

STATEMENT SUMMARY: FCC COMMISSIONER ROBERT M. McDOWELL
March 14, 2007

A Record of Accomplishments

Advanced Wireless Services (AWS): Last summer's phenomenally successful auction brought in nearly \$14 billion to the U.S. Treasury and attracted participation by many types of entities – of the 104 winning bidders, 57 identified themselves as small or very small businesses, rural telephone companies, or businesses owned by minority groups or women.

Wireless Competition: The Commission's September 2006 report on wireless competition noted that wireless subscriber growth has grown exponentially and prices for wireless services have significantly declined.

Video Franchising Order: The Commission's December 2006 order paves the way for additional video competition, while striking a careful balance between establishing a de-regulatory national framework to clear unnecessary regulatory underbrush and preserving local control over local issues.

Interim changes to the Universal Service contribution methodology: The June 2006 interim changes to the Universal Service contribution methodology serve as an important first step toward broadening the Fund's contribution base to ensure equitable and nondiscriminatory support of the Fund in an increasingly digital world.

Future Challenges

700 MHz Spectrum Auction: We are currently in the process of analyzing the record and finalizing the rules for the commercial portion of this band, and our comprehensive work in this area is especially time-sensitive given Congress' recent mandate that we commence auctioning this spectrum no later than January 28, 2007, less than one year from now.

Public Safety Interoperability: Likewise, the Commission's proposal for a national, centralized approach to maximize public safety access to interoperable, broadband spectrum in the 700 MHz band is timely given that the hard date for cessation of analog broadcasting, February 17, 2009, is only two years away.

Deployment in the spectrum white spaces: We are moving forward to create the opportunity for additional unlicensed operation in the white spaces. The technology innovation spurred by the Commission's work in the white spaces proceeding plays a critical role in the in the wireless marketplace, including fostering job growth and related business opportunities.

Review of broadcast ownership rules: These rules must take into account the dramatic changes that have occurred in the media landscape in recent years and at the same time, continue to promote our long-standing values of diversity, localism and competition.

Release of digital audio broadcasting rules: 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.

Extension of Video Franchising Order to all video providers: Many of the statutory provisions we interpreted in the video franchising proceeding are generally applicable to all cable operators. Extending the relief granted to new entrants to incumbents and overbuilders will give much-needed regulatory certainty to all market players, spark investment and speed video competition.

**STATEMENT
of
COMMISSIONER ROBERT M. McDOWELL
FEDERAL COMMUNICATIONS COMMISSION**

**Before the
SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES**

March 14, 2007

Good morning Mr. Chairman and distinguished members of the Subcommittee. Thank you for providing us with this opportunity to appear before you this morning. After sixteen years in the private sector, my first nine months on the FCC have exceeded all of my expectations. I have been deeply honored to be able to serve the American people in this capacity, and with such talented and dedicated colleagues and staff.

Today is a wonderful time to be at the FCC. Revolutionary technological developments are yielding untold opportunities for newly empowered consumers to improve the quality of their lives. Similarly, new products and services are allowing businesses to improve their competitiveness and efficiency. This dynamic disruption transcends traditional regulatory paradigms. From the FCC's perspective, America's communications future has never looked brighter. Much work remains to be done, however.

Regulatory Philosophy

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

Free markets and free ideas are the twin cornerstones upon which we built America. My approach to each issue that comes before the Commission is to focus on my belief that the fundamental mission of the FCC is to promote freedom. I want consumers to have the freedom to have their demands satisfied. I want entrepreneurs to have the freedom to innovate and bring their products and services to market so they can satisfy those consumers' demands. Overall, I trust free people acting within free markets to make better decisions for themselves than those of us in government. Government should not adversely interfere with the relationships between consumers and entrepreneurs. Rather, government should try to remove barriers to entry and allow competition to flourish. I believe that the public interest is best served by following this approach.

There are circumstances, however, when the government should address market failure to further the public interest so new entrepreneurial ideas have a chance to compete in the marketplace, and succeed or fail on their own merits – and their own merits alone. Any remedies applied to market failure should be narrowly-tailored, and sunsetted, to maximize freedom for all market players.

Today, disruptive new technologies pose challenges to existing providers of products and services – and to regulators and legislators. Part of the Commission's job is to help open new windows of opportunity to provide entrepreneurs new avenues for technologies to compete in the marketplace. Given this disruption, the FCC has to adapt and make a transition from legacy regulations that govern individual industries, to more nimble rules that ensure fair opportunities for all competitors. As regulators, we must be careful to avoid inhibiting innovation and technological advances. The FCC must

continue to tear down barriers to entry and clear out unnecessary regulatory underbrush. Consumers, through the marketplace, rather than the Commission, should pick the winners. We should never lose sight of the fact that the ultimate shareholders in every endeavor we undertake are America's consumers.

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

A Record of Accomplishments

The Commission is adopting policies to encourage increased broadband deployment for the public. While America's rate of broadband deployment has more than doubled during the Martin chairmanship (from 20 percent growth in penetration per year, to 40 percent growth last year, to a current growth rate of 52 percent), we are pressing hard for greater advancements. Accordingly, we are making it easier for entrepreneurs to construct new delivery platforms more quickly. Furthermore, our policies are paving the way for the owners of existing platforms to upgrade their facilities. The resulting new surge in capital investment will stimulate our economy and will give American consumers new tools to strengthen their freedom by enhancing their ability to choose.

