FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 19, 2009

The Honorable Henry A. Waxman, Chairman
Committee on Energy and Commerce
United States House of Representatives

The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce
United States House of Representatives

Dear Chairman Waxman and Ranking Member Barton:

Enclosed please find a response to the recent report of the Majority Staff of the Committee on Energy on Commerce.

Sincerely,

Kevin J. Martin

Response of FCC Chairman Kevin J. Martin to
Majority Staff Report of House Energy and Commerce Committee

I am writing to respond to the allegations and conclusions contained in the Majority Staff Report that was publicly released on December 9, 2008. In my view, the Majority's report ignored relevant information, contained numerous errors and lacked substance.

It is critical to note that the Majority staff did not find any violations of rules, laws or procedures. In fact, I followed the same procedures that have been followed for the past 15 years by FCC Chairmen, both Democratic and Republican alike. Additionally, in nearly all of the instances cited in the report, I acted to put the interests of consumers ahead of those of the industries we regulate. For example, I make no apologies for my commitment to ensuring that deaf and hearing impaired Americans have equal access to communications services and for advocating on behalf of consumers who have seen their cable bills more than double over the last decade. Indeed, most of the criticisms contained in the Majority Staff Report reflect the vehement opposition of the cable and wireless industries to my policies to serve and protect consumers.

I feel it is necessary to respond to and correct many of the staff report's errors and mischaracterizations.

Telecommunications Relay Services (TRS)

The Majority staff alleges that under my chairmanship the Commission spent too much money in order to provide telecommunications services to the deaf and disabled. I disagree. I believe it is in the public interest to ensure that the disabled are able to participate in 21st Century communications and take advantage of changes in technology. Therefore, I have consistently advocated initiatives to expand the ability of people with disabilities to access communications services.

The issue discussed in the Majority Staff Report concerning the amount of compensation received by providers of video relay services (VRS) primarily involves a policy difference. Specifically, while the Majority Staff Report claims that the TRS Fund is only supposed to compensate providers for their marginal costs of providing service, the Commission rejected that interpretation of the statute long before I became Chairman and instead interpreted the statute to allow for the reimbursement of additional costs, such as those for installation, equipment and long distance calls. The Commission, as far back as Chairman Kennard, interpreted the reasonable cost language of the statute as including more than the Majority staff referred to as marginal cost. And the basic cost rules were adopted without dissent under Chairman Powell.

I appreciate that the Majority staff may disagree with the Commission's interpretation of the statute and believe instead that deaf individuals should be required to pay for such costs. But a fair examination of the issue would recognize that this disagreement is with the Commission, rather than me personally, and has little to do with

reimbursement decisions for TRS made in recent years. The Majority Staff Report also omits several critical facts regarding the Commission's recent decision setting compensation rates for video relay services (VRS).

First, contrary to the Report's implication, compensation rates for VRS have gone *down* rather than up during my tenure. When I became Chairman, the compensation rate for all VRS providers was $7.293 per monthly minute of use. As a result of reforms instituted during my time as Chairman, the rate now applicable to the largest VRS providers (in terms of monthly minutes of use) has been lowered to $6.30 per monthly minute of use, a decrease of more than ten percent. To be sure, as reflected in the Report, one CGB staffer believed that VRS compensation rates should be lowered even further. However, many advocates for and members of the deaf community personally contacted me and expressed strong opposition to further cuts in funding for VRS, arguing that such cuts would be "devastating"[1] to deaf individuals and would "effectively cut[] VRS availability for the deaf."[2] In fact, the Commission received thousands of e-mails objecting to further cuts, and many of these e-mails were produced to the Committee. Given my commitment to expanding communications services for disabled Americans, I was unwilling to risk harming deaf individuals by instituting the drastic rate cuts advocated by the CGB staffer quoted in the Report.

Second, the Commission *unanimously* adopted the Order in question setting rates for VRS, and no information regarding VRS providers' expenses was withheld from Commissioners in making that decision. Indeed, on July 19, 2007, as documented in records provided to the Committee, the Consumer and Governmental Affairs Bureau (CGB) provided Commissioner Copps's office with detailed projections regarding providers' costs as well as the amount of profit that would be earned by the largest provider, Sorenson, under various proposals.[3] Similarly, on October 15, 2007, as documented in records provided to the Committee, CGB provided Commissioner Adelstein's office with information concerning Sorenson's actual cost of service.[4] Notably, after receiving this information, both Commissioner Copps and Adelstein voted for and praised the Order in question.[5]

Moreover, it should be noted that the staffer in question believed that the "only solution" to the problem he identified was to adopt an "entirely new approach," and he stated that the only approach that could have been implemented absent Congressional

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[1] See Appendix, Attachment 1.

[2] See Appendix, Attachment 2.

[3] See Appendix, Attachment 3.

[4] See Appendix, Attachment 4.

[5] *See, e.g., id.* at 20193 (Statement of Commissioner Copps) (by adopting tiered-rate approach for VRS, "the Commission encourages competition for services while recognizing that there are efficiencies when larger providers have achieved economies of scale"); *id.* at 20194 (Statement of Commissioner Adelstein) (noting that Order addresses variety of open questions about compensation rates for VRS and other services and commending Chairman and Consumer and Governmental Affairs Bureau for their "efforts to improve our management of the fund through this Order").

action was to require deaf users to pay for VRS services. In particular, he argued that deaf customers should be required to pay "for equipment, installation, maintenance, extra call features, [and] long distance."[6] I disagreed with this conclusion and stand by my decision not to impose new charges on deaf Americans.

FCC's A La Carte Report and Annual Video Competition Report

While the Majority staff criticizes me for being heavily involved in the production of a report ("the Further Report") that pointed out mistakes made in an earlier Media Bureau report on a la carte cable prices and attempting to manipulate data in order to give the Commission greater regulatory authority to promote competition and diversity, the Majority Staff Report sets forth an incomplete picture of the internal processes that produced both reports and is entirely disinterested in whether the reports themselves were factually accurate. I have consistently advocated for both greater competition in the cable marketplace as well as more consumer choice in picking programming packages.

A La Carte Report

Turning to the A La Carte Report first, the report does note that the initial A La Carte Report "was not required by statute or regulation" and it "was not circulated to the full Commission for review, but was issued at the direction of Chairman Powell." There was no requirement or expectation that the report be put out for public comment or approved by the full Commission. The Further Report criticized by the Majority staff was produced by Commission staff under the same circumstances and adhering to the same process as the initial A La Carte Report.

The Further Report was produced by Commission staff to correct a mistaken calculation and the unsupported problematic assumptions in the initial A La Carte Report. The mistaken calculation I am referring to was not an obscure or minor error but was a mistake that went to the heart of the Initial Report's conclusions. Specifically, the report made a mistake in calculating the number of channels that the average consumer would receive without an increased cable bill under a la carte.

In a letter to the Commission's Chief Economist prior to the issuance of the Further Report, Booz Allen Hamilton (which produced the data on behalf of the cable industry that also formed the basis of the Initial Report,) acknowledged, "revenues from the broadcast basic tier should have been excluded from the operators video average revenue per user (ARPU) before calculating the average cost per channel under a la carte." Thus, both BAH and the Initial Report overstated the cost per channel leading to an incorrect conclusion that consumers would pay more for fewer channels under a la carte. Just correcting this one mathematical error changed the basic finding of the Initial Report. When the price per channel was accurately calculated, in three out of the four scenarios examined by BAH, consumers fared better under a la carte. The Further Report did not conclude that every consumer would pay less for cable under a la carte. Rather it

[6] House Report, Exhibit 4 at 2.

concluded that given greater choice in the purchasing of channels, consumers would have the option to pay less (and often would pay less). I stand by that conclusion.

The Majority Staff Report also ignores the findings of Congress's own experts. The Congressional Research Service agreed there were significant problems with the BAH study and the initial A La Carte Report. Specifically, CRS points to the same issue addressed by the Further Report; the "breakeven" number of channels a consumer could buy without seeing an increase in their cable bill. CRS concludes, "[I]t may well be that the Booz Allen study and the Initial report overstate the negative impact that a la carte pricing may have on both program networks and operators and, hence, the extent to which that effect might raise a la carte prices. It is not possible to estimate how significant this overstatement might be, but it suggests that the 'breakeven' number of a la carte networks might be greater than indicated by the Booz Allen Study or the Initial Report." CRS goes on to note that corrections to the BAH study have yielded "significantly lower a la carte prices."

According to CRS, "Booz Allen's pessimistic projection that half to three quarters of emerging networks would fail, which is based in part on inflated $4 to $5 a la carte prices, appears to be an overstatement." The Majority Staff Report accuses me of being outcome driven, claiming that "the outcome of the new report was predetermined," but took no issue with the Initial Report that was based almost entirely on inaccurate data supplied by the cable industry, which certainly had a significant interest in influencing Congress. It is also surprising, given the error acknowledged by Booz Allen and CRS, that the Majority Staff Report claims that Media Bureau staff believed that the Initial Report "contained what they believed to be the best analysis of the issue." This is clearly not true, and had the Majority staff conducted a complete examination of the record, it would have revealed that both Media Bureau staff as well as the Commission's Chief Economist recognized that there were several problems with the Initial Report.

The Majority Staff Report also selectively quotes from e-mails in order to create the misleading impression that the conclusions of the Further Report were manipulated over the objection of staff. In particular, while the Majority staff makes it appear as though Catherine Bohigian told Media Bureau economist Daniel Shiman to stop working on the Further Report because she disagreed with his conclusions, further e-mails reveal that such an impression is entirely inaccurate. Namely, they indicate that there was no disagreement between Ms. Bohigian and Mr. Shiman and that Ms. Bohigian directed him to keep working ("OK, please work with Sarah on the consquences/conclusions. Thanks for all the hard work.").[7] The Majority staff also distorts the substance of Mr. Shiman's views on providing consumers with a wider range of choice of programming packages. For example, while the Majority staff accurately notes that Mr. Shiman voiced the view that "pure a la carte would most likely raise cable bills, with fewer channels delivered," it omits Mr. Shiman's further view that he was "much more optimistic about the impact of mixed bundling, which allows MVPDs to continue offering bundles at a good price if

[7] See Majority Staff Report, Exhibit 11.

consumers want it, and of the themed tiers and limited a la carte (i.e., flexible small bundles."[8]

Annual Video Competition Report

In enacting the Cable Television Consumer Protection and Competition Act of 1992, Congress sought to promote video competition. Competition benefits consumers by delivering lower prices and better services to consumers. In particular, Congress was concerned that cable operators were not subject to sufficient competition and that they could therefore exercise market power to the detriment of consumers and independent programmers. Congress thus sought to provide the Commission with greater regulatory authority in the event that future developments provided cable operators with greater market power. Specifically, if the 70/70 test set forth in section 612(g) of the Communications Act is met (meaning that cable systems with 36 or more channels are available to more than 70 percent of American households and are subscribed to by more than 70 percent of households to which such systems are available), "the Commission may promulgate any additional rules necessary to promote diversity of information sources."

Unfortunately, Congress's concerns about the exercise of market power by cable operators has proven to be well-founded as cable subscribers have seen their bills double over the last decade. I therefore remain concerned that there is insufficient competition in the video market and that consumers are literally paying the price.

The Majority staff's assertions that I relied on "weaker" data and "withheld" other data from the other Commissioners in the development of the 13th Annual Video Competition Report is not consistent with the facts. I did not "manipulate" data in the draft report that I circulated to the other Commissioners but rather used the data I considered to be most reliable to determine the level of competition in the cable industry.

In determining whether the 70/70 test has been met, the Majority staff itself notes, "There is nothing in the relevant statute or regulations that requires the FCC to use any particular data in assessing the level of competition on the cable television industry." And in my public statement at the time the report was adopted and in a letter to Ranking Member Barton, I provided a detailed explanation of why I felt data from Warren Communications to be best.[9] In my letter I noted, "the Commission has used Warren's data for its 70/70 calculations since we started reporting on these benchmarks in the Tenth Annual Report." I went on to explain that "we rely on Warren data because it provides information on subscribers and homes passed for cable systems with 36 or more channels," the specific statistics necessary to determine whether the 70/70 test set forth in section 612(g) has been met. Similarly my public statement noted, "We rely on Warren data because it provides information on subscribers and homes passed for cable systems with 36 or more channels as specified in the statute. In addition, Warren collects its data

[8] See *id.*

[9] See Appendix, Attachment 5.

directly from cable television operators or individual cable systems to create a large database of cable industry information." I strongly disagree with the Majority Staff Report's characterization of the Warren data as being "weaker" as does the cable industry itself. Indeed, NCTA argued to the Commission in years past, "Warren's TV Factbook and online database, not the Commission's Form 325 data, is relied upon by businesses and researchers for system-specific information about the cable industry."[10] In addition, in 2003, the first year the Commission addressed whether the cable industry had met the "70/70" test, the Commission relied solely on Warren Communications data to determine that the test had not been met.

The Majority staff criticizes the draft video competition report because it excluded data from Kagan, Nielsen, the Cable Price Survey and the Commission's Form 325. As I explained publicly at the time, however, Kagan and Nielsen, unlike Warren, do *not* report data for cable systems with 36 or more channels which are the systems Congress directed the Commission to examine. Thus, neither company provides the precise data we need to perform the calculation specified by the statute. Moreover, the Kagan estimate regarding the number of households passed by cable, 113,600,000, is greater than the U.S. Census Bureau estimate of 109,450,000 total households. As a result, while the Commission has cited Kagan data in previous Video Competition reports, it has always been clear that it should be used merely as a trend indicator, rather than as a precise estimate for any particular year.

Similarly, there are significant limitations to data derived from the Commission's Cable Price Survey and Form 325. These two sources represent extremely small samples and therefore cannot be relied upon for the purpose of determining whether the 70/70 test has been met. The Commission currently sends questionnaires to only 781 cable systems for its Price Survey (representing only 10.2% of the total 7,634 systems in our database) and collects Form 325 data from approximately 1,100 cable systems (representing only 14.4% of the total 7,634 systems in our database). In contrast, Warren sends questionnaires to all 7,090 cable systems, and states that it has data representing more than 96% of all cable subscribers.

Additionally, the Majority criticizes that all other data was withheld from the other Commissioners until the night before the Video Competition Report was scheduled for a vote. **Rather than being "withheld" from the other Commissioners, the simple fact is that no other Commissioner requested the other data until the night before the vote. Despite the fact that they had the draft item for consideration for several months, it was only the night before the vote that any Commissioner first asked to see the other data.** Had the other Commissioners asked for the other data earlier, they would have received it promptly (as they did when they asked for it the night before the meeting).

Moreover, in the draft report that was circulated, I explicitly included an explanation as to why the Warren data was more reliable than the Kagan data.

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[10] NCTA Comments at 7, CS Docket 98-61 (filed June 30, 1998).

Specifically, footnote 94 stated "[w]e note that Kagan, unlike Warren, does not report data for cable systems with 36 or more channels and thus does not provide the precise data we need to perform the calculation specified by the statute. We also note that the Kagan estimate regarding the number of households passed by cable, 113,600,000 is greater than the U.S. Census Bureau estimate of 109,450,000 total households. As a result, we find the Warren data to be more reliable in this regard."

I have already responded to Congress many times on this issue. In particular, I have acknowledged, in a letter to Chairman Dingell, that"[i]n retrospect, given the controversy, I should have included in the item a more detailed explanation of why I believed Warren data was more reliable than other sources we have cited in the past or that were submitted in the record."[11]

NRIC Advisory Subcommittee Report on 911 Services and Hatfield Report on Enhanced 9-11 Services

The Majority staff report alleges that my office suppressed a report produced by subcommittee 1B of NRIC, which was charged with recommending improvements to emergency and Enhanced-911 services. As the Majority staff notes, I have long supported initiatives to ensure consumers can quickly and reliably access 911 in times of emergency whether they are using a wireline, wireless or VoIP phone. Indeed, some of the issues in the report had already been addressed by the Commission.

In any event, as the staff notes, the report is actually publicly available. It is also important to note that the Majority staff concluded in the report that "there is no requirement that the FCC produce such a report and it appears that withholding the report has no direct regulatory implications."

In addition, it is alleged on page 16 of the report that I improperly terminated a report on E-911 wireless services by outside consultant Dale Hatfield. The Majority Staff Report states, however, that I have "strongly supported mandatory implementation of E-911 services."

In conclusion, the Majority staff clearly noted on page 17 that the Commission was justified in canceling Mr. Hatfield's contract and that there was "no evidence that Chairman Martin canceled the contract because he disagreed with the findings." Specifically, the report concludes that "Mr. Hatfield made his May 20, 2006, presentation to the Wireless Bureau more than two months after the final report was due, but never produced the final report, even though he was paid most of the money due under the task order. Under the circumstances, it appears that Chairman Martin was justified in canceling the contract."[12]

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[11] See Appendix, Attachment 6.

[12] See also Appendix, Attachment 7 (Letter to Congressman Doyle).

Broadband over Powerline (BPL) Engineering Reports

The Majority staff criticizes me for supposedly withholding from the public portions of engineering reports addressing whether Broadband over Powerline (BPL) technology can cause interference to radio signals. First and foremost, the Majority staff failed to share a key fact about this issue; namely, that the Commission orders in question were not issued by me but were issued under my predecessor, former FCC Chairman Michael Powell.

The Office of Engineering and Technology's (OET) decision on the American Radio Relay League's (ARRL) FOIA request for the reports in question was issued **before I became Chairman.** Similarly, the rules establishing the technical requirements for the deployment of BPL technology were promulgated **before I became Chairman.**[13]

Finally, as Chairman, I have consistently permitted the Commission's Office of General Counsel (OGC) to defend in court all decisions made by the Commission under the previous Chairman, even when I disagreed with those decisions.

Bright House Networks v. Verizon California

The Majority staff alleges that I improperly reversed a draft Enforcement Bureau decision finding that Verizon had violated Customer Proprietary Network Information (CPNI) rules and instructed the Enforcement Bureau to find in favor of Verizon. While the Majority staff claims that both the Wireline Competition Bureau and the Office of General Counsel agreed with the draft Enforcement Bureau decision, that assertion is incorrect. Neither the General Counsel nor the Wireline Bureau Chief supported the Enforcement Bureau's proposed decision.

I did in fact disagree with the Enforcement Bureau's proposed decision, and most press reports about December's oral argument on this case in the U.S. Court of Appeals for the District of Columbia Circuit indicate that the judges seemed to be sympathetic to my position and perspective. Moreover, as the staff acknowledges, there is nothing improper with me doing so. Indeed, the Majority Staff Report concludes that "Chairman Martin certainly had the right to do so."

Unfortunately, a majority of the Commission voted in this case to allow complainants--players providing a bundle of services over one platform (cable VoIP)—to gain an advantage over their competitors—players providing those same bundled services over a different platform (traditional telephone service). Specifically, they decided to prohibit some companies from marketing to retain their customers, even though the marketing practices prohibited today are similar to the aggressive marketing techniques engaged in by the complainants themselves (when they provide cable video service). To reach this result, they in essence created a new law, holding that these complainants are "telecommunications carriers" for purposes of obtaining this competitive advantage, but

[13] See Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband Over Power Line Systems, 19 FCC Rcd 21265 (2004)

that they are not "telecommunications carriers" for other purposes, such as complying with the obligations of "telecommunications carriers."

I have consistently maintained that it is important to create a regulatory environment that promotes competition and investment, setting rules of the road so that all players can compete on a level playing field. I am concerned that Commission's decision here promotes regulatory arbitrage and is outcome driven. It could thwart competition, harm rural America, and frustrate regulatory parity. I stand by my position on this issue and remain hopeful that the courts will have the same concerns and reverse the Commission's decision.

The Majority Staff Report also insinuates that an unspecified source outside the Commission may have provided my office with a draft revised decision. This allegation is false. Indeed, the Majority Staff Report admits that it found no evidence to support the allegation. The report instead leaves the matter for "speculation" based on the "notion" that no one in my office was capable of producing such a "well-written" decision. I am very proud of the quality of the work produced by attorneys within my office as well as attorneys throughout the Commission for the last four years, and any implication that "well-written" decisions must originate outside of the Commission is an insult to the Commission's dedicated professionals.

Personnel Decisions and Agency Management

The Majority staff complains that I have engaged in "micromanagement" and transferred various employees.

First, the Majority Staff Report recognizes that "[t]he Chairman of the FCC is clearly authorized by statute to manage the staff and day-to-day operation of the Commission." With respect to personnel, the Majority staff also concludes that the practice of transferring employees "took place under Chairman Powell and earlier chairmen." Indeed, I have followed the same procedures that have been followed for at least 15 years, by FCC Chairmen, both Democratic and Republican alike. As Chairman, I have consistently sought to place the best person in each position of significant responsibility at the Commission. I make no apologies for doing so and believe that the record over the last four years demonstrates that I have made wise choices. Indeed, it is striking that the Majority staff nowhere identifies even a single specific personnel decision that was unwarranted.

Furthermore, with respect to the charge of "micromanagement," the Commission has been very productive under my chairmanship, issuing hundreds of decisions, and I stand by our record of accomplishment.[14] The Majority staff also criticizes the fact that Media Bureau economists were directed to stop working on "unapproved" research and to work only on "official projects." I find this criticism to be rather remarkable. It is the

[14] See Appendix, Attachment 8 ("Moving Forward: Driving Investment and Innovation While Protecting Consumers")

job of Media Bureau economists to perform official FCC work assigned by their supervisors; it is not their job to use Commission resources to do "unapproved" work that they might find interesting. It was thus entirely appropriate for the front office of the Media Bureau to remind economists that they should only work on "official projects" during work hours.

White House Demands for Local Television Programming – In Times of Emergency

The Majority staff complains that a White House official contacted the Commission to ask about DIRECTV providing certain local television programming to the White House as part of its satellite television service. I have made national security and homeland security a top priority for the Commission and did ask the staff to work with DIRECTV to try to ensure that the White House Situation Room had access to the information they would need during an emergency and to communicate that the Commission's rules limiting the ability to bring distant broadcast signals into another market were not an impediment to doing so.

In contrast, the Majority staff ignores the national security issues. This was not a complaint about simply getting local broadcast channels into the White House for entertainment purposes. Rather, the White House Situation Room, the operational nerve center in times of national emergency, was concerned about being able to access local broadcast channels during an emergency. For instance, if a bomb was detonated in San Francisco or a earthquake occurred in Los Angeles, it would be critical for our national security and homeland security officials to have instant access to the most current and up-to-date information on the ground. The Commission conveyed to DIRECTV that national security was our top priority and thus making such information available for national security and homeland security purposes was critically important.

The T-Mobile Enforcement Action

The Majority staff alleged that I improperly intervened to reduce a fine imposed on T-Mobile regarding complaints related to the National Do Not Call Registry. The Majority staff also questioned whether it was appropriate for the FCC to notify T-Mobile in advance that a fine was under consideration.

The Office of the FCC Chairman routinely works with the Enforcement Bureau in enforcement cases. It is common for the Commission to notify a party of a potential enforcement action to reach a settlement of the case. It is impossible to reach a consent decree without discussing the scope of the violation and the range of penalties; in fact it is a routine part of the legal process.

Derek Poarch, Chief of the Public Safety and Homeland Security Bureau

The Majority staff alleges that Chief Poarch "routinely violated Government-travel regulations" and maintained inaccurate time and attendance records. I am not

aware of the basis of any of these allegations nor have I been provided with any evidence to support them.

Conclusion

I respectfully request that this official correspondence and attachments be entered into the record.

Appendix

Attachment 1

To Chairman Martin;
Commissioners Tate, Copps and Adelstein

I am Deaf user of relay communications services. I strongly urge you to increase funding for these Services and not cut funding. These services are important to me and to other Deaf individuals, our families and co-workers. Cuts would be devastating. I want more Deaf people to use TTY, VRS and IP Relay, not less.

ELEANOR Y. RITCHEY } BOTH DEAF!
FERMAN L. RITCHEY and }
Print Name

These services indeed are very important to us and other deaf individuals. Please, please don't cut funding. Many thanks!

Attachment 2

CG Docket No. 03-123, AB VRS

10/25/2007 8:21:25 AM - Email Acknowledgement sent to delusker@aol.com.

DELUSKER@aol.com wrote on 10/24/2007 8:37:37 AM :

Dear Chairman Martin, Commissioners Adelstein, Copps, McDowell, and Tate:

I am a hard-of-hearing person and use Video Relay Service (VRS) to communicate with other deaf and hard-of-hearing individuals. I was appalled to learn that the FCC staff is intent on drastically cutting the VRS rate, and effectively cutting VRS availability for the deaf. Instead of seeking to limit the number of deaf people with VRS access, the FCC should do everything in its power to make VRS available to more deaf people.

I, along with other hearing and Deaf individuals, use these services in both my work and personal life. It is an important way in which I/we communicate. I urge you to do everything you can to make VRS service available to the many deaf people who currently do not have access to this vital, life-changing service.

The VRS rate should encourage the VRS providers to:

* Serve more deaf people, not discourage them from reaching out to more deaf people

* Provide interpreter training programs so that there will be an adequate number of qualified interpreters for VRS and the local Deaf communities

* Provide service and technology improvements, such as the development of new videophone equipment, fulfilling the Americans with Disabilities Act (ADA) mandate of functionally equivalent telecommunications services

I, along with other hearing and deaf individuals, their families and coworkers, depend on VRS and other relay services.

Please stop any VRS program cuts and fulfill the mandate of the Americans with Disabilities Act (ADA) to provide deaf people with functionally equivalent telecommunications services.

Sincerely,

Diana E. Lusker

Attachment 3

Matthew Berry

From: Ian Dillner
Sent: Wednesday, April 23, 2008 11:00 AM
To: GR9-VRS
Subject: FW: Answers to questions regarding TRS cost methodology item (CLAS 070202)
Attachments: TRS Rate order Copps questions - 7.18.07.doc

From: Nicole McGinnis
Sent: Thursday, July 19, 2007 4:47 PM
To: Ian Dillner
Cc: Cathy Seidel
Subject: FW: Answers to questions regarding TRS cost methodology item (CLAS 070202)

as sent to Scott. Thanks!

*** Non-Public: For Internal Use Only ***

From: Nicole McGinnis
Sent: Thursday, July 19, 2007 4:47 PM
To: Scott Deutchman
Cc: Cathy Seidel; Thomas Chandler; Pam Slipakoff
Subject: Answers to questions regarding TRS cost methodology item (CLAS 070202)

Hi Scott -

We wanted to respond to the questions you raised when Cathy and I met with you earlier this month regarding the relay cost recovery methodology order that is on circulation. Our answers are attached.
We hope this information is helpful, and please let us know if you have any additional questions.

Thanks!

Nikki
x 2877

*** Non-Public: For Internal Use Only ***

7.18.07

Responses to questions from Commissioner Copps' office on the proposed 2007 TRS Cost Recovery Methodology Order (CLAS No. 070202)

(1) What is Sorenson's profit margin if we adopt the three tiers as suggested by Snap, Sorenson and Sprint Nextel? [tier 1: 50,000 minutes and under; tier 2: 50,001 to 500,000 minutes; tier 3: over 500,000 minutes]

The current regulations and Commission orders state that providers are entitled to their reasonable actual costs of providing service. Commission orders also provide that such costs do not include profit, or a markup on expenses, but rather providers are entitled to an 11.25% rate of return on capital investment. As a practical matter, because the provision of TRS is labor, not capital, intensive this rate of return generally is not a significant portion of the providers' reasonable costs.

Sorenson provides more than 4 million VRS minutes a month. Under the SVRS tiered proposal, all providers get the highest rate for their first 50,000 minutes ($6.77), the second highest rate for their next 450,000 minutes ($6.50), and the lowest rate for minutes above 500,000 ($6.30). There is no way to definitively assess how much profit Sorenson may receive under the proposed rate plan because we would need an accurate estimate of what their costs of providing service will be and how many minutes they will provide. There are, however, several ways we can roughly estimate profit.[1]

One way to estimate future profit is to extrapolate from prior years' profits, which we know based on Sorenson's own filings that include past actual data.[2] First, their 2007 NECA filing indicates that their actual cost of providing service in calendar 2006 (without any cost disallowances) was $4.06 a minute; they were paid $6.644 a minute; so their profit for calendar year 2006 was over

[1] Sorenson's own filing suggests that the rate should be slightly higher than the current $6.644 rate (based on their projected 2007-2008 data alone, with no cost disallowances). Under those set of facts, Sorenson would not receive any profit. This data is not reliable, however, as the providers have a history (as well as an incentive) to both underestimate minutes and overestimate costs, both of which result in a higher rate. For example, Sorenson's filing includes some questionable costs (*e.g.*, $10 million in financial transactions fees for 2007-2008; over $24 million in marketing and outreach for 2007-2008). Also, Sorenson seems to materially underestimate minutes of use. It estimated 39 million minutes of use in calendar 2007, but for the first five months of 2007 they have been averaging 4 million minutes a month, which would result in 48 million minutes of use (a nearly 25% increase). Moreover, NECA, using historical growth trends, estimates 65 million minutes of use for the 2007-2008 Fund year. Sorenson predicts that will handle about 41 million minutes in this same time period. But if Sorenson continues to provide 80% of total minutes, it should be providing approximately 52 million minutes. Therefore, compared to NECA's projections, it underestimated its minutes by approximately 25%.

[2] Basing a rate on prior actual costs, however, even adjusted for inflation, may not reflect that the record indicates that interpreter labor costs, which are a major input cost, are rising due to a shortage of interpreters. Accordingly, actual future costs may be higher than the historical cost data suggests.

$94 million (or approximately 39%) (calculated by multiplying the total number of minutes compensated, by the $2.58 difference between the two rates). Their NECA filing also indicates that in 2005 their profit was nearly $60 million (including the $40 million they paid as stock options to their employees. (Note that this is non-public information.)

This level of profit is confirmed by NECA's May 1, 2007 filing, which provides that the *average* VRS rate for calendar year 2006 based on all providers' actual costs and minutes was $4.56 even though the providers were compensated at $6.66 (that is public information). So, on average, the providers were compensated $2.10 more than their per minute costs (or approximately 32% more). We know that Sorenson provides about 80% of the minutes, and we also know that in recent years they have been the low cost provider. That confirms that Sorenson reaped well over $2.10 on each minute of service (and that it provided over 36 million minutes of service).

Another way to estimate future profit is to assume that an accurate approximation of actual costs for the 2007-2008 Fund year would be the weighted average of providers' actual 2006 costs ($4.56), as reflected in NECA's filing, and upwardly adjust it for inflation. According to NECA, that cost per minute would be $4.76. Using this figure as the per-minute cost, if Sorenson provides 41 million minutes (or 3.4 million minutes a month), as it projects, then its monthly profit under the tiers and rates noted about would be:

- first 50,000 minutes: $100,500 (50,000 minutes x (6.77-4.76)
- next 450,000 minutes: $783,000 (450,000 x (6.50-4.76)
- next 2.9 million minutes: $4.47 million (2,900,000 x (6.30-4.76)

For the full fund year (assuming that the tiered rates were in effect for the entire year and that last year's fixed rates were not currently in effect on an interim basis), the profit would be approximately $64 million (total revenue under tiered rates -- $258 million; less revenue based on per-minute cost of $4.76 -- $194 million). That is a 33% profit over costs reflected in a per-minute cost rate of $4.76 (and the $4.76 per-minute cost rate is likely too high for Sorenson, since it is based on the average actual cost for all providers).

What is Sorenson's profit margin if we adopt the three tiers as suggested by Hands On? (meaning that the middle tier is expanded to be from 50,001 - 1,000,000 minutes, instead of 50,000 – 500,000 minutes).

The change is not great. As noted above, under the plan all providers get the highest rate for their fist 50,000 minutes, the second highest rate for their next 450,000 minutes, and the lowest rate for minutes above 500,000. So, for Sorenson, which providers more than 4 million minutes of service a month, the difference between using a middle tier that ends at 500,000 or 1,000,000 means that, under the latter proposal, for an additional 500,000 minutes, Sorenson (and any other provider offering more than 1,000,000 minutes a month) would receive an extra $135,000 a month (*i.e.,* 500,000 minutes x $0.27, the difference between the $6.77 and $6.50 rates for the first and second tiers). Over a year, the total would be about $1.6 million extra if the middle tier went to 1,000,000, instead of 500,000.

The overall percentage profit again depends on their actual costs of providing service and how many minutes they provide. If we assume, for example, that they offer 3.4 million minutes a month, as they project, and that their actual per-minute costs are $4.76 (average actual 2006 per-minute cost of all providers, adjusted upward for inflation), then the profit would be

approximately 34%. (The 1% increase in profit margin reflects the additional $1.6 million Sorenson would receive in the middle tier ended at 1,000,000, instead of 500,000.).

What is Sorenson's profit margin if we adopt the following tiers*:
tier one: 100,000 and under
tier two: 100,001 to 1 million
tier three: in excess of 1 million
***these tiers are the same as the tiers proposed by Hands On, but this third variation expands the first tier by 50,000.**

As noted immediately above, the change in the parameters of the middle tier would not have a large effect on Sorenson's profits, given that any rate above the $4.00 range gives them considerable profit. The change here is simply that second 50,000 minutes offered a month are paid an extra $0.20 (6.50-6.30). That is $100,000 a month, or $1.2 million a year more than in the prior example (or a total of $2.8 million a year extra compared to the first example).

