

**Remarks of Commissioner Deborah Taylor Tate
To the Association of National Advertisers
Fourth Annual Advertising Law and Business Affairs Conference
February 12, 2008**

“Convergence of Media and Legal and Business Implications”

I. Introduction

Good Morning and thank you for this invitation. I appreciate the opportunity to speak with you today about issues important to the FCC and the advertising industry. I first want to thank Bob Liodice, President of ANA, and the co-chairs of this conference, Dan Jaffe, Executive Vice President of ANA, and Doug Wood, ANA’s General Counsel. I applaud the ANA for continuing to reach out to both the FCC and FTC, as partners in this ever-evolving, media-rich world. The theme of this year’s conference is “Avoiding the Fate of the Dinosaurs in a Time of Media Convergence.” This line perfectly encapsulates the challenge facing the advertising and technology industries today; just ask the landline phone companies. I commend you for your foresight not only in realizing the revolutionary changes that are taking place, but also proactively adapting your business models to this new day, and to the new ways you must reach viewers and audiences. My regulatory philosophy has always been to first encourage market-driven solutions, and I hope that other industries will follow your example.

In many ways, my own professional career has intersected with ad agencies and extraordinary creative talents for as long as I can remember-- whether political campaigns, choosing colors and slogans and editing ads, or campaigns to raise children’s immunization rates and improve public schools. So, I would like to take this opportunity to thank you all, as representatives of member organizations, for the positive impact that you have had in helping to bring the awesome power of advertising to bear on so many problems facing our children and youth – from the war against drugs and tobacco, to buckling up our seatbelts, to the more recent national epidemic of childhood obesity. You have had, and will continue to have, a profound effect on our country. On that note, I want to thank those of you who have been part of the creative ad campaigns that national, state, and even local broadcasters are already running regarding the DTV transition that is set to take place February 17, 2009. As you know, this will be the greatest technological transition since the advent of color tv, with improved fidelity, surround sound, and digital channels. We need your continued help. I hope that you all will seize this new advertising opportunity and help us educate Americans about the transition – and don’t just stop with video. Please help us think of creative ways in which to reach out especially to those groups most at risk – our seniors and many of our non-English-speaking citizens.

To give you an idea of the great work advertisers are doing to help us educate America about the DTV transition, here are some clips being aired by the National Cable and Telecom Association and the National Association of Broadcasters.

However, in addition to this rich consumer experience, the digital transition will also enable our first responders and other public service entities to become truly interoperable in times of disaster or attack. So, there are lots of terrific reasons we need your help to ensure a smooth transition for all Americans.

Over a lifetime of public service-- especially working with two Governors-- ad agencies and broadcasters were often my first calls when we were launching a major campaign. In fact, I may be one of the few government officials with an “Addy,” an award I truly cherish. We resurrected a vintage ad from the 1970s called “TN TRASH,” with a colorful country music personality driving across the state throwing out trash, introducing an entire new generation to this character and launching environmental projects across our beautiful state. The song became such a phenomenon that it was one of the top requested songs on the radio! And, my friend Bill Hudson and I got to take home an Addy.

II. Convergence

Innovators constantly engage in what the economist Joseph Schumpeter called “creative destruction” – destroying entrenched business models and technologies through some innovative vehicle to create value, whether in goods or services, for consumers – and we literally see it happening here in the United States almost every day. At the same time, certain technologies are converging, allowing us to do more things with the same wire or radio waves, or with the same device – whether communication with family, sharing in-depth research with a colleague halfway around the world, or for entertainment, such as a movie theater that now resides in the palm of your hand, or a mobile communications device that is a personal banking institution.

