

**PRE-HEARING QUESTIONS
FROM
THE COMMITTEE ON ENERGY AND COMMERCE, SUBCOMMITTEE ON
TELECOMMUNICATIONS AND THE INTERNET**

**RESPONSES OF
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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?

America's record for expanding affordable, accessible, and robust broadband falls well short of where we need to be as a country. The United States is 15th in the world in broadband penetration according to the International Telecommunications Union, and according to its more nuanced digital opportunity index, we are 21st. With broadband being a critical engine of our economy, our educational system and future technology, this is twenty rungs too low. Our poor broadband standing not only impacts our daily lives, but it has real business, competitiveness consequences as well. Right now, most Americans pay twice as much for broadband connections that are one-twentieth the speed of some countries in Asia and Europe. How can we expect our small businesses to compete in a digital economy or students to enter the digital classroom at dial up speeds?

Our desperate need is a national broadband strategy built upon a more in-depth and granular analysis of the deployment of broadband in this country. The FCC generally defines broadband at unacceptably low speeds (200 kbps) and concludes that broadband is available for an entire ZIP code area if one person within that ZIP code has access to broadband (a level of granularity criticized by the Government Accountability Office last year). We should be obtaining more specific data on the price, speeds, availability, and adoption of broadband throughout America, including rural and urban areas, tribal lands, our disability communities, and our seniors. We should also take a careful look at how other countries are meeting their broadband challenges. Undoubtedly one size does not fit all, but I am convinced we can learn much from the experiences of those abroad. And we should look at what is and is not working in our own communities. Strategies like municipal wireless, Wi-Max, use of the TV white spaces, and changes to universal service funding are certainly worth assessing and considering.

Finally, the solution to our broadband crisis must ultimately involve public-private partnerships like those that built the railroad, highway, and telephone systems in previous years. Combined with changes to our universal service system to make sure it is

focusing on our broadband needs, this represents our best chance at recapturing our leadership position.

- 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?

Section 706 of the Telecommunications Act directs the Federal Communications Commission to encourage the deployment of advanced telecommunications capability—broadband—to all Americans. It has been over two years since the Commission issued its last 706 report. We should be issuing more and better reports on broadband in this country. To start, we need better statistics that no longer use our outdated 200 kpbs definition of broadband and that do not measure deployment based on availability of broadband within a ZIP code. We should be looking at how broadband adoption and availability is related to income, race, geography/tribal lands, and other important variables in order to determine the types of difficulties different stakeholders are facing in obtaining affordable broadband. We also need to start collecting information on the price of broadband and the degree of broadband competition on a significantly more granular level.

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?

The commercial mobile industry is a dynamic industry which has had many positive things to report during the past five years, including growing subscribership and increasing minutes of use. At the same time, we saw the number of nationwide carriers drop to four in 2006. There has also been a significant drop in the number of markets with five or more carriers during the past few years. I believe we must remain ever vigilant to ensure that the benefits competition has brought to consumers do not evaporate.

In addition, I remain concerned about the effects arising out of the cross-ownership of wireless and wireline companies. In this era of convergence, we often hear that new technologies will bring competition to markets currently dominated by incumbents. But what happens when the same company or companies dominate both the new and the old markets? Will a parent company really allow a subsidiary to introduce products that cannibalize existing revenue streams? I expect that this issue will become increasingly important in the wireless industry—especially with the next generation of broadband services.

- 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”?

The Commission can meet these statutory objectives by creating both geographically large and small auction areas in specific services, thereby providing opportunities for small and rural carriers. In addition, our Designated Entity program plays a critical role in ensuring that smaller carriers have a fighting chance to obtain spectrum resources. We took action to offer diverse license sizes and to strengthen our DE rules in this past summer’s auction of valuable AWS spectrum—and raised nearly \$14 billion for the U.S. Treasury. As we head toward the upcoming 700 MHz auction, we should consider similar small license areas to provide opportunities for small and rural competitors to participate.