Again, the overall percentage profit again depends on their actual costs of providing service and how many minutes they provide. If we assume, for example, that they offer 3.4 million minutes a month, as they project, and that their actual per-minute costs are $4.76 (average actual 2006 per-minute cost of all providers, adjusted upward for inflation), then the profit would be approximately 35%. (The 1% increase in profit margin reflects another additional $1.2 million Sorenson would receive if the first tier ended at 100,000, instead of 50,000.).

(2) Did the Joint Consumers file anything - do we have the impression they would be OK going straight to order on the VRS cost methodology piece?

The tiered rate proposal for VRS was not made until April 2007 (by CSDVRS), well after the comment period ended for the July 2006 Cost Recovery FNPRM. After that time, the providers have filed numerous *ex partes* on this issue, but not the consumers. Given the relatively high level of the tiered rates proposed, the fact that the providers have agreed to them, and the fact that the consumer groups generally support the providers in cost recovery issues, we do not anticipate that they would be unhappy with adopting these rates now.

As for the comments of the consumers, the Joint Consumer Groups filed comments (10/30/06) and reply comments (11/13/06) to the 2006 Cost Recovery FNPRM. In their comments, they asserted that the Fund should compensate expenses in each of the cost categories raised in the FNPRM: certified deaf interpreters, marketing and outreach, executive compensation, overhead, R&D, and legal and lobbying activities. (Note that because the consumers do not pay for any aspect of this service, they have no apparent reason to oppose more expansive compensation for the providers). In their reply comments, they responded to what they asserted was an overly narrow reading of "functionally equivalent" made by the Florida PSC in its comments; reiterated, in response to the price caps proposal for VRS, that providers should be compensated for their reasonable costs; and asserted that the Commission should not permit CAs to intervene in calls to prevent IP Relay fraud. There are no *ex partes* or other comments from consumer groups on tiered rates specifically.

(3) Who are the providers of STS?

There are seven providers of interstate STS that receive compensation from the Fund: AT&T, Hamilton, MCI, Nordia, Sprint, Kansas Relay (KRSI), and CAC. *See* http://www.neca.org/media/0607MaydataTRSstatus.pdf. The Fund pays approximately $25,000 per month for interstate STS (a negligible amount out of the $45 million paid in total each month from the Fund).

(4) With respect to branded marketing, what did commenters say in the record? Did anyone suggest a way of allowing some degree of branded marketing -- did anyone suggest a line that would differentiate between permissible branded marketing vs. impermissible branded marketing? (in other words, did anyone suggest a more nuanced approach, something other than "allow all branded marketing" or "don't allow any branded marketing" -- something that would allow some lines to be drawn on branded marketing?)

As an initial matter, we note that no commenters provide suggestions for compensating limited types of branded marketing. HOVRS argues that there is "no practicable means of differentiating between non-branded and branded outreach and marketing."

Verizon states that advertising, "[n]ot designed or directed to increasing market share" should be reimbursable, which suggests that they oppose "branded" marketing. However, CSDVRS argues that "denying compensation for branded marketing will not only hurt competition; it will hurt the ability of VRS consumers to select services and features that can best meet their individualized needs." CAC argues that compensating branded marketing provides an incentive for providers to share information with consumers.

Consumer groups agree, arguing that branded marketing, "provides the deaf and hard of hearing communities and hearing public with the benefits of a competitive TRS market," and that "[t]he development of competitive 'differentiators' brings significant benefits." Consumer groups further explain that branded marketing increases the visibility of providers, and gives them incentive to educate the public more effectively on what they have to offer. STS advocate, Bob Segalman, argues that if only non-branded outreach efforts are compensated from the fund, it will unnecessarily limit the potential of outreach to make TRS more widely utilized.

Note that several providers filing comments in response to NECA's proposed rates (NECA's May 1, 2007 filing) also addressed marketing. Sorenson, for example, argues at length that it is important to compensate marketing and outreach. CSDVRS and Bob Segalman also assert that the Fund should pay for marketing and outreach.

(5) Who is on the TRS Advisory Council? (And what consumer groups?)

The Council members, and the group they represent, are: Warren Barnett (hearing and speech disability community); Clay Bowen (state relay administrator); Larry Brick (TRS user); Monica Martinez (Commissioner of Michigan PUC); Sheila Conlon-Mentkowski (deaf consumer); Phil Erli (interstate service provider that pays into the Fund); Kelby Brick (Hands On); Gail Sanchez (AT&T Relay); Dixie Zeigler (Hamilton Relay); Rebecca Ladew (hearing and speech disability community). *See* http://www.neca.org/media/407TRSCouncilMembers.pdf. As indicated, of these 10 members, 4 represent TRS users or the hearing and speech disability community.

(6) What is Sprint Nextel's position on the MARS plan? They filed comments objecting to the MARS plan earlier in the proceeding, but did they continue to oppose MARS as time passed? Did they ever file ex parte comments softening their position against MARS for TRS and STS?

Sprint Nextel opposes the MARS plan for traditional TRS, asserting that it would create new burdens and uncertainties, may not be based on efficient costs, and the Commission does not have the authority to use the MARS plan because is constitutes an delegation of authority to the states. *See* paras. 22-26 of draft item. In a later *ex parte* (3/13/07), Sprint Nextel asserted that *if* the Commission were to adopt the MARS plan, it should adopt a separate MARS rate for captel (which the item does do). There are no other Sprint Nextel *ex partes* addressing the MARS plan or indicating a change of position.

(7) Can we get a list of which commenters opposed MARS?

Only Sprint Nextel opposes the MARS plan for traditional TRS, asserting that it would create new burdens and uncertainties, may not be based on efficient costs, and the Commission does not have the authority to use the MARS plan because is constitutes an delegation of authority to the states. *See* paras. 22-26 of draft item. Verizon and AT&T support the MARS plan for traditional TRS, but not STS or the other services because, they assert, there are no market based rates for these services (a statement that is not correct for STS, since states pay for this).

While other providers oppose the MARS plan for VRS and/or IP Relay (including Sorenson and Hands On, and, as noted above, Verizon and AT&T), the item does not apply the MARS plan to those services.

(8) Why would providers support MARS if, in each instance, the MARS rate is lower than the lowest NECA rate? What do we think their rationale is for supporting MARS? (As we note in the item, a number of commenters, including AT&T, Ultratel and others, support MARS)

The comments and reply comments addressing the MARS plan, raised in the July 2006 FNPRM, were filed before the providers knew what rates NECA would propose in its May 1, 2007 filing. So their comments to the MARS plan were based on more general factors than whether the rate would be higher or lower than the upcoming rate NECA would propose. Also, the proponent of the MARS plan, Hamilton, is one of the major providers of traditional TRS – so we can assume they would not push for a plan that would under-compensate them. As it turned out, NECA proposed rates in the $1.70 -$1.80 range, which is higher than the MARS rate of $1.59 (based on the 2006 state rates). But the MARS rate of $1.59 is still significantly higher than the current rate of $1.29. Also, everyone recognizes that the MARS rate will likely go up over time because the state rates will go up as states re-bid their contracts for intrastate service. As Hamilton notes, the advantage of the MARS plan is that it has a principled basis (competitively bid state rates for the same service, *albeit* interstate rather than intrastate, is easy to administer, and therefore is less subjective than basing a rate on projected costs and minutes and possible cost disallowances).

(9) What comments came in from providers on the NECA filing?

Comments were filed by Ultratec, Hands On, Sprint Nextel, CSDVRS, Hamilton, AT&T, and Sorenson. Reply comments were filed by Hands On, Hamilton, Sorenson, Healinc, and the Joint Providers (Snap, Sorenson, Sprint Nextel). There have also been numerous *ex partes*. These comments are summarized briefly below.

Comments

1) **Ultratec**

- Need for separate CapTel rate
- Lower occupancy rate for CAs
- CapTel is highly efficient

2) **HOVRS**

- Rate process not transparent
- NECA's adjustments to HOVRS data are not justified
- A single VRS rate is problematic
- All NECA proposed rates are inappropriate
- Adoption of any of NECA's rates will result in over- or under-compensation
- FCC should adopt a tiered rate structure

3) **Sprint Nextel**

- NECA's proposed rates are inappropriate
- FCC should reject NECA's proposed disallowance of Sprint Nextel indirect costs

4) **CSD/VRS**

- Implement tiered rate plan
- Rates need to be stabilized
- Outreach and marketing should be compensable
- R&D should be compensable

5) **Hamilton**

- MARS plan eliminates need for true-ups, formula calculations, and debates over disallowed costs
- Supports NECA's recommendation regarding payment timing
- Supports TRS Advisory Council
- Supports increase in cash working capital factor to 1.6%

6) **AT&T**

- At a minimum, $25 million of the $45 million surplus in the Fund for 06-07 should be applied to 07-08 to offset funding requirement

7) **Sorenson**

- $6.77 should be adopted
- Rate must be based on reasonable projections

- Inappropriate to disallow interpreter training cost, O&M
- IP Relay rate muse be based on avg of projected costs
- Rates based on historical allowable costs decrease efficiency and competition
- Analysis of Cheryl Parrino and Dr. Gregory Rosston included

8) **Verizon**

- Freeze the rate until methodology is determined
- Rates should be based on provider projections, including marketing and outreach

Reply Comments

10) **NECA**

- Does not seek to prejudge FCC final decision- includes formulas based on provider–projected costs and demand
- Request to maintain surplus is prudent

11) **HOVRS**

- $6.7738 is the only legitimate rate- still inappropriate
- Supports tiered, multi-year rate methodology

12) **Joint Providers (Snap, Sorenson, Sprint Nextel)**

- Dissatisfaction with all 24 alternatives proposed by NECA- only $6.7738 has minimal support- agrees with Sprint Nextel and Sorenson
- R&D should be compensable

13) **Hamilton**

- Freeze the rate
- A modest increase the rate would be appropriate
- More transparency needed

14) **Sorenson**

- No commenters support any rate other than $6.7738
- R&D needed to provide functionally equivalent 911 service
- A weighted average improves efficiency- the current methodology, while not optimal, rewards the more efficient
- FCC lacks a procedural basis to consider tiered rate structure which is substantively flawed

15) **Healinc**

- Supports tiered rate methodology
- Proposed NECA methodologies represent status quo based on weighted averages

Ex Partes

16) **Ultratec (5/9/07)**
- Do separate rate for IP CapTel

17) **Sprint, Sorenson, Snap (with Ian Dilner) (5/11/07)**
- Pay for marketing and outreach for VRS
- Want $6.77 rate
- Price caps for VRS
- No true-up
- Sprint- no MARS plan unless there is a mid-year adjustment, and separate rate for CapTel

18) **Sprint, Sorenson, Snap (with Cathy Seidel et. al.) (5/11/07)**
- Need marketing and outreach
- Do not do rate at historical costs

19) **CSDVRS, HOVRS, CAC, GoAmerica (5/16/07)**
- Support tiered rate
- Allow compensation for R&D and M&O

20) **Snap, Sprint Nextel, Sorenson (5/23/07)**
- Discussed NECA filing and support for price caps

21) **Sprint, Sorenson, Snap (with Scott Bergmann) (5/31/07)**
- Support tiered rates and price caps

22) **Sprint, Sorenson, Snap (with Scott Deutchman, Nick Alexander, and John Hunter separately) (6/1/07)**
- Support tiered rates and price caps

23) **CAC (5/31/07)**
- Cost disallowances for IP are unreasonable
- Costs associated with R&D should be compensable
- Costs Associated with M&O should be compensable
- TRS and IP relay costs are similar

24) **Hands On (6/5/07)**
- Oppose Sorenson non-compete clause
- Asks FCC to take prompt action on Sorenson non-compete
- Supports tiered rate
- Rate should be frozen until new methodology determined

25) **UltraTec (6/6/07)**
- Need for separate Captel rate

26) **CDVRS, HOVRS, GoAmerica, CAC (6/12/07)**
- Prefer utilization of such a tiered structure with the rate levels price capped for three years

- In the alternative, favor a straight price capped rate based on $6.644

27) **Hamilton (with Scott Deutchman and Ian Dillner separately) (6/15/07)**
- Detailed benefits of MARS
- Encouraged FCC to further examine price caps and tiered rates, and to share information with providers and consumers

27) **Snap, Sprint Nextel, Sorenson (6/15/07)**
- a tiered rate would create perverse incentives
- support a three-year approach

28) **CSDVRS (6/16/07)**
- Supports tiered rates

29) **HOVRS and Snap (with John Hunter, Scott Bergmann, and Scott Deutchman; also separately with CGB) (6/26/07)**
- Competition has benefited consumers
- FCC stood by while one provider monopolized the market
- FCC should declare non-competes invalid for VRS providers

31) **Snap, Sprint Nextel, Sorenson (6/27/07)**
- The initial tier level should be $6.77
- The second level should be $6.50
- The third level should be $6.30
- Each would be subject to the price cap plan
- Growth in VRS penetration could be measured aggregating total VRS minutes in a proceeding year
- The ASL interpreter pool could be assessed by comparing the number of VRS interpreters employed from one year to the next, and to assess the number of interpreter training programs and participants in the country
- The industry structure could be assessed by determining the number of providers that enter and exit e4ach year
- Quality can be assessed by reviewing complaints received each year
- Costs can be assessed by analyzing the percentage change in average wages, the percentage change in benefits costs, and the percentage change in outreach costs

32) **HOVRS (6/5/07)**

- Endorse the S-VRS proposal (by Sprint, Sorenson, and Snap) in all aspects except for the tiers- proposes that the second tier run from 50.001 to 1,000,000 minutes.
- AT&T, Healinc, and GoAmerica support HOVRS proposed tiers.
- Sprint, Sorenson, and Snap indicate that they have no objection to the HOVRS proposal.
- Hamilton has indicated to HOVRS that it does not object.

- Asks the Commission not to seek further comment on the tiered rate proposal, and to take quick action to provide stability for providers.

10) Questions for OGC:

(a) Regarding para. 58 of the item as circulated -- on lobbying and legal fees -- can you please run this by OGC and ask them about the defensibility of our position?

The statute provides only that the Commission prescribe regulations "generally" providing that costs "caused by interstate telecommunications relay services shall be recovered." Sec. 225(d)(3). In the 2004 TRS Order, the Commission stated that the reasonable costs of providing TRS included only those direct and indirect costs necessary to provide the service. Thus, the Commission has great latitude in determining precisely what costs can be compensated from the Fund. OGC believes it is reasonable and therefore very defensible to limit recovery for lobbying/legal expenses.

Moreover, paragraph 58 does not completely disallow legal or lobbying expenses. Rather it places the burden on the provider to demonstrate that the costs are directly linked to and necessary for the actual provision of service in compliance with the mandatory minimal standards. This is reasonable (and plausibly required) given that the statute prescribes recovery for costs "caused by" interstate TRS.

(b) What is the litigation risk that we are delegating the Commission's obligations under Section 226 to the states by adopting the MARS plan? (see para. 23 of the item)

OGC does not think the MARS plan constitutes a delegation of any kind. As is stated clearly in the order (para 24) the plan directs the Commission to gather and then average state TRS rate data (in addition to other information) to arrive at an interstate rate utilizing the Commission's own methodology. The Commission retains complete responsibility for developing and administering the final rate.

(c) footnote 12, regarding the adjustment to the fund size and the carrier contribution factor -- please run by OGC whether it works to do a mid-year fund adjustment rather than doing so at this time.

Each year, NECA files with the Commission a recommended contribution factor based on the expected size of the TRS Fund. The Commission then issues an order formally establishing the size of the fund and the contribution factor on an annual basis pursuant to 64.604(c)(5)(iii)(B). This occurs on or about July 1. In the draft order, the Commission keeps in place the current fund size but gives notice that it may be changed prior to the conclusion of the funding year. Technically, this is consistent with the rule because the Commission would not be *changing* the fund size/contribution factor more than once a year. Thus, OGC thinks a mid-year correction, if necessary, could be achieved. Moreover, in 2004, when faced with a shortfall due to an unanticipated rise in the number of VRS minutes, the Bureau waived section 64.604(c)(5)(iii)(B) and issued a mid-year correction. 19 FCC Rcd 2993.

Attachment 4

Matthew Berry

From: Cathy Seidel
Sent: Monday, October 15, 2007 4:35 PM
To: Scott Bergmann
Cc: Nicole McGinnis; Thomas Chandler
Subject: TRS rates

Scott –
As mentioned briefly a moment ago, below is a little more insight regarding the VRS rates in the draft item. Let us know if you need anything further.

You had asked about the Bureau's views regarding the proposed rates for VRS in the TRS cost methodology item on circulation. As you are aware, NECA's filing proposes VRS rates ranging from $4.55 to $6.77. The highest rate -- $6.77 – represents the weighted average of all the providers' projected costs and minutes of use, using the providers' figures without any adjustments. The lowest rate ($4.55) is the average of the providers' actual costs of providing service in calendar 2006 (the actual rates for each provider based on their own historical actual cost data ranged from $4.05 for Sorenson, to $5.85 for Hamilton, to $6.15 for Hands On, to over $10 for Verizon). As a practical matter, because Sorenson has over 80% of the market, their data controls the rate, and therefore the data of the smaller providers is not relevant to NECA's determinations.

The order on circulation adopts the following VRS rates:

1. up to 50,000 minutes -- $6.77
2. 50,000 to 500,000 -- $6.50
3. over 500,000 -- $6.30

We think these rates could be justified as follows: The first rate (6.77) is the rate NECA calculated based on the providers' projected costs and minutes of use, without any disallowances. Because smaller (generally new) providers have higher costs, we use the rate NECA calculated based on the provider's projected data. This rate will make sure new providers can cover all their costs

The second rate (6.50) is the first rate *less* (1) industry forecasted marketing and some costs NECA excluded that the providers did not dispute. It represents a slight decrease from the current rate of $6.64 and also can be justified based on some economies of scale as minutes get greater.

The third rate (6.30) is based on a reduction from the second level to encourage VRS providers to become more efficient as they handle greater call volume, but not so low as to reduce the incentive to expand their service and reach new deaf users.

Attachment 5

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

The Honorable Joe Barton
Ranking Member
House Energy and Commerce Committee
U.S. House of Representative
2322-A Rayburn House Office Building
Washington, D.C. 20515

Dear Ranking Member Barton:

Thank you for your letter. Attached, please find my answers to your questions.

Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

Kevin J. Martin
Chairman

Attachment

cc:
The Honorable J. Dennis Hastert
The Honorable Cliff Stearns
The Honorable John Shimkus
The Honorable Ed Whitfield
The Honorable Barbara Cubin
The Honorable Lee Terry
The Honorable Mike Rogers
The Honorable Mike Ferguson
The Honorable Joseph R. Pitts
The Honorable John B. Shadegg
The Honorable Tim Murphy
The Honorable Ralph M. Hall
The Honorable Nathan Deal
The Honorable Vito Fossella
The Honorable Steve Buyer
The Honorable Michael C. Burgess
The Honorable Mary Bono
The Honorable John Sullivan
The Honorable Sue Wilkins Myrick
The Honorable Marsha Blackburn
The Honorable Greg Walden
The Honorable George Radanovich

1. **Please describe all items regarding government-mandated a la carte, multicast must-carry, program carriage, rate regulation of leased access, interactive set-top box obligations, cable ownership, and the 70/70 provision that are currently circulating or planned for an open meeting. For each, please provide the applicable docket numbers.**

Government-mandated a la carte:

- None

Multicast Must Carry:

- Second Order on Reconsideration and Second Further Notice of Proposed Rulemaking in *Cable Carriage of Digital Television Broadcast Signals* (CS Docket No. 98-120), circulated 6/13/2006. The Second Order would require the mandatory carriage of multiple streams of broadcasters' digital transmission.

- Notice of Proposed Rule Making in *Promoting Diversification of Ownership in the Broadcasting Services* (Docket number not assigned until adoption), circulated 3/12/2007. The Notice of Proposed Rulemaking seeks comment on several initiatives designed to increase participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses.

Program Carriage:

- Report and Order in *Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage* (MB Docket No. 07-42), circulated 11/6/2007. The Report and Order adopts proposals concerning modifications to the Commission's leased access and program carriage rules.

Rate Regulation of Leased Access:

- Report and Order in *Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage* (MB Docket No. 07-42), circulated 11/7/2007. The Report and Order adopts proposals concerning modifications to the Commission's leased access and program carriage rules.

Interactive Set-top Box Obligations:

- None.

Cable Ownership:

- Fourth Report and Order and Further Notice of Proposed Rule Making in The Commission's *Cable Horizontal and Vertical Ownership Limits* (MM Docket No. 92-264), circulated 3/12/2007. The Fourth Report and Order adopts proposals in

response to the court remand in *Time Warner Entertainment Co. v. FCC* concerning the cable horizontal ownership limit.

70/70 Provision:

- Thirteenth Annual Report in *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming* (MB Docket No. 06-189), circulated 10/12/2007. The Thirteenth Annual Report to Congress examines multiple issues concerning the status of competition in the market for delivery of multichannel video programming to consumers.

In addition to these rulemaking items, the Commission frequently submits reports on a variety of topics relating to media, including both broadcast and cable. The 2006 Report on the status of competition in the market for the delivery of multichannel video programming and the Notice of Inquiry to begin the 2007 report are currently circulating before my colleagues and are scheduled to be considered at tomorrow's open agenda meeting. The Commission has also committed to submit a Report on Localism, which is currently pending before my colleagues. These reports touch on a wide range of topics including almost all of the ones listed above.

2. Please describe any data the Commission has received suggesting that the 70/70 provision has been met, the source of the data, and whether that data is of the same type and source the Commission usually relies on in its annual video competition reports.

The Commission has received data from Warren Communications that suggests the 70/70 provision has been met. This data is the same type and from the same source as the data the Commission usually relies on in its annual video competition reports. (See Attachment). Warren is a recognized source of industry data, and the Commission has used Warren's data for its 70/70 calculations since we started reporting on these benchmarks in the Tenth Annual Report. We note that in both the Tenth and the Eleventh Annual Reports, the Commission reported that data from Warren showed that the second prong of the 70/70 test was 68.9 percent; in the Twelfth Annual Report, the Warren data showed that the second prong was 67.8 percent. We rely on Warren data because it provides information on subscribers and homes passed for cable systems with 36 or more channels as specified in the statute. In addition, Warren collects its data directly from cable television operators or individual cable systems to create a large database of cable industry information.[1] Warren states that it is the only research entity that directly surveys every cable system at least once every year, providing the most complete source of cable data.[2] In fact, the cable systems represented in Warren's database serve 96% of

[1] *See* Letter from Michael Taliaferro, Managing Editor, Television & Cable Factbook, to Commissioners Tate and McDowell, Nov. 15, 2007.

[2] *Id.*

all subscribers nationwide.[3]

Congress required the Commission to monitor cable's penetration into the television market in section 612(g) of the Act. Congress required that: (1) "at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States" and (2) "are subscribed to by 70 percent of the households to which such systems are available, the Commission may promulgate any additional rules necessary to provide diversity of information sources."[4] (70/70 test). As discussed below, several commenters, including CFA, MAP, and AT&T argue the test has been met. Others, primarily members of the cable industry and a cable financial analyst, argue it has not been met. For the first time this year, however, data from one of the sources the industry itself relies on, Warren Communications News (Warren), results in finding that the test has been met. As described below, this data appears to be the most reliable.

There is no disagreement among commenters that the first prong of the 70/70 test has been met. As in the *2005 Report*, commenters agree that cable systems with 36 or more activated channels are available to more than 70 percent of households within the United States.

There has been and continues to be considerable disagreement, however, on the precise level of availability, i.e., the number of homes passed by systems with 36 or more activated channels, and on the exact percent of households that subscribe to such systems.[5] In the *2005 Report*, we found that alternative estimates yielded different conclusions about whether the 70/70 test had been met. Notably, the Commission explicitly recognized then that "[g]iven the circumstances and the fact that all available data sources are imprecise to some extent, it is possible that the second prong of the 70/70 benchmark has been met."[6] Accordingly, the *2005 Report* requested further comment on the best methodologies and data for measuring the 70/70 thresholds and what, if any, additional action should be undertaken to achieve the statutory goals, should we find that the thresholds have been met.[7]

In the 2005 Report, using data from the Census Bureau, we found that there were 107,850,000 households. Using Warren data we found that cable systems with 36 or more channels were available to 93,077,522 households. We therefore determined that 86.3 percent of homes were passed by cable systems with 36 or more channels.[8] In

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[3] *See* John Eggerton, *McDowell, Tate Question 71.4% Cable-Subscribership Figure*, Broadcasting & Cable, Nov. 14, 2007.

[4] 47 U.S.C. § 532(g). This provision was added to the Communications Act by the Cable Communications Policy Act of 1984 ("*1984 Cable Act*"), Pub. L. No. 98-549, 98 Stat. 2779.

[5] *See, e.g.*, Comments of AT&T, MB Docket No. 05-255 (filed Apr. 3, 2006); Comments of NCTA, MB Docket No. 05-255 (filed Apr. 3, 2006); Reply Comments of NCTA, MB Docket No. 05-255 (filed Apr. 25, 2006).

[6] *2005 Report* at 2515 ¶ 35.

[7] *2005 Report* at 2515 ¶ 36.

[8] *2005 Report* at 2513 ¶ 32.

calculating this figure, the Commission noted that no commenter had provided any conflicting data, and thus concluded that "there appears to be no serious disagreement that this prong of the analysis has been satisfied."

Using these same data sources, current Census Bureau data indicate that there are 109,450,000 households, an increase of almost 2 million homes.[9] And, according to Warren, 93,373,707 households are passed by cable systems with 36 or more channels, up almost 300,000 subscribers from last year. Thus, based on these data sources, we find that the percentage of availability of cable systems with 36 or more channels has declined slightly to 85.3 percent (93,373,707/109,450,000) of households.

With respect to penetration, the 2005 Report stated that Warren reported that 63,145,124 households subscribed to cable systems with 36 or more channels, resulting in 67.8% (63,145,124 /93,077,522) of households subscribing to cable systems with 36 or more channels.

Again using the same data sources, we find that, according to Warren, as of October 2007 there were 93,373,707 households passed by cable systems with 36 or more channels. Warren reports that there were 66,661,544 subscribers to such systems. Thus, by Warren's measures, 71.4 percent (66,661,544/93,373,707) of households passed by cable systems offering 36 or more channels subscribe to these systems.[10]

Commenters disagree about whether the second prong of the 70/70 test has been met. Some commenters urge us to look at other data sources. Of the available sources, Warren appears to be the most reliable data submitted. For the reasons described below, other data sources are not as suitable for this purpose.

Certain commenters urge us to look at Kagan or Nielsen. These companies, unlike Warren, do not report data for cable systems with 36 or more channels. Thus, neither Kagan nor Nielsen provide the precise data we need to perform the calculation specified by the statute. We also note that the Kagan estimate regarding the number of households passed by cable, 113,600,000, is greater than the U.S. Census Bureau estimate of 109,450,000 total households. As a result, while the Commission has cited Kagan data in previous Video Competition reports, it has always been clear that it should be used merely as a trend indicator, rather than as a precise estimate for any particular year.

As described in the *2005 Report,* AT&T submits that the second prong of the 70/70 test has been met.[11] In doing so, AT&T mixes data from different sources. If possible, the calculation of the second prong, which compares the number of subscribers to the number of households passed, should use the same data source for both the

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[9] U.S. Census Bureau, *Census Bureau Reports on Residential Vacancies and Homeownership* (press release), July 27, 2007, Table 3. *See* http://www.census.gov/hhes/www/housing/hvs/qtr207/q207press.pdf (visited Oct. 10, 2007).

[10] Warren Communications News, *Custom Report: from Television and Cable Factbook Datasets*, Oct. 10, 2007. E-mail from Michael Taliaferro, Assistant Publisher, Directories, WARREN COMMUNICATIONS NEWS to Dana Scherer on Oct. 10, 2007.

[11] *2005 Report*, 21 FCC Rcd 2514 ¶ 33.

numerator and denominator. In this way, the numerator (number of cable subscribers) is derived from the same households that are used for in the denominator (number of households passed by cable systems), and a valid comparison can be made between the number of subscribers and the household passed. Using Warren data for both the numerator and denominator remedies the deficiency in the estimate submitted by AT&T.

Other commenters concur with AT&T that the second prong of the 70/70 test has been met. For example, CU uses various public sources to conclude that there are 63 million cable subscribers served by cable systems offering 36 or more channels and 88 million households passed by cable systems offering 36 or more channels. CU then relies on its own assumptions to arrive at its estimate of 71.6 percent (63 million/88 million = 71.6%) for the second prong of the 70/70 test.

MAP submits a report by Dr. Gregory Rose. Dr. Rose used data from ABI Research which reports 133.71 million households passed by cable systems and 99.61 million cable subscribers for North America (U.S., Canada, and Mexico). Estimates for the U.S. were derived by subtracting from the ABI data estimates for Canada and Mexico based on data from Paul Budde Communications. Dr. Rose calculates a total of 110.91 million households passed by cable systems and 85.99 million cable subscribers in the U.S. Thus, Dr. Rose estimates 77.53 percent (85.99 million /110.91 million = 77.53%) for the second prong of the 70/70 test. However, the estimate is for all cable systems, not those that offer 36 or more channels. We note that the Communications Works of America agrees with MAP's conclusions.[12]

Alternatively Bernstein and NCTA argue that the second prong of the 70/70 test has not been met. Sanford C. Bernstein and Company believes that Warren undercounts the number of households passed by cable systems with 36 or more channels. However, Bernstein does not break out data for cable systems with 36 or more channels, as the statute requires. It derives an estimate of total households passed by cable, 106 million, based on SEC filings for companies that are publicly traded and those that issue public debt. In addition, it estimated subscriber counties for non-publicly traded companies based on data from SEC filings for companies that are publicly traded, filings for companies that issue public debt, MDC Corporation, and NCTA. It estimates that the total number of U.S. cable subscribers is 63,512,700 million households. We are not able to confirm the reliability of these estimates.

MAP and the Consumer's Union argue that publicly available documents undercount subscribers because they do not distinguish multiple dwelling units. Since 30 percent of Americans live in MDUs, the actual number of cable subscribers who subscribe to cable systems with 36 or more channels could be significantly higher. A higher number of subscribers results in a higher percentage of households who subscribe to cable systems with 36 or more channels.

In addition, NCTA submitted analysis of the Warren data by Michael G. Baumann. Dr. Baumann reviewed the on-line version of the Warren data and found 909 cable systems report subscribers but not homes passed and 401 systems report homes passed but not subscribers. Dr. Baumann estimates 66.1 percent for the second prong of

[12] See CWA letter dated Nov. 20, 2007.

the 70/70 test using only Warren data for cable systems that reported both homes passed and subscribers. We cannot verify that after NCTA has subtracted over 1300 systems, the remaining cable systems.

In the past, the Commission has referenced data from its price survey data or Form 325. This year, using data from the Price Survey would lead to a figure of 56.3 percent of households passed by cable systems offering 36 or more channels subscribe to these systems. Based on the data from the Form 325, the same figure would be 54 percent. These two sources represent extremely small samples and therefore cannot be relied upon for this purpose. The Commission currently sends questionnaires to only 781 cable systems for its Price Survey (representing only 10.2% of the total 7,634 systems in our database and collects Form 325 data from approximately 1,100 cable systems (representing only 14.4% of the total 7,634 systems in our database). In contrast, Warren sends questionnaires to all 7,090 cable systems, and states that it has data representing more than 96% of all cable subscribers.[13] Indeed, as NCTA has argued, "Warren's TV Factbook and online database, not the Commission's Form 325 data, is relied upon by businesses and researchers for system-specific information about the cable industry."[14]

In addition, commenters, such as AT&T, the Association of Independent and Video Filmmakers et al., and CBA, argue that competitors to incumbent cable systems (*e.g.*, overbuilders, DBS operators, and Internet providers) should be included in the calculation of the 70/70 test.[15] DBS operators and Internet providers do not meet the statutory definition of a cable system and, therefore, should not be included in the 70/70 calculations. An overbuilder, however, meets the statutory definition of a cable system and, therefore, should be included in the 70/70 calculations. Warren includes most overbuilders in its estimates of cable subscribers, but does not include subscribers to one notable cable provider, Verizon.[16] Doing so would increase the total number of cable subscribers to systems with 36 or more channels by 717,000, thereby increasing the percentage of households subscribing to systems with 36 or more channels to 72.1%.[17]

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[13] John Eggerton, "McDowell, Tate Question 71.4% Cable-Subscribership Figure," *Broadcasting & Cable*, 11/14/2007.

[14] *See* NCTA Comments at 7, CS Docket 98-61 (filed June 30, 1998).

[15] *See* AT&T Comments at 4, AIVF Comments at 5, and CBA Reply at 3-4 filed in response to request for additional information in the *2005 Report*, 21 FCC Rcd 2515 ¶ 36.

[16] *See 2007 edition of* Warren Television and Cable Factbook at D-7. Warren uses the Commission's definition of a cable system in Sec. 76.5 of our rules, including overbuilders. Moreover, this approach is consistent with our construction of the term in other cable related settings. In the "effective competition" test relevant to cable rate regulation under Section 623 of the Act, the Commission has distinguished between vacant and occupied housing units, declining to include vacant housing units within the term "households" as used in that analysis. Therefore, we conclude here that the calculation of the second prong should include only occupied housing units in the denominator and only subscribers from such units in the numerator.

