For this reason, I am hopeful that advances in technology and wireless service applications will facilitate entry of new and diverse players.

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 am committed to ensuring that the Commission takes advantage of additional opportunities to spur technological innovation and increased access to advanced wireless services by a broad array of participants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, whether licensed or unlicensed.

**2.C. What actions, if any, do you believe the Commission should take with regard 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.

For instance, the Commission's action to adopt a new equipment testing regime for unlicensed devices that operate in the 5 GHz band (which adopted a new equipment testing policy for unlicensed devices that operate in the 5 GHz band), as well as the work to promote deployment in the spectrum white spaces, discussed above, evince the benefits that arise from a flexible spectrum policy. In these proceedings, the Commission articulated a broad set of parameters – including the need to protect incumbent users from harmful interference – yet, at the same time, did not establish specific uses for the spectrum bands at issue.

Similarly, I will do my best to ensure that future Commission actions do not impede the original intent the ability of AWS and 700 MHz auction winners to putting their spectrum to the broadest possible use by deploying a wide range of advanced wireless services. In light of the rapidly expanding international and domestic demand for wireless voice and data services, and the demand for greater amounts of spectrum to

support advanced applications, in developing these rules, the Commission took a flexible, market-based approach.

In addition, the Commission's spectrum management policy must incorporate the needs of our nation's emergency response providers. In this regard, I am pleased that Chairman Martin acted to establish the Public Safety and Homeland Security Bureau. The events of September 11, 2001, and the 2005 hurricane season underscored America's dependence on a robust, reliable and resilient telecommunications infrastructure, which should always be effective even in the face of catastrophic natural disasters, pandemics, or terrorist attacks, and which must include wireless and satellite technologies.

Under this flexible framework, the Commission permits our nation's entrepreneurs to design products that fully exploit the spectrum resources in response to market conditions and consumer demands. I am confident that, by sticking to flexible spectrum management, we will strengthen the American economy and American consumers, the ultimate stakeholders in every endeavor the Commission undertakes, will prosper as a result.

**3.A. What general steps can the Commission take to enhance the level of preparedness of our nation for the upcoming digital television transition (DTV) in February of 2009?**

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. For instance, we are overseeing broadcasters' construction of digital facilities and enforcing deadlines for that construction. We are in the process of completing a final DTV table of allotments for the assignment of digital channels to stations. 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), which provides a wealth of information including a summary of facts about the transition and converter box program, a shopper's guide for DTV equipment, materials community groups can use to conduct DTV awareness programs, and news and regulatory information. We will continue to coordinate with industry stakeholders and the NTIA on digital transition issues. 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.

**3.B. What specific actions do you support the Commission taking with respect to the broadcasting, cable, programming content, manufacturing, or retail sector to enhance consumer education about the DTV transition?**

In the Commission's budget proposal for 2008, we have requested \$1.5 million for our Consumer & Governmental Affairs Bureau to conduct DTV outreach. Through this outreach initiative, the Commission will help prepare the public for the transition from analog to digital television in concert with stakeholders such as the NTIA, broadcasters, cable operators and consumer electronics companies. Specifically, the Commission will work with

these stakeholders to coordinate an effective consumer education and advocacy campaign to ensure a smooth transition to digital television.

**4.A. In each of the major areas of the Commission's authority, what actions, if any, do you believe the Commission should take?**

Wireless

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. As discussed in response to Question 1.A., 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 six 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 six 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. As noted in response to Question 1.A., however, I acknowledge that we must continue to build on our success and we cannot rest yet. 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.

Public Safety

As noted earlier, 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, including our nation's emergency response providers. Moreover, given that over 220 million Americans rely upon wireless technologies for anytime, anywhere communications, the public has high expectations for reliable communications and effective coordination among emergency personnel in times of crisis.



I am hopeful that the questions we posed in the rulemaking we released in December – which proposes a national, centralized approach to maximize public safety access to interoperable, broadband spectrum in the 700 MHz band – will enhance the ongoing dialogue regarding partnerships among the public safety community and the commercial wireless industry. The same market and technological forces that have made advanced wireless services an everyday part of living for the vast majority of Americans can and should be leveraged by the public safety community to make robust, redundant, low cost solutions widely available to our nation's first responders. I look forward to analyzing the record in this proceeding and moving forward to provide emergency response providers access to advanced broadband wireless services as quickly as possible.