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

We operate under an important statutory obligation to bring the benefits of spectrum-based services to rural America. On the licensed spectrum front, we have an ideal opportunity to do that if we can create the right band plan and license area sizes for the upcoming 700 MHz auction.

I also believe we should be trying to free up more spectrum for unlicensed uses. Unlicensed spectrum has been a hotbed for innovation. Spectrum once used for things like garage-door openers is now connecting us to the Internet. Unlicensed spectrum reduces barriers to entry and provides opportunities for entrepreneurs to introduce new technologies. That is why I am supportive of our decision to authorize operation in the TV white spaces, provided of course that we can adequately protect existing users of the band.

Finally, I believe we should be encouraging innovative new ideas like “smart radios” and government-commercial spectrum sharing. These next-generation technologies and partnerships hold the promise of greatly expanding the capacity and usefulness of our nation’s finite spectrum resources.

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 of 2009?

I believe the Commission needs to confront head-on the significant consumer confusion that exists in this area. We should be working to ensure that every customer understands what the February 2009 date will mean for his or her viewing options. We should strive to let every consumer understand how his or her buying decisions between now and then will affect those options. I appreciate the actions taken by the agency to date, including our Consumer and Governmental Affairs Bureau reaching out to state, local, and tribal governments and public service organizations, as well as its efforts in

creating a DTV website (www.dtv.gov), Shopper's Guide and DTV Tip Sheet. But if we are going to succeed here we have to do more. We need to be working closely and cooperatively with NTIA and with the consumer electronics industry to ensure that we get the word out to every American as early as possible. Consumer education and outreach have not always been at the core of this agency's mission—but with the digital transition only two years away, the time to make it a priority is now.

- 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?

Consumer education and outreach are indispensable in gaining consumer acceptance of DTV. Responsibility for this outreach lies with both the Commission and the most affected industries. Another—and critically important—step we could take is to revive some of our long dormant inquiries into the public service obligations of TV and radio broadcasters after the digital transition. I believe that resolving these questions as soon as possible will help consumers understand the benefits of going digital, which will in turn allow them to make the appropriate buying decisions in advance of the transition. In addition, we should be bringing the parties together and encouraging the development of such practices that will bring needed consumer information to buyers before they become owners. It's the right policy; it is also, I believe, good business.

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?

Wireline and Universal Service. Universal service is a critical pillar of the 1996 Act. My overriding objective as an FCC Commissioner is to help bring the best, most accessible, and cost-effective communications system in the world to *all* of our people, including those who live in rural and urban communities, those who live on tribal lands, those who are economically disadvantaged, and those with disabilities. We have to modernize our system of universal service. Indeed, having access to broadband is becoming just as important in the 21st Century as having access to basic telephony was in the 20th Century. We therefore need to update the way both contributions and distributions are determined in order to stabilize the fund and ensure that the goals of universal service in a broadband world are realized.

Promoting competition is another pillar of the 1996 Act. The FCC should do more to promote competition for all telecom services. As just one example, we need to complete a long-pending proceeding on the special access market. The Government Accountability Office recently cited serious concerns over the lack of competition in this market. Further, as more wireline services are classified by the Commission as Title I services, the Commission needs to address important questions about such things as consumer protections, disabilities access, and privacy, to name a few. There are other

challenges to be addressed as well, including phantom traffic and inter-carrier compensation.

Wireless. First and foremost, we need to address the concerns of the public safety community about interference, interoperability, and other issues. This means completing the 800 MHz rebanding process in a timely and just fashion and fulfilling our statutory responsibilities to implement Emergency Alert System regulations as required by the SAFE Port Act of 2006.

In addition, we need to focus on the suite of pending issues raised in the 700 MHz band. In December, the Commission adopted an NPRM proposing an inventive public safety model—the creation of a nationwide, interoperable broadband public safety communications network in the 700 MHz band. While I have some concerns with government-commercial sharing of public safety spectrum, given the long-standing need for reform in this area we simply cannot afford to ignore innovative ideas that could potentially revolutionize existing public safety spectrum management.

