

**Written Statement
Of**

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

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

July 24, 2007

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

When I last appeared before you, I explained that the Commission was focused on accomplishing several critical goals -- increasing broadband deployment, encouraging wireless deployment, promoting competition, protecting consumers, and enhancing public safety. We have continued to vigorously pursue these objectives during the past few months.

The pro-competition policies that we have been furthering are designed to ensure that consumers benefit from innovation and technological advancements in all of the communications industries. For example, the Commission recently boosted competition in the delivery of voice and video services to people who live in apartment buildings. In a consistent and competitively-neutral fashion, we ensured that new entrants wanting to provide service to people who live in apartment buildings have the ability to use the internal wiring of both incumbent telephone and incumbent cable operators. Importantly, the Commission sought to support all new competitors, not one technology or one industry over another, and demonstrated its commitment to ensure that all consumers, regardless of where they live, benefit from competition in the voice and video markets.

In addition, we recently extended the disability access requirements of sections 225 and 255 – which formerly only applied to traditional phone services – to providers of Voice over Internet Protocol (VoIP). Congress sought to ensure that all Americans, including people with disabilities, benefit from

advances in technology. It is the Commission's responsibility to make this possible.

Promoting broadband access and affordability remains one of our top priorities. To this end, it is critical that we gain a better picture of broadband deployment in this country so that we can better calibrate our policies. I remain committed to improving our process, obtaining more and better information. Recently, we sought comment on improvements to the Commission's broadband data collection efforts, including collecting data on a more granular geographic basis. And, equally important, we sought comment on redefining the term "advanced services" to require higher minimum speeds. Given the evolution of technology and consumer expectations, we need our definition of broadband to keep up with the marketplace. We hope to move forward on these issues this fall.

The Commission has also been devoting significant time and attention towards completing its review of the media ownership rules. We must ensure that these rules take into account the competitive environment in which media companies operate and, at the same time, promote localism and diversity. A major part of our efforts in this regard has been collecting information through the media ownership hearings we have been holding around the country. Since I last testified before you, we have had two additional hearings – one media ownership hearing in Tampa, FL, and one localism hearing, in Portland, ME. And, we have scheduled our next media ownership hearing in Chicago on September 20th. Public input is critical to our process. Our efforts to collect a full public record will continue when we hold our final media ownership and localism hearings later this year.

I would like to spend some time updating you on two issues that have been and will remain at the top of the Commission's priorities – the upcoming spectrum auction in the 700 MHz band and the

DTV transition. These issues share a few things in common. First, both issues involve the same piece of our public airwaves. They also present both great opportunities for consumers and difficult challenges for policymakers. And, they both have been at the forefront of Congress's attention and the Commission's agenda.

The 700 MHz Auction

In implementing Congress' directive to reallocate the airwaves, the Commission must balance often competing interests while maintaining its focus on serving the public interest and the needs of the American people. Since I became Chairman, promoting broadband deployment has been one of my highest priorities. I am pleased that we have made significant progress. More work, however, still needs to be done.

One important factor spurring both increased broadband availability and reduced prices is competition among broadband platforms. All Americans should enjoy the benefits of broadband competition – availability, high speeds, and low prices. In much of the country, consumers have a choice of only two broadband services: cable or DSL. And in some parts of the country, consumers do not even have that choice. Wireless service is fast becoming critically important as another platform to provide broadband. One of the most important steps we can now take to provide affordable broadband to all Americans is to facilitate the deployment of a third “pipe” into the home. It is worth noting that wireless broadband is cost-effective to deploy not just in the big cities, but in rural areas, as well.

The upcoming auction presents the single most important opportunity for us to achieve this goal. Depending on how the Commission structures the upcoming auction, we will either enable the emergence of a third broadband pipe – one that would be

available to rural as well as urban American – or we will miss our biggest opportunity.

I have recently proposed rules for the 700 MHz auction that I believe will facilitate a national wireless broadband service. A coalition of companies that support a national wireless broadband alternative, Intel, Skype, Yahoo, Google, DIRECTV, and EchoStar, urged the Commission to structure the auction in such a manner that it would maximize the opportunity for a national wireless broadband service to emerge. They urged the Commission to make available at least one 11MHz paired block, offered over large geographic areas, with combinatorial bidding so that a national service could be established. I put forward a proposal that would meet these requirements.

My proposal would provide significant opportunities for small and rural carriers to obtain spectrum at auction as well. The proposed band plan would provide for a variety of geographic license areas and spectrum block sizes. I am also proposing stringent build-out requirements – the strictest build-out the Commission has ever proposed – to help ensure that the rural and underserved areas of the country will benefit from the provision of new services that this spectrum will facilitate. These build-out requirements include interim benchmarks and tough penalties. We also would permit higher power limits in rural areas, which will reduce the number of towers necessary to serve consumers and lower the cost of build-out.