### Satellite/International

Although satellite telephony is most frequently cited as a possible component in a nationwide interoperable emergency communications network, other commercial satellite services are currently being used by emergency response providers as well. Commercial satellite services are already used today by local police and fire departments, state agencies, the United States Coast Guard, FEMA, and the American Red Cross. Increased integration of commercial satellite services as part of an emergency communications network is possible as emergency response providers become familiar with the capabilities of satellite services.

In the immediate aftermath of Hurricane Katrina, satellite services were able to provide reliable mobile telephony, data and information services, and radio and television services to the affected areas. Chairman Martin has rightfully recognized that a satellite component should be included as part of an interoperability solution, and I too support that concept. I am hopeful that the questions posed by the Commission in the rulemaking we released in December – which proposes a national, centralized approach to maximize public safety access to interoperable, broadband spectrum in the 700 MHz band -- will enhance the ongoing dialogue regarding partnerships among the public safety community and the satellite industry.

Separately, while I recognize that it is beyond the role of the Commission to determine whether foreign nations' laws and regulations are or are not in compliance with any obligations under trade agreements with the United States or other international law, the Commission's rules incorporate both the commitments made by the United States as part of its World Trade Organization (WTO) membership, as well as a process for evaluating entry by non-WTO Member nations. It is important, therefore, that the Commission continue to evaluate non-WTO Member nations (and all foreign nations with regard to non-WTO covered services) for equivalent competitive entry for U.S. satellite operators. We must continue to provide expert advice to our counterparts within the Executive Branch agencies, such as the Office of the U.S. Trade Representative, to ensure that the requirements for foreign entry to the United States' satellite markets, which do not restrict or preclude meaningful participation by foreign operators or favor a

particular competitor or set of competitors, are reciprocated in as many nations as possible.

### Broadcast Radio and Television/Cable Services

I look forward to the Commission releasing rules very soon in our digital audio broadcasting proceeding. I applaud the “early adopters” of in-band on-channel (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. I hope that the service rules and other licensing and operational requirements we develop 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 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.

I hope that the Commission will extend the de-regulatory benefits we are providing to new entrants in our recently adopted video franchising order to all video providers, specifically incumbents and overbuilders. 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. 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.

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. The record in the video franchising proceeding did not allow us to create a regulatory parity framework just yet, but I look forward to the Commission doing so within six months of release of that order, as we committed to do. 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.

I also hope that we will reform our procedures for resolving program access and program carriage disputes. Commission regulations governing program carriage agreements and program access by MVPDs for years have not been enforced in the expeditious manner contemplated by Congress and our own rules. Although the substance of these regulations provides MVPDs and programmers with standards and processes for redress of their disputes with cable providers, very few parties have filed complaints to adjudicate their disputes. Those that are filed often wait too long for resolution and some are never resolved. The parties to these complaints and consumers deserve better. Speedy resolution of disputes is critical in this quickly evolving market. We are considering proposals for new rules on this topic. I look forward to working with my colleagues on the reform needed to make our rules a real avenue of relief for industry parties. Also, the Commission will soon release a notice of proposed rulemaking regarding whether to retain the program access provisions of the Act that prohibit exclusive contracts for satellite delivered programming between cable operators and vertically integrated programmers. The Notice will initiate our inquiry into recent developments in the video market and whether access by MVPDs to “must have” programming from vertically integrated providers remains an essential component to competitive services.

As you know, we initiated the quadrennial review of our broadcast ownership last summer. Any new rules must strike a difficult balance. They must take into account the dramatic changes that have occurred in the media landscape in recent years. At the same time, we must ensure that the rules continue to promote our long-standing values of competition, diversity and localism. We must also carefully address the issues presented to us by 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 attending more of the field hearings we are convening around the country and learning more about competition, diversity and localism from the perspective of people “on the ground,” such as: consumers, broadcasters, programmers, artists, economists academics and so forth. People with first-hand knowledge of the realities of the market will provide us with valuable information on how to go forward with the proceeding. Also, 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 as we consider whether to modify the ownership rules. 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.