[17] Verizon 9-30-07, SEC Form 10-Q. Adding Verizon's subscribers does not increase the denominator because doing so would double count homes already passed by cable.

ATTACHMENT

WARREN NUMBERS PUBLISHED PREVIOUSLY IN 70/70 SECTIONS OF VIDEO COMPETITION REPORT

10th Annual Report (as of December 1, 2003):

- 82,506,311 households passed by cable systems with 36 or more channels.
- 56,859,607 households subscribe to cable systems to these systems
- Prong II = 68.9% (56,859,607/82,506,311)

11th Annual Report (as of Oct. 19, 2004):

- 84,415,707 households passed by cable systems with 36 or more channels
- 58,177,885 households subscribe to these systems
- Prong II = 68.9 % (58,177,885/84,415,707)

12th Annual Report (as of Sept. 21, 2005):

- 93,077,522 households passed by cable systems with 36 or more channels
- 63,145,124 of those households subscribe to these systems
- Prong II = 67.8% (63,145,124/93,077,522)

DRAFT 13th Annual Report (as of Oct. 10, 2007)

- 93,373,707 households passed by cable systems with 36 or more channels
- 66,661,544 of those households subscribe to these systems
- Prong II = 71.4% (66,661,544/93,373,707)

Attachment 6

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

The Honorable John Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington D.C. 20515

Dear Chairman Dingell:

Thank you for your letter concerning our processes at the Federal Communications Commission. I agree that the Commission should conduct its affairs fairly, openly and transparently to serve the public interest. I appreciate the opportunity to provide an initial response to your questions.

Since I became Chairman, my approach has been to try to address concerns raised by my colleagues whenever possible including those raised a day before or even an hour before a scheduled Open Meeting. I recognize that at times this may result in a delay or in a less orderly process, but I believe it significant that over 95% of Commission items have been adopted by a bipartisan majority of Commissioners.

1) Will you commit to publishing the text of proposed rules sufficiently in advance of Commission meetings for both (i) the public to have a meaningful opportunity to comment and (ii) the Commissioners to have a meaningful opportunity to review such comments? If so, how?

The Administrative Procedures Act ("APA"), which is the law that governs the process when the Commission adopts new rules, requires that we describe in a notice to the public "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. 553(b)(3). The Commission complies with this requirement by publishing Notices of Proposed Rulemakings ("NPRM") that discuss the specific issues that the Commission intends to resolve and seeks comment on them. In response, members of the public then submit comments and reply comments to the Commission providing their views on the various issues discussed in the NPRMs. Commission staff then reviews this record and uses it to draft a detailed Order that the Commissioners will vote. The Order includes background information, a description of the comments, an explanation of the decisions the Commission is making, and the text of any rules.

The APA does not require that we publish the exact text of a proposed rule, and in

fact, it has not been standard practice to publish separately proposed rules prior to adoption of an Order. Recently, however, because of the unusually controversial nature of the media ownership proceeding, I took the extra step of publishing the actual text of the one rule I thought we should amend in advance of the upcoming Commission meeting on December 18.

2) Will you commit to providing your fellow Commissioners with all of the relevant data and analysis upon which a proposed order or rule is based? If so, how?

Yes, I already provide my fellow Commissioners all of the relevant data and analysis upon which a proposed order or rule is based. Proposed orders that Commissioners receive include background discussion, a detailed review of the record, and the rationale supporting our decisions regarding the implementation of any new rules or changes to existing rules.

The specific issue that may have prompted this question relates to our recent consideration of our annual Video Competition Report. This Report was circulated to my colleagues on October 11, 2007. It was considered for adoption at the November 27, 2007 Commission open meeting, almost 7 weeks later.

In 1998, the Cable industry argued that the Commission should eliminate its own collection of data because the data was already provided by Warren and Nielsen. The industry specifically noted that "Warren's TV Factbook and online database ... is relied upon by businesses and researchers for system specific information about the cable industry."[1]

In the 2002 Video Competition Report, the Commission specifically noted the differences between data from Warren and Kagan, concluding that "these differences suggest that the Kagan data should be used with a good deal of caution and that they are most reliable as a trend indicator, rather than a precise estimate for only one yare."[2] Although the Commission continued to cite Kagan data in later years, the Report continued to emphasize the limited nature of its use.[3]

In 2003, the first year the Commission addressed whether the cable industry had met the "70/70" test, the Commission relied solely on Warren Communications data to determine the test had *not* been met.[4]

In 2004, 2005, and 2006, the Commission's reports also discussed data from our Price Survey and Form 325 internal data collection. In 2006, several commenters submitted evidence that the 70/70 test had been met; others submitted evidence showing that it had not been met. Warren found that 67.8% households subscribing to cable systems with 36 or more channels. The Commission explicitly recognized then that

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[1] NCTA Comments at 7, CS Docket 98-61 (filed June 30, 1998) ("NCTA Comments").
[2] 9th Annual Report at para. 18.
[3] *See* 10th Annual Report at para. 21; 11th Annual Report at para. 19; 12th Annual Report at para. 30.
[4] *See* 10th Annual Report at para. 22.

"[g]iven the circumstances and the fact that all available data sources are imprecise to some extent, it is possible that the second prong of the 70/70 benchmark has been met." Thus, last year after outlining all the data, the Commission put the public on notice that the 70/70 test might have already been met. Thus, everyone was on notice about this important issue.

In 2007, the Video Competition Report cited Warren's data that found that 71.4% of households passed by cable systems with 36 or more channels subscribed to those systems. This Report cites data as of 2006.

In considering our most recent report, I provided the Commissioners with the data I determined was most relevant and most accurate for the purpose of determining how many subscribers there were to cable systems with 36 or more channels. The proposed report relied on data from Warren Communications, the only outside data source that distinguished cable systems with more than 36 channels and the data that relied on the largest survey of existing cable systems. In addition, Warren collects its data directly from cable television operators or individual cable systems to create a large database of cable industry information.[5] Warren states that it is the only research entity that directly surveys every cable system at least once every year, providing the most complete source of cable data.[6] In fact, the cable systems represented in Warren's database serve 96% of all subscribers nationwide.[7] I therefore believe that Warren is the most accurate and reliable source.

In the draft report that was circulated, I included an explanation as to why the Warren data was more reliable than the Kagan data. Specifically, footnote 94 stated "[w]e note that Kagan, unlike Warren, does not report data for cable systems with 36 or more channels and thus does not provide the precise data we need to perform the calculation specified by the statute. We also note that the Kagan estimate regarding the number of households passed by cable, 113,600,000 is greater than the U.S. Census Bureau estimate of 109,450,000 total households. As a result, we find the Warren data to be more reliable in this regard."

In addition, as I explained in response to a question from Ranking Member Barton prior to adoption of the Annual Report, (see attached) I did not include the Commission's Price Survey or Form 325 data in my proposal to the Commissioners because they are not as accurate as Warren. Specifically, these two sources represent smaller samples of the cable industry and therefore do not provide as reliable information regarding the number of subscribers to systems with more than 36 channels or number of homes passed by systems with more than 36 channels. The Commission currently sends questionnaires to only 781 cable systems for its Price Survey (representing only 10.2% of the total 7,634 systems in our database and collects Form 325 data from approximately 1,150 cable

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[5] *See* Letter from Michael Taliaferro, Managing Editor, Television & Cable Factbook, to Commissioners Tate and McDowell, Nov. 15, 2007.

[6] *Id.*

[7] *See* John Eggerton, McDowell, Tate Question 71.4% Cable Subscribership Figure, *Broadcasting & Cable*, Nov. 14, 2007.

systems (representing only 14.4% of the total 7,634 systems in our database). In contrast, Warren sends questionnaires to 7,090 cable systems, and states that it has data representing more than 96% of all cable subscribers.[8] Indeed, as the National Cable Television Association argued, "Warren's TV Factbook and online database, not the Commission's Form 325 data, is relied upon by businesses and researchers for system specific information about the cable industry."[9] Moreover, when one Commissioner asked for the most recent Price Survey data, it was provided to him within hours.

In retrospect, given the controversy, I should have included in the item a more detailed explanation of why I believed Warren data was more reliable than other sources we have cited in the past or that were submitted in the record.

3) **Will you commit to giving your fellow Commissioners adequate time to review proposed orders and rules? Is so, how?**

Yes. Today, Commission processes and decision-making time frames remain essentially the same as the general decision-making procedures established nearly ten years ago under Chairman William Kennard. These procedures were modeled on procedures outlined from the Commission's then General Counsel William Kennard during Reed Hundt's tenure as Chairman. During my tenure, I have endeavored to follow these same general procedures and time frames established by my predecessors in order to give Commissioners adequate time to review proposed orders and rules.

The full Commission considers proposed rules or rule changes through one of two methods. Commissioners either vote for proposed rules or rules changes under items that are "on circulation" or they vote for such items at the Commission's required monthly Open Meeting.

The vast majority of the FCC's rules are adopted "on circulation." Under this process, the Commissioners receive and vote electronically proposed orders which include background discussion, a detailed review of the record, and a thorough explanation of our decisions regarding the implementation of any new rules or changes to existing rules. Items on circulation remain in that status until 3 Commissioners vote electronically to approve proposed orders. If an item has been on circulation for at least 21 days, once a majority of Commissioners have voted to approve a circulate item, the remaining Commissioners have 10 days to register their votes or seek an extension beyond the 10 day voting period.

The other method that the Commission uses to adopt rules is to vote at the Commission's required monthly Open Meeting. Under the decision-making procedures of the last three Chairman (two Democratic, one Republican), Commissioners' offices receive items for their review at least three weeks before the open meeting. We have provided to the Commissioners a list of items that we are providing to them that day or that they already have that I would like the Commission to consider at the next open

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[8] *Id.*

[9] NCTA Comments at 7.

meeting.

Under Commission practice, when an item designated for the meeting has been received by the Commissioners' offices at least three weeks before the meeting, all Commissioners' substantive edits should be provided to the originating Bureau/Office not later than close of business seven days before the meeting. During my tenure, I have not enforced this practice on my fellow Commissioners in order to provide them even more time to consider these items. Unfortunately, many of the delays we have experienced with respect to the starting time of Open meetings have resulted because Commissioners have waited until 24 or 48 hours before the designated start of the Commission meeting to provide input, and have continued to provide edits up to and past the time the meeting was scheduled to begin. While it might be more orderly to enforce the prior, I would be concerned that it would significantly reduce the opportunity to reach a compromise with my colleagues.

As of December 3rd, there were 150 items circulating, waiting for the Commissioners to vote. 136 items were circulating for more than 30 days. Three Commissioners had not yet voted 133 of them. 110 of them had been circulating for more than 90 days. Three Commissioners had yet to vote 107 of them. As of December 9th, there are 154 items circulating, waiting for the Commissioners to vote. 137 items have been circulating for more than 30 days. Three Commissioners have not yet voted 110 of them. 110 of them have been circulating for more than 90 days. Three Commissioners have not yet voted 84 of them. I follow the same practice in place since I was a staffer at the Commission when William Kennard was Chairman of identifying some of these items to be voted at the next meeting. Under the Commissions decision-making procedures, if a circulation item has not been adopted within 30 days, the Chairman may convert it to a meeting item and put it on the Sunshine notice for the next meeting. The practice going back to Chairman Kennard had been to give notice to the other Commissioners at least two weeks before the meeting of an intent to move a circulation item to a meeting. Instead, I have typically provided my colleagues with three weeks notice of my intent to move a circulation item to an Open meeting by including it in the initial list.

Finally, the GAO recently expressed concerns that not all parties are aware of the draft rules and proposals that have been circulated among the Commissioners awaiting a vote. In order to address this concern, last week we posted on our website all of the names of the 154 items that are currently before the Commissioners on circulation and the date the item was originally circulated. This list will be updated on the Commission's website on a weekly basis.

As of December 9th, the oldest item on circulation dates to March 7, 2005.

4) **Will you commit to providing your fellow Commissioners and the public with adequate notice of Commission meetings? If so, how?**

Yes. I will continue to provide Commissioners with three weeks notice of the upcoming

Open meeting and a list of items that we are providing them or that we have already placed on circulation that I plan to consider at the Open meeting. I would note that, in the past, some Chairmen have only provided Commissioners with 2 weeks notice of items already on circulation that they plan to consider at the open meeting. I have typically provided 3 full weeks and will continue to do so. In addition, as I explained, the Commission will on a weekly basis post to the Internet the names of items that I have put on circulation so that the public has full information regarding what proposals the Commissioners are considering.

5) **Please describe the Commission's document retention policies, including policies relating to the retention of internal and external Commission correspondence, including e-mail. If these policies have changed since you became Chairman, please describe those changes, the date the changes were instituted, any staff education and oversight activities related to the changes, and the rationale behind the changes. Please also describe any changes you are contemplating to the Commission's policies regarding document retention.**

For more than twenty years, the Commission has had a document retention policy responsive to the requirements established by the National Archives and Records Administration (NARA). This policy is memorialized in a Commission policy statement promulgated by the Commission's Office of Managing Director. I have attached a copy of the policy statement.

The Commission's directive requires all Bureau and Offices to retain, according to specified schedules, official items that describe or document the agency's organization, functions, policies, decisions, procedures or operations. "Official" refers to materials created or received by the agency in the conduct of its business and other materials that show how the agency transacted business.

The Commission updates its directives periodically. In March 2007, the Commission updated its previous document retention directive, but the Commission's 2007 document retention directive is substantially the same as the previous directive.

With respect to staff education and oversight activities, the Commission implemented an agency-wide employee training program on its document retention policies in 2007. As of this date, nearly all of the Commission's employees have successfully completed the training.

Sincerely,

Kevin J. Martin
Chairman

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

The Honorable Bart Stupak, Chairman
Subcommittee on Oversight and Investigations

The Honorable Ed Whitefield, Ranking Member
Subcommittee on Oversight and Investigations

The Honorable Edward J. Markey, Chairman
Subcommittee on Telecommunications and the Internet

The Honorable Michael J. Copps, Commissioner
Federal Communications Commission

The Honorable Jonathan S. Adelstein, Commissioner
Federal Communications Commission

The Honorable Deborah Taylor Tate, Commissioner
Federal Communications Commission

The Honorable Robert M. McDowell, Commissioner
Federal Communications Commission

Attachment

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

The Honorable Joe Barton
Ranking Member
House Energy and Commerce Committee
U.S. House of Representative
2322-A Rayburn House Office Building
Washington, D.C. 20515

Dear Ranking Member Barton:

Thank you for your letter. Attached, please find my answers to your questions.

Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

Kevin J. Martin
Chairman

Attachment

cc: The Honorable J. Dennis Hastert
The Honorable Cliff Stearns
The Honorable John Shimkus
The Honorable Ed Whitfield
The Honorable Barbara Cubin
The Honorable Lee Terry
The Honorable Mike Rogers
The Honorable Mike Ferguson
The Honorable Joseph R. Pitts
The Honorable John B. Shadegg
The Honorable Tim Murphy
The Honorable Ralph M. Hall
The Honorable Nathan Deal
The Honorable Vito Fossella
The Honorable Steve Buyer
The Honorable Michael C. Burgess
The Honorable Mary Bono
The Honorable John Sullivan
The Honorable Sue Wilkins Myrick
The Honorable Marsha Blackburn
The Honorable Greg Walden
The Honorable George Radanovich

1. Please describe all items regarding government-mandated a la carte, multicast must-carry, program carriage, rate regulation of leased access, interactive set-top box obligations, cable ownership, and the 70/70 provision that are currently circulating or planned for an open meeting. For each, please provide the applicable docket numbers.

Government-mandated a la carte:

- None

Multicast Must Carry:

- Second Order on Reconsideration and Second Further Notice of Proposed Rulemaking in *Cable Carriage of Digital Television Broadcast Signals* (CS Docket No. 98-120), circulated 6/13/2006. The Second Order would require the mandatory carriage of multiple streams of broadcasters' digital transmission.

- Notice of Proposed Rule Making in *Promoting Diversification of Ownership in the Broadcasting Services* (Docket number not assigned until adoption), circulated 3/12/2007. The Notice of Proposed Rulemaking seeks comment on several initiatives designed to increase participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses.

Program Carriage:

- Report and Order in *Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage* (MB Docket No. 07-42), circulated 11/6/2007. The Report and Order adopts proposals concerning modifications to the Commission's leased access and program carriage rules.

Rate Regulation of Leased Access:

- Report and Order in *Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage* (MB Docket No. 07-42), circulated 11/7/2007. The Report and Order adopts proposals concerning modifications to the Commission's leased access and program carriage rules.

Interactive Set-top Box Obligations:

- None.

Cable Ownership:

- Fourth Report and Order and Further Notice of Proposed Rule Making in The Commission's *Cable Horizontal and Vertical Ownership Limits* (MM Docket No. 92-264), circulated 3/12/2007. The Fourth Report and Order adopts proposals in

response to the court remand in *Time Warner Entertainment Co. v. FCC* concerning the cable horizontal ownership limit.

70/70 Provision:

- Thirteenth Annual Report in *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming* (MB Docket No. 06-189), circulated 10/12/2007. The Thirteenth Annual Report to Congress examines multiple issues concerning the status of competition in the market for delivery of multichannel video programming to consumers.

In addition to these rulemaking items, the Commission frequently submits reports on a variety of topics relating to media, including both broadcast and cable. The 2006 Report on the status of competition in the market for the delivery of multichannel video programming and the Notice of Inquiry to begin the 2007 report are currently circulating before my colleagues and are scheduled to be considered at tomorrow's open agenda meeting. The Commission has also committed to submit a Report on Localism, which is currently pending before my colleagues. These reports touch on a wide range of topics including almost all of the ones listed above.

2. Please describe any data the Commission has received suggesting that the 70/70 provision has been met, the source of the data, and whether that data is of the same type and source the Commission usually relies on in its annual video competition reports.

The Commission has received data from Warren Communications that suggests the 70/70 provision has been met. This data is the same type and from the same source as the data the Commission usually relies on in its annual video competition reports. (See Attachment). Warren is a recognized source of industry data, and the Commission has used Warren's data for its 70/70 calculations since we started reporting on these benchmarks in the Tenth Annual Report. We note that in both the Tenth and the Eleventh Annual Reports, the Commission reported that data from Warren showed that the second prong of the 70/70 test was 68.9 percent; in the Twelfth Annual Report, the Warren data showed that the second prong was 67.8 percent. We rely on Warren data because it provides information on subscribers and homes passed for cable systems with 36 or more channels as specified in the statute. In addition, Warren collects its data directly from cable television operators or individual cable systems to create a large database of cable industry information.[1] Warren states that it is the only research entity that directly surveys every cable system at least once every year, providing the most complete source of cable data.[2] In fact, the cable systems represented in Warren's database serve 96% of

[1] *See* Letter from Michael Taliaferro, Managing Editor, Television & Cable Factbook, to Commissioners Tate and McDowell, Nov. 15, 2007.

[2] *Id.*

all subscribers nationwide.[3]

Congress required the Commission to monitor cable's penetration into the television market in section 612(g) of the Act. Congress required that: (1) "at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States" and (2) "are subscribed to by 70 percent of the households to which such systems are available, the Commission may promulgate any additional rules necessary to provide diversity of information sources."[4] (70/70 test). As discussed below, several commenters, including CFA, MAP, and AT&T argue the test has been met. Others, primarily members of the cable industry and a cable financial analyst, argue it has not been met. For the first time this year, however, data from one of the sources the industry itself relies on, Warren Communications News (Warren), results in finding that the test has been met. As described below, this data appears to be the most reliable.

There is no disagreement among commenters that the first prong of the 70/70 test has been met. As in the *2005 Report*, commenters agree that cable systems with 36 or more activated channels are available to more than 70 percent of households within the United States.

There has been and continues to be considerable disagreement, however, on the precise level of availability, i.e., the number of homes passed by systems with 36 or more activated channels, and on the exact percent of households that subscribe to such systems.[5] In the *2005 Report*, we found that alternative estimates yielded different conclusions about whether the 70/70 test had been met. Notably, the Commission explicitly recognized then that "[g]iven the circumstances and the fact that all available data sources are imprecise to some extent, it is possible that the second prong of the 70/70 benchmark has been met."[6] Accordingly, the *2005 Report* requested further comment on the best methodologies and data for measuring the 70/70 thresholds and what, if any, additional action should be undertaken to achieve the statutory goals, should we find that the thresholds have been met.[7]

In the 2005 Report, using data from the Census Bureau, we found that there were 107,850,000 households. Using Warren data we found that cable systems with 36 or more channels were available to 93,077,522 households. We therefore determined that 86.3 percent of homes were passed by cable systems with 36 or more channels.[8] In

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[3] *See* John Eggerton, *McDowell, Tate Question 71.4% Cable-Subscribership Figure*, Broadcasting & Cable, Nov. 14, 2007.

[4] 47 U.S.C. § 532(g). This provision was added to the Communications Act by the Cable Communications Policy Act of 1984 ("*1984 Cable Act*"), Pub. L. No. 98-549, 98 Stat. 2779.

[5] *See, e.g.*, Comments of AT&T, MB Docket No. 05-255 (filed Apr. 3, 2006); Comments of NCTA, MB Docket No. 05-255 (filed Apr. 3, 2006); Reply Comments of NCTA, MB Docket No. 05-255 (filed Apr. 25, 2006).

[6] *2005 Report* at 2515 ¶ 35.

[7] *2005 Report* at 2515 ¶ 36.

[8] *2005 Report* at 2513 ¶ 32.

calculating this figure, the Commission noted that no commenter had provided any conflicting data, and thus concluded that "there appears to be no serious disagreement that this prong of the analysis has been satisfied."

Using these same data sources, current Census Bureau data indicate that there are 109,450,000 households, an increase of almost 2 million homes.[9] And, according to Warren, 93,373,707 households are passed by cable systems with 36 or more channels, up almost 300,000 subscribers from last year. Thus, based on these data sources, we find that the percentage of availability of cable systems with 36 or more channels has declined slightly to 85.3 percent (93,373,707/109,450,000) of households.

With respect to penetration, the 2005 Report stated that Warren reported that 63,145,124 households subscribed to cable systems with 36 or more channels, resulting in 67.8% (63,145,124 /93,077,522) of households subscribing to cable systems with 36 or more channels.

Again using the same data sources, we find that, according to Warren, as of October 2007 there were 93,373,707 households passed by cable systems with 36 or more channels. Warren reports that there were 66,661,544 subscribers to such systems. Thus, by Warren's measures, 71.4 percent (66,661,544/93,373,707) of households passed by cable systems offering 36 or more channels subscribe to these systems.[10]

Commenters disagree about whether the second prong of the 70/70 test has been met. Some commenters urge us to look at other data sources. Of the available sources, Warren appears to be the most reliable data submitted. For the reasons described below, other data sources are not as suitable for this purpose.

Certain commenters urge us to look at Kagan or Nielsen. These companies, unlike Warren, do not report data for cable systems with 36 or more channels. Thus, neither Kagan nor Nielsen provide the precise data we need to perform the calculation specified by the statute. We also note that the Kagan estimate regarding the number of households passed by cable, 113,600,000, is greater than the U.S. Census Bureau estimate of 109,450,000 total households. As a result, while the Commission has cited Kagan data in previous Video Competition reports, it has always been clear that it should be used merely as a trend indicator, rather than as a precise estimate for any particular year.

As described in the *2005 Report*, AT&T submits that the second prong of the 70/70 test has been met.[11] In doing so, AT&T mixes data from different sources. If possible, the calculation of the second prong, which compares the number of subscribers to the number of households passed, should use the same data source for both the

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[9] U.S. Census Bureau, *Census Bureau Reports on Residential Vacancies and Homeownership* (press release), July 27, 2007, Table 3. *See* http://www.census.gov/hhes/www/housing/hvs/qtr207/q207press.pdf (visited Oct. 10, 2007).

[10] Warren Communications News, *Custom Report: from Television and Cable Factbook Datasets*, Oct. 10, 2007. E-mail from Michael Taliaferro, Assistant Publisher, Directories, WARREN COMMUNICATIONS NEWS to Dana Scherer on Oct. 10, 2007.

[11] *2005 Report*, 21 FCC Rcd 2514 ¶ 33.

numerator and denominator. In this way, the numerator (number of cable subscribers) is derived from the same households that are used for in the denominator (number of households passed by cable systems), and a valid comparison can be made between the number of subscribers and the household passed. Using Warren data for both the numerator and denominator remedies the deficiency in the estimate submitted by AT&T.

Other commenters concur with AT&T that the second prong of the 70/70 test has been met. For example, CU uses various public sources to conclude that there are 63 million cable subscribers served by cable systems offering 36 or more channels and 88 million households passed by cable systems offering 36 or more channels. CU then relies on its own assumptions to arrive at its estimate of 71.6 percent (63 million/88 million = 71.6%) for the second prong of the 70/70 test.

MAP submits a report by Dr. Gregory Rose. Dr. Rose used data from ABI Research which reports 133.71 million households passed by cable systems and 99.61 million cable subscribers for North America (U.S., Canada, and Mexico). Estimates for the U.S. were derived by subtracting from the ABI data estimates for Canada and Mexico based on data from Paul Budde Communications. Dr. Rose calculates a total of 110.91 million households passed by cable systems and 85.99 million cable subscribers in the U.S. Thus, Dr. Rose estimates 77.53 percent (85.99 million /110.91 million = 77.53%) for the second prong of the 70/70 test. However, the estimate is for all cable systems, not those that offer 36 or more channels. We note that the Communications Works of America agrees with MAP's conclusions.[12]

Alternatively Bernstein and NCTA argue that the second prong of the 70/70 test has not been met. Sanford C. Bernstein and Company believes that Warren undercounts the number of households passed by cable systems with 36 or more channels. However, Bernstein does not break out data for cable systems with 36 or more channels, as the statute requires. It derives an estimate of total households passed by cable, 106 million, based on SEC filings for companies that are publicly traded and those that issue public debt. In addition, it estimated subscriber counties for non-publicly traded companies based on data from SEC filings for companies that are publicly traded, filings for companies that issue public debt, MDC Corporation, and NCTA. It estimates that the total number of U.S. cable subscribers is 63,512,700 million households. We are not able to confirm the reliability of these estimates.

MAP and the Consumer's Union argue that publicly available documents undercount subscribers because they do not distinguish multiple dwelling units. Since 30 percent of Americans live in MDUs, the actual number of cable subscribers who subscribe to cable systems with 36 or more channels could be significantly higher. A higher number of subscribers results in a higher percentage of households who subscribe to cable systems with 36 or more channels.

In addition, NCTA submitted analysis of the Warren data by Michael G. Baumann. Dr. Baumann reviewed the on-line version of the Warren data and found 909 cable systems report subscribers but not homes passed and 401 systems report homes passed but not subscribers. Dr. Baumann estimates 66.1 percent for the second prong of

[12] See CWA letter dated Nov. 20, 2007.

the 70/70 test using only Warren data for cable systems that reported both homes passed and subscribers. We cannot verify that after NCTA has subtracted over 1300 systems, the remaining cable systems.

In the past, the Commission has referenced data from its price survey data or Form 325. This year, using data from the Price Survey would lead to a figure of 56.3 percent of households passed by cable systems offering 36 or more channels subscribe to these systems. Based on the data from the Form 325, the same figure would be 54 percent. These two sources represent extremely small samples and therefore cannot be relied upon for this purpose. The Commission currently sends questionnaires to only 781 cable systems for its Price Survey (representing only 10.2% of the total 7,634 systems in our database and collects Form 325 data from approximately 1,100 cable systems (representing only 14.4% of the total 7,634 systems in our database). In contrast, Warren sends questionnaires to all 7,090 cable systems, and states that it has data representing more than 96% of all cable subscribers.[13] Indeed, as NCTA has argued, "Warren's TV Factbook and online database, not the Commission's Form 325 data, is relied upon by businesses and researchers for system-specific information about the cable industry."[14]

In addition, commenters, such as AT&T, the Association of Independent and Video Filmmakers et al., and CBA, argue that competitors to incumbent cable systems (*e.g.*, overbuilders, DBS operators, and Internet providers) should be included in the calculation of the 70/70 test.[15] DBS operators and Internet providers do not meet the statutory definition of a cable system and, therefore, should not be included in the 70/70 calculations. An overbuilder, however, meets the statutory definition of a cable system and, therefore, should be included in the 70/70 calculations. Warren includes most overbuilders in its estimates of cable subscribers, but does not include subscribers to one notable cable provider, Verizon.[16] Doing so would increase the total number of cable subscribers to systems with 36 or more channels by 717,000, thereby increasing the percentage of households subscribing to systems with 36 or more channels to 72.1%.[17]

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[13] John Eggerton, "McDowell, Tate Question 71.4% Cable-Subscribership Figure," *Broadcasting & Cable*, 11/14/2007.

[14] *See* NCTA Comments at 7, CS Docket 98-61 (filed June 30, 1998).

[15] *See* AT&T Comments at 4, AIVF Comments at 5, and CBA Reply at 3-4 filed in response to request for additional information in the *2005 Report*, 21 FCC Rcd 2515 ¶ 36.

[16] *See 2007 edition of* Warren Television and Cable Factbook at D-7. Warren uses the Commission's definition of a cable system in Sec. 76.5 of our rules, including overbuilders. Moreover, this approach is consistent with our construction of the term in other cable related settings. In the "effective competition" test relevant to cable rate regulation under Section 623 of the Act, the Commission has distinguished between vacant and occupied housing units, declining to include vacant housing units within the term "households" as used in that analysis. Therefore, we conclude here that the calculation of the second prong should include only occupied housing units in the denominator and only subscribers from such units in the numerator.

[17] Verizon 9-30-07, SEC Form 10-Q. Adding Verizon's subscribers does not increase the denominator because doing so would double count homes already passed by cable.

ATTACHMENT

WARREN NUMBERS PUBLISHED PREVIOUSLY IN 70/70 SECTIONS OF VIDEO COMPETITION REPORT

10th Annual Report (as of December 1, 2003):

- 82,506,311 households passed by cable systems with 36 or more channels.
- 56,859,607 households subscribe to cable systems to these systems
- Prong II = 68.9% (56,859,607/82,506,311)

11th Annual Report (as of Oct. 19, 2004):

- 84,415,707 households passed by cable systems with 36 or more channels
- 58,177,885 households subscribe to these systems
- Prong II = 68.9 % (58,177,885/84,415,707)

12th Annual Report (as of Sept. 21, 2005):

- 93,077,522 households passed by cable systems with 36 or more channels
- 63,145,124 of those households subscribe to these systems
- Prong II = 67.8% (63,145,124/93,077,522)

DRAFT 13th Annual Report (as of Oct. 10, 2007)

- 93,373,707 households passed by cable systems with 36 or more channels
- 66,661,544 of those households subscribe to these systems
- Prong II = 71.4% (66,661,544/93,373,707)

Attachment 7

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

April 13, 2007

The Honorable Mike Doyle
United States House of Representatives
401 Cannon House Office Building
Washington, D.C.

Dear Congressman Doyle,

Thank you for your letter of March 13, 2007, concerning the Commission's contract with Mr. Dale N. Hatfield. First, let me say how much I appreciate Dale Hatfield's past work here at the Commission. I have known Dale since I first came to the Commission as a staffer in 1997. He spent many years as a respected member of the Commission staff, including serving as the Chief of the Office of Engineering and Technology, Chief Technologist, and as the head of the Office of Plans and Policy. He is a distinguished engineer, and has made considerable contributions to the field. His work has been valuable to the Commission in the past, and his insights are welcome at the Commission in the future.

I have made 911 a priority for the Commission, and I share your view that the public expects us to get these issues right. One of the first issues that I turned to as Chairman was ensuring that all Americans' 911 calls reach emergency operators regardless of whether they are using a wireline phone, wireless phone, or an Internet phone. I have pursued, and will continue to pursue, the best sources of information to guide the Commission's decision making on emergency 911 issues and to ensure that appropriate actions are taken to safeguard all Americans.

In your letter, which I received the afternoon prior to my appearance before the Subcommittee on Telecommunications and the Internet, you asked that I be prepared to answers questions on this matter at the hearing that following morning. Given your request, I asked my staff to brief me on their recollections of the Hatfield contract and events that occurred more than a year before. You also requested that we gather all contractual materials, and all communications between Mr. Hatfield and the Commission related to the second report. Since then, we have reviewed all contractual materials related to Mr. Hatfield, collected every communication (including emails, memoranda, letters and call logs) between the Commission and Mr. Hatfield related to the second report, and additionally collected every such communication internally within the Commission. I appreciate the opportunity to now provide you with all of the details about the contract and to more fully answer the questions you raised.

In short, in 2001 the Commission entered into a contract with Mr. Hatfield to study E-911 issues, which resulted in 54-page report submitted to the Commission in October 2002. In 2003, the Commission entered into a new contract with Mr. Hatfield to provide assistance to the Commission with the "next steps" identified in his 2002 report. The Commission issued three orders under the 2003 contract in 2003, 2004 and 2005. In the three years since the 2003 contract, however, Mr. Hatfield has not provided any further reports to the Commission. In 2005-06, Mr. Hatfield established a timeline for delivery of a second report, but did not deliver a report under these deadlines. Mr. Hatfield billed $9,500 of the $10,000 authorized for the 2005-06 year, but indicated that he still had significant work to do. His contract was suspended in May 2006. Although the Commission is no longer paying for his services, we welcome any data he has compiled or reports that he has completed since that time.