Each platform competes in unique ways. For example, telephone companies and cable companies seek to offer services – wireline voice, wireless voice, video, and high-speed Internet access – with triple-plays and quadruple-plays that include a broadband component. We at the FCC have provided regulatory relief to traditional telecom companies to add multi-channel video to compete with cable, and they are doing so – AT&T with U-verse and Verizon with FiOS. Cable companies are competing with telecom companies by adding voice service – most often VoIP – and cable already has 32 million broadband connections. As providers build bigger pipes, access to high-speed Internet service grows even faster-- and hopefully more affordable. Using wireless transmissions, satellite service providers offer broadband and, increasingly, so do terrestrial wireless service providers. In the U.S., we estimated there were about 23 million wireless broadband connections last year, counting satellite and mobile devices, and I hope we will observe an even greater increase in the coming year. All of this, of course, has the potential to radically change how, when, and where you may reach consumers, viewers, and listeners.

In just the past few months, I have observed firsthand how much convergence touches our lives and changes our world. I see this wherever I go, from the Global Forum on Convergence in Venice, where I spoke to and learned from government and technology leaders from around the world, to the World Radio Conference in Geneva, where we discussed spectrum allocation for the next generation of services, to the Googleplex in Mountain View, California, where I was thrilled to learn about their customer-centered focus on providing new services, to last month’s Consumer Electronics Show in Las Vegas, where electronics manufacturers showed off the latest revolutionary technologies. Technology clearly is advancing in new and exciting ways. The opportunities to create value for consumers and for our communities are seemingly endless. Importantly for this group, new technologies even hold the promise of providing more precise measurements of the “eyeballs” your ads are attracting – better measures to see exactly how your work does in fact create value. So rather than having a negative impact, I think convergence can have a profoundly positive impact- for those ready and willing to be cross-platform, multi-faceted innovators.

One could spend hours simply describing these latest advances in technology, but I want to highlight just a couple. On the consumer side, we are increasingly moving to a world in which your mobile phone can tell you where you are, then locate the nearest restaurant, or more importantly, the nearest emergency care center. It can even call 911, and direct help your way. The latest mobile devices can provide high-speed access to the Internet from any place, at any time, which is incredibly empowering. So empowering, in fact, that as mobile phones become available to more and more of our young children, we will need to think carefully about what is and is not appropriate for them.

Advances in technology change our world in other ways, too. Take politics, for example. Your favorite candidate can be your friend on Facebook. And the very latest, of course, is political micro-blogging with Twitter. The YouTube debate has come a long way from the Kennedy-Nixon televised debate. In fact, we’ve come a long way from the last election, only two years ago, where candidates were just beginning to utilize the internet and other networking sites for friendraising. Now candidates can easily raise millions in a few days

In the scramble to adjust to this new world, it can sometimes be too easy to focus on the daily work we do, to the exclusion of the broader social context into which that work fits. All of us, in our roles as professional and government officials, have an obligation to ensure that we contribute to our larger society. I take my role as an official very seriously and thankfully that’s not a tough sell for this crowd either, as the ANA’s mission statement itself says, “On behalf of the industry, we align the marketing community towards solutions for societal concerns.”

In short, it’s not about technology for technology’s sake, just as it’s not about advertising for advertising’s sake. It’s about innovations that bring real improvement to our world.

III. How Convergence Affects Advertising

Two weeks ago at the National Association of Television Program Executives annual conference, the hot topic was the migration of content from television to the Internet, and how that migration affects consumers and advertisers-- and changes business models. Internet advertising revenue has risen from less than \$1 billion in 1997 to \$16.9 billion in 2006-- and it's projected to reach \$27.5 billion in 2008. Over the past four years, Internet advertising has grown between 20-34% each year, while tv and radio have seen virtually no growth and newspaper ad dollars have in fact declined. Internet advertising is now a multibillion dollar a year business, and it's not just national advertisers that are sharing in the profits. Local advertisers are turning to the Internet as well. As Analyst Gordon Burrell recently pointed out, "There is tremendous growth in local online advertising, whether web advertising or search advertising. In 2007, \$8.7 billion was spent by local advertisers."

