

**Response of Jonathan S. Adelstein
Commissioner, Federal Communications Commission**

**Questions for Federal Communications Commission Members from
The Hon. John D. Dingell, Chairman,
House Committee on Energy and Commerce
and
The Hon. Edward J. Markey, Chairman,
Subcommittee on Telecommunications and the Internet**

February 7, 2007

1. *Broadband Policy*

- 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?**

One of America's central challenges is promoting the widespread deployment of higher-bandwidth broadband facilities to carry the vast array of new innovative services that are transforming virtually every aspect of the way we communicate, and to make sure that these facilities are affordable for consumers. This must be a greater national priority than it is now. An issue of this importance to the economy of our nation and the success of our communities warrants a coherent, cohesive, and comprehensive national broadband strategy.

- **The U.S. needs a national broadband strategy that seriously addresses our successes and failures, and strives to improve our broadband status.**

Virtually every other advanced country has implemented a national broadband strategy. Even though we have made strides, I am concerned that the lack of a comprehensive plan is one of the reasons that the U.S. is nevertheless falling further behind our global competitors. Each year, we slip further down the regular rankings of broadband penetration. More troubling, there is growing evidence that citizens of other countries are getting a much greater broadband value, in the form of more megabits for less money. According to the ITU, the digital opportunity afforded to U.S. citizens is not even near the top, it's 21st in the world. This is more than a public relations problem. It's a productivity problem, and our citizens deserve better.

We must engage in a concerted and coordinated effort to restore our place as the world leader in telecommunications by making affordable broadband available to all our citizens. It will mean taking a hard look at our successes and failures, and improving our data collection. A true broadband strategy should incorporate benchmarks, deployment timetables, and measurable thresholds to gauge our progress. It is not enough to rely on poorly-documented conclusions that deployment is reasonable and timely.

We need to set ambitious goals, shooting for real high-bandwidth broadband deployment. We should start by updating our current definition of high-speed of just 200 kbps in one direction to something more akin to what consumers receive in countries with which we compete, speeds that are magnitudes higher than our current definitions. Further, we need much more reliable data than the FCC currently compiles so that we can better ascertain our current problems and develop responsive solutions. Giving consumers reliable information by requiring public reporting of actual broadband speeds by providers would spur better service and enable the free market to function more effectively.

We must also re-double our efforts to encourage broadband development by increasing incentives for investment because we will rely on the private sector as the primary driver of growth. These efforts must take place across technologies so that we not only build on the traditional telephone and cable platforms, but also create opportunities for deployment of fiber-to-the-home, fixed and mobile wireless, broadband over power line, and satellite technologies.

We must also work to promote meaningful competition, as competition is the most effective driver of lower prices and innovation. This is increasingly important to ensure that the U.S. broadband market does not stagnate into a comfortable duopoly, a serious concern given that cable and DSL providers control 98 percent of the broadband market.

There also is more Congress can do, 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 so that we have the human resources to fuel continued growth, innovation and usage of advanced telecommunications services.

- **Spectrum-based services can be the third “channel” of broadband, and we have to work with our licensees to promote the deployment of underused spectrum.**

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. Instead of the third “pipe,” this holds promise as the third “channel” to challenge DSL and cable modem. The Commission must keep working to do this using both licensed and unlicensed spectrum. Particularly given recent consolidation in the communications industry, it becomes even more critical to open a third channel to more consumers and companies. For example, I worked with Sprint and Nextel to secure significant build-out commitments from the companies for the deployment of services in the 2.5 GHz band in association with their merger. The companies provided a specific schedule of implementation milestones that signal a commitment to deploy to at least 30 million Americans across 20 markets, both large and small. This truly is a banner commitment. Their investment will help all providers in the 2.5 GHz band. The infusion of capital into this market should stimulate product and service offerings that ultimately will benefit both the commercial and educational segments of the 2.5 GHz industry.