The attached narrative fulfills your request for an "explanation of why Mr. Hatfield's full report was terminated after he presented his findings to Commission staff," and also contains the "detailed timeline of the events surrounding the report and its premature termination." The additional documentary information you requested accompanies this letter, including:

- All contractual materials related to Mr. Hatfield's second report; and
- All communications, including emails, memoranda, letters and call logs between Mr. Hatfield and the Commission related to the second report.

With respect to your request for "a list of tentative findings that Mr. Hatfield presented to Commission staff," Mr. Hatfield did not provide anyone at the Commission with a copy of any conclusions in writing. The few tentative findings presented to the Commission staff are contained in a summary memorandum prepared by Bureau staff of the May 2006 meeting between Mr. Hatfield and Bureau staff, which is appended to this letter as Exhibit E. In addition, in an effort to be as complete as possible, we have also included copies of all other documents produced by Commission staff related to Mr. Hatfield's second report, as well as a report submitted to the Commission that was authored by Mr. Hatfield in his capacity as a consultant on behalf of parties that the Commission regulates. See attached Exhibit G.

Please do not hesitate to contact me if you have any further questions.

Sincerely,

Kevin Martin
Chairman

Timeline and Specific Questions

In October 2001, before I became Chairman, the Commission entered into a contract with Mr. Hatfield to work on E911 issues. The purchase order issued under this contract was initially for $6,000, and was subsequently increased on three separate occasions in the amounts of $5,000, $10,882.00 and $10,700, for a total authorized amount of $32,522. Of this amount, $32,293.70 was paid to Mr. Hatfield. Mr. Hatfield prepared and filed a fifty-four page report with the Commission on October 15, 2002, one year after initially being retained by the Commission, entitled "A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services." His report is publicly available on the Commission's E911 website, and is attached at Exhibit A to this letter.

In September 2003, again before I became Chairman, the Commission entered into a second contract with Mr. Hatfield for consulting services on E911 issues, at a rate of $250 per hour. In September of 2003, the Commission issued a purchase order under this contract in which Mr. Hatfield was to assist the Commission with "next steps" identified in his 2002 report. The purchase order was funded in the amount of $27,000, of which only $3,000 was paid to Mr. Hatfield. Specifically, under this order, Mr. Hatfield's task was described as follows:

> "In 2002 Dale Hatfield researched and prepared a key report for the Commission that analyzed the state of E911 deployment across the nation. The report raised several important next steps for the Commission and other stakeholders, including addressing network architecture issues, standards, and protocols. Given Dale's extensive engineering and policy experience, particularly his work on the 2002 report, he is uniquely suited to assisting [sic] the Commission in this effort. In particular, we expect Dale to assist the Commission in establishing and implementing the appropriate technical fora to address E911 network architecture issues. We view Dale's continuing role in E911 policy as critical to advancing U.S. public safety."

In September 2004, the Commission issued another order under the September 2003 contract, in which Mr. Hatfield was again to assist the Commission with "next steps" identified in his 2002 report. The 2004 order was initially funded in the amount of $21,000.. None of this amount was paid to Mr. Hatfield, as he did not submit any invoices for payment that year. Specifically, under this order, Mr. Hatfield's task was described as follows:

> "In the continuing need for accurate assessment of the state of E911 deployment across the nation [sic]. Mr. Hatfield's prior work raised several important next steps for the Commission and other stakeholders, including addressing network architecture issues, standards, and protocols. Given Dale's extensive engineering and policy experience, he is uniquely suited to assisting [sic] the

> Commission in this continuing effort. In particular, we expect Dale to assist the Commission in defining the appropriate technical fora to address E911 network architecture issues. We view Dale's continuing role in E911 policy as critical to advancing U.S. public safety."

In September 2005, the Wireless Telecommunications Bureau issued a further order under the 2003 contract with Mr. Hatfield. Under this order's statement of work, Mr. Hatfield was to provide:

> "Follow up on status of suggested Commission actions identified in his October 2002 report, including what remains undone and whether a need continues to exist for such actions given the current status of e-911 [sic] deployment and other technology developments, and an assessment of whether there are new actions recommended to be taken in light of today's environment;
> Provide an independent view of the technical and other challenges faced by smaller carriers/telecommunications providers in deploying Phase II service, as referenced in the Tier III Order, which was released by the Commission earlier [in 2005], as well as any problems with urban canyon and in-building settings;
> Evaluate the current state of location technologies, including fore [sic] each of the switch, network, and handset elements; [and]
> Provide an independent assessment/view regarding methods of verifying compliance with the Commission's accuracy requirements."

This order was extended specifically at the request of the Wireless Telecommunications Bureau. At the time, the Bureau recognized that Mr. Hatfield had not performed any work during the 2004-05 year. Nonetheless, the Bureau sought extension of Mr. Hatfield contract and identified the specific tasks that Mr. Hatfield was to perform, which were incorporated directly into the statement of work. The Bureau suggested that Mr. Hatfield's work would be particularly relevant "in light of a major upcoming e-911 [sic] deadline in early FY06." In addition, the Bureau suggested that "Mr. Hatfield's expertise would be helpful as the Commission proceeds to deliberate next steps regarding the [National Reliability and Interoperability Council] recommendation and any future NRIC or [Emergency Services Interconnection Forum] efforts regarding establishment of e911 standards." See attached email at Exhibit B.

Although I was not personally aware of the contract extension, the 2005 extension was approved by my Chief of Staff in the context of 264 routine contracting actions during the month of September 2005, the last month of the fiscal year, 66 of which were for the Wireless Telecommunications Bureau. Even when the contract was extended, there was some concern regarding whether an extension of Mr. Hatfield's contract was justified. In particular, concern was expressed that Mr. Hatfield had failed to produce any further data to the Commission since his initial report in 2002, and had failed to submit any invoices to the Commission under the order issued in September 2004. See attached email Exhibit

C. Nonetheless, an additional order was issued in September 2005 in the amount of $10,000 at the request of the Wireless Telecommunications Bureau.

In February 2006, Mr. Hatfield met with several staff members in the Wireless Telecommunications Bureau to address the scope of his work and provide an outline of a proposed report. A summary of the February 2006 meeting drafted by Bureau staff was provided to Mr. Fred Campbell of my offices. See attached email Exhibit D. At that time, there were no findings or conclusions included beyond: "V. Principal findings and conclusions." In that summary, Mr. Hatfield provided a schedule for completion of his work. He was to provide a draft of his report by March 1, 2006 for review and comment. Consistent with his original contract, the Commission was provided an opportunity for review and comment. Specifically, the FCC could provide "its feedback (including an opportunity to remove any discussions of a sensitive nature)" by March 15, 2006. His final report was to be completed and submitted by March 22, 2006. Mr. Hatfield later indicated that he would not meet that deadline but that he could complete the report by the end of March. See attached email at Exhibit E.

By May 2006, Mr. Hatfield had still not completed his report. He met again with staff from the Wireless Telecommunications Bureau on May 10, 2006, to provide an update. A summary of the May 2006 meeting with the Bureau was also prepared by Bureau personnel, but was not provided to me or my staff. See attached email Exhibit F. At that meeting, Mr. Hatfield apparently provided some brief tentative conclusions and recommendations, which are recited in the summary memorandum. However, Mr. Hatfield also suggested that additional work was necessary. In particular, he indicated that an ongoing APCO-International study (Project LOCATE) would provide him with specific additional information needed to form his conclusions, and that once he had this information a delivery date for his report could again be set. We also do not have copies of any slides used during these meetings, but would welcome their submission to the Commission. On April 10, 2007, APCO-International publicly released and filed their Project LOCATE report.

In late May 2006, I learned about the existence of the new order from my personal staff and the fact that Mr. Hatfield was working on another report. My personal staff contacted Mr. Hatfield and asked him about the nature of his work and his proposed report. Mr. Hatfield declined to indicate to my personal staff what tentative conclusions, if any, he had reached. He declined to provide a summary of his findings. He also declined to provide a draft of his proposed report to my personal staff at the time. To this date, Mr. Hatfield has not provided the Commission with a draft of his report or a copy of his conclusions in writing.

By this time, the Commission had already acted on several 911 issues. For example, from December 2005 to March 2006, the Commission acted upon more than a dozen E911 handset penetration deadline waiver requests, and was continuing to address implementation of the 911 rules adopted in June 2005 for interconnected voice over Internet protocol providers.

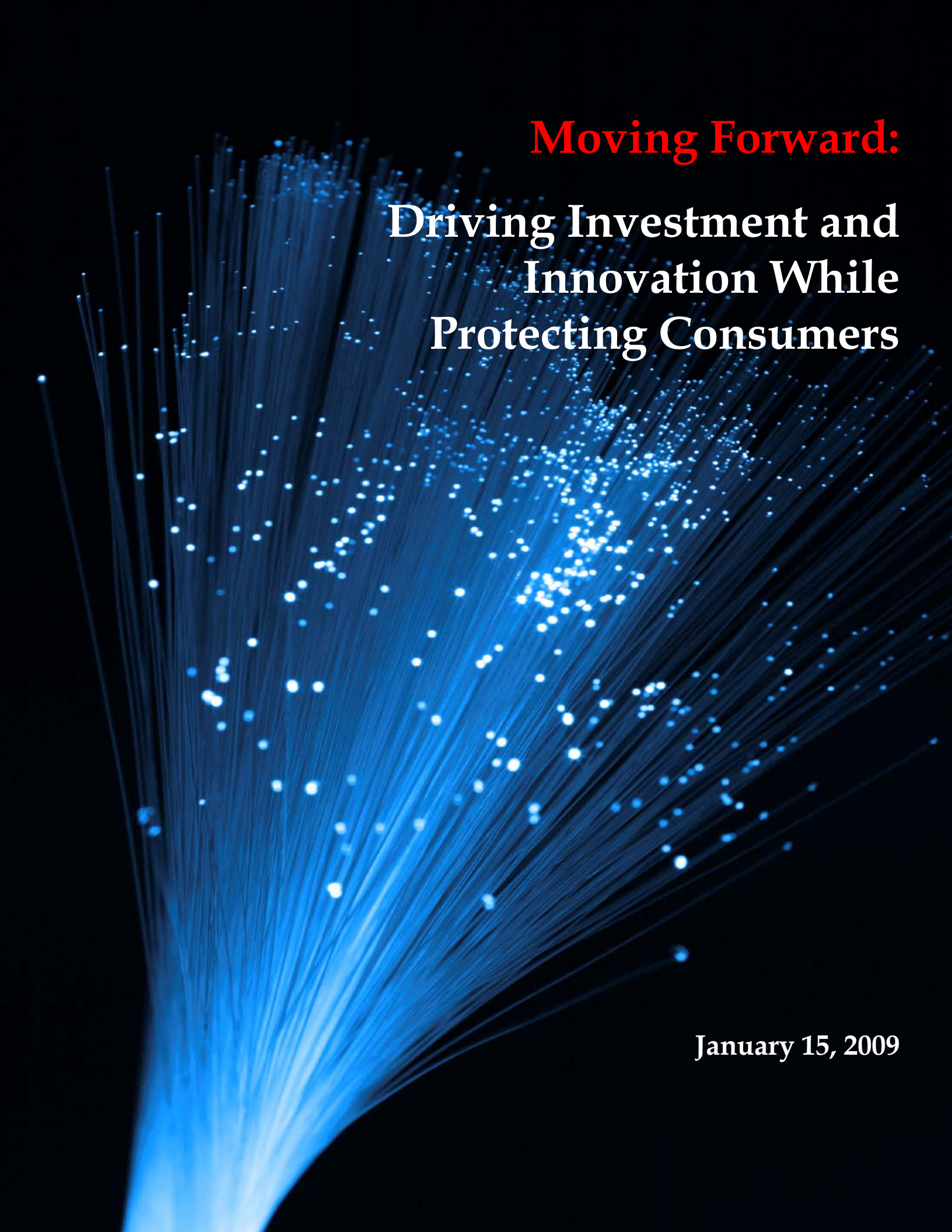
In addition, in March 2006 I announced plans to create a new Public Safety and Homeland Security Bureau that would focus on all of the various technical issues relating to E911, including the issues Mr. Hatfield had been examining. Given the recent Commission actions on VoIP 911 and pending wireless E911 issues, and my plans to create the new Bureau, I concluded that it was not in the public interest to continue to pay an outside third-party to address wireless E911 issues. Moreover, more than three years had lapsed since he was initially retained to assist the Commission in addressing the next steps identified in his 2002 report. He had not done any additional work in 2004-05. In 2005-06, he had not produced the promised draft report to the Commission and suggested that significant additional work remained to be done. Mr. Hatfield ultimately billed the Commission $9,500 of the $10,000 budgeted for his task in 2005, and as such should have been in the very final stages of his work. In light of all of these factors, the contract was suspended in May 2006 and Mr. Hatfield was instructed to compile his final invoices and cease billing the Commission for his E911 work.

In your letter, you cited several tentative conclusions from Mr. Hatfield regarding rural E911 deployment, E911 coverage in indoor environments, and location accuracy methods. While these topics may have been within the scope of Mr. Hatfield's proposed report to the Commission, Mr. Hatfield did not present any tentative conclusions to me or members of my personal staff, and as such they did not impact the decision to suspend Mr. Hatfield's contract. To the extent he provided such tentative conclusions to Bureau staff, they are contained in the memorandum summarizing Mr. Hatfield's May 2006 meeting with them. We also do not have copies of any slides used during these meetings, but would welcome their submission to the Commission.

Neither Mr. Hatfield's research nor his proposed report was suppressed by suspension and non-renewal of the contract. Nor was the suspension of the contract related to any tentative conclusions he may have reached. Nor was it ever indicated to Mr. Hatfield that he could not pursue work on E911 issues on his own. Although we are not currently paying Mr. Hatfield for his advice, we would welcome any report he may have now finished. We understand that Mr. Hatfield may have approached other parties about contracting him to further study these issues and finish any reports. Again, we would welcome any reports he may finish if others choose to pay him for that work. To the extent Mr. Hatfield wishes to use any data he may have developed pursuant to the canceled contract for other purposes, including issuing a report, he may do so. Even under the most restrictive interpretation of his contract, Mr. Hatfield could seek written permission from the Commission to disclose any data generated under the contract.

While there was one inquiry from an outside party about that possibility, Mr. Hatfield has not made any such official request to date; I would, however, grant any such request he makes.

Attachment 8



Moving Forward:

Driving Investment and Innovation While Protecting Consumers

January 15, 2009

Federal Communications Commission

Moving Forward:

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Introduction

Over the past several years, we have seen a telecommunications industry undergoing rapid and unprecedented change. In 2001, the Commission was still mired in the fights between local and long distance telephone providers. Television stations had barely started making plans to broadcast in digital. More people had wireline telephone service than wireless. Broadband connections were not widespread. Cable companies weren't offering voice service and telephone companies weren't offering video.

Today, ushered in by the broadband revolution, we have finally found the promised land of convergence. Telephone calls are made using the Internet and over cable systems. Television programs are watched whenever we want, are offered by telephone companies and are increasingly available on the Internet. Cable, wireless and traditional telephone companies all sell packages of minutes that don't differentiate between local and long distance.

There are over 260 million wireless subscribers, or twice as many as there are wireline subscribers. And cell phones are mini-computers. They take pictures, play songs and games, send e-mail, and hopefully will send and receive emergency messages in times of disaster.

Faced with such fast-paced technological change, the Commission under Chairman Kevin Martin has tried to make decisions based on a fundamental belief that a robust, competitive marketplace, not regulation, is ultimately the greatest protector of the public interest. 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.

Government, however, still has an important role to play. The Commission has worked to create a regulatory environment that promoted investment and competition, and set the rules of the road so that players could compete on a level playing-field. The FCC has also stepped in when the marketplace didn't allow for sufficient competition to a former monopoly, when the market needed to be open to new entrants and technologies, or when larger societal goals such as ensuring the needs of public safety, fell outside the market's scope. Finally, the Commission also made sure that as the industry was transforming, average consumers didn't get left behind.

During Chairman Martin's tenure, the Federal Communications Commission has been focused on establishing the appropriate regulatory environment that achieves the right balance between two competing interests: (1) to encourage investment in communications infrastructure; and (2) to make sure consumers and innovation are not unintentionally or intentionally disadvantaged by the owners of that infrastructure. The Martin Commission has acted to level the playing field so that all entrants could fairly compete, facilitating increased investment. At the same time, we have been able to push for more open platforms to spur innovation and the consumer benefits of lower prices and improved services.

Promoting Broadband Deployment

Broadband deployment has been a top priority of the Commission over the past four years. Broadband technology is a key driver of economic and social growth. The ability to share increasing amounts of information, at greater and greater speeds, increases productivity, facilitates interstate commerce, and helps drive innovation. Moreover, broadband Internet access has the potential to affect almost every aspect of our lives — how we communicate with each other, where we work, how we educate our children, how we entertain ourselves, and how we receive our health care. To fully appreciate and take advantage of the Internet today, consumers need faster broadband connections.

Under Chairman Martin, the Commission has focused on creating a regulatory environment that promotes investment in broadband network infrastructure and competition. The Commission has removed legacy regulatory obstacles that discouraged such investment and slowed deployment. Moreover, to evaluate the progress it has made in promoting broadband and to better direct resources toward unserved and underserved areas, the Commission has updated its broadband data gathering program.

Eliminating Legacy Regulations and Encouraging Infrastructure Investment

In 2001, the communications industry was mired in a period of far-reaching decline. Old-style regulations placed on new investment and broadband services were part of the problem.

The Commission has promoted broadband deployment by eliminating inefficient and unnecessary legacy regulation. The Commission also deregulated all broadband services, establishing a level playing field, in which all companies are subject to the same basic rules.

In August 2005, the Commission substantially reduced regulation of broadband access, removing legacy regulations, like tariffs and price controls, which discouraged providers from investing in broadband networks. The Commission subsequently classified

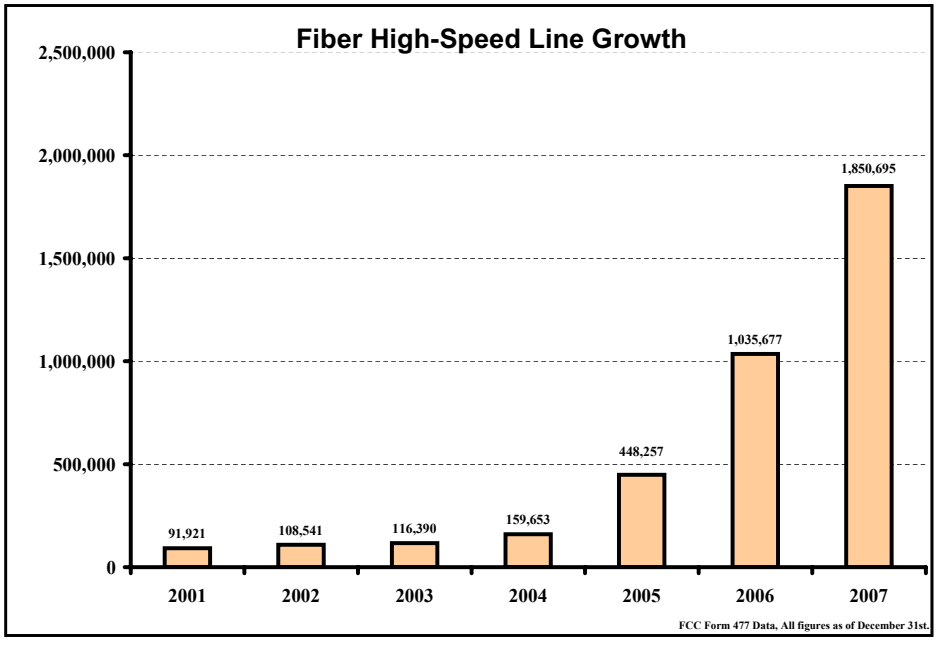
Promoting Broadband Deployment

Broadband-over-Power-Line and wireless broadband Internet access services as "information services" not subject to legacy regulations. These actions leveled the playing field among all operators in the provision of broadband Internet access services.

The Commission also removed wholesale unbundling requirements on new fiber investment by incumbent local exchange carriers—thus encouraging those carriers to invest in infrastructure in an environment free of economic regulation. Similarly, the Commission forbore from enforcing legacy Title II requirements and Computer-Inquiry requirements, such as tariff rules and price controls, on certain broadband enterprise services. In addition, the Commission streamlined the state and local franchise process for new entrants. The Commission also banned exclusive contracts in apartment buildings.

Investment in Broadband Infrastructure

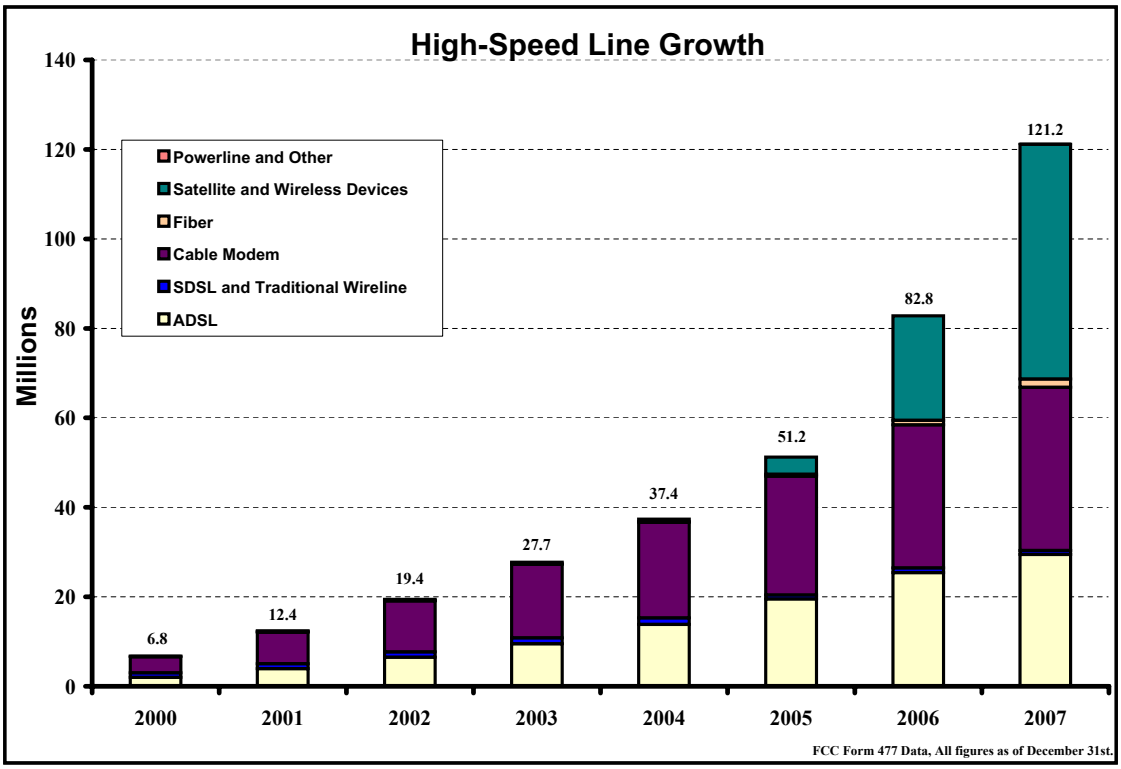
The Commission's broadband policies have led to increased investment in broadband infrastructure. Telecommunications companies expect to make $50 billion in capital expenditures on broadband in 2008–2009.[1] Moreover, companies are increasingly investing in fiber. One company alone, Verizon, has indicated that it will spend up to $23 billion to deploy its FiOS network throughout its service area.[2] And industry-wide spending on fiber-related telecommunications equipment is estimated to grow almost $13.5 billion annually in the next three years.[3] As a result of this investment, fiber is increasingly used across the United States for services from television, Internet access,



telephony, security, and meter reading. The number of homes passed in the United States has increased from approximately 1.6 million in 2005 to over 13 million today. Nearly 4 million households have been connected (up from slightly over 200,000 in 2005). Video is now provided to approximately 2 million homes, up from well under 100,000 in 2005.[4] The number of fiber lines has grown from just over 90 thousand in December 2001 to over 1.8 million in December 2007 (over 1900% growth).[5]

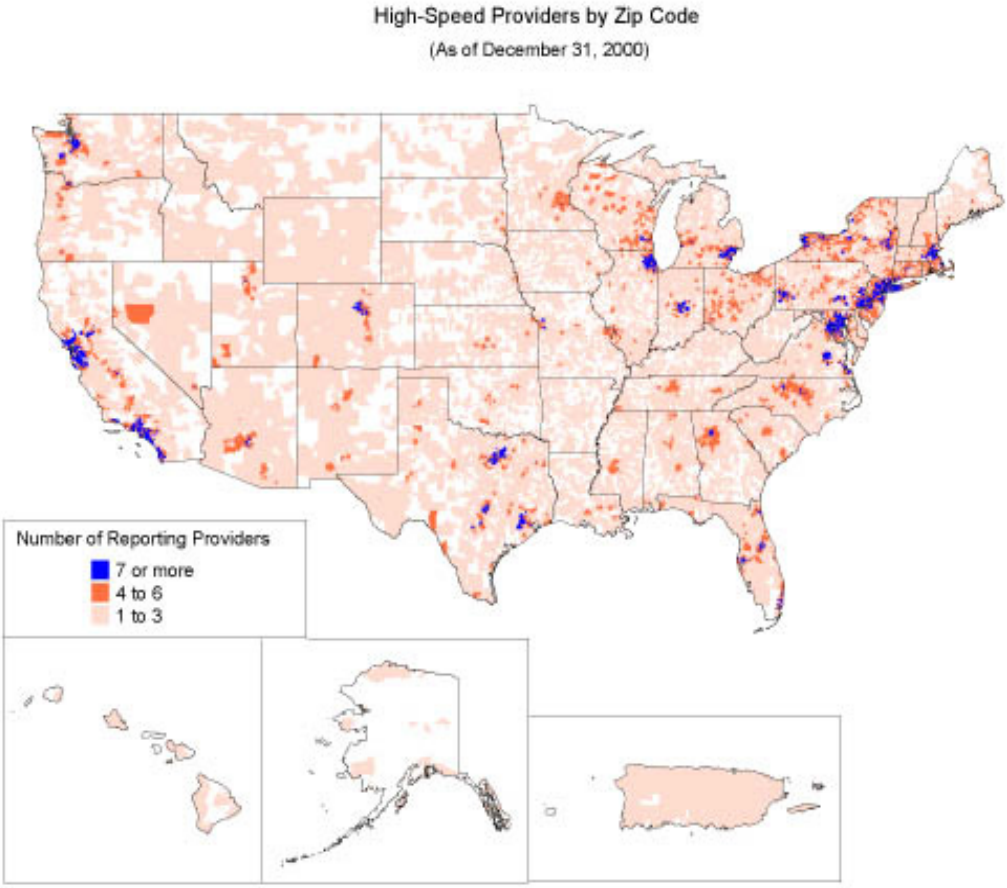
Increasing Broadband Subscription and Higher Speeds

The Commission's actions to boost infrastructure investment have contributed significantly to the rapid increase in broadband subscribership. Since 2000, the number of high-speed lines has increased more than 1600 percent, from approximately 6.8 million lines in December 2000 to over 121 million lines in December 2007.[6]



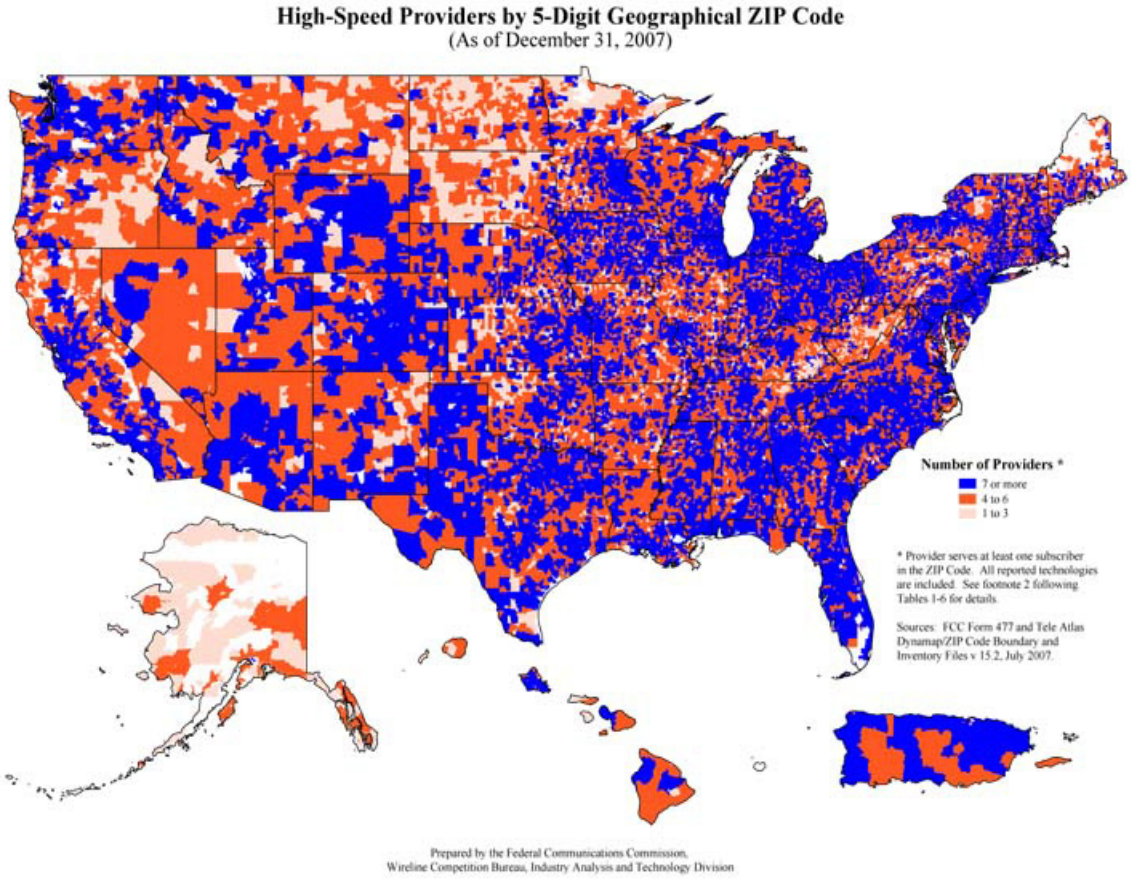
Promoting Broadband Deployment

In 2000, almost 80 percent of the nation's geographic zip codes had three or fewer high-speed providers, with no high-speed provider in almost a third of all geographic zip codes.



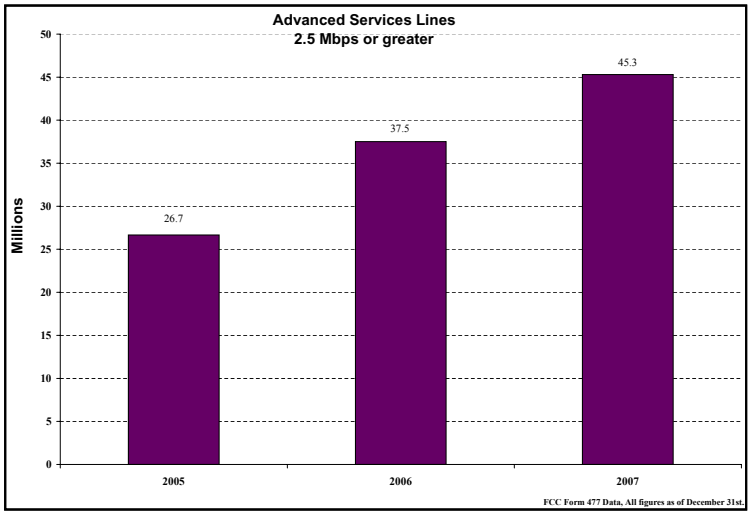
Promoting Broadband Deployment

Contrast 2007, in which all but 62 of the nation's 30,152 geographic zip codes had at least one high-speed provider, and more than 50 percent had seven or more high-speed providers.