Advertising must go mobile. As CBS executive Cyriac Roeding said recently, mobile is the only medium that people carry with them 18 hours a day—in my case, make that 24 hours a day! He noted that CBS Mobile's sports section drew 75 million mobile page views and 5 million unique visitors during the fourth quarter of 2007. As NBC's President for Integrated Media, Beth Comstock, puts it, "Video has been liberated" from the television set. We are seeing more and more content delivered via mobile devices. Not only do mobile devices allow for round-the-clock access to consumers, they also serve as a direct-response medium. Virgin Mobile USA reports that branded content on Virgin Mobile targeted to its core audience of teens and twenty-somethings generates click-through rates of 6%-- much higher than rates for typical Web banner ads.

We are beginning to see where advertising is going with last week's announcement by CBS that they will begin the first serious experiments with mobile phone ads customized to a consumer's specific location. The CEO Loopt, CBS's partner in this project, predicts that by the end of 2008, 50 million mobile phones in the U.S. will be able to receive location-based ads. Can you imagine being able to reach consumers with an ad for a restaurant five minutes before they drive by it? The convergence of technology offers unlimited possibilities for your industry. Just look at the AT&T and Starbucks alliance announced earlier today.

IV. Issues at the FCC

I know that you are all well-versed on the ramifications of this convergence on the advertising industry, but I would like to share some of the implications I see based on issues under consideration at the FCC.

A. Sponsorship ID

First is the issue of sponsorship identification, also known as product placement or embedded ads. I have already spoken to a few of you about the Notice of Proposed Rulemaking the Commission is considering, which would seek comment on whether to further expand our rules for sponsorship identification. This item developed in response to recent changes in television advertising techniques, specifically the increase in paid product placements. With the development of DVRs and TiVo, viewers are able to record their favorite shows and watch them without commercial breaks, resulting in a decline in advertisement penetration. In light of this, the industry responded with new techniques, such as embedded advertisements woven into the plotlines or sets of television shows. Some consumer groups, and perhaps some at the Commission, believe the American public needs government to protect them from this practice-- in the form of highly-visible, concurrent messages disclosing the sponsorship of products as they appear on screen. The FTC looked at this issue in 2005 and found that "the rationale for disclosing that an advertiser paid for a product placement (i.e., that consumers will give more credence to objective claims about a product's attributes when made by a party independent from the advertiser), is absent." Many of you have already contacted the Commission, requesting that we seek comment more generally in the form of a Notice of Inquiry. I can assure that we are seriously considering that proposal and hope to have a decision in the next few weeks. Stay tuned, and stay involved.

This is yet another issue which I continue to point out will change greatly with the migration of programming to the Internet— an unregulated, Wild West of video content. In point of fact, a recent *New York Times* article on Web-based programming described "The Fantastic Two," a web series about two friends and their fantasy football league, in which McDonald's dollar menu items are regularly integrated into the show's plotline. McDonald's Director of U.S. Media said, "This is unique for us in the level of integration." No sponsorship identification requirements mean McDonald's and the web series producers have unfettered freedom to integrate ads into the plot. I eagerly anticipate seeing how the market responds.

As a lifelong government official, I believe there is a role for government to play in protecting the public

interest and educating consumers. It is not clear to me at this point that the development of product placements and other creative ways of reaching consumers warrant such government protection or education. I believe the Commission is right to exercise caution and seek more information about the practice before considering a rulemaking. I look forward to hearing from you.