Meeting the needs of public safety is critically important. During a crisis, public safety officials need to be able to communicate with one another. We are all aware of problems that have been created by the lack of interoperability for public safety during recent crises like 9/11 and Hurricane Katrina. To that end, my proposal for the upcoming auction would help create a truly national interoperable broadband network for public safety agencies to use during times

of emergency. I believe this proposal could offer many public safety benefits and is consistent with public safety's views on achieving an interoperable broadband network.

Many national and local public safety organizations have expressed support for a public-private partnership approach in which a national commercial licensee would work together with a national public safety licensee to build such a shared network. We must efficiently and effectively manage the 700 MHz spectrum allocated to both commercial users and public safety by Congress. My proposal will help the Commission ensure that public safety keeps pace with the advances in communications and gives first responders the broadband communications capabilities they need to protect safety of life and property of the American public.

Finally, I have also proposed that the license winner for about one-third of the spectrum be required to provide a platform that is more open to devices and applications. This auction provides an opportunity to have a significant effect on the next phase of wireless broadband innovation. A network more open to devices and applications can help ensure that the fruits of innovation on the edges of the network swiftly pass into the hands of consumers. Consumers would be able to use the wireless device of their choice and download whatever software they want.

Currently, American consumers are too often asked to throw away their old phones and buy new ones if they want to switch cell phone carriers. And when they buy that new phone, it is the wireless provider, not the consumer, who chooses what applications the consumer will be allowed to use on that new handset. Wireless consumers in many other countries face fewer restraints: for example, they can take their cell phones with them when they change carriers, and they can use widely available Wi-Fi networks – available in their homes, at the airport or at other hotspots – to access the Internet.

The upcoming auction provides a rare chance to promote a more open platform without disrupting existing networks or business plans. I have not, however, proposed to apply these same principles to the entire 700 MHz band or to other existing networks. Nor have I proposed to apply network neutrality obligations or mandatory wholesale requirements for this block or any other block.

In addition, the Commission recognizes that spectrum is a unique public asset, and that we must obtain a fair return on this asset for the American people. To ensure that a fair price is paid, I have proposed a reserve price for this block of spectrum, as well as an overall reserve price for the entire auction. If the reserve price is not met, the spectrum would be re-auctioned without the requirement for open devices and applications. These reserve prices, which are based on the winning bids for spectrum in our recent AWS-1 auction, will safeguard the value of the spectrum.

These issues have garnered a great deal of interest and commentary. I look forward to hearing from you and consulting with my colleagues on the Commission to finalize the rules in the next few weeks, enabling us to begin the auction by early next year.

The Digital TV Transition

The broadcasters' switch to digital technology will enable viewers to enjoy movie-quality picture and sound, multiple programming choices and interactive capabilities. A successful completion of the digital transition, however, depends upon ensuring that appropriate policies are in place to minimize the burdens and costs born by consumers. It also depends upon government and industry working together in promoting consumer awareness.

As I recently assured you, Chairman Dingell and Chairman Markey, the Commission is working, consistent with its statutory authority and budgetary capacity to ensure that no American is left behind in this part of the digital revolution.

For some time now, we have been working both on our own and in cooperation with industry, other government agencies, and consumer groups to advance the transition and promote consumer awareness. Our efforts to date have been three-fold. First, we have been working to get the right rules 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 has been dedicated to minimizing the negative impact of the digital transition on consumers while maximizing the benefits to them.

Without the proper policies in place, some viewers may be left in the dark or be unable to realize the full opportunities offered by digital technology. Such an outcome would be unacceptable.

The Commission, therefore, has initiated several rulemaking proceedings designed to facilitate the upcoming transition. In one recent proceeding, the Commission proposed to ensure that cable subscribers do not lose access to broadcast signals because of the digital transition.

About 50% of cable subscribers today - - at least 32 million people - - subscribe to analog not digital cable. These consumers are at risk of losing their ability to watch broadcast television after the digital transition unless the Commission acts. According to the 1992 Cable Act, cable operators must ensure that all local broadcast stations carried pursuant to this Act are “viewable” by “*all*” cable subscribers. The Commission is currently considering a rulemaking that would require cable operators to ensure their

analog customers don't lose their broadcast signals. Cable operators can either continue to carry signals in analog format to the millions of analog cable subscribers or alternatively, cable operators who have chosen to go all-digital can provide their subscribers with the necessary equipment to view broadcast and other channels.

One of the most important actions we have taken to facilitate a smooth transition is to ensure that electronics retailers fully inform consumers at the point of sale about the DTV transition date and the equipment necessary to continue to be able to receive over-the-air television signals.

Consumers have certain expectations and one of their expectations is that the television that they purchase today will also work two years from now. In April, the Commission released an order requiring retailers to disclose to consumers that a television with only an analog tuner will not receive over-the-air broadcast signals after February 17, 2009. Such notice should ensure that consumers are making a fully informed decision about the television that they seek to purchase *before* bringing it home. It will also help educate consumers about the upcoming digital transition.