Similarly, I put a strong emphasis on promoting the availability of affordable broadband services through our review of the AT&T-BellSouth merger. In addition to AT&T's commitment to provide broadband services to 100% of their territory by the end of 2007, we made substantial additional progress toward increasing consumer access to broadband services. I was particularly pleased that AT&T committed to jumpstart service in the under-used 2.3 GHz band by agreeing to a specific construction commitment over the next three and a half years. In addition, the applicants committed to divest their licenses in the 2.5 GHz band, which will ensure that independent broadband access providers interested in developing services in the 2.5 GHz band will now have access to spectrum in an important part of the country that may otherwise have been unavailable to them. Increased 2.5 GHz availability in the southeast will lead to the deployment of wireless broadband services in this market in direct competition to the newly formed company. Taken together, the two spectrum conditions – a build-out condition for the 2.3 GHz band and divestiture of the 2.5 GHz band – will significantly advance the deployment of wireless broadband services in the southeast and throughout the rest of the country.

- **We have a number of tools to promote broadband deployment across all of our nation's communities, no matter their location.**

Promoting the availability of affordable broadband 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. 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 must ensure that universal service evolves to promote advanced services, which is a priority that Congress made clear. Congress can help by ensuring the broadest and most stable possible source of funding for universal service.

We also need to encourage and support the effort by the large incumbent local exchange carriers to deploy new systems capable of delivering high-quality video services. This could be one of the most important developments in competition we have seen in many years. Although I believe the Commission overstepped its authority in its recent Section 621 Order, I do believe that legally sustainable franchise reform might to a small degree improve the atmosphere for investment. More critical is the need to ensure new entrants can continue to get fair access to programming from vertically-integrated competitors such as large cable companies. We will need to renew our program access rules, which are currently scheduled to expire October 5, 2007.

- **Preserving the open character of the Internet should be our paramount goal.**

Finally, it is critical that we 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. Preserving the vibrant quality of the Internet and promoting high speed access to the Internet are goals that go hand-in-hand.

Historically, there have not been gatekeepers on the Internet – it’s been open to anyone with an Internet connection. That enables 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 creative in the way that they 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.

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’s current efforts to gauge broadband deployment, access, and affordability fall far short. In its 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.” The clear conclusion is that FCC has much work to do to improve the quality and scope of its broadband data, as well as its analysis of the availability of affordable broadband services, if it is to satisfy the Congressional mandate in Section 706 of the Act.

- **The FCC’s data collections improperly rely on a Zip Code measure of availability and on a dated definition of broadband at 200 Kbps.**

One troubling aspect of the FCC’s data gathering and analysis is the use of a discredited measure of broadband availability. The current practice of basing conclusions about availability on providers’ lists of Zip Codes in which they serve at least one customer does not provide sufficient information about the actual deployment of broadband networks or its practical availability for consumers. For example, GAO found that 77 percent of Kentucky residents had access to broadband in mid-2005, as compared to the FCC’s estimate that 96 percent of Kentucky households had access to broadband services. Similarly, GAO observed that the number of providers reported in a Zip Code overstates the level of competition to individual households. 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.

The FCC’s broadband data collection efforts also rely on a definition of broadband that it is inadequate to meet customer and business demands for cutting-edge broadband applications. Defining “broadband” as 200 Kbps may have made sense in 1998, but it is not adequate to download, much less upload, streaming video, flash animation, or other increasingly-common broadband applications. Given the increasing use of broadband to deliver applications such as telemedicine, distance learning, downloading of movies, high definition TV, voice over Internet

protocol, and other latency-sensitive video services, it is critical that the FCC explore revisions to its definition of broadband.

- **The FCC can improve its data collection efforts by working with state and local officials, assessing the actual cost to consumers of obtaining broadband, and monitoring the broadband take rate across a wide range of consumer demographics.**

Beyond these critiques of the FCC's current data collection efforts, the Commission could do far more to assess the availability of affordable broadband services. Given the importance of the broadband value (or price per megabit) on productivity, the Commission should explore ways to monitor the actual cost to consumers of obtaining broadband services. Similarly, the Commission should explore ways to more directly monitor the relationship between broadband adoption and consumer demographics, such as region, income, education, race, and disability. Moreover, the Commission should more actively engage State and local officials to gain greater access to information about localized conditions, for example, through the Federal-State Joint Conference on Advanced Telecommunications Services. These efforts would enhance the ability of the Commission and Congress to understand the availability of affordable broadband and to target policy efforts accordingly.

