

Written Statement

of

**The Honorable Kevin J. Martin
Chairman
Federal Communications Commission**

**Before the
Committee on Energy and Commerce
U.S. House of Representatives**

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Good morning Chairman Dingell, Chairman Markey, Ranking Member Barton Ranking Member Upton and Members of the Committee. Thank you for the opportunity to be here with you today. I have a brief opening statement and then I look forward to answering any questions you may have.

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

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

These technological advances, converging business models, and the digitalization of services are creating unparalleled opportunities and considerable challenges. Faced with such fast-paced change, regulations and the Commission often struggle to keep up.

The FCC is an independent agency and a creature of Congress. Our highest priority, therefore, is to implement the will of Congress. In the Telecommunications Act of 1996, Congress instructed the Commission on how to approach such challenges. The preamble reads:

An Act to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

Preamble, Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 56 (1996). With this guidance in mind, the Commission has tried to make decisions based on that fundamental belief in promoting a robust, competitive marketplace. Competition is the best method of delivering the benefits of choice, innovation, and affordability to American consumers. Competition drives prices down and spurs providers to improve service and create new products.

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

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

Increasing Broadband Deployment

Broadband technology is a key driver of economic growth and enables almost all of today's innovations. The ability to share increasing amounts of information, at greater and greater speeds, increases productivity, facilitates interstate commerce, and helps drive innovation. But perhaps most important, broadband has the potential to affect almost every aspect of our lives. It is changing how we communicate with each other, how and where we work, how we educate our children, and how we entertain ourselves.

During my tenure as Chairman, the Commission has worked hard to create a regulatory environment that promotes broadband deployment. We have removed legacy regulations, like tariffs and price controls, that discourage carriers from investing in their broadband networks, and we worked to create a regulatory level playing-field among broadband platforms.

We have begun to see some success as a result of the Commission's policies. According to the Commission's most recent data, high-speed connections increased by 26% in the first half of 2006 and by 52% for the full year ending June 30, 2006.

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

Perhaps most importantly, the Pew study found that the significant increase in broadband adoption was widespread and cut across all demographics.

According to their independent research:

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

The average price of broadband paid by consumers also has dropped in the past two years. The Pew study found that, from February 2004 to December 2005, the average price for home broadband access fell from \$39 per month to \$36 per month. For DSL, monthly bills fell from \$38 to \$32 or almost 20%.

While the Commission worked hard to promote broadband access and affordability, there is more we can do. The Commission is committed to obtaining better information about broadband deployment and services nationwide. Since I became Chairman, we have already taken some steps to improve the information we collect and report. For instance, for the first time last year, we began reporting information regarding different speeds of broadband connections (e.g., about services offered at speeds in excess of 200 kbps).

In addition, last September, I put forward a proposal to gain an even better picture of broadband deployment in this country. This proposal asks questions about how we can obtain more specific information about broadband deployment and consumer acceptance in specific geographic areas and how we can combine our data with those collected at the state level or by other public sources. By improving our data collection, we will be able to identify more precisely those areas of the country where broadband services are not sufficiently available.

I also have circulated our fifth inquiry into “whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.” 47 U.S.C. §157 nt. In this Notice, we seek comment on all aspects of broadband availability, including price and bandwidth speeds. In particular, we seek comment on whether, given the evolution of technology and the marketplace, we should redefine the term “advanced services” to require higher minimum speeds. Between these two proceedings, it is my hope that the Commission will solicit the information necessary to better assess the competitive progress in the broadband market.

Encouraging Wireless Deployment

Wireless service is becoming increasingly important as another platform to compete with cable and DSL as a provider of broadband. To promote more choice for consumers among broadband providers, the Commission has made a significant amount of spectrum available on both a licensed and unlicensed basis that can be used to provide broadband service in municipalities, rural areas and across the nation.

The Commission is working to make available as much spectrum as possible to put the next generation of advanced wireless devices into the hands and homes of consumers. In September the FCC closed its largest and most successful spectrum auction, raising almost \$14 billion. The spectrum offered was the largest amount of spectrum suitable for deploying wireless broadband ever made available in a single FCC auction. The Commission specifically designated licenses for smaller and rural geographic areas to promote access by smaller carriers, new entrants, and rural telephone companies.

The Commission is currently preparing to auction 60 MHz in the 700 MHz band. This spectrum is also well-suited for the provision of wireless broadband and the upcoming auction represents a critical opportunity to continue deploying wireless broadband services, especially to rural communities. Again, the Commission will consider the need to provide for smaller geographic licensing areas. I also believe we should consider adopting more stringent build out requirements to facilitate broadband deployment in rural and underserved areas.

On the unlicensed side, the Commission recently initiated a proceeding to resolve technical issues associated with "white spaces" to allow low power devices to operate on unused television frequencies. And the Commission has completed actions necessary to make available 255 MHz of unlicensed spectrum in the 5 GHz region, nearly an 80 percent increase.