B. Children's Advertising

i. Advertising during children's hours

Another issue the Commission continues to consider is children's programming. The Children's Television Act requires broadcasters to air three hours of children's programming each week, and limits the amount of advertising aired during those three hours to 10.5 minutes per hour on weekends, and 12 minutes per hour on weekdays. I encourage you, as good corporate citizens, to use these limited minutes to convey positive messages to our children. You can monetize messaging for fruit juice and candy, just as easily as for french fries and candy. There are parents watching with their children who will be just as interested in ads for bicycles and swingsets, as for cell phones and video games. I'm going to offer you a bit of inside-baseball advice—proactively commit to running ads for healthy foods and active lifestyles during the three hours of children's programming each week. Some of you have probably heard discussions on Capitol Hill regarding further limitations and even greater regulation-- such as, for example, discounting children's programming that includes ads for unhealthy foods. I offer you this advice as a lifelong proponent of market-based, industry-driven solutions first.

ii. Childhood Obesity

On a closely-related note, every single person in this room would agree that we should find a cure for any disease that afflicts 10 million children in America. There is such a disease-- and it's not cancer, and it's not something that requires scientific discoveries for treatment—it's childhood obesity. And yes, it affects 10 million children-- and counting. Stopping this epidemic is a personal passion of mine. I believe that those of you in the advertising industry are critical partners in the battle. While we can argue about the exact numbers, reports show that children ages 2-7 watch nearly 14,000 ads per year, and 8-12 year olds watch 30,000 ads per year. I want to start by applauding those of you whose companies develop and produce advertisements that promote healthy foods and active lifestyles. By using your resources in this way, you are truly saving lives, positively impacting our healthcare system, and in the end, saving taxpayer dollars.

We all agree that childhood obesity is a national health problem. More than 10 million school-aged children are now considered overweight, and the numbers are expected to grow. There is no question that the health ramifications are reason enough for us all to get involved in finding a solution. I regularly speak to pediatricians who are alarmed by the growing rate of traditionally-adult diseases such as cardiac issues, hypertension, and Type II diabetes, being diagnosed in young children. What will the effect be on the already eighty million adults living with heart disease, when these ten million children grow up? Over the past year, a number of you have partnered with me, Commissioner Michael Copps, Chairman Kevin Martin, and two U.S. Senators, to form the Joint Task Force on Childhood Obesity. The work of that group, and the Council of Better Business Bureaus, has led to a number of important pledges by the advertising and media industry. For example:

- Nickelodeon, Discovery Kids, Disney, Sesame Workshop, and the Cartoon Network will no longer allow their characters to advertise unhealthy foods.
- Ion Media will no longer air ads for unhealthy foods on its kids' programming network Qubo.
- Thank you to McDonald's, Cadbury, Campbells, Mars, Coca-Cola, General Mills, Kellogg, Kraft, Burger King, Unilever, ConAgra, Hershey, and PepsiCo will advertise only "better for you" foods to children under 12. These companies made up over two-thirds of the children's food and beverage advertising expenditures.

While there remains disagreement about whether these pledges go far enough to truly make a difference, I believe this is, at a minimum, a signal from the industry – and you – of willingness to come to the table and be part of the solution. I appreciate all of the members of the ANA that have devoted time to this critical issue. It has now grown into a health, welfare, and economic crisis for this country.

C. Violence and Indecency

Another issue I continue to express concern about is the level of violence and indecency on television. Most of you know the statistics-- an average American household has the television set turned on 8 hours and 11 minutes per day, and children watch on average between 2 and 4 hours of television per day. With this level of daily media exposure, I believe we must ensure that children are viewing positive, wholesome images, not harmful, unhealthy ones. Last year, I was proud to see the FCC issue a report to Congress on the state of violence in the media. That study found that “on balance, research provides strong evidence that exposure to violence in the media can increase aggressive behavior in children, at least in the short term.”