2. Wireless and Spectrum Policy

- 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?**

It is difficult to assess the relative competitiveness of the current mobile service radio (CMRS) market because the industry has changed so dramatically over the past five years. I do believe the current CMRS retail market is competitive. The price per minute continues to fall and the number of mobile telephone subscribers continues to grow in leaps and bounds. Average monthly bills prices are holding relatively steady while the "minutes of use per month" by customers has essentially doubled over the past five year period.

- **While the current CMRS retail marketplace is competitive, in light of recent consolidation, the FCC must remain vigilant in its oversight of the market and in providing opportunities for new entrants.**

The rapid consolidation in the CMRS market over the past several years is troubling. The ever-increasing market share of the largest carriers' requires that the Commission be increasingly vigilant in its oversight of the CMRS marketplace. It has been reported to us that in 1998 the five largest wireless carriers controlled 48% of the market; in 2005, the top five carriers controlled almost 90% of the market. It was understandable that some level of consolidation occurred, but the Commission must ensure that the market remains competitive and that we provide real opportunities for new entrants in the marketplace. We also must keep a close eye to ensure that consumer protection issues like privacy and truth-in-billing remain in the forefront.

Competition has been the driver of CMRS industry growth over the past decade. To maintain that growth, we are best served by ensuring that competition is alive and vibrant. The Commission must always be looking for opportunities to promote the deployment of new, competitive CMRS services – whether through spectrum management or other types of policymaking. We are starting to see increased market penetration by newer CMRS carriers that are focused on traditionally underserved consumer markets like lower-income Americans. This is a very positive trend, and one that we should support through our policy making.

- **Recent consolidation in the CMRS industry has led to more concerns about the competitiveness of the CMRS wholesale market and its impact on roaming.**

Notwithstanding my views about the competitive CMRS retail marketplace, I am becoming increasingly concerned about the competitiveness of the CMRS wholesale market as compared to five years ago. Concerns about roaming have become more widespread and more vocal over the past several years. Whether in the context of recent mergers or other rulemakings, the Commission is hearing regularly from small and mid-size carriers who are becoming increasingly frustrated with their ability to negotiate automatic roaming agreements with larger regional and nationwide carriers for the full range of CMRS services. Not surprisingly, consolidation in the wireless industry over the past few years has only served to amplify existing concerns about the current state of roaming practices. Moreover, the network technology of a carrier interested in roaming even further limits the choice of potential roaming partners in a given market.

I was pleased we initiated a proceeding in August 2005 to explore all aspects of the issue of roaming and more specifically the effects of consolidation on the ability of smaller carriers to negotiate access to larger networks. While CMRS providers already are subject to the common carrier provisions of Title II of the Act, including Sections 201 and 202, I supported the item's request for comment on whether existing remedies under these provisions of the law have been sufficient to ensure the continued development of automatic roaming services.

I strongly encouraged interested parties to provide as full and complete a record as possible in this proceeding. And I have heard from parties on both sides of the issue. Yet, I still think we should get access to more information, and I have supported an FCC review of actual roaming agreements so that the Commission truly is informed on the nature of these contracts. I believe we should move forward with this proceeding as quickly as possible.

- 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”?**

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.

- **We need to ensure that, when appropriate, the Commission offers a wide variety of licenses at auction to provide opportunities for a diverse group of bidders and licensees.**

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 thought that smaller licenses would improve access to spectrum by those providers who want to offer service to smaller areas, while also providing a better opportunity for larger carriers to more strategically expand their spectrum footprint. Our decision to adopt a smaller license block was well received by a number of carriers and manufacturers. After that original ruling, a number of parties came together to propose an even better balance between small and large license areas through a variety of changes to the bandplan, most of which we adopted in advance of the AWS auction.

As we prepare for the 700 MHz and future auctions, it is critical we build on this success to provide 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.