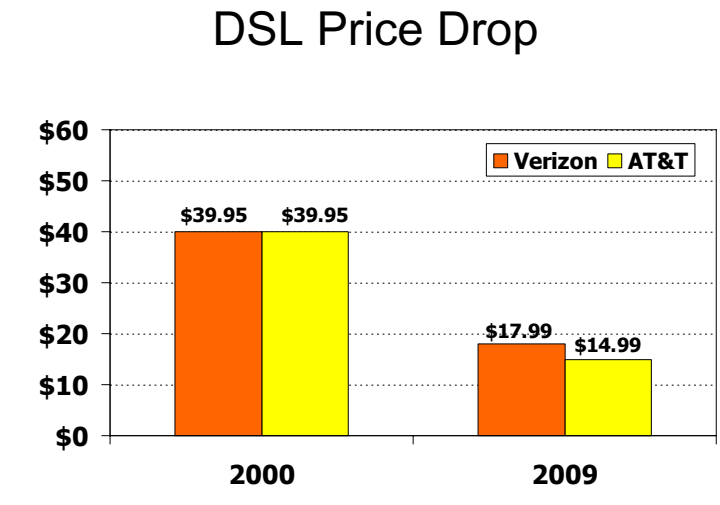
Promoting Broadband Deployment

The number of broadband lines providing higher transmission speeds has also been increasing. From December 2005 to December 2007, the number of lines with transmission speeds greater than or equal to 2.5 mbps grew by 70 percent, from approximately 27 million lines to over 45 million lines.[7]



Lower Broadband Prices

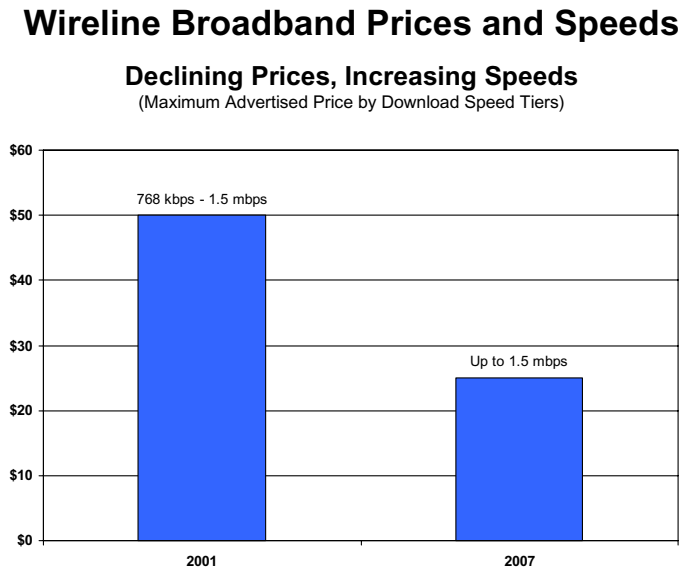
As a result of the increased competition and investment resulting from the Commission's policies, we have seen both significant reductions in the price of broadband and significant increases in speed. Since 2000, the price of wireline broadband has decreased more than 50 percent.[8]

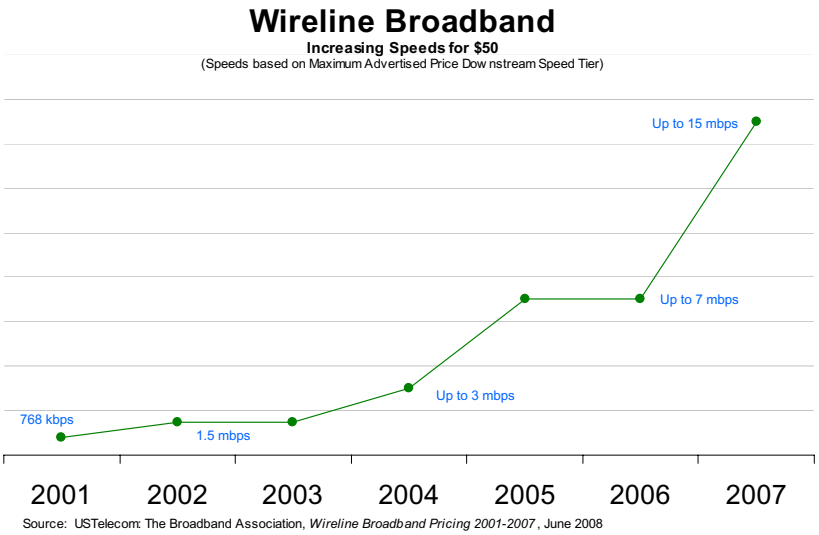


Source: Communications Daily, Feb. 15, 2000; Newsday, Dec. 4, 2000 and company Web sites 2009

Promoting Broadband Deployment

Furthermore, while it cost approximately $50 in 2001 to obtain a 768 kbps connection, in 2007, $50 could get you a connection with speeds up to 15 mbps. In that same period, speeds have increased, enabling consumers to purchase service that is over ten times faster than what was offered back in 2001.[9]





As a result, the number of adult Internet users in the United States has increased from 127 million (64 percent of the adult population) in 2001 to 184 million (81 percent of the adult population) in 2008.[10]

Promoting Broadband Deployment

Understanding the State of Broadband in the United States

The Commission has worked to gain a better understanding of who has broadband and the nature of the broadband services being deployed in the marketplace. Recently, the Commission revised its broadband data gathering program in a way that significantly improves the utility and value of the data collected. Importantly, the Commission increased the speed of what is considered basic broadband from 200 kbps to 768 kbps. In addition to basic broadband, the Commission defined seven new upload and download speed tiers for reporting broadband subscribership data.

This new framework allows for finer distinctions among services with regard to their practical capabilities. The Commission also for the first time required carriers to report the number of subscribers in geographic units below the state level. The Commission's choice of the census tract as the geographic reporting unit has the advantage that it enables the correlation of the collected broadband-subscribership data with a variety of demographic measures. This, in turn, will facilitate a better understanding of the demographic and economic factors that affect broadband adoption.

Reporting Broadband Connections: Speed Tiers

Old Tiers
Faster Direction
> 200 kbps, <2.5 mbps
≥ 2.5 mbps, <10 mbps
≥ 10 mbps, < 25 mbps
≥ 25mbps, < 100 mbps
≥ 100 mbps

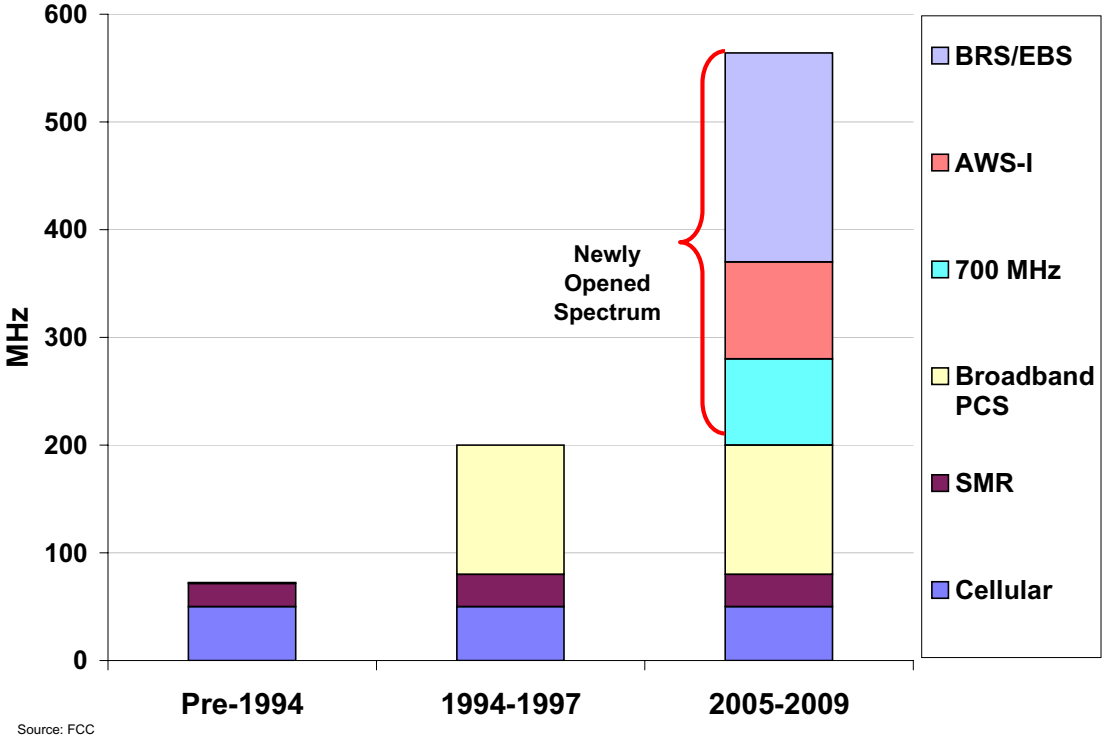
New Tiers	
Download	Upload
>200 kbps, < 768 kbps	< 200 kbps
	>200 kbps, < 768 kbps
≥ 768 kbps,< 1.5 mbps	≥ 768 kbps,< 1.5 mbps
≥ 1.5 mbps,< 3 mbps	≥ 1.5 mbps,< 3 mbps
≥ 3 mbps,< 6 mbps	≥ 3 mbps,< 6 mbps
≥ 6 mbps,< 10 mbps	≥ 6 mbps,< 10 mbps
≥ 10 mbps,< 25 mbps	≥ 10 mbps,< 25 mbps
≥ 25 mbps,< 100 mbps	≥ 25 mbps,< 100 mbps
≥ 100 mbps	≥ 100 mbps

Ushering in an Era of Wireless Broadband

Effective Spectrum Policies for Promotion of Wireless Broadband

Increasingly broadband is moving from a wireline to a wireless world. And wireless broadband uses spectrum. During Chairman Martin's tenure, the Commission promoted access to spectrum that will facilitate wireless broadband options for consumers. Specifically, the Commission has used spectrum auctions to efficiently and effectively make available as much spectrum as possible to put the next generation of wireless broadband devices into the hands and homes of consumers. All told, the Commission has made over 354 megahertz of spectrum available over the last four years for mobile wireless broadband services through auction and flexible use policies, which is a tremendous increase over the approximately 200 megahertz of spectrum that had previously been available for such services in the Cellular, Specialized Mobile Radio (SMR) and Broadband PCS bands.

Increase in Spectrum Available for Wireless Broadband Services



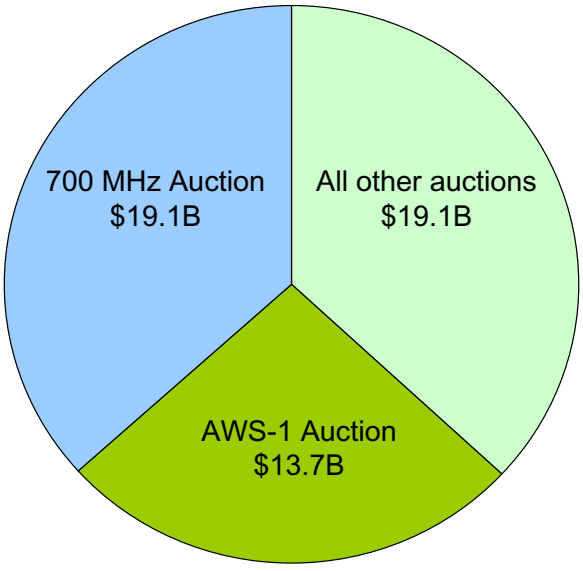
Source: FCC

The Commission used various tools over recent years to open up this significant amount of spectrum. The Commission conducted rulemakings and spectrum license auctions in the 700 MHz and AWS-1 bands that have transformed these bands, previously occupied in part by federal spectrum users and analog television broadcasters. The Commission also approved the unlicensed use of the television (TV) "white spaces" spectrum, which represents is a significant victory for consumers. The Commission expects that everything from enhanced home broadband networks, to intelligent peer-to-peer devices, and even small communications networks will come into being in TV "white spaces."

Putting Licensed Spectrum in the Marketplace

In fact, the 700 MHz and the AWS-1 auctions were the two most successful auctions in Commission history. The 700 MHz auction put an additional 62 MHz on the market and raised a record-breaking $19.1 billion. In the AWS-1 auction 90 MHz was sold for $13.7 billion.

Comparison of 700 MHz and AWS-1 Auction Revenues vs. All Others

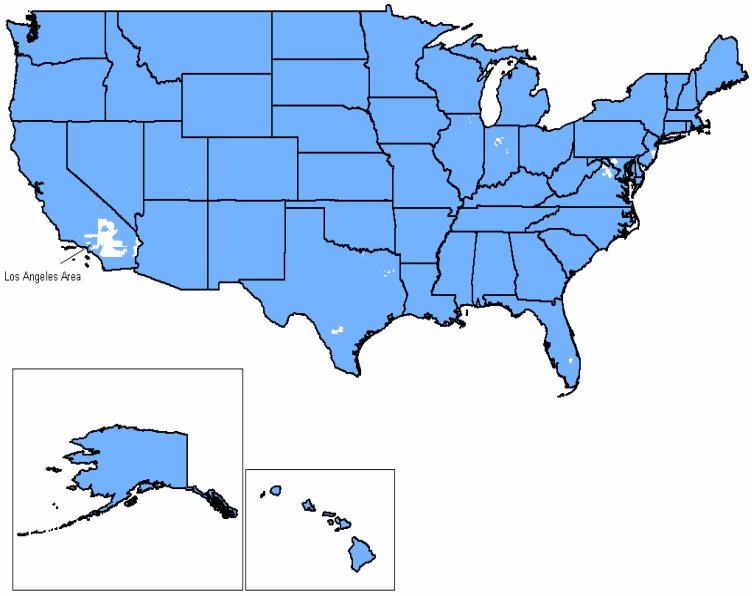


Note: 700 MHz Auction revenues do not account for bidding credits. (FCC, April 2008)

Ushering in an Era of Wireless Broadband

700 MHz band rules and auction. By making available new licenses for 52 megahertz of 700 MHz spectrum, the Commission made possible greater broadband penetration, which will provide more consumers with benefits from technological advancements.[11] The 700 MHz spectrum is especially well suited for wireless broadband because it can carry lots of data, penetrate walls easily, travel far distances, and do it with great efficiency and speed.

The Commission auctioned a total of 1098 licenses (Auction 73), with 4 licenses covering every location in the nation. The Commission licensed a variety of block sizes and geographic areas, allowing for broad participation by potential bidders with a variety of service plans and business models. Block sizes ranged from 6 to 22 megahertz. The geographic scope of licenses varied from 734 Cellular Market Areas (CMAs) in Block B to 12 Regional Economic Area Groupings in Block C. The auction of this 52 megahertz of 700 MHz spectrum has helped unleash previously latent potential in 18 megahertz of 700 MHz band spectrum that had previously been auctioned.



Note: Map includes 700 MHz A, B, and Upper C Block licenses in the 50 states won by bidders in areas without wired networks.

To ensure that as many people as possible have access to this wireless broadband service as quickly as possible, licensees in the 700 MHz band must meet stronger and more effective build out requirements for these wireless licenses, intended to promote better access to spectrum and broader deployment of broadband service, particularly to rural areas. In addition, to spur deployment in rural areas, holders of larger licenses must demonstrate that they meet the applicable benchmarks within each of a number of smaller

geographic subdivisions of their license area. If a licensee fails to meet its interim performance benchmarks, the deadline for compliance with the end-of-term benchmark is accelerated by two years. If a licensee fails to meet the end-of-term benchmark, it will be subject to the Commission's "keep-what-you-use" policy, under which the unserved portions of the license area are reclaimed for future use by other service providers.

The Commission's 700 MHz auction brought spectrum ideally suited for wireless broadband Internet access to the market, with a bidder other than the incumbent DSL or cable provider winning 700 MHz spectrum in nearly every area in the country. Further, both nationwide incumbents that participated in the 700 MHz auction have announced they will deploy the very latest generation of wireless broadband services using this spectrum, which will operate at speeds competitive with the latest DSL and cable modem services.

Advanced Wireless Services (AWS-1) Rules and Auction. The Commission's service rules and auction process for the AWS-1 Band (1710-1755MHz and 2110-2155MHz) provided greater certainty to licensees with minimal regulatory intervention, thereby making possible greater benefits to consumers.

In 2005, the Commission modified the AWS-1 band plan to allow for smaller licenses. Over the course of two subsequent license auctions (Auction 66 and 78), the Commission offered and sold 1,122 licenses authorizing use of 90 megahertz throughout the entire nation. In fact, the Commission issued 6 licenses covering each and every location in the nation. The Commission created a variety of license types, with differing block sizes and geographic areas, allowing for broad participation by potential bidders with various service plans and business models. Block sizes ranged from 10 to 20 megahertz. The geographic scope of licenses varied from 734 Cellular Market Areas (CMAs) in Block A to 12 Regional Economic Area Groupings in Block F.

By 2008, wireless carriers began to deploy third generation (3G) wireless systems on AWS-1 spectrum. Thus, licensing 90 megahertz of AWS-1 spectrum furthered the availability of broadband access and increased competition in broadband services.

Revised BRS/EBS Rules. In addition, the Commission worked to transition the Broadband Radio Service (BRS) and the Educational Broadband Service (EBS) in the 2500-2690 MHz band to a new band plan suitable for advanced mobile broadband services. Aided by rule changes adopted in 2006, the transition has been completed in areas covering 86% of the United States population, and is already underway in areas covering an additional 8% of the population. Furthermore, Clearwire is using the band to provide Internet access in approximately fifty markets, and WiMAX service is being offered in the band in areas from Baltimore to Portland, Oregon, to rural Idaho. The Commission's actions opening up 194 megahertz of BRS/EBS spectrum for innovative mobile wireless technologies almost doubles the total spectrum available for such uses.

Ushering in an Era of Wireless Broadband

The additional 354 megahertz of spectrum described above represents a substantial increase over the spectrum previously available for such services. Prior to 2005, the Commission made available approximately 206 megahertz in bands such as the Cellular, Specialized Mobile Radio (SMR) and Broadband PCS bands. (Of that amount, approximately 80 megahertz was made available prior to the advent of Commission spectrum license auctions in 1994, while 126 megahertz was made available between 1994-2004.)

Innovative Use of Unlicensed Spectrum

TV White Spaces. In addition, the Commission has dramatically increased spectrum on an unlicensed basis. In decisions issued in 2006 and 2008, the Commission adopted rules to enable unlicensed fixed and personal portable wireless devices to operate in the TV broadcast spectrum in what is referred to as "TV White Spaces." The Commission's action opening the white spaces will encourage the creation of a WiFi on steroids. It has the potential to improve wireless broadband connectivity and inspire an ever-widening array of new innovative Internet based products and services for consumers. The newly adopted Part 15 rules provide for unlicensed radio transmitters to operate in the TV broadcast television spectrum at locations where that spectrum is not being used by licensed services, making a significant amount of spectrum available for new and innovative products and services, including broadband data and other services for businesses and consumers. The rules are a culmination of several years of technical evaluation of TV devices and prototype unlicensed devices. The rules include many safeguards to prevent harmful interference to incumbent communications services, and are a conservative first step toward deployment of TV band devices.

Other Broadband Spectrum

3650-3700 MHz Band. To facilitate the deployment of wireless broadband, the Commission has also established innovative services rules and realigned spectrum band plans. For example, the Commission finalized an innovative non-exclusive, nationwide licensing scheme for the 3650-3700 MHz band, which facilitates access to, and intensive use of, the spectrum for the provision of wireless broadband services. In 2007, the Commission began issuing licenses and registering links in the band for use with new high-speed, wireless local area networks and broadband Internet access operating equipment. Currently, there are 602 nationwide registrations and 1,407 registered links in the band.

This spectrum was available pursuant to a non-exclusive "light" licensing scheme and required operators to use equipment incorporating a contention-based protocol, *i.e.*, technology that permits multiple licensees to share spectrum by ensuring that all licensees have reasonable opportunity to operate without causing harmful interference to each

other. The spectrum environment in the 3650-3700 MHz band is expected to encourage multiple entrants and stimulate the expansion of broadband service to rural and underserved areas.

Satellites. In the satellite sector, the Commission has acted to make use of allocated spectrum more rational, more efficient and responsive to consumer demands, including the demand for rural broadband connectivity. For example, the Commission adopted service rules in 2007 to open spectrum in the 17/24 GHz band to new satellite services. Additionally, the Commission adopted a Notice of Proposed Rulemaking that would enable Direct Broadcast Satellite (DBS) operators to operate new satellites between the DBS satellites currently in orbit. Final rules in this area could lead to increased competition for DBS services. The Commission also acted to grant Ancillary Terrestrial Component (ATC) authority to Mobile Satellite Service (MSS) operators to increase their ability to use their licensed spectrum more efficiently by allowing ground-based repeaters to strengthen satellite signals in places where it might be difficult to receive a signal directly from the satellite, such as mountainous or heavily forested areas, or between tall buildings in large urban areas. The Commission also made more spectrum available for the two 2 GHz-band mobile satellite service licensees, which will facilitate the provision of public safety and rural broadband services, and allow them to compete effectively in the market for mobile telecommunications services.

Other Licensed Spectrum. Ground work has also been laid to place even more spectrum in the hands of the marketplace, including up to 25 MHz of additional spectrum in the AWS-3 band. Similarly, we have worked to resolve the longstanding issues regarding the WCS and SDARS bands, thus opening this spectrum for broadband deployments. In each instance, we have attempted carefully to balance the rights of incumbent spectrum holders with the need to encourage the technological innovation that will facilitate the more efficient use of spectrum, notably in adjacent bands which previously could not be used.

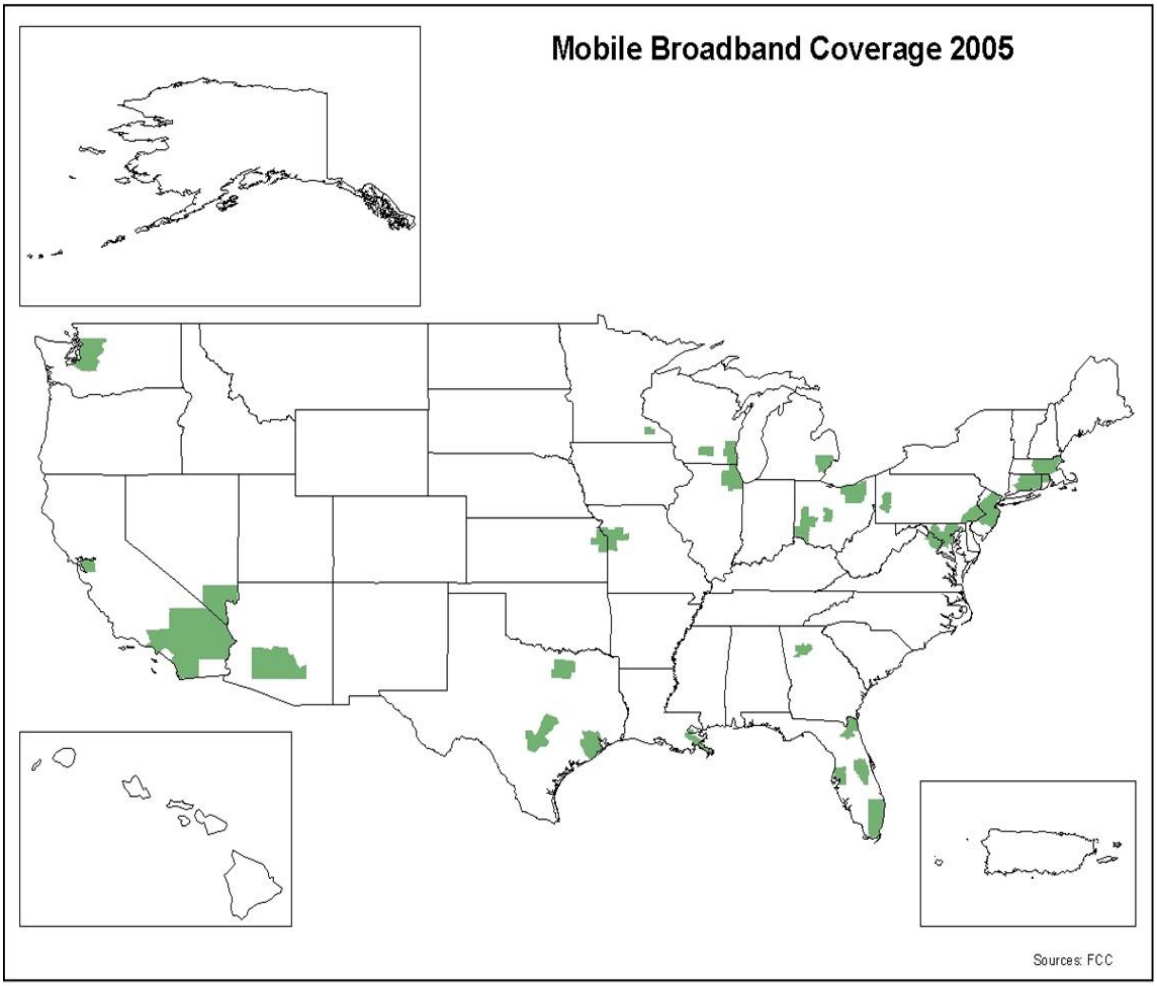
Other Regulatory Action to Increase Wireless Broadband Deployment. The Commission has promoted wireless broadband deployment in a number of other ways as well by eliminating regulatory barriers and approving mergers that promise to increase broadband access. For example, the Commission also classified wireless-based broadband Internet access service as an information service, thus ensuring regulatory parity among all broadband Internet access service competitors. Further, with the Sprint Nextel and Clearwire transaction, the Commission has encouraged investment and provided sufficient spectrum for the building of new nationwide communications infrastructure. That new company will deploy a new mobile broadband technology — WiMAX — nationwide.

These efforts are coupled with other steps that the Commission has taken to increase the efficient use of spectrum, including the introduction of mandatory narrowbanding requirements and the introduction of secondary markets initiatives, which allow partitioning, disaggregation and spectrum to allow licensees to put unused spectrum back in the marketplace so that spectrum assets work for them and for consumers.

Ushering in an Era of Wireless Broadband

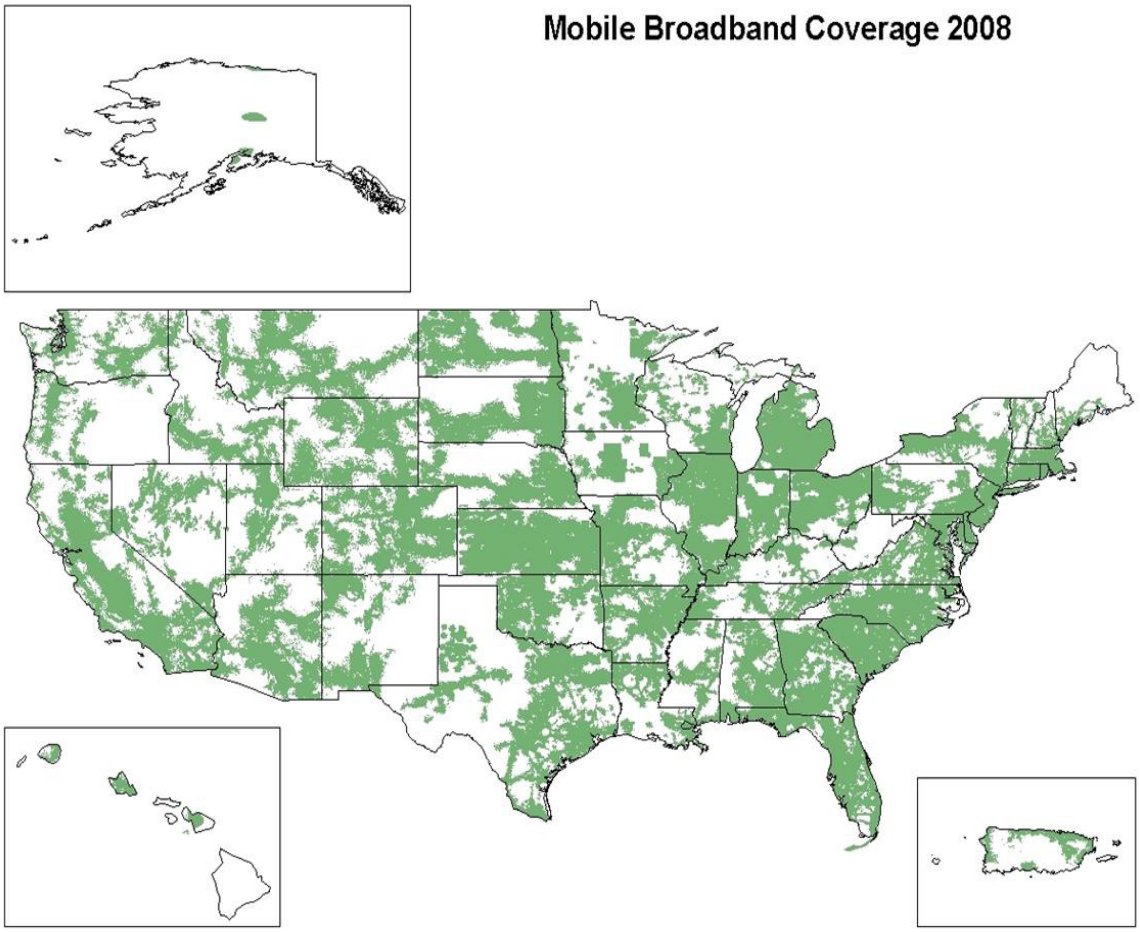
Wireless Market Developments

Growth, Competition, and Innovation. The increasing use of mobile data and Internet services by consumers over the past four years has been made possible by the continued deployment of mobile broadband technologies and the increasing availability of mobile broadband-capable devices. Mobile operators began launching broadband networks in a few cities in late 2003. These network technologies allow users to access the Internet at speeds comparable to DSL connections. As of mid-2005, mobile broadband services were available to around 25 percent of the U.S. population.



Ushering in an Era of Wireless Broadband

By mid-2008, mobile broadband network availability had grown substantially to over 92 percent of the population.

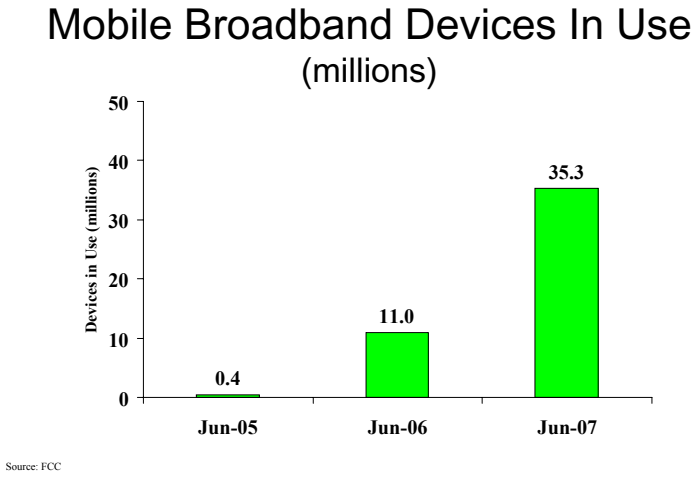


Ushering in an Era of Wireless Broadband

This represents a substantial investment on the part of mobile services providers. For example, in each of the last 3 years, Verizon Wireless has invested $6.5 billion or more to expand and advance its network nationwide.[12] Since 2006, Sprint Nextel has invested more than $15 billion in capital largely to enhance its networks.[13]

Investment is also continuing, and even more deployment is planned. Verizon Wireless has indicated it expects to begin deploying next generation LTE wireless broadband by the end of 2009,[14] and Sprint launched a 3G/4G dual mode broadband service in December 2008.[15] As of September 2008, T-Mobile had deployed its UMTS/HSDPA high-speed data network in 13 major US markets, and expected to have expanded this to 27 markets by year end.[16] Clearwire has launched its WiMAX network in both Baltimore, MD and Portland, OR. It offers "pre-WiMAX" Internet services in 46 markets throughout the U.S., and as of December 23, 2008, AT&T Mobility's 3G network is available in 335 major metropolitan areas, and expected to reach 350 markets by year end.[17]

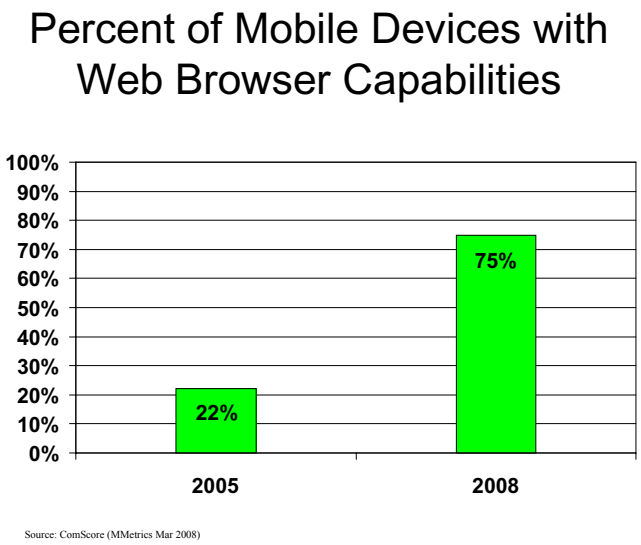
Consumer use of mobile devices that are capable of accessing the Internet at broadband speeds has also increased significantly since 2005.



Source: FCC

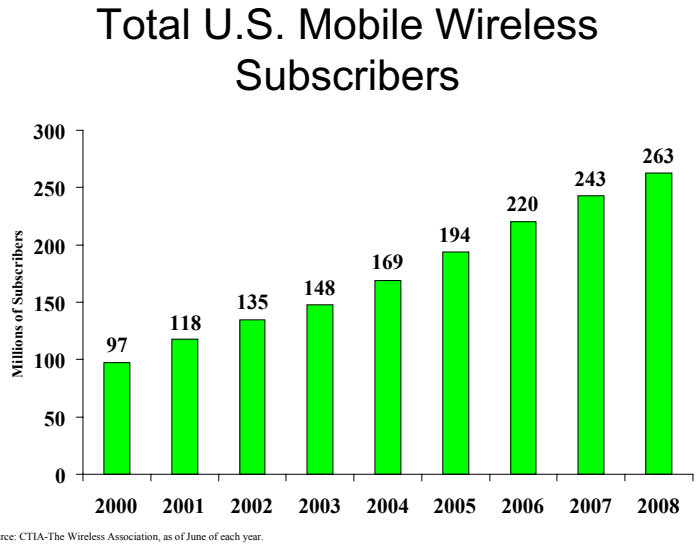
Ushering in an Era of Wireless Broadband

In June 2005, just under 400,000 mobile wireless broadband-capable devices were in use in the United States. By June 2007, this number had grown to 35.3 million.[18] In addition, the percentage of mobile devices with browser capabilities has risen from 22 percent to 75 percent from 2005 to 2008.



