

**Statement of**

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**Before the  
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Chairman Upton, Ranking Member Markey, and members of the Subcommittee, I am pleased to appear before you today as you consider potential changes to the statutory framework for the digital television transition.

My name is Rick Chessen. I am Chair of the FCC's DTV Task Force, and have been since its inception in October 2001. At the time, the transition was still in its early stages, and struggling to take off. Indeed, some openly wondered whether the transition would ever happen at all.

As today's hearing indicates, times have changed. We're no longer discussing *whether* the transition will end but *when* and *how* to end the transition as quickly and smoothly as possible for the American public.

There is plenty of credit to go around. Each of the affected industries – broadcasters, cable and satellite operators, content providers, consumer electronics manufacturers and retailers – deserve some credit for bringing us to this point. They developed the business plans, invested the capital, and are bringing the benefits of digital television to American consumers.

Government deserves some of the credit as well. Over the past few years, both Congress and the FCC have demonstrated a renewed sense of urgency, doing whatever was needed to get the transition moving. Often informal tools were used, like the industry roundtable discussions convened by this Committee that helped define and focus the issues. When necessary, the FCC used more formal regulatory tools, such as the DTV tuner mandate, rules for “plug and play” television sets, and penalties for broadcasters that failed to meet their build-out obligations.

But we still have much work to do. My statement will outline some of the steps that the FCC has taken to further the transition, as well as provide a status update on several of the pending proceedings

### **First DTV Periodic Review**

One of the first major actions the Commission took after formation of the DTV Task Force was to reconsider some decisions made in the First DTV Periodic Review. These “mid-course adjustments” were necessary in order to maximize the number of DTV stations on the air and to provide incentives for consumers to purchase DTV equipment. In that Reconsideration Order, adopted November 8, 2001, the Commission permitted stations to initially build lower-powered – and less expensive – DTV facilities, while retaining the right to expand coverage as the transition progressed. The Commission deferred replication and/or maximization requirements on stations, and also deferred requirements regarding the channel election process. However, the Commission declined to modify the deadlines for stations to be on the air with a digital signal, and refused to issue a blanket extension of remaining DTV construction deadlines. The result was that many more commercial and non-commercial stations were on the air with a digital signal (whether it was at licensed facilities or pursuant to a special temporary authority) by the May 1, 2002 and May 1, 2003 deadlines, respectively. From there, the number of stations on the air has continued to grow. As of April 7, 2005, 1,497 (or 87%) of the TV stations (both commercial and noncommercial) were on-the-air either with licensed DTV facilities or with special temporary authority.

### **Second DTV Periodic Review**

The Commission adopted the Second DTV Periodic Review Report and Order on August 4, 2004. Among other things, the Order: (1) established firm deadlines for digital stations to increase their power levels to either replicate or maximize their service areas, or lose the interference protection for those unserved areas; (2) required PSIP information in digital broadcast signals in order to promote closed captioning, v-chip, channel numbering and other

functionality; and (3) established a channel election process that will result in a Final DTV Table of Allotments.

### **Channel Election Process**

On February 10, 2005, nearly all TV broadcasters filed an election for their channel preference for final DTV operations. In this first round of elections, most stations chose to operate on their existing DTV channel. Several hundred chose to operate on their existing NTSC channel. Fifty stations chose to defer their decision to the second round of elections. Twenty stations did not participate because both of their allotments were out of the “core” DTV spectrum (i.e. TV channels 2 – 51). These stations will elect in the second round as well.

The Commission’s goal is to complete the required interference analysis of these first round elections and issue tentative channel designations by the end of this summer, and have the second round of elections in the fall. Round three elections would occur in early 2006, with a Notice of Proposed Rulemaking proposing a new DTV Table of Allotments by August 2006.

The channel election process is a complex undertaking involving not only domestic interference analysis for all stations, but also requires international coordination for those stations in the Northern and Southern border zones. At this point, the FCC’s International Bureau currently is working on existing international coordination issues. There likely will be additional coordination necessary for a number of stations in the border zones that elected to retain their NTSC channels or those that elected to participate in round two elections, as well as the border zone stations that have both allotments out of core. It is anticipated that international coordination for those stations will begin as soon as the FCC’s Media Bureau has cleared them domestically and issued tentative channel designations.

### **Digital Carriage Issues**

One of the most important issues regarding the DTV transition is how over-the-air broadcast stations are carried on multichannel video program distributors (“MVPDs”). A substantial majority of television households in most markets subscribe to either cable or satellite service. Thus, resolving the carriage issues will help facilitate the overall transition. The Commission recently issued a decision regarding dual carriage and multicast carriage issues as they relate to cable operators. In that decision, the Commission determined that the record did not support establishing either dual carriage obligations during the transition or multicast carriage requirements on cable operators. Several Petitions for Reconsideration were filed after the release of the Report and Order. The Commission still needs to address several issues related to cable carriage, including what constitutes material degradation of the broadcaster’s signal. Additionally, the Commission is still considering how to define the digital carriage obligations for satellite carriers.

### **Low Power Television, TV Translators, and Class A Stations**

There are approximately 2,100 LPTV stations and 4,700 TV translators operating in analog today. These LPTV stations and translators are secondary services to full-power stations and other primary services. Thus, these types of stations, which do not operate on channels in an allotment table, can continue operating as long as they do not cause interference to full-power stations or other primary service operations.