The FCC has a unique role in establishing the market for spectrum. Auctions are a free-market mechanism, but it is the government's role to establish the ground rules through a bandplan. We have a special responsibility to establish bandplans that allow for a diversity of license sizes. We want to maximize the level of utilization by giving more options so that the market can perform most efficiently, and we can preclude companies from being forced to bid on licenses that are larger than the areas they intend to serve. Large carriers can always aggregate smaller licenses, but companies of all sizes cannot make them any smaller than the FCC allows.

- **We need a Designated Entity program that makes sense and truly provides opportunities for small businesses, rural telephone companies, and businesses owned by members of minority groups and women.**

I was very disappointed in our decision prior to the AWS auction to not deal directly with the loophole in our rules that allows large wireless companies to invest in designated entities (DEs). It truly was unfortunate that the Commission did not take action to specifically address the single biggest issue facing the DE program given the overwhelming support in the record to do so – restricting the award of DE benefits to an otherwise qualified DE entity where it has a “material relationship” with a large in-region incumbent wireless service provider. We missed a real opportunity to shut down what almost everyone recognizes has the potential for the largest abuse of our DE program. And now it appears that the changes that were adopted may actually do more harm than good to the DE community. As a result, DEs only accounted for 4% of the net bids proceeds of the AWS auction, well below their usual participation level in previous CMRS auctions.

- **We need to reassess the impact of blind bidding on small businesses.**

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 businesses and other DEs. 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.

- **The Commission should allow sufficient spacing between final rules and auction applications to allow for full and robust auction participation.**

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 and 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.

- **The Commission should re-engage the rural wireless proceeding because of its likely benefits to DEs and small businesses.**

A different proceeding that could substantially help both our wireless broadband efforts and the opportunities afforded to smaller businesses and DEs 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 or DE is best situated to fill this unserved gap.

C. What actions, if any, do you believe the Commission should take with regard to spectrum management?

Since I have been at the Commission, I have outlined an approach for spectrum policy that I call a “Framework for Innovation.” To the greatest extent possible, we should let innovation and the marketplace drive the development of spectrum-based services. I do believe, though, the Commission has a responsibility to establish ground rules for issues such as interference and availability, and the agency also has an important role in working with foreign administrations to develop international sharing and interference criteria.

- **The Commission needs to be more creative with getting spectrum into the hands of operators ready and willing to serve consumers at the most local levels.**

My goal is to maximize the amount of communications and information that flow over the Nation’s airwaves, both on earth and through space. To get there, the Commission has 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 and willing to serve consumers at the most local levels. For example, I strongly supported guidelines to facilitate a more robust secondary market. We removed significant obstacles and provided a framework for allowing licensees to lease spectrum more easily, while ensuring that the Commission does not lose ultimate control over it.

Another approach I am particularly excited about is cognitive or smart radios. Cognitive radios could play a key role in shaping our spectrum use in the future, and will lead to the advent of smarter wireless devices. This will allow us to make greater use of spectrum than is possible today. Smart radios can literally leapfrog the technical and legal problems that currently hamper many of today’s spectrum opportunities. The Commission must do what it can to ensure that its spectrum policies and regulations keep pace with all of the latest trends in the spectrum-based industry.

- **The Commission needs to more aggressively pursue alternative licensing approaches that make it easier for local operators to get access to spectrum.**

I have long pushed for flexible licensing approaches that make it easier for community-based providers to get access to wireless broadband opportunities. In 2005, we adopted rules to make spectrum in the 3650 MHz band available for wireless broadband services. To promote interest in the band, we adopted an innovative hybrid approach for spectrum access. It makes the spectrum available on a licensed, but non-exclusive, basis. I have spoken with representatives of the Community Wireless Network movement, and they are thrilled with this decision and the

positive impact it will have on their efforts to deploy broadband networks in underserved communities around the country.

This follows in the footsteps of our decision in the 70/80/90 GHz proceeding that also broke new ground. In that proceeding, I pushed for a new approach to spectrum licensing in making spectrum available for enterprise use. This spectrum block can be used to connect buildings with multi-gigabit-speed wireless point-to-point links for a mile or more. Instead of digging up streets to bring fiber to buildings, licensees can set up a wireless link for a fraction of the cost. And, more importantly, it is available to operators by just applying through an on-line database. Because of the unique characteristics of this band, we are able to accommodate multiple users of the spectrum within the same market.