Source: ComScore (MMetrics Mar 2008)

More generally, between 2000 and 2008, competition in the wireless marketplace continued to bring growth and innovation to the wireless industry and to provide significant benefits to consumers. The number of mobile phone subscribers rose approximately



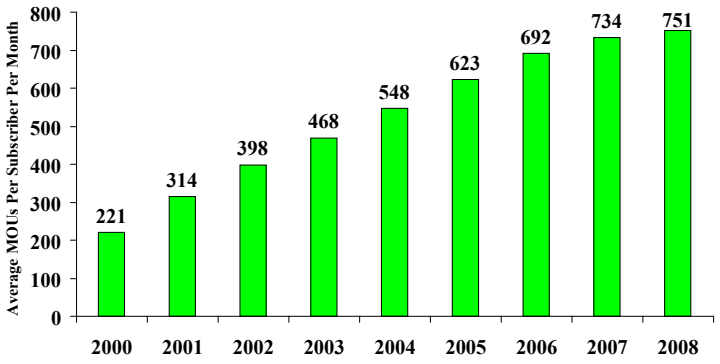
Source: CTIA-The Wireless Association, as of June of each year.

Ushering in an Era of Wireless Broadband

171 percent between 2000 and 2008, from 97 million to 263 million. This means that more than 85 percent of all Americans now own a mobile phone.

Consumers also are using their mobile phones and devices more than ever before. In mid-2008, the average mobile subscriber spent 751 minutes – or 12.5 hours – talking on the phone each month. This is an almost 240 percent increase from 221 minutes – or 3.7 hours – per month in 2000.

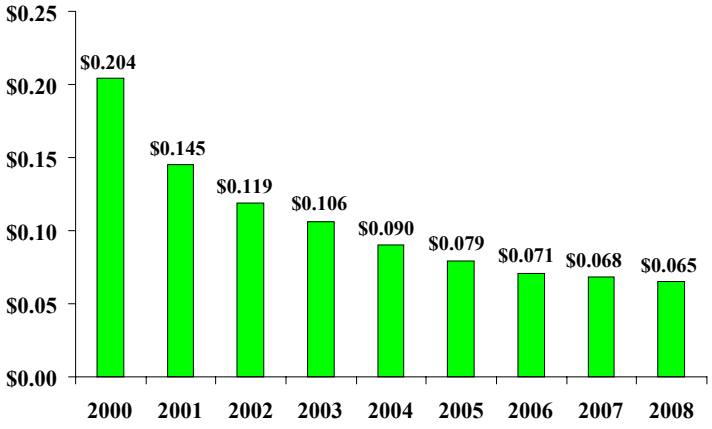
Average Minutes-of-Use per Month



Source: CTIA-The Wireless Association, as of June of each year.

At the same time, the per minute price of mobile phone service fell almost 70 percent from 20.4 cents in 2000 to 6.5 cents in 2008.

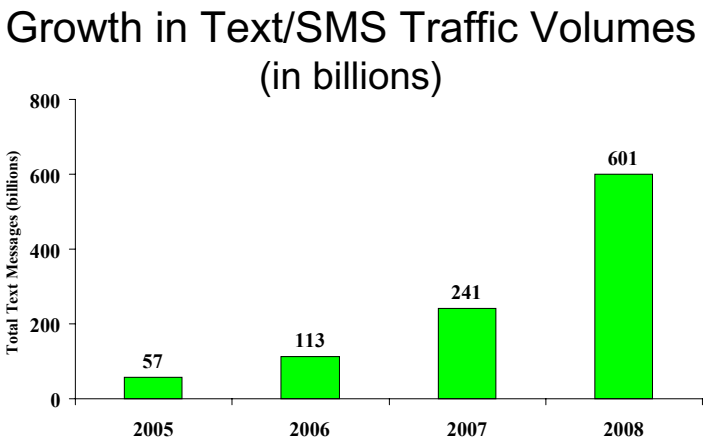
Price Per Minute for Mobile Telephone Service



Source: Calculated using ALMB and Average Minutes of User per Subscriber per Month measures from CTIA-The Wireless Association. As of June of each year.

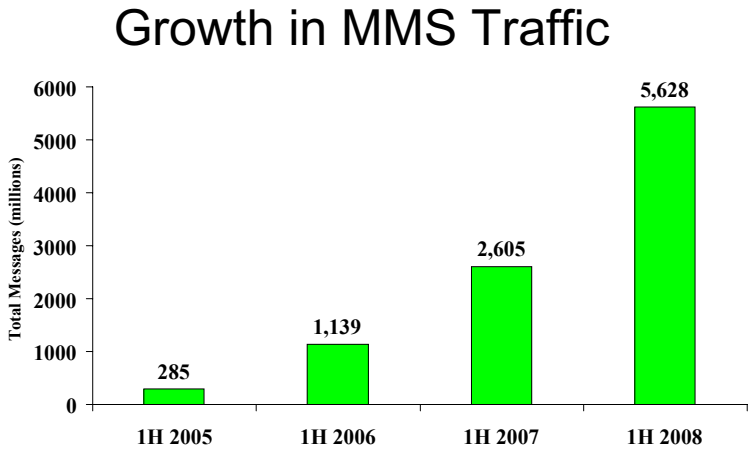
Ushering in an Era of Wireless Broadband

Americans also are using their mobile devices for much more than talking. Consumers use mobile data applications and Internet services to a much larger degree now than they did four years ago. For instance, the number of text messages sent by mobile phone users has risen tenfold from 57 billion in 2005 to 601 billion in 2008.



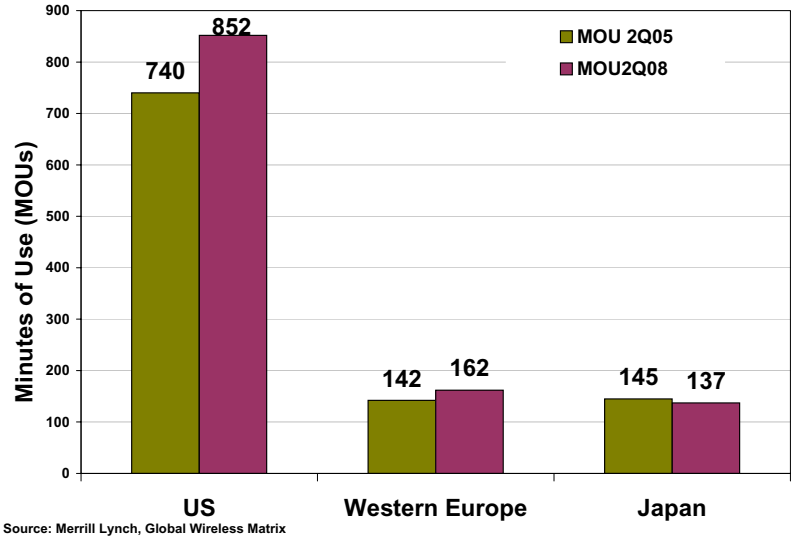
Source: CTIA-The Wireless Association (2005-2008). Annualized, June to June.

The number of photo and video messages ("MMS") sent has also increased dramatically from 285 million in the first half of 2005 to 5.6 billion in the first half of 2008. While mobile data and Internet services were still nascent in 2005, their use has become more prevalent in recent years. Analysts estimate that, in 2008, around 57 percent of U.S. mobile subscribers used mobile data applications.[19] One analyst also estimates that the number of active mobile Internet users (those who use the service at least once a month) increased 73 percent from May 2006 to May 2008.[20]

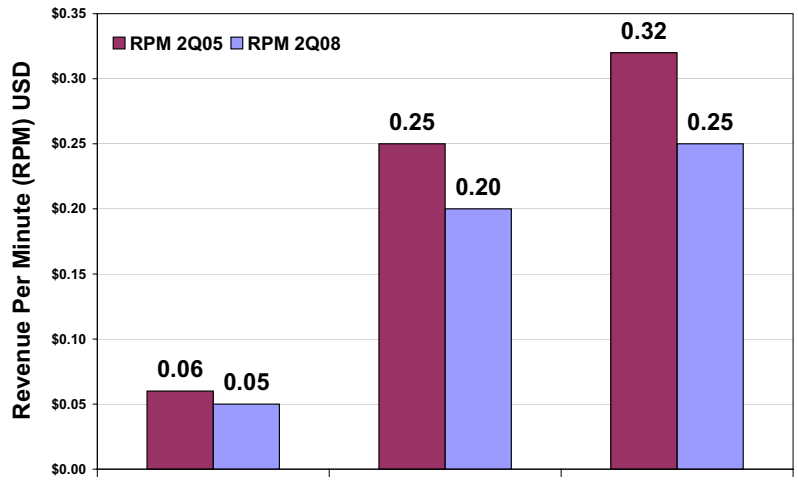


Source: CTIA-The Wireless Association (2005-2008).

International Comparisons. Over the past four years, mobile subscribers in the U.S. have experienced lower prices than mobile consumers in Western Europe and comparable Asia-Pacific countries, and U.S. mobile subscribers have led the world in mobile phone usage by a wide margin.[21]



Source: Merrill Lynch, Global Wireless Matrix



Source: Merrill Lynch, Global Wireless Matrix

In 2005, revenue per minute ("RPM") of mobile service – a proxy for per-minute price – was three to four times higher in Western Europe and Japan than in the United States. This trend became more pronounced in 2008, when RPM was four to five times higher in Western Europe and Japan than in the U.S. In comparing usage, the amount of time that mobile subscribers spend talking on the phone is 400 to 500 percent higher in the United States than in Western Europe and Japan, a trend that has remained constant over the past four years.

Fostering Innovation and Open Technology Platforms

In addition to pursuing policies to encourage investment in networks we have also acted to ensure consumers can experience choice and innovation when using these networks. We have worked to achieve this goal by pursuing a policy of openness across all sectors including wireless, wireline and video.

A network that is more open to devices and applications can help foster innovation on the edges of the network. As important, it gives consumers greater freedom to use the wireless devices and applications of their choice when they purchase service from the new network owner. When the same decision was made decades ago on the wireline network, we saw an explosion in innovation and choice. Investment in the market increased, new phones and calling features were developed and consumers benefited. In the wake of the Carterfone decision, AT&T subscribers went from having to rent boring black rotary phones to purchasing competitively priced, innovative phones such as cordless phones, and phones with answering machines. Ultimately, these rules facilitated the development of the Internet, as consumers were able to attach modems to the network and go anywhere the Internet could take them without interference from the network owner.

Preserving the Vibrant Nature of the Internet

The Commission has a duty to preserve and promote the vibrant and open character of the Internet as the telecommunications marketplace enters the broadband age. To this end, the Commission, in August 2005, adopted its Internet Policy Statement comprised of four consumer-oriented principles, to protect consumers' access on the Internet. It contained four consumer-oriented principles:

(1) Consumers are entitled to access the lawful Internet content of their choice;

(2) Consumers are entitled to run applications and use services of their choice, subject to the needs of law enforcement;

(3) Consumers are entitled to connect their choice of legal devices that do not harm the network; and

(4) Consumers are entitled to competition among network providers, application and service providers, and content providers.

Fostering Innovation and Open Technology Platforms

In adopting these principles the Commission sought to protect consumers' ability to access content of their choice. When the Commission adopted these principles, it stated that all of these principles are subject to reasonable network management. Accordingly, broadband providers may use reasonable network practices to manage their networks, but they must do so without violating our principles and should do so in a reasonably transparent manner. Moreover, these principles were not adopted for one particular platform.

Since it adopted the Internet Policy Statement, the Commission has been vigilant in protecting consumers' access to content, applications and services on the Internet. As described in the section on Protecting Consumers from Harm, the Commission has not hesitated to enforce these principles when it was presented with evidence of traffic blocking.

Moving Towards More Open Wireless Platforms

Until only very recently, most wireless carriers operated "closed" networks. Within these "closed" networks, subscribers were limited to choosing among only those handsets and applications approved by the carriers themselves. In July 2007, the FCC adopted an "open platform" rule for one-third of the 700 MHz spectrum auctioned early last year (the "C Block"). The Commission deliberately took a cautious and limited approach to fostering more openness in the wireless world. Its plan followed a careful balance of spurring innovation and consumer choice while encouraging infrastructure investment. The Commission used this targeted approach to promote the development of networks that are more open to devices and applications.

Requiring licensees of this spectrum to allow consumers to use the devices of their choice and download applications of their choice has helped push the wireless industry to embrace more open networks. In less than a year, many wireless providers have evolved from vocal opponents to vocal proponents of open networks. This more open approach provides a ripe field for wireless innovation and growth, including opportunities for equipment manufacturers, software developers, and others.

Indeed, following the adoption of the 700 MHz "open platform" rule, several wireless carriers announced voluntary plans to deploy an "open platform" beyond the Commission's C Block requirement. In November 2007, Verizon Wireless issued an announcement that in 2008, its customers would be permitted to use the devices and applications of their choice on its network. In 2008, Verizon Wireless launched its Open Development Program, holding conferences and webcasts about certifying devices for use on its net-

Fostering Innovation and Open Technology Platforms

work, designating independent device testing labs to conduct certification, and certifying the first third-party devices to be used on its network.

In 2007, the Open Handset Alliance, a group of now more than 30 technology and mobile companies, was formed to develop the Android platform, a complete, open, and free mobile operating system. In 2008, T-Mobile with Google unveiled the first Android device, and three of the four nationwide providers have expressed interest in offering mobile handsets that use Android. Also in 2008, Sprint and Clearwire announced that New Clearwire would have an open platform. Using only a wireless modem, customers may use the device of their choice to access Clearwire's wireless broadband Internet service.

Many new and innovative applications have also been launched since the adoption of the "open platform" rule including those in Apple's App Store. Other manufacturers, including R.I.M. and Palm are planning or have launched similar sites. Using these portals, wireless device users can download onto their wireless devices applications to play games, track flights, find friends on the go, and make restaurant reservations, for example, and much more.

Non-Proprietary Set-Top Boxes

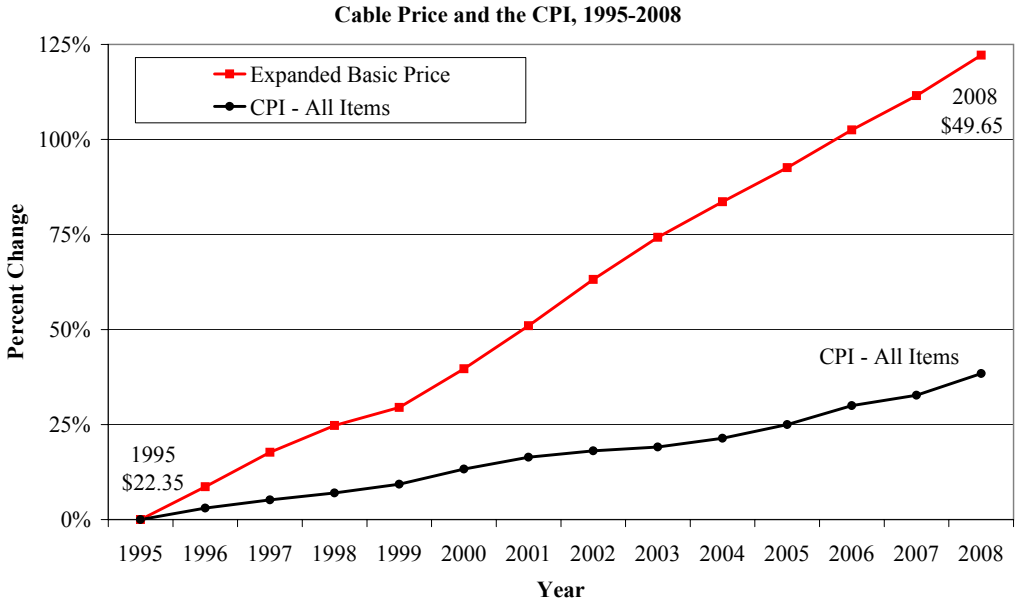
In 2007, the FCC acted to implement a nearly 10-year old statutory requirement to create a competitive market for set-top boxes. The Commission no longer allowed cable operators to integrate proprietary security elements into their set-top boxes. As a result, consumers may purchase a box of their choice instead of having to lease equipment from their cable providers. Enforcing the Commission's separable security requirement provided consumers electronics manufacturers the opportunity to develop and market innovative, feature-rich, state-of-the-art products. Chairman Martin's goal of a competitive set-top box market will give consumers greater choice and the benefits of innovation.

Promoting Competition in the Video Marketplace

Greater competition in the market for the delivery for multichannel video programming is a primary goal of federal communications policy. Increased competition can lead to lower prices and more choices for consumers. During Chairman Martin's tenure the Commission worked to increase competition by eliminating barriers to new entry into the video market.

Cable Prices

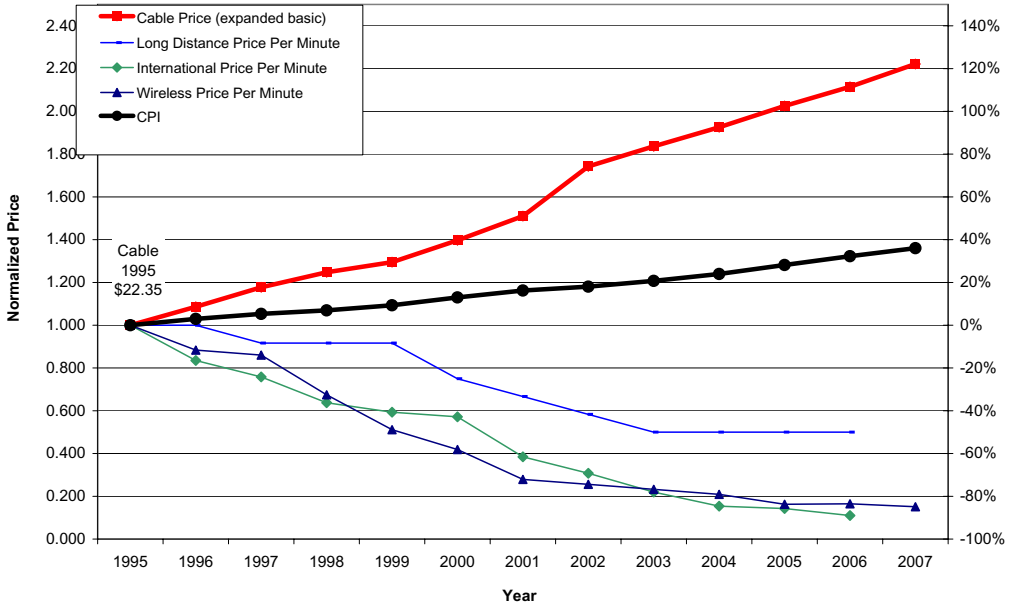
Consumers have seen their cable bills double over the last decade at the same time the costs for all other communications services have declined. It is almost universally accepted that cable rates have risen dramatically over the past decade and that consumers' bills for video services are too high. As described below, in recent years, the cost of basic cable services has gone up disproportionately when compared against other communications sectors. Specifically, since Congress enacted the 1996 Act, cable rates have risen every year – significantly higher than the rate of inflation. In 1995, cable rates were $22.35 and in 2008 (using prices as of January 1, 2008) cable rates more than doubled to $49.65.



Promoting Competition in the Video Marketplace

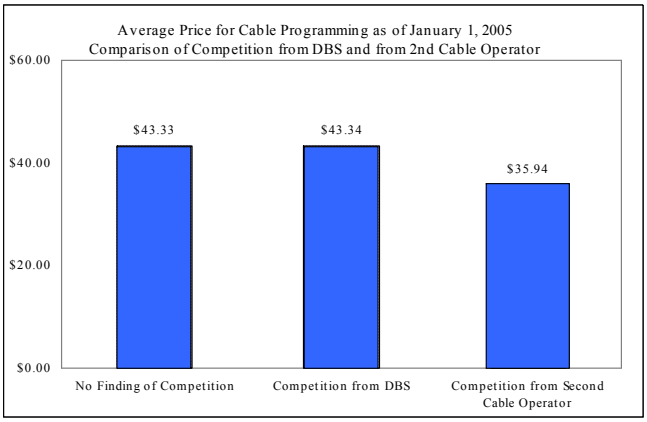
The increase in cable prices appears even more dramatic when viewed relative to the prices for a number of other communications services. The price for every service that the Commission regulates has decreased. For example, the average rate for wireless service has plummeted more than 85% ($ 0.43 per minute in 1995, compared with $0.07 per minute in 2007), average long distance rates has declined more than half ($0.12 a minute to $0.06 a minute), and international calls have declined more than 89% ($0.91 a minute in 1995 to $0.10 in 2007). In contrast, cable prices alone have increased, and they have risen more than 110% (from an average $22.35 a month in 1995 to more than $49 a month in 2007).

Rates for Communications Services 1995-2007



To state this a different way, before they were reregulated in 1993, average cable prices were $22.23. When adjusted for inflation that average cable price would be $33.88. Compared against 2007 cable prices of $49.65, we see an increase of nearly 53%. That is, cable rates are now 50% higher, even when adjusted for inflation, than when Congress stepped in to reregulate them with the passage of 1992 Cable Act.

Video competition can impact cable bills. According to our cable price survey, where there is no competition, the average price for cable programming was $43.33 in January 2005. But in areas where there was competition from a second cable operator, the average price for cable programming decreased to $35.94.



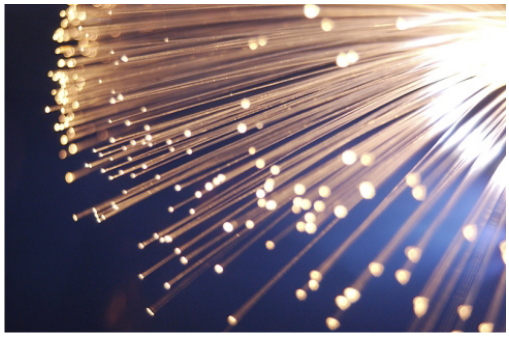
Promoting Competition in the Video Marketplace

Competition from satellite providers did not have the same effect. In areas with competition from DBS alone, there was only a one cent difference in the price of cable from when there is no competition at all (with competition from DBS, cable cost one cent more). The Commission's data shows that DBS and cable do not seem to compete on price. Rather, the data indicates that only competition from a second cable operator has a downward impact on prices.

Given this, the Commission has adopted policies designed to encourage more cable operators to enter the video market. By removing regulatory barriers faced by new cable operators trying to enter the market, the Commission tried to ensure that consumers have the ability to choose among more than one cable operator. Such competitive choice will provide them one of the most important benefits of competition that the Act envisioned: lower prices.

Video Franchise Reform

As telecommunications companies were spending billions of dollars to upgrade their networks to provide video services in competition with cable providers, they encountered roadblocks when they applied for franchises from local franchising authorities. There were instances where local franchise authorities did not act upon applications for more than a year or required extraordinary in-kind contributions. The Commission concluded that the current operation of the franchising process constitutes an unreasonable barrier to entry that impedes the achievement of the interrelated federal goals of enhanced cable competition and accelerated broadband deployment. Thus, under Chairman Martin, the Commission streamlined the video franchise process by requiring action within a reasonable time period and preventing the imposition of unreasonable build-out requirements. These actions were designed to speed the delivery of new video services to consumers and thereby provide them more choices and lower prices.



Apartment Building Access

MDU Access Order. All consumers, regardless of where they live, should enjoy the benefits of competition. Approximately 30 percent of Americans live in Multiple Dwelling Units (MDUs) and their numbers are growing. The Commission found that contracts granting exclusivity access to cable operators harm consumers, competition and broadband deployment. Accordingly, the Commission concluded that such exclusive contracts

are unlawful under the Act. The Commission found that prohibiting such clauses would materially advance the Act's goals of enhancing competition and broadband deployment. And, such prohibition would provide more competitive choice to the residents of MDUs who were locked into a exclusive contract with a cable operator. In this manner, a significant barrier to entry by competing video providers was eliminated.

Cable Inside Wiring Order. During Chairman Martin's tenure, the Commission also made it easier for competitive cable companies to gain access to "inside wiring" in these apartment buildings in a consistent fashion, further ensuring that all consumers – including those in apartment buildings – benefit from competition in the provision of communications services.

Fostering Greater Consumer Choice in the Video Market

The Commission has also worked to enhance consumers' choice and control over the video packages they purchase.

Program Access Order. In the fall of 2007, the prohibition on exclusive contracts under the Commission's program access rules was extended for an additional five year period until October 2012. Ensuring that competitive cable operators have access to cable affiliated programming is necessary for viable competition in the video distribution market. By extending this prohibition, the Commission ensured that new entrants, in addition to existing players, will continue to have access to critical programming on a nondiscriminatory basis.

Cable Cap Order. The Commission voted to cap the number of customers a single cable television company may serve nationwide. This order set a 30 percent limit on horizontal ownership nationwide, meeting Congress's mandate that no cable operator should be so large that it can impede the flow of video programming to consumers. In this manner, Commission promoted video programming diversity by ensuring new video programmers can enter and compete in the video market. And, the Commission sought to

increase competition in the multichannel video programming market by providing consumers with greater programming choices and diversity.

Leased Access Order. The Commission also reformed the leased access rules to foster the development of independent programming channels on cable systems. In this manner, the Commission sought to ensure that consumers receive a broader and more diverse range of programming from their cable operators. In addition, the Commission adopted an expedited complaint process and a more rationale method of determining leased access rates in order to make it easier for independent channels, including those owned by minorities and women, to gain carriage from cable operators.

Greater Choice in Packaging and Sale of Video Programming Services. As stated above, cable rates have risen dramatically over the past decade – faster than the rate of inflation and faster than the rates of any other communications service. Consumers' video bills are simply too high.

According to a Nielsen Media Research report, the number of television channels received by the average household in the United States has more than doubled in the last decade, increasing from 41.1 in 1995 to 104.2 in 2006. The average household, however, has increased the number of channels it watches only from 10.5 to 15.7. This means that, today, cable subscribers are paying for more than 85 channels that they do not want to watch in order to obtain the approximately 16 channels that they do.

Indeed, a poll by the Associated Press found that 78% of respondents would prefer to choose and pay for their own tailored selection of cable channels. In response, the Commission has challenged cable and satellite operators to offer more cost effective alternatives, encouraging them to make family-friendly programming packages available and to offer networks in a more a la carte manner.

The Media Bureau's 2006 Further Report on Packaging and Sale of Video Programming Services to the Public found that themed tiers and a la carte could provide consumers the opportunity to reduce their cable bills by purchasing fewer channels or smaller packages. Specifically, using assumptions from the Booz-Allen-Hamilton study, the Bureau found that a consumer purchasing 11 cable channels would face a change in his bill ranging from a 13% decrease to a 4% increase, with a decrease in 3 out of 4 cases.

Minority consumers, particularly those living in non-English speaking homes, could also benefit tremendously from a la carte offerings. Currently, cable and satellite providers require subscribers to purchase dozens, if not hundreds, of channels in order to get foreign-language programming for which they must pay an additional cost. Under a la carte, however, non-English speaking consumers could purchase only those channels that offer programming they understand and desire.

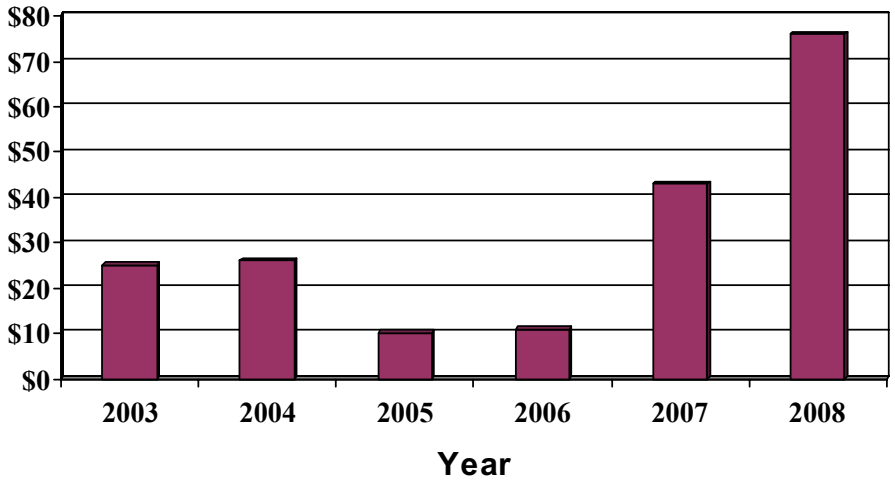
Protecting Consumers from Harm

Under the leadership of Chairman Martin, the Commission has been vigilant in protecting consumers from intentional or unintentional harm. The FCC took action across industries to address the needs and concerns of consumers and ensure they have the necessary tools to make informed decisions. The Commission preserved consumers' unfettered access to the internet content of their choice, protected children from inappropriate content, and strengthened consumer privacy.

Enforcing Commission Rules

Strictly enforcing its rules, the Commission under Chairman Martin issued over $151 million in fines. That total amount is greater than the total combined amount of fines assessed under the preceding two Chairmen. Moreover, under Chairman Martin the Commission issued the two highest dollar amount consent decrees in its history. (Univision $24 million consent decree and XM radio $17.4 million consent decree.)

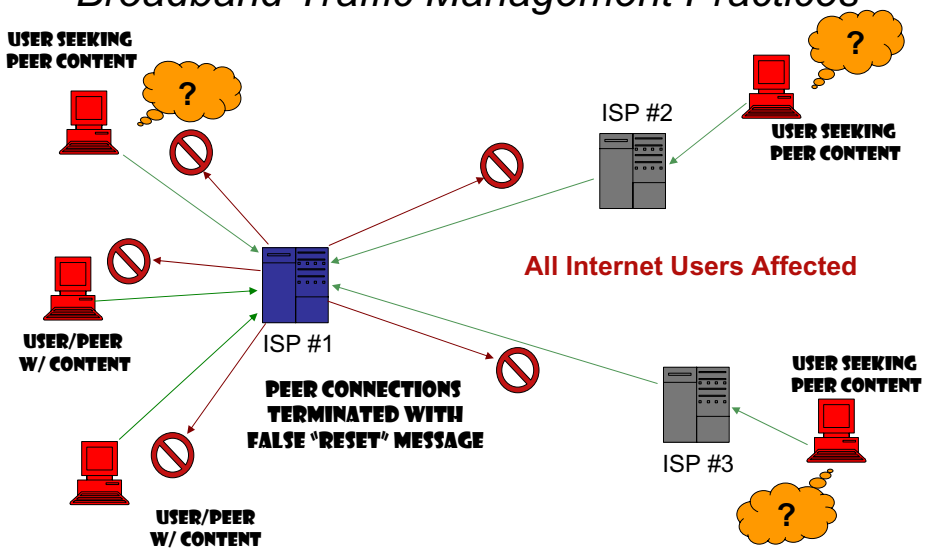
Monetary Forfeitures Assessed and Payments Negotiated through Consent Decrees, Calendar Years 2003 through 2008
Dollars in millions



Protecting the Open Internet

Spearheaded by Chairman Martin, the Commission affirmed its willingness to enforce the rights of any consumer to access any content or application on the Internet. Responding to complaints from broadband subscribers, the FCC in 2008 ordered Comcast to stop arbitrarily delaying subscribers' downloads and blocking their uploads when using certain peer to peer applications. After an extensive investigation the Commission concluded that these practices were discriminating among applications rather than treating all applications equally. Specifically, it found Comcast's network management practices were arbitrarily focused on individual peer to peer applications rather than on the amount of congestion in the network or size of a particular file. The FCC required the company to change its network management practices and to start disclosing these practices to the FCC and customers.

FCC Protects Consumers from Unreasonable Broadband Traffic Management Practices



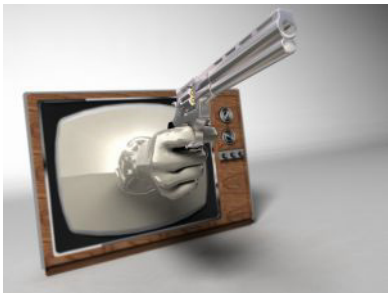
The Commission announced its intention to adjudicate future disputes regarding federal Internet policy on a case-by-case basis, using an established framework. Specifically, if legal content is arbitrarily degraded or blocked, and the defense is "network management," the broadband operator must show that its network management practice is reasonable. The Commission will look at whether such practice furthers an important interest and is carefully tailored to serve that interest. Finally, the Commission conclud-

ed that network management practices should be disclosed to consumers so that they can make informed decisions when purchasing broadband service.

Protecting Children

Enforcement of Indecency Rules. Families have a right to expect that broadcasters will not expose children to harmful programming by carrying indecent, obscene or profane material at times when children are likely to be watching or listening. Congress therefore prohibits stations from airing indecent or profane programming at any time between the hours of 6 a.m. and 10 p.m. The Commission has taken significant steps both in its own decisions and in the courts to enforce this law. Responding to hundreds of thousands of viewer complaints about more than 50 television programs, the Commission took action against several broadcast licensees for airing material that was deemed indecent. Specifically, the Commission has issued an Omnibus Television Order (deciding 48 separate cases) and orders imposing fines relating to the broadcast of several shows including Without A Trace, Super Bowl XXXVIII, NYPD Blue and Married by America.

Violence Report. During Chairman Martin's tenure, the Commission used its expertise on children's television issues to examine the impact of excessively violent television programming and its impact on children. The Report found that evidence indicates exposure to violence in the media can increase aggressive behavior in children, at least in the short term. The Commission offered several recommendations to Congress, including ways in which the industry could address violent programming, such as providing consumers greater choice in how they purchase their programming.