For commercial carriers and their customers, the upcoming 700 MHz auction is very important because it will increase competition in the markets for broadband access, especially in rural areas. It is critical that we get 700 MHz service and auction rules right because we may never again have this opportunity, with spectrum with these propagation characteristics, to facilitate the provision of wireless broadband nationwide. We also need to complete our TV white spaces proceeding in time for the digital TV transition, if not before. The need for a “first pipe” to rural America and a “third pipe” in urban America is among the most pressing issues in telecommunications. I believe that use of the TV white spaces will have a substantial impact in driving broadband penetration and lowering broadband prices—and I look forward to the day when consumers can make full use of this promising spectrum.

Broadcast Radio and Television. I believe the time has come for the Commission to think creatively and broadly about how to restore the public interest to the public airwaves. The future of American media is deeply linked to the future of American democracy. When used for good, media enlightens minds, conveys powerful ideas, educates and lays the foundation for human development. But when media is used to mislead and misinform, it can—it does—inflict lasting harms.

To begin with, the Commission should resolve its periodic consideration of its media ownership rules in a way that preserves the fundamental values of localism, diversity, and competition. As I have often stated, I do not believe that the wave of media consolidation we have seen in the past decades has served America and American democracy very well. While I understand the significant economic uncertainty that some broadcasters face, I also believe that we need to make sure that we approve ownership structures that reduce local influence over local programming only when absolutely necessary. We also should not seek to encourage or permit any reduction in diversity of ownership without a truly compelling and specific reason to do so. And finally we should be taking every step within our power to reverse the unacceptably low representation of women and minorities among the ranks of station owners.

At the same time, I believe the Commission must not restrict its consideration of broadcasting and the public interest only to issues of ownership. We also need to think about how our rules—and the changes to those rules that have occurred over the decades—have affected the value of broadcasting to the American people. I believe it is time to open a new conversation about what the American people expect from their broadcasters and what the Commission should be doing to make sure they get it. For this reason, I am pleased Chairman Martin has committed to completing our localism proceeding before moving forward with our ownership proceeding. Going beyond that, we must find ways to bring basic public interest standards back to broadcasting and the spirit of public interest to other media too. Finally, the process of debating the future of the American airwaves should be as open, transparent, and inclusive as possible—after all, the airwaves belong to the American people and they should have a major say in how those airwaves are used.

Cable services. The Commission should establish policies that increase consumer choice, allow independent programmers to compete in the marketplace, and lower the monthly bills that American consumers pay for video services. I believe that bringing additional entrants into the video services market is an important way to encourage all these goals. However, even as the Commission seeks to enable vigorous competition, we need to preserve the important role that states and localities have traditionally played in regulating video services. We need to make sure that local authorities continue to be able to ensure the availability of improved video services for all members of their community. We also need to make sure that they retain the ability to support and require Public, Educational and Governmental (PEG) programming.

The Commission also needs to address competitive issues arising from the substantial vertical and horizontal integration in the industry. This means completing our cable ownership cap proceeding, as well as initiating and resolving rulemakings involving program access, the program access complaint process, leased access, and program carriage.

Satellite. The satellite industry made significant contributions in maintaining and re-establishing communications in the wake of Hurricane Katrina. And as I've said, I'm eager to see if satellites can play an even more prominent role in the public safety and homeland security area. To do this, the Commission must first ensure that our present policies don't interfere with the satellite industry's ability to be a powerful homeland security and public safety partner. The Commission needs to continue to provide more certainty that satellite spectrum will remain satellite spectrum. We also need to make efforts to ensure that internationally harmonized spectrum isn't used for other purposes because such harmonization was won only after hard battles. I am pleased that we recently provided additional spectrum to mobile satellite services in order to bolster their ability to provide sustainable and survivable communications.

Public Safety. The safety of the people must always be the first and foremost responsibility of government. It has been over five years since the tragedy of 9/11 and over a year and a half since Hurricane Katrina, and we know this: America is not as

ready as it could be and should be for the next attack or natural disaster, whenever that awful day should come. I commend Chairman Martin for making this a priority since he became Chairman and for establishing the new Public Safety and Homeland Security Bureau last year. But much remains to be done.