- **The Commission needs to take a hard look at our service and construction rules to make sure they do not undercut access to unused spectrum.**

I am also continually evaluating our service and construction rules to ensure that our policies do not undercut the ability of wireless innovators to get access to new or unused spectrum. So in developing policies, I have tried to advocate a carrot and stick approach. I want to promote flexibility and innovation, but since the spectrum is a finite public resource, I want to see results as well – particularly in the area of wireless broadband.

In the summer of 2005, I was very pleased to work with Sprint and Nextel to secure significant build-out commitments from the companies for the deployment of services in the 2.5 GHz band in association with their merger. I initially had concerns about Sprint Nextel amassing such a wide swath of spectrum in the 2.5 GHz band without providing any clear plan for deployment. But the companies met my concerns head on. They provided a specific schedule of implementation milestones that will ensure wireless broadband services will be deployed to at least 30 million Americans across a number of markets, both large and small. The Sprint Nextel condition will have a profound effect on the wireless landscape by resulting in an increase in broadband choice and availability across the United States.

I also pushed hard to further jumpstart wireless broadband efforts in the 2.5 GHz band by all licensees. I won an agreement for more significant safe harbors in the omnibus 2.5 GHz Reconsideration Order that we released last year. I believe this spectrum has so much potential, and we already are seeing companies provide 2.5 GHz broadband services in dozen of markets across the country. The bottom line is that if we truly want to promote the meaningful deployment of wireless broadband services, we have to make sure we have meaningful safe harbors in place.

- **The Commission needs to be more responsive to requests for waivers and other requests for regulatory guidance.**

The spectrum industry is a dynamic one. It is driven by technology and constantly changing. But despite some recent developments, I am concerned the Commission is losing its spectrum edge. My staff and I regularly hear from parties who are developing new technologies that require a waiver of our rules or are involved in ongoing proceedings, but are unable to move forward due to a lack of guidance from the Commission. Unfortunately, the list is long and

includes items like the pending petitions for reconsideration in the ESV and 3650 MHz proceedings; proposals to adopt a power spectral density-based emission limit, as an alternative to existing standards; the unresolved sharing standards between 2.3 GHz licensees and the satellite radio operators; and the roaming and rural wireless proceedings discussed above.

I do not necessarily know how all of these issues should be decided. But I do know that many of them touch on issues like wireless broadband and homeland security. That means they should be dealt with as quickly as possible. Technology in the spectrum space moves too fast to be delayed by an unnecessarily long deliberation at the FCC.

3. Digital Television Transition

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 2009?

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 two 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 750 days 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) has been successful, that may not be the best way to reach certain insular communities – communities with relatively low broadband 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.

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?

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 salesforces 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.

4. Overall Commission Policies

A. In each of the major areas of the Commission’s authority (e.g., wireline, wireless, universal service, broadcast radio and television, cable services, satellite, public safety, international), what actions, if any, do you believe the Commission should take?

- **The FCC’s primary obligation is to keep all Americans connected to each other and to public safety – no matter where they live and who they are.**

Today, we have the opportunity through technology to connect this country in profound ways. But we need to provide for all of our neighbors, including those in rural, insular and other high-cost areas, as well as Native Americans, residents of our inner cities, minorities, those with disabilities, non-English speakers, and low-income consumers. All of our citizens should have access, 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 promoting 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. 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. As the expert agency, we must find anew our voice on E911 issues to ensure that all Americans are connected to emergency responders no matter from where they are calling or which technology they are using.

In connecting American consumers with the latest technologies, we need to ensure that these same consumers are afforded the most advanced protections regarding privacy of call records, truth-in-billing, and other sensitive consumer areas. We need to move swiftly to conclude our outstanding Notice of Proposed Rulemaking (NPRM) looking at consumer protection obligations over digital broadband networks. And we should continue and expand our outreach efforts so that all consumers, including those with disabilities and non-native speakers, can continue to be an active part of this exciting telecommunications revolution.