Childhood Obesity Taskforce. During Chairman Martin's tenure, the FCC used its expertise in children's television issues to examine the impact of the media on the rise in childhood obesity. To build consensus on voluntary steps to combat childhood obesity, the Commission, along with Senators Harkin and Brownback, formed the Joint Task Force on Media & Childhood Obesity. The task force is composed of representatives from the media, advertising, food and beverage industries, along with consumer advocacy groups and health experts.

Protecting Consumers from Harm

The Task Force succeeded in producing some significant voluntary commitments aimed at reducing the negative impact of the media on children's eating habits and increasing its positive influence on their behavior. For example, fifteen of the nation's largest food and beverage manufacturers including Kraft Foods and Kellogg agreed to curtail advertising of "unhealthy food" to children under age twelve, and others are reformulating current products.

Children's Programming. Under Chairman Martin's tenure, the FCC made clear that it takes seriously the public interest obligations of broadcasters. While reviewing a planned transfer of Univision to Broadcasting Media Partners in 2007, it came to the Commission's attention that Univision was not properly meeting a requirement that it air programs to educate and inform children. The programs Univision had aired to meet this requirement on 24 of its stations for more than two years were telenovelas similar to teen soap operas and not educational in nature. In a consent decree with the FCC, Univision agreed to make a contribution of $24 million to the U.S. Treasury and follow a compliance plan designed to ensure that the needs of children and families are better served in the future.

Safeguarding Consumers' Privacy

Consumer Calling Records. Telephone companies have a lot of personal and private information about their customers and the law requires the companies to protect the confidentiality of that information. In 2007, the Commission strengthened its rules governing the disclosure of consumers' telephone records. Specifically it moved from an "opt-out" approach that allowed a carrier to disclose a customer's phone records unless that customer had expressly directed that the records not be disclosed, to an "opt-in" approach, prohibiting a carrier from disclosing a customer's phone records unless that customer has given express consent to such disclosure. The new measures also prohibit carriers from releasing, over the phone, sensitive personal data or call detail records unless the customer provides a password; requires providers to notify customers immediately when changes are made to a customer's account; and requires providers to notify their customers in the event of a breach of confidentiality. Finally, service providers also must annually certify their compliance with these regulations, inform the Commission of any actions they have taken against data brokers, and provide a summary of the complaints they receive regarding the unauthorized release of CPNI.

Protecting Consumers from Harm

In order to further enhance customers' privacy protections, the Commission extended its telecommunications privacy rules to interconnected VoIP service, which many customers use as an alternative to traditional voice services. To enforce these protections, the FCC has proposed 25 forfeitures, totaling $2.1 million, and has reviewed more than 5,000 certifications from companies concerning their compliance with these privacy requirements.

National Do-Not-Call Registry. Almost everyone has had their privacy disturbed by a telephone call from someone trying to sell them something. And these calls often come at very inconvenient times, like during dinner or while the family is watching TV. To prevent these intrusions, Congress passed a law that lets people join the "National Do-Not-Call Registry." When their registrations were due to expire in June 2008, 172 million telephone consumers would have been left without the protections they had come to rely on. The Commission therefore stepped in and made registrations with the Do-Not-Call Registry permanent. In addition, the FCC has proposed forfeitures and entered into consent decrees totaling nearly $900,000 and has issued over 850 citations for do-not-call violations. The actions the Commission has taken to ensure compliance with the Registry and enforce the do-not-call rules, in addition to the sheer volume of telephone numbers added to the Registry, are strong indicators that the Registry has been successful in curbing the number of unwanted telemarketing calls.

Fax Advertising. Just like unwelcome sales calls, unsolicited fax advertisements are intrusive. In 2005, the Commission adopted an order implementing the Junk Fax Prevention Act of 2005 to protect the public from the costs of unwanted fax advertising. The rules make it unlawful to send unsolicited advertisements to any fax machine without the recipient's prior express permission, unless the sender has an "established business relationship" with the recipient. Moreover, even senders of permissible fax advertisements must include notice and contact information on the fax so recipients have a way to "opt-out" of future faxes. The Commission has been vigilant in enforcing its Junk Fax rules, proposing almost $19 million in penalties for violations of this prohibition. It has also issued 1140 citations for such misconduct.

Addressing Consumers' Needs and Concerns

Early Termination Fees. When the imposition of early termination fees (ETFs) on wireless subscribers emerged as a significant source of concern for many consumers, the Commission initiated a proceeding to consider the interrelated policy and legal implications associated with the use of ETFs. At that time, the nationwide wireless providers imposed significant flat or fixed charges if a subscriber canceled his or her wireless service before the end of the contract period, even if the contract was due to expire soon. In 2008, the Commission held a public hearing that brought many interested parties – from industry and consumer perspectives – together to discuss the complex jurisdictional and policy issues relating to the use of ETFs. As a

result of the Commission's efforts, AT&T, Sprint Nextel, T-Mobile and Verizon Wireless all announced that they were discontinuing the use of fixed ETFs and adopting ETFs that diminish over the term of a contract for wireless service.

Cable Services. The Commission is investigating whether various cable operators may have unlawfully reduced the service they provide to some of their subscribers without also reducing the rates they charge for that service. The Commission has also investigated whether cable companies have provided the necessary notice to local governmental authorities when they have changed their service offerings. The Commission has already proposed forfeitures totaling $67,500 against cable operators for apparent violations in these areas.

Greater Choice in Packaging and Sale of Video Programming Services. Since Congress enacted the 1996 Act, cable rates have increased every year, while the prices for other services the Commission regulates have decreased. The Commission has challenged cable and satellite operators to offer more cost effective alternatives, encouraging them to make family-friendly programming packages available and to offer networks in a more a la carte manner. The Media Bureau's 2006 Further Report on Packaging and Sale of Video Programming Services to the Public found that themed tiers and a la carte could provide consumers the opportunity to reduce their cable bills by purchasing fewer channels or smaller packages. Moreover, the Media Bureau found that some type of a la carte option could prove better than today's bundling practices in fostering diverse programming responsive to consumer demand.

Long Distance Usage and Cost. The Commission acted to protect customers who make relatively few interstate long distance calls. Specifically, the Commission required AT&T, Qwest, and Verizon to offer rate plans tailored to the needs of these customers. These rate plans, which the carriers must maintain for several years, have either no monthly fee or only a minimal charge. A consumer who makes few interstate long distance calls can realize substantial savings by subscribing to one of these plans in lieu of a plan imposing a relatively large monthly fee.

Informing Consumers

Enhanced Disclosure. In 2007, the Commission adopted the Enhanced Disclosure Order, requiring TV broadcasters to file a standardized form on a quarterly basis that specifically details the type of programming that they air and how that programming serves their local community. This form will describe a host

of programming information including local civic affairs, local electoral affairs, public service announcements and independently produced programming. With a standardized form and Internet access to it, the public and government officials will now be able to engage broadcasters directly in a discussion about what local commitments they are and/or should be fulfilling. This Order also requires that much of a television station's public inspection file be placed on the station's website, if they have one. Alternatively, it allows stations to place their public files on the website of their state broadcasters association. This action will further increase the public's access to this important information.

Payola Consent Decree. The Commission in 2007 reminded broadcasters that it won't tolerate payola because it believes the public should know when someone is seeking to influence them or the types of music they hear on the radio. As a result of an FCC investigation into possible payola violations, four broadcast companies agreed to make significant contributions to the U.S. Treasury totaling $12.5 million and institute business reforms to insure their stations and employees do not violate the sponsorship identification laws in the future.

Choosing Long Distance Plans. The Commission recognized that consumers who make extensive use of the interstate long distance network may not have all the information they need to make informed choices among alternative long distance plans. To address this concern, the Commission required AT&T, Qwest, and Verizon to provide customers subscribing to certain types of rate plans (e.g., AT&T's rate plans that charge a single monthly rate for unlimited local and long distance usage) with information regarding their monthly long distance usage. This information should help consumers subscribing to these rate plans evaluate whether the plans are cost-effective given the consumers' calling patterns.

Facilities-Based Competition

Competition for facilities-based voice service has increased substantially since June 2005. Much of this increase has come from the cable companies. Data filed with the Commission show that the number of coaxial cable telephone lines in service in the United States grew from approximately 5.1 million lines at the end of 2005 to approximately 8.4 million lines at the end of 2007.[22] These numbers likely understate the extent of cable company penetration into the voice telephone market. The Commission expects to have more concrete data in the future after changes it recently implemented to its data gathering efforts take effect.

Competitive Networks Order. During Chairman Martin's tenure, the Commission saw that long-term exclusive contracts between owners of residential multi-tenant buildings and incumbent cable or telephone operators posed a barrier for new entrants in the provision of video and voice services. The Commission's Competitive Networks Order recognized the importance of eliminating barriers to infrastructure investment while creating regulatory parity among entities seeking to provide communications services in residential multiple tenant environments (MTEs), such as apartment buildings, condominiums, and co-operatives. Specifically, the Commission prohibited carriers from entering into contracts that would make them the exclusive provider of telecommunications services in residential MTEs. The Commission also barred carriers from enforcing any existing contract to provide exclusive service in residential MTEs. This order placed essentially the same restrictions on telecommunications carriers as the Commission's MDU Access Order had placed on cable operators, and so brings regulatory parity among competitors seeking to serve MTE residents, including those seeking to provide a "triple play" of voice, video, and broadband Internet access service.

Incumbent LEC Inside Wiring Order. The Commission also made it easier for competitive telecommunications and cable companies to gain access to "inside wiring" owned incumbent LECs in these apartment buildings in a consistent fashion, further ensuring that all consumers – including those in apartment buildings – benefit from competition in the provision of communications services.

Local Number Portability. The Commission also acted to remove a roadblock that had been inhibiting many consumers from switching telephone service providers. Local Number Portability (LNP) gives telephone customers the ability to keep their telephone number when changing service providers. The availability of LNP thus eliminates a major disincentive to switch carriers, helping to facilitate the successful entrance of new ser-

vice providers and competition between such new service providers and existing wireline and wireless carriers. Consumers have ported more than 78 million phone numbers from one carrier to another during Chairman Martin's term. The average number of ports per month where customers moved their number from one carrier to another has increased from 1.6 million in 2004 to about 2.4 million in 2007, with the average number of such wireline to wireline ports increasing from about 750,000 per month to about 1.3 million per month during that period.

In 2007, the Commission took steps to facilitate greater competition among telephone providers by extending LNP obligations to interconnected VoIP providers. This measure ensures that interconnected VoIP customers have the same ability as customers of traditional telephone service to keep their telephone numbers when changing telephone service providers. Enabling customers to port their numbers reliably and expeditiously when changing carriers – whether that carrier is a traditional wireline provider, wireless carrier, or interconnected VoIP provider – gives customers flexibility in the quality, price, and variety of services they can choose to purchase, which in turn enhances competition.

Interconnection Issues. The pro-competitive framework that Congress established in the 1996 Act provides that the state commissions shall arbitrate any disputes that arise when telecommunications carriers request interconnection agreements with incumbent carriers. In the Time Warner Order, the Wireline Competition Bureau addressed a situation in which state commissions had issued conflicting interpretations of federal law in arbitrating interconnection agreements between local phone companies and requesting telecommunications providers seeking to provide services wholesale to other service providers, specifically VoIP providers. Acting on delegated authority, the Bureau affirmed the Commission's existing policy that "telecommunications service" can be either a wholesale or retail service. The Bureau went on to make clear that regardless of whether a third-party provider's retail VoIP service is considered an information service or a telecommunications service, the wholesale common carrier has the right under section 251 of the Act to interconnect with the incumbent local phone company.

Localized Regulatory Relief. As a result of increased competition for voice services between telephone companies and cable companies, the Commission has been able to scale back some of its regulations in targeted locations where such "intermodal" competition is most pronounced. Most notably, the Commission conditionally forbore from

applying certain network unbundling requirements and dominant carrier rules that apply to the incumbent wireline carrier, but not the incumbent cable operator, in portions of the Anchorage study area and the Omaha Metropolitan Statistical Area (MSA). The Commission granted even more regulatory relief in Terry, Montana in recognition of the unique factual circumstances there.

Regulatory Relief for Long Distance. In the Section 272 Sunset Order, the Commission established a new framework to govern the provision of in-region, long distance services by the BOCs and their independent incumbent LEC affiliates. This framework, which is consistent with the relief granted Qwest in the Qwest Section 272 Sunset Forbearance Order, replaced unnecessarily burdensome regulation with less intrusive measures that protect important customer interests while allowing AT&T, Qwest, and Verizon to respond to marketplace demands efficiently and effectively. This framework has increased the BOCs' ability to develop and deploy innovative long distance services that meet their customers' needs.

The prior regime had forced each BOC to choose between two different regulatory regimes in providing in-region, long distance services, both of which imposed significant burdens and costs: the BOC could provide these services on a nondominant carrier basis through a section 272 separate affiliate; alternatively, it could provide these services directly or through an affiliate that is not a section 272 separate affiliate subject to dominant carrier regulation, including rate regulation and tariff-filing requirements. The new framework recognizes that this regime imposed unnecessary costs and allows each BOC to provide in-region, interstate, long distance services through the corporate structure it deems best, as long as it complies with certain targeted safeguards and other continuing obligations.

Addressing Public Safety Needs

It is the Commission's highest obligation to promote the safety of life and property through the use of communications. Meeting the needs of public safety has remained a consistent priority for the Commission over the past several years. This responsibility is particularly critical when the market would not otherwise produce these benefits, and where the social benefit of regulation takes precedence over the unencumbered functioning of the marketplace. This includes ensuring consumers have access to help during emergencies, ensuring all Americans have access to emergency information in times of crisis, and that the public safety community and citizens have access to reliable communications during and after disasters, whether natural or manmade.

Consumer Access to Emergency Services and Information

Ensuring Reliable 911/E911 Access Across Platforms. Consumers appropriately expect to receive emergency help when they dial 911 regardless of whether they are using a wireline, wireless or VoIP phone. Under Chairman Martin's leadership, the Commission has made a priority of ensuring that consumers have access to 911 and E911 emergency services across various communications platforms.

In May of 2005, the Commission extended 911 requirements to providers of interconnected Voice over Internet Protocol, or "VoIP" services. This action ensured that interconnected VoIP consumers would be able to dial 911 and receive help. Prior to this order, when a person dialed 911 from an interconnected VoIP service, that emergency call might be delayed or misrouted, and in some cases might never reach emergency responders. Now, when an interconnected VoIP customer dials 911, that call is delivered to the appropriate local emergency operators along with the caller's telephone number and location information, facilitating a more rapid response and enabling emergency responders to call back if the 911 call is disconnected. More recently, the Commission implemented the NET 911 Act to provide interconnected VoIP providers rights of access to network elements necessary to provide 911 and E911 service.

The Commission has long recognized the importance of ensuring that persons with disabilities can both promptly contact emergency personnel through the telephone system and have access to emergency information broadcast on television. As a result, the

Addressing Public Safety Needs

Commission has adopted new TRS rules to ensure that consumers using the Internet-based forms of Telecommunications Relay Services (TRS) can call emergency services through a relay provider and have the call automatically routed to the appropriate emergency personnel. Similar to interconnected VoIP service, the rules require Video Relay Service (VRS) and IP Relay providers to obtain from consumers a "registered location" at which the service will be used, and the provider will use that location to determine the appropriate emergency services to call. The rules also require providers to answer 911 calls before non-emergency calls. In addition, the VRS interoperability rules are intended to ensure that consumers can make an emergency call through any provider's service, regardless of the equipment used to make a call, and therefore that consumers are not limited to the services of a single provider in the event of an emergency

The Commission's extension of 10-digit numbering to Internet-based TRS, such as VRS, has also increased 911 access for persons with hearing or speech disabilities. Now, these 911 calls can be routed directly to appropriate emergency services operators, along with location information, which can save critical time in an emergency. This gives Internet-based TRS users access to the same kinds of enhanced 911 protections that voice telephone customers enjoy.

The Commission has also diligently pursued improvements in the accuracy of the location information transmitted to Public Safety Answering Points (PSAPs) when consumers place 911 calls from their mobile phones, as well as extending location information requirements to VoIP 911 calls. In this regard, three of the largest wireless carriers have already committed to meet the accuracy requirements on a county basis.

Since March 2005, the Commission has taken enforcement action against eight carriers, proposing more than $4 million in fines for failing to upgrade their E911 capabilities to provide information about the location of wireless 911 callers to 911 dispatch centers, thus ensuring that the benefits of the Commission's rules are realized by the public safety community and consumers, where compliance can literally be a matter of life and death.

Enhancing the Emergency Alert System. In the past three years, the Commission has been proactive in both extending the reach of the Emergency Alert System (EAS) to consumers, and in laying a foundation for the roll-out of next generation EAS technology. Thus, in addition to ensuring that the public will continue to receive emergency alerts from traditional radio and television broadcasters, the Commission has also extended EAS requirements to a variety of new communications platforms, such as over-the-air digital TV, satellite radio, satellite TV, and cable TV.

Addressing Public Safety Needs

In a 2007 Order, the Commission required communications providers to use a common protocol for transmission of emergency alerts once the protocol is approved by the Federal Emergency Management Agency (FEMA). The Commission also required communications providers to transmit state and local alerts so long as the Commission has reviewed and accepted the state's EAS plan. This will encourage states to adopt next generation technologies for their EAS networks.

Finally, to expand the scope of persons receiving EAS alerts, the Commission has encouraged EAS stakeholders to provide for multi-lingual EAS alerts, and to enable EAS to better reach persons with disabilities.

Establishing Commercial Mobile Alert Services for Mobile Devices. In 2008, the Commission successfully implemented the Warning, Alert and Response Network Act (WARN Act) which required the Commission to take a number of steps to facilitate the voluntary transmission of emergency alerts by commercial mobile service providers to their subscribers.

For example, as required by the WARN Act, the Commission established and managed the Commercial Mobile Service Alert Advisory Committee (CMSAAC). This advisory committee, comprised of representatives of the commercial wireless industry, public safety agencies, Federal government agencies, manufacturers and other experts, was tasked with recommending technical requirements to facilitate the voluntary transmission of emergency alerts by commercial mobile service providers.

Based in large part on the CMSAAC's recommendations, the Commission adopted three orders establishing the Commercial Mobile Alert System (CMAS) that will enable consumers to receive emergency alerts over their mobile handsets. With the CMAS, consumers, including those with hearing and vision disabilities, will be able to receive timely Presidential, Imminent Threat (e.g., hurricane) and Amber alerts over their mobile devices.

To date, over 140 commercial wireless mobile carriers, including the major nationwide carriers, have elected to participate in whole or in part in the CMAS.

With this comprehensive wireless mobile alerting system, consumers on the go will be able to receive emergency alerts in a short timeframe, even where they do not have access to broadcast radio and television or other sources of emergency information. The CMAS complements the EAS and other sources of emergency information by ensuring that Americans have the ability to receive emergency alerts and other information over a wide variety of technologies.

Addressing Public Safety Needs

Launching the Public Safety and Homeland Security Bureau

Under Chairman Martin's leadership, the Commission launched a new Bureau on September 25, 2006, dedicated to supporting the needs of the public safety community and consolidating Commission functions that address issues that impact consumer access to emergency services and communications during personal or community crises. The Bureau's mission is "To collaborate with the public safety community, industry and other government entities to license, facilitate, restore and recover communications services used by the citizens of the United States, including first responders, before, during and after emergencies by disseminating critical information to the public and by implementing the Commission's policy initiatives." Through the Public Safety and Homeland Security Bureau, the Commission's pursuit of this mission is one of its highest goals.

Preparing For and Responding to Emergencies

Hurricane Katrina and the FCC's Rapid Hurricane Response Activities. Since 2005, the Commission has made tremendous strides in its disaster recovery preparation, procedures, and implementation. In 2005, Hurricane Katrina created a communications crisis so widespread that the Commission operated on an unprecedented 24/7 basis to address widespread communications outages and assist the communications recovery efforts of public safety providers, commercial carriers, and other federal agencies. The Commission received almost unanimous praise

for its efforts and was cited in the White House's "lessons learned" report for its quick actions "to facilitate the resumption of communications services in the affected area and to authorize the use of temporary communications services for use by emergency personnel and evacuees in shelters."

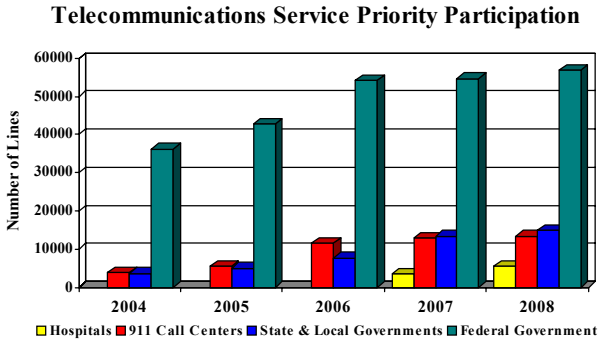
Since the 2005 hurricane season, the Commission has taken significant steps to develop improved procedures for responding to hurricanes and other disasters.

For example, during the 2008 season, FCC personnel were assigned to the field to assist in communications restoration efforts for Tropical Storm Fay and Hurricanes Gustav and Ike. In addition, the FCC developed a novel system, dubbed Project Roll Call, which was deployed for the first time during 2008. Project Roll Call uses spectrum analyzing equipment in conjunction with special software and FCC databases to analyze the spectrum environment before and after a storm to determine which systems are up and operating and which are not. This tool is particularly effective for broadcasters and public safety radio communications networks.

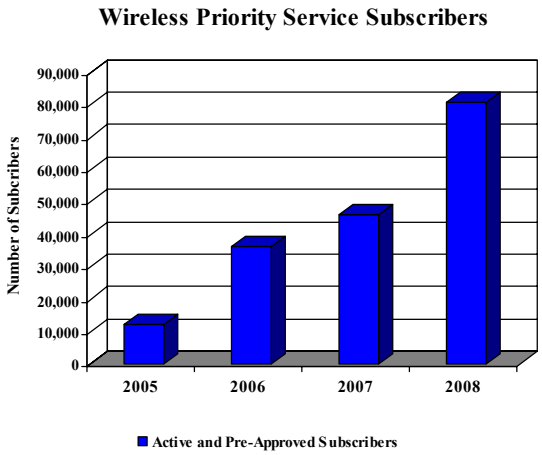
Finally, since Katrina, the Commission has developed and implemented the Disaster Information Reporting System (DIRS), a voluntary reporting system that provides the federal government with daily situational information about communications systems during crises. DIRS was activated for the first time in 2008 and proved very useful to our federal partner agencies.

Promoting Telecommunications Service Priority and the Wireless Priority System

The Commission has established two priority communications programs -- telecommunications service priority (TSP) and wireless priority system (WPS) -- that are designed to ensure that the public safety community has reliable access to public communications systems at all times, especially during disasters and other emergencies. TSP helps ensure priority installation and restoration of telecommunications services and WPS ensures priority access to wireless services. These programs greatly improve the ability of the emergency response community to conduct the



communications they need to protect the American public.



Because of the benefits these programs provide to participating public safety providers, Bureau personnel have worked over the past four years to increase enrollment by 911 call centers, hospitals, and state and local emergency operations centers. As a result, enrollment in TSP has risen by 180% and enrollment in WPS has risen by 220%. However, while considerable progress has been made, many public safety agencies still have not enrolled in these programs and we therefore plan to continue our outreach to improve their enrollment.

One-Stop Shopping for Authoritative Public Safety Communications Information

Through the Public Safety and Homeland Security Bureau, the Commission has developed a comprehensive approach to interfacing with the public safety community and the general public to provide information on emergency planning and timely information during disasters. In August 2007, the Public Safety and Homeland Security Bureau created a Clearinghouse on its website to collect, evaluate, and disseminate the most current communications information for the public safety community. The Clearinghouse includes documents generated by both Bureau staff and outside parties, which focus on such topics as Best Practices, Communications and Interoperability Plans, and Emergency Guidelines. The Clearinghouse also provides links to other federal, state and local government resources, such as FEMA, the National Communications System (NCS), and the Centers for Disease Control (CDC). The importance of the website to the Bureau's outreach efforts is highlighted by the heavy usage it has received. Since its creation, the Clearinghouse has had over 96,000 hits from users. Overall, the website has had over 2 million hits since its creation in 2006.

Addressing Public Safety Needs

Managing Public Safety Spectrum and Devices

Licensing and Interference Resolution. Licensing serves a critical role in ensuring that public safety agencies will continue to have access to spectrum for their growing communications needs, both during routine public safety operations and in times of major emergencies. The Commission's Public Safety and Homeland Security Bureau currently administers over 150,000 public safety licenses in multiple spectrum bands. In the past four years, licensing staff has processed a total of 173,476 public safety radio applications to keep pace with the requests of state and local public safety entities across the country to expand or modify their spectrum use.

Since March 2005, the FCC's Enforcement Bureau has investigated and resolved approximately 850 complaints of harmful interference to public safety communications, ensuring that our Nation's first responders can communicate effectively and efficiently without the worry of missing vital information.

700 MHz. The past four years has seen significant developments in the opening of the 700 MHz band to public safety use. After Congress allocated 24 MHz of spectrum in the band for public safety, the Commission designated 10 MHz for broadband use to address public safety's demonstrated need for access to advanced wireless broadband technology.

Absent alternatives to fund a nationwide public safety broadband network, the Commission acted to create a public/private partnership between a single nationwide public safety licensee and a commercial licensee partner that would be awarded an adjacent 700 MHz spectrum block at the same time. However, because the auction did not produce a winning commercial partner, the Commission has since issued two further notices seeking the best path to ensure successful deployment of a nationwide, fully interoperable public safety broadband network. This proceeding remains an important priority for the Commission, as development of this network is critical to the ability of our nation's first responders to protect the safety of the American public during emergencies.

800 MHz. Over the past three years, the Commission has made significant progress in the 800 MHz rebanding effort. Although the process has taken longer than originally

anticipated, 97 percent of Channel 1-120 licensees and 33 percent of NPSPAC and Expansion Band licensees in non-border areas have completed rebanding of their systems, and 82 percent of NPSPAC licensees have rebanding agreements with Sprint Nextel.

To ensure the safety of citizens living in border communities, the Commission worked with colleagues in Canada and Mexico to protect U.S. public safety operations from interference. The Commission negotiated with both countries on coordination of vital public safety operations and the development of agreements to govern public safety operations, including those in the 700 MHz and 800 MHz bands.

In October 2008, the Commission initiated the rebanding process in the U.S.-Canada border area, and we have also made significant progress in international negotiations with Mexico to enable rebanding to proceed along the U.S. - Mexico border. These developments have improved the ability of 800 MHz public safety systems to operate free from harmful interference. In addition, rebanding is now yielding new spectrum for licensing to public safety. In the past year, we have established a mechanism for Sprint to relinquish all of its Interleaved Band channels to public safety by March 2010, and the first wave of these channels will become available for public safety licensing later this month.

Encouraging Innovative Public Safety Devices. Over the past several years, the Commission has worked with innovators seeking to advance the state of public safety technology and to put advanced communications tools in the hands of our first responders. These tools have the potential to save civilian lives, and to make the jobs of the public safety community safer.

For example, the Commission has granted a number of waivers and approved equipment authorizations for devices such as the Remington Eyeball, an imaging sensor that provides live audio and video feeds to law enforcement agencies and can be thrown like a baseball into a remote or confined and potentially hazardous location, thus mitigating danger to police personnel. This and other devices, such as the SafeScout imaging device, the Quick Reaction Perimeter Intrusion Detection ("QUPID") fixed surveillance ultra-wideband ("UWB") imaging system, the Sapphire DART real-time identification and tracking system and the UltraVision surveillance system may provide unique technological solutions to protect life and property.

Overseeing the Digital Transition

A successful completion of the digital transition depends upon minimizing the burdens placed on consumers and maximizing their ability to benefit from it. The Commission's highest priority is protecting the American consumer. The conversion to digital television promises movie quality picture and sound as well as potentially new programming choices. It also will allow us to significantly improve public safety communications and usher in a new era of advanced wireless services. To prepare for the digital transition, the Commission has worked both on its own and in coordination with industry, other governmental agencies, and consumer groups to advance the transition and promote consumer awareness. Our efforts have been three-fold. First, we have been focused on getting the right policies in place to facilitate a smooth transition. Second, we have been actively enforcing our rules to protect consumers. And, third, we have been promoting awareness of the transition through our consumer education and outreach efforts. Through all of our activities, the Commission is committed to ensuring that no American is left in the dark.

Policy Proceedings and Minimizing the Burden on Consumers

The Commission's first priority was to prepare full-power broadcasters for the transition by putting in place the necessary technical rules to allow broadcasters to construct digital facilities. And, the Commission has initiated numerous policy proceedings designed to facilitate the nation's transition to digital and promote consumer awareness of the transition. These are described below.

Broadcaster Readiness. Today, approximately 98 percent of stations have either completed construction of their digital facilities or are well on their way to completion. Specifically, as of the end of 2008, about 90.3 percent of full power television stations are either fully operational with digital service or are on track to have their full digital service operational by February 17, 2009. Another 7.5 percent of all full power stations will be serving at least 85 percent of their population by February 17, 2009, with final operations beginning sometime soon thereafter.

Final DTV Table of Allotments and Review. In 2007, the Commission adopted the final DTV table of allotments. This order provided virtually all full power television stations with their final channel assignments for broadcasting in digital.

In 2007, the Commission also completed a proceeding establishing deadlines for broadcaster construction of their final, post-transition facilities.

Overseeing the Digital Transition

DTV Transition Status Reporting (Form 387). The Commission also adopted a requirement that all full power stations complete, file, and update a FCC Form 387, as needed, to keep the Commission and the public apprised of stations' progress in meeting the transition deadline on February 17, 2009.

Distributed Transmission Systems. The Commission adopted rules for the use of distributed transmission system ("DTS") technologies in the digital television service. DTS will provide broadcasters with an important tool for providing optimum signal coverage for their viewers. For some broadcasters that are changing channels or transmitting locations for their digital service, DTS may offer the best option for continuing to provide over-the-air service to current analog viewers, as well as for reaching viewers that have historically been unable to receive a good signal due to terrain or other interference. Furthermore, DTS may be a useful tool for stations to prevent some loss of service to existing analog viewers resulting from changes to the station's service area in the transition to digital service.

Translator Replacement Service. The Commission initiated a Notice of Proposed Rulemaking that proposes the creation of a new "replacement" digital television translator service to permit full-service television stations to continue to provide service to loss areas that have occurred as a result of their digital transition. This proposal would also allow broadcasters to apply for special temporary authority to use such translators during the pendency of the rulemaking.

Viewability Order. Chairman Martin led the Commission in taking action to make sure cable operators continued to make signals of all broadcast stations viewable after the transition. Specifically, under Chairman Martin's leadership, the Commission ensured that all Americans with cable – regardless of whether they are analog or digital subscribers – are able to watch the same broadcast stations the day after the digital transition that they were watching the day before the transition. In this manner, the Commission made sure analog cable subscribers were not shortchanged after the digital transition. Under the Commission's "Viewability Order" cable operators must ensure that all "must carry" local broadcast stations carried are "viewable" by all cable subscribers. Enforcement was stepped up to make sure consumers did not unknowingly buy televisions that would not receive broadcast stations following the transition.

Labeling Order. The Commission imposed a television labeling obligation that required sellers to alert consumers if they were selling TV equipment with only an analog tuner to make sure consumers did not unknowingly buy televisions that would not receive broadcast stations following the transition.

DTV Consumer Education Order. The Commission adopted a DTV Consumer Education Order to require broadcasters, MVPDs, manufacturers, and others to convey information on the digital transition to consumers on a regular and continuing basis through the end of the transition.

Overseeing the Digital Transition

Analog Nightlight Order. The Commission has moved swiftly to implement the Short-Term Analog Flash and Emergency Readiness Act. This legislation and the Commission's implementing rules allow and encourage broadcasters to provide emergency and transition information to viewers for up to 30 days after February 17. To the extent that any viewers remain unaware of or unprepared for the transition, this temporary continuation of analog service should help alleviate customer confusion and ensure that these viewers have access to emergency information.

DTV Enforcement Activities

The Commission's DTV-related enforcement efforts are focused on protecting consumers from the unknowing purchase of television equipment without integrated digital tuners. DTV-related enforcement actions are centered on four areas: (1) the labeling requirement for equipment with analog-only tuners; (2) the prohibition on the importation and shipment of television receivers without integrated digital tuners; (3) the obligation of various industry segments to inform consumers about the transition; and (4) V-Chip requirements.

Labeling Requirement. The Commission actively enforced its rules requiring stores to place warning labels on any analog television they sell. The labels notify consumers that these televisions generally will not be able to receive over-the-air television signals without additional equipment. Not long after this rule was adopted, the Enforcement Bureau began inspecting thousands of stores and websites across the country to assess their compliance. Although most retailers complied with the DTV labeling rule, the Enforcement Bureau has issued over 350 citations warning retailers of labeling violations in their stores. Where we found repeat violations, we took stronger enforcement action. Since adoption of the rule in the Spring 2007, the Commission released over $4.7 million in enforcement decisions against 22 retailers for apparent violations of the DTV labeling rule. After we began issuing these citations and enforcement actions, retailers improved their compliance with the rule, and the number of new violations dropped dramatically.