The Commission is also considering an order that would classify wireless broadband Internet access service as an information service. This action would eliminate unnecessary regulatory barriers for service providers. This classification also would clarify any regulatory uncertainty and establish a consistent regulatory framework across broadband platforms, as we have already declared high speed internet access service provided via cable modem service, DSL and BPL to be information services. This action is particularly timely in light of our auctions which are specifically making available spectrum for wireless broadband services.

Promoting Competition

Consumers today are benefiting from technological developments and innovation in media. DVRs, VOD and HD programming offer more programming to watch at any given time than ever before.

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

The cost of basic cable services have gone up at a disproportionate rate – 38% between 2000 and 2005 – when compared against other communications sectors. The average price of the expanded basic cable package, the standard cable package, almost doubled between 1995 and 2005, increasing by 93%. The GAO and the Commission's most recent cable price survey found that while cable does face some competition from DBS, DBS and cable do not seem to compete on price. In other words, the presence of a DBS operator does not have an impact on the price the cable operator charges its subscribers. Significantly, however, where a second cable operator is present, cable prices are significantly lower – almost 20% (\$43.33 without competition vs. \$35.94 where there is competition).

Congress recognized that competition in the video services market benefits consumers by resulting in lower prices and higher quality of services. Indeed, one of the Communications Act's explicit purposes is to “promote competition in cable communications,” and Congress expressly prohibited local authorities from granting exclusive franchises. In December of last year, the Commission took steps to implement Section 621 of the Act, which prohibits local authorities from unreasonably refusing to award a competitive franchise.

We need to continue to take steps to remove regulatory barriers to competition in the video market by, for instance, ensuring that consumers living in apartment buildings are not denied a choice of cable operators. We need to continue our efforts to create a regulatory environment that encourages entry by making sure that competitive providers have access to “must-have” programming that is vertically integrated with a cable operator.

Promoting competition and choice must continue to be a priority in the voice arena, as well. We need to continue to ensure that new entrants are able to compete with incumbents for telecommunications services. For example, we recently made clear that new telephone entrants, such as cable and other VOIP providers, must be given access to local telephone numbers and be able to interconnect with incumbents to deliver local calls to them.

Similarly, the ability to port numbers between providers is critical. Customers should not be held hostage because a provider refuses to allow a customer to transfer his or her phone number to another wireless or wireline carrier. We need to ensure that porting numbers between providers, including between wireline and wireless carriers, is as efficient as possible.

Protecting Consumers

There are times when market driven forces alone may not achieve broader social goals. And we must always be on alert for companies intentionally or unintentionally harming consumers. Among the issues the Commission is turning its attention to is the ability of unauthorized users to gain access to callers' phone records, or pretexting. As I testified before this Committee approximately one year ago, the disclosure of consumers' private calling records is a significant privacy invasion. At that time, I recommended that this practice be made illegal and that the Commission's enforcement tools be strengthened. Since then, I know that this Committee has been actively working on this issue.

The Commission has been doing its part as well. I have proposed that the Commission strengthen our privacy rules by requiring providers to adopt additional safeguards to protect customers' phone record information from unauthorized access and disclosure. Specifically, the Commission would prohibit providers from releasing call detail information to customers except when the customer provides a password. Similarly, we propose to modify our current rules to require providers to obtain customer consent before disclosing any of that customer's phone record information to a provider's joint venture partner or independent contractor.

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

Perhaps no other issue before the Commission garners more public interest than our periodic review of the media ownership rules. Critical to our review of the media ownership rules is the collection of objective facts and an open dialog with the public. We have commissioned multiple economic studies and are engaging in hearings across the country in a range of markets. The goal of these hearings is to fully and directly involve the American people in this process. We held our first hearing in Los Angeles, where we focused on the ability of independent television producers to gain access to distribution. We also held a hearing in Nashville, in which we focused on the concerns of the music industry, and in Harrisburg, Pennsylvania, in which we focused on factors relevant to media ownership in that smaller market. The Commission's efforts to collect a full public record will continue in the months ahead.

The attention devoted to the media ownership issue is not surprising. The media touches almost every aspect of our lives. We are dependent upon it for our news, our information and our entertainment. Indeed, the opportunity to express diverse viewpoints

lies at the heart of our democracy. We must balance concerns about too much consolidation and too little choice with appropriate consideration of the changes and innovation that are taking place in the media marketplace. We must make sure that consumers have the benefit of a competitive and diverse media marketplace.

At our public hearings, the Commission has heard a consistent concern that there are too few local and diverse voices in the community. Indeed diversity is one of the major principles underlying our rules governing broadcast ownership. Small and independently owned businesses can find it difficult to enter the broadcast industry due to financial and resource constraints. I have proposed several ways to better address these issues. For example, we could permit and encourage new entrants to operate broadcast television stations through voluntary arrangements with existing broadcasters. An eligible entity could lease a portion of a broadcaster's digital spectrum and obtain all the rights and obligations that accompany the operation of a broadcast television station. We also are considering other changes, such as modifying our "Equity Debt Plus" rule to facilitate the ability of eligible entities to enter into partnerships, and evaluating how our leased access rules are working.

Enhancing Public Safety

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

Conclusion

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