- **The nationwide deployment of higher-bandwidth, open and neutral, broadband is critical to the success of our citizens and our country as a whole.**

As described more fully in Response 1.A., 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 falling further behind our global competitors. An issue of this importance warrants a comprehensive national strategy to ensure that affordable broadband is available for all Americans. We must redouble our efforts to encourage broadband development by increasing incentives for investment and promoting competition. A true broadband strategy would incorporate benchmarks, deployment timetables, and measurable thresholds to gauge our progress, rather than relying on conclusory statements about whether deployment is reasonable and timely.

It will 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.

In addition, we also must 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.

- **Universal service has played, and will continue to play, a vital role in meeting our commitment to connectivity.**

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 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. These are important proceedings that will greatly impact the service available in Rural America and it will be important for the Commission to consider whether proposals will create the right incentives for providers to invest in Rural America and whether they 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.

- **The Commission must measure the impact on consumers of proposals to harmonize intercarrier compensation.**

Closely related to universal service is the consideration of intercarrier compensation reform. Our current system consists of a complex set of different rules for traffic that looks very similar to the consumer. Many stake holders have argued that harmonizing the different rates could substantially reduce opportunities for arbitrage and promote a more efficient marketplace. The Commission currently has an open rulemaking looking at this issue and has recently sought comment on a reform plan (the Missoula Plan) that was filed under the auspices of the National Association of Regulatory Utility Commissioners Task Force on Intercarrier Compensation.

As we move forward with our consideration of the Missoula Plan and any alternative proposals, our touchstone must be the impact of any proposals on consumers, and not just high-volume users. If a proposal shifts substantial cost burdens to end-user consumers, as some proposals might do, we may put at risk the high levels of connectivity that we have worked so hard to achieve. And, if the Commission adopts an intercarrier compensation plan that shifts substantial

cost recovery to the universal service fund, we must be cognizant of the pressures that would put on the fund.

- **We must adopt policies that truly promote competition across telecommunications markets, particularly in the area of special access.**

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 incumbent obligations, 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.

- **The FCC must do more to promote active use of all spectrum, whether licensed, unlicensed, over satellites, or by public safety.**

Spectrum-based services can be a great driver of competition, and the FCC must do more to stay on top of the latest developments in spectrum technology and policy. 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.

I am very excited about the growth of unlicensed devices. The Commission should conclude open proceedings looking at raising the power level for these services in rural areas. We also must move forward with the TV white spaces proceeding. This spectrum presents an enormous opportunity for the unlicensed community. Of course, we need to make sure we get the engineering right to protect broadcasters and to ensure the continued success of our vibrant wireless microphone industry; but devices using the white spaces clearly are the future and their potential to promote broadband in underserved areas is very exciting.

First responders are a large user of wireless services, but are often unable to communicate with neighboring jurisdictions. We need to be more aggressive in promoting wide scale interoperability for public safety, which has been a challenge for this community and our country as a whole for some time. Recent technology developments may help solve problem, and the Commission is looking at national public safety broadband solution in the 700 MHz band. Interoperability will require creative solutions, but the results will be well worth the effort.

Satellite technology is another service that has served our country so well in recent years, and holds so much promise for the future. Fixed and mobile satellite operators have played a critical role in helping defend our country overseas while promoting important commerce around the globe and within the U.S. We should continue to explore new opportunities for satellite broadband deployment and ensure that our licensing rules do not pose a barrier for innovative services and earth station technologies. On the entertainment side, we should conclude quickly our NPRM on opening up new spectrum in the 17/24 GHz band for broadcast satellite services, the so-called “reverse band.” This is a valuable spectrum opportunity for exciting next generation DBS services – so I do not want to see the proceeding lag.

- **The central tenet of American media policy has been, and should continue to be, the public interest.**

As for the broadcast 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.” As we review the ownership rules, we should first do no harm; we should take far greater care than we have in the past before permitting any additional media consolidation. Also, to make the media landscape look and sound like America, we need to open our airwaves to community-based and minority voices, and improve minority and women ownership. The success of our review rests upon the degree to which the American people believe that their voices have been heard. Accordingly, transparency – relative to public hearings, Commission studies, and the public release of the specific rules before they are finalized – is an essential ingredient.