DTV Tuner Requirement. The Commission actively enforced its rules barring importers from bringing analog televisions into the United States. By prohibiting the importation of those televisions, the rules ensure that consumers will be able to buy televisions capable of receiving digital signals. The Enforcement Bureau reviews U.S. Customs data and complaints to identify potential violations of this requirement. During Chairman Martin's tenure, the Commission has taken more than $3.7 million in enforcement actions against eight companies for possible violations of this rule. As the digital transition date approaches, we have seen a significant decrease in the number and scale of such violations.

Overseeing the Digital Transition

Consumer Education Requirements. The Commission actively enforced its rules requiring broadcasters, cable operators, telecommunications companies and others to educate the public about the digital television transition. Because of the importance of the transition, we initiated investigations of companies in several industries to assess their compliance with these rules. Those investigations have generated a number of enforcement actions. For example, one telecommunications company recently paid $51,000 after receiving an Enforcement Bureau order regarding the company's apparent failure to notify its customers of the transition as required under our rules. The Commission is considering an Enforcement Bureau order proposing $11.25 million in fines against seven companies for the same type of violation. The Enforcement Bureau is reviewing additional information submitted by broadcasters, cable operators, and telecommunications carriers to determine their compliance with the DTV consumer education rules.

V-Chip Requirements. As the Commission has encouraged the availability of digital televisions, we have worked hard to ensure that those devices comply with Commission rules relating to safety and other requirements. One important requirement is the "V-Chip" rule, which requires all digital televisions to include technology allowing consumers to program their devices to block offensive or objectionable programming based on the broadcaster ratings for offensive language, sexual content, and violence. That rule also requires that digital televisions be able to update their blocking software to future ratings systems, which might include issues like smoking, drug use, or other activities. When the Enforcement Bureau investigated whether manufacturers were complying with these rules, we learned that many companies were not complying with the updating requirement. As of the end of 2008, the Commission has released enforcement decisions imposing more than $12.6 million in fines against 11 manufacturers.

DTV Consumer Education and Outreach

Chairman Martin guided the Commission through one of the most massive projects the agency has faced, that of preparing consumers for the nationwide transition from analog to digital broadcasting on February 17, 2009, as mandated by Congress. In particular, the Commission's outreach and education efforts are focused on the 82 markets with the highest over-the-air populations. In these and other markets, the Commission in actively partnering with local government (e.g., libraries, senior centers, social services, school districts); local broadcasters; community and grassroots organizations; charitable organizations; faith-based organizations; professional, semi-professional and collegiate sports teams; and other community and regional stakeholders to educate consumers about the transition, and specifically, how to order converter box coupons and install converter boxes.

Overseeing the Digital Transition

Consumer Awareness and Preparedness. Awareness of the digital transition has been growing. The Commission's focus has been on ensuring that as many Americans as possible – and in particular, those segments of the population that are predominantly over-the-air viewers including the elderly, people with disabilities, and minorities – are aware of the upcoming transition.

The consumer outreach and education activities that the Commission and other industry members have undertaken appear to have been effective. The National Association of Broadcasters (NAB) reported in October 2008 that the national awareness level is at 92 percent. This is up from 79 percent in January of 2008. And recent NAB polling also indicates that minorities are increasingly aware of the upcoming transition. Specifically, NAB reported that 92 percent of Hispanic respondents were aware the broadcast television signals will be switching to an all-digital format, a four point jump since NAB's May 2008 survey. This number equals the national awareness number. The poll also found that African-American awareness of the DTV transition is at 86 percent, up one point from May 2008.

It is critical that people are not just aware of the transition but they must also be prepared for it. In December 2008, Nielsen issued a survey that found that "Unreadiness among U.S. households continues to decline, and the pace at which U.S. households are getting ready has increased. Between November 2008 and December 2008, the penetration of completely unready households in the U.S. declined by six-tenths of a percentage point – one of the largest drops we have seen since we began reporting readiness status in May 2008."

Wilmington Test. On September 8th, Wilmington, North Carolina became the first market in the country to transition from analog to digital television. The early switch to digital in Wilmington was instrumental in helping the Commission identify, understand, and hopefully prevent some future problems when the rest of the nation transitions on February 17, 2009.

The majority of Wilmington viewers were aware of and prepared for the transition. Importantly, the consumer education campaign that was conducted appears to have been effective. Prior to the transition on September 8th, NAB released a survey indicating that 97 percent of Wilmington residents were aware of the switch to digital. Consumer calls received by the Commission at its call center also indicated that the vast majority of

the 400,000 television viewers in the Wilmington-area were aware of the transition and prepared for it.

The measure of success in Wilmington is not what happened on September 8th, September 15th or October 15th. Rather, it is how we are going to take what we learned in Wilmington and apply that knowledge to the rest of the country.

Nationwide 82-Area Tour. In August 2008, Chairman Martin announced a nationwide initiative to increase awareness about the upcoming transition to digital television. As part of our efforts to prepare consumers for the transition, the Commission identified television markets in which the largest number of viewers will have to take action to be prepared for the transition. Specifically, 82 target television markets were identified for specific DTV outreach, including all those markets in which more than 100,000 households or at least 15 percent of the households rely solely on over-the-air signals for television. Within these markets, we are aiming to educate those groups most vulnerable to the transition such as senior citizens and non-English speakers. Chairman Martin and the Commissioners, as well as other Commission staff, are fanning out to these markets to raise awareness and educate consumers in the days leading up to the digital television transition on February 17, 2009. At each stop, there is a public event, such as a town hall meeting, workshop, or roundtable to highlight the digital transition. In coordination with these visits, the Commission is working with local broadcasters and radio stations to increase the broadcasts of Radio and TV DTV PSAs and run stories about these visits.

As part of this nationwide tour, the Commission is also coordinating with the broadcasters to explore whether at the same time these stations may participate in a temporary turn off of their analog signals. During these so-called "soft tests" analog customers would see a message on their screens informing them of the transition and how to become prepared. Two nationwide soft tests have also been conducted.

Grassroots Bid. The Commission selected 12 grassroots organizations and local agencies to help over–the-air viewers prepare for the digital transition. These selections are worth up to $8.4 million and are the culmination of a full and open procurement process. The Commission sought proposals to conduct outreach in all parts of the country, with a particular focus on the 82 markets with the highest over-the-air television populations. In particular, the FCC selected organizations dedicated to serving across populations across the country most at risk in the digital transition including senior citizens, people with disabilities and Spanish-speaking households. Specifically, the FCC sought the assistance of local, regional and national organizations with converter box procurement and installation, establishment and staffing of local call centers, educating consumers about the transition and other local grass roots efforts.

U.S. Postal Service Partnership. We are displaying DTV education posters in all 34,000 post offices across the country. We have worked with the U.S. Postal Service to install updated posters beginning December 1, 2008 running through the end of the tran-

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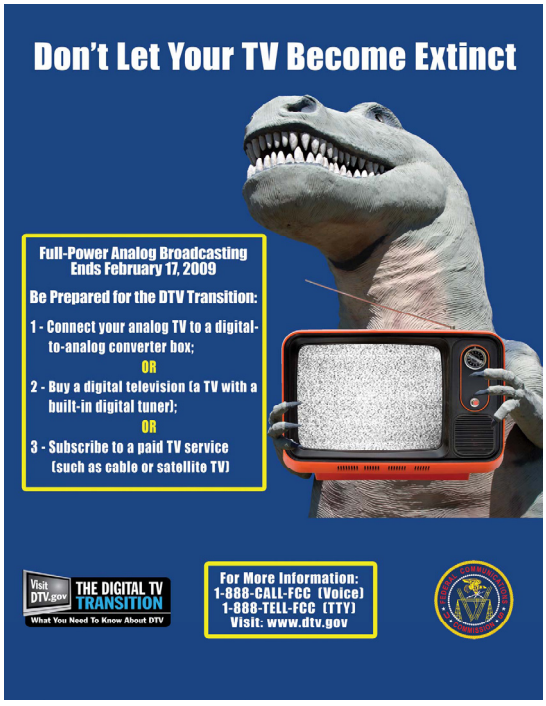
sition period. The new posters are targeted to instill a greater sense of urgency to consumers and use the slogan "On February 17, 2009 your TV is changing. Are you ready?"

Media Outreach (PSAs and Educational Video). The FCC has created 12 television and 17 radio PSAs, in English and Spanish. The PSAs feature the Commissioners. In addition, a new educational video released in November walks consumers through the basic steps of the transition, and demonstrates how to hook up a converter box.

Nationwide Billboards and Transit Ads. The Commission obtained donated space for one to two months in 72 high-target population markets throughout the country. See example of a billboard placed in Seattle, WA.

Nationwide Magazine Ads. The Commission, in partnership with AARP, is including DTV information and a tear-out converter box coupon application in widely distributed AARP publications, AARP The Magazine, AARP's Segunda Juventud, and The AARP Bulletin. In addition, the FCC will be advertising in fifteen additional magazines including American Profile, Better Homes & Gardens, Ebony - Marketplace section, Essence, Family Circle, Farm Journal, Hispanic, People en Espanol, People Magazine, Reader's Digest, Soap Opera Digest, TV Y Novelas, US Weekly - back of book, USA Weekend, and Vanidades.



DTV Awareness Sessions. The Commission has conducted over 2,750 DTV Awareness sessions, attended more than 2,310 conferences, events and partnership meetings, established 1,768 partnerships, and made over 11,290 visits to various organizations around the country to disseminate DTV information. In addition, the Commission's Enforcement Bureau has used its resources in the field to assist in the Commission's DTV outreach efforts. Specifically, members of the Enforcement Bureau's 24 Field Offices have made more than 10,000 DTV education visits and conducted nearly 2,100 awareness sessions throughout the country to educate consumers about the DTV transition.

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Information Distribution. A key part of the Commission's education and outreach efforts has been the development and distribution of consumer literature. These tools are a cost-effective means to provide information about the transition. As of the end of 2008, over 14 million pages of DTV-related publications and over 111,286 posters have been distributed. In addition, the six most popular DTV publications have been translated into 29 languages in addition to English. The language including Spanish, Amharic, Arabic, Cambodian, Chinese, Creole, Farsi, French, Greek, Hmong, Italian, Japanese, Korean, Kurdish, Laotian, Navajo, Polish, Portuguese, Romanian, Russian, Somali, Taiwanese, Tagalog, Vietnamese, and Yupik. The publications include the one-pager, Frequently Asked Questions, and information sheets on converter box set-up, antennas, troubleshooting, and recycling. In addition, the entire website is available in Spanish.

Speakers Bureau. In August 2008, the Chairman also announced that the Commission has launched a Speakers Bureau for groups throughout the country to request speakers to discuss the upcoming digital transition. As of the end of 2008, we have received 184 requests for speakers. The requests are being handled by staff traveling for conferences and events, as part of the outreach for our town hall meetings, and by our field agents.

Other DTV Activities

Converter Box Testing. The Commission's laboratory in Columbia, Maryland, part of OET, has tested DTV converter boxes in support of NTIA's coupon eligible converter box program. The laboratory has tested more than 200 converter boxes and is turning its attention under NTIA's guidance to compliance of DTV converter boxes that are on the market.

DTV Mapping. The Commission released two reports that show changes in the coverage of the nation's full-power television (TV) stations as they prepare to transition from analog to digital broadcasting on February 17, 2009. The first report provides maps showing the analog and digital coverage areas for each of the 1749 full-power TV stations in the United States. The vast majority of TV stations throughout the country will experience a significant increase in the population that can receive their signals. Some stations, however, are expected to experience some losses in the population that will be served by digital service as compared to their existing analog service. The second report contains maps and other information for the 319 stations where more than two percent of

Ensuring Access to Communications by All Citizens

Every American, regardless of physical location or physical condition, should have access to our nation's communications technologies. As the communications landscape evolves, we must ensure that all Americans continue to have access to the economic, educational, and health care opportunities available on the communications network. Because market forces alone may not ensure equal access to communications, the Commission must be prepared to play a role to make sure this important social goal is met.

Congress charged the Commission with implementing universal service and telecommunications relay service – programs that are designed to expand access to communications services. During the tenure of Chairman Martin, the Commission has advanced the goals of these programs, and put the Commission on a path toward strengthening and modernizing them, while implementing safeguards to ensure that these programs continue to operate as Congress intended. The Commission also promoted disability access by updating and enforcing its closed captioning and hearing aid compatibility rules.

Connecting Health Care Providers and Schools and Libraries

Improving Access to Health Care. In 2006, the Commission adopted a pilot program to facilitate broadband deployment to health care providers, bringing the benefits of innovative telehealth and, in particular, telemedicine services to those areas of the country where the need for those benefits is most acute.

In 2007, the Commission selected 69 participants covering 42 states and three U.S. territories to be eligible to receive funding for up to 85 percents of the costs associated with: (1) the construction of a state or regional broadband network and the advanced telecommunications and information services provided over that network; (2) connecting to Internet2 or National LambdaRail (NLR); and (3) connecting to the public Internet. The networks will connect over 6,000 health care providers across the country, including hospitals, clinics, public health agencies, universities and research facilities, behavioral

health sites, community health care centers, and others. Many of these health care providers are located in insular areas and isolated regions, where transportation costs are high and health care specialists are concentrated in distant urban centers.

All of the networks will construct innovative and highly efficient regional broadband networks, either by building new, comprehensive networks or upgrading existing ones. All of these networks, as discussed above, will be able to connect to the public Internet as well as to one of the nation's dedicated Internet backbones: Internet2, or National LambdaRail. When the projects funded through the Pilot Program are completed, this is what the National Health Care Network will look like.

The Commission has worked closely with Pilot Program participants to ensure the success of this program. Changes to initial applications, through aggregation of projects, upgrading, replacing technology, or adding eligible health care providers to networks without increasing the underlying cost of the projects, have increased the benefits that health care providers and consumers will receive under the Pilot Program. For example, the California Telehealth Network has been able to work within its awarded Pilot Program funding amount of $22 million to more than double the health care providers it plans to connect – increasing from 300 facilities to over 700 facilities.

Ensuring Access to Communications by All Citizens

Bringing Broadband to Schools and Libraries. The E-rate program provides schools and libraries with discounts on eligible telecommunications and Internet access services up to a total amount of $2.25 billion each funding year. This funding has enabled schools and libraries to dramatically increase their access to broadband services. In a 2007 study, the National Center for Education Statistics (NCES) found that access to the Internet is ubiquitous in public schools.[23] NCES found that nearly 100 percent of public schools in the United States had Internet access, and 97 percent of these schools used broadband connections to access the Internet.

Preserving Universal Service

Congress created the universal service fund to ensure that all Americans, regardless of where they live, have equal access to communications services. In many parts of rural America however, it is cost prohibitive for one, let alone multiple, phone companies to provide service at a reasonable cost to consumers. It is only through direct grants from the universal service fund that consumers in those high-cost areas can have the same phone service enjoyed by consumers in more urban areas. The universal service fund also provides discounts on telecommunications and Internet access services to rural health care providers and to schools and libraries, and helps low-income consumers obtain and pay for the costs of telephone service.

Stabilizing the High-Cost Fund. In 2008, the Commission reined in explosive growth in high-cost universal service support disbursements. The Commission imposed an interim cap on the amount of high-cost support available to those entities responsible for the most dramatic increases in high-cost support disbursements, competitive eligible telecommunications carriers. The cap will contain the growth of universal service in order to preserve and advance the benefits of the fund and protect the ability of people in rural areas to continue to be connected. In addition, the cap will help to prevent excessive contributions from consumers who support the fund. Contributions to the universal service fund are based on a percentage of carriers' interstate and international revenue.

Since the cap has been put in place, this percentage has decreased approximately 17 percent, from 11.4 percent to 9.5 percent.

Broadening the Contribution Base. The Commission also acted to preserve universal service by expanding the base of contributions to the universal service fund in 2006. First, to better reflect the growing demand for wireless services, the Commission raised the "safe harbor" percentage used by wireless providers to estimate interstate revenue. Second, the Commission extended universal service contribution obligations to providers of interconnected voice over Internet Protocol, or VoIP, service. These actions stabilized the contribution base for the universal service fund in the near-term and minimized the effects of any changes on consumers, contributors, and universal service fund administration, while the Commission considers more fundamental reform of the contribution methodology.

Improving Program Administration. The Commission has strengthened its oversight and management of the current universal service fund administrator, the Universal Service Administrative Company (USAC). The Commission established memorandums of understanding (MOUs) with USAC to ensure greater clarity in administrative and management functions. In addition, the Commission established performance measures and goals for the universal service fund and USAC, and required USAC to develop customer service standards and to prepare, review, and report data concerning the quality of service USAC provides to universal service fund stakeholders. The Commission also adopted rules that establish rigorous document retention requirements for program participants. The Commission's new rules also create additional penalties for bad actors; specifically, the Commission can now prohibit any party that defrauds any of the universal service disbursement programs from continued participation in the program. Moreover, the Commission continues to explore additional safeguards to protect the fund.

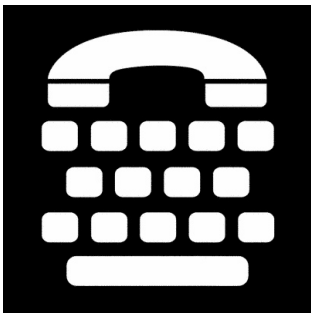
Auditing and Enforcing Program Rules. The Commission's Inspector General has conducted 459 audits of universal service beneficiaries and contributors, and, based on the results of those audits, is now overseeing a second round of 650 audits. These audits have resulted in recovery of improperly disbursed funds and enforcement action against entities that apparently violated Commission rules. The Commission has followed-up on investigations by taking strong enforcement action against bad actors. The Commission has issued Notices of Apparent Liability and Consent Decrees totaling over $21 million and recovered in excess of $230 million in underpayments to the Universal Service Fund. The Commission has also issued suspensions and debarments against 14 individuals and four companies.

Ensuring Access to Communications by All Citizens

Improving Access for Persons With Disabilities

Congress required the creation of a nationwide TRS program to allow persons with hearing and speech disabilities access to the nation's telephone network. TRS must be made available to the extent possible and in the most efficient manner. In addition, TRS must offer telephone system access that is "functionally equivalent" to voice telephone services. Functional equivalency means individuals with disabilities having access to the same services as everyone else. This equal access is vital to accessing jobs, education, public safety, and simple communications with family, friends, and neighbors.

Similarly, the Commission has adopted closed captioning and hearing aid compatibility rules to provide persons with hearing and visual disabilities with the same access to services and information as persons without such disabilities.



Improving TRS. The Commission recognizes many forms of TRS – from traditional TTY calls to more recent forms like Video Relay Service. Over the past several years, the Commission has continued to recognize other forms of TRS to meet the more specific communication needs of persons with disabilities. The Commission recognized ASL-to-Spanish VRS as a form of TRS so that persons who are deaf and communicate via ASL can make telephone calls to persons who speak Spanish. In addition, the Commission recognized IP Captioned Telephone Service so that persons with some residual hearing have more choices in how they make captioned telephone calls and are not tied to any particular equipment or technology.

The Commission also continues to adapt its rules to improve the quality of TRS and meet consumer needs. In a significant step forward, Internet-based TRS users can now obtain ten-digit telephone numbers that are the same as those used by voice telephone users to make and receive calls. The Commission also adopted speed of answer rules (so

that consumers do not have to wait an unreasonable period of time to place a call) and interoperability rules (so that equipment can be used to make a call through any provider).

At the same time, the Commission has worked to protect the TRS program from waste, fraud and abuse. The Commission adopted new cost reimbursement methodologies for each form of TRS to ensure that the providers are compensated in accordance with the TRS rules. The Commission also prohibited certain incentive and marketing practices that have the intent or effect of encouraging consumers to make unnecessary calls – calls that the consumer does not pay for but for which the provider gets compensated. The Commission addressed the misuse of IP Relay by persons using that service to defraud merchants by making credit card purchases over the telephone. And the Commission has audited providers, including the minutes of use submitted for payment, to ensure the legitimacy of both the use of TRS and payments made from the Fund to providers.

Enhancing Closed Captioning. The Commission's closed captioning rules ensure that persons with hearing disabilities can fully enjoy television programming by reading what is being spoken as text on the screen. Over the past several years, the Commission has improved captioning quality standards and adopted procedures to aid consumers when they have concerns about their closed captioning service. The Commission also addressed captioning issues raised by the transition to Digital Television and the use of converter boxes, to ensure that consumers continue to benefit from closed captioning after the transition is completed.

In addition, broadcasters must provide emergency information either through closed captioning or a visual presentation so that persons with hearing disabilities have access to potentially life-saving information. The Commission has fined TV broadcasters who failed to provide emergency information in an accessible format, proposing forfeitures of nearly $125,000 against seven television stations for failing to provide persons with hearing disabilities timely visual access to the same emergency information the stations provided to their hearing audiences in connection with their coverage of various emergency events involving wildfires, tornado warnings, and hurricanes.

Ensuring Hearing Aid Compatibility. The hearing aid compatibility rules ensure that consumers with impaired hearing have access to handsets that function properly with hearing aids. In 2007, the Commission began a new proceeding to reexamine rules, as applied to wireless handsets. Building upon a "consensus plan" proposed by representatives of consumer groups and the wireless telecommunications industry, the Commission adopted significant revisions. The new rules are designed to ensure that consumers will have available to them an increasingly broader selection of hearing aid-compatible handsets, regardless of technology or frequency bands (including newly available frequency bands) used

by their handsets. In addition, the Commission has issued NALs or consent decrees for violations of the wireless hearing aid compatibility handset and labeling requirements.

Increasing Access to Ownership

Access to Capital Conference. The Commission held an en banc hearing and conference on overcoming barriers to communications financing. This conference was designed to enhance the knowledge of the Commission and attendees about: (i) the present state of capital markets as those markets impact ownership diversity in the media and telecom industries and, particularly, the success of minorities and women entrepreneurs; (ii) how financing is secured for new, diverse, resource-limited ventures, focusing on actual problems encountered by women and minorities attempting to secure financing for media and telecom deals; and (iii) potential ways the Commission can help facilitate financing opportunities for minorities and women.

Ensuring Localism and Diversity in Broadcasting. The Commission took action to maintain the three long-standing core goals of Commission media ownership policy – competition, localism and diversity. Chairman Martin led the Commission in taking steps to increase diversification of ownership in the broadcast services by promoting opportunities for new entrants. In addition, the Commission completed a long-standing initiative to study localism in broadcasting and made proposals to ensure that local stations air programming responsive to the needs of their service communities.

Spectrum Sharing. As television stations transition from analog to digital, the Commission has a rich opportunity to foster the entry of many more new, independent and diverse voices on the air. One idea that takes advantage of the potential for digital technology to serve a more diverse array of consumers is spectrum sharing. Spectrum sharing is one of the most significant opportunities presented by the DTV transition, and is not a new idea. The Commission already has rules in place to allow spectrum-sharing arrange-

ments for broadcast stations. In the digital environment, the ability to share spectrum, rather than having to purchase new stations or spectrum, provides an entry-level opportunity for new entrants to cut some overhead costs and get into the business of broadcasting. Chairman Martin proposed allowing broadcasters to create more diverse and locally oriented channels by sharing their digital spectrum with entities offering such programming.

Ion Media Networks recently joined with a minority-owned new entrant in the television broadcasting industry, Urban Television, with a share-time proposal that would launch targeted programming serving the needs and interests of African-American viewers. The proposal presumes that the share-time stations created by the arrangement would be entitled to mandatory carriage – without carriage, the proposal would not be feasible. By granting the applications for the Ion-Urban Television share-time arrangement, the Commission would give birth to the nation's first over-the-air African American television network. Groups such as the Rainbow PUSH Coalition, MMTC, the NAACP, and the Lawyers Committee for Civil Rights Under the Law have all encouraged the Commission to grant the proposal. This is an important example of the type of opportunity the Chairman has advocated to address the serious financial and logistical barriers – lack of access to capital and spectrum – that plague most new entrants.

Reforming Universal Service and Intercarrier Compensation

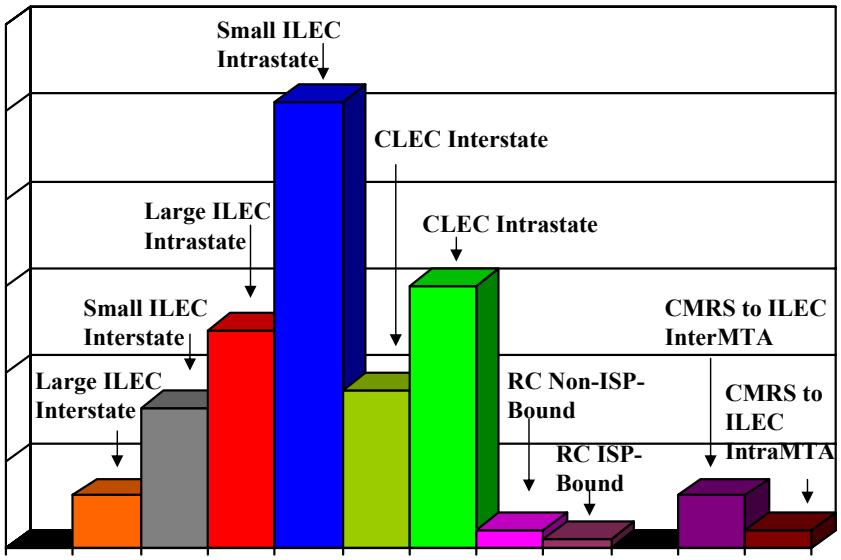
Although the Commission has taken interim steps to ensure the continued viability and affordability of the universal service fund for American consumers, further reform is needed. In moving to an IP-based world, consumers require access to broadband services. The Commission must explore ways to utilize universal service funds to provide broadband service to all Americans.

In November, the Commission sought comment on proposals to tie receipt of high-cost universal service support to a provider's commitment to offer broadband service ubiquitously throughout its service area. The Commission also sought comment on establishing a Broadband Lifeline/Link Up Pilot Program to examine how the low-income universal service support mechanisms (the Lifeline and Link Up programs) can be used to enhance access to broadband Internet access services for low-income Americans. Moreover, the Commission sought on proposals to reform the universal service contribution base by assessing contributions based, wholly or in part, on telephone numbers. Such reform will be necessary to broaden and stabilize our universal service contribution base as demand for new services strains the size of the fund.

Ensuring Access to Communications by All Citizens

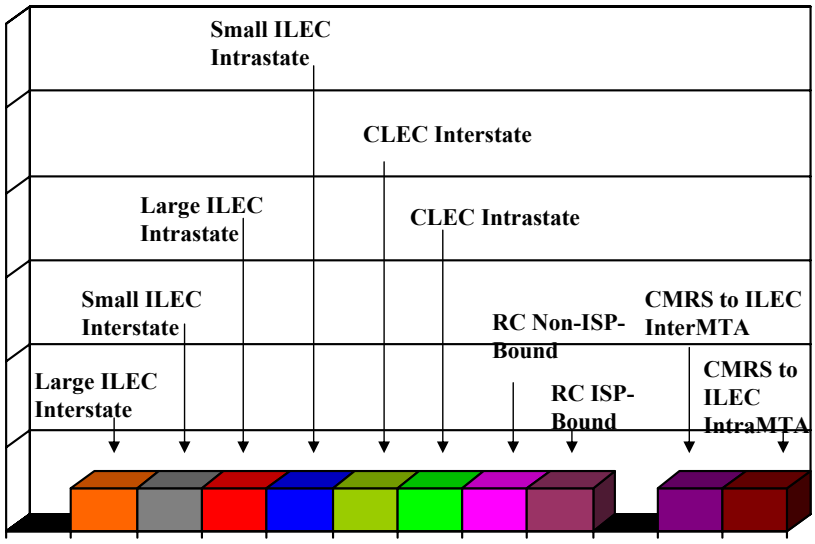
At the same time, the Commission sought comment on proposals to reform the intercarrier compensation regime. Under the current regime, carriers assess different rates for different types of traffic exchanged via the public switched telephone network.

Disparate Rates



Evidence of increasing regulatory arbitrage, as well as increased competition and changes in technology, has led the Commission to consider comprehensive reform of intercarrier compensation. The differences in existing intercarrier compensation regimes impose significant inefficiencies on users and distort carriers' investment incentives, which can result in losses of billions of dollars in consumers and producers surplus. Possibly more important, these legacy regulatory regimes pose an obstacle to the transition to an all-IP broadband world. Because carriers currently can receive significant revenues from charging above-cost rates to terminate telecommunications traffic, they have a reduced incentive to upgrade their networks to the most efficient technology or to negotiate interconnection agreements that are designed to accommodate the efficient exchange of IP traffic, as both actions would likely lead to reduced intercarrier payments.

Uniform Rates



To preclude these negative effects, intercarrier compensation rates must be transitioned to a regime where traffic is exchanged at the same rate, regardless of the technology used.

Conclusion

Technological advances, converging business models, and the digitalization of services have created unparalleled opportunities and considerable challenges. Under Chairman Martin's leadership, the Commission has produced meaningful results for consumers. It put in place the appropriate regulatory framework that achieves the twin goals of spurring investment and establishing open platforms to deliver choice and innovation to consumers. In almost all cases vigorous competition has enabled consumers to get newer and more innovative technologies and communications services at ever-declining prices. Television programs are sold on the Internet and streamed wirelessly to mobile devices; teenagers communicate over IM, SMS and MySpace, not the landline phone; DVRs mean you watch your TV when and where you want; mobile phones show movies, play songs, photograph your kids, and even send you emergency messages. The Commission's efforts in recent years have helped all Americans reap the rewards of convergence and the broadband revolution.

Footnotes

1.NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, NETWORKED NATION: BROADBAND IN AMERICA 2007 34, tbl. 7 (2008), http://www.ntia.doc.gov/reports/2008/NetworkedNationBroadbandinAmerica2007.pdf.

2 Saul Hansell, Verizon's FiOS: A Smart Bet or a Big Mistake?, N.Y. TIMES, Aug. 19, 2008, at C1.

3 NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, NETWORKED NATION: BROADBAND IN AMERICA 2007 34, tbl. 7 (2008), http://www.ntia.doc.gov/reports/2008/NetworkedNationBroadbandinAmerica2007.pdf.

4 Michael Render, US Fiber to the Home Market Update, at 12 (Dec. 15, 2008), available at http://www.ftthcouncil.org/documents/176173.pdf (last visited Jan. 13, 2009).

5 See FCC, HIGH-SPEED SERVICES FOR INTERNET ACCESS: STATUS AS OF DECEMBER 31, 2007, tbl.1 (2009).

6 See FCC, HIGH-SPEED SERVICES FOR INTERNET ACCESS: STATUS AS OF DECEMBER 31, 2007, tbl.1 (2009).

7 See HIGH-SPEED SERVICES FOR INTERNET ACCESS: STATUS AS OF DECEMBER 31, 2005, TBL. 5 (2006); HIGH-SPEED SERVICES FOR INTERNET ACCESS: STATUS AS OF DECEMBER 31, 2007, TBL. 5 (2009).

8 USTelecom.org, Wireline Broadband Pricing 2001–2007, at 2, http://www.ustelecom.org/uploadedFiles/Learn/Broadband.Pricing.Document.pdf (last visited January 8, 2009).

9 Id.

10 HarrisInteractive.com, The Harris Poll—Four Out of Five Adults Now Use the Internet, http://www.harrisinteractive.com/harris_poll/index.asp?PID=973 (last visited January 8, 2009).

11 In addition, the Commission is continuing with its efforts to use an additional 10 megahertz of related spectrum (D Block) to foster a Public/Private Partnership creating a nationwide interoperable broadband network for public safety services.

12 See, http://news.vzw.com/news/2008/07/pr2008-07-11b.html.

13 See, http://newsreleases.sprint.com/phoenix.zhtml?c=127149&p=irol-newsArticle_newsroom&ID=1237672.

14 Stephen Lawson, Verizon Aims for LTE Deployment in 2009, PC World, http://www.pcworld.com/businesscenter/article/155240/verizon_aims_for_lte_deployment_in_2009.html.

15 See, http://newsreleases.sprint.com/phoenix.zhtml?c=127149&p=irol-newsArticle_newsroom&ID=1237086.

16 See, http://www.t-mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20080919&title=T-Mobile%20USA%20Announces%20Commercial%203G%20Network%20Availability.

17 See, http://newsroom.clearwire.com/phoenix.zhtml?c=214419&p=NewsArticle&id=1240894.

18 High-Speed Services for Internet Access: Status as of June 30, 2006, FCC, Mar. 2008, Table 1.

19 Critical Mass – The Worldwide State of the Mobile Web, Nielsen Mobile, July 2008, at 3; Sharon Armbrust, Wireless Investor: U.S. Mobile Wireless Projections: Data Dollars Outgrow Voice 8-to-1, WIRELESS INVESTOR, SNL Kagan, July 15, 2008, at 4.

20 Critical Mass – The Worldwide State of the Mobile Web, Nielsen Mobile, July 2008, at 3-4.

21 Merrill Lynch, Interactive Global Wireless Matrix 3Q08.

22 Local Telephone Competition: Status as of December 31, 2007, table 5 (WCB/IATD rel. Sept. 2008), available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-285509A1.pdf

23 "Internet Access in U.S. Public Schools and Classrooms: 1994-2005," U.S. Dept. of Education, Institute of Education Sciences, NCES 2007-020.