Our charge now is to make sure the new Bureau has the resources – including staff and budget – to do the work we need it to do. Part of that work is acting as a clearinghouse for ideas and proposals to address public safety. Every jurisdiction, first responder, and health care facility should not have to start from scratch in devising a plan when others have tried many different solutions, some of which worked, some of which didn't. They should be able to contact an FCC that has collected the best practices of others so they can profit from these experiences. Tremendous effort, time, maybe even lives, could be saved through such Commission action. The new Bureau has started down this road but to do it right will take resources and ongoing commitment.

International. The Commission should continue to work with our counterparts internationally to improve the transparency of foreign regulatory regimes and to promote pro-competitive regulatory regimes that increase services and decrease prices to consumers globally and in the United States. Particularly, we should continue to expand and improve our relationship with our regulatory counterparts in Mexico and Canada. Our cross-border relationships in the areas of digital television and public safety radio services are critical to Americans living in border communities.

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 above, the Commission should undertake to collect and analyze on a more granular level the industries that the Agency oversees. The Government Accountability Office last year concluded that the FCC's broadband statistics are lacking. More granular data on broadband speeds, adoption, prices, and types of competition are essential to developing a national broadband strategy. With respect to commercial mobile services, we really need to develop new methods to measure coverage in rural areas, rather than assuming that if one part of a county (such as an interstate highway) receives coverage, then every part of the county receives coverage. The Commission has 2,000 of the most talented communications experts in the country and we should be calling on them more to collect and analyze this data and to report to Congress more regularly on different policy options and what is and is not currently working.

The FCC also needs to substantially improve its data and research on media ownership. Currently, the FCC does not have reliable data on the degree (or lack) of ownership of TV and radio stations by minorities and women, nor does it publicly release summary information on the number and type of license transfers that have occurred over the past few years. Moreover, the agency conducted and sponsored media research during the last ownership proceeding that was not peer-reviewed and which suffered from a number of fatal methodological flaws. In order to give its current media ownership

proceeding credibility and in order to produce a result that will benefit the American people, I believe the agency needs to take all available steps to ensure that the 10 studies it has recently contracted for are independent, peer-reviewed, rigorous, and transparent.

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

The programs and policies the Commission administers are important for many reasons, including bringing the wonders of telecommunications to those who live in rural areas, on tribal lands, or in our inner cities, to those who have limited incomes or disabilities, and to schoolchildren and rural health care providers. The importance of our programs means they require regular review and care. The Commission can always stand to improve and enhance its oversight. It should conduct and complete rulemakings to strengthen our administration of current programs. The agency should have effective audit programs with the resources they need to complete audits that have real consequences for any bad actors who abuse good programs. The agency also should review whether it is receiving all of the necessary documentation it needs to identify waste, fraud or abuse in any program and that the record retention requirements for participants are sufficiently long to permit timely and thorough investigations of wrongdoings.

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

From the time I came to the FCC nearly six years ago, I have said that communications is the business of us all. Every great department and agency of government has a traditional group of stakeholders and their input and counsel are critically important to the success of that department or agency. Industry is obviously an important stakeholder in this work. But in communications, *every* American is a stakeholder, because each of us is affected in so many important ways by our communications systems. Our freedoms, our diversity, and our values all come into play. So it is essential for commissioners and the FCC to reach out to non-traditional stakeholders as well as traditional ones, to ensure that Commission decisions do indeed reflect the public interest. I have tried to do this in the last six years meeting with seniors, Native Americans, the disability community, rural Americans, minorities, and many others across the country. For example, in the last year alone, I have attended a dozen media ownership hearings to solicit as many viewpoints as possible. The Commission needs to do more of this. It should hold a number of its formal monthly meetings outside of Washington, DC each year. I appreciate the outreach efforts the Bureaus are engaged in, however, there is always more that can be done to improve these efforts.