The first step in the digital transition for analog TV translator and LPTV stations was taken in the adoption of the LPTV Digital Order on September 9, 2004. In that Order, the Commission outlined the existing options for translator stations to make the transition. As option one, any station on any channel may “flashcut” to digital on its analog channel at any time

without waiting for the full power elections. Further, stations proposing to “flashcut” on channels 63, 64, 68, or 69 (the public safety channels) must secure a "coordinated use" agreement with state and regional public safety representatives. By law, however, stations operating on channels 60-69 must vacate these channels by the end of the full service transition, and find another channel to operate on.

As option two, any station licensee or permittee may apply for a digital “companion” channel in a window to be opened in the future, but may not apply for a companion channel in the 60-69 channel band. Any station proposing digital operations on channels 52-69 must notify potentially affected 700 MHz commercial wireless and public safety licensees before filing their application.

There are approximately 600 Class A stations with enhanced spectrum rights. In an earlier proceeding that created the Class A service, these stations were permitted to “flashcut” to digital. They will also be eligible to apply for a digital companion channel.

The Commission has recognized that it may not be possible for many of these low power stations to find companion channels until the end of the full-power transition, and thus, that the transition for these stations may extend beyond the end date for the full-power transition. The final transition date of low power stations will be considered in the Commission’s Third DTV Periodic Review.

### **DTV Tuner Mandate**

On August 8, 2002, the Commission adopted an Order that required digital TV tuners to be included in nearly all new TV sets by July 1, 2007. The Commission’s mandate, and its authority under the 1962 All Channel Receiver Act, was upheld by the Court of Appeals for the D.C. Circuit.

The mandate required that all TV receivers with screen sizes greater than 13 inches and all television receiving equipment such as video cassette recorders (VCRs) and digital versatile disk (DVD) players/recorders, have DTV reception capability as of July 1, 2007. The mandate adopted a phased-in schedule, starting with the largest sets in an effort to minimize the costs for equipment manufacturers and consumers. Currently, the FCC has a pending Notice of Proposed Rule Making seeking comment on whether to modify the schedule and is poised to take action in this proceeding in the near term.

### **Cable “Plug and Play” Rules**

On September 10, 2003, the Commission adopted rules for “one-way” digital “plug and play” cable compatibility. The rules enable consumers to purchase DTV sets that allow them to receive on-way cable programming without the need for a set-top box. Consumers must obtain a security card from their local cable operator to be inserted in the TV set to view scrambled programming. Currently, industry negotiations are on-going regarding “two-way”/interactive plug and play receivers.

### **Broadcast Flag**

On November 4, 2003, the Commission adopted the redistribution control mechanism known as the “broadcast flag.” The goal was to foster the digital transition by preventing mass redistribution of broadcast content over platforms like the Internet, while ensuring that consumers’ ability to make copies of such content was not affected. If broadcast content could not be protected from mass redistribution over the Internet, the FCC recognized that high-value digital content would migrate to distribution systems like cable and satellite, where it could be protected. However, the FCC’s decision was overturned by the Court of Appeals for the D.C.

Circuit on May 6, 2005. The court determined that the Commission lacked the statutory authority to impose the regulations.

### **Children's Programming Obligations**

On September 9, 2004, the Commission adopted rules regarding broadcasters' children's programming obligations in the digital world. Among other things, the Order addresses how the current three-hour children's core educational programming processing guideline should apply to a DTV broadcaster that chooses to multicast. The Order increases the amount of the core programming guideline proportionally to the increase in free video programming offered by the broadcaster on multicast channels. The revised guideline provides flexibility to broadcasters that multicast by permitting them the choice whether to air core programming on a single or multiple channels, provided that at least three hours per week are shown on their main channel. The new guidelines will become effective after a one year phase-in period. The Order also applies the same commercial time limits placed on digital children's television programming that exist for analog children's television programming.

### **Consumer Education**

The FCC's Consumer and Governmental Affairs Bureau is actively engaged in a consumer outreach campaign designed to educate the public on the digital television transition. The Commission has established a special webpage ([www.dtv.gov](http://www.dtv.gov)) that provides detailed information on the transition itself, including a Tip Sheet that was designed in coordination with the Consumer Electronics Association ("CEA") and Consumer Electronics Retailers Coalition ("CERC"). Several major retailers are making this tip sheet available in their stores and on their web sites. The Bureau will continue to do outreach to all segments of the population to help



ensure that the public is aware of the digital transition and how to prepare themselves for the end of analog broadcasting.

It is not too early to begin planning for the end of the transition. The more certainty we can provide – and the sooner we can provide it – the smoother the eventual switch-over will be for consumers and industry alike, and the more efficiently public safety officials and advanced wireless service providers will be able to make use of the reclaimed broadcast spectrum.

At the FCC, we stand ready to assist in any way we can. The draft legislation is another important step in addressing some of the outstanding issues before us, particularly on the issues of setting a hard date and educating the public about how to prepare itself for the switch-over. We look forward to working with this Committee as we continue to make progress toward bringing the DTV transition to a speedy and successful conclusion. I am happy to answer any questions you may have.