No issue elicits more complaints, or more discussion, everywhere I go, than the level of violence on television. Almost 70% of parents say they are very concerned about sex and violence on television and they support limits on content. As we enter the age of content delivery over mobile devices, there is a whole new set of questions to address regarding how to provide ratings, how to block objectionable content, and whether the FCC has a role to play in this arena. Now that wireless devices are being marketed to children as young as six, I have encouraged the wireless industry to be part of the solution as well. I have been working with Microsoft, Google, CTIA, and some of the largest wireless carriers about their particular solutions to this critical issue, and I congratulate those companies that have already introduced parental tools. Just last fall, AT&T launched its “Smart Limits for Wireless” initiative, which helps parents protect children from inappropriate calls, texts, and internet content by allowing them to block numbers they deem inappropriate, and filter access to content on their child's phone. I truly believe there is a new market for “walled gardens”- just as parents want safe places for their children to play out in the neighborhood, they want safe places for their children to play in the online world. You, as advertisers, have the opportunity to help them find those places and be the named sponsor. I also encourage you to consider sponsoring and bringing back the “family hour” which has devolved tragically, as evidenced by a recent report showing 76% of family hour programming contained foul language.

Another children’s issue that I am sure you are aware of is the desire of many advocates to start providing content ratings for advertisements, or alternatively, apply our broadcast decency rules to commercials. This is an area we are just beginning to explore and I am interested to get your feedback on the matter. Again, I urge you to take whatever voluntary steps you think are prudent to answer the call of parents to protect children from anti-family-friendly content. I believe that market-based solutions are the best way to achieve our shared goals and to provide parents the tools they need to be the first line of defense for their children.

V. Conclusion

In conclusion, over the past century, from radio to television to print news, advertisers have played an integral role in the dissemination of content. Today, as content begins to be cross-platform and technology-maximized, your industry is again at the vanguard of the revolution. While I’m not in the advertising business, I’d like to leave you with a few thoughts for the future—some things I see developing from my vantage point at the FCC.

First, focus on global and mobile devices- and not just for business users. Just yesterday I was reading about the new Disney cell phone being targeted twenty and thirty year old women in Japan. You all probably know better than anyone that Disney is no longer just for kids. In 2007, 26 million people visited Tokyo Disney, one of the most popular dating destinations in the world.

Second, look at all the new locations where content is being delivered. I also read this week that American Airlines, Jet Blue, and Alaska Airlines are considering offering WiFi on their flights. A new highway for billboards if you will.

And then there are blogs. No longer part of the fringe, blogs are becoming mainstream, and are often part of source lists that include the *New York Times* and *Washington Post*. I would encourage you to partner with bloggers- perhaps somewhat unlikely media sources- and immerse yourselves in this world of media convergence. An op-ed in yesterday’s *Wall Street Journal* explored advertisers’ interaction with users of online social networks like Facebook. I agree with the article’s author, who points out that advertising must become more user-specific in order to remain relevant. As she says, “the new model creates a more trusted environment for reaching high-value, frequent purchasers, whether of airline tickets, electronics, clothes or other items.... Value is being created in users’ own walled gardens...” The benefit of social networking, or social graphing, as it’s now being called, is that it allows you, as advertisers, to develop a virtual graph of who is looking at your products. Nielson now has

competition from TNS and TiVo, and while the terms and technologies continue to change, the value of being connected is still driving the market. Just as landline phones brought us together in the early 20th century, social networking sites are bringing us together in the 21st century.

Fourth and finally, I urge you to understand the devices themselves. While the economy may be slowing down, the effects have not been felt in the consumer electronics industry, where LCD and plasma television set sales are on the rise. “Prosumers,” who are no longer eating out or going to the movies, are turning to television for their total entertainment experience. With video and music content available on demand, individuals are becoming their own programmers and producers with products like “Cybershot” for viewing personal photos and videos on the big screen. And I have not even mentioned the gaming industry at 100 million game boxes. Advertising will be literally exploding throughout the world!

I see these new developments as great opportunities for your industry. Far from being relegated to the “fate of the dinosaurs,” I think the advertising industry has a bright future and crucial role to play in today’s era of technology convergence.

I will end where I began. Thank you for all you are doing to help educate America—particularly over the next year regarding the DTV transition taking place February 17, 2009. The possibilities in advertising cyberspace are endless. I can’t wait to see the next Super Bowl ad, or what pops up on my wireless device next. Thank you again for having me and I look forward to working with you in the future.