And, just last week, the Commission adopted a Notice of Proposed Rulemaking on several DTV education initiatives that were originally suggested to us by Chairmen Dingell and Markey. This NPRM seeks comment on requiring broadcasters, multichannel video programming distributors, retailers and manufacturers to take certain actions to publicize the digital transition. I intend for the Commission to complete this proceeding expeditiously.

In addition to our policymaking activities, we have also been vigorously enforcing our digital transition-related rules. For example, as described above, in April we adopted labeling requirements to ensure that consumers are protected from the

unknowing purchase of television equipment without integrated digital tuners. As of July 19, 2007, Commission staff had inspected about 1030 retail stores around the country, as well as retailers' websites, to monitor compliance with our rules. As a result of these inspections, we issued over 262 citations notifying retailers of violations. As an outgrowth of our investigations, I recently presented my colleagues with Notices of Apparent Liability against seven large retailers for apparently violating the Commission's television labeling requirements. These fines, in the aggregate, total over three million dollars.

The Commission is also tracking down companies that continue to import or ship television receivers without DTV tuners, in violation of our rules. For example, on May 30, 2007, the Commission issued Notices of Apparent Liability against two companies – Syntax Brillian Corp. (approx. \$2.9 million) and Regent USA, Inc. (\$63,650). Our investigations in this area are continuing. Swift enforcement of all of our DTV-related rules is critical to protecting consumers from purchasing television sets that may be rendered useless in 18 months. Enforcement activities in this area will continue to be a priority for the Commission in the coming year.

In addition to our policymaking and enforcement activities, we have devoted resources to promoting consumer awareness of the upcoming transition through education and outreach efforts. Specifically, the Commission has prepared and disseminated numerous consumer publications to alert and inform consumers about the transition. For example, Commission staff recently revised one of our DTV fact sheets, entitled, "DTV is Coming (And Sooner Than You Think)," to add a section focused on helping consumers determine whether their current TV set contains a digital tuner or whether they will need to purchase a new one.

We have also partnered with several consumer organizations, such as CERC and NACAA, to help us disseminate DTV education information. Another important way we have been disseminating information is through our participation in events and conferences around the country. At such events, Commission staff can interact with individual consumers and give DTV-related information about the transition directly to them.

Our consumer outreach and education activities are geared in part toward reaching consumers who are likely to be unaware of the upcoming digital transition, including senior citizens, non-English speaking consumers, minority communities, people with disabilities, low-income individuals, and people living in rural and tribal areas. For example, earlier this month we held an Indian Telecommunications Initiative Regional Workshop in Albuquerque, NM. This workshop focused on the DTV transition with the goal of assisting Indian Tribes in preparing, organizing and conducting their own DTV awareness programs and initiatives. While there, we organized and conducted DTV panels, exhibited equipment, and distributed DTV education materials.

We also recently announced that we will host a DTV Consumer Education Workshop on September 26. This workshop, to be held at Commission headquarters, will consist of officials from organizations who represent a broad range of DTV stakeholders, including government agencies, industry, tribal organizations, disability community groups, non-English speaking groups, senior citizen organizations, low-income consumer representatives and other public interest organizations that may represent underserved customers or those living in rural areas. The purpose of this workshop will be to provide an opportunity for all interested parties to jointly discuss the challenges associated with the upcoming transition and explore ways in which these organizations can work together, in conjunction with the Commission, to develop coordinated consumer education activities.

In addition to furthering the activities already discussed, the additional funding we have requested from Congress will allow us to undertake several new initiatives that will greatly enhance our efforts to reach those consumers who currently rely upon over-the-air service. For example, in order to reach consumers more directly, additional funds would allow us to expand our dissemination of published materials through targeted direct mailings of DTV-related information to hundreds of thousands of households, with a focus on underserved communities and senior citizens. And, we could translate our DTV consumer education materials into languages other than Spanish, possibly including French and Mandarin, and distribute these materials through government and community organizations serving immigrants and non-English speaking consumers.

These are exciting and challenging times for consumers. We are in the middle of a digital revolution. With the upcoming 700 MHz auction and the digital transition, we are at a critical juncture. The government must set the right rules and policies in place to encourage the deployment of the next generation of infrastructure and the introduction of new and innovative services over this infrastructure. The Commission must keep working to ensure that through the upcoming wireless auction and digital transition, consumers are able to experience the best that technology has to offer. This means that we must work to both minimize the negative impact of the digital transition and introduce more competition in the broadband market. By doing so, we can ensure that consumers can reap the vast rewards the digital revolution offers.

The Commission's ultimate trust and responsibility is, after all, the public interest. And it is from the public's airwaves that these opportunities for innovation flow. In both the 700 MHz auction and the DTV transition, we cannot lose sight of that goal.

Thank you for your time and attention today. I appreciate the opportunity to share with you the Commission's current priorities and would be happy to answer any questions you may have.