In recent months, several industry parties have discussed with me issues regarding retransmission consent and the latest round of negotiations between MVPDs and broadcasters. The most contentious of these thus far appears to be the dispute between Mediacom and Sinclair Broadcasting. I was pleased to hear that the parties reached 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 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. Commissioner Adelstein graciously joined us in that meeting. 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. Some parties have suggested reforming the retransmission consent regime through statutory changes. I am listening to these proposals with an open mind and look forward to any guidance the Congress may have.

As a father of two young children, I am concerned about indecent and violent content on television. I believe that parents and other caregivers are the first line of defense when it comes to protecting our children from inappropriate content. As regulators, we have a role to play as well. We at the Commission are doing our best to enforce the indecency laws, while being mindful of First Amendment protections and the prohibitions on censorship and interference with broadcasters' freedom of speech. Obviously, ruling on indecency complaints requires a delicate balancing of interests and 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. With respect to violent content, the Chairman has circulated a draft Report summarizing the findings in our inquiry on television violence, its effect on children and the means by which the government may regulate violent content in a manner consistent with the Constitution. I look forward to Congress' guidance on this issue. I also am interested in technological solutions to the issues parents, families and other viewers face with respect to both indecent language and violence on television. Greater efforts to educate consumers about TV ratings and the use of the V-chip and of parental controls for cable and DBS systems will encourage a market-driven solution for limiting the violent content in programs our children watch.

### Wireline/Universal Service

The Universal Service system has been instrumental in keeping Americans connected and improving their quality of life. However, this system is in dire need of comprehensive reform. Let's look at the statistics: 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 five year period. We simply cannot afford to continue to let the Fund grow unchecked.

Fundamental reform of the Universal Service system is necessary. Accordingly, 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. The Joint Board will meet during the NARUC winter meeting in mid-February and is expected to release recommendations to the Commission for its consideration a few weeks later. I look forward to receiving those recommendations and the comments of the parties.

Closely related to Universal Service reform is intercarrier compensation. We must reform the intercarrier compensation regime; otherwise, it won't survive. Compensation under the current system varies depending on the type of carrier involved, the nature of traffic and the direction of traffic. The Commission should step back and see how competition and technology are changing the marketplace and examine where the current regime is in need of reform. The Commission should also promote efficiency, competition and technological innovation. The Commission currently has an outstanding rulemaking proceeding on intercarrier compensation. Comments and reply comments have been filed on a proposal advanced by a segment of the industry, known as the "Missoula Plan." Separate comments have been filed on the phantom traffic issue as well. Distilling the positions of all the parties will be a long, cooperative process, but I look forward to working with everyone on this challenge.

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. 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.

The Commission has existing requirements for all telecommunications carriers to protect Customer Proprietary Network Information (CPNI), but is considering more stringent requirements against the actions of pretexters. We must take all necessary steps to protect unauthorized disclosure of this sensitive data, keeping in mind that pretexters utilize new techniques all the time. In view of this, we must be vigilant to assure that carriers are constantly staying ahead of the pretexters. However, we should also guard against imposing over-reaching requirements that go beyond the actual problem and cause unjustified burdens on carriers. The Commission is currently considering adopting more stringent protections that address call detail records. Finally, the FCC has taken and continues to be engaged in active enforcement actions against carriers that violate our CPNI disclosure rules.

The allocation of N11 codes, or abbreviated dialing arrangements, continues to be of importance because these numbers are among the scarcest of resources under the Commission's jurisdiction. In 2000, the Commission assigned 211 for community information and referral services and 511 for traffic and transportation information. At that time, the Commission stated that it would reexamine the deployment of those codes in five years. During that time, wireless carriers have raised concerns about the

implementation of those codes. I look forward to evaluating the issues raised by allocation and implementation of those valuable resources.

Section 10 of the Communications Act provides a mechanism for the Commission to forbear from enforcing regulations where such action will promote competitive market conditions. A number of forbearance petitions are pending before the Commission. To the extent that I am permitted to participate in such proceedings, I look forward to evaluating the merits of those petitions.