The FCC launched its localism proceeding in 2003 to assess whether TV and radio broadcasters were addressing and satisfying the needs of local communities. The Commission should complete its review, make real recommendations to Congress, and propose meaningful regulatory changes for public comment. This proceeding should conclude before, not after, our review of the broadcast ownership rules.

We also need to establish quantitative public interest obligations for DTV broadcasters, in exchange for their use of the public airwaves through digital technology. Technological advances should benefit the American people just as they do the commercial interest of broadcasters. The Commission should also conclude its proceeding on enhanced disclosure requirements for TV broadcasters. Both of these items have been pending since 1999.

The transition from analog radio to digital radio will also create many new and exciting opportunities for the broadcasting industry and the Commission should do everything it can to encourage it. We also need to initiate and complete a proceeding on public interest obligations of digital radio broadcasters. We should use this opportunity to foster greater localism, diversity and competition in terrestrial radio.

- **The role of cable services in the marketplace is significant, and the FCC must be careful in its oversight, particularly with regard to vertically-integrated programmers.**

The Commission should be mindful of the role of cable services in the media marketplace. In 2001, the D.C. Circuit reversed and remanded the Commission's cable 30 percent horizontal and 40 percent vertical limits. The Commission now seeks to establish reasonable limits that will enhance effective competition and protect video consumers. Accordingly, we should timely resolve the court's concerns about the cable ownership limits, and address the related rules of attribution.

The program access rules have played a key role in the development of competitive multi-channel video providers. The Commission should quickly issue an NPRM on the program access rules which prohibit exclusive contracts for satellite-delivered programming between vertically-integrated programmers and cable operators. The limitation will expire on October 5, 2007. Our examination of this issue should consider the needs of new entrants into the video market, companies that are essential to the future of video competition. The Commission should also quickly issue an NPRM on the commercial leased access rules which require cable operators to set aside channel capacity for commercial use by video programmers unaffiliated with the operator. The Commission should conclude this proceeding as soon as possible to ensure that we foster diversity in video programming sources.

- **The Commission must vigorously, and not selectively, enforce its rules.**

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.

5. Commission Process and Functioning

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?

As described in Response 1.B., the Commission must undertake serious efforts to improve the quality and scope of its broadband data collection efforts. Congress, in Section 706 of the Act, directed the Commission to make regular reports on the availability of broadband services to all Americans. As detailed above, the Commission's efforts fall far short of providing Congress the information needed to develop informed policy decisions.

- **To better meet our statutory obligations, the FCC must improve its data collection across the board, particularly with respect to competition in the telecommunications market and the availability of telecommunications services to Native Americans.**

The Commission must improve its collection of data with respect to other important statutory objectives, such as preserving and advancing universal service among Native Americans and promoting competition in telecommunications markets. Indeed, within the past year, GAO has singled out both of these areas as in need of additional data collection efforts and analysis.

With respect to promoting the availability of telecommunications services among Native Americans living on Tribal lands, GAO released a report in January 2006 noting that there is considerable variation among tribes regarding telephone subscribership rates, with many substantially below the national rate. This is an area where the Commission should do more to collect and analyze granular and more recent data on subscribership. In addition, GAO has also observed that the status of Internet subscribership is unknown because no federal survey has been designed to track this information. This is information that is critical to assessing whether broadband Internet access services are being made available on Tribal lands, in addition to whether they are available at affordable prices.

Similarly, in November 2006, GAO released a report concluding that the Commission needs to improve its ability to monitor and determine the extent of telecommunications competition for business customers. Many business customers, wholesale carriers, independent wireless companies, satellite providers, rural companies, and long distance providers rely on access to incumbent providers' services for their voice and high-speed connections. So it is notable that GAO has concluded that while the Commission uses various data to assess competition in these services, most of these have "significant limitations." Moreover, GAO criticized the Commission for only engaging in a one-time, snapshot assessment of competition, rather than undertaking any effort to revisit or update its assessments. GAO's conclusion was succinct: "without more complete and reliable measures of competition, FCC is unable to determine whether its deregulatory policies are achieving their goals."