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

Last summer, the Commission completed an auction for spectrum for Advanced Wireless Services (AWS) in the 1710-1755 and 2110-2155 MHz bands, which are ideal for the delivery of bandwidth-intensive wireless applications. This auction was phenomenally successful and brought in nearly \$14 billion to the U.S. Treasury. The Commission's action to establish a broad array of market sizes for AWS licenses attracted participation by many types of entities. 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. Wireless growth is rising rapidly due to robust competition and technological innovation. What was unimaginable just ten years ago is now part of the daily routine of tens of millions of Americans. Innovative broadband services using advanced technologies allow customers to use new multimedia phones to watch TV, download songs, receive information and access content, such as sports, news and weather, at broadband speeds. I am committed to providing meaningful opportunities for entities of all sizes to bring their bold and innovative products and services into the dynamic wireless marketplace.

Over the last 13 years, since the Commission issued its first Wireless Competition Report, wireless subscriber growth has grown exponentially, and competition among numerous providers has flourished. The overall wireless penetration rate in our country is now at 71 percent. Furthermore, our report estimates that revenue per minute (RPM) declined 22 percent last year alone. RPM currently stands at \$0.07, as compared with \$0.47 in December 1994 – a decline of 86 percent. (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.

The Video Franchising Order the Commission issued earlier this month advances the pro-consumer goals of enhancing video competition and accelerating broadband deployment. The order strikes a careful balance between establishing a de-regulatory national framework to clear unnecessary regulations, 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, 154(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 regulatory relief as we did with this order.

Although I would have liked to have provided the deregulatory benefits granted to new entrants to all video providers, be they incumbent cable providers, over-builders or others, the record in this proceeding did not allow us to create a regulatory parity framework just yet. I am pleased that the Commission has committed to release an order addressing parity for all cable competitors no later than six months from the release date of the Video Franchising Order.

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

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

Universal Service is intertwined with intercarrier compensation. We have to reform the current access regime; otherwise, it won't survive. I believe that all carriers should be compensated for the costs of carrying others' traffic on their networks. We have received comments on the "Missoula Plan" that was submitted by a NARUC Task Force last June. I look forward to reviewing those comments. We need to step back and see how competition and technology are changing the marketplace and examine where the current regime is in need of reform. We also need to promote efficiency, competition and technological innovation. It will be a long, cooperative process, but I look forward to working with all interested parties on this challenge.

Future Challenges

During this year in particular we have our work cut out for us. We are currently in the process of analyzing the record and finalizing the rules for the commercial portion of the 700 MHz spectrum band, which is well-suited for wireless broadband applications. The results of last summer's AWS auction, discussed above, provide good guidance as we design the band plan and implement the rules for the 700 MHz auction. I hope to be able to enhance and improve upon the positive aspects of the AWS auction to provide a second meaningful opportunity for participation in the 700 MHz auction. Along these lines, I am pleased to consider a draft order that proposes to classify wireless broadband Internet access service as an information service, which would clarify any regulatory uncertainty with respect to wireless services, including those utilizing the 700 MHz band.

Our comprehensive work in this area is especially time-sensitive given Congress' recent mandate that we commence auctioning the commercial 700 MHz spectrum no later than January 28, 2008, less than one year away. I am hopeful that we will complete our work this spring.

In addition, I am pleased that the Commission acted in December to seek public comment on a proposal for a national, centralized approach to maximize public safety access to interoperable, broadband spectrum in the 700 MHz band. I expect that this discussion will enhance the ongoing dialogue regarding partnerships among the public safety community and the commercial wireless industry, which is important given Americans' high expectations for reliable communications and effective coordination among emergency personnel as they undertake day-to-day activities and in crisis situations. As Congress recently mandated that analog broadcasting cease in the 700 MHz band (including the 24 megahertz of spectrum it reserved for public safety) no later than February 17, 2009, it is important that we complete our work in this proceeding as soon as possible.

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

Moreover, I am pleased that our timetable aims to ensure that new consumer equipment for these bands will be market-ready as soon as possible.

I am excited about our work to prepare for the 700 MHz auction, public safety's forthcoming access to the 700 MHz band, as well as future deployment in the white spaces, because I am hopeful that the competitive opportunities presented by these proceedings will broaden the ability of 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.

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

I look forward to continuing our review of competition and the effects of consolidation among traditional media companies, as well as the emergence of new

competing services. I also am eager to attend more field hearings around the country to learn more about competition, diversity and localism from the perspective of people with first-hand knowledge of the realities of their local market – be they consumers, broadcasters, programmers, artists, economists or academics. With respect to diversity, I am particularly concerned about the dearth of female and minority owners of broadcast properties. I anticipate learning more about the causes of this situation, especially as compared with other industries requiring similar amounts of capital investment.

Hopefully, the Commission soon will release rules 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 believe 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 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, both incumbents and overbuilders. Many of the statutory provisions we interpreted in the video franchising 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. 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.

Conclusion

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

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