**5.A. What steps, if any, can the Commission take to enhance the depth and accuracy of its collection of data and analysis of affected industries?**

The Commission's annual Video Competition Report and Cable Price Survey would be enhanced by collecting additional data about causes for industry changes and trends. For instance, the Cable Price Survey presents statistical information about the average rates for cable basic and expanded basic tiers of service in markets with varying levels of competition. Compiling this snapshot of prices on particular dates, while potentially helpful, is only a first step. I would like for us to study the status of video competition in terms of not only prices, but also value provided to consumers, programming costs, barriers to entry and so forth. The Cable Price Survey does not provide an analysis of all of the potential factors that could cause overall rate increases. For instance, are higher rates reflective of many factors including: consumers buying more bundled service offerings; greater value being offered today compared with several years ago (such as the benefits of digital cable over analog, or more channel offerings); cost recovery due to regulatory burdens; the rising cost of "must have" content; or other causes? Such analyses will better inform our actions with respect to furthering competition in the video marketplace. The Video Competition Report would also benefit from the gathering of additional data that would assist deeper analysis of evolution in the industry.

With respect to the *Eleventh Wireless Competition Report*, discussed above, I am pleased that the Commission included analysis of: the number of carriers per market and market concentration; market entry conditions; market consolidation and exit transactions; and rural market areas. I am hopeful that the Commission will continue to gather as much granular data on these important factors as possible.

Peer review is another method of ensuring that Commission data and analysis are accurate. The Commission has begun conducting ten economic studies as part of our review of the broadcast ownership rules. The studies will include surveys of consumers about their use of media, descriptions of the ownership structure of current media and the effect of ownership structure on the quantity and quality of programming, examination of barriers to entry for minorities and so forth. Each of these studies will be peer reviewed.

Regular efforts to update the semi-annual collection of data concerning broadband deployment is important. Suggested steps are addressed in my response to Question 1.B., above. In addition, the Commission tracks the status of local telephone competition on a

semi-annual basis. We should be certain that these reports include all providers that offer voice and data services.

**5. B. What steps, if any, can the Commission take to better prevent waste, fraud, or abuse in programs it administers?**

A strong deterrent to waste, fraud and abuse is a vigorous enforcement program. The Commission's Enforcement Bureau is actively engaged in enforcing Universal Service payment requirements. In 2006, the Bureau issued notices of apparent liability in the amount of \$597,000, collected voluntary contributions of \$590,000, and collected Universal Service Fund payments of almost \$1.5 million. It also initiated a significant number of suspension and disbarment proceedings in the Schools and Libraries program. In addition, the Commission's Inspector General conducts audits of the Schools and Libraries program, as well as the High Cost, Rural Healthcare, and Low-Income programs. For the six month period between April 1, 2006 and September 30, 2006, the Inspector General had released 53 audit reports that identified \$11,502,220 of potential improper payments in the Schools and Libraries program alone. The President's Fiscal Year 2008 Budget Request includes \$5.565 million for the Inspector General. Where appropriate, we should also make sure that our rules are clear and concise, thereby eliminating the opportunity for manipulation and interpretation by participants in programs administered by the Commission where waste, fraud and abuse can occur.

**5.C. What steps, if any, can the Commission take to enhance communications with the public in rulemakings and adjudication proceedings before the Commission?**

Commission proceedings at present are as transparent to the public as they have ever been. We continue to strive to provide information to and communicate with the public so that interested parties will understand our procedures and participate in FCC proceedings.

The Commission's website, [www.fcc.gov](http://www.fcc.gov), has helped our efforts tremendously. The website summarizes the history of many proceedings of interest to the public, makes all Commission documents and filed comments available, informs readers of important filing and meeting dates, and so forth. For example, with respect to our media ownership proceeding, the website provides a summary of the rules under review, lists recent actions with links to the applicable documents, outlines the research studies we have commissioned, provides a simple comment filing procedure and provides information on public hearings and additional materials. We will make the research studies on media ownership, when completed, available on our website for public review and comment.

Also in the media ownership context, we have committed to convening six field hearings and two localism hearings in cities across the country to gather information from the public to inform our study of the rules. We already have held field hearings in Los Angeles and Nashville, and will soon announce our third hearing. The input from the

public at these hearings is valuable to us, and I hope the hearings also give the public some insight into the Commission's proceeding.

I am also pleased by the Commission's efforts to widely disseminate information among people with disabilities. For instance, the Commission makes materials related to its proceedings available in Braille, large print, electronic files and audio formats. To request these materials, one need only send an e-mail to or phone (on a voice or TTY line) the staff of the Commission's Consumer & Governmental Affairs Bureau, who are available to provide timely assistance.

While these efforts evince the Commission's strong commitment to provide information to all American citizens, we are always open to additional suggestions regarding how to enhance our communications with the public.