I agree with GAO's conclusion that the Commission should develop measures and methods to monitor competition on an on-going basis that more accurately capture market developments and the availability of customer choice. Indeed, the Commission should consider development of a new series of reports focused on the "State of Telecommunications Competition" based on solid

quantitative and qualitative analysis, much as the Commission has strived to do in other areas such as wireless and video services.

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

The Commission must ensure that it administers the programs within its purview with the highest attention to preventing waste, fraud, and abuse. Two areas of particular focus for the Commission have been its administration of the universal service support mechanisms and the Telecommunications Relay Service (TRS) Fund. Given the critical role that these programs play in ensuring that all Americans have access to the most advanced services, the Commission has opened proceedings to assess their strengths and weaknesses. It is important that we strive to consistently improve our performance, while at the same time ensuring that even well-intentioned reform efforts do not undermine the effectiveness of these critical programs.

- **The Commission should be diligent in ensuring that universal service support mechanisms and TRS Fund are administered fairly and effectively.**

In July 2005, the Commission launched a broad inquiry into the management, administration, and oversight of the universal service support mechanisms. Through this inquiry, the Commission sought comment on the effectiveness of existing efforts to protect the fund against potential misuse, the effectiveness of the existing administrative structure, and on establishing performance measures to assess the effectiveness of these programs. This inquiry seeks comment on a wide-ranging set of proposals. Among the more promising options are proposals to safeguard against waste, fraud, and abuse by expanding the scope of our disbarment rule, which prohibits bad actors from participating in the program. I was pleased the item seeks comment on whether the Commission should broaden the scope of our debarment rule to encompass entities that have been found guilty of civil and criminal violations beyond those associated with our universal service programs or entities that are shown to have engaged in clear patterns of abuse of our rules. I was also pleased that the item seeks comment on applying different levels of sanctions for different violations.

The Commission, in July 2006, also initiated a comprehensive rulemaking proceeding seeking comment on the administration of the TRS Fund and on ways to prevent waste, fraud, and abuse. The relay services supported by the TRS Fund serve as vital connections for millions of Americans with hearing and speech disabilities. Without federal and state TRS services, these citizens would be left out of the vital communications networks that link our economy. I have heard from providers and consumers alike that the Commission can do more to improve its administration of the Fund and to increase awareness of these critical services.

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

Communication with the general public is essential to a healthy and vibrant democracy. With few exceptions, the decision-making of a federal agency should be transparent to inspire public confidence in policy outcomes. While the FCC does a good job in communicating with industry,

we could enhance our communication and interaction with the general public, researchers, public-interest groups and policymakers, in the following respects:

- **Improve the quality of Notices of Proposed Rulemaking (NPRMs):** The quality and specificity of NPRMs vary widely from one proceeding to the next. In every rulemaking proceeding, the Commission should endeavor to provide the public with a complete discussion of the Commission's thinking and concerns, the differing views of the majority and minority Commissioners, and the full range of viable policy options. On major proceedings, we should propose specific rules on which the public can comment, rather than merely asking broadly worded questions that give commenters little guidance as to how to recommend improvements or express concerns targeted to the proposals we are considering.
- **Permit More Peer Review of FCC Studies:** Policy debates and decision-making at the FCC increasingly turns on quantitative data analyses. As a result, the agency should invite peer review of FCC studies that will be used as a basis for policy changes.
- **Increase Public Hearings:** As the media ownership hearings have demonstrated, Americans want to be actively involved in the Commission's deliberative process. Hence, public hearings in local communities across the nation about major communications issues (i.e., broadband deployment, video franchising, and E-911) could serve as a means to educate and inform the American people, as well as giving them the opportunity for meaningful input.
- **Improve FCC Website:** The Commission's website contains a voluminous amount of information, but members of the general public, researchers and communications attorneys have suggested that there may be additional ways to improve the quality and interactivity of the FCC website, which can always benefit from continual enhancements.
- **Enhance Access to Data and Data Collection:** Some media scholars and public interest organizations have argued that the FCC has erected high barriers to access data and information. While the Commission has a statutory obligation to limit the availability of certain data and information, it should make an effort to ensure that its limits are narrowly set and that as much material as possible is made available. Information that serves as a basis for policy changes in particular should be disclosed whenever possible.